

## ■ CONSTITUTIONAL DEVELOPMENTS IN AUSTRIA

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### **FOCUS: Austrian regulations concerning the rights and status of aliens – entry, asylum, residence and expulsion under constitutional scrutiny**

In the current issue, the "Austrian constitutional developments" Section focuses on recent decisions from the Austrian Constitutional Court related to the entry and residence of aliens in Austria. The relevant national laws include the Federal Laws concerning the Grant of Asylum (Asylum Act, *Asylgesetz*), Settlement and Residence in Austria (Settlement and Residence Act, *Niederlassungs- und Aufenthaltsgesetz*) and the Exercise of Aliens' Police, the Issue of Documents for Aliens and the Granting of Entry Permits (Aliens' Police Act, *Fremdenpolizeigesetz*), all of them enacted in 2005 as part of a legal initiative on the law in regard to aliens.

The Asylum Act draws the legal conditions for asylum seekers, the status of refugees, residence during the proceeding and procedural law. In general, rejected asylum seekers are not entitled to any kind of residence permit and may be expelled and deported from Austria. The Settlement and Residence Act regulates the grant of residence permits if the stay in Austria exceeds six months; it also provides rules regarding EU-entry and residence standards. In general, applications for residence permits under this Act have to be admitted from abroad. This does not apply for the status of "residence on humanitarian grounds", which is granted at the discretion of the Austrian government, usually to those who are already somewhat integrated into Austrian society. The Aliens' Police Act provides rules regarding the issue of documents to aliens, the grant of entry permits, expulsion order, residence prohibition, deportation and detention pending deportation (*Schubhaft*) of aliens. Furthermore it contains provisions for citizens of the EEA, Switzerland and Austria as related to their families along with procedural law and sanctions. Under the Aliens' Police Act and under the Asylum Act, illegal immigrants or rejected asylum seekers may be arrested and held in custody to ensure expulsion or forcible return to their country of origin.

Finally, it has to be pointed out that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does have constitutional rank in Austria. The rights and guarantees, conveyed under ECHR, are equally binding on Austrian legislation, administration and jurisdiction as are legal requirements and fundamental rights regulated by Austrian federal constitutional law. Hence the understanding and interpretation of the ECHR's fundamental rights and freedoms play a major role in the jurisdiction of the Austrian Constitutional

Court, also as regards to the Austrian regulations concerning the rights and status of aliens.

The following decisions outline the recent constitutional developments in the fields of asylum and migration law.

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