REDIAL PROJECT

National Synthesis Report – Austria

(Draft)

Ulrike Brandl

I. Introduction

The return decision is an administrative order, which is enacted by the Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl – BFA).[1] The Federal Administrative Court (Bundesverwaltungsgericht) is competent to decide about a complaint against such a return decision.[2] The complaint has to be filed with the BFA, the Office has to decide in a preliminary decision. The BFA has to submit the complaint, the preliminary decision and the files to the Federal Administrative Court.[3] The time limit for the complaint is two weeks. In case the complainant is an unaccompanied minor, the limit is four weeks.

A **return decision** according to **§ 52 Aliens Police Act**[4] is a decision containing the obligation of a third country national to leave the country. The terminology has been changed in order to transpose the provisions of the Return Directive (RD)[5] and to adapt the terminology accordingly.[6]

---

[1] The BFA, the Federal Administrative Court and Administrative Courts in the Federal States have been established in 2013, the work started on 1 January 2014. Before 2014 the competence to issue return decisions was allocated to the Aliens Police. Independent Administrative Boards (or Senates, UVS - Unabhängige Verwaltungssenate) were responsible to decide about complaints filed against these orders. See also Act on Procedures bevore the BFA (BFA-Verfahrensgesetz – BFA-VG, Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden), BGBl. I Nr. 87/2012, Amendments: BGBl. I Nr. 68/2013, BGBl. I Nr. 144/2013. In force since 1 January 2014.

[2] See above.

[3] Act on Procedures before the Administrative Courts (Bundesgesetz über das Verfahren der Verwaltungsgerichte, Verwaltungsgerichtsverfahrensgesetz – VwGVG) BGBl. I Nr. 33/2013, as amended by BGBl. I Nr. 122/2013. In force since 1 January 2014.

[4] Aliens Police Act (Fremdenpolizeigesetz 2005 - FPG, Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetiteln, FPG), BGBl. I Nr. 100/2005. Amendments: BGBl. I Nr. 157/2005, BGBl. I Nr. 99/2006, BGBl. I Nr. 2/2008, BGBl. I Nr. 4/2008, BGBl. I Nr. 29/2009, BGBl. I Nr. 122/2009, BGBl. I Nr. 135/2009, BGBl. I Nr. 17/2011 (VfGH), BGBl. I Nr. 38/2011, BGBl. I Nr. 112/2011, BGBl. I Nr. 49/2012, BGBl. I Nr. 50/2012, BGBl. I Nr. 87/2012, BGBl. I Nr. 22/2013 (VfGH), BGBl. I Nr. 68/2013, BGBl. I Nr. 144/2013, BGBl. I Nr. 70/2015.

[5] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals, Return Directive – RD, O.J. L 348/98, 24.12.2008.

[6] In the previous versions of the Aliens Police Act the order was named “expulsion order”.

Complaints against decisions to apprehend persons or to detain persons for a short period according to § 39 Aliens Police Act have to be decided by the Administrative Courts in the Federal States. These Courts are also responsible to decide about entry bans in certain cases, which were already pending with the Federal Administrative Senates prior to the entry into force of the comprehensive change in the administrative procedures on 1 January 2014. These Courts also decide about applications for a reduction of the time limit of the entry ban, a revocation or for an abolition of the entry ban according to § 60 and § 125 Aliens Police Act. § 125 Aliens Police Act contains complex transitional rules taking the changes in the administrative procedures in force since 1 January 2014 into account. As all residence bans and entry bans remained in force, applications for withdrawal or abolition of these bans are still possible. They have to be decided by the Administrative Courts in the Federal States. These rules explain why still a considerable amount of cases has been pending before the Administrative Courts in the Federal States in 2014 and early 2015. All other complaints regarding entry bans have to be decided by the Federal Administrative Court.

Provisions of the RD are mainly transposed in the Aliens Police Art. In order to transpose the RD the Austrian legislator saw the necessity to amend certain parts of the Aliens Police Act. The decision that a third country national has to leave Austria is now called return decision (prior to the transposition of the RD "expulsion order"). The legislative documents, especially the Government Proposal,[7] contain comprehensive references to the terminology and content of the RD. § 53 stipulates the details for issuing entry bans. The legislative documents state that return decisions have to be accompanied by entry bans according to Art. 11 RD, both decisions are issued in one administrative order. These explanations show that the legislator based the explanations on a false interpretation of the RD. The text of the law stipulates that entry bans may be issued and contains rules on the determination of the length of the entry ban.

The territory covered by the RD is the territory of the Member States, meaning the States applying the provisions of the RD. The High Administrative Court made clear that only the EU States bound by the Directive are covered and also Switzerland, Norway, Iceland and Liechtenstein (VwGH 2013/18/0021, 22.5.2013).

II. Art. 7 RD:

> Questions: Art. 7 RD Para. 1: How is the administrative discretion to choose between 7 and 30 days controlled by courts?
>
> Para. 2: here again the question of the control of discretion with regard to time-frames used for the extension of voluntary departure period is interesting; besides, are there any other grounds than those explicitly mentioned in that paragraph taken into account when extending the period of voluntary departure?
>
> Para. 3: Since El Dridi suggests that there should be a risk of absconding to use the option of imposing certain obligations, what is the threshold for the existing risk of absconding below which such obligations are imposed? Are they imposed even in the cases where there is no risk of absconding?
>
> Para. 4: How do the courts determine (interpret) in this context that:

a) There is a risk of absconding

b) that an application for a legal stay has been dismissed as manifestly unfounded or fraudulent

c) that the person concerned poses a risk to public policy, public security or national security (for these issues cf. COM Communication, pp. 10 et seq. as well as an EMN Ad-hoc Query)

Art. 7 RD, transposition and jurisprudence: In the decision that a third country national has to leave Austria (return decision) the BFA has to establish the time limit for the voluntary departure. § 55 Aliens Police Act stipulates the usual time limit for a voluntary return. This limit is 14 days from the

[7] GP XXIV, RV 1078 AB 1160, S. 103.

point when the return decision becomes final and enforceable. The 14 days limit may be extended in cases where the BFA decides that the third country national's interests to regulate his or her personal situation prevail over the reasons, which led to the decision that the person has to leave the country.

The BFA may not grant a 14 days period in cases where the suspensory effect of the appeal has been denied. This suspensory effect may be denied or has to be denied for a number of reasons. These comprehensive reasons are enumerated in § 18 (2) Act on Procedures before the BFA. In cases where the suspensory effect is not denied a time limit of 14 day has to be granted.

In cases where it is denied the authority has to decide about the time limit, which has to be determined in each individual case.

The time limit granted has to be revoked in cases where facts exist which show a danger for public order or security or where a risk of absconding exists (§ 55 (5) Aliens Police Act). **In cases where a time limit for voluntary departure has to be granted, there is no administrative discretion to choose between seven and 30 days, the limit is 14 days and may be extended.**

The BFA may grant a longer period exceeding the 14 days in case where special circumstances exist, which require a longer period for the preparation of the voluntary departure. These circumstances have to be substantiated by the third country national. There is no need to apply for an extension; the circumstances have to be submitted in the procedure. In cases where such circumstances only come into existence or where the third country national only gets to know the circumstances after the decision is rendered, he or she could apply to the authorities as well.

§ 55 Aliens Police Act neither enumerates such reasons nor does it specify details. According to the Government Proposal (legislative document)[8] § 55 (3) Aliens Police Act transposes Art. 7 (2) RD. The Government proposal also refers to examples. These are the previous length of stay of the third country national, the necessity that a child completes a semester at an Austrian school or similar and equivalent reasons.

The Courts had to decide about cases where the complainant stated that the two weeks for voluntary departure are too short. A very interesting and well-reasoned case concerned nationals of Byelorussia.[9] Their applications for asylum had finally been denied. They already lived in Austria for six years. The first instance authority denied the prolongation of the time limit. The Independent Administrative Senate Tyrol[10] granted a prolongation upon appeal. The Directorate of Security filed an *ex officio* complaint against this decision, which was decided by the High Administrative Court.[11] The Court analysed Art. 7 RD and its transposition into Austrian law. The Court mentioned that not only circumstances existing in Austria might create the necessity to prolong this period, but also circumstances in the country of origin or in the destination country. The applicants had stated that they did not have a social net in Byelorussia. Their house had been taken by relatives; there were no possibilities for them to move to their country of origin in winter, because it would be impossible to find a place to live with (adequate) heating. They also stated that their son was born in Austria and was not registered in Byelorussia. In the *ex officio* complaint, the authority argued that only circumstances in Austria could require the necessity to prolong the period for departure. They also argued that it is common for persons whose asylum application has been denied that they do not have a place to live or a social net in their country of origin. The Court decided **that also circumstances in the target country might lead to a prolongation and create the necessity to prolong the period**. The Court stated that primarily reasons in Austria play a role but also – as mentioned – circumstances in the country of origin. The circumstances mentioned in § 55 Aliens Police Act refer to the personal situation in connection with the preparation of the departure. The Court then referred to the necessity to interpret the personal circumstances in a broad way. This wide interpretation is also stated in the legislative documents relating to §

[8] See fn. 7.

[9] See e.g. High Administrative Court, 2012/21/0072, 16.5.2013.

[10] See fn. 1.

[11] The case was processed before the changes in the administrative procedures in force since 1 January 2014.

55 Aliens Police Act.[12] The authorities have to reach a **fair balance** between the **personal and public interests**. The circumstances have to be temporary. Their elimination must be predictable.

Several decisions by the Federal Administrative Court refer to this decision. Most of them just quote the provisions and the decision and conclude that no such special circumstances exist. The Federal Administrative Court however decided in a case concerning a Macedonian citizen that personal circumstances exist, which require the prolongation.[13] The decision was based on medical reasons. The Macedonian citizen already had a surgery on his eye and was on the waiting list for a transplantation of the cornea in his right eye. The Court decided that he has a time limit of one year to leave the country. Though the transplantation was scheduled for April 2015, a one-year limit was seen necessary according to the opinion of the Court. In such a case, complications may occur and it was thus seen necessary to grant a period of one year.

If a person is pregnant and the birth of the child is expected in the near future, the period for all family members has to be extended for a period of eight weeks after the birth.[14]

In general, Austrian authorities and Courts may only impose return decisions in case, where an interference into the family or private life occurs, when such an interference is justified according to Art. 8 (2) ECHR. These decisions do not only have to refer to the situation in Austria but also to all other Member States, which are bound by the RD.[15]

According to § 56 Aliens Police Act the BFA may decide that the third country national has to fulfil certain obligations in cases where a certain time limit for return has been imposed. § 56 Aliens Police Act transposes Art. 7 (3) RD. The authority also has to decide about the necessity to impose such measures (Auflagen) which apply during that period.

The BFA may impose such obligations only in cases where a risk of absconding or a threat to public order or security exists. § 56 Aliens Police Act requires a risk of absconding or a threat. The wording is different to the meaning of Art 7 (3) RD. Art. 7 (3) requires that the measures have to aim at avoiding the risk. This does not require explicitly – maybe implicitly – an already existing risk.

The BFA has to undermine the threat to public order or security or the risk of absconding by concrete references to facts based on a solid investigation. Obligations are reporting obligations to the police, taking up residence in a designated place, residence and sojourn limited to a certain area (district area, Gebiet einer Bezirksverwaltungsbehörde) or an adequate financial deposit (bail). The BFA has to define the obligations and to state the reasons why the obligations are imposed (see Federal Administrative Court, I405 2008755-2/2E, 13.5.2015). It is not sufficient to make a general statement like "there is no integration into the Austrian society or legal order" or "the behaviour of the mother is not immaculate".[16]

Austrian courts refer to the files of the asylum proceedings or to the decisions about applications for residence permits.

III. Art. 8 RD

> Questions: How is the El Dridi "gradation" interpreted by national courts?
>
> Para. 1: How is the obligation to take "all necessary measures" interpreted and what do "all necessary measures" mean? Cf. Achoughbabian: "measures/coercive measures: "any intervention which leads, in an effective and proportionate manner, to the return of the person concerned". Also, the impact of the Luxembourg case-law on the national criminal law sanctions.

[12] See fn. 7.

[13] Federal Administrative Court, W196 2015947-1, 28.1.2015.

[14] Federal Administrative Court, G307 2013610-1, 24.2.2015.

[15] High Administrative Court, 2013/22/0284, 26.3.2015.

[16] See Federal Administrative Court, G307 2009115-1/2E, 28.7.2014.

Para. 4: Interpretation of "proportionality"/"non-excess of reasonable force"/"the dignity and physical integrity"

Art. 8 RD transposition and jurisprudence: § 46 Aliens Police Act stipulates the obligations that the authorities have to enforce the return of the person (Abschiebung, deportation). The authorities have to impose all necessary measures to conduct the deportation. The provisions do not further clarify the term "all necessary measures". A third country national may be deported if he or she did not leave the country though the time limit already elapsed, if there are certain indications that the person does not intend to leave the country, if an entry or residence ban is valid and the person re-entered Austria despite the existing ban. A further reason is the necessity to control the departure for reasons of public security or public order. The reasons that the person did not leave though the time limit elapsed or that the person did not leave though the immediate departure was required were enacted in order to transpose Art. 8 RD. The enforceable return decision has to be indicated in the passport. Deportation may be or has to be announced and enforced following a return decision or already following the entry and apprehension because of the illegal entry (possible within 72 hours after illegal entry). Jurisprudence confirms that complaints may not only be filed against return decisions but also against the practical enforcement (Maßnahmenbeschwerde) of the return decisions by deportation.[17] The High Administrative Court decided that in these cases (apprehension because of the illegal entry within 72 hours) the deportation in a technical sense lasts longer and comprises the period from apprehension to departure.[18]

There is no case law on "all necessary measures" in Art. 8 RD. The Aliens Police Act stipulates that departures have to be systematically monitored.

IV. Art. 9 (2) RD

Questions: Interpretation of "may postpone": again the issue of discretion, also with regard to time-frames.

Other examples for the reasons of postponement than those explicitly mentioned in Para. 2?

Art. 9 RD transposition and jurisprudence: The Aliens Police Act and other laws contain the explicit obligation not to violate the *non refoulement* obligation. The real risk has to exist either in the country of origin or in another country where to the deportation should take place. There are no other reasons for postponement of the deportation except the impossibility to effectuate the deportation because of reasons, which were not caused by the third country national. If deportation is not admissible based on the prognosis that the *non refoulement* obligation would be violated the person may stay in Austria. The physical state and the mental capacity (Art. 9 (2) RD) are taken into account when determining whether a person may be returned or not. The legal basis is § 46a Aliens Police Act, the stay of the person is tolerated as long as the conditions do not change.

Concerning the enforcement of the return decision, the Aliens Police Act only mentions certain details, namely that families should be deported together if the conditions exist at the same time and that the authorities have to make sure that unaccompanied minors are received by an adult family member or else (see the answer below to Art. 10 (2) RD).

Deportations have to be monitored by human rights rapporteurs.[19] These rapporteurs have to be present already when the person is informed about the planned deportation in a first information interview and also during deportation. The rapporteur has to submit a report during one week after deportation and the deportation has to be monitored up to the arrival of the person unless deportation is carried out with a scheduled flight. Is there in practice an administrative or judicial review of these monitoring activities? There is no administrative or judicial review. The report has to be submitted to the Ombudspersons (in an anonymized way).

[17] High Administrative Court, 2010/21/0056, 20.10.2011.

[18] See for many High Administrative Court, 2012/21/0085, 15.5.2012. The case concerned the question, which Independent Administrative Senate was competent *ratione loci* to decide about the legality of deportation.

[19] See the Implementing Regulation to the Aliens Police Act.

V. Art 10 RD

Questions:

The threshold of "satisfaction" that …

Determining "adequateness" of reception facilities in the State of return.

Art. 10 RD transposition and jurisprudence: Art. 10 (2) RD is transposed by § 46 (3) Aliens Police Act. This provision regulates that in case unaccompanied minors are deported the authorities have to make sure that he or she will be returned to a member of his or her family, a nominated guardian or to adequate reception facilities in the State of return.

There is no jurisprudence concerning unaccompanied minors, who should be deported. Some decisions however refer to the situation in Russia, though the facts did not disclose a necessity to do so. The Federal Administrative Court stated that returned minors who are unaccompanied could be accommodated in a children's home in Russia.[20]

VI. Art. 11 RD

Questions:

Para. 1(2): "may" – again a wide discretion

Para. 2: How are "all relevant circumstances of the individual case" interpreted, also in the light of Recital 14 RD? What are the maximum time-limits in Para. 2 cases? How is "serious threat to public policy etc." interpreted? Any difference between "a serious threat" in this paragraph and "a risk to public policy etc." in Art. 7(4)?

Para. 3(1): how is "shall consider" interpreted?

Para. 3(3): similarly, how is "may refrain" interpreted and applied by the courts? More importantly, what are the "humanitarian reasons"?

Para. 3(4): how are "for other reasons" interpreted?

Para. 4: handling entry bans issued by other MS

Para. 5: handling entry bans in "international protection" cases.

Handling historic entry bans (cf. Filev and Osmani).

Art. 11 transposition and jurisprudence: § 53 Aliens Police Act contains provisions on entry bans and intends to transpose Art 11 RD. The Government Proposal refers to the transposition and the necessity to decide about return decisions and entry bans in a combined way. Entry bans have to be issued together with a return decision. There is a lot of case law on entry bans.[21]

§ 53 Aliens police Act stipulates that the BFA may impose entry bans (in an administrative order, together with a return decision). According to § 53 (2) Aliens police Act the BFA may impose entry bans for a maximum period of five years, according to § 53 (3) for a maximum period of ten years, for certain severe violations unlimited entry bans may be imposed. The transposition of the RD led to an amendment and adaptation of the time frame, the previous situation allowed unlimited entry bans or entry bans limited with ten years. An entry ban is defined as the prohibition to enter the territory of the Member States for a certain period. § 53 (2) and (3) Aliens Police Act enumerate the complex facts and legal reasons, which have to be taken into account when the length of the entry ban is determined.

There is comprehensive jurisprudence on entry bans. Decisions have to be made on a case-by-case basis taking all the circumstances of the behaviour and conduct of the person and the length of the sojourn into account. § 53 (2) enumerates the circumstances which have to be taken into account when determining the length of the residence ban **between 18 months** and **up to five years**. These are: pre-

[20] See for many Federal Administrative Court, W112 1420241-2/37E, 4.6.2015.

[21] For explanations, which Court is competent to decide, see above Introduction.

vious behaviour of the third country national and the fact, if and how far the sojourn of the person is a threat to public order or security or is contrary to the public interests mentioned in Art. 8 (2) ECHR.

§ 53 (2) 1. enumerates a list of reasons, which have to be taken into account when the authorities decide, if and how far the sojourn of the person is a threat to public order or security or is contrary to the public interests mentioned in Art. 8 (2) ECHR. According to § 53 (2) the time frame for entry bans is 18 months to five years. Facts and reasons which have to be taken into account according to § 53 (2) are: A person has been sentenced by a final decision by a final decision, for an administrative offence, e.g. of traffic rules, the Industrial Code, the Aliens Police Act, the Act on Border Controls, the Domicile Registration Act, the Act on the Transport of Dangerous Goods or the Aliens Employment Act (engagement in an employment which he would not have been permitted to pursue under the Aliens Employment Act), with more details). Another reason is the conviction by a final decision for a violation of another Administrative Act, when the conviction contains a prison sentence or a penalty of more than € 1.000. Other facts are the final conviction for a violation of the Settlement and Residence Act (with one exemption), the final conviction for the wilful commission of fiscal offences, for serious violations of the statutory provisions governing prostitution. A further reason is that the person fails to furnish evidence that he or she possesses the means to support himself or herself. If the person has concluded a fictitious marriage or has been adopted and the sole or predominant reason was to obtain or retain the residence permit.

§ 53 (3) Aliens Police Act provides the legal basis for entry bans with a maximum period of **ten years or also unlimited entry** bans for severe violations. All these reasons refer to threat to national security. § 53 (3) Aliens Police Act enumerates: Conviction by a final judgement to unconditional imprisonment for more than three months, partially suspended imprisonment, suspended imprisonment for more than six months, or on more than one occasion for criminal offences based on the same malicious inclination; conviction within three months after entry for the wilful commitment of a criminal act; final sentence for procuration.

For certain severe violations (§ 53 (3) 5.-8.) unlimited entry bans may be imposed. These reasons are: Final conviction for an unconditional sentence for more than five years; assumption based on certain reasons that the persons belongs to a to a criminal organisation (§ 278a of the Criminal Code (CC)) or a terrorist association (§ 278b CC) or for other reasons related to terrorist acts (financing of terrorism); assumption, on the basis of certain facts, that the conduct poses a threat to national security, in particular by public participation in violent acts, by publicly calling for violence or by instigation or provocation or publicly approves or promotes a crime against peace, a war crime, a crime against humanity.

Jurisprudence takes all the personal circumstances and the reasons mentioned in § 53 (2) and (3) Aliens Police Act into account.

The High Administrative Court decided that a long duration of the stay is a very important fact when determining the balance based on Art. 8 (2) ECHR (VwGH 2012/21/00449, 2.10.2012). If the person already stayed in Austria for more than ten years this long period has a high value in the balance of interests. Even if the person only speaks basic German, the long stay is a reason for not allowing an entry ban and for determining the length. Only if the person would not been integrated neither socially nor professionally a residence ban would be allowed.

The High Administrative Court also had to decide about residence bans enacted before the amendment of the Aliens Act transposing the content and terminology of the RD. The Court decided that the previous residence ban in fact remains as it is, remedies however are available and have to be decided on the basis of the amended law taking the transitional rules into account. In this case, an unlimited residence ban had been issued before the amendment of the Aliens Police Act. After the amendment, it would not have been possible to enact an unlimited ban. Therefore, the authorities have to withdraw the ban ex officio or upon application after ten years (VwGH 2011722/0333, 10.4.2014).

The High Administrative Court decides in constant jurisprudence based on an interpretation of the law that a prognosis decision has to be made taking into account the personal behaviour of the alien and the question whether and based on which concrete reasons the assumption is justified that the person constitutes a danger for public order or security (see for many VwGH 2011/23/0256, 20.12.2011 and VwGH 2013/18/0052, 10.9.2013). Mere references to convictions are not sufficient, the authorities

have to take the kind of delict or criminal act and the kind of administrative offence into account and have to make a concrete statement of the threat. They have to draw a certain image of the personality.

The authorities have to take security reasons and the private and family life into account (according to Art. 8 (2) ECHR). The Administrative Court Vienna decided that a residence ban for ten years had to be reduced to seven years because of the necessity to reach a fair balance between the commitment of drug crimes and the established family life (VGW-151/04674108/2014, 13.3.2014).

A fair balance is between the personal interests and the other reasons, e.g. public interests to protect the labour market, are contained in a number of decisions (see for many UVS, Independent Administrative Senate, UVS-FRG/46/2822/2013, 23.10.2013). In this case, the applicant had been employed without complying with the Aliens Employment Act. He also had a wife and a three years old daughter in Austria and he was integrated in Austria as well as his second asylum procedure had lasted for more than ten years. The Court decided that the entry ban has to be withdrawn. The fair balance between the personal interest and the other reasons, here public security) was at stake in the decision VGW-151/046/5867/2014, 16.9.2014). A number of family members of the applicant lived either in Austria or in other EU Member states. The drug crimes committed by the applicant were only minor crimes; the applicant had undergone a therapy and now lives with her partner in a different social surrounding.

There is very interesting decision by the High Administrative Court referring to the underlying system of the RD. The Court stated that reasons of public order do not necessarily constitute a reason for imposing an entry ban. The Court again referred to the fair balance. In this case, the public interest prevailed over the personal interests of the person. The Court also stated that the RD does not contain a minimum limit of 18 months for entry bans. This minimum period is contained only in § 53 Aliens Police Act. In cases where such a limit would be too high, the authorities are not allowed to impose an entry ban at all. The Court also considered **Art. 11 RD directly applicable**.

The authorities have to conduct a profound investigation when they decide about an entry ban and the length of the entry ban. A mere statement that there is a danger that the person would continue to work illegally is not sufficient (see VwGH 2012/18/0230, 19.2.2013).

Another decision, where personal and public interests had to be balanced is VGW-151/046/6877/2014 and others, 7.4.20149. The applicants were integrated in Austria and lived there for more than ten years and the son was born in Austria. The mother had committed criminal acts at the beginning of her sojourn; she however committed no offences within the previous six years. The length of the asylum procedure was not attributable to the conduct of the applicants but to the authorities.

An entry ban has to be withdrawn, when the person left the country, married a person living in Austria in Serbia, and has a daughter, who was born and lives in Austria. Entry bans have to be withdrawn when the circumstances, which led to the imposition of such an entry ban, changed. Aspects of private and family life have to be taken into account (see VGW-151/04674680/2014, 24.6.2014).