

## **Austria ? Higher Administrative Court, March 21st 2018, Ra 2017/18/0474**

**Country of Decision:**

Austria

**Country of Applicant:**

Afghanistan

**Date of Decision:**

21-03-2018

**Citation:**

Ra 2017/18/0475, Ra 2017/18/0476, Ra 2017/18/0479, Ra 2017/18/0478, Ra 2017/18/0477

**Court Name:**

Higher Administrative Court

**Keywords:**

Child Specific Considerations  
Credibility assessment  
Individual assessment  
Internal protection  
Obligation to give reasons  
Protection  
Return  
Safe country of origin  
Serious harm  
Subsidiary Protection  
Vulnerable person

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**Relevant Legislative Provisions:**

European Union Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 2](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [3]**Headnote:**

The judicial examination of whether subsidiary protection shall be approved requires a thorough assessment of the individual case. This applies in particular for especially vulnerable persons.

### **Facts:**

An Afghan citizen applied for asylum and international protection in the federal territory of Austria on October 25<sup>th</sup> 2015 and May 19<sup>th</sup> 2016 respectively, together with his wife, their underage daughter and their three underage sons. As reason for flight, the applicant stated his brother was kidnapped and killed by the Taliban. He now wanted a better a life for his children.

The Federal Immigration and Asylum Service (BFA) dismissed all applications. The Federal Administrative Court (BVwG) dismissed the appeal as unfounded and declared a further appeal as inadmissible on the basis of Sec. Art. 131 Paragraph 4 B-VG.

The Court had reasoned that, during their stay in Austria, the applicants did not adapt a lifestyle that would justify a right to internal protection. They also did not have a right to subsidiary protection. A return to the Afghan capital of Kabul would not violate their rights granted by Sec. 2 and Sec. 3 ECHR. The family would be able to live a *safe and stable* life in Kabul.

The underage children would also not be subjected to the danger of inhumane treatment. They would have the possibility to visit a school and live under harmonic, nonviolent family circumstances. Their familial network would also protect them from dangers of sexual abuse, child labour or other forms of violence. The family still had strong connections to their country of origin. Therefore, the public interest of a return would overweigh the applicants? one of staying in Austria.

A further appeal criticized the BVwG for not making additional inquiries regarding the reason for flight as well as not acknowledging the applicants? efforts to assimilate. It especially questioned the decision regarding subsidiary protection. It had not been made under appropriate judgement of the *specific, current situation*.

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### **Decision & Reasoning:**

The VwGH approved the further appeal as far as the BVwG not having examined the applicants? right to subsidiary protection appropriately. *A complete assessment of the individual case* was necessary to determine whether a return to the country of origin would constitute a real risk of violating Sec. 3 ECHR.

Considering the possible dangers, the *personal situation of the person concerned would have to be put in relation to the general status of human rights in the country of destination*. It had to be considered that the applicants are a family with four underage children and therefore an especially vulnerable group of people in need of protection.

The actual level of security and freedom the applicants can experience in the country of origin had to be analysed. Kabul being comparably safe and stable would not imply that this is also the case for vulnerable persons. The numbers of underage victims and civil victims in Afghanistan, specifically Kabul, had been enormously high in recent years.

The present case had to be examined more specifically and recent reports had to be taken into consideration. Although the BVwG had considered several essential aspects, it did not provide a

thorough judgement of the possible dangers as well as the minors' vulnerability. The further appeal therefore rightfully criticized a violation of the obligation to state reasons.

On the basis of § 42 Paragraph 2 Numbers a and b, the appealed decision was set aside in regard to the non-approval of subsidiary protection. The VwGH dismissed the further appeal regarding any other claims.

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**Outcome:**

Appeal partially granted.

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**Subsequent Proceedings :**

The case was revised in the BVwG's decisions in ZI. W220 2158926-1/12E, ZI. W220 2158931-1/11E, ZI. W220 2158938-1/9E, ZI. W220 2158929-1/9E, ZI. W220 2158934-1/9E, ZI. W220 2158936-1/9E

**Observations/Comments:**

This case summary was written by Niklas Klug, undergrad student at University of Cologne.

**Attachment(s):**

[JWT\\_2017180474\\_20180321L00\\_specific\\_vulnerability\\_RCD\\_afghanistan.pdf](#)[4]

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**Other sources cited:****Domestic Case Law Cited**

Austria - VwGH ? Supreme Administrative Court - December 13<sup>th</sup> 2017, Ra 2017/01/0187

Austria - VwGH ? Supreme Administrative Court - September 13<sup>th</sup> 2017, Ra 2016/12/0118

Austria - VwGH ? Supreme Administrative Court - November 23<sup>rd</sup> 2017, Ra 2016/11/0160

Austria - VwGH ? Supreme Administrative Court - January 23<sup>rd</sup> 2018, Ra 2017/18/0301

Austria - VwGH ? Supreme Administrative Court - December 13<sup>th</sup> 2016, Ra 2016/20/0098

Austria - VwGH ? Supreme Administrative Court - August 30<sup>th</sup> 2017, Ra 2017/18/0089

Austria - VwGH ? Supreme Administrative Court - August 30<sup>th</sup> 2017, Ra 2017/18/0036

Austria - VwGH ? Supreme Administrative Court - November 29<sup>th</sup> 2017, Ro 2017/18/0002

**National / Other Legislative Provisions:**

[Austria - AsylG 2005 \(Asylum Act\) - §§ 3](#) [5]

[57](#) [6]

[Austria ? Constitution - Art. 133 Abs. 4](#) [7]

[Austria ? General Administrative Procedure Act - §52](#) [8]

[Austria ? Higher Administrative Court Act - §§ 34](#) [9]

[42](#) [10]

[47ff.](#) [11]

[Austria - Higher Administrative Court Regulation for Expenses](#) [12]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] [https://www.asylumlawdatabase.eu/node/195#toc\\_4](https://www.asylumlawdatabase.eu/node/195#toc_4)

[3] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[4]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/JWT\\_2017180474\\_20180321L00%20specific](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/JWT_2017180474_20180321L00%20specific)

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-asylg-2005-asylum-act-%C2%A7%C2%A7-3>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/57>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-constitution-art-133-abs-4>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-general-administrative-procedure-act-%C2%A752>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-higher-administrative-court-act-%C2%A7%C2%A7-34>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/42>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/47ff>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-higher-administrative-court-regulation-expenses>