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4.15.4 Refining national legislation on the issuance of a return decision to third-country nationals

In Austria, an amendment of 23 December 2020 was made to the Federal Office for Immigration and Asylum Procedures Act[1210] on return counselling. Previously, return counselling had been obligatory either once a first instance return decision against a third-country national or a notification as referred to in the Asylum Act 2005, Article 29(3)4-6 had been issued.[1211] As of 1 January 2021, such counselling is to be generally administered only after a final or enforceable return decision has been issued. Exceptions have been defined for cases including third-country nationals staying unlawfully and for accelerated procedures.[1212] It still remains possible to request voluntary return counselling at any stage in the procedures.

As of 1 January 2021, a return counselling session is thus mandatory for the following cases, as set out in Article 52(2a) of the Federal Office for Immigration and Asylum Procedures Act:

- Third-country nationals staying unlawfully in Austria against whom return decisions have been issued, even if not final;
- Third-country nationals staying lawfully against whom a return decision has been issued and has become enforceable or final;
- Asylum seekers against whom notifications of intended rejection or dismissal of the application for international protection or of intended revocation of de facto protection against a removal have been issued in admission procedures (Article 29(3), sub-paragraphs 4 to 6 of the Asylum Act 2005); and
- Asylum seekers against whom a return decision has been issued and has become enforceable or final.

This amendment was prompted by the fact that compulsory return counselling had previously taken place at an early stage, often before any appeal proceedings. Waiting until decisions become final and enforceable should ensure targeted and efficient return counselling. It should also help to make sure that foreign nationals receive information promptly on assistance options for voluntary return, thus avoiding any forced return and strengthening voluntary return and reintegration.

An amendment was passed in Lithuania in November 2020[1213] which clarified that a return decision cannot be issued pending the examination of an application for international protection. In

Bulgaria, the National Assembly adopted a draft law amending the Law on Foreigners in the Republic of Bulgaria,[1214] which proposes to amend existing provisions in the field of return. The country to which a return will be executed must be indicated in the return decision.

Estonia clarified criteria to assess the risk of absconding when a return decision is issued (or a decision to detain a foreigner). According to amendments to the Obligation to Leave and Prohibition on Entry Act, the risk of absconding occurs when a third-country national notifies the PBGB that he/she does not wish to comply with the obligation to leave, or the Estonian Internal Security Service or the administrative authority comes to this conclusion based on the attitude or conduct of the foreigner.

In Ireland, amendments to the International Protection Act 2015, which were introduced by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020,[i] now allow for the return of applicants whose applications are deemed inadmissible (subject to the prohibition on refoulement) to the United Kingdom, which has been designated as a safe third country since 31 December 2020.

[1210] 145. Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005 und das BFA-Verfahrensgesetz geändert werden [145. Federal Act amending the Establishment and Residence Act, the Asylum Act 2005 and the BFA Procedural Act], December 23, 2020. https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_145/BGBLA_2020_I_145.html

[1211] 145. Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005 und das BFA-Verfahrensgesetz geändert werden [145. Federal Act amending the Establishment and Residence Act, the Asylum Act 2005 and the BFA Procedural Act], December 23, 2020. https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_145/BGBLA_2020_I_145.html

[1212] Parliament, Republic of Austria | Parlament, Republik Österreich. (2019). *Bundesgesetz, mit dem ein Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung erlassen (BBU-Errichtungsgesetz – BBU-G) und das BFA-Verfahrensgesetz, das Asylgesetz 2005 und das Grundversorgungsgesetz – Bund 2005 geändert werden - Erläuterungen [Federal Law enacting the Federal Law establishing the Federal Agency for Reception and Support Services (BBU Establishment Law, BBU-G) and amending the BFA Procedures Act, the Asylum Law 2005 and the Basic Care Law – Federation 2005 - Explanatory notes]* . https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00594/fname_748859.pdf

[1213] XIII-3412 Lietuvos Respublikos ?statymo „D?l užsienie?i? teisin?s pad?ties“ Nr. IX-2206 pakeitimo ?statymas [XIII-3412 Law amending the Law of the Republic of Lithuania “On the Legal Status of Aliens” No IX-2206], November 10, 2020. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d9581ac124e611eb8c97e01ffe050e1c

[1214] ???????????? ?? ????????? ? ?????????? ?? ?????? ?? ?????????? ? ????????? ????????, ???????? ??????? ???? 21 / 2021 ? [Bill amending and supplementing the Law on Foreigners in the Republic of Bulgaria, State Gazette number 21/2021], February 26, 2021. https://www.parliament.bg/bg/laws/ID/163303

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