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BENEFICIARIES OF INTERNATIONAL PROTECTION TRAVELLING TO THEIR COUNTRY OF ORIGIN: CHALLENGES, POLICIES AND PRACTICES IN AUSTRIA

Martin Stiller

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The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

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EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission by order of the European Council in order to satisfy the need for a regular exchange of reliable information in the field of migration and asylum at European level. Since 2008, Council Decision 2008/381/EC has constituted the legal basis of the EMN, and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union (EU) institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The NCP Austria is – pursuant to an agreement with the Federal Ministry of the Interior – located in the Research and Migration Law Department of the Country Office for Austria of the International Organization for Migration (IOM). The IOM office was established in 1952 when Austria became one of the first members of the Organization. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to correspondingly develop and implement national projects and programmes.

The main task of the NCPs is to implement the work programme of the EMN, including the drafting of the annual policy report and topic-specific studies, answering Ad Hoc Queries launched by other NCPs or the European Commission, carrying out visibility activities, and networking in several forums. Furthermore, the NCPs in each country set up national networks consisting of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data and information, which are supplemented where necessary through additional information collected directly. EMN studies are prepared in accordance with common study templates in order to achieve comparable results within the EU and Norway. Since comparing

results frequently proves challenging, the EMN has produced a glossary, which ensures that similar definitions and terminology are used in all national reports.

Upon completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarizes the most significant results from the individual national reports. In addition, topic-based policy briefs, so-called EMN Informs, are produced in order to present selected topics and compare national results in a concise manner. All national studies, synthesis reports, informs and the Glossary are available on the website of the European Commission Directorate-General for Migration and Home Affairs.

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EXECUTIVE SUMMARY

As part of the EMN study entitled Beneficiaries of international protection travelling to their country of origin: challenges, policies and practices in the EU Member States, in Norway and Switzerland, this national report deals with legal norms, administrative practice and case law in the context of issues related to the withdrawal of international protection. "International protection" is an umbrella term used in summary fashion to refer to both asylum status and subsidiary protection status.

The national report shows that Austria has precise legal provisions applying to the withdrawal of both asylum status as well as subsidiary protection status; these provisions set out the specific conditions for withdrawing either status and also specify the consequences resulting from withdrawal. In keeping with the specifications for the EMN study,[1] the scope of this national report is limited to status withdrawal either due to beneficiaries travelling to their country of origin or as a result of contact with authorities representing their country of origin in Austria.

For the scope of asylum law, "indications" (*Hinweise*) of potential reasons for withdrawing the status was one of the items defined in the Act Amending the Aliens Law 2018.[2] Based on the statute wording, such "indications" include in particular applying for and being issued a passport for the particular country of origin and entry to that country. Merely contacting the authorities of one's country of origin does not result in withdrawal of asylum status, according to the provisions of Austrian law. The situation is different, however, if, upon contacting the authorities, the individual applies for and is issued a passport for their country of origin. Asylum is usually withdrawn in such cases. Another reason for withdrawal of asylum is entry to one's country of origin, in which case the principles developed through court rulings have to be considered here.

The Asylum Act 2005[3] does not define any specific conduct on the part of beneficiaries of subsidiary protection that would potentially lead to

1 See chapter 1.4.
2 FLG I No. 56/2018.
3 FLG I No. 100/2005, in the version of federal law FLG I No. 56/2018.

withdrawal of that status. Beneficiaries of subsidiary protection are accordingly permitted to enter their country of origin, for example. Whether subsidiary protection is granted in Austria always depends on whether the applicant (still) qualifies for being granted (renewed) protection. This is evaluated based on all circumstances of the case.

The authority responsible for withdrawal procedures in Austria is the Federal Office for Immigration and Asylum. Where the conditions for status withdrawal are likely to be met, that authority has the duty to initiate a withdrawal procedure and to withdraw protection status if the applicable conditions are met. The authority cannot deviate from that compulsory legal norm. The individual concerned must be given the opportunity to cooperate in the withdrawal procedure and be allowed to present evidence in their defence. In addition, the withdrawal procedure has to be completed within a certain period, otherwise asylum status can no longer be withdrawn; this is specified in the Asylum Act 2005. When protection status is withdrawn with final effect, the residence permit expires in the case of persons granted asylum or is revoked from former beneficiaries of subsidiary protection. After definitive withdrawal, the individual concerned is also required to surrender any identity documents or cards confirming the person's status as entitled to asylum or subsidiary protection. An additional consequence of status withdrawal is that the authorities are obliged to issue a return decision, which can ultimately be enforced through removal.

This national report presents one case example as well as specific examples relating to withdrawal of protection status, illustrating official decisions in practice and court rulings.

1. INTRODUCTION

1.1 Study background and objectives

Competent authorities in several EU Member States have in the past observed cases where beneficiaries of international protection have travelled voluntarily to their country of origin or applied to the country's authorities for a passport. While such acts on the part of beneficiaries of international protection do not necessarily imply misuse of international protection status, such behaviour could contradict the circumstances that originally led to protection being granted. Such behaviour would, for example, suggest that the individual is not, as claimed in order to obtain protection status, or is not, to the full extent, subject to persecution in their country of origin, since that individual would otherwise not voluntarily travel back to the country.

Thus, this national report is intended to look at the issue of whether reasons for the withdrawal of protection status exist when beneficiaries of international protection travel to their countries of origin or contact the country's authorities. In keeping with the specifications for the EMN study, the scope of this national report is limited to the aspects mentioned above. No other existing reasons for status withdrawal are discussed. Another aim here is to provide objective information relating to the impact that such travel or contact has on protection and residence status. This involves presenting the legal framework providing the basis for potential withdrawal of protection status. Another issue examined in detail concerns the circumstances under which a person's travel to their country of origin or contact with the authorities of that country can be taken as an indication of that person having re-availed themselves of the protection of their country of origin.

1.2 International and European context

In Austria, asylum and subsidiary protection status are granted and withdrawn based on the Asylum Act 2005,[4] which, in turn, is based on the binding legal instruments applying at EU and international levels to relevant matters. At international level, the Convention Relating to the Status of Refugees (Geneva Refugee Convention)[5] provides the basis for granting asylum. For the scope of the EU, the recast Qualification Directive[6] additionally contains provisions governing the granting of asylum as well as subsidiary protection, with the latter to be considered in cases where the conditions for granting asylum are not met.

One pre-condition for revoking international protection status is that asylum or subsidiary protection has in fact been granted. It would go beyond the scope of this report to describe in detail the conditions under which asylum and subsidiary protection are granted.[7] It can nonetheless be stated in summary that, in order to be granted asylum, there must be a "well-founded fear" that the individual would be persecuted due to certain reasons related to them personally. The person concerned must also be residing outside their country of origin and be unable or unwilling to avail themselves of the protection of that country (Art. 1 Section A subpara 2 Geneva Refugee Convention). As regards the EU, acts of persecution and reasons for persecution are defined in detail in Art. 9 and Art. 10 of the Qualification Directive. Being only concerned with the granting of refugee status (asylum), the Geneva Refugee Convention has no provisions on subsidiary protection.

The rules governing subsidiary protection in the European Union are taken from the Qualification Directive. Based on the Directive, such protection status is to be granted to a third-country national who, while not qualifying for refugee status, would be threatened with serious harm,

4 FLG I No. 100/2005, in the version of federal law FLG I No. 56/2018.

5 FLG No. 55/1955.

6 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ 2011 L 337/9 (Qualification Directive).

7 For further information see AT EMN NCP 2015:18, 64–80; Reyhani 2014:40.

such as through a death penalty or execution or through torture, if they returned to their country of origin (Articles 15 and 18 Qualification Directive).

Both the Geneva Refugee Convention and the Qualification Directive specify reasons allowing the cessation of asylum or subsidiary protection status once granted.

One example defined in the Geneva Refugee Convention is when the person granted asylum voluntarily re-avails themselves of the protection of their country of origin (Art. 1 Section C subpara 1 Geneva Refugee Convention). Based on Art. 11 para 1 (a) of the Qualification Directive, individuals cease to have refugee status when, for example, they voluntarily re-avail themselves of the protection of their country of nationality. Protection here refers in general to the responsibility of a State's government to enforce the laws of that State.[8] Thus, individuals are protected by their State when the State enforces laws, thereby enabling its population to coexist under orderly conditions. It therefore needs to be assumed that individuals have re-availed themselves of the protection of their countries of origin if they again subject themselves to the scope of influence of the particular country's government, for example by returning to that country.

Subsidiary protection can cease for example when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required (Art. 16 para 1 Qualification Directive).

8 UNHCR, *FAQ Genfer Flüchtlingskonvention,* available at www.unhcr.org/dach/de/services/faq/faq-genfer-fluechtlingskonvention (accessed 27 November 2018).

1.3 Definitions

The study makes use of the following definitions, which are taken from the Asylum and Migration Glossary of the European Migration Network:[9]

Application for international protection: A request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU, that can be applied for separately.

Asylum: A form of protection given by a State on its territory, based on the principle of non-refoulement and internationally or nationally recognized refugee rights and which is granted to a person who is unable to seek protection in their country of citizenship and/or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or for holding a particular political opinion.

Asylum seeker: A person who seeks protection from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments.

Beneficiary of international protection: A person who has been granted refugee status or subsidiary protection status.

Country of origin: The country of nationality or, for stateless persons, of former habitual residence.

Geneva Refugee Convention: The UN multilateral treaty is the key legal document defining who is a refugee and who is not, the rights of refugees and the legal obligations of States towards them.

Refugee: A third-country national who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside of their country of

9 See European Migration Network, *Asylum and Migration Glossary 6.0* (European Commission, Brussels, 2018a). Available at https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary/a_en (accessed 7 December 2018); European Migration Network, *Glossar zu Asyl und Migration 5.0* (European Commission, Brussels, 2018b). Available at www.emn.at/wp-content/uploads/2018/07/emn-glossar-5-0_de.pdf (accessed 15 November 2018).

nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Art. 12 (Exclusion) of Directive 2011/95/EU does not apply.

Subsidiary protection: The protection given to a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless person, to their country of former habitual residence, would face a real risk of suffering serious harm as defined in Art. 15 of Directive 2011/95/EU, and to whom Art. 17 para 1 and 2 of this Directive do not apply, and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.

Withdrawal of international protection: The decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with Directive 2011/95/EU.

1.4 Methodology

The present study was conducted by the National Contact Point (NCP) Austria in the EMN within the framework of the EMN's 2017–2018 Work Programme. The study follows a common study template with a predefined set of questions developed by the EMN, in order to facilitate comparability of the findings across all Member States.

Legislative texts, national and international publications, and websites were used as sources. The study was also able to draw on continuous media monitoring information provided by the Country Office for Austria of the International Organization for Migration (IOM). The statistics used were provided by the Federal Ministry of the Interior.

The decisions handed down by the Federal Administrative Court between 1 January 2014 and 10 September 2018 (the report cut-off date) on complaints filed against first-instance decisions on the withdrawal of status were evaluated based on the decisions published from the collection of decisions in the legal database[10] and the Legal Information System of the

10 Manz, *rdb.at*, available at www.rdb.manz.at (accessed 10 September 2018).

Federal State.[11] Searches were performed over references to Art. 7 of the Asylum Act 2005 with the keyword "status withdrawal" (Aberkennung) and over references to Art. 9 para 1 of that act. These search parameters rendered 202 decisions in cases of asylum withdrawal and 92 decisions relating to procedures for withdrawal of subsidiary protection for the specified period. Nonetheless, it should be noted that not all of these decisions are relevant for this national report.[12]

To supplement the information obtained from secondary research, qualitative semi-structured face-to-face interviews were conducted with experts active in asylum law and legal advice, with additional information being requested in writing in some cases. The experts listed below participated through personal interviews:

- Stephan Klammer, director of legal counselling, Diakonie Refugee Service;
- Bianca Koller, staff member of Department III/5, Federal Ministry of the Interior;
- Matthias Rauch, head of Unit III/5/b, Federal Ministry of the Interior.

The study was compiled by Martin Stiller (Legal Associate, IOM Country Office for Austria) under the supervision of Julia Rutz (Head of Research and Migration Law, IOM Country Office for Austria). Issues related to statistics were dealt with by Saskia Heilemann (Research Associate, IOM Country Office for Austria).

The interviewees mentioned above deserve special thanks for sharing their knowledge and experience through personal interviews. The author wishes to additionally thank Lena Köpsell (Media Intern, IOM Country Office for Austria) for assistance in various matters and for research contributions.

The study was prepared in close cooperation with the Federal Ministry of the Interior.

11 Legal Information System, *Federal Administrative Court,* available at www.ris.bka.gv.at/Bvwg (accessed 10 September 2018).

12 This results from the fact that some of these decisions only regard procedural issues. Furthermore, these decisions partially regard withdrawals on grounds not examined within this national report.

2. PRIOR SITUATION IN AUSTRIA

The following section summarizes past changes in Austria in the political discussion of matters relating to the withdrawal of asylum status due to an individual travelling to their country of origin or contacting the authorities of that country.

2.1 Withdrawal of international protection as a priority issue

Protection had been revoked already in the past where the conditions for withdrawing previously granted protection had been met.[13] In 2015 authorities began to collect data on travel by beneficiaries of international protection.[14] Similarly, in response to a question by parliament in 2016, the minister of the interior at the time stated that no statistics were kept on the number of cases in which asylum status was withdrawn due to individuals travelling to their country of origin.[15]

In any case, for Austrian policymakers today, withdrawal of international protection status and the subsequent removal from the country of individuals deprived of international protection can be considered key issues. This can be concluded among other things from the amendments to the Asylum Act 2005 that were introduced through the Act Amending the Aliens Law 2018.[16] Current political decision makers have declared the goal of granting protection or maintaining previously granted protection to individuals who do in fact require it.[17] This was one of the reasons for adapting the Asylum Act 2005 through the Act Amending the Aliens Law 2018. As a result of the amendment, a withdrawal procedure is now clearly required

13 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.

14 Written input by the Federal Ministry of the Interior, 7 November 2018.

15 Federal Ministry of the Interior, *Beantwortung der parlamentarischen Anfrage betreffend „Heimaturlaub von Asylberechtigten und Asylwerbern" 9978/J vom 15. Juli 2016, 9545/AB (XXV.GP),* p. 1, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_09545/imfname_559176.pdf (accessed 31 October 2018).

16 FLG I No. 100/2005, in the version of federal law FLG I No. 56/2018.

17 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.

when there are "specific indications" (konkrete Hinweise) that one of the conditions for the cessation of protection, as enumerated in Art. 1 Section C of the Geneva Refugee Convention, has been met. Accordingly, the circumstances to be regarded as "specific indications" have also been defined.[18] According to the rationale given for the act, the definition of such "specific indications" in the Act Amending the Aliens Law 2018 is intended to contribute towards increasing the number of initiated withdrawal procedures and withdrawal decisions by 15 per cent,[19] thus accelerating withdrawal of asylum status.[20] The United Nations High Commissioner for Refugees (UNHCR) and other parties expressed doubts as to whether this measure would prove effective in achieving accelerated procedures or increasing the numbers of withdrawal procedures and withdrawal decisions.[21]

Even before the Act Amending the Aliens Law 2018 was passed, institutions providing legal counselling were notified by the competent authority, the Federal Office for Immigration and Asylum, that, starting in mid-2018, emphasis would be placed on status withdrawal procedures and on reviewing eligibility for granting protection.[22] The materials related to the statute do not reveal any specific reasons why it was in the second half of 2018 that the amendments to the Asylum Act 2005, described above, and the more frequent review and initiation of withdrawal procedures were

18 Specifically the entry in the country of origin by the person granted asylum or the application for and the issuing of a country of origin's passport are considered as "specific indications" (Art. 7 para 2 Asylum Act 2005).

19 Act Amending the Aliens Law 2018, Ministerial Draft – Preamble and Impact Assessment, p. 8, available at www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00038/imfname_690125.pdf (accessed 19 September 2018).

20 Stenographic record, Assembly of the National Council on 5 July 2018 (2018a), permanent secretary Edtstadler, p. 2, available at www.parlament.gv.at/pd/stvorwww/XXVI/NRSITZ/NRSITZ_00036/A_-_16_04_25_Staatssekretarin_im_Bundesministerium_fur_Inneres_Mag__Karoline_Edtstadler.pdf (accessed 20 September 2018).

21 Stenographic record, Assembly of the National Council on 5 July 2018 (2018b), Member of Parliament Zadić, p. 1, available at www.parlament.gv.at/pd/stvorwww/XXVI/NRSITZ/NRSITZ_00036/A_-_15_54_38_Abgeordnete_Dr__Alma_Zadic,_LL_M___PILZ_.pdf (accessed 2 October 2018); UNHCR, UNHCR – Analyse des Entwurfs für das Fremdenrechtsänderungsgesetz 2018, p. 2, available at www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_00872/imfname_693196.pdf (accessed 2 October 2018).

22 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

to be implemented. One legal aid expert has, however, cited possible practical reasons. Additional staff was hired by the Federal Office for Immigration and Asylum, not least in response to the migration events of 2015 and 2016 (Jell-Nemati, 2016:37).[23,24] With the completion of a major part of the large number of asylum applications that had precipitated the increase in staff numbers, it is suggested that staff now have more time to conduct reviews and status withdrawal procedures.[25]

2.2 Statistical material on status withdrawal in Austria

Since 2015 Austria has maintained statistics on travel by beneficiaries of international protection to their country of origin. Corresponding data has only been collected as of that year; for previous years data are either unavailable or not comparable. Indeed, not all the data categories required for this particular evaluation were initially available; consequently, the 36 trips to countries of origin recorded for 2015 is a relatively small number.[26] A total of 171 beneficiaries of international protection are verified as having travelled to their country of origin in 2016. At 97 in 2017, the number was 43 per cent lower. Between January and June of 2018, only 32 individuals holding either asylum or subsidiary protection status are recorded as having travelled to their country of origin. When the figures for the first six months of 2018 are extrapolated, a further decrease by 34 per cent compared with the previous year is estimated for 2018.[27]

Without any relation to actual travel by such individuals to their country of origin, Eurostat data show an increasing status withdrawal rate

23 Federal Office for Immigration and Asylum, *30 Prozent mehr Außerlandesbringungen und Steigerung der Asylentscheidungen um 57 Prozent*. News, 19 January 2017, available at www.bfa.gv.at/presse/news/detail.aspx?nwid=567156585A6B42756274383D&ctrl=796C386F347944696937796A68352F47503437326B513D3D&nwo=1 (accessed 29 October 2018).

24 Media reported that the number of employees in the Federal Office for Immigration and Asylum had almost tripled (Profil, *Leiter des Bundesasylamtes Wolfgang Taucher: „Es ist nicht meine Aufgabe, Likes zu sammeln.“,* 4 September 2018, available at www.profil.at/oesterreich/bundesasylamt-wolfgang-taucher-interview-10325613 (accessed 22 November 2018)).

25 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

26 Data provided by the Federal Ministry of the Interior, 7 November 2018.

27 Ibid.

since 2015. A disproportionately strong increase is even seen between 2017 and the first three quarters of 2018 (Eurostat, n.d.a and n.d.b). These figures are in line with observations by a legal aid expert, who cited a noticeable increase in status withdrawal procedures.[28] The Eurostat data do not differentiate categories based on the reason for withdrawal, however. It needs to be assumed in general that, even in the past, an individual's asylum status was revoked where the person was verified to have travelled to their country of origin. The fact that the number of cases of travel to countries of origin has fallen recently, while status withdrawal has risen in number, suggests that status is now withdrawn mostly for other reasons. This study looks into withdrawal of protection due to travel to a country of origin or contact with authorities representing the country of origin in Austria; yet these are not the only grounds for status withdrawal. Other reasons are set out in Art. 7 of the Asylum Act 2005, including the grounds for exclusion from asylum enumerated under Art. 6 of that act, among which are listed criminal conviction and posing a threat to the security of the Republic of Austria.[29]

28 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

29 Beyond that these include protection granted according to Art. 1 section D Geneva Refugee Convention as well as the exclusion criteria as listed in Art. 1 section F Geneva Refugee Convention.

3. GROUNDS FOR STATUS WITHDRAWAL

The reasons potentially leading to withdrawal of protection status in Austria are exhaustively enumerated in the Asylum Act 2005, in Art. 7 for the case of persons granted asylum and in Art. 9 for beneficiaries of subsidiary protection (Filzwieser et al., 2016:654; Schrefler-König and Szymanski, 2014:Art. 9 Asylum Act, comment 2).[30] Status withdrawal is therefore only permissible for the reasons set out in the Asylum Act 2005.

The scope of this national study is limited to the question of whether grounds for withdrawing international protection exist when the status holder contacts the authorities of their country of origin in Austria or travels to that country. It should nonetheless be noted that these are not the only grounds. Other reasons are set out in Art. 7 of the Asylum Act 2005, including the grounds for exclusion from asylum enumerated under Art. 6 of that act, among which are listed criminal conviction and posing a threat to the security of the Republic of Austria.[31]

3.1 Contact with the authorities of a country of origin

The following section examines whether a reason for status withdrawal is to be identified when beneficiaries of international protection contact the authorities representing their country of origin in Austria.

3.1.1 Persons granted asylum

One of the cases for withdrawing asylum status specified in Art. 7 para 1 subpara 2 of the Asylum Act 2005 is when grounds for the ceasing of protection exist, as enumerated in Art. 1 Section C of the Geneva Refugee Convention. Voluntarily re-availing oneself of the protection of one's country of origin is defined as one such reason in Art. 1 Section C subpara 1 of the Geneva Refugee Convention. In other words, the Geneva Refugee

30 See chapter 1.2 for the distinction between asylum and subsidiary protection.

31 Beyond that these include protection granted according to Art. 1 section D Geneva Refugee Convention as well as the exclusion criteria as listed in Art. 1 section F Geneva Refugee Convention.

Convention ceases to be applicable when persons granted asylum voluntarily place themselves under the protection of their country of origin.

Based on the Geneva Refugee Convention, the Austrian Asylum Act 2005 defines the circumstances to be regarded as "specific indications" of a person granted asylum status having re-availed themselves of the protection of their country of origin. The "specific indications" that were introduced to the Asylum Act 2005 through the Act Amending the Aliens Law 2018 were defined with reference to previous case-law rulings by the Supreme Administrative Court.[32] Applying for and being issued a passport by one's country of origin is accordingly considered a "specific indication" of that person re-availing themselves of the protection of their country of origin (Art. 7 para 2 Asylum Act 2005). Yet, according to rulings by the Supreme Administrative Court, this only applies to cases where no circumstances are presented that would argue against the person having re-availed themselves of the protection of their country of origin (Filzwieser et al., 2016:661).[33]

The Asylum Act 2005 does not, in contrast, specify any legal consequences for persons granted asylum who merely establish contact with the authorities of their countries of origin, without applying for or being issued a passport. A legal aid expert also confirmed having no knowledge of any such consequences.[34] The expert with the Federal Ministry of the Interior asserted that no generalizations could be made as to whether establishing contact as described resulted in status withdrawal. Rather, she reported, a preliminary check was conducted as part of an examination of the individual case, and this could subsequently result in a withdrawal procedure and ultimately in status withdrawal if, under consideration of the restrictive Supreme Court rulings, the legal requirements were deemed to have been met. Mere contact will probably not always result in the instigation of a withdrawal procedure or constitute sufficient grounds for status withdrawal; rather, several factors need to be weighed up, according to the expert from the Federal Ministry of the Interior.[35]

32 Act Amending the Aliens Law 2018, Government Proposal – Explanatory Notes, p. 22, available at www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00189/imfname_698465.pdf (accessed 18 September 2018).

33 Supreme Administrative Court, 24 October 1996, 96/20/0587. In this regard the Supreme Administrative Court mentioned, for example, circumstances that call into question the voluntary nature of the behavior that is being assessed.

34 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

35 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.

3.1.2 Beneficiaries of subsidiary protection

Unlike in cases of persons granted asylum, applying for and being issued a passport for a country of origin is not explicitly defined in Art. 9 of the Asylum Act 2005 as a reason for withdrawing subsidiary protection. As to the reason for this differentiation between persons granted asylum and beneficiaries of subsidiary protection, the expert with the Federal Ministry of the Interior referred to the fact that beneficiaries of subsidiary protection do not face the threat of being persecuted individually by their country of origin[36] (or that country's institutions).[37] Subsidiary protection is granted, she stated, based on conditions such as civil war in the individual's country of origin, where that person would face serious harm upon returning to the country. Consequently, contact with authorities and the issuing of a passport are to be seen here in an entirely different light than in cases of persons entitled to asylum, who are granted that status specifically based on the threat of individual persecution by their country of origin, according to the expert.

The Asylum Act 2005 similarly does not provide for withdrawing status in the case where beneficiaries of subsidiary protection merely contact the authorities of their country of origin in Austria. Also in this regard the expert with the Federal Ministry of the Interior referred to such cases as always involving examinations of the individual case to consider all circumstances. Where such an examination reveals that the conditions for status withdrawal are met,[38] protection status has to be revoked, according to the expert.[39] A legal aid expert also claimed that consequences in response to contact with authorities could not be definitively ruled out. This is reportedly because no court rulings based on the new legal situation existing since late 2018 have as yet been handed down. According to the legal expert, persons in counselling are advised to avoid establishing contact with the authorities of their country of origin in Austria.[40]

36 Only the State, Parties or Organizations can be considered as "persecutor" in the meaning of the Geneva Refugee Convention (cf. Schrefler-König and Szymanski, 2014:Art. 3 Asylum Act Note 11).

37 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.

38 Among them, changes in the situation in the country of origin so that the conditions for the granting of subsidiary protection do not (or no longer) persist.

39 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.

40 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

3.2 Travel to countries of origin

This section presents the legal basis for issuing travel documents to persons granted asylum and also examines whether any (legal) consequences result after such individuals travel to their country of origin or a neighbouring State.

3.2.1 Persons granted asylum

The Act Amending the Aliens Law 2018 clearly defines travel by a person granted asylum in Austria to their country of origin as a "specific indication" that the individual has re-availed themselves of the protection of their country of origin (Art. 7 para 2 Asylum Act 2005). A reason for the cessation of protection as listed in Art. 1 Section C of the Geneva Refugee Convention is given in such cases.[41]

When evaluating whether travel by an individual to their country of origin actually constitutes a reason for status withdrawal, one of the decisive aspects considered in the rulings by the Supreme Administrative Court is whether such travel is voluntary and motivated by the individual's intention to re-avail themselves of the protection of their country of origin.

While the Asylum Act 2005 does not define "voluntary" in this context, the term probably refers to cases where persons granted asylum are acting while not under physical or psychological coercion (Filzwieser et al., 2016:654). Under case law as well, only those cases are defined in which individuals cannot be assumed to be acting voluntarily. Such cases include extradition and removal and – where the length of the stay is decisive – cases where the individual is forced to extend their stay due to illness or similar impediments.[42]

The intention of the person concerned to re-avail themselves of the protection of their country of origin implies volition on the part of that person to establish a normal relationship with that country, in other words, a sort of "sustained affinity" towards their country of origin.[43] Thus, the

41 Relevant are Art. 1 Section C subpara 1 and subpara 4 Geneva Refugee Convention. The voluntary settlement by a person granted asylum, that is the voluntary transfer of residence in that country that she/he has left owing to a fear of persecution, is generally already included in subpara 1 (Filzwieser et al., 2016:655).

42 Supreme Administrative Court, 3 December 2003, 2001/01/0547.

43 Ibid.

reason for the individual's travel to their country of origin also needs to be considered. Trips by an individual to visit sick persons in their country of origin, for example, need to be ruled out as indicating the intent to seek protection (Filzwieser et al., 2016:654); with respect to an individual's relationship to their country of origin, visits with an elderly or infirmed parent have to be judged differently than regular holiday stays or trips to set up business relationships, for instance (UNHCR, 2011:25; Filzwieser et al., 2016:662).[44]

Finally, frequency of travel and length of stay also have to be considered, according to rulings by the Supreme Administrative Court.[45] Accordingly, regular stays or visits are to be judged differently than travel on only one occasion. The rulings by the Supreme Administrative Court do not generally qualify any short trip as a reason for terminating protection as defined in Art. 1 of the Geneva Refugee Convention;[46] the Federal Office for Immigration and Asylum nonetheless stated that, in the event of an excessively long stay, even a one-time trip by an individual to their country of origin could result in status withdrawal.[47]

Austrian asylum law does not require individuals to notify the asylum authority of any planned travel to their countries of origin. As detailed below in section 3.2.3, federal or provincial laws relating to the receipt of social benefits can require individuals to provide notification of their absence from home.[48] Individuals need not obtain authorization or approval prior to travelling to their home countries. Mention should be made here of a political initiative taken in 2017 by one party, NEOS – The New Austria and Liberal Forum (NEOS), in proposing such approval. By way of example, it was proposed that travel for the purpose of visiting terminally ill relatives should require such prior approval. In the view of NEOS, this would prevent any misuse while enhancing legal certainty for all parties involved.[49]

44 Supreme Administrative Court, 28 January 2005, 2002/01/0354.

45 Interview with Matthias Rauch, Federal Ministry of the Interior, 17 October 2018.

46 Supreme Administrative Court, 3 December 2003, 2001/01/0547.

47 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.

48 Such duty to give notice results for example from Art. 50 para 1 Unemployment Insurance Act, Art. 21 para 1 Viennese Law on Needs-based Guaranteed Minimum Resources or Art. 16 para 1 Styrian Law on Needs-based Guaranteed Minimum Resources.

49 Heute, *Flüchtlinge: Heimreisen sollen kontrolliert werden*, 22 June 2017, available at www.heute.at/politik/news/story/Neos--Genehmigungspflicht-fuer-Reisen-von-Fluechtlingen-46096131 (accessed 23 November 2018).

In connection with travel to countries of origin, a legal aid expert reported that even travel to a neighbouring country of the individual's country of origin was considered in a status withdrawal procedure or when deciding whether to initiate such a procedure. According to the expert's observations, in such situations persons granted protection were assumed by the authorities to be travelling from the neighbouring country to their particular country of origin, which would constitute fulfilment of the reason for status withdrawal defined in Art. 7 para 1 subpara 2 of the Asylum Act 2005.[50]

Reasons for travel

Family reasons are cited as being by far the main grounds for travel to individuals' countries of origin; this was reported both by the Federal Office for Immigration and Asylum and a legal aid expert. The corresponding reasons cited by persons granted asylum as the occasion of travel to their countries of origin included deaths and funerals, the illness of family members and family visits.[51] According to the expert in legal counselling, individuals often enquired in advance whether travel to their country of origin was permitted for one of the reasons listed above.[52] Another occasion for travel to individuals' countries of origin, mentioned by the Federal Office for Immigration and Asylum, is to procure documents, for example in divorce cases.[53]

Nonetheless, in Austria, the reasons for travel by persons granted asylum are not stored electronically in the form of structured data, according to the Federal Office for Immigration and Asylum.[54]

Travel documents

To be able to travel, persons granted asylum have to be in possession of a suitable travel document. Persons granted asylum are entitled to a travel document, as set out in the Geneva Refugee Convention and the Qualification Directive.[55] Art. 28 of the Geneva Refugee Convention

50 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.
51 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
52 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.
53 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
54 Ibid.
55 See chapter 1.2 for the Qualification Directive and the Geneva Refugee Convention.

requires the contracting States to issue travel documents to refugees lawfully staying in their territory for the purpose of travel outside their territory. This is, however, on condition that no compelling reasons of national security or public order would require otherwise. Art. 25 of the Qualification Directive defines similar terms, requiring Member States to issue travel documents to beneficiaries of refugee status for the purpose of travel outside their territory. This does not apply, however, to cases where compelling reasons of national security or public order would require otherwise. In accordance with these requirements, persons granted asylum in Austria are, upon application, issued a Convention Passport (Art. 94 para 1 Aliens Police Act 2005)[56] that allows them to leave and enter Austria, subject to the applicable statutory provisions (Art. 15 leg. cit.).[57] As the Convention Passport is in principle valid for every country in the world, it is also valid for the countries bordering on the country of origin of a person granted asylum. An individual's country of origin is always excluded from the validity of that individual's Convention Passport (Art. 91 para 1 and 2 in conjunction with Art. 94 para 5 Aliens Police Act 2005). Convention Passports issued in Austria consequently contain a notice stating that the document is not valid for the holder's country of origin. Convention Passports are normally valid for a period of five years and renewal is not permitted (Art. 94 para 5 in conjunction with Art. 90 para 1 and 3 Aliens Police Act 2005).

Apart from being issued a Convention Passport, persons granted asylum can also retain a passport from their country of origin. Where an asylum seeker holds a passport from their country of origin, representatives of the public security service in Austria are entitled to seize the document as evidence[58] (Art. 39 para 1 Federal Office for Immigration and Asylum

56 FLG I No. 100/2005, in the version of federal law FLG I No. 56/2018.

57 As a result, foreigners who wish to enter or exit the federal territory lawfully are, in the absence of a provision to the contrary in federal law or in international agreements or of international practices to the contrary, required to carry a valid travel document (Art. 15 para 1 Aliens Police Act 2005).

58 With reference to asylum seekers, these include for example documents that give information on the identity or citizenship (Aliens Authorities Restructuring Act, Government Proposal – Preamble and Explanatory Notes, p. 27, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed 21 September 2018)). This also includes the passport of the country of origin.

Procedures Act;[59] Art. 38 para 1 Aliens Police Act 2005). The passport is to be subsequently returned by the Federal Office for Immigration and Asylum to the person concerned, provided that it is not required for the asylum procedure (or another procedure; Art. 21 Asylum Act 2005, Art. 39 para 3 Federal Office for Immigration and Asylum Procedures Act).[60]

3.2.2 Beneficiaries of subsidiary protection

Travel by beneficiaries of subsidiary protection to their country of origin is not listed in Art. 9 of the Asylum Act 2005 as one of the grounds for status withdrawal. Beneficiaries of subsidiary protection are accordingly free in principle to travel to their country of origin and stay there.[61]

The Federal Office for Immigration and Asylum is nonetheless entitled to review individuals' status, for example when renewing a person's residence title[62] or in response to their travelling to their country of origin;[63] the decisive factor here is whether the individual (still) qualifies for subsidiary protection (Art. 8 para 1 Asylum Act 2005). The circumstances of travel are taken into account in the overall evaluation. If the conditions for granting that status are still met, protection continues to be granted even if the person granted subsidiary protection voluntarily travels to their country of origin and jeopardizes themselves.[64] If, however, these conditions are no longer met, subsidiary protection status is to be revoked, as required in Art. 9 para 1 subpara 1 Asylum Act 2005. According to a legal aid expert, the authorities normally argue here that the conditions in the country of origin have changed, with for instance an alternative to flight now existing in that country, so that the conditions for granting subsidiary protection are no longer met.[65]

Reasons for travel

The reasons for travel by beneficiaries of subsidiary protection are also not stored electronically in the form of structured data, according to the

59 FLG I No. 87/2012, in the version of federal law FLG I No. 56/2018.
60 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
61 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
62 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.
63 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.
64 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
65 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

Federal Office for Immigration and Asylum.[66] Reference is made to the discussion in section 3.2.1 on the most common reasons for travel by beneficiaries of subsidiary protection to their country of origin.[67]

Travel documents

Beneficiaries of subsidiary protection holding a passport from their country of origin are able to travel using that passport. As the name indicates, the Geneva Refugee Convention applies only to refugees and does not refer to subsidiary protection at all. Accordingly, the terms contained in the Geneva Refugee Convention – and specifically those relating to travel documents[68] – apply only to persons granted asylum. The Geneva Refugee Convention does not refer to a travel document for beneficiaries of subsidiary protection.

The situation is different at European level. Art. 25 para 2 of the Qualification Directive requires Member States to issue documents for travel outside their territory to persons granted subsidiary protection status who cannot obtain a national passport. However, this does not apply to cases where compelling reasons of national security or public order would require otherwise. Under Austrian law, beneficiaries of subsidiary protection as defined in Art. 2 para 1 subpara 16 of the Asylum Act 2005 are accorded the temporary and renewable right to enter and reside in Austria. In addition, persons who have been granted subsidiary protection in Austria receive an Alien's Passport (Fremdenpass) upon application, provided, however, that no compelling reasons of national security or public order exist that would oppose the issuing of an Alien's Passport. Furthermore, an Alien's Passport can only be issued to persons granted subsidiary protection who are unable to obtain a valid travel document from their country of origin (Art. 88 para 2a Aliens Police Act 2005). According to a legal aid expert, the Austrian authorities instruct beneficiaries of subsidiary protection in some cases to obtain confirmation from the embassy of the individual's country of origin in Austria proving that no passport for the country of origin will be issued to them.[69] By virtue of the Alien's Passport, beneficiaries

66 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.

67 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018; Written input by the Federal Office for Immigration and Asylum, 24 October 2018.

68 See above, chapter 3.2.1.

69 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

of subsidiary protection can leave and enter (or re-enter) Austria, subject to the applicable statutory provisions (Art. 15 para 1 Aliens Police Act 2005).[70] Alien's Passports are normally valid for a period of five years and renewal is not permitted (Art. 90 para 1 and 3 Aliens Police Act 2005). While Alien's Passports are usually valid for every country in the world, the country of origin of the beneficiary of subsidiary protection is always excluded (Art. 91 para. 1 and 2 Aliens Police Act 2005). Alien's Passports are designed to comply with international standards for such travel documents (Art. 88 para 3 Aliens Police Act 2005). Such passports carry the title of Fremdenpass (Alien's Passport), with the title additionally indicated in English and French on the outside cover. The cover is brown (Art. 14 Regulation on the Implementation of the Aliens Police Act).[71] Since the provisions governing the Alien's Passport also apply accordingly to the Convention Passport, the format of the Alien's Passports for beneficiaries of subsidiary protection is basically the same as that of Convention Passports for persons granted asylum (Art. 94 para 5 Aliens Police Act 2005).

3.2.3 Consequences for social benefits

The withdrawal of asylum status is the most serious consequence of travel by an individual to their country of origin; apart from that, no further consequences under asylum law result from the Asylum Act 2005. A legal aid expert who was interviewed was also not aware of any such consequences.[72]

With respect to the receipt of social benefits in Austria, however, negative consequences may ensue. It should be noted, however, that such consequences potentially affect not only beneficiaries of international protection but basically any recipient of benefits who meets the criteria. One example in this context is the receipt of unemployment benefit. Pursuant to Art. 16 para 1 (g) of the Unemployment Insurance Act 1977,[73] entitlement to unemployment benefit is suspended in cases including a stay in another country, so that unemployment benefit is to be discontinued in accordance with Art. 24 para. 1 of that act. Art. 25 para 1 requires that, in

70 See also chapter 3.2.1.
71 FLG II No. 450/2005, in the version of federal law FLG II No. 227/2018.
72 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.
73 FLG No. 609/1977, in the version of federal law FLG I No. 30/2018.

such cases, recipients be compelled to return "what they have unjustifiably received". The purpose of the notification obligation set out in Art. 50 para 1 of the Unemployment Insurance Act 1977 is to enable the authority to review each and every change in the unemployed person's circumstances that might result in a change in entitlement, in order to determine whether the benefit should be discontinued or adjusted.[74] Accordingly, any change in circumstances, including stays abroad, must be reported to the authority within one week of taking effect.

A stay in another country may also have an impact on minimum benefit. Responsibility for managing the minimum benefit system lies with the individual provinces, so that recipients are subject to varying obligations relating to disclosure of relevant circumstances, while varying consequences may result from failure to comply with these obligations. The obligations applying to individuals receiving minimum benefits under the Styrian Minimum Benefit Act, for example, include the requirement to report to the authorities without delay any absence lasting longer than two weeks (Art. 16 para 1 Styrian Minimum Benefit Act).[75] Benefits are to be refunded in the event that the individual fails to provide notification and benefits are wrongly claimed as a result. In addition, by failing to provide notification or not providing notification in time, the individual is committing an administrative offence punishable by a fine of up to EUR 4,000 (Art. 23 Styrian Minimum Benefit Act).

3.3 Information for persons granted international protection

As described above, the person's protection may be withdrawn as a result of contacting the authorities of their country of origin in Austria or of travelling to their country of origin. It would therefore seem appropriate to ask whether beneficiaries of international protection are informed of these impending consequences.

It should be noted here that beneficiaries of international protection in Austria usually receive information about the potential consequences of contacting the authorities of their country of origin or of travelling to that

74 Supreme Administrative Court, 15 September 2010, 2010/08/0139.
75 PLG No. 14/2011, in the version of provincial law PLG No. 63/2018.

country only upon request. Such information is provided orally or in writing, depending on which regional directorate or branch office of the Federal Office for Immigration and Asylum is responsible. This contrasts with certain organizational units of the Federal Office for Immigration and Asylum, which, when issuing original travel documents, (orally) communicate to persons granted asylum the potential consequences of a trip to their country of origin. In some cases, where corresponding indications exist, specific information is provided orally during appointments with authorities.[76] The information is provided in a language which the person concerned understands. There is no legal obligation to provide this information.[77]

Based on these observations, it cannot be ruled out that beneficiaries of international protection are not aware of the detrimental consequences of contacting the authorities of their country of origin or travelling to that country.

76 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
77 Written input by the Federal Office for Immigration and Asylum, 7 November 2018.

4. WITHDRAWAL PROCEDURES AND CONSEQUENCES FOR THE RIGHT OF RESIDENCE

This section discusses relevant aspects of the withdrawal procedure and withdrawal decisions as well as the consequences that a withdrawal decision has for the right of residence.

4.1 Review of protection status

When examining how an individual's continued qualification for international protection is systematically reviewed, a distinction needs to be made between persons granted asylum or those granted subsidiary protection.

4.1.1 Persons granted asylum

The Federal Office for Immigration and Asylum is required to evaluate at least once every calendar year whether, in the countries accounting for the largest numbers of persons granted asylum within the previous five calendar years, there has been any significant and lasting change in the specific conditions which were the main cause of fear of persecution among those concerned (Art. 3 para 4a Asylum Act 2005).[78] This evaluation is prepared as part of Country of Origin Information, a record of relevant facts, including their sources, on the situation in the countries concerned (Art. 3 para 4a Asylum Act 2005; Art. 5 para 1 Act Establishing the Federal Office for Immigration and Asylum).[79] Where such an evaluation shows that there has been a significant and lasting change in the relevant circumstances in an individual's country of origin, a procedure for

78 Federal Act, which amends the Asylum Law 2005, the Aliens Police Act 2005 and the Federal Office for Immigration and Asylum Procedures Act, Government Proposal – Explanatory Notes, p. 3, available at www.parlament.gv.at/PAKT/VHG/XXV/I/I_00996/fname_498908.pdf (accessed 18 October 2018).

79 FLG I No. 87/2012, in the version of federal law FLG I No. 56/2018.

withdrawing the person's asylum status must be initiated in any case (Art. 7 para 2a Asylum Act 2005).[80] In such cases, the authorities are required to notify, but not by any specified means, the individual concerned that a procedure for withdrawal of asylum status has been initiated (Art. 7 para 2a Asylum Act 2005).[81]

However, the evaluation referred to above as well as the specific circumstances indicating that the conditions for status withdrawal are likely to be met only lead to the initiation of a withdrawal procedure, not immediately to actual withdrawal of asylum status. In the withdrawal procedure, it must be ensured that the facts of the case are fully established and that the conditions for withdrawal are examined thoroughly.[82] Not until the withdrawal procedure comes to an end does the Federal Office for Immigration and Asylum decide whether to revoke asylum status.

A similar review is carried out when renewing residence titles held by persons granted asylum. The residence permit issued in connection with asylum status is initially valid for three years, in accordance with Art. 3 para 4 of the Asylum Act 2005. It is renewed for an indefinite period of validity, provided that the conditions for initiating a procedure to withdraw asylum status are not met or any withdrawal procedure has been terminated (Art. 3 para 4 Asylum Act 2005).

4.1.2 Beneficiaries of subsidiary protection

For the case of beneficiaries of subsidiary protection, the Asylum Act 2005 does not provide for an annual review of the situation in beneficiaries' country of origin. Similarly, no review is required when a beneficiary travels to their country of origin or contacts the national authorities of their country of origin in Austria.

The renewal of an individual's residence title is, however, an example of a case in which the conditions for the continuation of subsidiary

80 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.

81 Federal Act, which amends the Asylum Law 2005, the Aliens Police Act 2005 and the Federal Office for Immigration and Asylum Procedures Act, Government Proposal – Explanatory Notes, p. 4, available at www.parlament.gv.at/PAKT/VHG/XXV/I/I_00996/fname_498908.pdf (accessed 18 October 2018).

82 Act Amending the Aliens Law 2018, Government Proposal – Explanatory Notes, p. 22, available at www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00189/imfname_698465.pdf (accessed 18 September 2018).

protection are to be reviewed.[83] According to an expert with the Federal Ministry of the Interior, the Country of Origin Information base is also consulted when assessing whether the prerequisites are met.[84] If it becomes evident that the conditions are not (or no longer) met, the residence title is not renewed (Art. 8 para 4 Asylum Act 2005). Where a review, not within the context of renewing an individual's right of residence, reveals that the conditions for granting subsidiary protection are not or no longer met, the Federal Office for Immigration and Asylum has the duty of initiating a withdrawal procedure, potentially resulting in the withdrawal of subsidiary protection status (Art. 9 par 1 subpara 1 and para 3 Asylum Act 2005; Art. 3 para 2 subpara 1 Federal Office for Immigration and Asylum Procedures Act).

4.2 Withdrawal procedures

The authority responsible for withdrawal procedures in Austria is the Federal Office for Immigration and Asylum (Art. 3 para 2 subpara 1 Federal Office for Immigration and Asylum Procedures Act). According to Austrian law, the Federal Office for Immigration and Asylum is obliged to withdraw the protection status of beneficiaries who meet the conditions for status withdrawal. The Federal Office for Immigration and Asylum cannot depart from this legal obligation (Filzwieser et al., 2016:654; Schrefler-König and Szymanski, 2014:Art. 9 Asylum Act, comment 2). The Federal Office for Immigration and Asylum is also responsible for maintaining the Country of Origin Information base (Art. 5 para 1 Act Establishing the Federal Office for Immigration and Asylum), which provides the basis for evaluations potentially resulting in status withdrawal procedures.[85]

Art. 7 para 2 of the Asylum Act 2005 requires a procedure for the withdrawal of asylum status to be initiated whenever "specific indications"[86] exist and it appears likely that the conditions for status withdrawal will be met. It therefore needs to be emphasized that the decisive factor in initiating

83 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.
84 Ibid.
85 See chapter 4.1.1.
86 Regarding "specific indications" see the explanation on the grounds for status withdrawal, chapter 3.1. and 3.2.

a withdrawal procedure is not whether the conditions for status withdrawal are already actually met but whether they are likely to be met.[87] Travel by a person granted asylum to their country of origin and applying for a passport from that country, with the passport then being issued, are specific indications of a reason for status withdrawal and may oblige the authorities to initiate a withdrawal procedure. Any report of travel movement filed by border police is to be checked as a possible indication in connection with an individual entering their country of origin.[88] Nonetheless, the more information on an individual's departures from Austria is available, the greater the likelihood in general of a withdrawal procedure being initiated. Information from reliable sources, such as reports by border officials or by Federal Agency for State Protection and Counter Terrorism, is also checked carefully, as they can be assumed to contain relevant background details.[89]

A comprehensive review of the conditions for status withdrawal, including the circumstances in the individual case, is required only once a withdrawal procedure has been initiated.[90] In such a procedure, all circumstances are considered that previously came to light when reviewing the conditions for status withdrawal. According to the Federal Office for Immigration and Asylum, in connection with travel by a person granted asylum to their country of origin, such details include, in particular, the frequency and the number of trips, the length of stay in the country of origin and the reasons for travel as well as the person's contact with authorities (to be issued a passport from their country of origin), whether they were registered in their country of origin and took up employment there, whether they have family ties or a network of social contacts in the country, and where the person stayed in their country of origin.[91]

87 This serves the purpose of not unnecessarily binding the administrative capacities of the authority, whenever the emerging of grounds for withdrawal according to Art. 7 para 1 Asylum Act 2005 is not to be expected based on the matter under consideration and whenever the procedure will most likely not lead to a withdrawal (Act Amending the Aliens Law 2009, Government Proposal – Materials, p. 8, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00330/fname_167909.pdf (accessed 31 October 2018)).

88 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.

89 Interview with Matthias Rauch, Federal Ministry of the Interior, 17 October 2018.

90 Act Amending the Aliens Law 2018, Government Proposal – Explanatory Notes, p. 22, available at www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00189/imfname_698465.pdf (accessed 10 September 2018).

91 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.

4.2.1 Individual rights

Under Austrian law, the parties to administrative procedures – including procedures pursuant to the Asylum Act 2005 before the Federal Office for Immigration and Asylum – are to be granted the "right to be heard". According to rulings by the Supreme Administrative Court, ensuring the right to be heard involves, very generally, allowing the parties to assert their rights and legal interests. This accordingly entails allowing the parties to present their legal position (to plead their case) and to request the admission of evidence, as well as simply to discuss the disputed matter.[92] Among the situations in which the right to be heard applies is during an investigation procedure, which is to determine the facts decisive for settling an administrative case (Art. 37 General Administrative Procedures Act 1991).[93] As subsidiary law under the Federal Office for Immigration and Asylum Procedures Act, the General Administrative Procedures Act 1991 also applies in procedures for the withdrawal of asylum status or subsidiary protection under the Asylum Act 2005.[94] Accordingly, persons whose protection status is to be withdrawn are also to be extended the right to be heard during withdrawal procedures pursuant to Art. 7 or Art. 9 of the Asylum Act 2005.

The right to be heard entitles a party to the procedure to present, mostly without regard to form, anything that supports their legal position (Walter and Mayer, 2003:137). Unless otherwise specified, items such as notices can be submitted to the authority in writing, orally or by telephone (Art. 13 para 1 General Administrative Procedures Act 1991). Thus, in the withdrawal procedure, the person concerned can present their legal position both in writing and orally, for instance in the context of an interview.

4.2.2 Time limitations

Voluntarily re-availing oneself of the protection of one's country of origin is one of the grounds for cessation stated in Art. 1 section C of the Geneva Refugee Convention (Art. 7 para 1 subpara 2 Asylum Act 2005); in Austria, asylum status can only be withdrawn on such grounds during a

92 Supreme Administrative Court, 28 March 2018, Ra 2016/11/0085.

93 FLG No. 51/1991, in the version of federal law FLG I No. 58/2018.

94 Aliens Authorities Restructuring Act, Government Proposal – Preamble and Explanatory Notes, p. 9, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed 4 September 2018).

limited period. Based on Art. 7 para 3 of the Asylum Act 2005, the Federal Office for Immigration and Asylum may not withdraw asylum status from a foreigner who has not committed a criminal offence unless the status is withdrawn within five years of being granted and the foreigner has their main residence outside Austria.[95]

Additional legal provisions apply to the duration of procedures for withdrawal of asylum status. Where asylum status is to be withdrawn from a person granted that status, on grounds including the fact that the person has voluntarily re-availed themselves of the protection of their country of origin or has settled in their country of origin (Art. 1 para C subpara 1 and 4 of the Geneva Refugee Convention), that procedure is to be decided as quickly as possible (Art. 7 par 2 Asylum Act 2005), but no later than within one month of when the procedure is initiated. Exceeding that deadline does not, however, exclude withdrawal of asylum status at a later time (Art. 7 para 2 third sentence Asylum Act 2005).

With reference to the withdrawal of subsidiary protection, the Asylum Act 2005 does not contain any periods upon expiry of which status withdrawal would not be permitted or before the end of which a withdrawal decision would have to be taken.

4.2.3 Decision

The decision by the Federal Office for Immigration and Asylum on withdrawal of protection status must be issued as an official decision in writing (Art. 7 para 1 and Art. 9 para 1 Asylum Act 2005).[96] The decision by the Federal Office for Immigration and Asylum must also contain the ruling and the instructions on legal remedies in a language understood by the person concerned or in a language that can reasonably be assumed to be understood by the person concerned (Art. 12 para 1 Federal Office for Immigration and Asylum Procedures Act). Under Austrian law, justification must be provided with any decision "that does not concur fully with the party's legal position or that rules on objections or requests made by the parties involved" (Art. 58 para 2 General Administrative Procedures Act 1991).

95 According to Art. 7 para 3 Asylum Act 2005, withdrawal in these cases is only possible if the person in question has already been granted a residence permit by final decision.

96 Aliens Authorities Restructuring Act, Government Proposal – Preamble and Explanatory Notes, p. 14, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed 12 October 2018).

The vast majority of withdrawal decisions must, therefore, provide justification for the decision, since beneficiaries of protection who are subject to a withdrawal procedure almost always request during the procedure that protection status not be withdrawn. This would also apply in every case where a representative in absentia is appointed.[97] A decision must always state the statutory provision applied, in order to make clear the basis for status withdrawal (Art. 59 para 1 General Administrative Procedures Act 1991).

A withdrawal decision is to be combined with a return decision in the following cases:[98]

- withdrawal of asylum status without subsidiary protection status being granted, or
- withdrawal of subsidiary protection.

In a procedure for issuing a return decision, the authority has the duty of weighing the public interest in termination of the individual's residence against the person's private and family interests, while considering the circumstances of the individual case. The criteria to be especially considered when weighing interests are enumerated in Art. 9 of the Federal Office for Immigration and Asylum Procedures Act (Hinterberger and Klammer 2017a:2).[99] When preparing the return decision, the authority is to simultaneously determine whether removal to one or more specified countries is permissible (Art. 52 para 9 Aliens Police Act 2005). Individuals not leaving Austria voluntarily can be removed based on the return decision (Art. 46 Aliens Police Act 2005). Ultimately, each individual case has to be examined to determine whether removal is indeed necessary and proportionate.[100]

Despite the maximum statutory period for passing a status withdrawal decision,[101] the authority is not obliged to take any decision. Art. 73 of the

97 According to Art. 11 General Administrative Procedures Act, the authority can file a petition with the competent court for the appointment of a trustee if required by the importance of the subject matter and provided that amongst others official action should be taken ex officio against a person whose whereabouts is unknown (cf. Federal Administrative Court, 25 October 2017, W111 1242924-2).

98 Cf. Art. 10 para 1 subpara 4 and 5 Asylum Act 2005.

99 Art. 9 para 2 Federal Office for Immigration and Asylum Procedures Act mentions for example the nature and duration of the present stay. Furthermore, the fact whether the present stay had been unlawful or the actual existence of a family life are considered.

100 For further information see Heilemann and Lukits, 2017:60.

101 See chapter 4.2.2.

General Administrative Procedures Act 1991 obliges an authority to take a decision only where a party to the procedure has submitted an application requiring a decision by that authority.[102] Authorities are not required to take decisions in procedures initiated ex officio. This principle applies to procedures for the withdrawal of international protection status, which are not (and cannot be) initiated upon application.[103] The Federal Office for Immigration and Asylum is consequently not obliged to end withdrawal procedures by issuing a decision, in other words, to either withdraw protection status or terminate the procedure. Where the conditions for withdrawing status are not met, statutory provisions provide for informal termination.[104]

A legal aid expert pointed out that the possibility existed in principle to apply for a decision ascertaining that the conditions for withdrawal were either met or not met. However, since the parties concerned have no detailed legal knowledge, frequently no such request was submitted, according to the expert.[105]

4.2.4 Legal remedies

In Austria, the Federal Administrative Court rules on complaints lodged against decisions by the Federal Office for Immigration and Asylum (Art. 7 para 1 subpara 1 Federal Office for Immigration and Asylum Procedures Act). Where asylum status has been withdrawn in combination with a measure terminating the individual's stay,[106] the complaint must be lodged within two weeks (Art. 16 para 1 Federal Office for Immigration and Asylum Procedures Act). Yet the general period of four weeks may apply under certain circumstances, for example, where the decision concerns a foreigner who is an unaccompanied minor as of the date when the decision is issued (Art. 16 para 1 second sentence Federal Office for Immigration and Asylum Procedures Act).

102 Supreme Administrative Court, 29 March 2004, 2004/17/0024.

103 Due to the procedure ex officio an application for withdrawal would be rejected as inadmissible (cf. Filzwieser et al., 2016:654).

104 Act Amending the Aliens Law 2009, Government Proposal – Materials, p. 8, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00330/fname_167909.pdf (accessed 31 October 2018).

105 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

106 Measures terminating a residence also include return decisions according to Art. 52 Aliens Police Act.

A four-week period is allowed for lodging a complaint against a decision withdrawing subsidiary protection (Art. 7 para 4 Proceedings of Administrative Courts Act).

An appeal against a ruling by the Federal Administrative Court may under certain circumstances be brought before the Constitutional Court or the Supreme Administrative Court (Art. 133 para 1 subpara 1 and Art. 144 para 1 Federal Constitutional Act).[107] A period of six weeks is allowed for lodging an appeal with the Supreme Administrative Court or for lodging a complaint with the Constitutional Court (Art. 26 para 1 Supreme Administrative Court Act;[108] Art. 82 para 1 Constitutional Court Act).[109] An appeal to the Supreme Administrative Court is, however, only admissible where the case concerns a legal matter of fundamental significance (Art. 133 para 4 Federal Constitutional Act). The Constitutional Court can refuse to deal with a complaint which has little likelihood of success or where any ruling would not be expected to clarify a constitutional issue (Art. 144 para 2 Federal Constitutional Act).

4.2.5 Challenges related to withdrawal procedures

According to the Federal Office for Immigration and Asylum, the authority has no (internal) guidelines on the withdrawal of asylum status,[110] whereas a general decree as well as a "case-law handbook" have been issued.[111] An expert with the Federal Ministry of the Interior reported that decrees and binding instructions have been issued based on legal requirements, setting out corresponding procedures and rules to be applied within the scope of the ministry. One such decree is said to exist for withdrawal cases, to be applied and followed with binding effect. Those decrees and binding instructions are reported to include references to the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status.[112] According to UNHCR, that handbook is

107 FLG No. 1/1930, in the version of federal law FLG I No. 22/2018.
108 FLG No. 10/1985, in the version of federal law FLG I No. 58/2018.
109 FLG No. 85/1953, in the version of federal law FLG I No. 22/2018.
110 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
111 Written input by the Federal Office for Immigration and Asylum, 7 December 2018.
112 UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR, Geneva, 2011). Available at www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html (accessed 31 October 2018).

intended as an aid in interpretation for States and their authorities but is not binding.[113] Reference should be made here to rulings by the Supreme Administrative Court, which in some cases cites details from the UNHCR handbook as being pertinent.[114]

The Federal Office for Immigration and Asylum reports generally having no difficulties with status withdrawal procedures involving persons granted asylum who apply for and are issued a passport by the authorities of their country of origin based in Austria. This follows on the one hand from the rulings by the Supreme Administrative Court[115] as well as from the fact that the issuing of passports, and biometric ones especially, requires contact with the authorities of the individual's country of origin. The fact that such cases are identified by the Federal Office for Immigration and Asylum only by way of exception or by chance is, however, seen as a challenge. Such cases are usually identified during checks at airports or border crossings, when the person granted asylum uses the passport from their country of origin as identification.[116]

Another challenge, referred to by the Federal Office for Immigration and Asylum in connection with the withdrawal of asylum status on the grounds of an individual travelling to their country of origin, involves determining whether travel was voluntary or whether the individual actually intended to avail themselves of their country of origin's protection. As mentioned above in section 3.2.1, persons granted asylum are to be returned their passports from their country of origin. Such individuals can therefore use such passports to enter their country of origin. Unless the Austrian authorities happen to discover that the individual's passport contains entry and exit stamps for their country of origin, it is very difficult for the Federal Office for Immigration and Asylum to prove that the person has travelled to their country of origin.[117] Another challenge is that persons granted asylum who travel without a passport issued by their country of origin

113 Interview with Bianca Koller, Federal Ministry of the Interior, 17 October 2018.
114 See Supreme Administrative Court, 3 December 2003, 2001/01/0547.
115 In this matter the Federal Office for Immigration and Asylum referred to the decisions by the Supreme Administrative Court of 15 May 2003, 2001/01/0535, 15 May 2003, 2001/01/0499 and 3 December 2003, 2001/01/0547 (written inputs by the Federal Office for Immigration and Asylum, 24 October 2018 and 7 December 2018).
116 Written input by the Federal Office for Immigration and Asylum, 24 October 2018.
117 Ibid.

usually give specific reasons for travelling, for instance to visit a sick family member. Based on the rulings by the Supreme Administrative Court, presented above in section 3.2.1, such cases do not qualify as grounds for cessation as stipulated in the Geneva Refugee Convention. It is also difficult for the Federal Office for Immigration and Asylum to establish the actual duration of the stay and the travel destination in some cases. This is a challenge where, for example, the authorities receive details of air travel by a person granted asylum to a neighbouring State of their country of origin but are unable to prove whether the individual continued the trip to their country of origin.[118]

4.2.6 Court rulings

Rulings by the Federal Administrative Court were examined as part of preparing this national report.[119] These rulings concern complaints lodged against decisions by the asylum authority in the first instance. The complete wording of first-instance decisions is not published, however, so that the asylum authority's reasoning for its decision in the first instance can only be inferred from the details reported in the Federal Administrative Court ruling.

The analysis revealed travel to an individual's country of origin as accounting for only a small share of the cases to date in which asylum status was withdrawn. A significant proportion of decisions to withdraw asylum status is based on Art. 7 para 1 subpara 1 of the Asylum Act 2005, which requires asylum status to be revoked when one of the grounds for exclusion from asylum enumerated in Art. 6 of that act exists.[120]

With regard to the withdrawal of subsidiary protection, it should be noted that apparently only one decision referred to travel by a beneficiary of subsidiary protection to their country of origin. Here, however, the first-instance asylum authority justified withdrawal of subsidiary protection on other grounds and not explicitly due to the individual's travel to their country of origin.[121] In view of the dearth of cases involving withdrawal of subsidiary protection, the following discussion is confined to cases where asylum status was withdrawn due to the beneficiary travelling to their country of origin.

118 Ibid.
119 Regarding the procedure for analysis, see the explanations in chapter 1.4.
120 See above, chapter 2.2.
121 Federal Administrative Court, 11 December 2017, L507 2153972-1/7E.

In general, among first-instance decisions by the Federal Office for Immigration and Asylum to withdraw asylum status on the grounds of travel to an individual's country of origin, some were lifted by the Federal Administrative Court and others confirmed. In its reasoning relating to cases where it revoked status withdrawal decisions, the Federal Administrative Court cites, the failure, in individual cases, on the part of the Federal Office for Immigration and Asylum to perform a correct legal assessment or to conduct thorough enquiries during the investigation.

An example is a ruling by the Federal Administrative Court[122] noting that the duration of the complainant's stay in their country of origin had not been investigated, while a longer period had been assumed than the one given by the complainant in testimony before the Federal Asylum Office, the competent authority at the time. The Federal Administrative Court additionally found that the Federal Asylum Office had overlooked the fact that, based on Supreme Administrative Court rulings, certain conditions must be met in order to withdraw asylum status under Art. 7 para 1 of the Asylum Act 2005. These were specifically that the individual must have not just stayed temporarily in their country of origin but have settled there; their return must have been voluntary; and the person must have intended to establish a normal relationship with their country of origin and to re-avail themselves of that country's protection. Based on these deficiencies, the court found the investigations by the first-instance authority to have been incomplete, subsequently ruling to lift the decision and refer the case back to the Federal Office for Immigration and Asylum for a new decision.

In a ruling in another case,[123] the Federal Administrative Court criticized the reasoning provided by the Federal Office for Immigration and Asylum, stating that it should have been more detailed, explaining in particular the basis for the conclusion by the Federal Office for Immigration and Asylum that the complainant had entered and returned to their country of origin lawfully. The Federal Administrative Court held that further investigations should be carried out in any event, as the facts of the case could not be appropriately determined without clarifying in detail the motives for the complainant's trip and in particular whether the complainant had travelled using a passport currently issued in their country of origin.

122 Federal Administrative Court, 23 April 2014, G305 1235300-2/17E.
123 Federal Administrative Court, 25 October 2017, L519 2162285-1/2E.

On the other hand, one of the matters confirmed in another ruling by the Federal Administrative Court[124] was a decision issued by the Federal Office for Immigration and Asylum, which in turn had found that the complainant had returned to Afghanistan voluntarily and resided with relatives in her country of origin again for almost six years. The Federal Administrative Court found that these circumstances fulfilled the criteria specified in subpara 1 and 4 of Art. 1 Section C of the Geneva Refugee Convention, so that the status withdrawal decision by the Federal Office for Immigration and Asylum had to be confirmed.

4.2.7 Case study

The following relates to a case study, described here in anonymous form,[125] involving a person granted asylum in Austria who then travelled to their country of origin. The case was chosen to illustrate the workings of a status withdrawal procedure.

Mr A, a citizen of the Islamic Republic of Iran, entered Austria unlawfully in January 2012. On 26 January 2012 he applied for international protection, explaining that he and a friend of his had attended a Christian church in the Islamic Republic of Iran. "Persons in civilian clothing" had attended the second meeting at such a house church but he, Mr A, had been able to escape. This had been the last time he had heard anything about the owner of the house where the assembly had taken place, he claimed, and so he fled from the Islamic Republic of Iran. On 28 September 2012, the Federal Office for Immigration and Asylum issued a decision granting Mr A asylum status and determining that he qualified under law for refugee status.

On 18 April 2017, the Federal Office for Immigration and Asylum received information from the German Federal Police at XY airport, reporting that Mr A had shown his Austrian Convention Passport, along with a Turkish visa, during a passport check at XY airport on a specified day in 2017. Later, irregularities were observed. During a hearing, Mr A initially went on record as saying that he and his wife, who had travelled with him, had only visited Turkey, but this was not corroborated by the stamps in his passport. Mr A and his wife later testified on more than one occasion that they had never been to the Islamic Republic of Iran. During a baggage inspection, a ticket in the name of Mr A's wife, booked for the Islamic Republic of Iran via Istanbul, was found. Mr A continued to testify that he had not been to the Islamic Republic of Iran and did not possess any official documents from that country. Subsequently, two other identification documents as well as military identification, all issued by the Islamic Republic of Iran, were discovered. The plane ticket stubs issued to the couple for the flight to the Islamic Republic of Iran were also finally found, proving that they had stayed there for 18 days. In the end, Mr A admitted to having visited the Islamic Republic of Iran, claiming a family visit as the purpose.

124 Federal Administrative Court, 24 February 2015, W137 1409206-1/14E.
125 Federal Administrative Court, 25 October 2017, L519 2162285-1/2E.

The Federal Office for Immigration and Asylum subsequently notified Mr A on 26 April 2017 of the results of the evidence gathered in the case and of the intention to initiate a status withdrawal procedure. The notice included a questionnaire. Mr A was given 14 days to submit a statement. In his statement, Mr A basically claimed that he had travelled to the Islamic Republic of Iran only once, for 18 days, to visit his father-in-law, who was suffering from a terminal illness. He further claimed that he been married to his wife by proxy and that he had not been present at the wedding in the Islamic Republic of Iran. The visit to the Islamic Republic of Iran had thus been his first time to have had personal contact with his father-in-law, especially because the latter, with tears in his eyes, had expressed the wish that they speak one last time before his death. Not possessing an Iranian passport, Mr A claimed that he had secretively entered the Islamic Republic of Iran unlawfully with the aid of a people smuggler. Mr A also provided details of his personal situation in Austria, in particular about how well he was integrated, and concerning his Christian faith.

In its assessment, the Federal Office for Immigration and Asylum concluded that Mr A had stayed in the Islamic Republic of Iran during a specified period of time in 2017. The Federal Office for Immigration and Asylum assumed that Mr A did not in fact face the threat of acts of persecution by the Iranian authorities. This assessment was based on the fact that Mr A had not encountered any significant difficulties when entering, staying in or leaving the Islamic Republic of Iran. His original denial damaged his credibility considerably, so his claim to have travelled with the aid of a people smuggler was deemed implausible, especially since all of his travel documents had been issued in his real name. Mr A was not granted subsidiary protection, since he had not been persecuted and his right to life and physical integrity had not been violated, nor was he threatened by inhuman or degrading treatment.

Nonetheless, in view of the ties identified between Mr A and Austria, his private and family life was assumed to be worthy of protection. In the subsequent decision by the Federal Office for Immigration and Asylum[126] of 23 May 2017, the asylum status previously granted to Mr A was withdrawn based on Art. 7 para 1 subpara 2 of the Asylum Act 2005 and it was determined based on Art. 7 para 4 of the Asylum Act 2005 that he was no longer entitled under law to refugee status. Mr A was also not granted subsidiary protection status under Art. 8 para 1 subpara 2 of the Asylum Act 2005. It was declared permanently inadmissible to issue a return decision and Mr A was granted a Residence Permit Plus.[127]

Mr A lodged a complaint against parts of that decision. The Federal Administrative Court, responsible for handling the complaint, concluded that the Federal Office for Immigration and Asylum had failed to make the enquiries necessary to establish the relevant facts. Although the Federal Administrative Court also doubted Mr A's credibility, it nonetheless ruled that specific details of the facts established by the Federal Office for Immigration and Asylum were lacking in the disputed decision. Citing the deficient investigation of the facts, the Federal Administrative Court required the Federal Office for Immigration and Asylum to carry out further investigations in any case. In its ruling of 25 October 2017, the Federal Administrative Court lifted the disputed decision and referred the case back to the Federal Office for Immigration and Asylum for a renewed decision.

126 Decisions by the Federal Office for Immigration and Asylum are not publicly available. The here given explanations follow from the summaries of the procedures before the Federal Office for Immigration and Asylum which are included in the Federal Administrative Court's decisions.

127 For more details, see chapter 4.3.1.

4.3 Consequences of a status withdrawal decision

The withdrawal of international protection status can have immediate consequences affecting an individual's right of residence. If an individual's protection status is revoked, their residence permit also expires when asylum withdrawal takes final effect; additionally, the individual is no longer entitled under law to refugee status (Art. 3 para 4 and Art. 7 para 4 Asylum Act 2005). When a person's asylum status is withdrawn,[128] the question of eligibility for subsidiary protection is reviewed. Where a person formerly granted asylum does not receive subsidiary protection and no other grounds exist that would entitle the person to continued stay, the individual's right of residence in Austria ceases. The residence permit held by a beneficiary of subsidiary protection is to be revoked upon withdrawal of protection status (Art. 9 para 4 Asylum Act 2005). Under Austrian law, besides withdrawal of asylum status, there is no separate decision to terminate right of residence.

On status withdrawal with final effect, the person concerned must return to the authorities any identification documents or cards certifying the person's status as a beneficiary of international protection (Art. 7 para 4 and Art. 9 para 4 Asylum Act 2005). Finally, decisions issued under the Asylum Act 2005 – which include the withdrawal of asylum status or subsidiary protection – are to be combined with a return decision (Art. 52 para 2 subpara 4 Aliens Police Act 2005; Art. 10 para 1 subpara 4 Asylum Act 2005).[129]

4.3.1 Options for remaining in Austria

A person whose asylum status or subsidiary protection has been withdrawn may continue to stay in Austria if they are eligible for a right of residence on other grounds.

Significant grounds here are represented by the residence titles for exceptional circumstances, listed under Articles 54 et seq. of the Asylum Act 2005, which include the Residence Permit Plus, the Residence Permit and the Residence Permit for Individual Protection. These residence titles authorize

128 In case of withdrawal of the asylum status, the granting of subsidiary protection is considered ex officio according to Art. 8 para 2 Asylum Act 2005. The law stipulates neither the possibility nor the need for an application (Schrefler-König and Szymanski, 2014:Art. 8 Asylum Act 2005, Note 1).

129 For further information on return decisions, see Heilemann and Lukits, 2017:23.

the holder to stay in Austria and usually to take up gainful employment.[130],[131] These residence titles are defined in the Asylum Act 2005, conveying the impression of being related to international protection. In fact, there is no relationship between international protection and the residence titles granted for humanitarian reasons (Hinterberger and Klammer, 2017b:1).

A Residence Permit Plus is issued, for example, where this is necessary to maintain private and family life, as defined in Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"),[132] and where the individual concerned has become appropriately integrated (Art. 55 para 1 Asylum Act 2005). Where the person does not become integrated as defined in Art. 55 para 1 subpara 2 of the Asylum Act 2005,[133] they are only issued a Residence Permit (Art. 55 para 2 Asylum Act 2005). A residence title under Art. 55 of the Asylum Act 2005 is issued either ex officio or on application with justification given.

Similarly, in particularly exceptional circumstances,[134] a Residence Permit Plus can be issued merely on the basis of a justified application if the person concerned has, as of the time of submission, resided continuously in Austria for the period specified in Art. 56 para 1 subpara 1 and 2 of the

130 Aliens Authorities Restructuring Act, Government Proposal – Preamble and Explanatory Notes, p. 44, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed 28 September 2018).

131 The "residence permit plus" entitles to residence in the federal territory and to taking up gainful employment as self-employed or employed person according to Art. 17 Act Governing the Employment of Foreign Nationals (FGL No 218/1975, in the version of federal law FLG I No. 56/2018), whereas the "residence permit" and the "residence permit for individual protection" entitle to residence in the federal territory and to taking up gainful employment as self-employed or employed person, for which a corresponding authorization according to the Act Governing the Employment of Foreign Nationals is precondition (Art. 54 para 1 subpara 1, 2 and 3 Asylum Act 2005).

132 FLG No. 210/1958, in the version of federal law FLG III No. 139/2018.

133 Art. 55 para 1 subpara 2 Asylum Act 2005 requires those concerned to complete module 1 of the Integration Agreement in accordance with Art. 9 of the Integration Act (FLG I No. 68/2017, as amended by the federal act published in FLG I No. 37/2018), or to legally pursue gainful employment as of the data of the decision, with monthly pay equalling at least the minimum earnings threshold.

134 The law does not state explicitly what qualifies as a case of exceptional circumstances. However, it can be assumed that such a case is constituted whenever the non-issuance of a residence permit, despite any obstacles for granting a residence permit, is considered unreasonable to a high degree, indifferent of the specific exceptional circumstances (Schrefler-König and Szymanski, 2014:Art. 56 Asylum Act 2005 Note 1).

Asylum Act 2005.[135] The person must also have become integrated to the extent specified in Art. 56 para 1 subpara 3 of the Asylum Act 2005.[136] Where the individual is not integrated as defined in Art. 56 para 1 subpara 3 of the Asylum Act 2005, they are only issued a Residence Permit. Other eligibility conditions for that residence title are set out in Art. 60 para 2 of the Asylum Act 2005.[137]

A Residence Permit for Individual Protection as specified in Art. 57 of the Asylum Act 2005 is to be issued ex officio or upon justified application, where one of the three cases listed under that article exists, specifically: based on the long-term, tolerated stay of an individual in Austria; to ensure legal proceedings, such as to prosecute a criminal case (particularly when involving witnesses or victims of human trafficking or of cross-border prostitution); and to protect individuals from domestic violence, even if up to that time the person concerned was not entitled to reside in Austria.[138] A review to determine whether to issue such a residence permit is to be conducted ex officio in the event of withdrawal of international protection (Art. 58 para 1 subpara 3 and 4 Asylum Act 2005).

Where residence titles under Art. 55 or 57 of the Asylum Act 2005 are not issued ex officio, the individual concerned is required to submit a corresponding application in person to the Federal Office for Immigration and Asylum (Art. 58 para 5 Asylum Act 2005). Such residence titles must not be issued under specified circumstances (Art. 60 para 1 and 3 Asylum Act 2005).[139]

135 According to Art. 56 para 1 subpara 2 Asylum Act 2005 this period comprises five years. Half of that time and at any rate three years of the determined permanent residence in the federal territory must have been lawful.

136 According to Art. 56 para 1 subpara 3 Asylum Act 2005 this is the fulfilment of module 1 of the Integration Agreement according to Art. 9 Integration Act or the legal pursuit of gainful employment as of the data of the decision, with monthly pay equalling at least the minimum earnings threshold.

137 These preconditions for granting are for example legal entitlement to an accommodation considered locally customary for a similarly large family (Art. 60 para 2 subpara 1 Asylum Act 2005), or a health insurance coverage that is liable to perform in Austria and that includes all risks (Art. 60 para 2 subpara 2 Asylum Act 2005).

138 Aliens Authorities Restructuring Act, Government Proposal – Preamble and Explanatory Notes, p. 47, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed 28 September 2018).

139 These circumstances include for example the existence of an entry ban (Schrefler-König and Szymanski, 2014:Art. 60 Asylum Act, Note 1) or public interests that prohibit the residence of the person in question.

In addition to one of the residence titles described above, individuals meeting all of the requirements also have the option in principle of acquiring a regular right of residence based on the Settlement and Residence Act.[140,141] It should be noted, however, that initial applications for settlement and residence titles under Art. 21 para 1 of the Settlement and Residence Act are to be submitted prior to entering Austria, to the local authority professionally representing Austria in the other country. Individuals whose protection status has been withdrawn do not fall under the exceptions defined in Art. 21 para 2 of the Settlement and Residence Act and are not permitted to apply from within the country. It is therefore necessary for such individuals to leave Austria and submit their applications from another country, where they are to await a decision.

A final option to be mentioned is tolerated stay as defined in Art. 46a of the Aliens Police Act 2005. This applies for example to foreigners whose removal appears impossible for factual reasons for which the foreigner is not responsible (Art. 46a para 1 subpara 3 Aliens Police Act 2005) or whose removal is not permitted (Art. 46a para 1 subpara 4 Aliens Police Act 2005); such individuals are allowed to stay in Austria as long as they cannot be removed due to legal or factual grounds. A specific case of a person whose stay in Austria is to be tolerated is where, after asylum status has been withdrawn, the individual is not entitled to reside in Austria on any other grounds but cannot be removed from the country. Although not lawful, the person's stay is tolerated under the legal system (Schrefler-König and Szymanski, 2014:Art. 46a Aliens Police Act 2005, comment 1).

4.3.2 Consequences for family members

Whether or not the withdrawal of protection status has potential consequences for family members depends primarily on when the application for international protection was submitted. Where all family members submitted their application for international protection at the same time, other provisions apply than in cases where family members join a person already residing in Austria at a later date (family procedures).

140 FLG I No. 100/2005, in the version of federal law FLG I No. 56/2018.

141 Federal Office for Immigration and Asylum, *Frequently Asked Questions,* available at www.bfa.gv.at/faq/start.aspx (accessed 9 October 2018).

If a family applies for international protection (asylum or subsidiary protection) in Austria at the same time, the applications of all family members are processed in a common procedure, with each application being examined separately. The Austrian Asylum Act 2005 follows the basic principle of providing an identical scope of protection to all members of one family. Thus, if only one family member is granted protection, all other family members are granted the same type of protection (Peyrl, Neugschwendtner and Schmaus, 2017:295). Although all grounds for the withdrawal of protection apply equally to all family members, no provision requires the equal treatment of a family when withdrawing protection status. This means that protection is withdrawn only from those individual family members for whom there are grounds for doing so (Filzwieser et al., 2016:654 and 714–715).[142] In the experience of a legal aid expert, however, investigations are carried out during the status withdrawal procedure for one family member to determine whether grounds exist for revoking protection from other family members as well.[143]

The situation is somewhat different when protection is granted through a family procedure. This type of procedure presupposes the general situation where one person in Austria (the sponsor) has already applied for asylum or been granted asylum or subsidiary protection status (Art. 34 para 1 Asylum Act 2005). If a member of the sponsor's family[144] subsequently applies for international protection, the application is considered as being for the same type of protection as the sponsor has. If the sponsor's protection status is withdrawn, a distinction must be made as to whether the family member joining the sponsor has already been separately granted protection.

Where the family member joining the sponsor has already been separately granted protection status, that person's status can only be withdrawn where specific grounds for doing so exist. Thus, once the family member has been granted protection, the fact of whether or not protection status has been withdrawn from the sponsor is no longer relevant.

142 Federal Act, which amends the Asylum Law 2005, the Aliens Police Act 2005 and the Federal Office for Immigration and Asylum Procedures Act, Government Proposal – Explanatory Notes, p. 3, available at www.parlament.gv.at/PAKT/VHG/XXV/I/I_00996/fname_498908.pdf (accessed 10 October 2018).

143 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.

144 Regarding the restricted circle of entitled family members, see Art. 2 para 1 subpara 22 Asylum Act 2005.

Where, in contrast, the family member joining the sponsor has not yet been granted protection status (asylum or subsidiary protection), withdrawal of protection status from the sponsor results in an interruption of the family procedure (Art. 34 para 2 and 3 Asylum Act 2005)[145] and protection status is not granted to the family member either. Reference needs to be made here to the issue discussed in section 4.2.3, namely that a decision in status withdrawal procedures is not mandatory, so that a family procedure can be interrupted for what is tantamount to an indefinite period. Such a family procedure could only be continued once a decision has been issued ascertaining that the status withdrawal procedure has been terminated. Yet, in many cases, no such declaratory decision is requested.[146]

145 Interview with Stephan Klammer, Diakonie Refugee Service, 9 October 2018.
146 Ibid.

5. CONCLUSIONS

As has become apparent from the discussions in this national report, Austrian law contains specific provisions potentially resulting in the withdrawal of international protection status. Administrative practice is only a factor in deciding whether to withdraw status on the basis of legal provisions. On the other hand, administrative practice plays no role in cases such as identifying the grounds for withdrawal or limiting the validity of Alien's Passports and Convention Passports. No case law exists as yet relating to the provisions of the Asylum Act 2005 that were amended in late 2018 through the Act Amending the Aliens Law 2018; it remains to be seen, therefore, whether or how the new legal situation will impact the previous decision-making practice of the Federal Office for Immigration and Asylum and, ultimately, the rulings handed down by the Federal Administrative Court and by the higher courts. The case law developed on the legal situation to date by the higher courts appears to be in accordance with the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*.

Despite the lack of any case law on the new legal situation in existence since late 2018, this national report presents in comprehensive detail the provisions of Austrian law that govern the withdrawal of international protection status. The grounds for withdrawal in Austria are contained in the Asylum Act 2005, which, since late 2018, also defines specific circumstances under which a status withdrawal procedure is to be initiated. This national report can serve as an additional source of information, in particular in view of its intended purpose to assist the European Asylum Support Office (EASO) in further developing the Common European Asylum System. This report will, therefore, potentially contribute to future harmonization of the procedures applied and the decisions taken within the framework of the Common European Asylum System.

ANNEXES

A.1 List of translations and abbreviations

English term	English abbreviation	German term	German abbreviation
Act Amending the Aliens Law	–	Fremdenrechtsänderungsgesetz	–
Act Establishing the Federal Office for Immigration and Asylum	–	BFA-Einrichtungsgesetz	BFA-G
Act Governing the Employment of Foreigners	–	Ausländerbeschäftigungsgesetz	AuslBG
administrative decision	–	Bescheid	–
Aliens Police Act 2005	–	Fremdenpolizeigesetz 2005	FPG
Asylum Act 2005	–	Asylgesetz 2005	AsylG 2005
beneficiary of subsidiary protection status	–	subsidiär Schutzberechtigte/r	–
common study template	–	gemeinsame Studienvorlage	–
complaint	–	Beschwerde	–
Constitutional Court		Verfassungsgerichtshof	VfGH
country of origin	–	Herkunftsstaat	–
European Asylum Support Office	EASO	Europäisches Unterstützungsbüro für Asylfragen	EASO
European Commission	–	Europäische Kommission	–
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU
family members	–	Familienangehörige	–
Federal Administrative Court	–	Bundesverwaltungsgericht	BVwG
Federal Constitutional Law	–	Bundes-Verfassungsgesetz	B-VG
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBl.
Federal Ministry of the Interior	–	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	–	Bundesamt für Fremdenwesen und Asyl	BFA
Federal Office for Immigration and Asylum Procedures Act	–	BFA-Verfahrensgesetz	BFA-VG
General Administrative Procedures Act	–	Allgemeines Verwaltungsverfahrensgesetz	AVG
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
international protection	–	Internationaler Schutz	–

English term	English abbreviation	German term	German abbreviation
IOM Country Office for Austria	–	IOM Landesbüro für Österreich	–
Legal Information System	–	Rechtsinformationssystem des Bundes	RIS
Member State	MS	Mitgliedstaat	–
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
National Council	–	Nationalrat	NR
NEOS – The New Austria	NEOS	NEOS – Das Neue Österreich	NEOS
Official Journal of the European Union	OJ	Amtsblatt der Europäischen Union	ABl.
persons granted asylum	–	Asylberechtigte	–
Proceedings of Administrative Courts Act	–	Verwaltungsgerichtsverfahrensgesetz	VwGVG
province	–	Bundesland	–
Provincial Law Gazette	PLG	Landesgesetzblatt	LGBl.
Regulation on the Implementation of the Aliens Police Act	–	Fremdenpolizeigesetz-Durchführungsverordnung	FPG-DV
removal	–	Abschiebung	–
residence permit (plus)	–	Aufenthaltsberechtigung (plus)	–
Residence Permit for Individual Protection	–	Aufenthaltsberechtigung besonderer Schutz	–
residence title	–	Aufenthaltstitel	–
Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz	NAG
sponsor	–	Bezugsperson/zusammenführende Person	–
status withdrawal	–	Aberkennung	–
Supreme Administrative Court	–	Verwaltungsgerichtshof	VwGH
Temporary Residence Permit	–	Aufenthaltsberechtigung	–
tolerated stay	–	Duldung	–
Unemployment Insurance Act	–	Arbeitslosenversicherungsgesetz	AlVG
United Nations High Commissioner for Refugees	UNHCR	Flüchtlingshochkommissariat der Vereinten Nationen	UNHCR

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