



**INTERNATIONAL
LEGAL RESEARCH GROUP
ON MIGRATION LAW
INTEGRATION POLICIES**

CONCLUDING REPORT

elsa

The European Law Students' Association





The European Law Students' Association

International Legal Research Group on Migration Law Concluding Report

The European Law Students' Association

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Introduction

Before embarking on the task to highlight and comparatively analyse the main findings of ELSA's report, in cooperation with the Council of Europe and the Committee on Migration, Refugees and Displaced Persons of the Council of Europe Parliamentary Assembly, some notes need to be provided on the integration of migrants need to be provided.

This report is organised into 11 chapters, deriving from the Academic Guidelines that the Final Report, that this document concludes, is based on. Each section provides an analysis of 28 national legislations based on the National Reports in the Final Report. Consequently, it provides an overview of what the integration process of migrants looks like in different parts of Europe. We hope that you will enjoy reading this Concluding Report and find many new ideas to ponder on.

We hope that you enjoy reading this report as much as we enjoyed writing it.

Thankfully yours,

Kerli, Bruno, Marilena, Ismini, Antonia, Fransesca. Andreja, Cecile, Nijat, Anežka, Oļegs and Valentin

Chapter 1. Regulation of Asylum

1.1. Legal framework

The right to asylum is an international human right, which is of vital importance for those who seek protection as a refugee. The main international provisions that regulate matters of asylum protection can be found in the 1951 Convention Relating to the Status of Refugees, which sets out the criteria for the refugee status and the minimum standards of protection for people who are given such a status, and the 1967 Protocol Relating to the Status of Refugees (herein the 'Refugee Convention'), which expanded the territorial and temporal scope of the definition of 'refugee'. As it will be explained further on, most countries replicate in their national legislation the definition and criteria for qualifying for the refugee status as provided in the Refugee Convention. It is the procedural aspects that vary to a greater extent. However, even in the case of procedure, the EU countries have a much more harmonized practice in contrast with other members of the Council of Europe. The latter are encouraged but not bound to follow certain recommendations of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe.

Relevant for members of the Council of Europe are treaties that, usually indirectly, address matters relating to asylum protection such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, the European Agreement on Transfer of Responsibility for Refugees, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as soft law comprising *inter alia* Recommendation No. R (81) 16 of the Committee of Ministers to member states on the Harmonisation of National Procedures Relating to Asylum,¹ Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe² and Recommendation N° R (98) 13 on the Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights.³ The "soft" law developed by the Council of Europe usually sets out the minimum procedural standards that member states are strongly encouraged to follow. Such standards and principles still offer vast flexibility for the member states to decide on the procedures related to asylum protection.

¹ Council of Europe: Committee of Ministers, Recommendation no. R (81) 16 of the Committee of Ministers to member states on the harmonisation of national procedures relating to asylum, Adopted by the Committee of Ministers on 5 November 1981 at the 339th meeting of the Ministers' Deputies.

² Council of Europe: Parliamentary Assembly, Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, 24 April 1997, Rec 1327 (1997).

³ Council of Europe: Committee of Ministers, Recommendation N° R (98) 13 on the Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights, 18 September 1998, Rec(98)13.

The members of the EU are also bound by EU Regulations and Directives which regulate the Common European Asylum System.⁴ These official documents set clear procedural rules and time-frames, focusing on the needs of vulnerable groups such as unaccompanied minors who seek asylum protection, establish minimum reception conditions and reaffirm the fact that detention is a last-resort measure, set clear rules for granting international protection, as well as rules for establishing which EU Member is responsible for processing the asylum application.

The national legal frameworks embed the main provisions from international and regional instruments and make a significant contribution in the areas which are less developed in international instruments such as procedure. Indeed, the comparative analysis shows that if eligibility or revocation criteria of asylum protection follow the same pattern, the national bodies involved in the procedure, the conditions and terms of the procedure of granting asylum protection, as well as the conditions for filing an appeal by an asylum seeker vary significantly across member states. Such variation stems from the principle that every sovereign state is entitled to exclusive control over its territory and, as a result, over persons in its territory.⁵

1.2. Findings of the ELSA National Groups

1.2.1. Bodies and entities involved in the asylum process

In most of the reporting countries, the entities tasked with asylum procedures are sub-divisions of the Ministries responsible for security and internal affairs. This seems to be an obvious choice given that these Ministries are responsible for the oversight and control of borders, where the first interaction between national authorities and asylum seekers takes place. There are various structures such as directorates, departments or services essentially responsible for both the initial screening reception and analysis of asylum applications.⁶ In some countries, such as Azerbaijan, the responsible body is not an internal department or agency of a Ministry. The State Migration Service is, thus, a governmental agency within the cabinet of Azerbaijan.⁷ In Bulgaria, refugee

⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast); Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); 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 (recast); Regulation (EU) no 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member states by a third-country national or a stateless person (recast).

⁵ Felice Morgenstern, *The Right of Asylum*, 1949 BRrr. Y.B. INT'L L. 327, 327.

⁶ For instance, in Albania, the responsible entity is the General Directorate for Border and Migration (Ministry of Internal Affairs); in Bosnia and Herzegovina — Field Office of the Service for Foreigner Affairs (Ministry of Security); Czech Republic — Department for Asylum and Migration Policy (Ministry of Interior); Italy — Territorial Commissions for the Recognition of International Protection (Ministry of Interior); Macedonia — Department for Asylum (Ministry of Interior), the Netherlands — Immigration and Naturalisation Service (Ministry of Justice and Security); Romania — National General Inspectorate for Immigration (Ministry of Internal Affairs).

⁷ European Law Students' Association Azerbaijan, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 8 accessed 20 November 2017.

and humanitarian protection matters fall under the competence of the State Agency for Refugees, while temporary protection issues are dealt with by the Council of Ministers.⁸

States with a federal system, such as Austria and Germany, have a different structure. In Austria, there is a Federal Office for Immigration and Asylum (BFA) with nine regional directorates for each federal state.⁹ Similarly, in Germany, the Federal Office for Migration and Refugees has branch offices in all the Federal Länder.¹⁰

Finally, some countries opted for semi-autonomous or autonomous entities. Thus, in Greece, matters concerning asylum protection fall under the responsibility of the Asylum Service, which is an autonomous body that reports to the Minister of Migration Policy.¹¹ In Ireland, the International Protection Office of the Irish Naturalisation and Immigration Service, which administers functions of the Minister for Justice and Equality, serves as a one-stop-shop for asylum services, along with immigration, citizenship and visa services.¹²

1.2.2. Eligibility requirements for asylum protection

In assessing whether an asylum seeker meets the requirements for the refugee status, most states rely on the criteria of the Geneva Convention. It must be noted that the researched states have been reluctant to expand the scope of the definition to an equivalent of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa or the Cartagena Declaration. Thus, generally, in order to qualify for the refugee status, an applicant must show that he/she:

- has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion;
- is outside his/her country of origin; and
- is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

In addition to refugee protection, all reporting states have some additional or subsidiary form of protection. Several countries, such as Bulgaria and the Czech Republic, have kept the

⁸ State Agency for Refugees with the Council of Ministers of the Republic of Bulgaria, 'What do we know and what do we not know about refugees?' <<http://www.aref.government.bg/images/docs/Refugee%20Status/aref1.pdf>> accessed 1 November 2017.

⁹ European Law Students' Association Austria, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 3 accessed 20 November 2017. See also <<http://www.bfa.gv.at/bundesamt/standorte/start.aspx>> accessed 27 May 2017 [German].

¹⁰ European Law Students' Association Germany, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 4 accessed 20 November 2017. See also <<http://www.bamf.de/EN/DasBAMF/Aufbau/Standorte/standorte-node.html>> accessed 27 October 2017 [German].

¹¹ European Law Students' Association Greece, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 4 accessed 20 November 2017. See <http://asylo.gov.gr/en/?page_id=39> accessed 30 October 2017.

¹² European Law Students' Association Ireland, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 4 accessed 20 November 2017. See <<http://www.inis.gov.ie/en/INIS/Pages/WP07000075>> accessed 25 October 2017.

humanitarian protection.¹³ Bulgaria, the Czech Republic and Turkey also grant temporary protection when faced with a massive inflow of asylum seekers.¹⁴

In Germany, persons displaced from their countries of origin, fleeing from violence, war and terror, are to find protection according to § 3 AsylG (the law governing asylum – Asylgesetz), which replicates the provisions of the Refugee Convention), while people fleeing from fear of the death penalty, inhumane treatment, indiscriminate violence or threat of life are entitled to subsidiary protection.¹⁵

The Czech Republic offers several forms of protection—refugee status, asylum for purpose of family reunification, humanitarian asylum, as well as subsidiary protection.¹⁶

Sweden offers an additional form of protection that resembles and somewhat overlaps with subsidiary protection: aliens that are outside their country of origin because he or she is unable to return and needs protection due to an external or internal armed conflict, other severe conflicts, having a well-founded fear of being subjected to serious abuses or environmental disasters in their country of origin. This provision also covers situations of political instability where the rule of law and human rights cannot be guaranteed. As the National Legal Research Group notes, however, the number of people being granted a residence permit based on this form of protection is not very significant.¹⁷

1.2.3. Asylum procedure

The asylum procedure and the time-limits vary significantly across member states. While it is not clear whether there are any countries that require a deadline for filing an application, it shall be reminded that the UNHCR suggests that there should not be such a time limit as that can significantly increase the risk of *refoulement*.¹⁸ Asylum procedures usually involve a two-step process: initial screening and interview after which the decision as to grant or not a certain form of protection is taken and communicated to the asylum applicant. Some countries require only written applications, while others, such as Austria, allow both written and oral applications. Most

¹³ European Law Students' Association Bulgaria, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 8 accessed 20 November 2017; European Law Students' Association Czech Republic, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 5-6 accessed 20 November 2017.

¹⁴ European Law Students' Association Bulgaria, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 10 accessed 20 November 2017; European Law Students' Association Czech Republic, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 7 accessed 20 November 2017; European Law Students' Association Turkey, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 6 accessed 20 November 2017.

¹⁵ European Law Students' Association Germany, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 8 accessed 20 November 2017. See also Reinhard Marx *Asyl G Kommentar zum Asylgesetz* (9th edn, Luchterhand Verlag 2017) [German].

¹⁶ European Law Students' Association Czech Republic, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 4-6 accessed 20 November 2017.

¹⁷ The Swedish National Legal Research Group reports that during 2015, only 229 persons were granted residence on that basis, which is mostly due to the fact that it overlaps with the provision on subsidiary protection.

¹⁸ Inter-Parliamentary Union, *Refugee Protection: A Guide to International Refugee Law* (2001) 58 <<http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guideinternational-refugee-law-handbook-parliamentarians.htm>> accessed 15 October 2017.

countries also have a regular and accelerated track for applications. The latter is usually used for applications that are obviously groundless.

In Albania, the interview is conducted within 21 days from filing an application and the decision is taken within a further 30-day period.¹⁹ In Austria, the initial screening takes place earlier, within 48-72 hours, however it takes up to 15 months for a decision to be reached after the second interview.²⁰ Azerbaijan has a 3-month period for a decision to be taken since the registration of the application,²¹ while in Bulgaria maximum time that may be required for deciding on an application can be up to 21 months.²² In the Netherlands, there is a minimum six-day 'rest period' (between filling an application and the interview), aimed at allowing the applicant to rest, gain strength, undergo all medical checks, etc.²³ This period may take up to 6 months depending on the influx of asylum seekers.²⁴ The general procedure requires the Dutch Immigration and Naturalisation Service to conduct two interviews in a span of 8 days and releases on the 7th or 8th day the final decision.²⁵

Some interesting practices can be noticed in member states in cases of massive influxes of persons, as well as procedures involving applicants belonging to vulnerable groups. As such, vulnerability of asylum seekers has been reported as a circumstance that speeds up and/or provides for additional safeguards particularly in EU member states. In Ireland, for instance, additional support is provided by social work team (Child and Family Agency (TUSLA)).²⁶

In the UK, an important programme is the Syrian Vulnerable Persons Resettlement Programme ('VPRP').²⁷ The VPRP was established in 2014 in order to provide a route for selected Syrians to come to the UK, and was subsequently extended as a result of the commitment made by the then-Prime Minister, David Cameron, to accept 20,000 Syrian refugees by 2020.²⁸ The programme expanded its scope and considered eligible persons who exhibit particular vulnerabilities, such as the elderly, the disabled and victims of sexual violence and torture. The

¹⁹ European Law Students' Association Albania, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 7 accessed 20 November 2017. See arts 26-27, *Law No 8432 of 1998 on Asylum in the Republic of Albania*, 14 December 1998 <<http://www.refworld.org/docid/3ae6b5c07.html>> accessed 16 November 2017.

²⁰ European Law Students' Association Austria, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 3 accessed 20 November 2017, citing paragraph 19 AsylG, BGBl I 2005/100 idF BGBl I 2017/68 [German].

²¹ European Law Students' Association Azerbaijan, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 8 accessed 20 November 2017.

²² European Law Students' Association Bulgaria, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 8 accessed 20 November 2017.

²³ European Law Students' Association Netherlands, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 9 accessed 20 November 2017, citing the Decree of 23 November 2000 on the execution of the Alien Act 2000 (Alien Decree 2000), [Vreemdelingenbesluit 2000], Article 3.109; EM Kampstra, *Hoofdzaken Vreemdelingenrecht* (Kluwer 2015) 65.

²⁴ *ibid.*

²⁵ *ibid.* 7.

²⁶ European Law Students' Association Ireland, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 5 accessed 20 November 2017.

²⁷ European Law Students' Association United Kingdom, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 11 accessed 20 November 2017.

²⁸ *ibid.*, citing Patrick Wintour, 'UK to take up to 20,000 Syrian refugees over five years, David Cameron confirms' (*The Guardian*, 7 September 2015) <<https://www.theguardian.com/world/2015/sep/07/uk-will-accept-up-to-20000-syrian-refugees-david-cameron-confirms>> accessed 16 June 2017.

applicants for this programme are refugees who have fled from the conflict to the countries bordering Syria and are resettled in the UK. Those selected for the VPRP are granted humanitarian protection status for a period of five years, with permission to work and access to public funds. As of 1 July 2017, all those admitted to the UK under the VPRP are to be granted refugee status.²⁹ One should note that the VPRP works in parallel with the existing general asylum procedure which eligible applicants can also resort to.

One peculiarity that Italy shares with Greece is the existence of the hotspot system, areas with disproportionate migratory pressure, which provide frontline assistance, processing and identification of migrants and asylum seekers that have usually arrived after search and rescue operations.³⁰ Afterwards, migrants are transferred to other reception centres. These countries also report issues with respecting the time-frame for examining applications and making a decision on them. In Italy, an asylum seeker submits a request with the Border Police or the provincial Police station. Later on, the documents are sent to one of the 20 Territorial Commissions. The applicant is interviewed within 30 days after receiving the application, and a decision is issued within the following 3 days. The entire procedure may take up to 18 months. However, the Italian National Legal Research Group reported that, in practice, this time frame is almost never respected.³¹

Lately, a concerning matter has been reported in case of asylum procedure in France. According to a public official report of the Accounting Court, France's asylum procedures take two years.³² This is a cause for concern in the long-run given the limitations of the status of applicant has compared to the status of refugee. Furthermore, the report reveals that the vast majority of asylum seekers are rejected in their applications, with an overwhelming 96% (on 2015) of those rejected remaining in France and not being subjected to deportation.³³ It should be noted that such pattern could be observed before the European response to the massive inflow of migrants in 2015. After the French authorities introduced the most recent law of the 29th of July 2015, which regulates in much stricter terms the procedure, this pattern might have been significantly changed.³⁴

²⁹ European Law Students' Association United Kingdom, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 11 accessed 20 November 2017.

³⁰ European Law Students' Association Italy, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 8 accessed 20 November 2017, citing the European Commission 'The Hotspot Approach to Managing Exceptional Migratory Flows' (2015) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf> accessed 19 July 2017 and Stewatch, Explanatory note on the "Hotspot approach" (2015) <<http://www.stewatch.org/news/2015/jul/eu-com-hotspots.pdf>> accessed on 6 July 2017.

³¹ *ibid* 8.

³² The Local, 'France : 96% of asylum rejects stay' (October 2015) <<https://www.thelocal.fr/20151020/france-deports-just-four-percent-of-asylum-seekers>> accessed 20 July 2017.

³³ European Law Students' Association France, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 4 accessed 20 November 2017, citing The Local, "France : 96% of asylum rejects stay" (October 2015) <<https://www.thelocal.fr/20151020/france-deports-just-four-percent-of-asylum-seekers>> accessed 20 July 2017.

³⁴ *ibid*.

At the same time, France also reports an interesting practice of allowing applications to be submitted from abroad.³⁵ Thus, a foreign national can request an asylum visa to French consular authorities in his home country. Once having obtained such a visa, he/she can come to France and continue with the procedure for granting asylum.

A positive trend worth noting can be observed in Sweden, which has legislated above the minimum level required by EU law.³⁶ In particular, Sweden broadened the criteria that allows more individuals to qualify for obtaining a residence permit and has expanded the scope family reunification. Unfortunately, in 2016, as a result of increased flow of refugees, a temporary law that limits the possibility to obtain a residence permit, and which thus hinders the scope of the above-mentioned expansions, was introduced and will be in force until 2019.

1.2.4. Right to appeal

The procedure and the period within which the appeal is to be filed varies significantly across countries. The most common practice is to give a rather short period of up to 7 days or 14 days within which an applicant whose application was rejected can file an appeal. This is the practice of such countries as Bulgaria, Czech Republic, Germany, Macedonia, Malta, Turkey. Other countries, such as Italy, Greece, France allow for a 30-day period for lodging an appeal.

Some procedural guidelines in the case of a fast-track or accelerated application are provided in the Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures (hereinafter 'the Guidelines'), which requires states to accord certain minimum procedural guarantees.³⁷ The ELSA national reports reveal that the term for appeal in the case of a fast-track/accelerated procedure is sometimes very limited. In Romania, for instance, if the application examined under an accelerated procedure, which is usually used for obviously groundless requests or for requests submitted by persons who represent a certain danger for the national security or public order, is rejected, the applicant has two days from the date of notification of the rejection to file an appeal. The decision at the appellate level must be reached within ten days and is final. In Slovenia, the applicant may file an appeal to the administrative court in 8 days from the date of initial notification about the decision.³⁸ While such are not conflicting with the Guidelines, it is less clear from the report submitted whether the procedures take into account the recommendations related to vulnerable persons and complex cases.³⁹

The nature of the appeal procedure also varies. In some countries, such as Poland, Greece and the Netherlands, the appeal is administrative, while in Turkey there is an administrative review and a judicial appeal. Recommendation No. R (81) 16 of the Committee of Ministers allows that

³⁵ *ibid.*

³⁶ European Law Students' Association Sweden, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 5 accessed 20 November 2017.

³⁷ See Part IV of the Council of Europe, Committee of Ministers, Guidelines on human rights protection in the context of accelerated asylum procedures, 1 July 2009.

³⁸ European Law Students' Association Slovenia, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 7 accessed 20 November 2017.

³⁹ See Part III of the Council of Europe, Committee of Ministers, Guidelines on human rights protection in the context of accelerated asylum procedures, 1 July 2009.

an appeal be submitted either to a higher administrative authority or to a court of law.⁴⁰ If there is no such specific administrative or judicial review, the minimum standard to be ensured is 'an effective possibility of having the decision reviewed'.⁴¹ In Malta, the appeal is submitted to a Refugee Appeals Board, which consists of three chambers that examine both aspects of law and facts.⁴² There is no appeal from the Refugee Appeals Board, but the applicant may nevertheless seek judicial redress from a civil court or, in case the basis of the appeal is the breach of a fundamental human right, the case may be lodged with the Constitutional Court.⁴³

A worrying trend can be noticed in the UK. Following the entering into force of the Immigration Acts 2014 and 2016, the right to an in-country appeal in case of the refusal of a claim has been limited significantly.⁴⁴ These changes have led to many situations where, on grounds of human rights protection, it is no longer possible to appeal the Home Office decision while in the UK. Instead, an applicant would like to remain in the country has to seek an administrative review or a judicial review. Both of these actions are costly and hinder the applicant's opportunity to defend his/her rights.⁴⁵

One can nevertheless appeal from within the UK if he/she has the legal right to do so. What follows is an appeal application to the First-tier Tribunal (Immigration and Asylum Chamber), where a tribunal judge listens to both the claimant and the Home Office presenting officer before making a decision. If the appeal fails one may still seek permission to appeal to the Upper Tribunal (Immigration and Asylum Chamber) if they consider that there is a legal mistake with the tribunal's decision.

1.2.5. Grounds for revocation asylum status

In most cases, the requirements for exclusion from protection and revocation replicate the grounds mentioned in Article 1 C. of the Geneva Convention. Thus, exclusion is triggered (i) in case an applicant voluntarily accepts the protection of the country of their citizenship, (ii) after the loss of their citizenship, he or she voluntarily acquires it again, (iii) an applicant acquires a new citizenship and enjoys protection of that country, (iv) an applicant voluntarily re-accommodates in the country he or she has left in the first place, (v) there no longer exist conditions for their status of refugee and can hence no longer deny the protection of their

⁴⁰ Principle No. 5, Recommendation no. R (81) 16 of the Committee of Ministers to member states on the harmonisation of national procedures relating to asylum, Adopted by the Committee of Ministers on 5 November 1981 at the 339th meeting of the Ministers' Deputies.

⁴¹ *ibid.*

⁴² European Law Students' Association Malta, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 9 accessed 20 November 2017. See also

<<https://www.gov.mt/en/Government/Government%20of%20Malta/Ministries%20and%20Entities/Officially%20Appointed%20Bodies/Pages/Boards/Refugee-Appeals-Board.aspx>> accessed 25 October 2017.

⁴³ *ibid.* 8.

⁴⁴ European Law Students' Association United Kingdom, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 11 accessed 20 November 2017. See also UK Government, 'Visa or Immigration Decision Appeal Procedure' <<https://www.gov.uk/immigration-asylum-tribunal>> accessed 18 June 2017.

⁴⁵ Colin Yeo, 'New commencement order introduces out of country human rights appeals and more' (*Free Movement blog*, 1 November 2016) <<https://www.freemovement.org.uk/new-commencement-order-introduces-out-of-country-human-rights-appeals-and-more/>> accessed 18 June 2017.

country of citizenship, (vi) an applicant can as a stateless person return to the country of their common residency, as there no longer exist conditions, due to which he or she was granted the refugee status.

In the UK, according to Immigration Rules, other reasons may also be invoked to revoke the asylum status. Such grounds are the exclusion from the Geneva Convention, misrepresentation of facts which were decisive for granting refugee status, or if the person who was granted the status represents a danger to the UK. The person is informed in writing about the decision to reconsider his/her status and the reasons for that. The person concerned is entitled to reply also in writing and mention why his/her status should be upheld.⁴⁶ A similar procedure takes place in Greece, where the person is also entitled to a personal interview along with the right to submit a memo in writing explaining why his/her status should not be withdrawn.⁴⁷

1.3. Conclusion

While the definition, qualifying criteria and general minimum standards of protection for an asylum seeker in the member states seem to replicate the provisions of the Geneva Convention, the procedures for application, appeal, revocation are country-specific and depend on various factors: administrative organization of the country, available budgets, the number of individuals seeking protection, as well as human and financial capabilities. The existing substantive provisions cannot be enjoyed by asylum seekers if procedural rights do not allow them access asylum protection or defend their right for asylum protection through an appeal. While some promising practices have been identified, trends in the curtailing of procedural rights raise concern and require further research.

Chapter 2. Regulation of Immigration

2.1. Legal Framework

With regard to the regulation of migration and the rights and obligations of states and migrants, the Council of Europe has through the years adopted many recommendations but there is no general and universally accepted binding regulation of migration. And the states themselves have concluded several agreements regulating this and setting minimum standards. Notably, the European Convention of Human Rights (ECHR) does not contain explicit mentions of migration or migrants, and the rights and obligations with regard to this issue are derived from ECHR's general provisions. Limited fractional regulation with regard to the right to liberty of

⁴⁶ European law Students' Association United Kingdom, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 12 accessed 20 November 2017, citing Home Office, UK Immigration Rules, pt 11 para 339BA.

⁴⁷ European law Students' Association Greece, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 10 accessed 20 November 2017. See also Law n. 4375/2016 (Organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception and other provisions), 2016, [Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης και άλλες διατάξεις].

movement is provided by Protocol 4 to ECHR. On the other hand, the European Social Charter focuses on migrants primarily as workers, for example by the commitment of states to simplify the formalities for foreign workers in the Article 18. Within the Council of Europe were also concluded other particular multilateral agreements accepted by limited numbers of states, as mentioned below.

2.1.1. General Regulation

Every person, regardless of his/her nationality, can benefit from the rights granted by the European Convention on Human Rights in the contact with any of its member states, according to its territorial application.⁴⁸ The ECHR itself does not regulate migration, however contains fundamental rights and guarantees and some of them are crucial for the scope and rules of migration law. Especially right to respect for private and family life⁴⁹ or prohibition of discrimination⁵⁰ that were both common grounds for decisions of European Court for Human Rights in cases related to migrants.⁵¹

The rights of aliens with regard to their residence in the territory of member states and their expulsion are then explicitly regulated by Protocols 4 and 7 to ECHR, in particular the right to liberty of movement and freedom to choose one's residence,⁵² prohibition of collective expulsion of aliens⁵³ or the right of aliens to procedural guarantees in the event of expulsion from the territory of a state.⁵⁴

Once the person legally resides in the territory of a state⁵⁵ he/she can benefit from certain rights⁵⁶ under the European Social Charter.⁵⁷

2.1.2. Special Regulation

Explicit regulation of migration issues is contained in the Convention on Establishment.⁵⁸ The Convention in its Article 1 requires state parties to facilitate the entry into their territory by nationals of other state parties for the purpose of temporary visits and to permit them to travel freely with an exception of cases contrary to *ordre public*, national security, public health or morality. Criteria for these limitations can be set by states on their national level.⁵⁹ The longer

⁴⁸ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, art 56

⁴⁹ *ibid*, art 8

⁵⁰ *ibid*, art 14

⁵¹ E.g. *Kjytin v. Russia*, No. 2700/10, 10 March 2011.

⁵² Council of Europe, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 16 September 1963, ETS 46, art 2

⁵³ *ibid*, art 4

⁵⁴ Council of Europe, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984, ETS 117, art 1

⁵⁵ Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163, Part VI art L

⁵⁶ Including e.g. the rights to protection of health, to social security and to social and medical assistance under Articles 11, 12 and 13 of the European Social Charter (revised)

⁵⁷ Council of Europe, *Appendix to the European Social Charter (Revised)*, 3 May 1996, ETS 163, Scope of the Revised European Social Charter in terms of persons protected: paragraph 1

⁵⁸ Council of Europe, Protocol to the European Convention on Establishment, 13 December 1955, ETS 19

⁵⁹ *ibid*, Section I

term forms of residence shall be facilitated for these nationals within the limits of their economic and social conditions.^{60 61}

The European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, sets out the requirements which regulate technical and procedural aspects of immigration, such as travel documents, places for crossing the borders, requirements of visas for visits longer than three months with the purpose of pursuing a gainful activity. With regard to free movement, the Agreement however reserves the right of the state to forbid nationals of another Party whom it considers undesirable to enter or stay in its territory.⁶² State parties, on grounds relating to *ordre public*, security or public health may also delay the entry into force of this Agreement or order the temporary suspension thereof in respect to all or some of the other parties.^{63 64}

The legal status of migrants with regard to work issues, their rights and states' obligations are regulated by the European Convention on the Legal Status of Migrant Workers.⁶⁵ This Convention is concerned with the principal aspects of the legal situation of migrant workers such as e.g. residence permits, work permits or working conditions.

2.1.3. EU Regulation

As more than a half of Council of Europe member states are also members of European Union, the legal framework of EU has crucial importance. Member states of the European Union and Iceland, Liechtenstein and Norway have a special reciprocal regime of free movement within European Economic Area (EEA), shared with Switzerland on the grounds of bilateral agreements.⁶⁶ With regard to third countries, EEA states (plus Switzerland and except Ireland

⁶⁰ *ibid*, art 2

⁶¹ The Convention was however ratified by only 12 states, including ten members of European Union and Norway as member of European Economic Area that have reciprocal regime of free movement. The twelfth contracting party to the Convention is Turkey.

⁶² Council of Europe, European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, 13 December 1957, ETS 25, art 6

⁶³ *ibid*, art 7

⁶⁴ The Agreement was ratified by 17 states, fifteen of them are members of EU or EEA (including Switzerland which is not member of EEA but its bilateral agreements provide it with basically the same regime).

⁶⁵ Council of Europe, European Convention on the Legal Status of Migrant Workers, 24 November 1977, ETS 93

⁶⁶ Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/; Council Regulation (EC) 562/2006 establishing a Community Code on the rules governing the movement of persons across borders [2006] OJ L 105/1; see also e.g. European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10 ; European law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 148 [Czech].); European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Aliens Act 2004, Chapter 10); European law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Emanuel Aubin, *Droit des étrangers* (Gualino Eds, 2014), 55 [French].); European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 ; European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13 ; European Law Students' Association Latvia, National Report on

and United Kingdom) apply common visa policy and common requirements for third-country nationals to comply with for short term stay in the territory of a state.⁶⁷

Basic legal instruments for this area are Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation,⁶⁸ and with regard to third countries national Schengen Borders Code,⁶⁹ Visa Code⁷⁰ and Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.⁷¹

2.2. Findings of the ELSA National Groups

2.2.1. Findings in EU countries

2.2.1.1. Requirements for EU citizens

The Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States grants Union citizens the right of residence in the host member state for a period not exceeding three months without being subject to any conditions, visa requirement or any formalities other than the requirement to hold a valid identity card or passport. For periods of residence longer than three months, states have the possibility to require EU citizens to register with the competent authorities and to prove that the person is employed or self-employed; or is enrolled in the educational establishment and has sufficient resources for life; or has sufficient resources not to become a burden on the social

Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members 2011, Article 16.); European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11; European Law Students' Association The Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 7 (P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 39.); European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10 ; European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 8 ; European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12

⁶⁷ Council Regulation (EC) 2016/399 on a Union Code on the rules governing the movement of persons across borders [2006] OJ L77/1; see also e.g. European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13, European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11

⁶⁸ Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

⁶⁹ Council Regulation (EC) 2016/399 on a Union Code on the rules governing the movement of persons across borders [2006] OJ L77/1.

⁷⁰ Council Regulation (EC) No 810/2009 establishing a Community Code on Visas [2009] OJ L243/1.

⁷¹ Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [2001] OJ L81/1.

assistance.⁷² Some states yes and require the registration after some time (Austria, the Netherlands) others voluntarily (Italy, Czech Republic).⁷³ But in addition to those requirements, it was noted that the Republic of Slovenia for example claimed its reserved power to decide quotas on how many residence permits can be issued each year for both citizens of EU and non-EU member states.⁷⁴

2.2.1.2. Requirements for non-EU citizens

For third country nationals, certain categories of persons have more favourable regime. The family members of all EU citizens, irrespective of their own nationality, are granted the same right to move and reside freely within the territory of EU member states under the Council Directive (EC) 2004/38.⁷⁵ For the purpose of this Directive the family member means the spouse or the partner with whom the EU citizen has contracted a registered partnership, the direct descendants who are under the age of 21 or are dependants and those of the spouse, and the dependent direct relatives in the ascending line and those of the spouse or partner.⁷⁶ In the Czech Republic and Sweden this applies also to family members of the citizen of the state in question (Czech/Swedish).⁷⁷ Nationals of Iceland, Liechtenstein and Norway have with EU member states a special reciprocal regime of free movement within European Economic Area (EEA), granting them the same right. The right to move freely is also shared with Switzerland on the grounds of bilateral agreements.⁷⁸

⁷² Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/, Articles 7, 8

⁷³ European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 8; European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11; European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13; European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 8

⁷⁴ European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 8

⁷⁵ Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/, Article 3

⁷⁶ Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/, Article 2

⁷⁷ European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 149 [Czech]; European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 14; Aliens Act, Chapter 5 art 3(1).

⁷⁸ Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/; Council Regulation (EC) 562/2006 establishing a Community Code on the rules governing the movement of persons across borders [2006] OJ L 105/1; see also e.g. European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10; European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 148 [Czech].); European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12

EEA states (except Ireland and United Kingdom) and Switzerland form a Schengen area. Schengen member states maintain common external border security and apply common visa policy and common requirements for third-country nationals to comply with for short term stay in the territory of a state.⁷⁹ Under the Schengen Borders Code, common Schengen area policy requires to hold valid travel document, valid visa (if required with regard to the particular state), to justify the purpose and conditions of the intended stay, and to have sufficient means of subsistence to be allowed to enter the area.⁸⁰ The list of states whose nationals are exempted from requirement to obtain visa before entering the area is in annex of Visa List Regulation. Certain states have concluded agreements with European Union, e.g. Macedonia, Serbia and Bosnia and Hercegovina were given the right for their citizens to reside in EU countries without a visa, others concluded agreements on the facilitation of the issuance of visas.⁸¹

The issuance of visa and conditions of application and procedure are regulated under the Visa Code. A visa may be issued for one, two or multiple entries or as an airport transit visa. A visa may be uniform and valid for the entire territory of the member states or visa with limited territorial validity. The period of validity shall not exceed five years. A visa can be refused on legal grounds, in particular based on reasons according to the Article 32 of Visa Code. The United Kingdom has special regime of right to abode for Commonwealth countries nationals.⁸²

(Aliens Act 2004, Chapter 10); European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Emanuel Aubin, *Droit des étrangers* (Gualino Eds, 2014), 55 [French]); European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12; European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13; European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members 2011, Article 16; European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11; European Law Students' Association The Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 7 (P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 39.); European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10; European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 8; European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12

⁷⁹ Council Regulation (EC) 562/2006 establishing a Community Code on the rules governing the movement of persons across borders [2006] OJ L 105/1; see also e.g. European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13, European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11

⁸⁰ Council Regulation (EC) 562/2006 establishing a Community Code on the rules governing the movement of persons across borders [2006] OJ L 105/1

⁸¹ Council Regulation (EC) 1244/2009 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [2009] OJ L 336/1

⁸² European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10 (Home Office,

Stays over 90 days remain to be regulated by national legislations, however the requirements are usually similar across most states. Migrants may apply for residence permit for various purposes, commonly for employment; self-employment or business; study; family reunification, voluntary or religious services.⁸³ Malta for example allows the issuance of a residence permit for the purpose of retirement,⁸⁴ the United Kingdom has a special category for so called high-value migrants such as investors or exceptional talents.⁸⁵ The requirements to be fulfilled by the migrant to be able to apply for residence permit slightly differ in each country, in Greece, for example, is required only to hold valid accepted travel document, valid visa if necessary, full health insurance and not to be considered as a threat to public order, national security or health to receive a certificate of registration allowing residence with a validation period of 1 year.⁸⁶

With regard to possible less or more favourable treatment, it was found that in at least a few states, vulnerable persons or persons under exceptionally distressing circumstances or in situation worth special consideration benefit from a simplified regime,⁸⁷ for example less

Right of Abode (Guidance, 12 August 2015) <<https://www.gov.uk/government/publications/right-of-abode-roa/right-of-abode-roa>> accessed 15 June 2017).

⁸³ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 14 (Law no 108 on the treatment of foreigners 2013, art 39 and following); European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10 ; European Law Students' Association Bosnia and Herzegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 ; European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999, Section 17); European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 14 ; European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 16 ; European Law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 14; European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12; European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 8 (Aliens Act, art 20); European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13 (Aliens Act, Chapter 5); European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11

⁸⁴ European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13

⁸⁵ European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 15

⁸⁶ European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13

⁸⁷ E.g. European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13 (Immigration Regulations 2004, art. 12) or European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 15 (Aliens Act, Chapter 5)

conditions required for obtaining residence permit for humanitarian reasons in the Czech Republic, including the exemption from the requirement of previous residence on the territory.⁸⁸

2.2.2. Findings in non-EU countries

States that are not part of the legal framework of EU and Schengen area regulate their entry and visa conditions at national level. However their framework share some similarity. States distinguish between groups of states whose nationals do and do not need visa. Persons exempted from the visa requirement are allowed to stay up to 90 days within the period of six months.⁸⁹ Persons required to obtain visa to be allowed to enter the territory may obtain airport transit visa, tourist visa or long stay visa for justified purposes (e.g employment, self-employment, studies, scientific research).⁹⁰

Some states apply more favourable regimes on nationals from certain states, based on bilateral or multilateral agreements. For example there exists visa-free regime within Commonwealth Independent States,⁹¹ special reciprocal regime for nationals of Nordic countries,⁹² agreement between Russian Federation and Liechtenstein on simplified procedures for obtaining visa⁹³ or visa-free regime between Russian Federation and Ukraine.⁹⁴ Albania, as EU candidate state allows entry without visa to foreigners with residence permit in EU member state or holders of valid Schengen visa.⁹⁵ Following the adoption of the Eastern Partnership between EU and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, more favourable regimes were established between those states. EU and Schengen are member states nationals are exempted from the requirement of obtaining visa for stays up to 90 days in Armenia.⁹⁶ Azerbaijan

⁸⁸ European Law Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic 1999, Section 66.)

⁸⁹ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13; European Law Students' Association Bosnia and Herzegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11; European Law Students' Association Russian Federation, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13

⁹⁰ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, 14

⁹¹ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 14

⁹² European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13 (A treaty between Denmark, Finland, Iceland, Norway and Sweden on population registration 2006 (Tanskan, Suomen, Islannin, Norjan ja Ruotsin välinen väestön rekisteröintiä koskeva sopimus 96/2006).); European Law Students' Association Norway, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Helsingfors Convention 23 March 1962 [Helsingforsavtalen])

⁹³ Agreement between the Government of the Russian Federation and the Government of the Principality of Liechtenstein on Simplified Procedures for Issuing Visas to Citizens of the Russian Federation and Citizens of the Principality of Liechtenstein, 12 November 2013

⁹⁴ European Law Students' Association Ukraine, Draft of the National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (October 2017) 10

⁹⁵ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13

⁹⁶ European Law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12

concluded with EU the Agreement on the facilitation of the issuance of visas, simplifying the procedure.⁹⁷

2.2.3. Expulsion

According to Articles 2/1 and 4 of Protocol 4 to ECHR everyone shall be free to leave any country and collective expulsion of aliens is prohibited. The reasons for expulsion of foreigners that states apply are very similar, usually it is when the migrant does not fulfil conditions for residence in the territory,⁹⁸ used invalid or false travel documents or travel documents of another person,⁹⁹ his/her residence permit expired and extension is not possible,¹⁰⁰ in case of abuse of the right to stay in the country or constitute threat to public order or national security,¹⁰¹ e.g. was sentenced for certain crimes.¹⁰² No collective expulsion instrument was found. People are free to

⁹⁷ Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas 2013

⁹⁸ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 (Guidance No.293 on the treatment procedure for foreign citizens with irregularly situation in the territory of the Republic of Albania 2015); European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10

⁹⁹ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 (Guidance No.293 on the treatment procedure for foreign citizens with irregularly situation in the territory of the Republic of Albania 2015); European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Law on Foreigners in the Republic of Bulgaria, art 41.); European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 15 (Finnish Immigration Service - Revoking the Permit <http://www.migri.fi/working_in_finland/revoking_the_permit> accessed June 25 2017.)

¹⁰⁰ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17; European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Migration Code, art 79); European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10

¹⁰¹ European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 15 (Aliens Act 2004, s 36.); European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 16 (Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.511-3(3) [Code de l'entrée et du séjour des étrangers et du droit d'asile]); European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13 (Immigration Regulations 2004, art 11); European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10

¹⁰² European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 (Guidance No.293 on the treatment procedure for foreign citizens with irregularly situation in the territory of the Republic of Albania 2015); European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 (Aliens Act 2004, s 149); European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10 ; European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11

leave the country with exceptional restrictions of public order (e.g. fulfilment of legal obligations, criminal prosecution,¹⁰³ public health (e.g. temporary quarantine) or national security.

There could be special approach towards certain categories of people like members of vulnerable group of people or in need of an extra protection (e.g. victims of certain categories of crimes, pregnant women, persons with serious health problems). The states with regard to expulsion or possible temporary extension of residence permit may consider factors like family background and relations or cultural and social link to the state.¹⁰⁴

If certain criteria are met, states provide assistance for returning home on request, e.g. return tickets, help with acquiring a travel document and reintegration assistance.¹⁰⁵

Under Article 1 of Protocol 7 to ECHR lawful resident shall not be expelled except in pursuance of a decision reached in accordance with law and shall be allowed to submit reasons against his/her expulsion and to have his case reviewed. A person may be expelled before the exercise of these rights when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

2.3. Conclusion

Council of Europe legal framework of migration and the rights and obligations of states and migrants provides only basic regulation and principles to comply with. Most of the provisions regarding these issues are laid down in national legislations and so may differ (and they usually do). Member states of Schengen system use common regulation of movement of persons and visa policy. Nationals of member states have the right of free movement within the Schengen area and minimum requirements for residence. More favourable regime for family members and the priority of maintenance the unity of the family¹⁰⁶ reflects the right to respect for private and family life under the Article 8 of European Convention on Human Rights.¹⁰⁷ Although the non-

¹⁰³ European Law Students' Association Russian Federation, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 13

¹⁰⁴ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12 (Law on Foreigners in the Republic of Bulgaria, art 44(2)); European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 ; European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 10 (KM Zwaan and others, *Nederlands Migratierecht* (Boom Juridische Uitgevers 2016) 353.)

¹⁰⁵ European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 <http://www.migri.fi/download/61070_vapaaehtoinen_paluu_esite_en.pdf?07b203cbf8bdd488>

September 4 2017.); European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 15; European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 17 (Home Office, UK Immigration Rules, pt 9)

¹⁰⁶ Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/, Preamble paragraph 6

¹⁰⁷ States also reflect this in establishing the family reunification as one of the reasons for granting residence permit. Council Directive (EC) 2003/86 on the right to family reunification [2003] OJ L 251; European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families, art 6, 7.); European Law

EU countries have their entry and visa policies regulated by domestic law they share some similarities. It was perceived from the surveyed countries that nationals of member states of that are part of the Schengen area - and their family members, within the meaning of Article 2 of Council Directive (EC) 2004/38, including non-EU nationals – may move and reside in another member state that is also part of it with relative ease. While there are some differences at state level regarding quotas and requirement of registration, entry rules for EU nationals are similar. For all other members of the CoE that participated in this research, regardless if you are a national of an EU member state or not, entry and residency is dependent on meeting the necessary visa requirements. These vary widely in accordance with the different multilateral and bilateral agreements made by each country.

Chapter 3. Government Bodies Responsible for Migration Affairs

3.1. Legal Framework

According to Article 19 of the European Social Charter, migrant workers and their families have a right to protection and assistance in the territory of the member states. Protection and assistance translates into twelve lines of action the member states are bound to undertake, summing up to maintaining adequate and free services to assist such workers and their families in their arrival, stay, departure and journey, especially with regards to health care, education, accommodation and working conditions.

In order to achieve results in the context of Article 19, member states need to have in place and maintain ‘adequate and free services’, which in turn means they need to have a structure or a system of such services. Since there is no particular prescription regarding the structure of the aforementioned services, it is at the discretion of each member state to establish a system that is adequate and capable of protecting migrants and their families.

Students' Association the Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic 1999, Section 17.), European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 7, European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 11, European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 12, European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 9 (Aliens Act, art 14), European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 9, European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 14 (Aliens Act, Chapter 5 art 3(1).)

In the following paragraphs the variation of architectures is presented briefly, focusing on the main authorities responsible for the implementation of migration policies; the governance, funding and the best practices developed by member states.

3.2. Findings of the ELSA National Groups

3.2.1. Migration Authorities

Taking into account that member states can establish their own unique system for migration, it is observed that the authority entrusted with migration issues varies from member state to member state. While a few member states have a dedicated authority or ministry to migration issues only, the most common choice among member states is the incorporation of migration issues to the broader portfolio of existing Ministries.

In the first category falls the Ministry for Immigration Policy in Greece, which was set up in 2016 and acts as the main responsible authority for migrants,¹⁰⁸ the Ministry of Immigration and Integration in Denmark,¹⁰⁹ and the State Migration Service in Azerbaijan, which acts as a 'one-stop-shop' with regards to the management of migration.¹¹⁰

In the second category, three sub-categories are observed. The first includes those member states that assign migration issues to their Ministry of Justice, i.e. Sweden, the Netherlands,¹¹¹ Ireland¹¹² and Norway. The second includes member states which have a dedicated department in their Ministry of Interior or Ministry of Internal Affairs (or Home Affairs), i.e. Turkey, Italy, Russia, Poland, Romania, the UK and Malta. The third includes member states that have assigned migration issues to other ministries. For example, in Bosnia and Herzegovina migration issues are within the scope of the Ministry of Security;¹¹³ in Armenia within the Ministry of Territorial

¹⁰⁸ Presidential Decree 123/2016 (Reconstruction and renaming of the Ministry of Administrative Reform and e-Government, re-establishment of the Ministry of Tourism, establishment of the Ministry of Migration Policy and Ministry of Digital Policy, Telecommunications and Information). European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 20-21 accessed 9 December 2017.

¹⁰⁹ See Aliens Act no. 412 of 9 May 2016. European Law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 21-22 accessed 9 December 2017.

¹¹⁰ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 15 accessed 9 December 2017

¹¹¹ To be precise, in the Netherlands it is the Ministry of Security and Justice. See Decision DP&O/15/661173 of the Minister of Security and Justice (on the establishment of the organisation of the Ministry of Security and Justice), of 3 July 2015 [Besluit van de Minister van Veiligheid en Justitie van 3 juli 2015, kenmerk DP&O/15/661174, houdende vaststelling van de organisatie van het Ministerie van Veiligheid en Justitie (Organisatiebesluit Ministerie van Veiligheid en Justitie 2015)], art. 2f.

¹¹² European Law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 9 accessed 9 December 2017.

¹¹³ European Law Students' Association Bosnia and Herzegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 12 accessed 9 December 2017.

Administration and Development;¹¹⁴ and in Spain within the Ministry of Employment and Social Security.¹¹⁵

On the central level, alongside the main authority there is a diversity of authorities playing a complementary role in migration issues, with the Ministry of Foreign Affairs commonly referred. Other examples are the Ministry of Integration in Albania whose responsibility is to monitor the fulfilment of the Stabilization and Association Agreement with the EU;¹¹⁶ the Ministry of Labour and Social Policy in Macedonia which is responsible for the Integration Strategy for Refugees and Foreigners;¹¹⁷ and the Ministry for Human Rights and Refugees in Bosnia and Herzegovina.¹¹⁸

In addition to the central authorities dealing with migration, member states such as Germany, Austria and Poland have also developed a decentralised and local system. In Germany, the Federal Office for Migration is represented by an office in every German state.¹¹⁹ Similarly, in Austria the Federal Office for Affairs related to Foreigners and Asylum has regional directorate offices in each federal state.¹²⁰ In Poland, there are Provincial Offices equipped with special Departments for Citizen's and Foreigner's affairs in all its administrative divisions.¹²¹

3.2.2. Governance and Funding

Regarding the system of governance, it is observed that the aforementioned Ministries of the member states further assign migration issues to one or more of their departments, directorates, agencies or general secretariats. For instance, under the Ministry of Interior in Turkey there is the Directorate General of Migration Management and the Migration Policies Board;¹²² in Bulgaria

¹¹⁴ The State Migration Service within the Ministry was established by the Decree of the RA President NH-286-N of 18 November 2009. European Law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 12-13 accessed 9 December 2017.

¹¹⁵ The General Secretary of Immigration and Emigration within the Ministry was established by the Royal Decree no. 703 of 2017. European Law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 13 accessed 9 December 2017.

¹¹⁶ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 22 accessed 9 December 2017.

¹¹⁷ European Law Students' Association Macedonia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 15 accessed 9 December 2017.

¹¹⁸ European Law Students' Association Bosnia and Herzegovina, 13.

¹¹⁹ European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 10-12 accessed 9 December 2017.

¹²⁰ European Law Students' Association Austria, 12.

¹²¹ European Law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 18 accessed 9 December 2017.

¹²² European Law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 11-12 accessed 9 December 2017.

the Migration Directorate;¹²³ in Italy the Department of Civil Liberties and Immigration and the Department of Public Security;¹²⁴ in the Netherlands the Directorate-General for Alien Affairs;¹²⁵ in Russia the General Administration for Migration Issues;¹²⁶ in Romania the General Inspectorate for Immigration;¹²⁷ and in Poland the Office for Foreigners.¹²⁸ These entities are oftentimes different from those dealing with refugees or asylum. For instance, in Greece, the General Secretariat for Migration Policy is different from the General Secretariat for Refugee Affairs and the General Secretariat for Asylum.¹²⁹

This system of governance follows reporting procedures to the General Secretary, Director, Chief or other, depending on the given title, and is funded either by the budget of the member states through allocation of funds to the Ministries in charge, or by the federal government, such as in the case of Austria.¹³⁰ As one of the exceptions to the aforementioned, the Swedish Migration Agency is independent of the parliament and the government, despite the fact it is established under the Ministry of Justice and funded by the state's budget.¹³¹ It is also worth-mentioning that in the case of Italy and Greece, logistical and financial support is also provided by international authorities/ institutions, i.e. the UNHCR and the EU.¹³²

¹²³ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 12-13 accessed 9 December 2017. See Bulgaria's State Gazette no. 103 of 25 November 2003.

¹²⁴ Article 5 of the Presidential Decree no. 398 of 2001, as amended by Article 2 of the Presidential Decree no. 210/2009. Ministero dell'Interno, 'Dipartimento per le libertà civili e l'immigrazione' (Department of Civil Liberties and Immigration), <<http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-immigrazione>> accessed 3 July 2017 [Italian]. European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 18 accessed 9 December 2017.

¹²⁵ European Law Students' Association Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 11-12 accessed 9 December 2017.

¹²⁶ European Law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 13 accessed 9 December 2017. See also Order of the Ministry of Internal Affairs of the Russian Federation no. 192 of 15 April 2016 'On approval of the Regulation on the General Administration for Migration Issues of the Ministry of Internal Affairs of the Russian Federation', art 2.

¹²⁷ In 2007, the Government Emergency Order no. 55 and the Government Decision no. 369 created the legal framework for the establishment and competence of the Romanian Office for Immigration, which has been later redefined as The General Inspectorate for Immigration through Government Decision n. 838/2012 (referred from here by as the Inspectorate). European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 14 accessed 9 December 2017.

¹²⁸ European Law Students' Association Poland, 16-17. See also The Statute of 12 December 2013 about foreigners, [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach].

¹²⁹ European Law Students' Association Greece, 21-23. For the General Secretariat of Migration see Art. 25 of Law no. 4375 of 2016. For a short description of the General Secretariat of Reception/Refugee Affairs see <<http://www.ypes.gr/el/GenGramYpodoxis/>> accessed 13 July 2017 [Greek]. For the Structure of the Asylum Service see <http://asylo.gov.gr/?page_id=83> accessed 13 July 2017 [Greek].

¹³⁰ European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 12 accessed 9 December 2017.

¹³¹ European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 16 accessed 9 December 2017. See also The Instrument of Government 1974:152 [Regeringsformen], ch 12, art 2.

¹³² European Law Students' Association Greece, 23-24. European Law Students' Association Italy, 20-21. See also Migration and Inclusion Asylum Fund 2014-2010 <http://asylo.gov.gr/?page_id=3097> accessed 13 July 2017 [Greek].

3.2.3. Promising Practices

The establishment of coordinating and consultative bodies can be deemed as a good practice among member states. In Bosnia and Herzegovina, the Coordination Body is responsible for continuous monitoring and ensuring inter-ministerial cooperation between the relevant institutions and suggesting measures for improvement;¹³³ in Romania the Coordinating Group implements the National Strategy regarding migration, ensuring cohesion between the EU actions and internal actions;¹³⁴ in the Netherlands the Advisory Committee on Migration Affairs plays an advisory role to the Ministry in migration issues;¹³⁵ in Bulgaria the National Council on Migration and Integration acts as a collective consultative body;¹³⁶ in Czech Republic the Council of the Government for Human Rights plays an advisory role with its expert Committee for Foreigners' Rights;¹³⁷ and in Macedonia the Coordinative Integration Body for Refugees and Foreigners is responsible for developing coherent strategies and policies.¹³⁸

Other worth-mentioning good practices are indicatively: in Germany, the regular training of the decision-makers and officers in the Qualification Centre which is part of the migration system;¹³⁹ in France, the presence of the Office of Immigration and Insertion in eight countries abroad;¹⁴⁰ in Czech Republic, the systematic preventive visits which take place in the Refugees Facilities by the Public Defender of Rights;¹⁴¹ and in Macedonia, the contribution of the Regional Initiative for issues of migration, asylum and refugees (MARRI) to the management of migration flows in Macedonia and in the region in general.¹⁴²

3.3. Concluding Remarks

Depending on their priorities, member states put emphasis on different organisational themes of the migration system. Notwithstanding the diverse choices they make in order to organise their migration system, they still share common features. In conclusion, member states design their own system for migrants in the context of their cultural, governmental and financial particularities, and adjust them accordingly as per the ever-changing historical circumstances. Ultimately, this translates into a constantly evolving system for migration that is shaped and moulded throughout the years and vis-a-vis the migration flows.

¹³³ European Law Students' Association Bosnia and Herzegovina, 14.

¹³⁴ European Law Students' Association Romania, 17.

¹³⁵ European Law Students' Association Netherlands, 12. See also the Law of 23 November 2000 (on the overall Review of the Alien Law) [Wet van 23 November 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000)], art. 2.

¹³⁶ Decree of the Council of Ministers No 21 of 05 February 2015, Articles 2 and 4. European Law Students' Association Bulgaria, 14-15.

¹³⁷ It was established under Government Resolution no. 809 of 9 December 1998. European Law Students' Association Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 15 accessed 9 December 2017.

¹³⁸ European Law Students' Association Macedonia, 14.

¹³⁹ European Law Students' Association Germany, 11.

¹⁴⁰ European Law Students' Association France, 18-19.

¹⁴¹ European Law Students' Association Czech Republic, 15. See also The Public Defender of Rights: Protection of Persons Restricted in their Freedom, Facilities for the Detention of Foreigners <<https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/detention-of-foreigners/>> accessed 23 July 2017.

¹⁴² European Law Students' Association Macedonia, 14.

Chapter 4. The Implementation of European Court of Human Rights Decisions

4.1. Legal Framework: the implementation mechanism under the ECHR

Member states of the Council of Europe, who are parties to the European Convention on Human Rights (hereby referred to as the 'ECHR' or the 'Convention'), are bound by the Convention. As such, they have a positive duty to execute any decision rendered by the European Court of Human Rights (hereby referred to as the 'ECtHR') against them.¹⁴³ Two consequences are to be drawn from this positive duty imposed on Member States.

Whenever, the ECtHR finds a Member state to be in violation of the Convention, this Member state will have the obligation to put an end to the said violation and it may be bound to compensate the plaintiff for the loss suffered.¹⁴⁴ The Committee of Ministers of the Council of Europe is tasked with monitoring the execution of the ECtHR's judgments by any Member state found to be in violation of the ECHR.¹⁴⁵ Nonetheless, national constitutional provisions may be interpreted and applied in disregard of the standards set in the ECHR and by the ECtHR.¹⁴⁶ That is notably the case in Germany, where the ECHR has the same status as any other ordinary law; hence constitutional rights are of a higher rank in the German hierarchy of norms.¹⁴⁷ The situation is similar in France,¹⁴⁸ Ireland,¹⁴⁹ and Russia.¹⁵⁰ On the contrary, other Member states, such as the Czech Republic,¹⁵¹ have ruled that the ECHR is to take precedence over constitutional laws. In any case, whether national constitutions provide for the prevalence of their Constitution over the ECHR or of the ECHR over their Constitution, Member states have widely recognised the binding nature of their obligations arising from the decisions rendered by the ECtHR.¹⁵²

¹⁴³ European Convention on Human Rights, art 46

¹⁴⁴ *ibid*, art 41

¹⁴⁵ *ibid*, art 46(2)

¹⁴⁶ Martinico, Giuseppe, 'Is the European Convention Going to Be 'Supreme'? A Comparative-Constitutional Overview of ECHR and EU Law before National Courts', *European Journal of International Law*, 23(2) (2012), 401-424

¹⁴⁷ Federal Supreme Court, October 14 2004, Supreme Court Report Vol. 111, 307 (319) [German]: "The Constitution aims at the integration of the Federal Republic of Germany in the legal community of peaceful and liberal states but does not waive its sovereignty laying in the last word of the German Constitution"

¹⁴⁸ French Constitution of the Fifth Republic, October 4 1958, art 55 [French]

¹⁴⁹ European Convention on Human Rights Act 2003

¹⁵⁰ Constitutional Court of the Russian Federation, Case no. 21-P, July 14 2015, para 2.2 [Russian]

¹⁵¹ Constitutional Court of the Czech Republic, Case no. Pl. ÚS 36/01, 2002 [Czech]

¹⁵² Organic Law of the Constitutional Court, art 71/c [Albanian]; French Constitution of the Fifth Republic, October 4 1958, art 55 [French]; Basic Law, art 19 IV, art 20 III, and art 25 [German]; *J Mc D v L* [2009] IESC 81; Constitution, art 117 [Italian]; Supreme Court of the Netherlands, HR November 10 1989, NJ 1990, 628 [Dutch]; Constitution, art 90 [Turkish]

However, some Member states' legislation provide for the automatic re-examination of the case before national courts prior to its implementation. As such, Albania¹⁵³ and Azerbaijan's¹⁵⁴ legislations provide for such automatic case reopening whenever the ECtHR finds them in violation of the ECtHR. Other Member states' legislation, including the Czech Republic's,¹⁵⁵ the Netherlands,¹⁵⁶ Denmark, Finland, Iceland, Spain, Sweden, Ukraine,¹⁵⁷ do not provide for such automatic reopening procedure but rather for a reopening of domestic judicial proceedings contingent on a continuous suffering of serious negative consequences. Such procedural automaticity may infringe the plaintiff's right to a fair trial,¹⁵⁸ which includes securing the interests of the parties and of the proper administration of justice,¹⁵⁹ such as legal certainty, the protection of legitimate expectations, and the requisite judicial effectiveness.¹⁶⁰ As such, the recommendation issued by the Committee of Ministers to the Member states in 2000 to ensure “adequate possibility of re-examination of the case, including reopening of proceedings”¹⁶¹ is to be understood as re-examination in case of systemic violations, not as the possibility for national courts to issue a new ruling counter to the ECtHR's decision in relation to the same facts. The ECtHR has indeed found that national courts may “grossly misrepresent” the findings reached in its judgments when re-opening a case and possibly misinterpret the ECtHR's decision.¹⁶² It, therefore, appears that the Council of Europe thrived on ensuring legal certainty and giving protection to the plaintiff's legitimate expectations, without however giving much weight to the impact this automatic reopening procedure may have on the effectiveness and the credibility of the ECtHR's decisions.¹⁶³ As the Committee of Ministers put it in May 2010, “prompt and effective execution of the judgments and decisions delivered by the Court is essential for the credibility and effectiveness of the Convention system.”¹⁶⁴

A Member state may also wish to amend its legislation, that has led to the violation found by the ECtHR, or which mirrors a legal provision that led to a violation of the ECHR by another Member state, in order to avoid later litigation before the ECtHR. Slovenia, for instance, started negotiations between its Ministry of Justice and a Working Group on the Implementation of

¹⁵³ Civil Procedure Code, art 494(c); Criminal Procedure Code, art 661 [Albanian]; European Law Students' Association Albania, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed November 26 2017, 25-26

¹⁵⁴ Civil Procedural Code 1999; Criminal Procedure Code 1999 [Azerbaijani]; European Law Students' Association Azerbaijan, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed November 26 2017, 21

¹⁵⁵ Constitutional Court Act, s 119 [Czech]; European Law Students' Association Czech Republic, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed November 26 2017, note 100, 21

¹⁵⁶ *Van Mechelen and others v the Netherlands* (1997) 25 EHRR 647

¹⁵⁷ Lambert Abdelgawad, Elisabeth, ‘The execution of judgments of the European Court of Human Rights’, Council of Europe Publishing, 2nd Edition, January 2008, 19

¹⁵⁸ European Convention on Human Rights, art 6

¹⁵⁹ *Nideröst-Huber v Switzerland* (1997) 25 EHRR 709, para 30

¹⁶⁰ *H. v Belgium* (1987) 1 EHRR 339, para 53

¹⁶¹ Recommendation CM/Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum, January 19 2000 (694th Meeting)

¹⁶² *Bochan v Ukraine (no.2)* [GC] [2015] ECHR 238, para 63-65

¹⁶³ *Scordino v Italy (no.1)* [GC] [2004] ECHR 412, para 224

¹⁶⁴ Council of Europe: Committee of Ministers, ‘Supervision of the execution of judgments and decisions of the European Court of Human Rights’, Annual Report, 2011, 15

Judgments of the ECtHR in October 2016¹⁶⁵ with the aim of establishing a more efficient and a more transparent implementation mechanism. In the same vein, the French Independent Constitutional Authority *Défenseur des droits* is tasked with issuing reports regularly underpinning inconsistencies of the French legislation and case-law with ECtHR decisions.¹⁶⁶ The authority responsible for the implementation of ECtHR decisions is the Constitutional Service (Division V) of the Austrian Federal Chancellery in Austria,¹⁶⁷ the Government Agent in Azerbaijan,¹⁶⁸ the Minister of Justice in Bulgaria,¹⁶⁹ and Parliament in Italy.¹⁷⁰ As such, national Parliaments may vote new laws or amend former ones to comply with ECtHR decisions and to prevent any further or later litigation in front of the ECtHR.

The ECHR sets absolute and qualified rights for individuals, which are to be protected by the countries that are Parties to the Convention. There is no provision setting rights for migrants explicitly. The ECtHR has recognised, under the banner of the international law principle of the State's sovereignty, that Member states are free to control the entry of non-nationals on their territory.¹⁷¹ However, once the non-national has entered the territory of a Member state, this Member state is bound by its ECHR obligations,¹⁷² as well as their interpretation given by the ECtHR, in regard to that non-national.¹⁷³

4.2. The implementation of ECtHR decisions concerning migrants at the national level by respondent States

4.2.1. Domestic remedies

According to the right to an effective remedy,¹⁷⁴ any Member state found to be in violation of the Convention is under the obligation to compensate the victims for the loss suffered as a result of the said violation.¹⁷⁵ However, there seems to be room for improvement due to the numerous

¹⁶⁵ “The first steps towards the systematic enforcement of the judgements of the European Court of Human Rights”, Ombudsman of the Republic of Slovenia, October 27 2010, <<http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/prvi-koraki-k-sistemskemu-izvrsevanju-sodb-evropskega-sodisca-za-clovekove-pravice/?cHash=5084def78a360e8bb62ec18244b6afa4>>, accessed June 20 2017 [Slovenian]; European Law Students' Association Slovenia, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed November 26 2017, 41

¹⁶⁶ Organic Law, March 20 2011, art 4(2) [French]

¹⁶⁷ Dia Anagnostou, 'Domestic implementation of European Court of Human Rights Judgements in Europe: Legal Infrastructure and Government Effectiveness Matter', *European Journal of International Law*, 25(1) (2014), 229-238

¹⁶⁸ National Action Programme on enhancing the efficiency of protection of human rights and freedoms in the Republic of Azerbaijan 2011 [Azerbaijani]

¹⁶⁹ Bulgarian General Assembly, September 21 2012; European Law Students' Association Bulgaria, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed November 26 2017, 21

¹⁷⁰ Law no. 400, Regulation of the Activity of the Government and Organisation of the Presidency of the Council of Ministers, 1988, art 5 para 3 let.a bis [Italian]

¹⁷¹ *Abdulaziz Cabales and Balkandali v the United Kingdom* (1985) EHRR 471

¹⁷² European Convention on Human Rights, art 1

¹⁷³ *Saadi v Italy* (2008) 28 ECHR 123, para 127; *Chahal v the United Kingdom* (1996) 23 EHRR 413, para 79

¹⁷⁴ European Convention on Human Rights, art 13

¹⁷⁵ Recommendation CM/Rec(2004)6 of the Committee of Ministers to member States on the improvement of domestic remedies, May 12 2004 (114th Session); Recommendation CM/Rec(2010)3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings, February 24 2010 (107th Session)

challenges of the matter.¹⁷⁶ These relate to the award of remedies that should be effective in a timely manner,¹⁷⁷ qualitatively and quantitatively adequate to the loss suffered, which is to be properly assessed. The ECtHR ruled that the choice of remedy should be left to the State,¹⁷⁸ with the benefit of a margin of discretion.¹⁷⁹ The Committee of Ministers has stressed the remaining “need to improve domestic remedies”, which “should be at the heart of any activity supporting the national implementation of the Convention”.¹⁸⁰

4.2.2. The implementation of ECtHR decisions on Article 3 ECHR concerning migrants: the right not to be subjected to torture or to degrading treatment

The ECtHR has interpreted the right not to be subject to torture or degrading treatments¹⁸¹ as imposing not only a negative, but also a positive obligation on Member states to protect any person under their jurisdiction, i.e. the obligation not to “knowingly [...] surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture”.¹⁸² Austria,¹⁸³ Bulgaria,¹⁸⁴ France,¹⁸⁵ Italy,¹⁸⁶ the Netherlands,¹⁸⁷ Sweden,¹⁸⁸ and Turkey,¹⁸⁹ amongst others, have been found to be in violation of article 3 after having deported non-nationals who were at risk of facing torture in their country of origin.

The response of the Member states found to be in violation of the Convention has mostly been to amend their national legislations or to adopt new laws to prevent any further violations. Austria adopted new immigration laws in 2005¹⁹⁰ – the Aliens Law Package 2005 – which significantly restructured Austrian migration law¹⁹¹ in order to transpose EU directives and implement regulations within the national law.¹⁹² Bulgaria amended its legislation in 2007 providing for an independent review before the Bulgarian Supreme Administrative Court prior

¹⁷⁶ Committee of Ministers, ‘Guide to good practice in respect of domestic remedies’, September 18 2013

¹⁷⁷ Steering Committee for Human Rights (CDDH), “The long-term future of the system of the European Convention on Human Rights”, December 11 2015, 34

¹⁷⁸ *Scordino v Italy (No.1)* [GC] (2007) 45 EHHR 7

¹⁷⁹ *Budayeva and others v Russia* App No 15339/02 (ECHR, March 20 2008)

¹⁸⁰ Steering Committee for Human Rights (CDDH), “The long-term future of the system of the European Convention on Human Rights”, December 11 2015, 43

¹⁸¹ European Convention on Human Rights, art 3

¹⁸² *Soering v the United Kingdom* (1989) 11 EHRR 439

¹⁸³ *Abmed v Austria* (1996) 24 EHRR 278

¹⁸⁴ *Al-Nashif v Bulgaria* (2002) 36 EHRR 37

¹⁸⁵ *A.A. v France* App no 18039/11 (ECHR, January 15 2015); *A.F. v France* App no 80086/13 (ECHR, January 15 2015)

¹⁸⁶ *Saadi v Italy* (2008) 28 ECHR 123

¹⁸⁷ *Salah Sheekh v the Netherlands* App no 1948/04 (ECHR, January 11 2007)

¹⁸⁸ *R.C. v Sweden* [2010] ECHR 307

¹⁸⁹ *Jabari v Turkey* [2000] ECHR 369

¹⁹⁰ Asylum Act 2005; Settlement and Residence Act 2005; Aliens Police Act 2005 [German]

¹⁹¹ International Organization for Migration (IOM), ‘The Organization of Asylum and Migration Policies in Austria’, December 2015

¹⁹² Council Directive 2004/82/EC on the obligation of carriers to communication passenger data [2004] OJ L261/24; Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents [2003] OJ L16/44; Council Directive 2003/86/EC on the right to family reunification [2003] OJ L251/12; Council Directive 2004/83/EC (the ‘Qualification Directive’) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ 304/12; Council Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals [2002] OJ L157/1

to the deportation.¹⁹³ Turkey amended its legislation in 2006¹⁹⁴ to waive the requirement that an asylum seeker shall submit an application for refugee status within five days of his/her entry on the Turkish territory should (s)he wish not to be deported immediately after those five days. The Steering Committee for Human Rights suggested that for such laws to adequately implement the decisions, there may be a need for “specialised parliamentary structures” to assess their compliance¹⁹⁵ and urged the governments to “fully inform parliaments on issues relating to the interpretation and application of Convention standards”¹⁹⁶ and to “systematically check the compatibility of draft legislations with the Convention standards.”¹⁹⁷

Communication and expertise sharing between Parliaments and Courts have also been encouraged.¹⁹⁸ National courts and administrative authorities have issued orders and reports to provide guidance on the implementation of the decisions of the ECtHR pursuant to having been found in violation of article 3. The Italian Court of Cassation issued an order addressed to the Italian national courts to guide them in the assessment to be conducted in relation to the concrete risks non-nationals may face if sent back to their country of origin.¹⁹⁹ The Dutch Foreign Ministry has been forced to review his assessment procedure of the situation in Somalia.²⁰⁰ Finally, the Swedish Migration Agency delivered a legal opinion providing guidance on how to assess reliability and credibility of the facts submitted to them by a non-national.²⁰¹ Ultimately, the implementation at the national level of the ECtHR decisions on article 3 concerning migrants does not appear to pose any significant challenge.

4.2.3. The implementation of ECtHR decisions on Article 5 ECHR concerning migrants: the right to security and liberty

Article 5 ECHR aims to prevent arbitrary deprivations of liberty.²⁰² Detention must, therefore, be “in accordance with a procedure prescribed by law”.²⁰³ However, compliance with domestic isn’t exclusively satisfactory. The domestic law itself must be compliant with the ECHR principles.²⁰⁴ This right to security and liberty²⁰⁵ was interpreted by the ECtHR as imposing an obligation on Member states to ensure that the detention prior to a deportation is of necessary

¹⁹³ Aliens Act 2007, art 46 [Bulgarian]

¹⁹⁴ European Law Students’ Association Turkey, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed November 26 2017, 21

¹⁹⁵ Steering Committee for Human Rights (CDDH), “The long-term future of the system of the European Convention on Human Rights”, December 11 2015, 35

¹⁹⁶ *ibid*, 43

¹⁹⁷ *ibid*, 36

¹⁹⁸ Hunt, Murray, “Enhancing Parliaments’ Role in the Protection and Realisation of Human Rights”, *Parliaments and Human Rights*, Oxford and Portland, 2015, 470-475

¹⁹⁹ Presidenza del Consiglio dei Ministri, ‘Relazione al Parlamento Anno 2009 – L’Esecuzione delle Pronunce della Corte Europea dei Diritti dell’Uomo nei Confronti dello Stato Italiano – Legge 9 Gennaio 2006’, (2009) 50 [Italian]

²⁰⁰ Mak, Elaine, ‘The Sheltering Sky of Strasbourg; on the ECtHR’s judgement in the case of Salah Sheekh v the Netherlands and its effects on asylum policy and adjudication in the Netherlands’, *Europe & Law Journal* 1(1), 2007

²⁰¹ Swedish Migration Agency, ‘Legal opinion in regards to the method of reviewing the reliability and credibility of a case’, RCI 09/2013, June 10 2013 [Swedish]

²⁰² *McKay v the United Kingdom* [2006] ECHR 820, para 30

²⁰³ European Convention on Human Rights, art 5

²⁰⁴ *Plesó v Hungary* [2012] ECHR 176, para 59

²⁰⁵ European Convention on Human Rights, art 5

and proportionate length²⁰⁶ and that it occurs in an appropriate place and under appropriate conditions. Bulgaria,²⁰⁷ the Czech Republic,²⁰⁸ Italy,²⁰⁹ Malta,²¹⁰ Romania,²¹¹ and Russia²¹² have been found to be in violation of article 5. While Bulgaria²¹³ and the Czech Republic²¹⁴ now appear to be in compliance with the decisions of the ECtHR rendered against them after having amended their respective legislation, the situation in Malta, Russia, Romania, and Italy appear to pose a greater challenge on the implementation of the decisions of the ECtHR, as their efforts to be compliant with the ECHR remain limited.

Indeed, Malta amended its Immigration Act in order to set a maximum of nine months for the detention of migrants and to provide them with a right to counsel and to information.²¹⁵ However, this new Maltese legislation has been criticised for its vagueness and for lacunas left within the protection of migrants that was set.²¹⁶ As to the Russian Federation, the Russian Constitutional Court has expressly referred to the decisions of the ECtHR concerning article 5 of the ECHR²¹⁷ in *Azimov v. Russia*²¹⁸ and *Ismailov v. Russia*.²¹⁹ However, since there is no provision in Russian law on judicial review, a great deal of uncertainty remains as to the length of the detention period,²²⁰ even though the Russian Constitutional Court has expressly urged the Russian Parliament to amend the legislation on this issue.²²¹ The Guideline 8 of the Committee of Ministers' Twenty Guidelines of Forced Return was commented as requiring "that there must be a possibility to challenge" the detention decision "before a national authority".²²² The Parliamentary Assembly of the Council of Europe also repeatedly states that "the detention of asylum seekers and irregular migrants shall be exceptional and only used after first reviewing all

²⁰⁶ *Azimov v Russia* [2013] ECHR 342

²⁰⁷ *Al-Nashif v Bulgaria* (2002) 36 EHRR 37

²⁰⁸ *Rashed v Czech Republic* App no 298/07 (ECHR, November 27 2008)

²⁰⁹ *Khlajfia and others v Italy* [GC] App no 16483/12 (ECHR, December 15 2016); *Sharifi and others v Italy and Greece* [GC] [2014] ECHR 1115

²¹⁰ *Mahamed Jama v Malta* App no 10290/13 (ECHR, November 26 2015); *Suo Musa v Malta* App no 42337/12 (ECHR, July 23 2013); *Aden Ahmed v Malta* App no 55352/12 (ECHR, July 23 2013)

²¹¹ *Ahmed v Romania* App no 34621/03 (ECHR, July 13 2010); *Lupsa v Romania* App no 10337/04 (ECHR, June 8 2006); *Kaya v Romania* App no 33970/05 (ECHR, October 12 2006); *S.C. v Romania* App no 9356/11 (ECHR, February 10 2015)

²¹² *Azimov v Russia* [2013] ECHR 342; *Ismailov v Russia* [2009] ECHR 1949; *Akram v Russia* [2014] ECHR 522; *Egamberdiyev v Russia* [2014] ECHR 670; *Rakhimov v Russia* [2014] ECHR 749; *Kim v Russia* [2014] ECHR 866

²¹³ Aliens Act 2011, art 46(a)(1) [Bulgarian]

²¹⁴ Residence of Foreign Nationals Act, s 73 [Czech]

²¹⁵ Immigration Act, ch 217

²¹⁶ Caruana, Claire, 'Malta's laws on detention are still unclear', Times of Malta, August 19 2016 <<https://www.timesofmalta.com/articles/view/20160819/local/maltas-laws-on-detention-are-still-unclear-says-unhcr.622400>> accessed December 21 2017

²¹⁷ Constitutional Court of the Russian Federation, Case n.14-P, May 23 2017 [Russian]

²¹⁸ *Azimov v Russia* [2013] ECHR 342

²¹⁹ *Ismailov v Russia* [2009] ECHR 1949

²²⁰ European Law Students' Association Russian Federation, *National Report on Integration of Migrants in European Law* Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) accessed 26 November 2017, 24

²²¹ *Kim v Russia* [2014] ECHR 866; *Esbonkulov v Russia* [2015] ECHR 47; *Khalikov v Russia* App no 71386/10 (ECHR, February 26 2015)

²²² Committee of Ministers, 'Twenty Guidelines on Forced Return', September 2005, 31

other alternatives and finding that there is no effective alternative”,²²³ hence calling on states to at least allow for an effective judicial review mechanism to operate.

Further, the situation in Italy and Romania has shown systemic flaws in their compliance with the decisions of the ECtHR. Following the ECtHR decision in *Sharifi v Italy and Greece*²²⁴, the situation in Italy brought up some serious concerns as to its compliance with its obligations under the ECHR. The situation in Italy is such that 85% of the migrants arriving from Greece are denied their right to security and are sent back within a few hours of their arrival, without going through any procedural assessment of their situation.²²⁵ The Committee of Ministers of the Council of Europe has requested feedback from the Italian government on the implementation of the ECtHR decisions due to the widespread violation of its obligations. However, the report communicated on March 16 2017 to the Committee²²⁶ by the Italian government has been deemed insufficiently clear, and the Committee has, therefore, asked the Italian government to submit another report by the end of September 2017. Similarly, Romania remains under the supervision of the European Committee for the Prevention of Torture, despite having amended its legislation to set a six-month limit to migrants' detention periods and to provide migrants with the possibility to challenge their detention under judicial review,²²⁷ and despite having opened more transit accommodation centres.

In relation to those “systemic issues” and “large-scale violations”, the Committee of Ministers underlined that problem is not to be dealt with by the respondent Member state on its own, but rather by all Member states of the Council of Europe “to address the root causes and consequences of those violations”.²²⁸ Implementation would, therefore, go beyond the mere compliance with the ECtHR case law and would entail the need for political cooperation on those issues. In July 2017, Commissioner Avramopoulos and Ministers of Interior of France, Germany, and Italy have agreed to work on new political measures to provide further support to and coordinate the work of the NGOs operating in the Mediterranean sea route and to EU policies on returns and relocation schemes, in order to support Italy with the difficulties met when dealing with the situation.²²⁹

²²³ Parliamentary Assembly of the Council of Europe, Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe, January 28 2010 (7th Sitting)

²²⁴ [GC] [2014] ECHR 1115

²²⁵ Medici per I Diritti Umani, 'Porti Insicuri – Le Riammissioni dai Porti Italiani alla Grecia e le Violazioni dei Diritti Fondamentali dei Migranti', November 2013

²²⁶ Strati, Filippo, “Asylum seekers and migrants in Italy: are the new migrant rules consistent with integration programmes?” European Social Policy Network, March 2017 [Italian] <http://www.mediciperidirittiumani.org/pdf/low_rapporto_Medu_2013.pdf>, accessed 13 July 2017

²²⁷ Law no. 122/2006 [Romanian]

²²⁸ Steering Committee for Human Rights (CDDH), “The long-term future of the system of the European Convention on Human Rights”, December 11 2015, 52

²²⁹ “Migration: Joint declaration by Commissioner Avramopoulos and the Ministers of Interior of France, Germany and Italy”, Statement/17/1876, Brussels, July 3 2017

4.2.4. The implementation of ECtHR decisions on Article 8 ECHR concerning migrants: the right to private and family life

The ECtHR has interpreted the right to one's private and family life²³⁰ as imposing a negative obligation on Member states not to deport an individual²³¹ in case such deportation may adversely and disproportionately affect one's right to private and family life.²³² Despite such extensive interpretation, the implementation of ECtHR's decisions on article 8 appears to vary quite significantly between Member states. The ECtHR does not provide for a strict definition of “family life”. It rather opted for a factual analysis to be conducted case by case.²³³

This rather broad and variable assessment has led to a differentiated implementation of the ECtHR decisions on the issue and to a hardening of the standards set up by some Member states. For instance, while the ECtHR's decisions on article 8 relate to both the right to family life and the right to a private life, the Russian Constitutional Court has restricted it to the mere right to family life.²³⁴ Conditions set up for family reunification have also become progressively stricter in the last thirty years in France.²³⁵ This ultimately led the ECtHR to rule that the conditions set up by Member states had become too strict without, however, providing for a clearer assessment of one's family ties. As such, Member states are regularly found to be in violation of their obligations resulting from article 8 of the ECHR, such as Bulgaria,²³⁶ France,²³⁷ Italy²³⁸ and the Netherlands.²³⁹ In response, Bulgaria amended its legislation in order for the personal and the family situation of the migrant to be taken into consideration, as well as the level of integration in Bulgaria and the connections remaining with the country of origin.²⁴⁰ In the same vein, France put an end to the strictness²⁴¹ resulting from the obligation for migrants to pass a test aimed at evaluating their knowledge of the French language and of the values of the French Republic.²⁴² Nonetheless, it is arguable that the knowledge of the national language will remain a criterion to assess one's private and family ties within a Member state, as it is currently provided for in Germany.²⁴³ Italy also amended the provisions found to be in violation of article 8, in order to bring its legislation in line with the ECtHR's requirements.²⁴⁴

²³⁰ European Convention on Human Rights, art 8

²³¹ *Berrehab v the Netherlands* (1988) 11 EHRR 322

²³² *Beldjoudi v France* (1992) 14 EHRR 252

²³³ *K. and T. v Finland* (2000) 31 EHRR 390

²³⁴ Constitutional Court of the Russian Federation, Case n. 628-O, March 5 2014, “On the refusal in acceptance for consideration of the complaint expressed by a citizen of the Chinese Democratic Republic on the infringement of his constitution right under paragraph 1.1 of article 18.8 of the Code of Administrative Offences of the Russian Federation” [Russian]

²³⁵ Code of the entry and the residence of foreigners and the right to asylum 2017, art L.411-8 [French]

²³⁶ *Al-Nashif v Bulgaria* (2002) 36 EHRR 37

²³⁷ *Tanda-Muzinga v France* [2014] ECHR 1047

²³⁸ *Dhabbi v Italy* App no 17120/09 (ECHR, April 8 2014)

²³⁹ *Jeunesse v the Netherlands* [GC] App no 12738/10 (ECHR, October 3 2014)

²⁴⁰ Aliens Act 2007, art 42(4) and art 44(2) [Bulgarian]

²⁴¹ Law of March 7 2016 [French]

²⁴² Code of the entry and the residence of foreigners and the right to asylum 2017, art L.411-8 [French]

²⁴³ Federal Supreme Court, February 21 2011, 2 BvR 1392/10 [German]

²⁴⁴ European Law Students' Association Italy, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 26 November 2017, 28

The Council of Europe admittedly recognised the scalable nature of the ECtHR definition of “family life”, giving it praise from being “accordance with the changes of perception and attitudes towards the notion of family in European societies”.²⁴⁵ This justification however appears paradoxical with the recommendations urging Member states to interpret “family life” as including *de facto* family members,²⁴⁶ underlining that there is no common European understanding of what family life entails.

4.3. Impact of the ECtHR case-law on Member states

4.3.1. The impact of ECtHR decisions on Article 3 ECHR concerning migrants: the right not to be subjected to torture or to degrading treatment

Even though a Member state is not found to be in violation of the ECHR, it may wish to amend its legislation, which mirrors a legal provision that has led to a violation of the ECHR by another Member state, with the aim to avoid later litigation in front of the ECtHR. In line with the numerous condemnations of Member states having been found to be in violation of article 3 ECHR for having deported non-nationals who were at risk of facing torture in their country of origin, German law has been amended: it now refers to the prohibition of deportation pursuant to the ECHR²⁴⁷ and the risk of facing torture or inhuman treatment has been set as one of three obstacles to the deportation of a migrant.²⁴⁸

Further, the ECtHR interpreted article 3 in combination with article 13 to set a further obligation for Member states not to deport a non-national to a country where his/her right to asylum under the Dublin II regulation would be likely to be disregarded, ultimately leading to a risk for that non-national of being sent back to, and facing torture in, his/her country of origin.²⁴⁹ As such, France enacted a Law Reforming Asylum on July 20 2015, which provides for a suspensive appeal against the placement under a Dublin procedure.²⁵⁰ The Czech Republic's Administrative Supreme Court ruled that deportation of a non-national to Hungary would be in violation of articles 3 and 13 following the ECtHR's decision in *M.S.S. v Belgium and Greece*²⁵¹ due to systematic flaws in the Hungarian asylum system.²⁵² Nonetheless, the case law of some Member states somehow appears to be inconsistent with regard to assessing whether a risk of infringement of one's right to asylum exists. Indeed, while the French Administrative Court of Appeal of Bordeaux held that the European Commission's findings²⁵³ as well as the Human

²⁴⁵ Ktistakis, Yannis, “Protecting Migrants under the European Convention on Human Rights and the European Social Charter”, Council of Europe Publishing, February 2013, 75

²⁴⁶ Parliamentary Assembly of the Council of Europe, Resolution 1327 (1997) on Protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, April 24 1997 (14th Sitting); Parliamentary Assembly of the Council of Europe, Resolution 1686 (2004) on European strategy for the promotion of sexual and reproductive health and rights, October 5 2004 (27th Sitting)

²⁴⁷ Residence Law, art 60 para 5 [German]

²⁴⁸ Asylum Law, art 4 [German]

²⁴⁹ *M.S.S. v Belgium and Greece* [2011] ECHR 748

²⁵⁰ Code on the entry and the residence of foreigners and the risk to asylum 2017, art. L. 743-3 [French]

²⁵¹ *M.S.S. v Belgium and Greece* [2011] ECHR 748

²⁵² Administrative Supreme Court, Case n. 5 Azs 195/2016 [2016] [Bulgarian]

²⁵³ European Commission, 'Infringement procedure against Hungary', Press release n° IP/15/6228, December 10 2015

Rights Commissioner for the Council of Europe's observations²⁵⁴ were sufficient to establish a systematic deficiency in the Hungarian asylum procedure,²⁵⁵ the French Administrative Court of Appeal of Lyon held that transferring an asylum seeker to Hungary was not in violation of the ECHR as the deficiencies in the Hungarian asylum procedure were not sufficiently established.²⁵⁶ The latter could arguably be inconsistent with the ECtHR decision in *M.S.S. v Belgium and Greece* in light of the systematic deficiencies in the Hungarian asylum procedures observed by the Council of Europe, the European Commission, as well as the Czech Republic's Administrative Supreme Court. Moreover, although divergences in case law has been said to be a consequence inherent to any judicial system and cannot as such be said to be contrary to the Convention,²⁵⁷ the French Administrative Supreme Court, the *Conseil d'Etat*, is under the obligation to resolving such conflict²⁵⁸ since such divergence may be contrary to the right to a fair trial. Should this divergence become profound and long-standing, France could be found to be in violation of article 3 and 13, as well as of article 6 of the ECHR.

4.3.2. The impact of ECtHR decisions on Article 8 ECHR concerning migrants: the right to private and family life

Since the ECtHR does not provide for a strict definition of “family life”, but rather for a factual analysis to be conducted case by case,²⁵⁹ the assessment of the impact of ECtHR decisions relating to article 8 ECHR has shown to be quite a trick task for Member states, who elect to confine their case-law to European standards or, on the contrary, to retain their national standards, without much success in either case.

Indeed, while the European Social Charter explained that a child was to be considered part of the family of a worker if (s)he was cumulatively a minor and dependent on the migrant worker,²⁶⁰ the ECtHR later condemned Denmark for having denied a young migrating adult protection on the ground of article 8, thus establishing that non-minor children still depending on their parents were to be considered part of the family.²⁶¹ On the contrary, while Austria²⁶² and France²⁶³ have been condemned for having ordered the deportation a non-national following his/her criminal conviction, Germany appears to retain the perpetration of a criminal offense as a ground for deportation.²⁶⁴ Although Member states are under the obligation to fully balance all interests at stake,²⁶⁵ it is unsure where the balance is to be struck since German law strictly provides for that

²⁵⁴ Council of Europe, 'Risk of human rights violations for asylum seekers returned to Hungary', Press release, January 13 2016

²⁵⁵ Administrative Court of Appeal of Bordeaux, no. 16BX00997, September 27 2016 [French]

²⁵⁶ Administrative Court of Appeal of Lyon, 2nd Chamber, no. 15LY02193, December 13 2016 [French]

²⁵⁷ *Santos Pinto v Portugal* App no 39005/04 (ECHR, August 20 2008), para 41

²⁵⁸ *Beian v Romania (no.1)* App no 39658/05 (ECHR, March 6 2008), para 37

²⁵⁹ *K. and T. v Finland* (2000) 31 EHRR 390

²⁶⁰ Appendix to the European Social Charter, Part II, art 19.6

²⁶¹ *Osman v Denmark* App no 38058/09 (ECHR, February 27 2009), para 55

²⁶² *Maslov v Austria* [GC] [2008] ECHR 546; *Yildiz v Austria* App no 37295/97 (ECHR, October 31 2002)

²⁶³ *Bousarra v France* App no 35672/07 (ECHR, September 23 2010)

²⁶⁴ Federal Supreme Court, February 21 2011, 2 BvR 1392/10 [German]

²⁶⁵ *Tuquabo-Tekle and others v the Netherlands* App no 60665/00 (ECHR, December 1 2005)

the right to refugee status “shall not apply if [...] the foreigner [...] had been sentenced to a prison term of at least three years for a crime or a particularly serious offense.”²⁶⁶

In line with the case-by-case analysis provided for by the ECtHR,²⁶⁷ national courts have grown to play a significant role in regard to this matter. The Swedish Migration Court of Appeal has thus overruled its former decisions²⁶⁸ in order to comply with the ECtHR's ruling in *A.A. v UK*.²⁶⁹ It has decided that not only the periods of legal stay should be taken into consideration, but also the periods of illegal residence on the Swedish territory, in order to assess whether the migrant has developed a private life in Sweden.²⁷⁰ Similarly, British courts have taken into consideration the ECtHR standards of 'insurmountable obstacles' to the enjoyment of the rights to family life²⁷¹ when applying article 8 to the fact of the case.²⁷² Nonetheless, although these standards are widely applied by national courts, their lack of clarity may bring some challenges as to their application, posing threats to the requirements of legal certainty and clarity of the law. As such, the Irish Court of Appeal has pointed to discrepancies surrounding the interpretation of the phrase “family life” and 'settled migrants' between the ECtHR and the Irish courts.²⁷³ The Commissioner on Human Rights for the Council of Europe has also urged the UK Government to overhaul family reunification rules, which appear to be “overly restrictive in nature”.²⁷⁴

4.4. Conclusion

Overall, respondent Member states have implemented decisions rendered against them by the ECtHR by awarding remedies to the plaintiffs and, further, by amending their national legislations and issuing court guidance as to how those new laws are to be applied. The Committee of Ministers has, however, stressed the need for more coherence in the remedies awarded at the national level, for governmental checks upon the adequacy of the new national legislations to be put in place, and for further cooperation between national Parliaments and national Courts to ensure due compliance of judgments with the Convention standards as interpreted by the ECtHR. The implementation and the impact of ECtHR decisions in and/or on Member states also vary quite significantly depending on what Convention articles the said decisions are based upon. Difficulties in regards to violations of article 5, mostly arising from systemic flaws and legislative lacunas remaining in specific Member states, have led to a call for a broader political cooperation between Member states. Finally, in regards to article 8, the main difficulty identified has been the uncertainty pertaining to the phrase “private and family life”, rendering its assessment and application by Member states tedious and highly contingent on

²⁶⁶ Residence Act, s 60 [German]

²⁶⁷ *K. and T. v Finland* (2000) 31 EHRR 390

²⁶⁸ MIG 2017:15 [2007] Swedish Migration Court of Appeal [Swedish]; MIG 2012:13 [2012] Swedish Migration Court of Appeal [Swedish]

²⁶⁹ *A.A. v the United Kingdom* [2011] ECHR 1345

²⁷⁰ MIG 2015:12 [2015] Swedish Migration Court of Appeal [Swedish]

²⁷¹ *Gül v Switzerland* [1996] EHRR 5; *Benamar and others v the Netherlands* App no 43796/04 (ECHR, April 5 2005); *Bajrsultanov v Austria* [2012] EHRR 989

²⁷² *SSHID v Respondent* [2010] UKUT B1

²⁷³ *Odenis Rodrigues dos Santos and others v the Minister of Justice* [2015] IECA 210

²⁷⁴ Commissioner for Human Rights, 'Memorandum on the Human Rights of Asylum Seekers and Immigrants in the UK' [2017] CommDH 17

European and national policies, and which the Committee of Ministers doesn't seem willing to call for an harmonised interpretation of.

Chapter 5. 'The Implementation of European Commission against Racism and Intolerance' and National Human Rights Bodies' Recommendations

5.1. Legal framework

5.1.1. Trends highlighted in ECRI's Country Monitoring Work and Recommendations

The European Commission against Racism and Intolerance (ECRI) plays a major role in member states' fight against racism, discrimination on grounds of "race", ethnic/national origin, colour, citizenship, religion or language (racial discrimination), xenophobia, antisemitism and intolerance. As a human rights body, ECRI issues General Policy Recommendations, aimed at guiding the development of national legal frameworks and policies, but also performs periodical monitoring of the situation in member states, which allows the development of more tailored and country-specific suggestions for the improvement of their national policies and practices in fighting racism and intolerance.

In 2016, ECRI identified three trends of particular concern: the necessity for the integration of unprecedented number of migrants, the rise of nationalistic populism and the reaction of European States to Islamist terror attacks.²⁷⁵ A preliminary review of the submitted national reports confirm the continuous concern voiced by ECRI relating to the intensification of xenophobia, intolerance and islamophobia. Incidents of hate speech, not only among private individuals but also by high-level politicians, were reported, for instance, in Albania.²⁷⁶ Reports on the situation in Austria, Bulgaria, the Czech Republic, Germany, "the former Yugoslav Republic of Macedonia", Turkey and the UK conclude that, in the context of the massive flow of migrants in recent years, integration efforts have been particularly difficult, and the tension has led to the intensification of hate speech and intolerance.

As a result, efforts into complying with ECRI recommendations need to be made and supported by members states more than ever. As it will be outlined below, however, the implementation of both general and country-specific recommendations set out by ECRI has taken place in a very uneven manner across member states.

5.2. Findings of the ELSA National Groups

5.2.1. Implementation of ECRI recommendations

Some states such as Albania and Armenia have yet to transpose into practice national integration programs.²⁷⁷ According to the final report submitted by the national research Group of ELSA

²⁷⁵ Annual Report on ECRI's Activities, CRI (2017) 35, 7.

²⁷⁶ ECRI Report on Albania, CRI (2015) 18, 9.

²⁷⁷ ECRI Report on Albania, CRI (2015) 18; ECRI Report on Armenia, CRI (2016) 37.

Albania, despite rather extensive legal provisions in Law no. 108 “On the treatment of foreigners”, there are currently no tangible results achieved and effective integration of foreigners, more generally, and refugees, more specifically, taking place in the Republic of Albania.²⁷⁸ Armenia represents a more successful example in this context, having followed the ECRI recommendation and adopting an Action Plan for 2017-2021, which includes a chapter on integration of migrants.²⁷⁹

In the case of Austria, ECRI commended the improvements shown by public attitude towards integration and the effective implementation of the Austrian National Action Plan on Integration.²⁸⁰ However, ECRI also noted a discrepancy between the integration measures offered to refugees, on the one hand, and asylum seekers and seekers of subsidiary protection on the other hand. Now, applicants for asylum are not entitled to the same working rights as refugees.²⁸¹ The Act on Integration 2017 (IntG 2017) failed to bridge this gap and only perpetuates this differentiation.²⁸²

In the most recent report on Azerbaijan, ECRI acknowledged the implementation of its previous recommendations on development and adoption by Azerbaijan of a Migration Code, but showed significant concern about the absence of an action plan and integration strategy that would respond to issues faced by migrants ‘in core areas such as housing, health, employment, education, equality and protection from discrimination.’²⁸³

Partially implemented are also the recommendations set out by the ECRI with regards to the Action Plan for the implementation of the Policy Guidelines for the Integration of Society in Latvia, in which more emphasis should be put on engaging representatives of various vulnerable groups.²⁸⁴ Latvia has also fully implemented an ECRI recommendation on the improvement of the accessibility of the Ombudsman institution.²⁸⁵

Social security and property issues persist and are preventing returnees to Bosnia and Herzegovina from fully integrating.²⁸⁶ Social security is also not provided to persons whose presence on the territory of “the former Yugoslav Republic of Macedonia” is tolerated and which application for international protection was rejected.²⁸⁷

In a similar manner, ECRI notes that the social and economic status of migrants in Greece is by far worse than of other social groups in Greece. Their situation has been aggravated by the economic crisis and, thus, calls for a ‘strong integration policy’.²⁸⁸ At the same time, the Greek

²⁷⁸ European Law Students’ Association Albania, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 26 accessed 20 November 2017.

²⁷⁹ European Law Students’ Association Armenia, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 22 accessed 20 November 2017.

²⁸⁰ ECRI Report on Austria, CRI (2015) 34, 9.

²⁸¹ European Law Students’ Association Austria *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 22 accessed 20 November 2017.

²⁸² *ibid.*

²⁸³ ECRI Report on Azerbaijan, CRI (2016) 17 [48]-[49].

²⁸⁴ ECRI conclusions on the implementation of the recommendations in respect of Latvia subject to interim follow-up, CRI(2015)5, 6.

²⁸⁵ *ibid.*

²⁸⁶ ECRI Report on Bosnia and Herzegovina, CRI (2017)2 [62]-[63].

²⁸⁷ ECRI Report on “The Former Yugoslav Republic Of Macedonia”, CRI (2016) 21 [79].

²⁸⁸ ECRI Report on Greece, CRI (2015) 1 [86].

local integration councils, a structure that bridges the gap between migrant communities and the local public authorities,²⁸⁹ can serve as an example of potential good practice, particularly in countries where there are significant variations in terms of integration capacity between large administrative centres and other regions of the country.

In Sweden, an urgent measure recommended by ECRI was the adoption of a plan of action to address residential segregation. This issue was, however, only partially implemented.²⁹⁰

Lack of implementation of ECRI recommendations and even a deterioration of the implementation of integration policies has been noted in Denmark.²⁹¹ Despite ECRI recommendations, family reunification has been regulated with even stricter criteria.²⁹² Moreover, the authorities introduced reduced levels of social benefits for persons who arrive in Denmark, including refugees and persons who receive subsidiary protection.²⁹³ ELSA Denmark's national report notes that there are ECRI recommendations that have been constantly ignored by Denmark.²⁹⁴ Notably, Denmark has not ratified Protocol 12 to the ECHR, recommended since 2005.²⁹⁵ It has also not amended its civil, criminal, administrative law to conform with ECRI's General Policy Recommendation No. 7.²⁹⁶

Similar constant refusal to adopt the Protocol No. 12 to the European Convention on Human Rights has been reported in the case of Germany.²⁹⁷

ECRI Conclusions on the implementation of the recommendations in respect of Bulgaria are particularly concerning. ECRI notes that since its report issued within the fifth monitoring cycle, the situation of asylum seekers and refugees has not seen any improvement.²⁹⁸ Anti-migrant protests have fuelled animosity between local population and the refugees.²⁹⁹

Budgetary concerns have been raised in ECRI's report on the situation in France. The Commission noted that despite the tangible results achieved by France, the continuously dropping budget allocated for integration policies could significantly jeopardize their implementation in the future.³⁰⁰

There are also countries such as Turkey, where integration efforts for refugees and migrants in general is very difficult to assess because there is not a system of integration indicators that would enable the tracking of progress in 'key areas such as education, employment, housing and health'.³⁰¹

²⁸⁹ *ibid* [89].

²⁹⁰ European Law Students' Association Sweden, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 24 accessed 20 November 2017.

²⁹¹ ECRI Report on Denmark, CRI (2017)20, 9.

²⁹² *ibid*.

²⁹³ *ibid*.

²⁹⁴ European Law Students' Association Denmark, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 31 accessed 20 November 2017.

²⁹⁵ *ibid* 30.

²⁹⁶ *ibid*.

²⁹⁷ ECRI conclusions on the implementation of the recommendations in respect of Germany subject to interim follow-up, CRI(2017)6, 5.

²⁹⁸ ECRI Conclusions on the implementation of the recommendations in respect of Bulgaria, CRI (2017) 22, 5.

²⁹⁹ *ibid*.

³⁰⁰ ECRI Report on France, CRI (2016) 1 [59].

³⁰¹ ECRI Report on Turkey, CRI (2016) 37 [64].

Finally, in some countries such as the UK, institutional changes have worsened integration chances for such vulnerable groups as the refugees. In 2011, the Refugee Integration and Employment Service, an institution tasked with assisting integration in such areas as housing, employment and welfare was closed, leaving a gap in the country's effort to integrate refugees.³⁰² In conclusion, integration efforts in member states are currently hampered by a wide variety of factors — legal loopholes, defective implementation of laws and integration policies, budgetary constraints and institutional deficiencies. These issues have been augmented by the great migration pressure that host-countries have been facing in the last couple of years. An effective response to such challenges require both international and national orchestrated efforts and commitment.

5.2.2. Countries' national bodies

National bodies play an instrumental role in both assessing the issues that migrants face and in ensuring responses tuned to the necessities and constraints faced by them on ground. This is why independence and a sufficient range of powers to make a meaningful contribution to addressing human rights issues faced by migrants is indispensable for such national bodies.

One of the main areas of activities of ECRI is building strategic partnerships with such organisations and supporting their work. In its 2016 annual report, ECRI highlighted its advice mentioned in the ECRI General policy recommendation no. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level adopted on 13 June 1997, calling for non-interference by political powers into the work of such bodies, as well as for endowing them with the necessary competencies to carry meaningful and impactful work.³⁰³ Unfortunately, ECRI reports reveal rather worrying trends in terms of their independence, institutional capacity and the powers and competencies given. This subsequently affects the extent to which the national human rights bodies can make a meaningful contribution to the improvement of the human rights situation in the reporting countries, more generally, and to more effective integration, more specifically.

Limited functions of the ombudsman institution have been highlighted as an issue in Finland, where the non-discrimination Ombudsman, which replaced the former Ombudsman for Minorities, is currently not empowered to bring matters before the courts based on own initiative, as ECRI had recommended. Its mandate now covers a wider range of prohibited grounds of discrimination than the previous Ombudsman's mandate.³⁰⁴ Despite ECRI's recommendation, thus far no local or regional branch offices for the Non-Discrimination Ombudsman have been established.³⁰⁵

Similarly, in the Czech Republic, 'the Public Defender of Rights does not possess the necessary powers and responsibilities to combat racial discrimination effectively.'³⁰⁶

³⁰² ECRI Report on the United Kingdom, CRI (2016) 38 [112].

³⁰³ Annual Report on ECRI's Activities, CRI (2017)35.

³⁰⁴ European law Students' Association Finland, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 26 accessed 20 November 2017.

³⁰⁵ *ibid.*

³⁰⁶ ECRI Report on the Czech Republic, CRI (2015) 35, p 9.

The latest ECRI report on Bosnia and Herzegovina notes that the Ombudsman Institution has ‘a complicated decision-making process, is understaffed and only 50% of its recommendations have been implemented.’³⁰⁷

The National Ombudsman’s mandate in the Netherlands encompasses the handling of complaints concerning the action of administrative authorities.³⁰⁸ However, a non-negligible limitation of the Ombudsman's powers is found in the fact that he/she is not competent to receive complaints on government policy or on the content of laws.³⁰⁹ It must be noted, however, that despite the limited scope of the Dutch Ombudsman and the fact that its decisions are not binding, 95% of the recommendations issued, in which compensation is sought, are taken seriously by the authorities.³¹⁰

In “the former Yugoslav Republic of Macedonia”, the Commission for protection against discrimination was heavily criticized in January of 2016 after selecting new members. Reportedly it is being called by a number of NGOs and experts “an incompetent commission”, because a large number of the new members had never worked in the field of protection of marginalized groups and had close ties to the now former ruling party – a note the ECRI report urged be fixed as a top priority.³¹¹ In their annual report for 2016, the Commission acted upon only 80 cases. However, 31 of those have concluded no basis for discrimination.³¹²

The Maltese national research group reported that, despite efforts put into more cooperation between the government and human rights organizations, most recommendations are not being implemented.³¹³

The gap between the implementation of integration policies by the Norwegian Government and the recommendations put forward by national bodies has widened.³¹⁴ This has been emphasized by the representatives of the Norwegian Refugee Council and the UNHCR.³¹⁵

None of the three main recommendations made by ECRI in respect of the Russian Federation have been implemented.³¹⁶ The Russian national research group highlighted that very stringent issues remain with relation to the non-ratification by the Russian Federation of the Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the significant hurdles that migrants face in their attempt to obtain a residence permit, as well as the

³⁰⁷ ECRI Report on Bosnia and Herzegovina, CRI (2017) 2, p 6.

³⁰⁸ Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Springer Science 2004) 30.

³⁰⁹ *ibid* 31.

³¹⁰ ECRI Report on The Netherlands CRI (2013) 39.

³¹¹ European Law Students’ Association “the former Yugoslav Republic of Macedonia”, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 21 accessed 20 November 2017.

³¹² *ibid*.

³¹³ European Law Students’ Association Malta, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 24 accessed 20 November 2017

³¹⁴ European Law Students’ Association Norway, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 23 accessed 20 November 2017.

³¹⁵ Pål Nesse, *Flyktninghjelpen*, 2017.

³¹⁶ ECRI conclusions on the implementation of the recommendations in respect of the Russian Federation, CRI (2016) 26.

refusal to create a specific position within the Human Rights Ombudsman institution that would address the issues that labour migrants face.³¹⁷

A similar gap between ECRI and human rights bodies' recommendations and the actions of the government are reported in Poland, where migrants continue to face difficulties in accessing jobs and successfully completing the Individual Integration Program, which is very short in length and underfunded.³¹⁸

While having limited functions as well, human rights bodies and NGOs in Greece have been vocal in informing about the issues of asylum protection and integration at the national level. The Greek National Commission for Human Rights (GNCHR) releases public statements and advisory opinions, informing and raising awareness about the nature of the right of access to asylum and the prohibition of *refoulement* as cornerstone principles of Refugee Law, promote the need for integration programs and developing recommendations to the Greek government.³¹⁹ The national research group also noted that the GNCHR has been very vocal in objecting the agreement between the EU and Turkey.³²⁰

A good example of a member state's effort into ensuring better integration policies can be noticed in France, which significantly improved the system under 'reception and integration contracts',³²¹ as well as the independence and powers of the national human rights body – the High Authority against Discrimination and for Equality (HALDE).³²²

Similarly, the German Institute for Human Rights (Deutsches Institut für Menschenrechte, DIMR), which performs research and advising, has been vocal in its findings before the German Federal Parliament.³²³ Recent DIMR reports highlighted the issues of privacy faced by migrants, forced to live together packed, and the great challenges faced particularly by vulnerable groups such as women and unaccompanied children.³²⁴ DIMR's proposal to conceptualise and adhere to a minimum housing standard has been implemented by several states such as Berlin, Brandenburg, Hamburg, Hessen and North-Rhein Westphalia, while other states are still formulating their own standards.³²⁵

Finally, a positive trend was reported by the national research group from Slovenia, where several significant changes in terms of refugees and migrants' ability to enter Slovenia,

³¹⁷ European Law Students' Association Russian Federation, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 27 accessed 20 November 2017.

³¹⁸ European Law Students' Association Poland, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 27 accessed 20 November 2017.

³¹⁹ Announcement of GNCHR: "Η Ευρωπαϊκή Ένωση πρέπει να αναλάβει τις ευθύνες της και να ανασχεδιάσει την μεταναστευτική της πολιτική", 31 August 2015 <http://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/EEEA%20Anakoinvsh%20Metanasteytiko.pdf> accessed 20 July 2017 [Greek].

³²⁰ Angeliki Chryssochoidou – Argyropoulou, First Vice-President of the GNCHR and Anna Eirini Baka, PhD, Legal Officer at the GNCHR, *Report on the EU-Turkey Agreement of the 18th of March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016* (Greek National Commission for Human Rights, 2016) <file:///C:/Users/irene/Desktop/GNCHR%20Report%20EU-Turkey%20Agreement.pdf> accessed 20 July 2017 [Greek].

³²¹ ECRI Final Report on France. CRI (2016) 1 [56].

³²² *ibid* [87].

³²³ European Law Students' Association Germany, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 33 accessed 20 November 2017.

³²⁴ *ibid*.

³²⁵ *ibid*.

improvements of the conditions in refugee centres and cooperation of police and non-governmental organization in their work on family reunification have taken place as a result of the activities and recommendations made by the Slovenian Ombudsman.³²⁶

5.3. Conclusion

In conclusion, though many of the ECRI recommendations are followed by member states, there are certain issues which have been met with a long-standing reluctance or have not been made as a priority.

With regards to recommendations made by national human rights bodies that cover integration issues faced by migrants, the reports reveal that the extent to which they are followed and internalized by governmental policies and action plans vary significantly across countries. One of the causes identified is the limited competences offered to human rights institutions, which prevents them from keeping the governmental agencies accountable for the implementation of integration policies. Political interference has also been flagged as an issue. Further challenges are posed by the resources available to states which determine its capacity to internalise the recommendations put forward by national human rights bodies. As bodies that can give a local voice to ECRI recommendations and best equipped to both ensure the oversight and identify most effective solutions, national human rights institutions should be given support in their work. Further action is required to promote the need for more independence and political non-interference with their work in some states. The reinforcement of the recommendations set out in ECRI GPR No. 12 is needed more than ever.

Chapter 6. Access to Healthcare for Migrants

6.1. Legal background

The European Social Charter is a treaty by the Council of Europe that was initially opened for signature in Turin in 1961 and revised in 1996.³²⁷ The major purposes of the Charter have been to ensure the social rights of the populations of ratifying member states, including the nationals and 'foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned,³²⁸ and contribute to the well-being and life standards of the aforementioned people. Pursuant to Article 11 - right to protection of the health – parties of the Charter undertake measures such as supplying highest possible health standards for everyone, elimination of barriers to access to healthcare for each person without discriminatory acts, facilitation of access to information about healthcare systems and avoidance of epidemic diseases and accidents. Article 13 considers granting of adequate

³²⁶ European Law Students' Association Slovenia, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) 19-20 accessed 20 November 2017.

³²⁷ Council of Europe, 'The Charter in four steps' <<https://www.coe.int/en/web/turin-european-social-charter/about-the-charter>> accessed December 12 2017

³²⁸ ETS No. 163 (European Social Charter (revised)) 1999

assistance by party states to persons without sufficient sources neither by themselves nor through other parties and reception of public and private services by everyone.³²⁹

Despite establishing the major basis of human rights protection in CoE, the ECHR does not include a provision stipulating a right to health. Instead, article 2 (right to life), 3 (prohibition of torture or inhuman or degrading treatment or punishment) and 8 (right to respect for private and family life) of the Convention have been used to substantiate a human rights violation in connection to a person's health. Hence, protection of health under the ECHR is only possible insofar that there is a link between the violation and one of the above-mentioned articles. In accordance with the interpretation of ECtHR, denial of healthcare might amount to a violation of the right to life, whenever someone's life is put in hazardous situations.³³⁰ In *Calvelli and Ciglio v. Italy*³³¹ judgment, the Court established the positive obligations of member states to the Convention under the Article 2 "to make regulations compelling hospitals ... to adopt appropriate measures for the protection of their patients' lives" and "an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable ...".³³² Article 3 has been invoked in matters concerning the rights of persons to healthcare in the context of removal/deportation and vulnerability as such procedures should not engender a base for the imminent danger to the health conditions of persons.³³³ In *D. v. the United Kingdom* case,³³⁴ taking the very serious nature of the illness of migrant into account, the Court found a violation of Article 3 since the applicant was dependent on the treatment and could not be subjected to the expulsion, therefore.³³⁵ In *N. v. the United Kingdom*,³³⁶ however, the Court held that the expulsion of people with serious illnesses to countries with low living conditions does not breach Article 3 as state parties are not liable for inequalities in medical treatment. Scarce budget to ensure healthcare services might substantiate claims of human rights violations based on right to respect for private and family life owing to the interpretation of the ECtHR.³³⁷ The Court held that existence of a direct link between the private life (which includes physical and psychological integrity of individual as well) of the applicant and the measures demanded by him/her may place a positive obligation on the State.³³⁸ Therefore, if the state refrains from providing with healthcare services due to insufficient sources may bring about the potential violation of Article 8.³³⁹ Furthermore, when utilizing such services, migrants must not be a subject to discriminatory treatment on any grounds, including due to their national origin,

³²⁹ Ibid

³³⁰ Yannis Kistakis, 'Protecting migrants under the European Convention on Human Rights and the European Social Charter: a handbook for legal practitioners' (Council of Europe, 2013) 56

³³¹ *Calvelli and Ciglio v. Italy* App no 32967/96 (ECHR, 17 Jan 2002)

³³² European Court of Human Rights, 'Factsheet – Health' [2017] 10

³³³ Maša Marochini, 'Council of Europe and the right to healthcare- is the European Convention on Human Rights appropriate instrument for protecting the right to healthcare?' [2013] Zb. Prav. fak. Sveuč. Rij. 729

³³⁴ *D.v. the UK* App no 30240/96 (ECHR, 2 May 1997)

³³⁵ European Court of Human Rights, 'Factsheet – Health' [2017] 7

³³⁶ *N.v. the UK* App no 26565/05 (ECHR, 27 May 2008)

³³⁷ Yannis Kistakis, 'Protecting migrants under the European Convention on Human Rights and the European Social Charter: a handbook for legal practitioners' (Council of Europe, 2013) 57

³³⁸ *Sentges v. Netherlands* App no 27677/02 (ECHR, 8 July 2003)

³³⁹ *ibid*

association with a national minority and birth status being among others (article 14). In the course of such discrimination, under article 13 of the Convention, migrants shall have an effective remedy before the national authorities.³⁴⁰

In the EU member states, third-country nationals with long-term residency benefit from equal treatment with nationals of respective countries in relation to 'social security, social assistance and social protection as defined by national law'.³⁴¹ Further, contracting parties of the European Convention on the legal status of migrant workers are committed to grant equality of treatment to the migrant workers and members of their families with respect to social security, social and medical assistance within their territories.³⁴² However, these rights may be subject to conditions required by national legislation, bilateral and multilateral agreements of the states.³⁴³ Regarding refugees, contracting states of Geneva Convention relating to the status of refugees carry an obligation to provide them with the same treatment as nationals in terms of social security.³⁴⁴ ICESCR requires the member states to ensure equal access to preventive, curative and palliative health services as emergency care for everyone, including irregular migrants and asylum-seekers.³⁴⁵ Moreover, PACE deems that emergency care should be accessible to irregular migrants as minimum health rights.³⁴⁶

6.2. Requirements to receive healthcare in national law

6.2.1. Residence Requirements

In all the surveyed Council of Europe member states outside EU/EFTA, existence of permanent/regular residence ensures the access of migrants to healthcare. Moreover, majority of the countries have constitutional provisions on the accessibility of emergency and urgent medical care for everyone.

6.2.1.1. EU migrants/EFTA nationals

The right to healthcare of EU migrants/EFTA nationals is regulated by the national legislations of respective countries outside EU/EFTA. Reckoning the findings of ELSA reports, valid residence permit is a preliminary condition to benefit from healthcare systems. With regard to the situation of EU migrants/EFTA nationals in EU countries, EHIC grants access to healthcare system to card holders during a temporary residence in the EU member states or Norway, Switzerland, Liechtenstein and Iceland.³⁴⁷ Only people under the insurance of national social security system of the EU and EFTA member states might apply to the respective national

³⁴⁰ European Convention on Human Rights 1950

³⁴¹ Council Directive 2003/109/EC (concerning the status of third-country nationals who are long-term residents) 2003

³⁴² ETS No 93 (European Convention on the legal status of migrant workers) 1977

³⁴³ *ibid*

³⁴⁴ Convention Relating to the Status of Refugees 1951

³⁴⁵ General Comment No. 14 to International Covenant on Economic, Social and Cultural Rights 1966, art. 12

³⁴⁶ PACE Resolution 1509 (on human rights of irregular migrants) 2006

³⁴⁷ Decision 2003/751/EC (aimed at introducing a European health insurance card to replace the forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 as regards access to health care during a temporary stay in a Member State other than the competent State or the State of residence) 2003

healthcare institutions to acquire the card taking the nature of benefits as well as expected length of stay into consideration.³⁴⁸ Insured person staying outside the competent member state shall be entitled to the benefits becoming necessary on the medical grounds.³⁴⁹ The cost of treatment of the EHIC holders will be covered in unforeseen situations, however, the country where the card owner has insurance has to recognise the treatment legally to cover the costs. In case of planned medical treatment, healthcare institution usually requires to seek for authorisation if the treatment demands hospitalization. For the non-hospital treatment, EHIC holders can seek for authorisation before leaving or directly travelling to the country of treatment and then claim for the refund.³⁵⁰ If the terms of country of treatment are less favourable than those offered by national insurance, the difference shall be refunded to the person concerned. In exceptional cases when the issuance of EHIC is not possible, a provisional replacement certificate shall be issued to the persons requested with the same benefits European Health Insurance Card offers.³⁵¹

EU citizens aiming to reside in another EU country for more than three months might be subject to certain conditions, including comprehensive sickness insurance cover. This requirement applies to only economically inactive³⁵² EU citizens under the Citizens' Rights Directive.³⁵³ Requirements to obtain comprehensive sickness insurance vary between member states with publicly funded residency-based and insurance-based contributory healthcare systems. In the latter³⁵⁴, persons who are covered by their home states under the EU coordination regulations³⁵⁵ fulfill the conditions of comprehensive sickness insurance. However, economically inactive EU citizens have to obtain private medical insurance, present EHIC and fill the EU coordination forms covering many situations adjusted under coordination regulations to have comprehensive sickness insurance cover, and accordingly a right to reside in former countries more than three months.³⁵⁶ On the contrary, workers and self-employed persons are exempted

³⁴⁸ European Commission DG Employment, Social Affairs & Inclusion, *'Applying for a card'* <<http://ec.europa.eu/social/main.jsp?catId=563&langId=en>> accessed November 30 2017

³⁴⁹ Regulation 883/2004/EC (of the European Parliament and of the Council on the coordination of social security systems) 2004

³⁵⁰ European Commission DG Employment, Social Affairs & Inclusion, *'Planned medical treatment'* <<http://ec.europa.eu/social/main.jsp?catId=569&langId=en>> accessed November 30 2017; This rule, however, is not recognized by Switzerland

³⁵¹ Decision 2003/751/EC (aimed at introducing a European health insurance card to replace the forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 as regards access to health care during a temporary stay in a Member State other than the competent State or the State of residence) 2003

³⁵² Economically inactive citizens include students, retired persons, unemployed persons who do not seek job and jobseekers who do not have a genuine chance of finding a job in a host country in accordance with the definition of European Parliamentary Research Service.

³⁵³ Directive 2004/38/EC (of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) 2004

³⁵⁴ EU countries with insurance-based healthcare systems include Belgium, Germany, Greece, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia

³⁵⁵ Coordination regulations (Regulations 2004/883/EC and 2009/987/EC) entitle EU citizens staying in other member states to socially covered health care. Thus, this coverage is accepted as comprehensive sickness insurance in the meaning of Citizens' Rights Directive.

³⁵⁶ Tomislav Sokol, 'Comprehensive sickness insurance as a condition for EU citizens' residence in other member states: a need for reform?' [2016] *European Journal of Social Security* 380

from this rule since they conduce to the public funds of host country through taxes and access to social security system with the same basis as nationals.³⁵⁷ Permanent residence card can be acquired granting the EU citizen has resided in the host member state for a continuous period of five years. Right of residence as well as permanent residence brings about the application of right to be treated on the equal footing with nationals of host country to those citizens under the same directive.³⁵⁸

6.2.1.2. *Non-EU/EFTA nationals*

Even though permanent residence is a primary circumstance to receive healthcare in all of the surveyed member states, some countries establish softer regulations for access of migrants to healthcare, where temporary residents benefit from health services as well. Report of ELSA Finland displays that third-country nationals (TCNs) with municipality of residence are entitled to the same healthcare services as Finnish citizens. This means that, apart from TCNs with permanent residence permit, those holding a continuous residence permit (which can be extended for 4 years) and temporary residence permit with the proof of intent to live in Finland permanently have equal rights to healthcare on the same basis with citizens of Finland.³⁵⁹ Ireland has similar practice where nationals of non-EU states access to the healthcare system like Irish nationals through the demonstration of intent to live in the country for a term of at least a year.³⁶⁰ Family members of EU citizens who have the right of residence or permanent residence are equally treated with the nationals of EU member state in terms of healthcare.³⁶¹ Nationals of non-EU countries who are covered by the social security scheme and reside in the EU member state legally have a right to apply for the EHIC.³⁶² However, unlike EU nationals, they are not able to use this card in Denmark, Iceland, Liechtenstein, Norway and Switzerland for medical treatment.³⁶³

6.2.2. Financial requirements

Countries with residency-based healthcare systems entitle all residents to full extent of health services regardless of the financial contributions. Nonetheless, EU member states where health care is provided based on insurances, minimum contributions have to be paid throughout given

³⁵⁷ European Parliamentary Research Service, 'Freedom of movement and residence of EU citizens: Access to social benefits' (2014) 25

³⁵⁸ Directive 2004/38/EC (of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) 2004

³⁵⁹ ELSA Legal Research Group Report – Finland, 23; Municipality of Residence Act 201 1994 [Kotikuntalaki]

³⁶⁰ ELSA Legal Research Group Report – Ireland, 16; European Agency for Fundamental Rights *Migrants in an irregular situation: access to healthcare in 10 European Union Member States* (2011)

³⁶¹ Directive 2004/38/EC (of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) 2004

³⁶² European Commission DG Employment, Social Affairs & Inclusion, 'Applying for a card' <<http://ec.europa.eu/social/main.jsp?catId=563&langId=en>> accessed November 30 2017

³⁶³ *ibid*

timeframe for access to healthcare system.³⁶⁴ Hence, unemployed EU citizens need to prove that they have sufficient financial resources not to become a burden on the social assistance system of host member state.³⁶⁵ In order to remove the potential consequences of financial obstacles, most of the EU member states apply cost-sharing arrangements in which people with low income and benefits are exempted from certain costs to some extent. For instance, in Belgium and Latvia, migrants possessing low income/pensions pay lower amount of money to visit specialists.

Denial of healthcare services owing to the lack of financial resources might constitute a violation of right to private and family life under the article 8 of the ECHR. However, treatment for foreign nationals in Austria is contingent on the payment for the services by the patient or third parties, meaning that respective clause of Patient Charter possibly violates Article 8 of the Convention.³⁶⁶ In Romania, employers who recruit migrant employees have obligation to pay social contribution to the insurance system. Czech Republic allows withdrawal of residence permit to foreign nationals who lack financial resources which, accordingly deprives the right of migrants to receive healthcare.³⁶⁷

6.2.3. Identity cards

Findings of the all surveyed ELSA Legal Research Group Reports stress that migrants have to present a valid national ID/passport alongside with residence permit to receive healthcare in the surveyed non-EU/EFTA countries. With regard to EU/EFTA countries, migrants from the same region also need to present their photo IDs since European Health Insurance Card does not entail photos of the individuals.³⁶⁸ Migrants outside EU/EFTA are applied the same condition provided that they are family members of EU/EFTA citizens. Otherwise, they have to hand over their residence permits in addition to documents above-mentioned. Further, residents of Nordic countries (Denmark, Finland, Iceland, Norway, Sweden) need only show a valid national ID card to obtain free healthcare in these countries. Additionally, Nordic countries' residents have to state their permanent address in the other Nordic country to acquire healthcare in Finland on the same basis as local residents.³⁶⁹

³⁶⁴ Eurodiaconia, 'Briefing: Free movement in the EU; What rights for EU mobile citizens?' [2014] 6

³⁶⁵ Directive 2004/38/EC (of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) 2004

³⁶⁶ ELSA Legal Research Group Report – Austria, 21; WHO Europe, *Health Systems in Transition (HiT) profile of Austria*

<<http://www.hspm.org/countries/austria08012013/livinghit.aspx?Section=2.9%20Patient%20empowerment&Type=Section>> accessed January 7 2018

³⁶⁷ European Committee of Social Rights, 'The Czech Republic and the European Social Charter' [2017] 5

³⁶⁸ European Commission DG Employment, Social Affairs & Inclusion, 'Unforeseen medical treatment' <<http://ec.europa.eu/social/main.jsp?catId=1021&langId=en>> accessed January 6 2018

³⁶⁹ *ibid*

6.2.5. Entitlement of specific groups

6.2.5.1. *Asylum seekers*

Asylum seekers are qualified for primary healthcare services such as emergency and urgent medical treatment in at least 18 surveyed CoE member states. However, the scope of medical assistance offered to asylum seekers is higher in Finland, Sweden and Latvia. Apart from urgent medical care, asylum seekers in Finland can access to other healthcare services considered necessary by medical professionals free of charge under the Health Care Act. Reception centers cover both treatment costs and those of medicines prescribed by doctors.³⁷⁰ Swedish legislation includes specific 'healthcare that cannot wait' clause for such persons which consists of somatic, psychiatric and dental care in addition to emergency treatment as well as maternity and childbirth care, contraceptive advice and abortion.³⁷¹ Moreover, Finland³⁷² and Sweden³⁷³ recognise underage asylum seekers as a group of migrants with special needs and grant them rights on the same basis with persons with a domicile in Finland and permanent residents of Sweden, respectively. Regarding Latvia, Medical Treatment Law refers to provision of 'outpatient and inpatient psychiatric assistance for asylum seekers from State funds in case of serious mental disorders and medical assistance for minors' as well.³⁷⁴ Since Turkey keeps the geographical limitation to the ratification³⁷⁵ of 1951 Geneva Convention, only people fleeing their countries due to events occurring in Europe benefit from healthcare services in its territory.³⁷⁶ Turkey, furthermore, supplies Syrians (owners of temporary protection) with free medical support and care in the institutions of Ministry of Health.³⁷⁷ However, in the UK, free healthcare for asylum seekers are provided through removal centres which, in most cases, lack the means to provide some services, such as those for chronic diseases, sexual care, access to support for low level

³⁷⁰ ELSA Legal Research Group Report – Finland, 23; Ilmo Keskimäki et al, 'Paperittomien terveystalvot Suomessa' (National Institute for Health and Welfare, Report 11/2014) <http://www.julkari.fi/bitstream/handle/10024/114941/THL_RAP2014_011web.pdf?sequence=3> accessed June 27 2017, 21

³⁷¹ ELSA Legal Research Group Report – Sweden, 23; Migrationsverket, 'Health care for asylum seekers' <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/While-you-are-waiting-for-a-decision/Health-care.html>> accessed January 6 2018

³⁷² ELSA Legal Research Group Report – Finland, 24; Ministry of Social Affairs and Health 'Social security and services of asylum seekers in Finland' <<http://stm.fi/en/social-security-and-services-of-asylum-seekers-in-finland>> accessed July 4 2017

³⁷³ ELSA Legal Research Group Report – Sweden, 23-24; Health and Medical Care for Asylum and Others Act art.5

³⁷⁴ ELSA Legal Research Group Report – Latvia, 23-24; The Medical Treatment Law. Published: Latvijas Vēstnesis, 1 July 1997, No. 167/168

³⁷⁵ Turkey ratified the Geneva Convention relating to the status of refugees, however, apply the 'refugee' definition to persons who have well-founded fear of being persecuted based on the grounds depicted in Article 1(2) of the Convention due to events only occurring in Europe.

³⁷⁶ ELSA Legal Research Group Report – Turkey, 18; Human Rights Watch, 'Protecting refugees' <<https://www.hrw.org/reports/2000/turkey2/Turk009-10.htm>> accessed January 6 2018

³⁷⁷ *ibid*

mental health.³⁷⁸ All in all, asylum seekers are entitled to right to healthcare after only completion of registration process.³⁷⁹

6.2.5.2. *Irregular migrants*

Irregular migrants have access to only urgent or emergency treatment in at least 15 surveyed member states of CoE. Irregular migrants in detention centers benefit from medical and psychological assistance, medical-sanitary provision, medical-inspection and medical care from dispensaries under Azerbaijani legislation.³⁸⁰ In Sweden, irregular migrants have greater access to healthcare compared to other countries due to the 'healthcare that cannot wait' clause, and maternity and childbirth care, contraceptive advice and abortion.³⁸¹ Additionally, Italy provides health services concerning pregnancy, vaccines, infectious diseases and drug addiction for irregular migrants. To benefit from aforementioned healthcare schemes, irregular migrants in Italy apply for a Temporarily Resident Foreigner code with six months term of validity and gain access to such services.³⁸² France grants financial aid to irregular migrants within social security based on the following requirements: a) the migrant has to start following a procedure to obtain a residence permit;³⁸³ b) the migrant has to reside in France more than 3 months and c) the migrant has to earn less than EUR 726.92 per month.³⁸⁴ Malta³⁸⁵, Slovenia³⁸⁶ and Sweden³⁸⁷, moreover, bestow privilege to the irregular children migrants, as in Malta minors that are unaccompanied and those with undocumented migrant parents are exempted from charges for medical services and the latter two recognizes the rights of irregular children migrants on the same basis with the permanent residents of the country. However, equality clause is not applicable to irregular migrants in Slovenia. This provision should be applied without prejudice to the article 2 and 3 of the ECHR. Last, but not least, the United Kingdom takes healthcare measures based on immigration status, meaning that irregular migrants might be barred from applying for an extension to leave if they desire to regularise their status, but cannot afford

³⁷⁸ ELSA Legal Research Group Report – the United Kingdom, 28; HM Chief Inspector of Prisons, ‘*Report on an Unannounced Inspection of Yarl’s Wood Immigration Removal Centre*’ (1 May 2015) <<https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>> accessed 21 June 2017, 83

³⁷⁹ AIDA – Asylum Information Database, ‘*Country reports*’ <<http://www.asylumineurope.org/reports>> accessed January 6 2018

³⁸⁰ ELSA Legal Research Group Report – Azerbaijan, 27; “Discipline rules in the Detention Centers of Illegal Migrants” 2016 [Qanunsuz miqrantların saxlanılması mərkəzlərinin daxili intizam Qaydaları]

³⁸¹ ELSA Legal Research Group Report – Sweden, 24; Health Care for Certain Foreigners Who Stay in Sweden Without the Necessary Permits Act, art 7

³⁸² ELSA Legal Research Group Report – Italy, 34

³⁸³ To obtain a residence permit, an individual shall attend the local administrative office and may present his/her details on family situation, financial resources, employment contract, proof of address and health insurance.

³⁸⁴ ELSA Legal Research Group Report – France, 35; CMU, ‘*Complementary CMU*’ <http://www.cmu.fr/vous_etes_etranger_en_situation_irreguliere.php> accessed 25 September 2017 [French]

³⁸⁵ ELSA Legal Research Group Report – Malta, 30; HUMA Network, Access to Healthcare and Living Conditions of Asylum Seekers and Undocumented Migrants in Cyprus, Malta, Poland and Romania, <http://interwencjaprawna.pl/docs/wpdt2011_1_en.pdf> accessed 19 July, 69

³⁸⁶ ELSA Legal Research Group Report – Slovenia, 19-20

³⁸⁷ ELSA Legal Research Group Report – Sweden, 24; Health Care for Certain Foreigners Who Stay in Sweden Without the Necessary Permits Act, art.6

annual surcharge fees.³⁸⁸ Such procedure might potentially result in violation of article 3 of ECHR in the cases of irregular vulnerable migrants.

Apart from residence requirements, financial requirements exist in Greece, Ireland, Hungary and Sweden for undocumented migrants as pre-treatment verification and post-treatment billing. Further, Germany establishes access beyond emergency care cost-free for migrants in irregular situation, however, leaves a right for public officials to report such migrants. Conversely, irregular migrants access beyond emergency care cost-free in France and Italy where duty to report does not exist.³⁸⁹

Chapter 7. Access to Education for Migrants

7.1. Legal framework

The right to education is in theory safeguarded in international, multilateral and bilateral treaties. In the international level it is reflected in Article 26 of the Universal Declaration of Human Rights, Article 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, and Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers.³⁹⁰

At CoE level, the right to education is controlled through several frameworks. Article 20 of the European Convention of Establishment gives equal footing to nationals of contracting states lawfully residing in another state party to “be admitted on an equal footing... to institutions for primary and secondary education”. More specifically, protection of migrant children is primarily derived from Article 2 of the Protocol 1 to the European Convention on Human Rights which prevent states from denying the right to education,³⁹¹ and Article 17 of the European Social Charter (ESC). The latter provides that states parties must ensure “children and young persons... have the care, the assistance, the education and training” and to provide adequate institutions and services thereto (17(1)(a)), and to provide “children and young persons a free primary and secondary education” (17(2)). Thus children up to the age of 18 must have access to free and effective education under the ESC.³⁹² Higher education forms a part of, but is not integral to, the right of education under Article 2 of Protocol No. 1.³⁹³ Thus, while access to

³⁸⁸ ELSA Legal Research Group Report – the United Kingdom, 30; Lilana Keith and Ewout Van Ginneken, ‘Restricting Access to The NHS for Undocumented Migrants is Bad Policy at High Cost’ [2015] *The British Medical Journal* 350(8013)

³⁸⁹ European Union Agency for Fundamental Rights, ‘Migrants in an irregular situation: access to healthcare in 10 European Union Member States [2011] 26 and 45

³⁹⁰ The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted by the UN General Assembly by Resolution 45/158 on 18 December 1990

³⁹¹ See also Recommendation 1755 (2006)
<http://assembly.coe.int/Documents/AdoptedText/ta06/EREC1755.htm>

³⁹² ESC Secretariat, ‘Information Document: The Right To Education Under The European Social Charter’ (CoE 17 November 2006)

³⁹³ *Sulak v. Turkey*, no. 24515/94, Commission decision of 17 January 1996, Decisions and Reports 84; *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV, *Leyla Şahin v. Turkey* [GC], no. 44774/98, ECHR 2005-XI; *Mürsel Eren v. Turkey*, no. 60856/00, ECHR 2006-II; *Veľho Vělev v. Bulgaria*, no. 16032/07, ECHR 2014 (extracts)

higher education should be guaranteed on a non-discriminatory basis, states need not provide free higher education to migrant children.

While under the appendix of the ESC the right to education seems to be limited to lawfully residing migrants and contracting state nationals,³⁹⁴ the ECtHR opened the door in *COHRE v. Italy* to populations which does not fulfill the appendix definition, to nevertheless be able to claim rights sufficiently related to life and dignity.³⁹⁵ The European Commission on Social Rights also affirms that the right to education protects all children, with access granted on an equal and non-discriminative basis,³⁹⁶ stressing the particular needs of vulnerable children (minority, asylum seekers, refugees)³⁹⁷ and integration into mainstream education facilities and schemes.³⁹⁸ In addition, Articles 7, 10, 15 and 30 of the ESC guarantee the right to education in different dimensions, like its application at the working environment, the special necessity to provide it to everyone without exceptions, the simultaneous importance of social integration and the increased attention in cases of poverty and social exclusion.

EU Directive 2009/9/EC which sets common procedures for member states to return illegally staying third country nationals, provides (but does not fix as an absolute obligation)³⁹⁹ the need for minors to be “granted access to the basic education system subject to the length of their stay”.⁴⁰⁰

At the same time Recommendation no.R(84)18 of the Committee of Ministers to member states has aimed to train teachers in intercultural understanding for education, notably in a context of migration. It was followed by the Recommendation *CM/Rec(2008)4* of the Committee of Ministers which addresses to member states by the need to integrate of children of migrants and of immigrant background. Moreover, the Parliamentary Assembly of the CoE Recommendation 2034 (2014) urged the Committee of Minister to focus on measures concerning integration of migrants, particularly through “integration tests”.

As hinted above, the case law play an important role in clarifying the right to education for migrants. *Ponomaryovi v. Bulgaria*⁴⁰¹ understood the right to education under the ECHR as a public service benefiting not only its users but more broadly society as a whole. In *Foreign Students v. the United Kingdom*, Commission decision, § 4⁴⁰² the committee ruled that while the right entry to a state and the right to education are separate, expulsion depriving a child of primary education may be held to interfere with that right.

³⁹⁴ Appendix to the Revised European Social Charter (ETS 163 – European Social Charter (revised), 3.V.1996), Scope, Para 1;

³⁹⁵ *COHRE v. Italy*, Complaint No. 58/2009, Merits 25 June 2010, para 33

³⁹⁶ Yannis Kústakis, ‘Protecting Migrants under the European Convention on Human Rights and the European Social Charter: A Handbook for Legal Practitioners’ (CoE 2013) 62

³⁹⁷ ECSR “Digest of the case law of the European Committee of Social Rights” (1 September 2008) Interpretation of Article 17(1)

³⁹⁸ *ibid*

³⁹⁹ Stefano Valenti, ‘Protecting the human rights of irregular migrants: the role of national human rights structures’ (Workshop Debriefing Paper, 17-19 June 2008 Padua) (CoE 2008) 51

⁴⁰⁰ Council Directive 2003/9/EC at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF> > Art 14

⁴⁰¹ *Ponomaryovi v. Bulgaria* (App no 5335/05) ECHR 28 November 2011

⁴⁰² *Foreign Students v. the United Kingdom*, nos. 7671/76 and 14 others, Commission decision of 19 May 1977, Decisions and Reports 9

The case of *Timishev v. Russia* is particularly interesting,⁴⁰³ the applicants' children had been refused admission to the school that they had been attending for the past two years, as the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the relevant town. However, Russian law did not allow the exercise of the right to education by children to be made conditional on the registration of their parents' place of residence. Thus absent legislation to the contrary, the Court assumed the migrant children's right to education and found that the applicant's children had been denied the right to education.

In the case of *Ponomaryovi v. Bulgaria*, the Court addressed the case of two pupils of Russian nationality living in Belgium with their mother but not having permanent residence permits. Whereas secondary education was free in Bulgaria, these two pupils, on account of their administrative status, had been charged school fees. The applicants had initially entered the country lawfully but subsequently lacked permanent residence permits; the authorities had no substantive objection to their remaining in Bulgaria and apparently never had any serious intention of deporting them. Consequently, and in view of the importance of secondary education, the Court found that the requirement for the two pupils to pay fees for their secondary education on account of their nationality and immigration status constituted a violation of Article 14 of the ECHR read in conjunction with Article 2 of Protocol No. 1.⁴⁰⁴

7.2. Findings: Legal Status and Access

One of the constraints of migrant children protection is related to their age. A 2014 CoE report on Austria, France, Sweden, Hungary found that all state support for migrant childrens ends at the age of 21 for the first three states, and is present up to 24 in Hungary.⁴⁰⁵ In Austria for example, school is only compulsory up to the age of 15, after which support may end up to six months after their age of majority. Apprenticeships with state support likewise ends at the age of 21, and young adults who have not finished apprenticeships by then must support themselves. In France, compulsory education also ends at 16, and migrant children arriving above that age are only given access to education if places are available.⁴⁰⁶ State support for apprenticeship also ends at 21.

7.2.1. Legal Migrants/Residents

In conformity with the above legal framework, ELSA national reports affirm that nearly all surveyed states expressly provide legal access to free primary and secondary education for legally residing migrants (for reasons other than refugee/asylum status). However, we cannot draw conclusions from the national reports of Denmark, France, Greece, Romania and Spain due to lack of information. A slight differentiation is present in the UK. In the UK, although immigration-related documentation is not required for registration at a school, some schools

⁴⁰³ *Timishev v. Russia*, nos. 55762/00 and 55974/00, ECHR 2005-XII

⁴⁰⁴ Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, Right to education, updated on 30 April 2017 <http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf>

⁴⁰⁵ UNCHR & CoE, 'Unaccompanied And Separated Asylum-Seeking And Refugee Children Turning Eighteen: What To Celebrate?' (March 2014) 32

⁴⁰⁶ *ibid* 32.

appear to be reluctant to accept migrant children.⁴⁰⁷ Additionally, the right of children to receive education varies for the children of non-EU/EEA migrants. Children in the latter category are entitled to receive education in the UK, but are not entitled to a place in a state-funded school.⁴⁰⁸

7.2.2. Asylum Seekers

If children of asylum seekers or other protected persons (refugee) legally reside in any of the states on the basis of an asylum residence permit, they enjoy the same benefits as the citizens of the states. ELSA national reports confirm this right, with the exception of from Austria, Denmark, Norway, Poland, Russia and Spain, due to lack of information in the national report. Further, Directive 2003/9/EC, ruled that children of asylum seekers should have access to education within three months after the submission of their asylum application. The range of covered “protected persons” is intended to be broad, and some states clarify this to greater detail. FYROM’s Law of Asylum and Temporary Protection of 2009 states that right of asylum covers refugees under the UN Refugee Convention 1951 and its 1967 Protocol, and persons under “humanitarian protection” under Art 3 ECHR and Art 3 UNCAT.⁴⁰⁹ So long as the migrant child possesses a legal asylum/protection status under law, they should be able to access primary and secondary education as would a citizen.

ELSA France noted that some asylum seekers aged between 16 and 18 have difficulties accessing education because public schools claim to have no express obligation to accept them.⁴¹⁰ It further notes that, for those who have never been to school before their entry in France, it is extremely difficult to integrate them into the education system., due to the lack of language classes.⁴¹¹ In Germany, the ELSA national report found that underage asylum-seekers and underage children of asylum-seekers have exemption from compulsory education in three of Germany’s sixteen Länder (Hesse, Baden-Wuerttemberg and Saarland). Reportedly, this is due to the lack of ‘customary place of residence’ rules for the Schulgesetze of those three Länder.⁴¹² Costs such as transportation and educational materials are thus only subsidized by the public in cases in which there is such an obligation to attend school, thus further excluding underage asylum seekers and children of asylum seekers in the abovementioned three Länder.

⁴⁰⁷ European Law Students’ Association United Kingdom, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 37-39

⁴⁰⁸ Department for Education, *School Admissions: Applications from Overseas Children* (Guidance, 25 March 2014) <<https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>> accessed 10 July 2017; Human Rights Joint Committee, *Human Rights of Unaccompanied Migrant Children and Young People in the UK* (Report, 12 June 2013) <<https://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/908.htm#a23>> accessed 16 June 2017.

⁴⁰⁹ European Law Students’ Association Macedonia, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 29

⁴¹⁰ European Law Students’ Association France, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 43

⁴¹¹ UNCHR & CoE, ‘Unaccompanied And Separated Asylum-Seeking And Refugee Children Turning Eighteen: What To Celebrate?’ (March 2014) 31.

⁴¹² European Law Students’ Association Germany, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 34

7.2.3. Unaccompanied Minors

Unaccompanied minors are non-EU nationals or stateless persons below the age of 18, who enters or resides in an EU state unaccompanied by an adult responsible for him or her.⁴¹³ ELSA national research teams found express guarantees to free education for unaccompanied minors in the Czech Republic,⁴¹⁴ Finland,⁴¹⁵ Germany,⁴¹⁶ Italy,⁴¹⁷ Latvia,⁴¹⁸ the Netherlands⁴¹⁹ and Norway (if the child is likely to stay more than 3 months).⁴²⁰ Lack of information in national reports bars us from drawing conclusions on the other states.

In Germany for example, all the Federal Länder grant unaccompanied minors the right to attend school as a matter of principle. There is not, however, any nationally standardised operating procedure for education,⁴²¹ such as the non-compulsory schooling in 3 Landers noted above. Italy meanwhile imposes on all educational institutions to adopt necessary measures to enable the unaccompanied minors to complete their studies since their entry in the reception facilities.⁴²²

In the Netherlands, an unaccompanied minor can be legally residing in many of the states based on a residence permit or a no-fault residence permit (an exception to the rule that illegals receive no benefits).⁴²³ A no-fault residence permit is a special permit for unaccompanied undocumented children that cannot go back to their country of origin due to circumstances that are not their “fault”. It will be granted if the child is under the age of 15, if the child filed for an asylum application and if the child cannot go back to his country of origin for three years, as a result of circumstances beyond his control.

7.2.4. Irregularly Residing Migrant Children

ELSA’s national research teams found that for at least 12 states (Azerbaijan, Czech Republic,⁴²⁴ Finland,⁴²⁵ France,⁴²⁶ Germany, Greece, Latvia, the Netherlands, Norway, Sweden, Turkey,⁴²⁷

⁴¹³ Directive 2011/95/EU 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

⁴¹⁴ European Law Students’ Association Czech Republic, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 31

⁴¹⁵ European Law Students’ Association Finland, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 35

⁴¹⁶ European Law Students’ Association Germany, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 34

⁴¹⁷ European Law Students’ Association Italy, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 41

⁴¹⁸ European Law Students’ Association Latvia, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 31

⁴¹⁹ European Law Students’ Association the Netherlands, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 25

⁴²⁰ European Law Students’ Association Norway, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 27

⁴²¹ Bernd Parusel, ‘Unaccompanied Minors in Germany: Reception, return and integration arrangement’ Working Paper 26 (EMN 2009) 62

⁴²² European Law Students’ Association Italy, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018)

⁴²³ European Law Students’ Association the Netherlands, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 24-25

⁴²⁴ European Law Students’ Association Czech Republic, *National Report on Integration of Migrants* in European Law Students’ Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 31

United Kingdom) the legal status of a child or parent's does not adversely affect that child's right to access education.

In Azerbaijan, ELSA's national group found the irregularity of the child's stay or one of the parents' employment and/or stay cannot be an incentive behind the refusal of right to access to public pre-school educational institutions or schools in accordance with their ratification of Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁴²⁸ The German research group found that access to education is extended to irregular migrant children under law which provides that: access to public preschool educational institutions or schools shall not be re-fused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.⁴²⁹

ELSA Greece notes that although Article 16 of the Greek Constitution confers rights to "Greek citizens", its scope is the protection of the "social citizen",⁴³⁰ in other words, a member of the society who lives in Greece and participates in social life. Furthermore, a minimum of social protection is enshrined constitutionally for everyone in the Greek territory, and therefore for immigrants without a legal residence.⁴³¹

ELSA Latvia reports that the right to education for minors are granted for legal residents, those with refugee status or other subsidiary or temporary protection (Article 50(2) *Patvēruma likums*).⁴³² Latvia extends this right to children with no legal grounds for residence; third states or stateless persons have right to basic education their period of stay before voluntary exit, suspension of expulsion and under detention (Article 3(3) *Izglāības likums*).⁴³³

In the Netherlands, irregular migrants receive no benefit is present for children's education.⁴³⁴ In principle, children of non-legally residing parents do not have the right to benefits. However, you can fall back on the exception for compulsory education of Article 10(2) of the Aliens Act. The Compulsory Education Act does not distinguish between nationalities and does not make compulsory education conditional on citizenship or legal residence. However, in order to benefit from the Dutch educational system, the legal residence must be prolonged or be permanent. Irregular migrants have to send their children to school and schools have to accept them. In

⁴²⁵ European Law Students' Association Finland, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 35

⁴²⁶ European Law Students' Association France, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 43

⁴²⁷ European Law Students' Association Turkey, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 25

⁴²⁸ European Law Students' Association Azerbaijan, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 31

⁴²⁹ European Law Students' Association Germany, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 35

⁴³⁰ K. Chrysogonos. *Ατομικά και Κοινωνικά Δικαιώματα*, Nomiki Bibliothiki, 2006, 51 [Greek]

⁴³¹ European Law Students' Association Greece, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 43 accessed 20 November 2017; Papassiopi-Passia, *Δίκαιο Αλλοδαπών*, Sakkoulas Publications, 164 [Greek]

⁴³² European Law Students' Association Latvia, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 30

⁴³³ Ibid 31

⁴³⁴ European Law Students' Association the Netherlands, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 41 24-25

practice, ELSA Netherlands notes this may raise problems as illegal migrants may want to stay below the radar to avoid expulsion. The Dutch Supreme Court however, ruled that families whose asylum application has been rejected, cannot be put on the streets, because the Government has a duty of care to safeguard the interests of the child.⁴³⁵

In Sweden, ELSA notes that both registered and unregistered children, as well as children waiting for granted asylum, may access Sweden's primary and secondary education.⁴³⁶ Even children whose application for asylum has been rejected have the right to education. However, Sweden limits this right to children staying in Sweden on a residence permit shorter than a year schooling,⁴³⁷ and deems education optional for migrants.⁴³⁸

ELSA UK's research group generally provides access to education irrespective of legal status with some discrimination.⁴³⁹ Free school meals are provided universally regardless of immigration status for reception, year 1 and year 2, but not beyond this. Special benefits are limited: Asylum seekers and dependents who qualify for support under Part VI of the Immigration and Asylum Act of 1999 are entitled to free school meals, while children subject to immigration control are deemed to have "no recourse to public funds" and thus not eligible.

Some states report some form of discrimination against irregularly residing migrant children, whether through direct laws or by practical shortcomings. ELSA Italy found that while in theory foreigners cannot be discriminated as regards to access to scholarships and other services related to the right to participate to the life of the school community, these rights are sometimes subject to the requirement of legal residence, which cannot be fulfilled for children of parents who are irregular migrants.⁴⁴⁰ ELSA Slovenia reported that children of illegal migrants may be prevented from enrolling in free elementary school as they can not provide the necessary official documents, such as a valid license for residence, birth certificate or medical records.⁴⁴¹ Further, in Turkey a residence permit, a temporary protection identification document, or Foreigners Identification Card is needed for the registration procedure to the educational institutions.⁴⁴² In the case of the completed entry of an application that has not resulted in a decision, families are able to enroll their children on status of 'guest students' which is open for an amendment after the results.

ELSA Republic of Macedonia reported that the majority of the regulations on access to education are strictly applicable only for Macedonian citizens or foreigners lawfully residing in

⁴³⁵ European Law Students' Association the Netherlands, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018) 25 accessed 20 November 2017

⁴³⁶ European Law Students' Association Sweden, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrants*, (Forthcoming 2018)

⁴³⁷ Swedish School Inspectorate 2009, 2013, 2014; Swedish National Agency for Education 2014a, Department for education, 2013.

⁴³⁸ European Law Students' Association Sweden, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 30

⁴³⁹ European Law Students' Association UK, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 38-39

⁴⁴⁰ European Law Students' Association Italy, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 40

⁴⁴¹ European Law Students' Association Slovenia, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 24

⁴⁴² Turkey Law n. 6458 (Law on the Foreigners and International Protection) Article 19 ff, 2013

the country,⁴⁴³ with few particular rules governing irregular or illegal immigrants. On Russia's access to education rights, part 2 of Article 5 of the Federal Law n.109-FZ of July 18 2006 "On Migration Registration of Foreign Citizens and Stateless Persons in Russia" establishes that a foreign citizen, in the case of staying in the place of residence, is required to register. Thus, ELSA Russia notes that registration is imperative for legal stay on the territory of Russia. Without fulfilling initial registration, the right to education can be limited.⁴⁴⁴

7.3. Findings: Information, Curriculum, Special Programs

While very little information was collected across countries in this regard, it is noteworthy to mention some interesting practices or constraints observed in some of the countries covered by the research.

ELSA Azerbaijan notes that in respect to the irregular migrants in detention facilities, textbooks and required educational materials are allowed to be delivered to those studying under the Annex 6 to the Internal Discipline Rules of detention centers of illegal migrants.⁴⁴⁵

ELSA France notes that the Ministry of Education makes available numerous written and audio documents in order to inform parents or any other authority responsible for newly arrived children. For example, a bilingual greeting booklet is available in 9 languages and is dedicated to explaining the organization of schooling, as well as the specific support for learning French.⁴⁴⁶

ELSA Ireland likewise found their educational system provides a variety of online resources available such as the "Guide to Irish Educational System" and the curriculum for primary and secondary education.⁴⁴⁷

ELSA Poland first provide migrants with basic needs in centers during processing, where they are also provided classes for children which focuses on teaching Polish but also helps children with their homework, and teaching culture.⁴⁴⁸ The nature of the classes, activities undertaken, their timetables and scope vary among different centers. Most often those classes are carried out for all the children residing in the center, without dividing them into age groups. Those classes focus on providing general knowledge, although some of the centers divide their classes into thematic areas, e.g. humanistic, mathematical, or concerning the natural world.⁴⁴⁹

Migrant students in Slovenia are entitled to information to the various options and programs available in the Slovenian secondary education, during their primary education or at the time of

⁴⁴³ European Law Students' Association FYR Macedonia, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 27

⁴⁴⁴ European Law Students' Association Russia Federation, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 31

⁴⁴⁵ European Law Students' Association Azerbaijan, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 30

⁴⁴⁶ European Law Students' Association France, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 41

⁴⁴⁷ European Law Students' Association Ireland, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 23

⁴⁴⁸ European Law Students' Association Sweden, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 32

⁴⁴⁹ *ibid* 33

following their further education.⁴⁵⁰ They are also taught the same curriculum as other children, and are given additional lessons in the Slovenian language.⁴⁵¹

ELSA UK notes that there is a “lack of straightforward, easily accessible information about the UK school system” to the confusion of newly-arrived migrant and refugee families.⁴⁵² Parents and guardians usually struggle to understand the teaching process, the curriculum, and the various school policies, relying instead on information obtained from other migrant and refugee families. These concerns prompted the charity Action For Social Integration to publish a targeted guide on the education system for migrants and refugees which includes information on key issues such as getting children into primary school.⁴⁵³ This is in addition to the discrimination on free school meals noted above.

In order to facilitate the access to the Romanian educational system, ELSA notes that children of asylum seekers benefit free of charge during a school year, from a preparatory course for enrollment in the national education system.⁴⁵⁴ The preparatory course stipulated in paragraph (1) is organized by the *Ministerul Educatiei, Cercetarii, Tineretului si Sportului* (Ministry of Education, Research, Youth and Sports), in collaboration with the National Refugee Office. The minor asylum seeker is enrolled in the preparatory course within 3 months from the date of the application for asylum. At the end of the course of initiation in Romanian, an evaluation commission, whose composition and functioning is established by order of the Ministry of Education, Research, Youth and Sports, assesses the level of knowledge of the Romanian language and establishes the registration of minors who have acquired a form of protection in Romania, in the corresponding year of study.

ELSA Turkey notes that temporary education centres are exclusively created for Syrian children and are placed usually near to the camps and urban areas.⁴⁵⁵ The centres teach in Arabic and use a modified version of the Syrian curriculum, at the end of the school terms, these centres provide a certificate showing the completion status and the grades. Refugee families residing in camps are required to apply to the Provincial Education Directorates for the enrolment and determination of the status of the child. In the case of the absence of the temporary education centres, families are able to sign their children to the state schools. Procedure for the enrolment to the state schools remains the same, in regards to the application to the Provincial Education Directorates.⁴⁵⁶

⁴⁵⁰ European Law Students' Association Slovenia, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 24

⁴⁵¹ *ibid* 25

⁴⁵² European Law Students' Association UK, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 37; Middlesex University, *Newly-arrived migrant and refugee children in the British Educational System* (Report, 6 December 2010) <[https://eprints.mdx.ac.uk/9399/4/AFSI - Research Report - final.pdf](https://eprints.mdx.ac.uk/9399/4/AFSI_-_Research_Report_-_final.pdf)> accessed 21 August 2017

⁴⁵³ Middlesex University, *A guide to Schooling in England for BME and newly arrived migrant parents* (Guidance, December 2010) < <http://sprc.info/wp-content/uploads/2013/03/AFSI-Guide-for-Parents-final.pdf>> accessed 10 September 2017.

⁴⁵⁴ European Law Students' Association Romania, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 27

⁴⁵⁵ European Law Students' Association Turkey, *National Report on Integration of Migrants* in European Law Students' Association and Council of Europe, *Integration of Migrant*, (Forthcoming 2018) 25-26

⁴⁵⁶ *ibid* 25

7.4. Conclusion

It is clear from Member-States legal framework that efforts have been taken to ensure access to education to children. However, while access to education should be universal, a number of legal and practical constraints were identified in some Member States that impede migrant children from obtaining, at least, primary a secondary education. Unfortunately, information obtained through national reports was insufficient across countries to obtain a full and comparative picture of the situation in these 27 member-states of the CoE. Nevertheless, it was possible to observe. in a group of countries, that lack of residence permit and/or documentation, or at least a guarantee of residence for a specific period of time, is still a barrier for children to access the education system. Furthermore, despite efforts by some countries to create inclusive education programs or curriculum, in others, lack of language courses or programmes that take into account the language barrier seems to exclude migrant children from obtaining the education they need.

Chapter 8. The Recognition of Foreign School and University Diplomas at National Level

8.1. Legal Framework

At EU and CoE level, no automatic recognition of academic qualifications exists for higher, secondary and primary education qualifications.⁴⁵⁷ Recognition for professional qualifications are regulated through Directive 2005/36/EC and is legally distinct.⁴⁵⁸ Academic qualifications are primarily governed by the Lisbon Convention of 1997⁴⁵⁹ which supersedes prior CoE⁴⁶⁰ and UNESCO⁴⁶¹ for ratifying states.⁴⁶² Most CoE members are also part of the Bologna Process, a voluntary process establishing the European Higher Education Area, promoting the integration and development of higher education in Europe.⁴⁶³

⁴⁵⁷ ENIC-NARIC, 'European or International Degree' <<http://www.enic-naric.net/european-or-international-degree.aspx>> accessed 25 October 2017.

⁴⁵⁸ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications (7 September 2005) OJ L 255 22–142.

⁴⁵⁹ Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (adopted 11 April 1997, entered into force 1 February 1999) European Treaty Series - No. 165 (Lisbon Convention).

⁴⁶⁰ CoE, 'Related Texts' in 'Details of Treaty No.165 (Lisbon Convention)' <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165>> accessed 4 November 2017.

⁴⁶¹ UNESCO, 'Conventions and Recommendations' <<http://www.unesco.org/new/en/education/themes/strengthening-education-systems/higher-education/conventions-and-recommendations/>> accessed 4 November 2017.

⁴⁶² CoE, 'Explanatory Report to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region' (1997) <<https://rm.coe.int/16800ccde6>> accessed 24 Oct 2017 (Lisbon Explanatory Report) 1-2, 3-5; Lisbon Convention art XI.4; CoE, 'Ratification Status Lisbon Convention' <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165/signatures>> accessed 25 October 2017.

⁴⁶³ The Bologna Declaration (19 June 1999) 19-06-99 – 22.2 Ko <https://media.ehea.info/file/Ministerial_conferences/02/8/1999_Bologna_Declaration_English_553028.pdf>

Higher education qualifications are “post-secondary level” education or training, recognized by a state as belonging to its higher education system.⁴⁶⁴ Uncompleted qualifications are regulated *mutatis mutandis* as “periods of study”.⁴⁶⁵ Secondary education is regulated insofar as they are a “qualification giving access to higher education”.⁴⁶⁶ Uncompleted secondary education falls outside the scope of Lisbon Convention, as do primary education; both remain mostly unregulated at the CoE level.

State parties shall recognize foreign higher education qualifications (and qualification leading thereto) from other state parties through a national framework,⁴⁶⁷ whether through government or private institutions.⁴⁶⁸

Foreign qualifications shall be recognized (with their attached rights) unless states can prove there exists “substantial differences” with its own qualification.⁴⁶⁹ The focus is a broad comparison emphasizing the procedure and criteria for recognition, rather than definite degrees or diplomas.⁴⁷⁰ The criteria is determined by states, but subject to “fair recognition”.⁴⁷¹ The burden to provide adequate information rests with the applicant.⁴⁷² States meanwhile, must provide “adequate and clear information on its education system”, including the procedure to recognize foreign qualifications.⁴⁷³ They must also ensure the procedure is transparent, coherent, reliable, and non-discriminative.⁴⁷⁴

The Lisbon Convention relies on two implementing bodies. The Convention Committee is made up of states, institutions, and organizations.⁴⁷⁵ It is tasked with overseeing the convention and may adopt non-binding recommendations or guidelines related to the recognition of foreign qualifications.⁴⁷⁶ The European Network of National Information Centres (ENIC), comprises

accessed 25 October 2017; EHEA, ‘The Bologna Process’ <<http://www.ehea.info/pid34247/how-does-the-bologna-process-work.html>> accessed 25 October 2017.

⁴⁶⁴ Lisbon Convention art 1.

⁴⁶⁵ *ibid* arts V.1-3

⁴⁶⁶ *ibid* art 1.

⁴⁶⁷ *ibid* arts II.1, IV.1, V.1, VI.1, VIII.1-2; For good practices on academic and professional qualifications, see Anke Schuster and others (eds), ‘Recognition of Qualifications and Competences of Migrants’, (International Organization for Migrations 2013).

⁴⁶⁸ Lisbon Convention arts I, II.1; Lisbon Explanatory Report 6-9.

⁴⁶⁹ Lisbon Convention arts III.3.5, IV.1, VI.1, 2.

⁴⁷⁰ Lisbon Explanatory Report 3.

⁴⁷¹ Lisbon Convention arts 1, III.1, IV.6; Lisbon Explanatory Report 10-12, 16; for guidance on criteria see EAR-HEI, ‘The European Recognition Manual – Higher Education Institution 2nd Edition’ (EAR-HEI 2016) <<http://eurorecognition.eu/Manual/EAR%20HEI.pdf>> accessed 5 November 2017 (EAR Recognition Manual) 14-66.

⁴⁷² Lisbon Convention art III.2; See also ENIC-NARIC, ‘The Diploma Supplement’ (2007) <http://www.enic-naric.net/fileusers/THE_DIPLOMA_SUPPLEMENT.pdf> accessed 5 November 2017; ENIC-NARIC, ‘Documents Required for Recognition Procedures’ <<http://www.enic-naric.net/documents-required-for-recognition-procedures.aspx>> accessed 5 November 2017.

⁴⁷³ Lisbon Convention arts III.4, VIII, IX.

⁴⁷⁴ *ibid* art III.1 & 2.

⁴⁷⁵ *ibid* art X.2.

⁴⁷⁶ *ibid* art X.2.5; CoE, ‘Recommendation on the Recognition of Joint Degrees and its Explanatory Memorandum’ (2004) <<https://rm.coe.int/16807465b8>> accessed 5 November 2017; CoE, ‘Code of Good Practice in the Provision of Trans-national Education’ (2001) <https://www.coe.int/t/dg4/highereducation/recognition/Code%20of%20good%20practice_EN.asp> accessed 5 November 2017; CoE, ‘Recommendation on Criteria and Procedures for the Assessment on Foreign Qualifications’ (2001) <https://www.coe.int/t/dg4/highereducation/recognition/Criteria%20and%20procedures_EN.asp> accessed 5 November 2017 ; CoE, ‘Recommendation on International Access Qualifications’ (1999)

each state party's National Information Centre (NARIC).⁴⁷⁷ NARICs facilitate information of higher education systems, provide advice and other relevant services.⁴⁷⁸ ENIC serves to organize, uphold and assist practical implementation at the international level.⁴⁷⁹

On vulnerable persons, state parties to the Lisbon Convention “shall take all feasible and reasonable steps” to “fairly and expeditiously” assess refugees, displaced persons and persons in a refugee-like circumstance.⁴⁸⁰ The primary problems here are lack of documentary evidence, information access and resources to recognition procedures.⁴⁸¹ Special procedures thus should be established,⁴⁸² for example through additional examination or interviews, a greater reliance on sworn statements, appeal mechanisms or alternate pathways to recognition.⁴⁸³ ENIC/NARIC provides guidelines and showcases best practices for dealing with refugee like persons.⁴⁸⁴

Under Art 28 EC Directive 2011/95/EU state parties shall ensure “equal treatment between beneficiaries of international protection and nationals” on the recognition procedures for foreign qualifications.⁴⁸⁵ Unlike other provisions,⁴⁸⁶ the precise consequences of art 28 is still unclear. State parties to The Hague Apostille Convention⁴⁸⁷ may rely on the procedures therein to have their documents legalized. Unfortunately, many countries, particularly many origin states of refugees are not party to this convention.⁴⁸⁸

<https://www.coe.int/t/dg4/highereducation/recognition/International%20Access%20Qualifications_EN.asp>
accessed 5 November 2017.

⁴⁷⁷ Lisbon Convention art X.3.

⁴⁷⁸ *ibid* art IX.2; ENIC-NARIC, ‘Higher Education Institutions’ <<http://www.enic-naric.net/higher-education-institution.aspx>> accessed 4 November 2017.

⁴⁷⁹ Lisbon Convention art X.3.2; Lisbon Explanatory Report 22-24; ENIC-NARIC, ‘Home’ <<http://www.enic-naric.net>> accessed 5 November 2017; Lisbon Convention Committee, ‘Joint ENIC/NARIC Charter of Activities and Services’ (9 June 2004) <<http://www.enic-naric.net/fileusers/Charter.en.pdf>> accessed 5 November 2017; See also Elizabeth Zamorano and others, ‘An Exploration of the Use and Potential use of the European Qualifications Framework in Qualifications Recognition Procedures of four ENIC-NARIC Centres: Final Report’ (EAO-EA 2011).

⁴⁸⁰ Lisbon Convention art VII.

⁴⁸¹ Erwin Malfroy, ‘Guidelines for the Recognition of Refugee’s Qualification’ (Coe Working Party on Refugee Qualification; ENIC-NARIC 1999) <http://www.aic.lv/ace/WP/Refugees/guid_ref.htm> accessed 5 November 2017.

⁴⁸² Directive 2011/95/EU (Qualification Directive) (13 December 2011) OJ L 337 art 28(2).

⁴⁸³ EAR-HEI, ‘Recognition of qualification holders without documentation - European guidelines for credential evaluators and admissions officers’ (EAR-HEI Consortium 2016) <http://www.enic-naric.net/fileusers/5335_EAR-HEI-Recognition-of-qualification-holders-without-documentation.pdf> accessed 5 November 2017; EAR Recognition Manual 129-134; EAR & ENIC-NARIC, ‘European Area of Recognition (EAR) Manual Chapter 12’ <<http://ear.enic-naric.net/manual/Chapter12/default.aspx>> accessed 5 November 2017; For examples of best practices see ENIC-NARIC, ‘Qualifications Held by Refugees’ <<http://www.enic-naric.net/recognise-qualifications-held-by-refugees.aspx>> accessed 5 November 2017.

⁴⁸⁴ ENIC-NARIC, ‘Qualifications Held by Refugees’ <<http://www.enic-naric.net/recognise-qualifications-held-by-refugees.aspx>> accessed 5 November 2017.

⁴⁸⁵ This directive may be subject to revision, see EC, ‘Explanatory Memorandum’ COM/2016/0466 final – (13 July 2016) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0466>> accessed 5 November 2017.

⁴⁸⁶ See IARLJ, ‘Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis’ (EASO, December 2016).

⁴⁸⁷ Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (adopted entered into force 24 January 1965); International Apostille, ‘What is Apostille’ <<http://www.internationalapostille.com/what-is-an-apostille/>> accessed 5 November 2017.

⁴⁸⁸ HCCH, ‘Apostille Convention Ratification Status’ <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>> accessed 5 November 2017.

8.2. Findings – General Procedure & Criteria

All countries in this report are parties to the Lisbon Convention save Greece. In 2016 the Convention Committee published the Lisbon Convention Monitoring Report (Monitoring Report),⁴⁸⁹ and was careful not to portray deficiencies in the implementation of the Lisbon Convention as outright violations.⁴⁹⁰

According to the Monitoring Report, of the 27 countries surveyed by ELSA, most had national regulations: 16 regulate recognition criteria and procedures at the national level, (Albania, Armenia, Azerbaijan, Bulgaria, Czech Republic, France, FYRO Macedonia, Malta, Poland, Romania, Russia, Spain, Slovenia, Turkey, Ukraine) and 3 partially regulate at the national level (Finland, Latvia, Sweden). Only 7 countries do not regulate at the national level (Austria, Bosnia-Herzegovina, Germany, Italy, the Netherlands, Norway and the United Kingdom), instead delegating wide authority to each higher education institution. Greece was excluded from the Monitoring Report.

Of the countries that do regulate at the national level, the criteria regulated are as follows:⁴⁹¹

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
|------------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|
| ALB | + | + | | + | + | + | + | + | + | + | + | + | + | + | + |
| ARM | + | + | | + | + | + | + | + | + | + | + | + | + | + | + |
| AZR | + | | | + | + | + | | + | + | | | + | + | + | + |
| BUL | + | | + | + | + | + | | + | + | + | + | + | + | + | + |
| CZE | + | + | | + | + | + | + | + | + | | + | + | + | + | + |
| FIN | | | | | | + | | | | | | | | | |
| FRA | | | + | | | | + | + | | | | | + | + | |
| MAC | + | + | | + | + | | + | | | | | | + | + | |
| MAL | | | | | | | | | + | | | + | | | + |
| POL | + | | + | + | + | + | | + | | | | + | + | + | |
| ROM | + | | | + | + | | | + | + | + | | + | + | | + |
| RUS | + | + | | | + | + | | + | + | | + | + | + | + | |
| SPA | + | + | | + | + | + | + | + | + | | + | + | + | + | + |
| SLO | + | + | + | + | + | + | + | + | + | + | + | + | + | + | + |
| TUR | + | | + | + | + | + | + | | + | | + | + | + | + | + |
| UKR | + | | | + | + | + | | + | + | + | | + | + | + | + |

Legend: 1 – recognition status of the awarding institution; 2 – type of awarding institution; 3 – learning outcomes; 4 – list of courses/content; 5 – quality/accreditation; 6 – formal rights (function of the qualification in the home country; e.g. access to further study); 7 – level in the qualifications framework(s); 8 – workload; 9 – nominal duration; 10 – profile; 11 – admission requirements, 12 – Time limit, 13 – Documents required; 14 – assessment process description; 15 – status of recognition report

All countries surveyed allow applicants the right to appeal, most regulating it at the national level. Only the United Kingdom exclusively regulates the right to appeal through internal regulations of each higher education institution.⁴⁹²

⁴⁸⁹ CoE & UNESCO, 'The Committee of the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region: Monitoring the Implementation of the Lisbon Recognition Convention' (Paris 2016) (Monitoring Report).

⁴⁹⁰ Monitoring Report 71-72.

⁴⁹¹ *ibid* 19, 21.

Of the 50 Monitoring Report countries, only 7 have a working definition of “substantial differences” at the national level, and 4 at the institutional level.⁴⁹³ Of the states presently surveyed, only Italy defines substantial differences, and at the institutional level. However, there is some consensus on what could constitute factors in “substantial differences” *inter alia*.⁴⁹⁴ formal accreditation status (49/50), duration shorter by more than one year (35/50), differences in program content and courses (35/50), different rights conferred by foreign degrees (28/50), and lack of a final thesis (21/50).

ELSA’s National Legal Research Groups generally confirm the Monitoring Report. Albania,⁴⁹⁵ Azerbaijan,⁴⁹⁶ the Czech Republic,⁴⁹⁷ FYRO Macedonia,⁴⁹⁸ Poland,⁴⁹⁹ and Spain⁵⁰⁰ regulate foreign qualifications through their respective ministries of education. These ministries tend to regulate standards, recognition, and provide advice or appeals. Armenia,⁵⁰¹ Bulgaria,⁵⁰² France,⁵⁰³ Malta,⁵⁰⁴

⁴⁹² Monitoring Report 29-31.

⁴⁹³ *ibid* 33-36.

⁴⁹⁴ *ibid* 35-37.

⁴⁹⁵ European law Students’ Association Albania, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 31-32; Albanian Ministry of Education, Sports and Youth, ‘Recognition of Foreign Diplomas’ <<http://www.arsimi.gov.al/al/arsimi/universiteti/njehsimi-i-diplomave-te-huaja>> accessed 5 November 2017 [Albanian].

⁴⁹⁶ European law Students’ Association Azerbaijan, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 31-33; Law of the Republic of Azerbaijan on Education 1992 [Azərbaycan Respublikasının Təhsil haqqında Qanunu] [Azerbaijani]; Azerbaijan Ministry of Education, ‘Accreditation and Nostrification Department’ <www.nostrifikasiya.edu.az> accessed July 15 2017 [Azerbaijani]; Ministry of Education of the Republic of Azerbaijan, ‘Nostrifikasiya’ <<http://edu.gov.az/az/page/67>> accessed July 15 2017 [Azerbaijani].

⁴⁹⁷ European law Students’ Association Czech Republic, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 32-36; Czech Republic Ministry of Education ‘List of universities and their study programs’ <<http://www.msmt.cz/vzdelavani/vysoke-skolstvi/prehled-vysokych-skol-v-cr-3?lang=1>> accessed July 15 2017 [Czech only]; Czech Republic Ministry of Education, ‘Academic Recognition’ <<http://www.msmt.cz/eu-and-international-affairs/academic-recognition>> accessed July 15 2017.

⁴⁹⁸ European law Students’ Association FYRO Macedonia, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 31-32; State Commission for Decision-making in Administrative Procedure and Second-Instance Labor Procedure, ‘Administrative Procedure’ <<http://www.dkz.mk>> accessed 5 November 2017; Law on Higher Education, Official Gazette of the Republic of Macedonia No. 35/08 and 103/08 as lastly amended; Law on High School Education, Official Gazette of the Republic of Macedonia no.44/1995 as lastly amended; Law on Primary Education, Official Gazette of the Republic of Macedonia no. 103/2008 as lastly amended.

⁴⁹⁹ European law Students’ Association Poland, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 34-35; Polish Ministry of Education, ‘Legislation on the Recognition of Education’ <http://www.nauka.gov.pl/uznawanie-wykształcenia/akty-prawne.html#Lista_instytucji> accessed 20 July 2017 [Polish].

⁵⁰⁰ European law Students’ Association Spain, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 28-31; Spanish Royal Decree no. 967/2014 [por el que se establecen los requisitos y el procedimiento para la homologación y declaración de equivalencia...] arts 5, 10-14.

⁵⁰¹ European law Students’ Association Armenia, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 24 -25; Republic of Armenia Law on Higher and Postgraduate Professional Education HO-62-N/14.12.2004/EN/I/29.05.2015 <<http://www.anqa.am/en/about-us/legal-field/laws/law-of-the-republic-of-armenia-on-higher-and-postgraduate-professional-education/>> accessed on 26 November 2017 arts 8, 20

⁵⁰² European law Students’ Association Bulgaria, *National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 31-33; NACID, ‘Home’ <<https://portal.nacid.bg/>> accessed on 23 August 2017 [Bulgarian].

Romania,⁵⁰⁵ Russia,⁵⁰⁶ Slovenia⁵⁰⁷ and Turkey⁵⁰⁸ rely on specialised national commissions or bodies, usually in collaboration or specific arrangement to NARICs.

For states without national regulations, the national legal research groups found that this does not imply a legal vacuum. The Austrian research group noted that basic legal parameters for higher education are regulated in the University Act (*Universitätsgesetz*).⁵⁰⁹ School diplomas in foreign countries are recognized by the Federal Ministry for Education (*Bundesministerium für Bildung*),⁵¹⁰ which grants all relevant legal titles.⁵¹¹ In Bosnia and Herzegovina, the Ministry of Education, Science and Culture recognizes secondary qualifications, while higher education qualifications are recognized by the Centre for Information and Recognition of Documents in the Higher Education Area (CIP/CIR),⁵¹² the latter providing advisory recommendations.⁵¹³

⁵⁰³ European Law Students' Association France, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 44-48; CIEP, 'Directory of regulated professions' <<http://www.ciep.fr/en/directory-of-regulated-professions>> accessed 15 August 2017; CIEP, 'CIEP : rôle, statut, missions' <<http://www.ciep.fr/role-statut-missions>> accessed 15 August 2017 [French].

⁵⁰⁴ European Law Students' Association Malta, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 31-34; NCFHE, 'National Commission for Further and Higher Education Annual Report 2013' (Ministry of Education and Employment 2013) <<https://ncfhe.gov.mt/en/resources/Documents/Annual%20Reports/Annual%20Report%202013.pdf>> accessed 5 November 2017; Laws of Malta, Chapter 327, Education Act (1988 as lastly amended) arts 64 & 65; Laws of Malta, Chapter 451, Mutual Recognition of Qualifications Act (2002 as lastly amended).

⁵⁰⁵ European Law Students' Association Romania, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 29-30; Regulation on the Organization and Operation of the National Center for Recognition and Equivalence of Diplomas, Ordin 4022/14.05.2008 [Regulamentului de organizare și funcționare a Centrului Național de Recunoaștere și Echivalare a Diplomelor...].

⁵⁰⁶ European Law Students' Association Russia, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 36-37; Federal Law No. 273 of 29 December 2012 on Education (Russia) [Федеральный Закон Российской Федерации от 29 декабря 2012 года №273-ФЗ] art 107; The Federal Service for the Supervision of Education and Science (Rosobrnadzor), 'Recognition of Foreign Degrees' <<http://obrnadzor.gov.ru/en/nostrification/>> accessed 03 November 2017.

⁵⁰⁷ European Law Students' Association Slovenia, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 26-28; The Assessment and Recognition of Education Act (ZVP) Uradni list RS, št. 87/2011 arts 17-18 [Slovenian].

⁵⁰⁸ European Law Students' Association Turkey, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 28-30; The Higher Education Council, 'Home' <<http://www.yok.gov.tr/web/denklikbirimi>> [Turkish]; Higher Education Law of Turkey No. 2547; Regulation on the Recognition of Foreign Higher Education Diplomas <[http://www.yok.gov.tr/documents/29946471/30170001/Regulations on Recognition and Equivalence of Foreign Higher Education Diplomas.pdf](http://www.yok.gov.tr/documents/29946471/30170001/Regulations%20on%20Recognition%20and%20Equivalence%20of%20Foreign%20Higher%20Education%20Diplomas.pdf)> accessed 5 November 2017.

⁵⁰⁹ European Law Students' Association Austria, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 29-31; Dragaric D and others, *Handbuch des Österreichischen Hochschulrechts – Band 8* (2nd edn, NWV 2012) 259 [German]; Austrian University Act BGBl. I. No. 12/2002 [Universitätsgesetz, UG] §§ 51 Abs 2 Z 28, 90, 124 Abs 7.

⁵¹⁰ Austrian School Education Act 2001 [Schulunterrichtsgesetz, SchUG] § 75 Abs 1.

⁵¹¹ Wieser B, *Handbuch des österreichisches Schulrechts - Band 3 Schulunterrichtsrecht* (NWV 2015) 243 [German].

⁵¹² European Law Students' Association Bosnia & Herzegovina, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 22-24; Framework Law on Higher Education in B&H, Official Gazette of B&H, No. 59/07; Recommendations on the Criteria for Assessment of Foreign Higher Education Qualifications in the Procedure of Recognition for the Purposes of Employment and Further Education, Official Gazette of B&H, No. 16/03; Qualification Framework in B&H, Official Gazette of B&H, No. 9/13 and 81/13.

Finland recognizes four different avenues.⁵¹⁴ The Finnish National Agency for Education recognizes higher education studies.⁵¹⁵ Field specific authorities deal with relevant professional qualifications, and employers or higher education institutions may also self-assess foreign qualifications, under the advice of the National Agency.⁵¹⁶

While lacking a national procedure Germany regulates qualifications through the Federal Government Recognition Act (*Anerkennungsgesetz*).⁵¹⁷ Specific professional qualifications are regulated by the appropriate state authority.⁵¹⁸ University diplomas from EU and non-EU states are recognized through the University Act (*Hochschulgesetz*). Recognition is carried out by the Central Office for Foreign Education (*Zentralstelle für ausländisches Bildungswesen*)⁵¹⁹ who issues an advisory statement.⁵²⁰

The Greek national report notes that Greece is not a party to the Lisbon Convention,⁵²¹ but possesses a NARIC-like institution known as the Inter-University Centre for the Recognition of Foreign Degrees (DOATAP).⁵²² Recognition requests are submitted to the DOATAP,⁵²³ and are assessed on the basis of formal criteria against Greek institutions.

Ireland created Quality and Qualifications Ireland (QQI) to enable foreign qualification recognition,⁵²⁴ which hosts NARIC Ireland. NARIC provides compatibility statements positioning foreign qualification in the framework of the Irish educational system.⁵²⁵

⁵¹³ Framework Law on Higher Education in Bosnia and Herzegovina, Parliamentary Assembly of BiH, no. 94/07.

⁵¹⁴ European Law Students' Association Finland, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 38-41; The Act on Eligibility for Public Posts Provided by Higher Education Studies Completed Abroad (1385/2015) [*Laki ulkomailla suorittettujen korkeakoulupintojen tuottamasta virkakelpoisuudesta*]; The Act on Recognition of Professional Qualifications (1384/2015) [*Laki ammattipätevyyden tunnustamisesta*].

⁵¹⁵ The National Agency for Education, 'Qualification for a profession based on a degree passed abroad' <http://www.oph.fi/english/services/recognition/professional_rights_on_the_basis_of_a_foreign_qualification> accessed July 2 2017 [Finnish].

⁵¹⁶ The National Agency for Education, 'Recognition of degrees and international comparison' <<http://www.oph.fi/english/services/recognition>> accessed July 2 2017 [Finnish].

⁵¹⁷ European Law Students' Association Germany, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 36-38; German Law for improvement of detection and recognition acquired professional qualifications abroad (15 March 2012) [Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen].

⁵¹⁸ German Law concerning the assessment of equalisation of professional qualifications § 1 BQFG [Gesetz über die Feststellung der Gleichwertigkeit von Berufsqualifikationen – Berufsqualifikationsgleichstellungsgesetz] [German]

⁵¹⁹ ZfAB, 'Information portal of the German government for the recognition of foreign professional qualifications' <https://www.anerkennung-in-deutschland.de/html/en/assessment_of_higher_education_certificates.php> accessed 23 July 2017.

⁵²⁰ Ibid.

⁵²¹ European Law Students' Association Greece, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 45-49.

⁵²² DOATAP, 'Home' <<http://www.doatap.gr/en/>> accessed 5 November 2017; Hellenic National Academic Recognition and Information Center and other provisions Law No. 3328/2005.

⁵²³ DOATAP, 'Documents Required' <<http://www.doatap.gr/en/dikaialog.php>> accessed 5 November 2017 [Greek].

⁵²⁴ European Law Students' Association Ireland, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 24-27; Irish Qualifications and Quality Assurance (Education and Training Act) Number 28 of 2012.

⁵²⁵ QQI, 'NARIC Ireland' (Quality and Qualifications Ireland, 2017) <<http://www.qqi.ie/Articles/Pages/NARIC-Ireland.aspx>> accessed 6 July 2017; QQI, 'National Framework of Qualifications (NFQ)' (Quality and Qualifications Ireland, date unknown) <[http://www.qqi.ie/Articles/Pages/National-Framework-of-Qualifications-\(NFQ\).aspx](http://www.qqi.ie/Articles/Pages/National-Framework-of-Qualifications-(NFQ).aspx)> accessed 5 July 2017.

The legal research group in Italy observed that as general requirements, legal translation, legalization and a declaration from the Italian diplomatic offices, are necessary.⁵²⁶ Applications may be made for academic purposes (access to first or post graduate university programs) or for employment.⁵²⁷ Academic recognition should be made to universities or to the *Alta Formazione Artistica e Culturale*,⁵²⁸ with appeals made to the Regional Administrative Tribunal. Employment for public office requires recognition applications be filed to the Italian Ministry of Education, University and Research.⁵²⁹

The report from Latvia noted that the state oversees recognition through its Academic Information Centre (*Akadēmiskās informācijas centrs*).⁵³⁰ Recognition request to continue studies are directed to specific institutions of higher education while employment or professional qualifications to the relevant employer. Recognition requests primary or secondary school to the Ministry of Education and Science.⁵³¹ In all cases the Academic Information Centre will provide a recommendation (*izziņa*) as to which Latvian qualification the foreign diploma is equivalent to.⁵³²

Norway coordinates applications through the Coordinated Admissions Body (*Samordna Opptak*) in charge of public and private institutions.⁵³³ Degrees from recognized institutions may be used directly, while unrecognized degrees are referred to specific universities or the Coordinated Admissions Body. Sweden implements recognition through The Council for Higher Education (UHR) for qualifications from a higher education, post-secondary vocational education or upper secondary education that have been obtained abroad.⁵³⁴

⁵²⁶ European Law Students' Association Italy, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 41-45; Decree no. 394 of the President of the Republic of Italy (Regulation to implement the Consolidated Law provisions governing immigration and the status of foreigners) 1999, [Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero] art 46.

⁵²⁷ CIMEA 'Recognition of Qualifications' <<http://www.cimea.it/en/services/services-recognition-of-qualifications/recognition-of-qualifications.aspx>> accessed 5 November 2017.

⁵²⁸ Italy Ratification of the Lisbon Convention, Law no. 148 of July 11 2002 [Ratifica ed esecuzione della Convenzione sul riconoscimento dei titoli di studio relativi all'insegnamento superiore nella Regione europea, fatta a Lisbona l'11 aprile 1997, e norme di adeguamento dell'ordinamento interno].

⁵²⁹ Italy Decree no. 165 (General rules on the work in the public administrations) 2001 [Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche] art 38 (3).

⁵³⁰ European Law Students' Association Latvia, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 32-33; Republic of Latvia Education Law (Latvijas Republikas Izglītības likums) (1998 as amended 2017) <www.vvc.gov.lv/export/sites/default/docs/LRTA/Citi/Education_Law.doc> accessed 5 November 2017; Academic Information Centre, 'Home' <<http://www.aic.lv/portal/en>> accessed 31 August 2017.

⁵³¹ Republic of Latvia Education Law, para 4.

⁵³² *ibid*, para 3.

⁵³³ European Law Students' Association Norway, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 28-29; Regulations concerning admission to higher education 2017 [Forskrift om opptak til høyere utdanning]; Samordna Opptak, <<https://www.samordnaopptak.no>> accessed 01 September 2017.

⁵³⁴ European Law Students' Association Sweden, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 34-37; 'The Directive on Professional Qualifications – a Complete Implementation' (Public Investigation SOU 2014:19) 171 [Yrkeskvalifikationsdirektivet – Ett samlat genomförande, Swedish].

The national research groups noted that the Netherlands⁵³⁵ and the United Kingdom⁵³⁶ devolve recognition of foreign qualifications to each national higher education institution, and adopt a hands-off approach. In both cases, the state NARIC advises and provides general information on the criteria and procedures;⁵³⁷ in the UK, the NARIC also provides an advisory statement of comparability.⁵³⁸ Finally, Ukraine recognizes foreign degrees through individual higher education institutions (continuing studies, academic post) or the Ministry of Education (employment and applying for education in Ukraine),⁵³⁹ the resulting assessment grants a certificate confirming the right to continue education or employment.

8.3. Findings - Refugees

Refugees' qualifications are formally regulated at the national level of only 4 surveyed countries (Czech Republic, France, Germany, Malta) and by other competent recognition authorities in 3 states (Finland, the Netherlands, Sweden); it is not subject to specific regulation in the other states.⁵⁴⁰ Germany, France, the Netherlands and Sweden have introduced the use of background papers for refugees without documentary evidence, which typically includes an overview of the claimed educational background with all available documents and evidence, and a checklist based on the Diploma Supplement⁵⁴¹ for authorities to add more relevant information. The outcome may be a formal decision (Germany, France, Finland), and advisory statement (France, the Netherlands, Sweden), or an explanatory document without recognition (Sweden).

The Monitoring Report specifically singles out Norway as having the most comprehensive system, which involves evaluation of all available documents, interviews and tests by experts.⁵⁴² Refugees and similar persons undergo this procedure if they are rejected from the normal process.⁵⁴³

⁵³⁵ European Law Students' Association The Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, *Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 26-27.

⁵³⁶ European Law Students' Association The United Kingdom, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 42-56; Monitoring Report 59 & ch 1.

⁵³⁷ NUFFIC, 'Academic diploma recognition in The Netherlands – how does it work?' <<https://www.studyinholland.nl/documentation/academic-diploma-recognition-in-the-netherlands-how-does-it-work.pdf>> accessed July 8, 2017; NARIC UK, 'Evaluation Criteria Methodology' <<https://www.naric.org.uk/naric/Code%20of%20Practice/Evaluation%20Criteria%20and%20Methodology.aspx>> accessed 5 November 2017.

⁵³⁸ NARIC, 'Statement of Comparability' <<https://www.naric.org.uk/naric/individuals/Compare%20Qualifications/Statement%20of%20Comparability.aspx>> accessed 11 July 2017.

⁵³⁹ European Law Students' Association Ukraine, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 25-27; Ukraine Law n. 504 (The Order of recognising degrees of higher education gained in foreign higher educational institutions) 2015 [Порядок визнання здобутих в іноземних вищих навчальних закладах ступенів вищої освіти] art 1.

⁵⁴⁰ Monitoring Report 47-49.

⁵⁴¹ *ibid* 48-49.

⁵⁴² *ibid* 48; NOKUT, 'Recognition Procedure for Persons without Verifiable Documentation (UVD-procedure)' <<http://www.nokut.no/en/Foreign-education/NOKUTs-general-recognition/Recognition-Procedure-for-Persons-without-Verifiable-Documentation/>> accessed 5 November 2017.

⁵⁴³ NOKUT, 'General Criteria to Recognize Foreign Education' <<http://www.nokut.no/no/Utdanning-fra-utlandet/NOKUTs-generelle-godkjenning/NOKUTs-kriterier/>>, accessed 01 September 2017

The report from Bulgaria found that while Bulgaria lacks specific procedures, refugees - from unexpected circumstances such as natural disasters, military actions in their country etc - with insufficient documentation can ask a court to establish the relevant facts.⁵⁴⁴ Similarly in the Czech Republic, persons under refugee-like circumstances may submit personal statements and other means of proof.⁵⁴⁵ The French national report confirms ENIC-NARIC has developed specific procedures for refugees:⁵⁴⁶ free of charge, flexible and requiring necessarily only a “minimum of documents”,⁵⁴⁷ but notes that it is unclear whether this procedure is open only to refugees or people in a refugee-like position.

There is insufficient information on the treatment of refugees by DOATAP,⁵⁴⁸ but Greece is currently involved in a pilot project for the European Qualifications Passport for Refugees.⁵⁴⁹ In Italy, refugees, displaced persons and persons in a refugee-like situation, are subject to the same provisions regulating the recognition of diplomas, certificates and other foreign qualifications which are applicable to Italian citizen; it does not seem to grant preferential treatment.⁵⁵⁰

The national report from Turkey noted potential good practice in Turkey, where the Higher Education Council has designated universities with extra quota for Syrian refugees.⁵⁵¹ The UNCHR recently announced that the EU, Turkey and the UNCHR will work together to aid refugees in recognizing their degrees.⁵⁵² However, no special recognition procedure for refugees or asylum seekers exists in Turkey as of yet. The UK Government acknowledged that they have not implemented Article VII of the Lisbon Convention and have no regulations at any level

⁵⁴⁴ European law Students' Association Bulgaria, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 31-34; National Regulation on State Requirements for acknowledgment of acquired higher education, Council of Ministers Decree No. 168 of 14 August 2000 <<http://www.lex.bg/laws/ldoc/-549417984>> [Наредба За Държавните Изисквания За Признаване На Придобито Висше Образование И Завършени Периоди На Обучение В Чуждестранни Висши Учиилища] accessed on 19 September 2017 §1.

⁵⁴⁵ European law Students' Association Czech Republic, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 33-36; Czech Act. No. 111/1998 Coll. on Higher Education Institutions and on Amendment to Other Acts, (22 April 1998) as amended.

⁵⁴⁶ European law Students' Association France, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 44-48; CIEP, 'Documents required for a certificate of recognition' <<http://www.ciep.fr/en/enic-naric-france/documents-required-for-a-certificate-of-recognition>> accessed 15 August 2017 [French].

⁵⁴⁷ CIEP, 'Reconnaissance des diplômes des réfugiés' <<http://www.ciep.fr/actualites/2015/12/17/reconnaissance-diplomes-refugies>> accessed 15 August 2017 [French].

⁵⁴⁸ ENIC-NARIC, 'Greece – Qualifications' <http://www.enic-naric.net/greece.aspx#anc11_20c> accessed 5 November 2017.

⁵⁴⁹ CoE, 'Pilot Project: Recognition of Qualifications held by Refugees' <<http://www.coe.int/en/web/education/recognition-of-refugees-qualifications>> accessed 11 July 2017.

⁵⁵⁰ Italy Legislative Decree no. 251 (Implementation of Directive 2004/83/EC) of 2007 [Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonchè norme minime sul contenuto della protezione riconosciuta testo in vigore] art 26 § 3.

⁵⁵¹ European law Students' Association Turkey, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants* (Forthcoming 2018) accessed 20 November 2017, 29; See also, Kevin Kamal, 'Education in Turkey' <<https://wenr.wes.org/2017/04/education-in-turkey>> accessed 3 November 2017.

⁵⁵² UNCHR, 'Press Release and Statement' <<http://www.unhcr.org/tr/en/press-releases-and-statements>> accessed August 25 2017.

concerning the qualifications of refugees' and displaced persons.⁵⁵³ UK NARIC is currently involved in a pilot project for the European Qualifications Passport for Refugees,⁵⁵⁴ which is a specially developed assessment scheme for refugees without adequate documentation, including information on integration, employment and further studies.

8.4. Conclusion

Migrants and particularly refugees often enter states carrying few belongings. The things they do carry: their skill, education and resolve, are nigh useless if local laws cannot accommodate them. Quick and effective integration thus benefits both the host state and the migrants themselves.

To this end, all states surveyed had procedures and criteria (to varying degrees, such as guidelines) to recognize foreign qualifications, whether through national regimes or advisory via ENIC-NARIC. Concerningly, all surveyed states except Italy lacked a clear definition of “substantial differences” but general agreement is present for several possible criteria: accreditation status, program content, rights attached & final thesis. The sooner states can adopt national criteria, and reach international consensus, the better for migrant’s legal certainty, as they (and origin education institutions) can better prepare documentation and other information. The legal status of the final recognition document also varies, from a legally binding document to a purely advisory recommendation. This may limit its usefulness to migrants, as given their already vulnerable position in a competitive economy, anything less than legal status may put them in a disadvantageous position in the labour market.

The majority of states had not set up comprehensive if any procedures to deal with the special vulnerabilities of refugees and those in refugee-like circumstances, which raises possible violations of Article VII Lisbon Convention. Providing national-treatment to refugees is welcome but insufficient (eg. Italy, Armenia, Article 28 of Directive 2011/95/EU). The Norwegian practice of relying on in-depth interviews and tests to assess undocumented claims/qualifications is worthy of replicating, and is similar to the European Qualifications Passport of Refugees currently being piloted. Given refugees’ situations, other helpful practice may include alternative methods of undocumented claims (eg. Bulgaria, Czech Republic), a waiver/deferment of fees (eg. France), provisions of translators/interpreters, and general guidance of the procedure and expected integration process.

⁵⁵³ Monitoring Report ch 5.

⁵⁵⁴ Council of Europe, ‘Pilot Project: Recognition of Qualifications held by Refugees’ <<http://www.coe.int/en/web/education/recognition-of-refugees-qualifications>> accessed 11 July 2017.

Chapter 9. Right to Vote and Stand for Elections for Migrants

9.1. Legal Framework

9.1.1. Council of Europe Framework

The right to free elections for citizens of Member States of the Council of Europe is guaranteed under Protocol , Article 3 to the ECHR. The active aspect of the right to free elections is the right to vote. This aspect is subject to some limitations regarding the margin of appreciation that each Member State has, in topics like the fixed minimum age of the individuals that take part in elections. The passive aspect of the right to free elections is the right to stand as a candidate. In the passive aspect the States have a more broad margin of appreciation. The right to free elections also derives from the exercise of the right to freedom of expression⁵⁵⁵ and complements to the right to freedom of peaceful assembly and to freedom of association with others.⁵⁵⁶ The prohibition of discrimination is also a fundamental right correlated to the right to vote⁵⁵⁷. However, under Article 16 of ECHR, ‘nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.’⁵⁵⁸

Therefore, the national legislators are not required to grant the right to vote and stand as candidates to an electorate that includes nationals and migrants, with or without a permanent residence. Certainly, this is an area of law in which the CoE does not have competence to act freely and it is on the discretion of each State to create and amend its own rules and procedures to allow or prohibit this participation.

The right to vote in local authorities for foreigners within the Member States of the Council of Europe is regulated in the Treaty no. 144, *Convention on the Participation of Foreigners in Public Life at Local Level* (hereinafter Convention) under Part I, Chapter C.

The Article 6 sets some criteria for foreign residents to participate in local and municipal elections which are the following: i. The foreign resident should fulfill the same legal requirements as apply to nationals, ii. The foreign resident should have a lawful residence in the national territory and finally, iii. The foreigner should have a habitual resident in the State concerned for the 5 years preceding the elections. However, a Contracting State may declare,

⁵⁵⁵ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, art 10, ETS 5, available at: <http://www.echr.coe.int/Documents/Convention_ENG.pdf>

⁵⁵⁶ *ibid*, art 11

⁵⁵⁷ *ie, Sejdic and Finci v. Bosnia and Herzegovina*, Application nos. 27996/06 and 34836/06, Council of Europe: European Court of Human Rights, 22 December 2009, available at: <http://www.refworld.org/cases,ECHR,4b44a28a2.html>

⁵⁵⁸ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, art 16, ETS 5, available at: <http://www.echr.coe.int/Documents/Convention_ENG.pdf>

when depositing its instrument of ratification, acceptance, approval or accession, that it intends to confine the application of paragraph 1 to the right to vote only.⁵⁵⁹

9.1.2. European Union Framework

The decisive step was taken in 2007 through the Treaty on the Functioning of the European Union, (hereinafter TFEU), which established under article 20 Article (2) (b) that all “Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;”⁵⁶⁰. Article 22 (1) and (2) of the same Treaty exhaustively describes the range of the rights granted to EU citizens.⁵⁶¹ As such, every EU citizen residing in a Member State that he is not a national of, can vote and stand for candidate both in municipal and European Parliament elections, under the same conditions as nationals. Furthermore, Council Directive 94/80/EC of 19 December 1994 laid down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.⁵⁶²

9.2. Findings of the ELSA National Groups

9.2.1. Requirements for the right to vote in National and Presidential elections

Most of the Member States of EU, link the right to vote and stand as candidates in National and Presidential elections and referendums with citizenship. The Constitutions of several states grant electoral and political rights only to nationals with the aim to protect the State’s sovereignty. The provisions of the European Convention of Human Rights commit all 27 countries participating in this Legal Research Group.

In every country participating in the survey, the Constitution foresees that citizenship is the main requirement linked to the electoral right in national and presidential elections. Age is the second requirement to enable electoral right to a national. In most of the countries this is the age of 18.

In a total of 27 countries, 22 grant non-nationals with electoral rights, only when they are above 18 years old and they have obtained citizenship according to the requirements of national legislation.

There are only three exceptions to this trend and they are the following: i. Citizens of the Commonwealth of Nations and of the Republic of Ireland are entitled to vote in parliamentary elections under the Representation of the People Act 1983 if eligibility is not restricted by the

⁵⁵⁹ Council of Europe, Convention on the Participation of Foreigners in Public Life at Local Level, art 6, Strasbourg, 05/02/1992, available at: <https://rm.coe.int/168007bd26>

⁵⁶⁰ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, art 20, 13 December 2007, 2008/C 115/01, available at: <http://www.refworld.org/docid/4b17a07e2.html>

⁵⁶¹ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, art 22, available at: <http://www.refworld.org/docid/4b17a07e2.html>

⁵⁶² Council of Europe, Directive, 94/80/EC of 19 December 1994, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31994L0080>

same age, residence, and capacity restrictions applied to UK citizens.⁵⁶³ Under the provisions of the Ireland Act 1949, the British government does not consider Ireland to be a foreign country with the effect that ‘Irish citizens are not considered to be “aliens.”’⁵⁶⁴ ii. The same provision in the Irish Act 1949 works for British people and their right to vote in all Irish general elections, including local elections as well.⁵⁶⁵

iii. The last exception is found in Azerbaijan, where Article 12 (2) of the Election Code of Azerbaijan Republic provides that, stateless persons regularly residing on the territory of Azerbaijan for more than 5 years have the right to vote in presidential, parliamentary, and municipal elections and on national referendums.⁵⁶⁶

It is very interesting to bring up what law foresees in Bosnia & Herzegovina about the participation of minorities in political decisions. The Dayton Agreement⁵⁶⁷ suggested a Constitutional arrangement which was finally adopted by the Constitution according to which, only people declaring affiliation with Bosniaks, Croats or Serbs were eligible to stand for election to the tripartite State presidency and the second chamber of the State parliament. There is a violation of Article 14 (prohibition of discrimination) and violation of Article 1 of Protocol No. 12 to the Convention (general prohibition of discrimination).⁵⁶⁸ According to Article 14 of the Convention, each one should enjoy the rights that the Convention enacted, including the right to vote, without any discrimination based on sex, color, language, race, religion, political or other opinion etc. In the Constitutional arrangement that was finally adopted, the right to stand for elections was granted with criteria based on race and religion, since only people declaring affiliation with Bosniaks, Croats or Serbs were eligible to stand as candidates in the State presidency.

9.2.2. Requirements for electoral rights in local and municipal elections

The right to vote in local authorities for foreigners within the Member States of the Council of Europe is regulated in the Treaty no. 144, *Convention on the Participation of Foreigners in Public Life at Local Level* (hereinafter Convention) under Part I, Chapter A and C.

Article 6 of the Convention foresees that the right to vote and to stand for elections in local authority elections should be granted to every foreign resident that lawfully residents in the State for the last 5 years preceding the elections. Additionally, Article 3 of the Convention enacts the right to freedom of peaceful assembly and to freedom of association with others, which includes the right to form and to join trade unions for the protection of their interests. These two rights, the

⁵⁶³ Representation of the People Act 1983, s 1(1)(c)

⁵⁶⁴ Ireland Act 1949, s 2; Terry McGuinness and Melanie Gower, *The Common Travel Area, and the Special Status of Irish Citizens in UK Law* (Parliamentary Briefing, 9 June 2017)

⁵⁶⁵ European Law Students' Association United Kingdom, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 49 (Forthcoming 2018)

⁵⁶⁶ European Law Students' Association Azerbaijan, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 40 (Forthcoming 2018)

⁵⁶⁷ Europe - Miscellaneous, Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina, 21 November 1995, available at: <http://www.osce.org/bih/126173>

⁵⁶⁸ ie, *Sejdic and Finci v. Bosnia and Herzegovina*, Application nos. 27996/06 and 34836/06, Council of Europe: European Court of Human Rights, 22 December 2009, available at: <https://www.opensocietyfoundations.org/litigation/sejdic-and-finci-v-bosnia-and-herzegovina>

right to vote and the right to freedom of assembly complement one another and compose the fundamental right of freedom of expression. Finally, Article 7 of the Convention supplements the right to vote with the addition that each Party may, either unilaterally or by bilateral or multilateral agreement, stipulate that the residence requirements laid down in Article 6 are satisfied by a shorter period of residence.

The Convention grants the electoral right and the right to stand as a candidate, with the reservation of Paragraph 2, to non-nationals that have been lawfully habitually residing in the Country's territory for at least 5 years. They should also meet the legal standards that nationals do to be able to vote and stand as candidates.

Out of 27 countries that participated in the Legal Research Group, only Albania, Czech Republic, Denmark, Finland, Italy, The Netherlands, Norway and Sweden have ratified the Convention, still with some Reservations and Declarations under Article 1 of the Convention.

Article 1 paragraph 1 provides that *any Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it reserves the right not to apply the provisions of either Chapter B or Chapter C or both*, which refers to the electoral right of foreigners. From the countries mentioned above, Albania, Czech Republic and Italy have reserved the right not to apply the provisions of Chapter C of the Convention. Therefore Albania, Czech Republic and Italy are not bound from Chapter C of the Convention to grant electoral rights to migrants and regulate their political rights in a national level.

The Netherlands declared that the right of Article 6, paragraph 1 should not cover persons that resident in the Netherlands on postings from other States as members of diplomatic or consular missions, and such of their spouses, partners and children who are not Dutch nationals and who maintain a joint household with them.⁵⁶⁹

The remaining 5 countries that ratified the Convention, have inserted some criteria for foreigners to be eligible to vote and be elected in local and municipal elections, which need to be the same as the ones that the Convention requires.

- The Danish Local Government Act under section 1(1), provides that any person who: i. is at least 18 years old and ii. has permanent residence for three years prior to the last election date in the region or municipal is eligible to vote. Additionally, the person must either be a Danish citizen, a citizen of another EU member state, a citizen of either Iceland or Norway. The first requirement regarding the age applies both for nationals and non-nationals. As for the residence permit, Denmark requires a 3-year permit in the territory, when for nationals there is no such restriction.⁵⁷⁰

⁵⁶⁹ The Netherlands on January 28 1997 contained a Declaration in a Note Verbale from the Permanent Representation of the Netherlands stating that *'The Government of the Kingdom of the Netherlands declares that Article 6, paragraph 1, of the Convention on the Participation of Foreigners in Public Life at Local Level, done at Strasbourg on 5 February 1992, taken in conjunction with the object and purpose of the Convention, will be interpreted as meaning that persons resident in the Netherlands on postings from other States as members of diplomatic or consular missions, and such of their spouses, partners and children who are not Dutch nationals and who maintain a joint household with them, are not covered by Article 6, paragraph 1, of the said Convention.'* Therefore, their Reservation applies only to a specific group of foreigners residing in the Kingdom.

⁵⁷⁰ National report of ELSA European Law Students' Association Denmark, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 41 (Forthcoming 2018)

- As for Finland, according to Chapter 2, Section 4, the Municipality of Residence Act is applicable when a person: i. has a valid permanent residence determined by the Aliens Act or holds a temporary residence permit valid for at least one year and has an intention to settle in Finland, ii. has turned 18 by the end of the election day. The voting right in municipal elections is also granted to other foreigners who have had residence of municipality for two years and who are registered to a municipality by latest on the 51st day before the election day. It seems like Finland is in conformity with the Convention regarding Article 6 and the Right to Vote, since an 1-year residence permit of a person above 18 years old are the two requirements for granting the right to vote to a non-national.⁵⁷¹
- In The Netherlands, migrants who haven't yet obtained Dutch citizenship are allowed to vote for the Municipal Council when they meet certain requirements, this is stated in article 129 and 130 of the Dutch Constitution in combination with Article 10 of the Municipalities Act and Article B3 of the Elections Act. These are the following: i. the migrant must be a resident of the applicable municipality, ii. the migrant must have reached the age of 18, iii. the migrant has to be legally residing in the Netherlands according to Article 8 of the Aliens Act, and iv. the migrant must have resided in the Netherlands for at least five years. These are exactly the criteria that the Convention requires in Article 6, in order to grant to non-nationals the right to vote. It seems that The Netherlands are in conformity with the Convention.⁵⁷²
- The criteria that the Norwegian Election Act under section 2-2 are the following: i. foreign citizens who have turned 18 years of age by the end of the election year, ii. Foreign citizens who have been registered in the Population Register as residents in Norway continuously for the last three years prior to the election day. With regards to the period of residence for foreign nationals, it is a requirement that they have been registered for the past three consecutive years. Therefore, Norway is in conformity with the Convention since the criteria for foreigners to be eligible to vote seem to concur with the requirements of the Convention under Article 6.⁵⁷³ Finally, Norway has declared that the convention would not apply to the territory of Svalbard.
- As for Sweden, the right to vote in regional and municipal elections is regulated in the Local Government Act 1991:900, under Chapter 2, Article 2. According to the Local Government Act a foreigner may register in Sweden as an alien if he/she fulfils the criteria of the Population Registration Act 1991:481 [Folkbokföringslagen], regardless of whether he/she has right of residence based on that he/she is a refugee or have obtained the right of residence through other forms of migration. Therefore, Sweden is also one of the countries that ratified and applied the requirements of the Convention

⁵⁷¹ National report of ELSA European Law Students' Association Finland, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 44 (Forthcoming 2018)

⁵⁷² National report of ELSA European Law Students' Association The Netherlands, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 30 (Forthcoming 2018)

⁵⁷³ National report of ELSA European Law Students' Association Norway, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 33 (Forthcoming 2018)

under Article 6 for the eligibility of foreigners to vote in municipal elections. It is worth mentioning that Sweden was the first Western European country which allowed foreign nationals to vote in municipal and regional elections, already in 1975.⁵⁷⁴ That because Sweden has a strong tradition of regional and municipal sovereignty, where a lot of power is given to the regional and local municipalities. Healthcare, education and social services are examples of matters handled on this level.⁵⁷⁵

The Member States that have Signed, Ratified and made Reservations or Declarations in the Treaty:

| Member State | Signature | Ratification | Reservation/ Declaration |
|------------------------|-----------|--------------|-----------------------------|
| Albania | + | + | + |
| Czech Republic | + | + | + |
| Denmark | + | + | |
| Finland | + | + | |
| Italy | + | + | + |
| The Netherlands | + | + | + |
| Norway | + | + | |
| Slovenia | + | | |
| Sweden | + | + | |
| United Kingdom | + | | |

From the countries listed in the table above, only Denmark, Finland, The Netherlands, Norway and Sweden seem to be in conformity with the Convention. It is worth to mention that Italy is in conformity with the Convention only in two specific Regions of the country, Emilia Romagna and Toscana for historical reasons.⁵⁷⁶

The rest of the countries of the survey seem to be applying the same criteria established for national elections and referendums as they apply in elections of local authorities.

These criteria derive from the Constitution of each country and they are basically 3: i. Nationality, ii. Age (above 18 years old, except Austria where a person can vote in municipal elections at the age of 16) and iii. Lawful residence. These countries are Armenia,⁵⁷⁷ Austria,⁵⁷⁸ Bosnia and

⁵⁷⁴ Ko-Chih R. Tung, *Voting Rights for Alien Residents-Who Wants It?* The International Migration Review, Vol. 19, No. 3, Special Issue: Civil Rights and the Sociopolitical Participation of Migrants (Autumn, 1985), pp. 451

⁵⁷⁵ National report of ELSA European Law Students' Association Sweden, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 40 (Forthcoming 2018)

⁵⁷⁶ Art. 3, par. 6, of Statute of *Tuscany* stated that: "The Region promotes, in respect of constitutional principles, the extension of the right to vote to immigrants". However, judgement of the Constitutional court n. 372 of 2004 considered this provision not to have a binding nature, but only a cultural/political purpose. With judgment n. 379 of 2004 the Constitutional Court considered article 2, paragraph 1, letter f) and article 15 paragraph 1 of Emilia Romagna Statute inconsistent with articles 1, 48, 117, 121 and 122 of Constitution insofar as it extended electoral rights (including participation in referendum and other public consultations) to immigrants and legal residents in the Region.

⁵⁷⁷ Constitution of the Republic of Armenia, Chapter 2, Fundamental Rights of the Human Being and the Citizen, Articles 44-45, available at: <http://www.ombuds.am/en/legislation/constitution.html>

⁵⁷⁸ A unique regulation concerning the participation of migrants in the local political process is found in the Styrian Municipal Code. It obliges every Styrian municipality to establish a Migrant Advisory Council [MigrantInnenbeirat] if more than 1,000 citizens who are third country nationals have their main residence in the municipality. 183 A similar obligation to establish such an advisory institution cannot be found in any other state, although there also exists a similar Migration- and Integration Advisory Council [Migrations- und Integrationsbeirat] in the city of Linz

Herzegovina,⁵⁷⁹ Bulgaria,⁵⁸⁰ France,⁵⁸¹ Germany, Greece,⁵⁸² Latvia,⁵⁸³ Malta, Poland,⁵⁸⁴ Romania, Turkey⁵⁸⁵ and UK.

It is noteworthy that Azerbaijan, even though it hasn't signed the Convention, it disconnected the electoral right from citizenship and therefore made it more accessible to migrants. According to the article 12.3, of the Electoral Code of Azerbaijan Republic foreigners regularly residing on the territory of Azerbaijan for more than 5 years have the right to participate only in municipal elections, on the condition that, in their country of origin foreigners rights to vote in municipal elections are recognized.⁵⁸⁶ Also the Irish nationals can also vote in local elections including city councils, county councils, local mayoral elections, and elections to the devolved legislatures of Scotland, Wales, and Northern Ireland.⁵⁸⁷ In conclusion, out of 27 countries surveyed, only 8 have ratified the Convention on the Participation of Foreigners in Public Life at Local Level and only 5 out of these (Denmark, Finland, The Netherlands, Norway and Sweden) seem to be in conformity with the Convention. The rest 17 countries have not signed the Convention and regulate the political rights of migrants in a national level, yet Azerbaijan, seems to be having almost the same requirements for granting electoral rights as the ones mentioned in Chapter C Article 6 of the Convention.

9.2.3. Special provisions for EU citizens

When it comes to municipal elections and European Parliamentary elections, there are some differences noted between EU and non-EU nationals. The Treaty of Maastricht in 1992 as well as the Treaty for the Functioning of European Union in 2007 established the Citizenship of the Union. The citizens of EU should have the right to vote and stand as candidates in local and European Parliament elections in the Member State that are not nationals of, under the same conditions as nationals. This is a privilege that all citizens of EU should enjoy equally. All member states of the Council of Europe seem to be in conformity with these two Treaties, except Albania, Azerbaijan, Bosnia & Herzegovina, Macedonia, Russia, Turkey and Ukraine simply because they are not members of the EU and they are not bound by the Treaties.

It is worth mentioning that Council of Europe is strongly promoting through its *Group of Specialists on Nationality* the implementation of third-country nationals' political participation in

in Upper Austria. 184 The goal of these advisory councils is to advocate for the interests of migrants in local politics and advise the municipality in all political decisions affecting migrants.

⁵⁷⁹ Art. 10 of the Law on Movement and Residence of Foreigners and Asylum in BiH, available at: <http://www.vertic.org/media/National%20Legislation/Bosnia>

Herzegovina/BA_Law_on_Movement_Residence_of_Foreigners.pdf

⁵⁸⁰ Bulgaria's Constitution of 1991 with Amendments through 2007, 1991

⁵⁸¹ French Constitution of October 4th, 1958, art 3

⁵⁸² The Constitution of Greece [Greece], 18 April 2001, art 102 para 2

⁵⁸³ Constitution of the Republic of Latvia 1922., art. 8. [Latvijas Republikas Satversme]

⁵⁸⁴ Poland., & Potulicki, M. (1935). Constitution of the Republic of Poland (April 23rd 1935)

⁵⁸⁵ Law n. 6458 on Foreigners and International Protection, Section 3, available at http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf

⁵⁸⁶ National report of ELSA European Law Students' Association Azerbaijan, *National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants*, p. 40 (Forthcoming 2018)

⁵⁸⁷s 2(1)(c); Lord Goldsmith QC, *Citizenship: Our Common Bond*, 47-49, available at: <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/docs/citizenship-report-full.pdf>

local elections as it considers the opposite as an infringement of the dignity of a person and generally of the essence of democracy which is representativeness.⁵⁸⁸

9.3. Conclusion

All 27 countries that participated in this research project regulate the electoral rights of nationals and aliens for national and presidential elections according to their Constitution.

In national elections, 26 countries require citizenship and age above 18 years to grant the electoral right to a migrant, except Azerbaijan with a noteworthy exception, in which stateless persons with a lawful residence permit for over 5 years, can vote in presidential, parliamentary, and municipal elections and on national referendums.

In local and municipal elections the Convention on the Participation of Foreigners in Public Life at Local Level bounds the Members States of CoE that have signed and ratified it. In a total of 27 countries only 5, which are Denmark, Finland, The Netherlands, Norway and Sweden, seem to be in conformity with the Convention on the Participation of Foreigners in Public Life at Local Level. They require the three criteria that the Convention established. In the remaining Member States, citizenship and age above 18 are the dominant links to grant electoral rights to aliens. It seems that countries that established a rather flexible legislation concerning the granting of electoral rights to migrants, are the ones that managed to facilitate the faster integration of them into society.

Chapter 10. Double Nationality and Obtaining Citizenship for Migrants

10.1. Legal framework

European Convention on Nationality declares that everyone has the right to a nationality⁵⁸⁹ and further implements one's rights to avoid statelessness⁵⁹⁰, arbitrary deprivation of one's nationality⁵⁹¹ and that neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality of one of the spouses during marriage, shall automatically affect the nationality of the other spouse.⁵⁹²

Countries to the Convention must process applications for nationality within reasonable time⁵⁹³, decisions must be provided in writing⁵⁹⁴, one has the right to an administrative or judicial review

⁵⁸⁸ Council of Europe, Community Relations Project, *Political and Social Participation of Immigrants through Consultative Bodies*, ISBN 92-871-3891-5, April 1999, 11, available at: https://www.coe.int/t/dg3/migration/archives/Documentation/Series_Community_Relations/Participation_public_life_report_en.pdf

⁵⁸⁹ European Convention on Nationality, ETS 166, 6 November 1997, Article 4 (a)

⁵⁹⁰ *ibid*, Article 4 (b)

⁵⁹¹ *ibid*, Article 4 (c)

⁵⁹² *ibid*, Article 4 (d)

⁵⁹³ *ibid*, Article 9

⁵⁹⁴ *ibid*, Article 10

whether the decision is in conformity with international law of the country in question⁵⁹⁵. Countries are entitled to a reasonable fee.⁵⁹⁶

Each State Party must recognise in its internal law that children born of one of its nationals shall automatically acquire the nationality of that State Party, subject to the possibility of providing for exception in the case of children born outside the territory. Where the nationality is not acquired at birth, it must be provided that the child concerned may submit an application for the acquisition of nationality according to the procedure laid down in internal law, subject to one or both of the indicated conditions.⁵⁹⁷ In addition, State Party must facilitate in its internal law acquisition of its nationality for following persons as well: spouses of its nationals⁵⁹⁸, persons who were born on its territory and reside there lawfully and habitually⁵⁹⁹, persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned⁶⁰⁰, stateless persons and recognised refugees lawfully and habitually resident on its territory.⁶⁰¹

Different solutions are provided in the Convention for cases of multiple nationality. In particular, States shall allow children to retain multiple nationalities when they are obtained *ex lege* at birth⁶⁰². It is also possible for member states' nationals to possess other nationalities whenever it is obtained automatically through marriage.⁶⁰³

State Party shall determine in its internal law whether its nationals who acquire or possess the nationality of another State retain its nationality or lose it. A State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required.⁶⁰⁴

Nationals with double nationality have the same rights and duties in the territory of the State Party in which they reside as other nationals, with exceptions possible in field of international law concerning diplomatic or consular protection by a State Party in favour of one of its nationals who simultaneously possesses another nationality and in case of private international law.⁶⁰⁵

Based on charter of signatures and ratifications of Treaty 166, European Convention on Nationality, participating countries can be divided into three groups: countries that have not taken any steps for the Treaty to enter into force (Azerbaijan, Ireland, Slovenia, the United Kingdom and Turkey), countries to have signed the Treaty (Greece, Russia, France, Italy, Latvia and Malta). In other participating countries, the Treaty has entered into force.⁶⁰⁶

⁵⁹⁵ European Convention on Nationality, ETS 166, 6 November 1997, Article 12

⁵⁹⁶ *ibid*, Article 13

⁵⁹⁷ Explanatory Report to the European Convention on Nationality, CETS 200, Article 6 (1)

⁵⁹⁸ European Convention on Nationality, ETS 166, 6 November 1997, Article 6 (4) (a)

⁵⁹⁹ *ibid*, Article 6 (4) (e)

⁶⁰⁰ *ibid*, Article 6 (4) (f)

⁶⁰¹ *ibid*, Article 6 (4) (g)

⁶⁰² *ibid*, Article 14 (1) (a)

⁶⁰³ *ibid*, Article 14 (1) (b)

⁶⁰⁴ *ibid*, Article 16

⁶⁰⁵ *ibid*, Article 17 (1)

⁶⁰⁶ Chart of signatures and ratifications of Treaty 166, European Convention on Nationality, Status as of 16/12/2017, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=4Ic1w2j2>, accessed December 16 2017

10.2. Findings of the ELSA National Groups

10.2.1. Naturalisation

European Convention on Nationality declares that each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishment the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application⁶⁰⁷, nevertheless countries have adopted different additional requirements for naturalisation to be presented in the following paragraphs.

While participating countries enable acquisition of nationality through naturalisation, Danish nationality cannot be acquired by naturalisation except by the statute as based on section 44(1) of the Constitutional Act of Denmark. The statute is applicable, if conditions for acquiring nationality by declaration are not fulfilled.⁶⁰⁸ The demands under the statute to acquire the nationality are presented in the paragraphs below.

Habitual residence in participating countries' varies from three (Armenia⁶⁰⁹, Bosnia and Herzegovina⁶¹⁰, Italy⁶¹¹), five (Albania⁶¹², Azerbaijan⁶¹³, Bulgaria⁶¹⁴, Czech Republic⁶¹⁵, France⁶¹⁶, Finland⁶¹⁷, Latvia⁶¹⁸, the Netherlands⁶¹⁹, Turkey⁶²⁰, Russia⁶²¹), seven (Greece⁶²²), eight

⁶⁰⁷ European Convention on Nationality, ETS 166, 6 November 1997, Article 6 (3)

⁶⁰⁸ European Law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39 accessed 16 December 2017; Act on Danish Nationality, Number 422, 6 July 2004

⁶⁰⁹ European Law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 14 October 2017

⁶¹⁰ European Law Students' Association Bosnia and Herzegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 14 October 2017

⁶¹¹ European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 20 December 2017

⁶¹² European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 12 October 2017

⁶¹³ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017

⁶¹⁴ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017; Bulgarian Citizenship Act, Article 12

⁶¹⁵ European Law Students' Association Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017

⁶¹⁶ European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 52, accessed 17 October 2017; Code Civil, Article 21-17

⁶¹⁷ European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 46, accessed 18 October 2017

⁶¹⁸ European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 22 November 2017; Section 12, paragraph 1, The Citizenship Law 1994 [Pilsonības likums]

⁶¹⁹ European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 31, accessed 23

(FYROM⁶²³, Romania⁶²⁴), nine (Denmark⁶²⁵) to ten years in Slovenia⁶²⁶. With Germany enabling naturalisation at discretion and naturalisation at demand, their legislation only declares that one acquiring nationality through naturalisation at demand has to have a habitual residence of 8 years. If the applicant completes the integration course, the habitual residence is set to 7 years or to 6 years, if the applicant makes an important contribution in integration.⁶²⁷

Shall one acquire nationality of the United Kingdom, he/she must have spent at least five years in the United Kingdom while not having been absent from it for more than 450 days. Additionally, one is permitted to leave the United Kingdom for no more than 90 days in the 12 months prior to submitting its application.⁶²⁸

In France⁶²⁹, the above-mentioned habitual residence of five years shall be reduced to two, if one has received a college degree by a university in France or due to an outstanding integration process proven by activities in the field of science, economy, culture or sport.

Habitual residence in Austria⁶³⁰ varies from 30, 15 (proof of personally and professionally integrating into the society) to 6 years (refugees under the Geneva Convention on citizenship or nationals of one of the European Economic area countries or born in Austria or has proven

November 2017; Ministry of Justice and Security, Immigration and Naturalization Service, 'Naturalisation' <<https://ind.nl/en/dutch-citizenship/pages/naturalisation.aspx>> accessed 8 November 2017

⁶²⁰ European Law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 23 November 2017

⁶²¹ European Law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017; Decree number 1325

⁶²² European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58, accessed 16 October 2017

⁶²³ European Law Students' Association FYROM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Number 67/92, 8/2004, Article 7

⁶²⁴ European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁶²⁵ European Law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 16 December 2017

⁶²⁶ European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 29, accessed 26 October 2017

⁶²⁷ European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 43, accessed 20 October 2017

⁶²⁸ European Law Students' Association the United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 5 November 2017; British Nationality Act 1981, Sch 1, Paragraphs 1(1)(a), 1(2)

⁶²⁹ European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 52, accessed 20 November 2017; Code Civil, Article 21-18

⁶³⁰ European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 20 November 2017

outstanding results in the field of science, economy, art, sport in the interest of Austria or has adequate knowledge of the language).

Austria is the only surveyed country breaching Article 6 (3) of the European Convention on Nationality, as a length of habitual residence is set to 30 and 15 years in addition to 6 years under above-mentioned criteria, the length which is in compliance with the Convention.

While Poland⁶³¹ in certain situations conditions the time spent in the country with obtaining different permissions, Italy⁶³², Norway⁶³³, Spain⁶³⁴ and Sweden⁶³⁵ determined the residential time based on the origin of the applicant.

An alien is considered to be a Polish national if he/she has been living in Poland for at least 3 years and has following permissions: permission to settle in the country, has a long-term EU resident permit or permanent resident permit, has a constant source of income and has a residence. Shall an alien only have one of the above mentioned permissions, one must be living in Poland for at least 10 years.

One must have lived in Norway for three years to become their national. Shall an applicant have lived seven years in the country for the period of last ten, whilst obtaining residence or work permit for at least a year, he/she will also be granted Norwegian nationality. Habitual residence during one or more intervals during which the application was processed, will be included in seven years needed to be spent in the country.⁶³⁶

Italy has divided potential applicants in following groups: descendants of previous Italian nationals including a second degree of kinship and foreigners born in Italy are required to live in the country for 3 years, four years are required for nationals of states members of the European Union. Stateless people, people with a status of refugees and aliens older than 18 years old, must have a habitual residence of 5 years. Seven years is required for children who were adopted by nationals of Italy before Law no. 184/1983 has entered into force.⁶³⁷

When acquiring Spanish nationality, following habitual residence is taken into consideration: 5 years for refugees, two years for nationals of Ibero-American countries, Andorra, the Philippines,

⁶³¹ European Law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 7 November 2017

⁶³² European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 20 December 2017

⁶³³ European Law Students' Association Norway, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 18 October 2017

⁶³⁴ European Law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38, accessed 15 December 2017

⁶³⁵ European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁶³⁶ European Law Students' Association Norway, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 18 October 2017; Statsborgerloven 2005, Section 62 [Act on Norwegian nationality 2005]

⁶³⁷ European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 20 December 2017

Equatorial Guinea, Portugal and people of Sephardi origins. For a widow or widower of a Spanish national and those born outside the country's territory with parents or grandparents of Spanish origin, two years are required. One year is required for people born in Spanish territory, for people not exercising the right to obtain the nationality by option, for those under guardianship, foster care or custody provided by a Spanish national or institution for two consecutive years.⁶³⁸

Applicants for Swedish⁶³⁹ nationality must have been living in the country for at least two years, if they descent from Scandinavian countries. For nationals of the European Economic area, holding residence permit with time restriction for at least five years are corresponding to holders with permits with no time restriction. Stateless persons or people with refugee status, must have been living in the country at least for four years, the habitual residence for other aliens is set to five years.

One must spend five of the nine years in Ireland to acquire the nationality. Nevertheless, some exceptions may be applicable to above mentioned residential time as explained in the individual report.⁶⁴⁰

10.2.1.1. Additional requirements

Even though the European Convention on Nationality only states habitual residence as a requirement to obtain a nationality, countries have adopted additional requirements. They may require a proof of sufficient income and paid taxes, no convictions for a criminal act, knowledge of their language, are interested in impact on national security, demand renouncing previous nationality and deference to the new country.

10.2.1.1.1. Proof of sufficient income and financial obligations

In some participating countries, one must proof to have a permanent source of income enabling him/her to support his/her existence and that one has evened any previous financial obligations. Albania⁶⁴¹, Bosnia and Hercegovina⁶⁴², Bulgaria⁶⁴³, Finland⁶⁴⁴, Latvia⁶⁴⁵, Russia⁶⁴⁶, Slovenia⁶⁴⁷ and Turkey⁶⁴⁸ do not state any further demands under this requirement, whereas in Austria⁶⁴⁹ an

⁶³⁸ European law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38, accessed 15 December 2017

⁶³⁹ European law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017; Lag om svenskt medborgarskap, 2001:82, Paragraph 20 [Swedish Citizenship Act]; Lag om svenskt medborgarskap, 2001:82, Paragraph 11 [Swedish Citizenship Act]

⁶⁴⁰ European law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 5 November 2017

⁶⁴¹ European law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 12 October 2017

⁶⁴² European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

applicant must provide a proof that he/she was able to support him/herself for at least 36 months in past 6 years. In addition, a proof of sufficient income is compulsory for 6 months prior to the application date. In Denmark⁶⁵⁰, one must not have received any public benefits within the last year prior to applying for a nationality and must not have received public benefits for more than 6 months in the last 5 years.

An applicant for Bosnian⁶⁵¹ nationality is required to prove to have taken care of all taxes or other financial obligations. In Finland⁶⁵² and Slovenia⁶⁵³ the applicant has to provide a proof of not materially failing to pay preservation or owing a debt regulated by public law.

10.2.1.1.2. Conviction for a criminal act

Albania⁶⁵⁴, Bosnia and Hercegovina⁶⁵⁵, Denmark⁶⁵⁶, France⁶⁵⁷, FYROM⁶⁵⁸, Greece⁶⁵⁹ and Slovenia⁶⁶⁰ set a maximum time spent in prison as a reason to prevent an applicant from

⁶⁴³ European law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017; Bulgarian Citizenship Act, Article 12

⁶⁴⁴ European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 46, accessed 18 October 2017; KHO 2017:40 [2017] Supreme Administrative Court of Finland

⁶⁴⁵ European law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 22 November 2017; Pilsonības likums, 1994, Section 12, Paragraph 1 [The Citizenship Law]

⁶⁴⁶ European law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017; Decree number 1325

⁶⁴⁷ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁶⁴⁸ European law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 23 November 2017

⁶⁴⁹ European law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 14 October 2017

⁶⁵⁰ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 16 December 2017

⁶⁵¹ European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁶⁵² European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 46, accessed 18 October 2017

⁶⁵³ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁶⁵⁴ European law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 12 October 2017

⁶⁵⁵ European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁶⁵⁶ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 16 December 2017

acquiring a nationality, nevertheless the time varies between the countries from one year in FYROM⁶⁶¹, a year and a half or more of unconditional prison sentence in Denmark, 3 years in Albania (exception is provided shall one be punished for political reasons), 3 years within 8 years of the submission of the application in Bosnia and Hercegovina, 6 years in France to 3 months or conditional sentence to prison with probation longer than one year in Slovenia. In order to be suitable candidate for Greek nationality, one must not have been convicted for last 10 years prior to submitting its application or must not have been imprisoned for a duration longer than one year.⁶⁶² Nevertheless, Germany has stated prohibition of committing a criminal act, without determining the maximum time one must not have spent in prison.⁶⁶³

Albania⁶⁶⁴ and Austria⁶⁶⁵ prohibit being convicted in their country or abroad. In addition, to be a suitable candidate for Austrian nationality convictions must not have been revoked. France⁶⁶⁶ and Greece⁶⁶⁷ detailed the requirement by stating specific criminal acts that shall not be committed– crimes connected to an attempt to attack the fundamental interests of the nation or for acts connected to terrorism (France) and crimes against democracy, treason, intended homicide, dangerous physical offense, drug dealing and trafficking, money laundering, international fiscal crimes, child abduction (Greece).

⁶⁵⁷ European law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 53, accessed 17 October 2017

⁶⁵⁸ European law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004, Article 3

⁶⁵⁹ European law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58, accessed 16 October 2017

⁶⁶⁰ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁶⁶¹ European law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004, Article 3

⁶⁶² European law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58, accessed 16 October 2017

⁶⁶³ European law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 43, accessed 20 October 2017

⁶⁶⁴ European law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 12 October 2017

⁶⁶⁵ European law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 14 October 2017

⁶⁶⁶ European law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 53 accessed 17 October 2017

⁶⁶⁷ European law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58, accessed 16 October 2017

To acquire Bulgarian nationality⁶⁶⁸, one should not have been sentenced by a domestic court for preplanned crime of general nature or be a party of criminal proceedings for such crime. An exception is given to people who have been rehabilitated. Finnish legislation⁶⁶⁹ prohibits commitment of any punishable act other than those subject to a petty fine or those placing a person under a restraining order.

10.2.1.1.3. Language requirements

Several member states surveyed demand that the applicant have the knowledge of their language. Whereas the level of proficiency varies from initial knowledge (Albania⁶⁷⁰, the Netherlands⁶⁷¹) to sufficient (Armenia⁶⁷², Azerbaijan⁶⁷³, Austria⁶⁷⁴, Bosnia and Hercegovina⁶⁷⁵, Bulgaria⁶⁷⁶, Denmark⁶⁷⁷, Finland⁶⁷⁸, FYROM⁶⁷⁹, Germany in case of naturalisation at demand⁶⁸⁰, Greece⁶⁸¹, Latvia⁶⁸², Poland⁶⁸³, Romania⁶⁸⁴, Russia⁶⁸⁵, Slovenia⁶⁸⁶, the United Kingdom⁶⁸⁷, Turkey⁶⁸⁸).

⁶⁶⁸ European law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017; Bulgarian Citizenship Act, Article 12

⁶⁶⁹ European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 46, accessed 18 October 2017

⁶⁷⁰ European law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 12 October 2017

⁶⁷¹ European law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 23 November 2017; Ministry of Justice and Security, Immigration and Naturalization Service, 'Naturalisation' <<https://ind.nl/en/dutch-citizenship/pages/naturalisation.aspx>> accessed 8 November 2017

⁶⁷² European law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 14 October 2017

⁶⁷³ European law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017

⁶⁷⁴ European law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 14 October 2017

⁶⁷⁵ European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁶⁷⁶ European law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017; Bulgarian Citizenship Act, Article 12

⁶⁷⁷ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 16 December 2017

⁶⁷⁸ European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 47, accessed 18 October 2017

⁶⁷⁹ European law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004, Article 3

⁶⁸⁰ European law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 43, accessed 20 October 2017

10.2.1.1.4. Impact on national security

Condition for one's naturalisation not posing no threat to the public order, security or defence of a country is only demanded in Albania⁶⁸⁹, Bosnia and Hercegovina⁶⁹⁰, FYROM⁶⁹¹, Romania⁶⁹², the Netherlands⁶⁹³, and Slovenia⁶⁹⁴.

10.2.1.1.5. Renouncement of previous citizenship

When a national of a third country acquires a nationality of Bosnia and Hercegovina⁶⁹⁵, Bulgaria⁶⁹⁶, Germany in case of naturalisation at demand⁶⁹⁷, Russia⁶⁹⁸ or Slovenia⁶⁹⁹, he/she must

⁶⁸¹ European law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58, accessed 16 October 2017

⁶⁸² European law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 22 November 2017; Section 12, Paragraph 1, The Citizenship Law 1994 [Pilsonības likums]

⁶⁸³ European law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 7 November 2017

⁶⁸⁴ European law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁶⁸⁵ European law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017; Decree number 1325

⁶⁸⁶ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁶⁸⁷ European law Students' Association the United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 5 November 2017

⁶⁸⁸ European law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 23 November 2017

⁶⁸⁹ European law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 12 October 2017

⁶⁹⁰ European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁶⁹¹ European law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Number 67/92, 8/2004, Article 3

⁶⁹² European law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁶⁹³ European law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 23 November 2017; Ministry of Justice and Security, Immigration and Naturalization Service, 'Naturalisation' <<https://ind.nl/en/dutch-citizenship/pages/naturalisation.aspx>> accessed 8 November 2017

⁶⁹⁴ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁶⁹⁵ European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

renounce its first nationality. The countries have adopted further demands and exceptions to this requirement.

In Bosnia and Herzegovina a renunciation is not necessary, shall a bilateral agreement provide this exception or if renunciation is not allowed or cannot be reasonably demanded.⁷⁰⁰ Bulgaria entails for the previous nationality to be renounced as of the moment of receiving Bulgarian nationality.⁷⁰¹

When applying for Russian nationality, one must provide a document confirming that he/she requested renunciation from the previous nationality.⁷⁰²

Slovenian and FYROM's⁷⁰³ legislation also demand a release from the current nationality. A proof from the applicant stating that he/she will demand the release, if acquiring the nationality is also accepted.⁷⁰⁴

10.2.1.1.6. Deference to the new country

Bosnia and Herzegovina⁷⁰⁵, Denmark⁷⁰⁶, France⁷⁰⁷, FYROM⁷⁰⁸, Latvia⁷⁰⁹, Romania⁷¹⁰, Russia⁷¹¹, Slovenia⁷¹², Spain⁷¹³, Sweden⁷¹⁴, the United Kingdom⁷¹⁵ and Turkey⁷¹⁶ require for an applicant to fulfill a condition of deference to the new country.

⁶⁹⁶ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017

⁶⁹⁷ European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 43, accessed 20 October 2017

⁶⁹⁸ European Law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018) 42, accessed 18 October 2017; Decree number 1325

⁶⁹⁹ European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁷⁰⁰ European Law Students' Association Bosnia and Herzegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁷⁰¹ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017; Bulgarian Citizenship Act, Article 12

⁷⁰² European Law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017; Decree number 1325

⁷⁰³ European Law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004, Article 3

⁷⁰⁴ European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017; European Law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Number 67/92, 8/2004, Article 3

⁷⁰⁵ European Law Students' Association Bosnia and Herzegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

In Bosnia and Hercegovina⁷¹⁷, Denmark⁷¹⁸ and Russia⁷¹⁹ an applicant must sign an official document of acceptance of their legal system and constitutional order. Whereas, in Latvia⁷²⁰ and Romania⁷²¹, one must prove a knowledge of the Constitution and the National Anthem.

A letter declaring obedience and loyalty to the country must be provided in Denmark⁷²², FYROM⁷²³ and Latvia⁷²⁴.

⁷⁰⁶ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 16 December 2017

⁷⁰⁷ European law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 53, accessed 17 October 2017

⁷⁰⁸ European law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004, Article 3

⁷⁰⁹ European law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 22 November 2017; Section 17, Paragraph 1, The Citizenship Law 1994 [Pilsonības likums]

⁷¹⁰ European law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁷¹¹ European law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017; Decree number 1325

⁷¹² European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁷¹³ European law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38, accessed 15 December 2017

⁷¹⁴ European law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁷¹⁵ European law Students' Association the United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 5 November 2017; British Nationality Act 1981, Sch 1 s 1(1)

⁷¹⁶ European law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 23 November 2017

⁷¹⁷ European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁷¹⁸ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 16 December 2017; Udlændinge- og Integrationsministeriet, Afgivelse af Erklæring om Troskab og Loyalitet, <<http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/afgivelse-af-erklaring-om-troskab-og-loyalitet>>, accessed 10 July 2017, [Danish]

⁷¹⁹ European law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017; Decree number 1325

⁷²⁰ European law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 22 November 2017; Pilsonības likums, 1994, Section 17, Paragraph 1 [The Citizenship Law 1994]

⁷²¹ European law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

Applicants in France⁷²⁵, Romania⁷²⁶, the United Kingdom⁷²⁷, Spain⁷²⁸, Sweden⁷²⁹ and Turkey⁷³⁰ must live a decent life and be of good character. To assess the criteria in Sweden⁷³¹, any unlawful behaviour from the past is reviewed. Applicants for Turkish⁷³² nationality must not have serious health problems.

France has determined that a special interview with an agent of the prefecture or an agent of the consulate must be conducted. The interview aims to control the embracement of the values of the country. Following the interview, if successful, one signs the Chart of the Right and Duties of the French citizen.⁷³³

10.2.1.1.7. Conclusion on naturalisation

Bulgarian⁷³⁴, Danish⁷³⁵, Greek⁷³⁶, Maltese⁷³⁷, Dutch⁷³⁸, Russian⁷³⁹, Slovenian⁷⁴⁰, Swedish⁷⁴¹ and Turkish⁷⁴² legislation declare the possibility of migrants to acquire their nationality through

⁷²² European Law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 16 December 2017

⁷²³ European Law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 20 October 2017; Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, Number 67/92, 8/2004, Article 3

⁷²⁴ European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 22 November 2017; Pilsonības likums 1994, Section 17, Paragraph 1 [The Citizenship Law 1994]

⁷²⁵ European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 53, accessed 17 October 2017

⁷²⁶ European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁷²⁷ European Law Students' Association the United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 5 November 2017

⁷²⁸ European Law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38, accessed 15 December 2017

⁷²⁹ European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁷³⁰ European Law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 23 November 2017

⁷³¹ European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017; Ändringar i utlänningslagen, 1994/95:179, pp. 58-61 [Government Bill prop., Amendments to the Aliens Act]

⁷³² European Law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018, 34,) accessed 23 November 2017

⁷³³ European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 53, accessed 17 October 2017

⁷³⁴ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017

naturalisation. In addition, Greece⁷⁴³ enables this possibility for refugees as well. In Italy and France, refugees and stateless persons are entitled to acquire nationality through naturalisation, whereas in Poland and Spain this option is enabled only for refugees.⁷⁴⁴ Bosnia and Hercegovina enables naturalisation for stateless people and refugees, nevertheless the Azerbaijan provides naturalisation only for stateless people.⁷⁴⁵

Armenia⁷⁴⁶, Azerbaijan⁷⁴⁷, Poland⁷⁴⁸, Spain⁷⁴⁹ and Sweden⁷⁵⁰ have only one additional requirement to be met when acquiring their nationality in addition to the habitual residence. With Spain⁷⁵¹ and

⁷³⁵ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 16 December 2017

⁷³⁶ European law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58, accessed 16 October 2017

⁷³⁷ European law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 24 October 2017

⁷³⁸ European law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 31, accessed 23 November 2017

⁷³⁹ European law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017

⁷⁴⁰ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁷⁴¹ European law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁷⁴² European law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 23 November 2017

⁷⁴³ European law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 58 accessed 16 October 2017

⁷⁴⁴ European law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49, accessed 20 December 2017; European law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 53, accessed 17 October 2017; European law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38 accessed 15 December 2017; European law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 7 November 2017

⁷⁴⁵ European law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017; European law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 29, accessed 28 October 2017

⁷⁴⁶ European law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 14 October 2017

⁷⁴⁷ European law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017

⁷⁴⁸ European law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 7 November 2017

Sweden⁷⁵² demanding deference to the new country, whereas Armenia⁷⁵³, Azerbaijan⁷⁵⁴ and Poland⁷⁵⁵ state language requirements, it is undemanding to become national of Spain or Sweden⁷⁵⁶.

Bosnia and Hercegovina and Slovenia call for the applicants to fulfil all above-mentioned additional requirements. Countries have the same requirements for proof of sufficient income and financial obligations as well as language requirements.⁷⁵⁷

Slovenia has set stricter demand for criminal charges. One must not be sentenced to more than 3 months in prison or conditional sentence in prison with probation longer than one year⁷⁵⁸, whereas Bosnia and Hercegovina set the time to 3 years within 8 years of the submission of the application.⁷⁵⁹

With remaining additional requirements, Bosnia and Hercegovina enables one to remain its previous nationality shall this be guaranteed by the bilateral agreement or the renouncement is not permitted or cannot be reasonably required. In order to prove deference to the new country, an applicant must sign an official document confirming acceptance of their legal system and constitutional order.⁷⁶⁰

⁷⁴⁹ European Law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38, accessed 15 December 2017

⁷⁵⁰ European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁷⁵¹ European Law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 38, accessed 15 December 2017

⁷⁵² European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁷⁵³ European Law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 14 October 2017

⁷⁵⁴ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 15 October 2017

⁷⁵⁵ European Law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 7 November 2017

⁷⁵⁶ European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 19 October 2017

⁷⁵⁷ European Law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017; European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁷⁵⁸ European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁷⁵⁹ European Law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

⁷⁶⁰ European Law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 28, accessed 28 October 2017

As Slovenia does not have additional demands for renunciation of previous nationality and deference to the new country⁷⁶¹, acquiring nationality in Bosnia and Herzegovina is the most demanding in comparison to other participating countries.

10.2.2. Dual nationality

As the European Convention on Nationality states that the State Party shall determine in its internal law whether its nationals who acquire or possess the nationality of another State retain its nationality or lose it, States adopted different solutions for cases of dual nationality.⁷⁶²

Countries' approach differs from prohibiting dual nationality (Germany⁷⁶³), prohibiting it with some exceptions (Austria⁷⁶⁴, Bulgaria⁷⁶⁵, Czech Republic⁷⁶⁶, the Netherlands⁷⁶⁷ and Norway⁷⁶⁸) to permitting dual nationality (Armenia⁷⁶⁹, Greece⁷⁷⁰, Poland⁷⁷¹, Romania⁷⁷² and Turkey⁷⁷³.)

⁷⁶¹ European Law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 26 October 2017

⁷⁶² European Convention on Nationality, ETS 166, 6 November 1997, Article 15

⁷⁶³ European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 44, accessed 20 October 2017

⁷⁶⁴ European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 14 October 2017

⁷⁶⁵ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 15 October 2017

⁷⁶⁶ European Law Students' Association Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017

⁷⁶⁷ European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 31, accessed 23 November 2017; Ministry of Justice and Security, Immigration and Naturalization Service, 'Renouncing your current nationality' <<https://ind.nl/en/Pages/Renouncing-your-current-nationality.aspx>> accessed 8 November 2017

⁷⁶⁸ European Law Students' Association Norway, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 18 October 2017

⁷⁶⁹ European Law Students' Association Armenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 31, accessed 14 October 2017; ՀՀ քաղաքացիության մասին ՀՀ օրենք, 1998, Article 13, HO-16 (ՀՕ-16) [Law on the citizenship of the Republic of Armenia]

⁷⁷⁰ European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 61, accessed 16 October 2017

⁷⁷¹ European Law Students' Association Poland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 7 November 2017

⁷⁷² European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁷⁷³ European Law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 23 November 2017

Albania⁷⁷⁴ permits dual nationality only to foreigners. Remaining surveyed countries have implemented further conditions for dual nationality as explained below.

In the United Kingdom and in Ireland it is important for to ensure that the second country in question also allows for dual nationality.⁷⁷⁵

In Austria, dual nationality is possible as long as it is obtained at birth. However, if the person's first nationality is Austrian, they can maintain it, if they meet one of the following conditions: if the preservation is in the interest of Austria, if there are substantial personal reasons to be taken into consideration such as a person was born in Austria, has older family members living in Austria, profession prospects, reasons related to property issues.⁷⁷⁶

Even though one must be renounced from previous nationality to obtain the Bulgarian nationality, the legislation permits following exceptions: marriage to a Bulgarian national, nationals of a member states of the European Union or the European Economic area or Swiss Confederation, shall a country in question have signed a dual agreement with Bulgaria. People with refugees or humanitarian status as well as stateless people are also subject to the before-mentioned exceptions.⁷⁷⁷

Under Dutch legislation, one does not have to released from previous nationalities shall the applicant lose its first nationality when obtaining the Dutch nationality, the country of applicant's first nationality does not permit for the applicant to be released from its nationality, marriage to a Dutch national, the applicant has not reached the age of 18, the applicant has an asylum residence permit, the applicant will be obliged to pay a large amount of money for his/her application to be taken into consideration or will lose certain rights. As an applicant does not need to renounce the previous nationality to acquire the Dutch nationality, if to renounce it, the applicant must fulfill the military service in the country of previous nationality.⁷⁷⁸

In Czech Republic, the decision regarding not losing the original nationality depends on the Ministry of Interior. It is possible to hold two nationalities in case of providing special welfare by

⁷⁷⁴ European law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 37, accessed 12 October 2017

⁷⁷⁵ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 16 December 2017; European law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 5 November 2017; European law Students' Association the United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 50, accessed 5 November 2017; Dual Citizenship, <<https://www.gov.uk/dual-citizenship>> accessed 18 June 2017

⁷⁷⁶ European law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 14 October 2017. For everyone born after July 1, 1966 the provincial government of the province where the mother of the applicant had her legal residence at the time of the applicant's birth, will decide.

⁷⁷⁷ European law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 15 October 2017; Embassy of the Republic of Bulgaria, London, Bulgarian citizenship act, <http://www.bulgarianembassy-london.org/index.php?option=com_content&task=view&id=107> accessed on 23 August 2017

⁷⁷⁸ European law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 23 November 2017; Ministry of Justice and Security, Immigration and Naturalization Service, 'Renouncing your current nationality' <<https://ind.nl/en/Pages/Renouncing-your-current-nationality.aspx>> accessed 8 November 2017

naturalization to the country or if the legislation of the first nationality does not permit losing its nationality. In other cases, the decision of the Ministry of Interior shall only be possible if the applicant has the permission for permanent residence in the country for at least 5 years, has lived in the country legally for at least 20 years, has not been convicted to a criminal act and he/she has actual and deep relation to the country.⁷⁷⁹

As Maltese legislation permits double nationality and does not require for one to renounce its original nationality, the demand to do so depends on legislation of country's original nationality.⁷⁸⁰ Similar legislation is applicable in Swedish law, as it allows double nationality, if a second country permits its nationals to have double nationalities.⁷⁸¹ Whereas, Italian nationality is not lost, shall an Italian national obtain dual nationality. Exception to this is provided, if there is an formal request by an Italian national to do so.⁷⁸²

Slovenian and Danish legislation does not prescribe an automatic loss of its nationality in cases when a their national acquires the nationality of a foreign country. It is in foreign country's jurisdiction to decide whether they will ask the applicant to give up her/his preivous nationality in the procedure for acquiring its nationality.⁷⁸³

Finnish nationals are considered to be nationals of Finland both in the country and abroad.⁷⁸⁴ Whereas for holders of FRYOM's nationality, they are considered exclusively a nationals of FRYOM, unless otherwise demanded by an international agreement.⁷⁸⁵

As a result of a custom, there are no specific provisions in France recognising the double nationality. France has, as the only participating country in the research, default on the dual

⁷⁷⁹ European law Students' Association Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017

⁷⁸⁰ European law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 24 October 2017

⁷⁸¹ European law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 19 October 2017

⁷⁸² European law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 50, accessed 20 December 2017

⁷⁸³ European law Students' Association Denmark, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 41, accessed 16 December 2017; Udlændinge- og Integrationsministeriet, Dobbelt Statsborgerskab, <<http://uim.dk/arbejdsomrader/statsborgerskab/dobbelt-statsborgerskab-1>>, accessed 10 July 2017 [Danish]; European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 26 October 2017

⁷⁸⁴ European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 48, accessed 18 October 2017; Finnish Immigration Service, Finlands Nationality Act, <http://www.migri.fi/download/16429_Suomen_kansalaisuus_eng.pdf?f18949c851bdd488>, accessed August 30 2017

⁷⁸⁵ European law Students' Association FRYOM, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 20 October 2017

nationality based on the first Chapter of the Convention of the Council of Europe of May 6, 1963.⁷⁸⁶

In Azerbaijan and Bosnia and Hercegovina it is possible to obtain double nationality, if enabled by the bilateral agreements to which the country is a signatory party to.⁷⁸⁷ In addition, in Azerbaijan one can obtain double nationality with the permission of the President.⁷⁸⁸

Russian legislation declares the dual national shall not be freed from the obligations specified for the Russian nationals, shall it not be otherwise provided by the federal law or an international agreement.⁷⁸⁹

A Latvian national is permitted to apply for dual nationality. Refugees are only entitled to obtain their previous nationality, shall they have a nationality of one of the following countries: Albania, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK, USA.⁷⁹⁰

Spain has adopted special system for dual nationality when determining which legislation will be applied for a person with dual nationality. The legislation used is based on double-nationality agreements determining which legal system shall be applicable. People with double nationality will therefore be subject to the legislation of the country where they have established their legal address at.⁷⁹¹

Countries that have signed such specific agreements with Spain are all ibero-American countries (countries where Spanish or Portuguese are the official languages⁷⁹²), Andorra, the Philippines, Equatorial Guinea and Portugal.

Italian nationals do not lose their nationality shall they acquire another nationality, nevertheless they can file a demand to be released from the Italian nationality.

⁷⁸⁶ European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 54, accessed 17 October 2017

⁷⁸⁷ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 12 October 2017; European Law Students' Association Bosnia and Hercegovina, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 28 October 2017

⁷⁸⁸ European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 15 October 2017

⁷⁸⁹ European Law Students' Association Russia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 43, 44, accessed 18 October 2017; The Constitution of the Russian Federation, Article 6 (3)

⁷⁹⁰ European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 37, accessed 22 November 2017

⁷⁹¹ European Law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 15 December 2017

⁷⁹² European Law Students' Association Italy, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 20 December 2017; Citizenship Law, Articles 11 and 12

10.3. Conclusion

With the European Convention on Nationality only stating upper limit of 10 years habitual residence as a condition for obtaining nationality through naturalisation⁷⁹³, participating countries have adopted several additional requirements for habitual residence, which can be based on one's nationality. Other requirements may vary from a proof of sufficient income and paid taxes, no convictions for a criminal act, knowledge of their language, are interested in impact on national security, demand renouncing previous nationality to deference to the new country.

European Convention on Nationality enables countries to determine in its internal law solutions for dual nationality⁷⁹⁴, generating different approaches from prohibiting dual nationality with certain exceptions (Austria⁷⁹⁵, Bulgaria⁷⁹⁶, Czech Republic⁷⁹⁷, the Netherlands⁷⁹⁸, Norway⁷⁹⁹), prohibiting dual nationality with no exceptions (Germany⁸⁰⁰), permitting dual nationality only to foreigners (Albania⁸⁰¹), having no additional demands or restrictions (Greece⁸⁰², Romania⁸⁰³, Turkey⁸⁰⁴) or providing further conditions (the United Kingdom⁸⁰⁵, Ireland⁸⁰⁶, Latvia⁸⁰⁷, Malta⁸⁰⁸, Slovenia⁸⁰⁹, Spain⁸¹⁰, Sweden⁸¹¹).

⁷⁹³ European Convention on Nationality, ETS 166, 6 November 1997, Article 6 (3)

⁷⁹⁴ *ibid*, Article 15

⁷⁹⁵ European Law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 14 October 2017

⁷⁹⁶ European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 15 October 2017

⁷⁹⁷ European Law Students' Association Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 42, accessed 18 October 2017

⁷⁹⁸ European Law Students' Association the Netherlands, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 31, accessed 23 November 2017

⁷⁹⁹ European Law Students' Association Norway, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 18 October 2017

⁸⁰⁰ European Law Students' Association Germany, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 44, accessed 20 October 2017

⁸⁰¹ European Law Students' Association Albania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 37, accessed 12 October 2017

⁸⁰² European Law Students' Association Greece, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 61, accessed 16 October 2017

⁸⁰³ European Law Students' Association Romania, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 34, accessed 22 October 2017

⁸⁰⁴ European Law Students' Association Turkey, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 35, accessed 23 November 2017

⁸⁰⁵ European Law Students' Association the United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 50, accessed 5 November 2017

⁸⁰⁶ European Law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 30, accessed 5 November 2017

For further development of this legal area, in countries where the European Convention on Nationality has yet to entered into force, countries should take necessary steps to do so. Countries are also encouraged to unify their legislations for acquiring nationality in different countries and to solve the question of dual nationality.

Chapter 11. The Contribution of European Union Funding in the Integration of Migrants

11.1. The EU's actions in relation to integration

In principle, member states of the EU have exclusive competence concerning integration of third country nationals ("TCNs").⁸¹² Nevertheless, since the enactment of the Treaty of Lisbon, the EU has now has authority to support member states in this area and, as a result, has adopted a number of programmes, agendas and instruments aimed to do so. The three main programmes that can be considered to have assisted member states in the integration of migrants are the European Integration Fund, the Asylum, Migration and Integration Fund, and the European Social Fund.

In this section we will present these and provide an overview of the assistance granted by the EU through their programmes and funding to integrate migrants in the different state members.

11.2. The Integration Fund

For the 2007-2013 period, the European Fund for the Integration of non-EU immigrants (EIF) was created, with a budget of EUR 825 million, as part of the General Programme "Solidarity and Management of Migration Flows" (SOLID).⁸¹³ The EIF aimed at supporting member states

⁸⁰⁷ European law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 37, accessed 22 November 2017

⁸⁰⁸ European law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 36, accessed 24 October 2017

⁸⁰⁹ European law Students' Association Slovenia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 32, accessed 26 October 2017

⁸¹⁰ European law Students' Association Spain, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 39, accessed 15 December 2017

⁸¹¹ European law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 40, accessed 19 October 2017

⁸¹² European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on the integration of third country nationals' COM(2016) 377, 2

⁸¹³ This was developed by the European Commission and aimed at ensuring an equal sharing of responsibilities between member states for the management of the Union's external borders and for the implementation of common asylum and immigration policies. See, European Commission, 'Integration Fund' <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund_en> accessed 7 November 2017

in the formulation, realization and evaluation of policies and specific actions to ensure the integration of non-EU citizens to be part of the host country. The target group are migrants who legally reside in the country, particularly women and children. According to the programme, member states have to report on the activities and actions carried out for the process of integration of migrants.⁸¹⁴

We shall now look at how this fund has been spent by member states, also giving examples of promising practice by looking at a number of successful projects.

26 member states took part in the EIF, all EU members but Denmark. The countries which implemented most projects were Spain (530 projects) and Germany (369 projects). On the other states with the least funded project were Malta (4 projects), Slovenia (5 projects) and Ireland (8 projects).⁸¹⁵ However, this figures increased considerably between 2009 and 2013 with, for instance, Slovenia going from 5 to 25 funded projects.⁸¹⁶ As well as the number of projects, also the average spent per project varied considerably from one state to another, with for instance Estonia spending EUR 18,000 per project and the UK spending EUR 596,000.

It is also very interesting to look at what the projects funded through EIF aimed to achieve. The fund, in fact, was created to target four main priorities⁸¹⁷ namely 1) the implementation of actions to put in place the 'Common Basic Principles for Immigrant Integration Policy'⁸¹⁸ 2) the development of indicator to assess the progress of integration 3) policy capacity building in this area 4) exchange of promising practice between member states. Over the period 2007-2009, 84% of the projects funded addressed Priority 1, whilst only 2 % of the projects addressed Priority 4. Focusing on the first priority, a number of common themes can be identified in projects funded through EIF including the need for a two-way approach, the role of civic orientation, the importance of raising awareness in regards to immigration and integration issues and the role of language proficiency. The main type of action taken by most member states under this priority relates to the sharing of practical information as well as educational materials with TCNs. To give an example, Belgium used part of the EIF funding to develop a number of pedagogic tools and educational material on citizenship and living in Belgium.⁸¹⁹ In Greece, on the other hand, funds were partly used to finance an advertising campaign to inform TCNs of the acquisition of the long-term residence status.⁸²⁰ The second action, taken by 19 member states, tackles language

⁸¹⁴ European Commission, 'Integration fund- National actions' <<https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund/national-actions>> accessed 9 December 2017

⁸¹⁵ Ramboll, 'Synthesis of the National Evaluation Reports on Implementation of Actions Co Financed by the European Fund for the Integration of Third-Country Nationals from 2007 and 2009 and Report at European Union Level' [2001] EIFA/CT/0006, i

⁸¹⁶ Internal Administrative Affairs, Migration and Naturalisation Directorate, 'Report on Migration, Internal Protection and Integration in 2015' (Ministry of the Interior of the Republic of Slovenia, May 2016) <http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/DUNZMN_2013/DUNZMN_2014/DUNZMN_2015/DUNZMN_2016/Statisticno_porocilo_-_ENG_2015_25052016.pdf> accessed 7 November 2017

⁸¹⁷ Ramboll, 'Synthesis of the National Evaluation Reports on Implementation of Actions Co Financed by the European Fund for the Integration of Third-Country Nationals from 2007 and 2009 and Report at European Union Level' [2001] EIFA/CT/0006, iii

⁸¹⁸ Council of the European Union, 'Press Release 2618th Council Meeting' [2004] 14615/04 (Presse 321), 15

⁸¹⁹ Ramboll, 'Synthesis of the Multiannual and Annual Programmes of the Member States: Priorities and Action of the European Fund for the Integration of Third-Country Nationals' [2010] 70092059, 8

⁸²⁰ *ibid*

training, in order to prevent language from being a barrier to successful integration. A very successful example of this is given by Cyprus,⁸²¹ which invested in a programme specifically focused on teaching Greek to TCNs. Key points of this initiative include employment of interpreters in public schools, special classes for TCN students, offering to TCNs the possibility of gaining a certification of their competency in Greek free of charge, development of diagnostic tools for learning Greek. However, this project also invested in training seminars for teachers. Their purpose was to 'further increase the capacity of teachers in terms of the treatment of migrants and TCNs integration problems'.⁸²² These were welcomed by the teachers attending, who confirmed that they were very useful and provided them with essential information and means to adequately handle such vulnerable group of students, often traumatised by their experience prior to their arrival in Cyprus. As such, this initiative had a very positive impact on the ability of teachers to teach effectively and prevent discrimination in classrooms.⁸²³

Under Priority 2, the majority of member states funded research initiatives on the situation of TNCs in their territory.⁸²⁴ These included quantitative and qualitative research on the impact of integration policies as well as methodological research on how evaluate integration.

An example of this is given by Poland,⁸²⁵ which funded a research project on discrimination against TCNs. This included a sociological survey, an analysis of the social and legal aspects of discrimination as well as a survey concerning employers' willingness to hire TCNs. The findings of these effectively supported and provided an input for the creation of antidiscrimination initiatives in Poland.⁸²⁶

Under Priority 3, half of the member states funded initiative concerning the adaptation of public and private services through integration.⁸²⁷ The main actions taken involved training and education targeting public officials and professionals. A project that was considered to be successful in this area was implemented by Finland. It aimed at raising awareness among authorities of the Thai community, deemed to be particularly vulnerable. The findings of the research have been used in the training of police force and, more broadly, public agents.⁸²⁸ The project has not only successfully reached the target group, but has also allowed the gathering of a lot of information about this particular minority, which will be used in planning public services and in organising cooperation with the third sector.⁸²⁹

⁸²¹ Ramboll, 'Synthesis of the Multiannual and Annual Programmes of the Member States: Priorities and Action of the European Fund for the Integration of Third-Country Nationals' [2010] 70092059, 7

⁸²² Cyprus Republic, 'Evaluation Report on Implementation of Actions Co Finance by The European Fund For The Integration of Third-Country Nationals' [2010] 22

⁸²³ *ibid*

⁸²⁴ Ramboll, 'Synthesis of the National Evaluation Reports on Implementation of Actions Co Financed by the European Fund for the Integration of Third-Country Nationals from 2007 and 2009 and Report at European Union Level' [2001] EIFA/CT/0006, 29

⁸²⁵ *ibid*, 30

⁸²⁶ Poland, 'Evaluation Report on Implementation of Actions Co Finance by The European Fund For The Integration of Third-Country Nationals' [2010], 29

⁸²⁷ Ramboll, 'Synthesis of the National Evaluation Reports on Implementation of Actions Co Financed by the European Fund for the Integration of Third-Country Nationals from 2007 and 2009 and Report at European Union Level' [2001] EIFA/CT/0006, 31

⁸²⁸ *ibid*, 31

⁸²⁹ Finland, 'Evaluation Report on Implementation of Actions Co Finance by The European Fund For The Integration of Third-Country Nationals' [2010], 25

Finally, less than half member states funded projects in relation to Priority 4.⁸³⁰ Most of these were research operations concerning the coordination and cooperation between member states and NGOs working in the area of integration.

It is worth mentioning the main reasons why a number of projects funded by a number of member states failed to be implemented. These included lack of capacity of the grant beneficiary, difficulties in reaching the targeted group and difficulties for the beneficiaries to maintain co-funding.⁸³¹

Overall the EIF was welcomed by the member states which argued that the funded projects were valuable and had a real positive impact on integration. However, in a recent report,⁸³² the European Court of Auditors has strongly criticised the programme for being fragmented and inadequately coordinated. It emphasised the fact that there are no set targets nor indicators and, as a result, it is impossible to assess the ultimate effectiveness of this programme. Ultimately, it was argued that 'there is no direct link between the fulfilment of individual projects and the attainment of overall success'.⁸³³

11.3. The Asylum, Migration and Integration Fund

This fund was set up by the EU for the 2014-2020 period to support projects in member states concerning asylum, legal migration and integration as well as return strategies. The goal of AMIF is to secure a long-lasting sustainable migration policy which will protect the right of asylum and ease movements for persons within the framework of regulated immigration.⁸³⁴ The target group are persons from third countries and the co-financing is up to 75 %.⁸³⁵ AMIF general provisions as well as the requirements which member states have to comply with are set out in two Council Regulations.⁸³⁶ Overall, the total budget of the AMIF is EUR 3.137 billion. For our present analysis, it is relevant to note that one of the specific objectives⁸³⁷ is to promote the effective integration of third-country nationals at national, local and regional levels. We should then look at how member state have used this funding up until now, especially in relation to the aforementioned objective.

⁸³⁰ Ramboll, 'Synthesis of the National Evaluation Reports on Implementation of Actions Co Financed by the European Fund for the Integration of Third-Country Nationals from 2007 and 2009 and Report at European Union Level' [2001] EIFA/CT/0006, 32

⁸³¹ *ibid*, 34

⁸³² European Court of Auditors, 'Do the European Integration Fund and European Refugee Fund contribute effectively to the integration of third-country nationals?' [2012] Special Report no 22

⁸³³ *ibid*, 79

⁸³⁴ European Commission, 'Asylum, Migration and Integration Fund' <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en> accessed 7 November 2017

⁸³⁵ *ibid*

⁸³⁶ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management [2014] OJ 150/112 and Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC [2014] OJ 150/168

⁸³⁷ *ibid*, Article 3(2)(b)

Based on our findings, it appears clear that the way AMIF allocated funding is spent drastically from one member states to the other. A few member states considered integration to be an extremely important priority. For instance, Austria⁸³⁸ and Sweden⁸³⁹ have used more than 40% of their AMIF allocation to integration-related projects. Ireland⁸⁴⁰ has instead used 27,9% of its allocation to this objective. At the other end of the spectrum, the United Kingdom⁸⁴¹ is particularly striking. It has, in fact, granted 55% of the funding to returns strategies, leaving only 20% of the allocation to cover integration-related initiatives.

We should now then look at a few example of promising practice, illustrating some integration-related projects that have been funded through AMIF so far. Czech Republic, for instance, has planned to use part of its allocation to develop its established Integration Support Centres. This centres offer TCNs access to a counselling service, legal and holistic advice as well as language and sociocultural courses and professional training to empower them.⁸⁴² Another successful example is the Finn Church Aid project, an initiative taking place in Finland, aimed at producing language syllabus to be distributes amongst TCNs in reception centres.⁸⁴³

Considering all of this, it is possible to see that the AMIF has played a positive role in enhancing the integration of migrants in EU member states. Nevertheless, similar criticism that was raised in relation to the EIF, may be noted in relation to this EU programme. A further concern has

⁸³⁸ European law Students' Association Austria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 37 accessed 20 November 2017 referring to Jelena Ijić, 'Öffentlicher Aufruf zur Einreichung von Projektvorschlägen' (13 April 2016),

<https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Projektfoerderung/Allgemeine_Informatonen_AUFRUF_BMEIA.pdf> accessed 7 November 2017

⁸³⁹ European law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 43 accessed 20 November 2017 referring to Migrationsverket, 'Sveriges nationella program för AMIF' <<https://www.migrationsverket.se/download/18.4100dc0b159d67dc61466a6/1490279211094/Sveriges+nationella+program+för+Asyl-%2C+migrations-%2C+och+integrationsfonden%2C+AMIF.pdf>> accessed 7 November 2017

⁸⁴⁰ European law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 31 accessed 20 November 2017 referring to The Department of Justice and Equality, 'The National Programme AMIF' (21 March 2016)

<[http://www.integration.ie/website/omi/omiwebv6.nsf/page/78C1D78795835CCF80257FC300613E6E/\\$file/National%20Programme%20AMIF.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/78C1D78795835CCF80257FC300613E6E/$file/National%20Programme%20AMIF.pdf)> accessed 7 November 2017

⁸⁴¹ European law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 51 accessed 20 November 2017 referring to UK Visas and Immigration, 'Asylum, migration and integration fund programme' (17 August 2015)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455177/uk_national_program_me_version_v1.pdf> accessed 7 November 2017

⁸⁴² European law Students' Association Czech Republic, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 44 accessed 20 November 2017 referring to Ministerstvo vnitra České republiky, 'Odbor fondů EU v oblasti vnitřních věcí. Obecné informace' (18 February 2016) <<http://www.mvcr.cz/clanek/fondy-eu-v-oblasti-vnitřnich-veci-obecné-informace.aspx?q=Y2hudW09MQ%3d%3d>> accessed 7 November 2017

⁸⁴³ European law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 50 accessed 20 November 2017 referring to The Ministry of Economic Affairs and Employment 'Kasvua kansainvälisistä osaajista –hankekokonaisuus'

<<https://www.rakennerahastot.fi/documents/605562/1379109/Kasvua+kansainvälisistä%20osaajista+-agenda/12adfa71-284b-4ce2-a76e-1209a2fcb229>> accessed 7 November 2017

also been advanced due to the different nature of the AMIF. While the EIF was strictly focused on the integration of migrants, the present fund has three different objectives. For this reasons, some member states, such as the UK, may be more inclined to focus on other objectives which involve to the return of TCNs irregularly residing. For this reason, it has been observed that in the UK 'EU funds need to be better targeted to support the integration of migrants'⁸⁴⁴ and that 'given the increasing refugee flows in Europe, having a separate EU integration fund could prove to be very beneficial in the long-term'.⁸⁴⁵

11.4. The European Social Fund

The ESF is a EU fund that aims at promoting employment, promoting economic and social cohesion throughout the EU with a particular focus on individuals belonging to disadvantaged social groups. Although not specifically targeted at migrants, the ESF provides important financial means to support member states' integration-related projects.⁸⁴⁶ As such, in allocating this funding, member states could pursue integration of TNCs through both mainstream as well as specific migration actions.⁸⁴⁷

Considering this, during the period 2000-2006, 1567 ESF measures were implemented by 21 member states. However only 276 measures (17%) specifically addressed migrants and other minorities.⁸⁴⁸ Germany, Spain and the UK have implemented the largest number of such measures representing altogether 70% of the total. Cyprus, Estonia, Latvia and Malta are the states which have implemented the least migrant-targeted ESF measures, with an average of 4 measures over the course of the first period.⁸⁴⁹ In the second period 2007-2013, all member states except Cyprus and Lithuania have announced the intention to implement such measures.⁸⁵⁰ Looking at the expenditure, it can be observed that over the first period 25% of the total ESF allocation was spent on measures targeting migrants. Over the second period, it is estimated that this figure will increase to 44%, showing an increased attention on this issue.⁸⁵¹

Based on the data available, during the first period of implementation it has been estimated that 1.116 million migrants benefited from ESF funded programmes. The highest share (58%) were migrants residing in Spain.⁸⁵²

Interventions financed by the ESF address both individuals and systems, structures. In regards to the first category these include training, counselling and orientation opportunities targeted at migrants. An example of this is given by Finland, which invested part of its ESF allocation in developing its Centre for Economic Development, Transport and Environment. More

⁸⁴⁴ Claude Moraes, 'Autumn Academy 2016: Strategic Options for European Agendas, Integration Action Plan', 4 <<http://www.compas.ox.ac.uk/media/AA16-Moraes.pdf>> accessed 7 November 2017

⁸⁴⁵ *ibid*

⁸⁴⁶ See Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Union Social Fund and repealing Regulation (EC) No 1784/1999 [2006] OJ 210/12

⁸⁴⁷ European Commission, 'The European Social Fund: Migrants and Minorities' (European Union, 2010), 27 <http://ec.europa.eu/employment_social/esf/docs/br_migrants_minorities_en.pdf> accessed 7 November 2017

⁸⁴⁸ *ibid*

⁸⁴⁹ *ibid*

⁸⁵⁰ *ibid*, 31

⁸⁵¹ *ibid*

⁸⁵² *ibid*, 33

specifically, these centres promoted a number of projects open to TCNs, including language, art and entrepreneurship training opportunities.⁸⁵³

A successful example was funded in Greece where part of the ESF allocation was invested in creating integrated intervention programmes, which were implemented by a number of vocational training centres, supportive centres and specialised centres. These initiatives were mainly aimed at minorities such as Greek Roma, Greek Muslims, refugees and migrants. They were aimed at providing equal opportunities in accessing the labour market and at facilitating the integration of migrants in the social framework. The project was twofold, on one hand focusing on providing training and employable skills to migrants and, on the other hand, providing assistance to the targeted individual by supplying job subsidisation and self-employment opportunities.⁸⁵⁴

Finally, it is important to emphasise that the fact that some member states which have not invested their ESF allocation in migrant-focused measures, does not mean that they have not implemented such measures at all. As showed in the previous sections, in fact, other EU funding instruments have been offered.

11.5. Conclusion

In this section we evaluated the effectiveness of EU funds aimed at assisting member states in the integration of migrants. This evaluation is very challenging for a number of reasons. Firstly, the criticism moved by the Court of Auditors in relation to the EIF⁸⁵⁵ can be extended to the other two funds we presented. There are, in fact, no set indicators to show whether these initiatives have ultimately been effective. Secondly, in relation to the AMIF and the EIF, final evaluations reports by member states have yet to be published and, as such, limited data is available. Nevertheless, we presented a number of successful projects and promising practices adopted by a number of member states. As such, we showed the positive impact of these three programmes in the integration of migrants in the EU.

⁸⁵³ European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (Forthcoming 2018), 49 accessed 20 November 2017 referring to Ministry of Economic Affairs and Employment 'Integration of Immigrants is a joint effort' <<http://tem.fi/en/administration-of-integration-and-the-actors-involved>> accessed 7 November 2017

⁸⁵⁴ European Commission, 'The European Social Fund: Migrants and Minorities' (European Union, 2010) <http://ec.europa.eu/employment_social/esf/docs/br_migrants_minorities_en.pdf> accessed 7 November 2017, 43

⁸⁵⁵ European Court of Auditors, 'Do the European Integration Fund and European Refugee Fund contribute effectively to the integration of third-country nationals?' [2012] Special Report no 22, 79

Bibliography

International and National Legislation

- Act on Danish Nationality
- Act on the Residence of Foreign Nationals in the Territory of the Czech Republic 1999
- Aliens Act 2004 (Finland)
- Aliens Act 2005 (Sweden)
- Aliens Act 2007 (Bulgaria)
- Aliens Act (Official Gazette of the RS, No. 16/17) [Zakon o tujcih] (Slovenia)
- Aliens Act no. 412 of 9 May 2016 (Greece)
- Ändringar i utlänningslagen, 1994/95:179 [Swedish]
- A treaty between Denmark, Finland, Iceland, Norway and Sweden on population registration 2006 (Tanskan, Suomen, Islannin, Norjan ja Ruotsin välinen väestön rekisteröintiä koskeva sopimus 96/2006)
- Austrian School Education Act 2001 [Schulunterrichtsgesetz, SchUG]
- Austrian University Act BGBl. I. No. 12/2002 [Universitätsgesetz, UG]
- Azərbaycan Respublikasında insan hüquq və azadlıqlarının müdafiəsinin səmərəliliyini artırmaq sahəsində Milli Fəaliyyət Proqramı 2011 [Azerbaijan]
- Azərbaycan Respublikasının Mülki Prosesual Məcəlləsi
- Azərbaycan Respublikasının Cinayət Prosesual Məcəlləsi
- British Nationality Act 1981
- Bulgarian Citizenship Act
- Bulgaria's Constitution of 1991 with Amendments through 2007
- Code Civil [France]
- Code of Good Practice in the Provision of Trans-national Education (2001)
- Code of the entry and the residence of foreigners and the right to asylum of 2017, [Code de l'entrée et du séjour des étrangers et du droit d'asile] (France)
- Constitution of the Republic of Armenia
- Constitution of the Republic of Latvia 1922, [Latvijas Republikas Satversme]
- Constitution of the Republic of Poland. April 23rd 1935
- Constitutional Court Act (Czech Republic)
- Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (adopted entered into force 24 January 1965)
- Convention Relating to the Status of Refugees 1951
- Convention on the Participation of Foreigners in Public Life at Local Level, Strasbourg, 1992
- Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163

- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5
- Council of Europe, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 16 September 1963, ETS 46
- Council of Europe, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984, ETS 117
- Council of Europe, European Convention on the Legal Status of Migrant Workers, 24 November 1977, ETS 93
- Council of Europe, European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, 13 December 1957, ETS 25
- Council of Europe, Protocol to the European Convention on Establishment, 13 December 1955, ETS 19
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- Council Directive 2003/86/EC on the right to family reunification [2003] OJ L251/12
- Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents [2003] OJ L16/44
- Council Directive (EC) 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/
- Council Directive 2004/82/EC on the obligation of carriers to communication passenger data [2004] OJ L261/24
- Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L304/12
- Council Directive 2011/95/EU 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
- Council Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals [2002] OJ L157/1
- Council Regulation (EC) 810/2009 establishing a Community Code on Visas [2009] OJ L243/1

- Council Regulation (EC) 1244/2009 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [2009] OJ L 336/1
- Council Regulation (EC) 2016/399 on a Union Code on the rules governing the movement of persons across borders [2006] OJ L77/1
- Czech Act. No. 111/1998 Coll. on Higher Education Institutions and on Amendment to Other Acts, (22 April 1998) as amended.
- Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina, 21 November 1995
- Decision DP&O/15/661173 of the Minister of Security and Justice (on the establishment of the organisation of the Ministry of Security and Justice) of 3 July 2015 [Besluit van de Minister van Veiligheid en Justitie van 3 juli 2015, kenmerk DP&O/15/661174, houdende vaststelling van de organisatie van het Ministerie van Veiligheid en Justitie (Organisatiebesluit Ministerie van Veiligheid en Justitie 2015)] (The Netherlands)
- Decision No 189 aimed at introducing a European health insurance card to replace the forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 as regards access to health care during a temporary stay in a Member State other than the competent State or the State of residence [2003] OJ L276/1
- Decision No S2 concerning the technical specifications of the European Health Insurance Card [2010] OJ C106/26
- Declaration in a Note Verbale from the Permanent Representation of the Netherlands, January 28 1997
- Decree of the RA President NH-286-N of 18 November 2009. (Armenia)
- Decree of the Council of Ministers no 21 of 5 February 2015. (Bulgaria)
- Decree no. 394 of the President of the Republic of Italy (Regulation to implement the Consolidated Law provisions governing immigration and the status of foreigners) 1999, [Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero]
- Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77
- Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications (7 September 2005) OJ L 255 22–142
- 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 (recast)
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
- Emilia Romagna Statute (Italy)
- ETS No. 5 First Protocol to the European Convention on Human Rights
- ETS No. 19 (European Convention of Establishment)
- ETS No. 93 (European Convention on the legal status of migrant workers) 1977
- ETS No. 163 (European Social Charter (revised)) 1999
- ETS No. 165 (Convention on the Recognition of Qualifications Concerning Higher Education in the European Region) 1997
- ETS No. 166 (European Convention on Nationality), 1997
- European Convention on Human Rights
- Federal Law No. 273 of 29 December 2012 on Education (Russia) [Федеральный Закон Российской Федерации от 29 декабря 2012 года №273-ФЗ]
- Framework Law on Higher Education in B&H, Official Gazette of B&H, No. 59/07
- Framework Law on Higher Education in Bosnia and Herzegovina, Parliamentary Assembly of BiH, no. 94/07
- French Constitution of October 4th, 1958
- General Comment No. 14 to International Covenant on Economic, Social and Cultural Rights 1966
- German Law concerning the assessment of equalisation of professional qualifications § 1 BQFG [Gesetz über die Feststellung der Gleichwertigkeit von Berufsqualifikationen – Berufsqualifikationsgleichstellungsgesetz] [German]
- German Law for improvement of detection and recognition acquired professional qualifications abroad (15 March 2012) [Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen]
- Government Resolution no. 809 of 9 December 1998. (Czech Republic)
- Guidance No.293 on the treatment procedure for foreign citizens with irregularly situation in the territory of the Republic of Albania 2015
- Hellenic National Academic Recognition and Information Center and other provisions Law No. 3328/2005
- Helsingfors Convention 23 March 1962 [Helsingforsavtalen]
- Higher Education Law of Turkey No. 2547
- Immigration Regulations 2004 (Malta)
- Irish Qualifications and Quality Assurance (Education and Training Act) Number 28 of 2012

- Italy Decree no. 165 (General rules on the work in the public administrations) 2001 [Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche]
- Italy Legislative Decree no. 251 (Implementation of Directive 2004/83/EC) of 2007 [Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta testo in vigore]
- Italy Ratification of the Lisbon Convention, Law no. 148 of July 11 2002 [Ratifica ed esecuzione della Convenzione sul riconoscimento dei titoli di studio relativi all'insegnamento superiore nella Regione europea, fatta a Lisbona l'11 aprile 1997, e norme di adeguamento dell'ordinamento interno]
- Kodi i Procedures Civile, art 494 (c)
- Kodi Procedures Penale, art 661
- Lag om svenskt medborgarskap, 2001:82 [Swedish]
- Law of 23 November 2000 (on the overall Review of the Alien Law)[Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000)] (The Netherlands)
- Law no 108 on the treatment of foreigners 2013 (Albania)
- Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë]
- Law no 561 (Education Act in Czech Republic) 2004, [Školský zákon]
- Law no. 4375 of 2016. (Greece)
- Law n.6458 (Law on the Foreigners and International Protection) 2013
- Law of the Republic of Azerbaijan on Education 1992 [Azərbaycan Respublikasının Təhsil haqqında Qanunu] [Azerbaijani]
- Law on citizenship of the Republic of Macedonia
- Law on Foreigners in the Republic of Bulgaria 1999
- Law on High School Education, Official Gazette of the Republic of Macedonia no.44/1995 as lastly amended
- Law on Higher Education, Official Gazette of the Republic of Macedonia No. 35/08 and 103/08 as lastly amended
- Law on Movement and Residence of Foreigners and Asylum in BiH (Bosnia and Herzegovina)
- Law on Primary Education, Official Gazette of the Republic of Macedonia no. 103/2008 as lastly amended
- Laws of Malta, Chapter 327, Education Act (1988 as lastly amended)
- Laws of Malta, Chapter 451, Mutual Recognition of Qualifications Act (2002 as lastly amended)
- Lisbon Convention Committee, 'Joint ENIC/NARIC Charter of Activities and Services' (9 June 2004)

- Migration Code of the Republic of Azerbaijan 2013 [Azərbaycan Respublikasının Miqrasiya Məcəlləsi] [Azerbaijani]
- National Regulation on State Requirements for acknowledgment of acquired higher education, Council of Ministers Decree No. 168 of 14 August 2000 <<http://www.lex.bg/laws/ldoc/-549417984>> [Наредба За Държавните Изисквания За Признаване На Придобито Висше Образование И Завършени Периоди На Обучение В Чуждестранни Висши Училища] accessed on 19 September 2017
- Order of the Ministry of Internal Affairs of the Russian Federation no. 192 of 15 April 2016 ‘On approval of the Regulation on the General Administration for Migration Issues of the Ministry of Internal Affairs of the Russian Federation’.
- PACE Resolution 1509 (on human rights of irregular migrants) 2006
- Parliamentary Assembly of the Council of Europe, Resolution 1327 (1997) on Protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, April 24 1997 (14th Sitting)
- Parliamentary Assembly of the Council of Europe, Resolution 1686 (2004) on European strategy for the promotion of sexual and reproductive health and rights, October 5 2004 (27th Sitting)
- Parliamentary Assembly of the Council of Europe, Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe, January 28 2010 (7th Sitting)
- Pilsónības likums, 1994 [Latvian]
- Presidential Decree no. 123 of 2016 (Reconstruction and renaming of the Ministry of Administrative Reform and e-Government, re-establishment of the Ministry of Tourism, establishment of the Ministry of Migration Policy and Ministry of Digital Policy, Telecommunications and Information). (Greece)
- Presidential Decree no. 398 of 2001. (Italy)
- Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members 2011
- Qualification Framework in B&H, Official Gazette of B&H, No. 9/13 and 81/13.
- Recommendation on Criteria and Procedures for the Assessment on Foreign Qualifications (2001)
- Recommendations on the Criteria for Assessment of Foreign Higher Education Qualifications in the Procedure of Recognition for the Purposes of Employment and Further Education, Official Gazette of B&H, No. 16/03
- Recommendation 1755 (2006) on human rights of irregular migrants
- Recommendation on International Access Qualifications (1999)
- Recommendation on the Recognition of Joint Degrees and its Explanatory Memorandum’ (2004)
- Recommendation No.R (84)18 of the Committee of Ministers of the Council of Europe

- Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems [2004] OJ L166/1
- Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Union Social Fund and repealing Regulation (EC) No 1784/1999 [2006] OJ 210/12
- Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L284/1
- Regulation (EU) no 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member states by a third-country national or a stateless person (recast).
- Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management [2014] OJ 150/112
- Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC [2014] OJ 150/168
- Regulations concerning admission to higher education 2017 [Forskrift om opptak til høyere utdanning]; Samordna Opptak, <<https://www.samordnaopptak.no>> accessed 01 September 2017
- Republic of Armenia Law on Higher and Postgraduate Professional Education HO-62-N/14.12.2004/EN/I/29.05.2015 <<http://www.anqa.am/en/about-us/legal-field/laws/law-of-the-republic-of-armenia-on-higher-and-postgraduate-professional-education/>> accessed on 26 November 2017
- Republic of Latvia Education Law (Latvijas Republikas Izglītības likums) (1998 as lastly amended 2013) <www.vvc.gov.lv/export/sites/default/docs/LRTA/Citi/Education_Law.doc> accessed 5 November 2017
- Residence of foreign Nationals Act (Czech Republic)
- Romanian Regulation on the Organization and Operation of the National Center for Recognition and Equivalence of Diplomas, Ordin 4022/14.05.2008 [Regulamentului de organizare și funcționare a Centrului Național de. Recunoaștere și Echivalare a Diplomelor...]
- Representation of the People Act 1983 (UK)
- Royal Decree no. 703 of 2017. (Spain)
- Spanish Royal Decree no. 967/2014 [por el que se establecen los requisitos y el procedimiento para la homologación y declaración de equivalencia...]

- State Gazette no. 103 of 25 November 2003 (Bulgaria)
- Statsborgerloven, 2005 [Norwegian]
- Statute of Tuscany (Italy)
- Styrian Municipal Code (Austria)
- The Act on Eligibility for Public Posts Provided by Higher Education Studies Completed Abroad (1385/2015) [Laki ulkomailta suorittettujen korkeakouluopintojen tuottamasta virkakelpoisuudesta, Finnish]
- The Act on Recognition of Professional Qualifications (1384/2015) [Laki ammattipätevyiden tunnustamisesta, Finnish]
- The Assessment and Recognition of Education Act (ZVPI) Uradni list RS, št. 87/2011 [Slovenian]
- The Bologna Declaration (19 June 1999)
- The Constitution of Greece, 18 April 2001
- The Constitution of the Russian Federation
- The Instrument of Government 1974:152 [Regeringsformen] (Sweden)
- The Statute of 12 December 2013 about foreigners [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach].(Poland)
- Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01
- Turkey Regulation on the Recognition of Foreign Higher Education Diplomas <http://www.yok.gov.tr/documents/29946471/30170001/Regulations_on_Recognition_and_Equivalence_of_Foreign_Higher_Education_Diplomas.pdf/> accessed 5 November 2017
- Ukraine Law n. 504 (The Order of recognising degrees of higher education gained in foreign higher educational institutions) 2015 [Порядок визнання здобутих в іноземних вищих навчальних закладах ступенів вищої освіти]
- UN Convention on the Rights of the Child 20 November 1989, United Nations, Treaty Series, vol. 1577
- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted by the UN General Assembly by Resolution 45/158 on 18 December 1990
- Universal Declaration of Human Rights 1948

Reports and Recommendations

- CoE, 'Explanatory Report to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region' (1997)
- CoE & UNESCO, 'The Committee of the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region: Monitoring the Implementation of the Lisbon Recognition Convention' (Paris 2016)
- Commissioner for Human Rights, 'Memorandum on the Human Rights of Asylum Seekers and Immigrants in the UK' [2017] CommDH 17

- Committee of Ministers, ‘Guide to good practice in respect of domestic remedies’, September 18 2013
- Committee of Ministers, ‘Twenty Guidelines on Forced Return’, September 2005
- Committee of Ministers, ‘Supervision of the execution of judgments and decisions of the European Court of Human Rights’, Annual Report, 2011
- Council of Europe: Committee of Ministers, Recommendation N° R (98) 13 on the Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights, 18 September 1998, Rec(98)13.
- Council of Europe: Committee of Ministers, Recommendation no. R (81) 16 of the Committee of Ministers to member states on the harmonisation of national procedures relating to asylum, Adopted by the Committee of Ministers on 5 November 1981 at the 339th meeting of the Ministers' Deputies.
- Council of Europe: Parliamentary Assembly, Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, 24 April 1997, Rec 1327 (1997).
- Cyprus Republic, ‘Evaluation Report on Implementation of Actions Co Finance by The European Fund For The Integration of Third-Country Nationals’ [2010]
- EAR-HEI, ‘Recognition of qualification holders without documentation - European guidelines for credential evaluators and admissions officers’ (EAR-HEI Consortium 2016)
- EAR-HEI, ‘The European Recognition Manual – Higher Education Institution 2nd Edition’ (EAR-HEI 2016)
- European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on the integration of third country nationals’ COM(2016) 377
- European Commission, ‘Explanatory Memorandum’ COM/2016/0466 final – (13 July 2016)
- European Commission, ‘The European Social Fund: Migrants and Minorities’ (European Union, 2010) http://ec.europa.eu/employment_social/esf/docs/br_migrants_minorities_en.pdf accessed 7 November
- European Committee of Social Rights, ‘France and the European Social Charter’ [2017]
- European Committee of Social Rights, ‘The Czech Republic and the European Social Charter’ [2017]
- European Court of Auditors, ‘Do the European Integration Fund and European Refugee Fund contribute effectively to the integration of third-country nationals?’ [2012] Special Report no 22
- European Law Students’ Association Austria, National Report on Integration of Migrants in European Law Students’ Association and Council of Europe, Integration of

- Migrants (2018)
<<http://www.hspm.org/countries/austria08012013/livinghit.aspx?Section=2.9%20Patient%20empowerment&Type=Section>> accessed January 7 2018
- European Law Students' Association Azerbaijan, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) "Discipline rules in the Detention Centers of Illegal Migrants" 2016 [Qanunsuz miqrantların saxlanılması mərkəzlərinin daxili intizam Qaydaları]
 - European Law Students' Association Bulgaria, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) Law on Health Insurance (Закон за здравното осигуряване) - July 1999
 - European Law Students' Association Finland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) Municipality of Residence Act 201 1994 [Kotikuntalaki]
 - European Law Students' Association France, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) <<http://www.medecinsdumonde.org/fr/populations/migrants-deplaces>> accessed 18 September 2017
 - European Law Students' Association Ireland, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) Migrants in an irregular situation: access to healthcare in 10 European Union Member States (2011)
 - European Law Students' Association Latvia, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) The Medical Treatment Law, 1 July 1997, No. 167/168
 - European Law Students' Association Malta, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) <http://interwencjaprawna.pl/docs/wpdt2011_1_en.pdf> accessed July 19 2017
 - European Law Students' Association Sweden, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/While-you-are-waiting-for-a-decision/Health-care.html>> accessed January 6 2018
 - European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration of Migrants (2018) <<https://www.justiceinspectores.gov.uk/hmiprisonswp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>> accessed 21 June 2017
 - European Law Students' Association United Kingdom, National Report on Integration of Migrants in European Law Students' Association and Council of Europe, Integration

- of Migrants (2018) <<https://www.hrw.org/reports/2000/turkey2/Turk009-10.htm>> accessed January 6 2018
- Explanatory Report to the European Convention on Nationality, CETS 200
 - Finland, 'Evaluation Report on Implementation of Actions Co Finance by The European Fund For The Integration of Third-Country Nationals' [2010]
 - IARLJ, 'Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis' (EASO, December 2016)
 - NCFHE, 'National Commission for Further and Higher Education Annual Report 2013' (Ministry of Education and Employment 2013)
 - Malfroy Erwin, 'Guidelines for the Recognition of Refugee's Qualification' (Coe Working Party on Refugee Qualification; ENIC-NARIC 1999)
 - Medici per I Diritti Umani, 'Porti Insicuri – Le Riammissioni dai Porti Italiani alla Grecia e le Violazioni dei Diritti Fondamentali dei Migranti', November 2013
 - Poland, 'Evaluation Report on Implementation of Actions Co Finance by The European Fund For The Integration of Third-Country Nationals' [2010]
 - Presidenza del Consiglio dei Ministri, 'Relazione al Parlamento Anno 2009 – L'Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo nei Confronti dello Stato Italiano – Legge 9 Gennaio 2006', (2009) 50
 - "Prvi koraki k sistemskemu izvrševanju sodb Evropskega sodišča za človekove pravice", Varuh človekovih pravic Republike Slovenije, 27. oktober 2016, <<http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/prvi-koraki-k-sistemskemu-izvrsevanju-sodb-evropskega-sodisca-za-clovekove-pravice/?cHash=5084def78a360e8bb62ec18244b6afa4>>, accessed June 20 2017 [Slovenian]
 - Ramboll, 'Synthesis of the National Evaluation Reports on Implementation of Actions Co Financed by the European Fund for the Integration of Third-Country Nationals from 2007 and 2009 and Report at European Union Level' [2001] EIFA/CT/0006
 - Ramboll, 'Synthesis of the Multiannual and Annual Programmes of the Member States: Priorities and Action of the European Fund for the Integration of Third-Country Nationals' [2010] 70092059
 - Recommendation CM/Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum, January 19 2000 (694th Meeting)
 - Recommendation CM/Rec(2004)6 of the Committee of Ministers to member States on the improvement of domestic remedies, May 12 2004 (114th Session)
 - Recommendation CM/Rec(2010)3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings, February 24 2010 (1077th Session)
 - Strati, F, 'Asylum seekers and migrants in Italy: are the new migrant rules consistent with integration programmes?', European Social Policy Network, March 2017 [Italian]

- http://www.mediciperidiritiumani.org/pdf/low_rapporto_Medu_2013.pdf, accessed 13 July 2017
- Swedish Migration Agency, Rättsligt ställningstagande angående metod för prövning av tillförlitlighet och trovärdighet, RCI 09/2013 June 10 2013
- ‘The Directive on Professional Qualifications – a Complete Implementation’ (Public Investigation SOU 2014:19) [Yrkeskvalifikationsdirektivet – Ett samlat genomförande, Swedish]
- Zamorano Elizabeth and others, ‘An Exploration of the Use and Potential use of the European Qualifications Framework in Qualifications Recognition Procedures of four ENIC-NARIC Centres: Final Report’ (EAO-EA 2011)

Books

- Aubin Emmanuel, *Droit des étrangers* (Gualino Eds, 2014), [French]
- Bernd Parusel, ‘Unaccompanied Minors in Germany: Reception, return and integration arrangement’ Working Paper 26 (EMN 2009)
- Chrysogonos K. *Ατομικά και Κοινωνικά Δικαιώματα*, Nomiki Bibliothiki, 2006 [Greek]
- Council of Europe, Community Relations Project, *Political and Social Participation of Immigrants through Consultative Bodies*, ISBN 92-871-3891-5, April 1999, 11
- Dia A, ‘Domestic implementation of European Court of Human Rights Judgements in Europe: Legal Infrastructure and Government Effectiveness Matter’, *European Journal of International Law*, 25(1) (2014)
- Dragaric D and others, *Handbuch des Österreichischen Hochschulrechts – Band 8* (2nd edn, NWV 2012) 259 [German]
- ECSR “Digest of the case law of the European Committee of Social Rights” (1 September 2008)
- ESC Secretariat, ‘Information Document: The Right To Education Under The European Social Charter’ (CoE 17 November 2006)
- Eurodiaconia, ‘Briefing: Free movement in the EU: What rights for EU mobile citizens?’ (2014)
- European Court of Human Rights, ‘Factsheet – Health’ (2017)
- European Parliamentary Research Service, ‘Freedom of movement and residence of EU citizens: Access to social benefits’ (2014)
- Handbook on European non-discrimination law, European Union Agency for Fundamental Rights, Council of Europe, 2010
- Hunt M, ‘Enhancing Parliaments’ Role in the Protection and Realisation of Human Rights’, *Parliaments and Human Rights*, Oxford and Portland, 2015
- Ko-Chih R. Tung, ‘Voting Rights for Alien Residents-Who Wants It? The International Migration Review, Vol. 19, No. 3, Special Issue: Civil Rights and the Sociopolitical Participation of Migrants (Autumn, 1985), pp. 451
- Ktistakis Y, ‘Protecting Migrants under the European Convention on Human Rights and the European Social Charter’, Council of Europe Publishing, February 2013, p75

- Lambert Abdelgawad E., ‘The execution of judgments of the European Court of Human Rights’, Council of Europe Publishing, 2nd Edition, January 2008
- Mak E, ‘The Sheltering Sky of Strasbourg; on the ECtHR's judgement in the case of Salah Sheekh v. the Netherlands and its effects on asylum policy and adjudication in the Netherlands’, *Europe & Law Journal*, 1(1) (2007)
- Martinico G, ‘Is the European Convention Going to Be ‘Supreme’? A Comparative-Constitutional Overview of ECHR and EU Law before National Courts’, *European Journal of International Law*, 23(2) (2012)
- Maša M., ‘Council of Europe and the right to healthcare- is the European Convention on Human Rights appropriate instrument for protecting the right to healthcare?’ (2013) *Zb. Prav. fak. Sveuč. Rij.* 729
- McGuinness Terry and Gower Melanie, *The Common Travel Area, and the Special Status of Irish Citizens in UK Law* (Parliamentary Briefing, 9 June 2017)
- Middlesex University, *A guide to Schooling in England for BME and newly arrived migrant parents* (Guidance, December 2010) < <http://sprc.info/wp-content/uploads/2013/03/AFSI-Guide-for-Parents-final.pdf>> accessed 10 September 2017
- Middlesex University, *Newly-arrived migrant and refugee children in the British Educational System* (Report, 6 December 2010) < https://eprints.mdx.ac.uk/9399/4/AFSI_-_Research_Report_-_final.pdf > accessed 21 August 2017
- P. Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015)
- Papassiopi-Passia, *Δικαιο Αλλοδαπών*, Sakkoulas Publications [Greek]
- Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) [Czech]
- Schuster Anke and others (eds), ‘Recognition of Qualifications and Competences of Migrants’, (International Organization for Migrations 2013)
- Stefano Valenti, ‘Protecting the human rights of irregular migrants: the role of national human rights structures’ (Workshop Debriefing Paper, 17-19 June 2008 Padua) (CoE 2008)
- Swedish School Inspectorate 2013, 2014, 2009, Swedish National Agency for Education 2014a, Department for education, 2013.
- Tomislav S., ‘Comprehensive sickness insurance as a condition for EU citizens’ residence in other member states: a need for reform?’ (2016) *European Journal of Social Security*
- UNCHR & CoE, ‘Unaccompanied And Separated Asylum-Seeking And Refugee Children Turning Eighteen: What To Celebrate?’ (March 2014)
- United Nations High Commissioner for Refugees (UNHCR), *Stellungnahme des UNHCR zur Anhörung des Innenausschusses des Deutschen Bundestages zum Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union am*

- 21. März 2007, 26; see also Björn Harmening, Wir bleiben draußen, Schulpflicht und Schulrecht von Flüchtlingskindern in Deutschland, 8 – 28.
- Yannis Ktistakis, 'Protecting Migrants under the European Convention on Human Rights and the European Social Charter: A Handbook for Legal Practitioners' (CoE 2013) 62
- Wieser B, Handbuch des österreichisches Schulrechts - Band 3 Schulunterrichtsrecht (NWV 2015) 243 [German]
- Zwaan KM and others, Nederlands Migratierecht (Boom Juridische Uitgevers 2016)

Periodicals

- Caruana C, 'Malta's laws on detention are still unclear', Times of Malta, August 19 2016 <<https://www.timesofmalta.com/articles/view/20160819/local/maltas-laws-on-detention-are-still-unclear-says-unhcr.622400>> accessed December 21 2017
- Pål Nesse, Flyktninghjelpen, 2017.
- Morgenstern F, The Right of Asylum, 1949 BRrr. Y.B. INT'L L. 327.
- Linda Reif, The Ombudsman, Good Governance, and the International Human Rights System (Springer Science 2004) 30.

Digital resources

- Academic Information Centre, 'Home' <<http://www.aic.lv/portal/en>> accessed 31 August 2017
- AIDA – Asylum Information Database, 'Country reports' <<http://www.asylumineurope.org/reports>> accessed January 6 2018
- Albanian Ministry of Education, Sports and Youth, 'Recognition of Foreign Diplomas' <<http://www.arsimi.gov.al/al/arsimi/universiteti/njehsimi-i-diplomave-te-huaja>> accessed 5 November 2017 [Albanian]
- Assistance for returning home <http://www.migri.fi/download/61070_vapaaehtoinen_paluu_esite_en.pdf?07b203cbf8bdd488> accessed September 4 2017
- Angeliki Chrysochoidou – Argyropoulou, First Vice-President of the GNCHR and Anna Eirini Baka, PhD, Legal Officer at the GNCHR, 'Report on the EU-Turkey Agreement of the 18th of March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016' (Greek National Commission for Human Rights, 2016) <file:///C:/Users/irene/Desktop/GNCHR%20Report%20EU-Turkey%20Agreement.pdf> accessed 20 July 2017 [Greek].
- Announcement of GNCHR: "Η Ευρωπαϊκή Ένωση πρέπει να αναλάβει τις ευθύνες της και να ανασχεδιάσει την μεταναστευτική της πολιτική", 31 August 2015 <http://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/EEDA%20Anakoinvsh%20Metanasteytiko.pdf> accessed 20 July 2017 [Greek].
- Azerbaijan Ministry of Education, 'Accreditation and Nostrification Department' <www.nostrifikasiya.edu.az> accessed July 15 2017 [Azerbaijani]

- Chart of signatures and ratifications of Treaty 166, European Convention on Nationality, Status as of 16/12/2017, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=4Ic1w2j2, accessed December 16 2017
- CIEP, ‘CIEP : rôle, statut, missions’ <<http://www.ciep.fr/role-statut-missions>> accessed 15 August 2017 [French]
- CIEP, ‘Directory of regulated professions’ <<http://www.ciep.fr/en/directory-of-regulated-professions>> accessed 15 August 2017
- CIEP, ‘Documents required for a certificate of recognition’ <<http://www.ciep.fr/en/enic-naric-france/documents-required-for-a-certificate-of-recognition>> accessed 15 August 2017 [French]
- CIEP, ‘Reconnaissance des diplômes des réfugiés’ <<http://www.ciep.fr/actualites/2015/12/17/reconnaissance-diplomes-refugies>> accessed 15 August 2017 [French]
- CIMEA ‘Recognition of Qualifications’ <<http://www.cimea.it/en/services/services-recognition-of-qualifications/recognition-of-qualifications.aspx>
- Colin Yeo, ‘New commencement order introduces out of country human rights appeals and more’ (Free Movement blog, 1 November 2016) <<https://www.freemovement.org.uk/new-commencement-order-introduces-out-of-country-human-rights-appeals-and-more/>> accessed 18 June 2017.
- Council of Europe, ‘Chart of signatures and ratifications of Treaty 019: European Convention on Establishment’, <https://www.coe.int/en/web/conventions/fulllist//conventions/treaty/019/signatures?p_auth=UEn3LFBc> accessed 4 November 2017
- Council of Europe, ‘Chart of signatures and ratifications of Treaty 025: European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe’ <https://www.coe.int/en/web/conventions/fulllist//conventions/treaty/025/declarations?p_auth=VS9wIKfc> accessed 4 November 2017
- CoE, ‘Pilot Project: Recognition of Qualifications held by Refugees’ <<http://www.coe.int/en/web/education/recognition-of-refugees-qualifications>> accessed 11 July 2017
- CoE, ‘Ratification Status Lisbon Convention’ <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165/signatures>> accessed 25 October 2017
- CoE, ‘Related Texts’ in ‘Details of Treaty No.165 (Lisbon Convention)’ <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165>> accessed 4 November 2017
- Council of Europe, ‘The Charter in four steps’ <<https://www.coe.int/en/web/turin-european-social-charter/about-the-charter>> accessed December 12 2017

- Czech Republic Ministry of Education ‘List of universities and their study programs’ <<http://www.msmt.cz/vzdelavani/vysoke-skolstvi/prehled-vysokych-skol-v-cr-3?lang=1>> accessed July 15 2017 [Czech only]
- Czech Republic Ministry of Education, ‘Academic Recognition’ <<http://www.msmt.cz/eu-and-international-affairs/academic-recognition>> accessed July 15 2017
- Department for Education, School Admissions: Applications from Overseas Children (Guidance, 25 March 2014) <<https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>> accessed 10 July 2017.
- DOATAP, ‘Documents Required’ <<http://www.doatap.gr/en/dikaiolog.php>> accessed 5 November 2017 [Greek]
- DOATAP, ‘Home’ <<http://www.doatap.gr/en/>> accessed 5 November 2017
- EAR & ENIC-NARIC, ‘European Area of Recognition (EAR) Manual Chapter 12’ <<http://ear.enic-naric.net/emanual/Chapter12/default.aspx>> accessed 5 November 2017
- EHEA, ‘The Bologna Process’ <<http://www.ehea.info/pid34247/how-does-the-bologna-process-work.html>> accessed 25 October 2017
- Embassy of the Republic of Bulgaria, London, Bulgarian citizenship act, <http://www.bulgarianembassy-london.org/index.php?option=com_content&task=view&id=107> accessed on 23 August 2017
- ENIC-NARIC, ‘Documents Required for Recognition Procedures’ <<http://www.enic-naric.net/documents-required-for-recognition-procedures.aspx>> accessed 5 November 2017
- ENIC-NARIC, ‘European or International Degree’ <<http://www.enic-naric.net/european-or-international-degree.aspx>> accessed 25 October 2017
- ENIC-NARIC, ‘Greece – Qualifications’ <http://www.enic-naric.net/greece.aspx#anc11_20c> accessed 5 November 2017
- ENIC-NARIC, ‘Higher Education Institutions’ <<http://www.enic-naric.net/higher-education-institution.aspx>> accessed 4 November 2017
- ENIC-NARIC, ‘Home’ <<http://www.enic-naric.net>> accessed 5 November 2017
- ENIC-NARIC, ‘Qualifications Held by Refugees’ <<http://www.enic-naric.net/recognise-qualifications-held-by-refugees.aspx>> accessed 5 November 2017
- ENIC-NARIC, ‘The Diploma Supplement’ (2007) <http://www.enic-naric.net/fileusers/THE_DIPLOMA_SUPPLEMENT.pdf> accessed 5 November 2017
- European Commission DG Employment, Social Affairs & Inclusion, ‘Applying for a card’ <<http://ec.europa.eu/social/main.jsp?catId=563&langId=en>> accessed November 30 2017

- European Commission DG Employment, Social Affairs & Inclusion, 'European Health Insurance Card' < <http://ec.europa.eu/social/main.jsp?catId=509&langId=en>> accessed November 30 2017
- European Commission DG Employment, Social Affairs & Inclusion, 'Planned medical treatment' < <http://ec.europa.eu/social/main.jsp?catId=569&langId=en>> accessed November 30 2017
- European Commission, 'Integration Fund' <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund_en> accessed November 7 2017
- European Commission, 'Integration fund- National actions' <<https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund/national-actions>> accessed 9 December 2017
- Finnish Immigration Service, Finlands Nationality Act, <http://www.migri.fi/download/16429_Suomen_kansalaisuus_eng.pdf?f18949c851bd4488>, accessed August 30 2017
- Finnish Immigration Service - Revoking the Permit <http://www.migri.fi/working_in_finland/revoking_the_permit> accessed June 25 2017
- Government of the United Kingdom, Dual Citizenship, <<https://www.gov.uk/dual-citizenship>> accessed 18 June 2017
- Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, Right to education, updated on 30 April 2017 <http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf>
- HCCH, 'Apostille Convention Ratification Status' <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>> accessed 5 November 2017
- Home Office, Right of Abode (Guidance, 12 August 2015) <<https://www.gov.uk/government/publications/right-of-abode-roa/right-of-abode-roa>> accessed 15 June 2017
- Human Rights Joint Committee, Human Rights of Unaccompanied Migrant Children and Young People in the UK (Report, 12 June 2013) <<https://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/908.htm#a23>> accessed 16 June 2017
- Iljić Jelena, 'Öffentlicher Aufruf zur Einreichung von Projektvorschlägen' (13 April 2016), <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Projektfoerderung/Allgemeine_Informationen_AUFRUF_BMEIA.pdf> accessed November 7 2017
- Internal Administrative Affairs, Migration and Naturalisation Directorate, 'Report on Migration, Internal Protection and Integration in 2015' (Ministry of the Interior of the Republic of Slovenia, May 2016)

- <http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/DUNZMN_2013/DUNZMN_2014/DUNZMN_2015/DUNZMN_2016/Statisticno_porocilo_-_ENG_2015_25052016.pdf> accessed 7 November 2017
- International Apostille, ‘What is Apostille’ <<http://www.internationalapostille.com/what-is-an-apostille/>> accessed 5 November 2017
 - Inter-Parliamentary Union, ‘Refugee Protection: A Guide to International Refugee Law’ (2001) 58 <<http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guideinternational-refugee-law-handbook-parliamentarians.htm>> accessed 15 October 2017.
 - General Secretariat of Reception/Refugee Affairs see <<http://www.ypes.gr/el/GenGramYpodoxis/>> accessed 13 July 2017 [Greek].
 - Kevin Kamal, ‘Education in Turkey’ <<https://wenr.wes.org/2017/04/education-in-turkey>> accessed 3 November 2017
 - Migration and Inclusion Asylum Fund 2014-2010 <http://asylo.gov.gr/?page_id=3097> accessed 13 July 2017 [Greek].
 - Migrationsverket, ‘Sveriges nationella program för AMIF’ <<https://www.migrationsverket.se/download/18.4100dc0b159d67dc61466a6/1490279211094/Sveriges+nationella+program+för+Asyl-%2C+migrations-%2C+och+integrationsfonden%2C+AMIF.pdf>> accessed November 7 2017
 - Ministero dell’Interno, ‘Dipartimento per le libertà civili e l’immigrazione’ (Department of Civil Liberties and Immigration), <<http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-limmigrazione>> accessed 3 July 2017 [Italian].
 - Ministry of Economic Affairs and Employment ‘Integration of Immigrants is a joint effort’ <<http://tem.fi/en/administration-of-integration-and-the-actors-involved>> accessed 7 November 2017
 - Ministry of Education of the Republic of Azerbaijan, ‘Nostrifikasiya’ <<http://edu.gov.az/az/page/67>> accessed July 15 2017 [Azerbaijani]
 - Ministry of Justice and Security, Immigration and Naturalization Service, ‘Naturalisation’ <<https://ind.nl/en/dutch-citizenship/pages/naturalisation.aspx>> accessed 8 November 2017
 - Ministry of Justice and Security, Immigration and Naturalization Service, ‘Renouncing your current nationality’ <<https://ind.nl/en/Pages/Renouncing-your-current-nationality.aspx>> accessed 8 November 2017
 - Moraes Claude, ‘Autumn Academy 2016: Strategic Options for European Agendas, Integration Action Plan’ <<http://www.compas.ox.ac.uk/media/AA16-Moraes.pdf>> accessed 7 November 2017
 - NACID, ‘Home’ <<https://portal.nacid.bg/>> accessed on 23 August 2017 [Bulgarian]

- NARIC UK, ‘Evaluation Criteria Methodology’ <<https://www.naric.org.uk/naric/Code%20of%20Practice/Evaluation%20Criteria%20and%20Methodology.aspx>> accessed 5 November 2017
- NARIC, ‘Statement of Comparability’ <<https://www.naric.org.uk/naric/individuals/Compare%20Qualifications/Statement%20of%20Comparability.aspx>> accessed 11 July 2017
- NOKUT, ‘General Criteria to Recognize Foreign Education’ <<http://www.nokut.no/no/Utdanning-fra-utlandet/NOKUTs-generelle-godkjenning/NOKUTs-kriterier/>>, accessed 01 September 2017
NOKUT, ‘Recognition Procedure for Persons without Verifiable Documentation (UVD-procedure)’ <<http://www.nokut.no/en/Foreign-education/NOKUTs-general-recognition/Recognition-Procedure-for-Persons-without-Verifiable-Documentation/>> accessed 5 November 2017
- NUFFIC, ‘Academic diploma recognition in The Netherlands – how does it work?’ <<https://www.studyinholland.nl/documentation/academic-diploma-recognition-in-the-netherlands-how-does-it-work.pdf>> accessed July 8, 2017
- Polish Ministry of Education, ‘Legislation on the Recognition of Education’ <http://www.nauka.gov.pl/uznawanie-wyksztalcenia/akty-prawne.html#Lista_instytucji> accessed 20 July 2017 [Polish]
- QQI, ‘NARIC Ireland’ (Quality and Qualifications Ireland, 2017) <<http://www.qqi.ie/Articles/Pages/NARIC-Ireland.aspx>> accessed 6 July 2017
- QQI, ‘National Framework of Qualifications (NFQ)’ (Quality and Qualifications Ireland, date unknown) <[http://www.qqi.ie/Articles/Pages/National-Framework-of-Qualifications-\(NFQ\).aspx](http://www.qqi.ie/Articles/Pages/National-Framework-of-Qualifications-(NFQ).aspx)> accessed 5 July 2017
- State Agency for Refugees with the Council of Ministers of the Republic of Bulgaria, ‘What do we know and what do we not know about refugees?’ <<http://www.aref.government.bg/images/docs/Refugee%20Status/aref1.pdf>>
- State Commission for Decision-making in Administrative Procedure and Second-Instance Labor Procedure, ‘Administrative Procedure’ <<http://www.dkz.mk>> accessed 5 November 2017
- Structure of the Asylum Service see <http://asylo.gov.gr/?page_id=83> accessed 13 July 2017 [Greek].
- The Department of Justice and Equality, ‘The National Programme AMIF’ (21 March 2016) <[http://www.integration.ie/website/omi/omiwebv6.nsf/page/78C1D78795835CCF80257FC300613E6E/\\$file/National%20Programme%20AMIF.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/78C1D78795835CCF80257FC300613E6E/$file/National%20Programme%20AMIF.pdf)> accessed November 7 2017
- The Federal Service for the Supervision of Education and Science (Rosobrnadzor), ‘Recognition of Foreign Degrees’ <<http://obrnadzor.gov.ru/en/nostrification/>> accessed 03 November 2017

- The Higher Education Council, ‘Home’ <<http://www.yok.gov.tr/web/denklikbirimi>> [Turkish]
- The National Agency for Education, ‘Qualification for a profession based on a degree passed abroad’ <http://www.opf.fi/english/services/recognition/professional_rights_on_the_basis_of_a_foreign_qualification> accessed July 2 2017 [Finnish]
- The National Agency for Education, ‘Recognition of degrees and international comparison’ <<http://www.opf.fi/english/services/recognition>> accessed July 2 2017 [Finnish]
- The Public Defender of Rights: Protection of Persons Restricted in their Freedom, Facilities for the Detention of Foreigners <<https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/detention-of-foreigners/>> accessed 23 July 2017.
- The Local, ‘France: 96% of asylum rejects stay’ (October 2015) <<https://www.thelocal.fr/20151020/france-deports-just-four-percent-of-asylum-seekers>> accessed 20 July 2017.
- The Local, ‘France: 96% of asylum rejects stay’ (October 2015) <<https://www.thelocal.fr/20151020/france-deports-just-four-percent-of-asylum-seekers>> accessed 20 July 2017.
- The Ministry of Economic Affairs and Employment, ‘Kasvua kansainvälisestä osajista –hankekokonaisuus’ <<https://www.rakennerahastot.fi/documents/605562/1379109/Kasvua+kansainvalisi+sta%20osajista+-agenda/12adfa71-284b-4ce2-a76e-1209a2fcb229>> accessed 7 November 2017
- Udlændinge- og Integrationsministeriet, Afgivelse af Erklæring om Troskab og Loyalitet, <<http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/afgivelse-af-erklaring-om-troskab-og-loyalitet>>, accessed 10 July 2017, [Danish]
- Udlændinge- og Integrationsministeriet, Dobbelt Statsborgerskab, <<http://uim.dk/arbejdsomrader/statsborgerskab/dobbelt-statsborgerskab-1>>, accessed 10 July 2017 [Danish]
- UK Visas and Immigration, ‘Asylum, migration and integration fund programme’ (August 17 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455177/uk_national_programme_version_v1.pdf> accessed 7 November 2017
- UNCHR, ‘Press Release and Statement’ <<http://www.unhcr.org/tr/en/press-releases-and-statements>> accessed August 25 2017
- UNESCO, ‘Conventions and Recommendations’ <<http://www.unesco.org/new/en/education/themes/strengthening-education-systems/higher-education/conventions-and-recommendations/>> accessed 4 November 2017

- Wintour P, 'UK to take up to 20,000 Syrian refugees over five years, David Cameron confirms' (The Guardian, 7 September 2015) <<https://www.theguardian.com/world/2015/sep/07/uk-will-accept-up-to-20000-syrian-refugees-david-cameron-confirms>> accessed 16 June 2017.
- Wintour P, 'UK to take up to 20,000 Syrian refugees over five years, David Cameron confirms' (The Guardian, 7 September 2015) <<https://www.theguardian.com/world/2015/sep/07/uk-will-accept-up-to-20000-syrian-refugees-david-cameron-confirms>> accessed 16 June 2017.
- ZfAB, 'Information portal of the German government for the recognition of foreign professional qualifications' <https://www.anerkennung-in-deutschland.de/html/en/assessment_of_higher_education_certificates.php> accessed 23 July 2017

Case-law

- A.A. v the United Kingdom [2011] ECHR 1345
- A.F. v France App no 80086/13 (ECHR, January 15 2015)
- Abdulaziz Cabales and Balkandali v. the United Kingdom (1985) EHRR 471
- Aden Ahmed v Malta App no 55352/12 (ECHR, July 23 2013)
- Ahmed v Austria (1996) 24 EHRR 278
- Ahmed v Romania App no 34621/03 (ECHR, July 13 2010)
- Akram v Russia [2014] ECHR 522
- Al-Nashif v Bulgaria (2002) 36 EHRR 37
- Azimov v Russia [2013] ECHR 342
- Bajsultanov v Austria [2012] EHRR 989
- Beian v Romania (no.1) App no 39658/05 (ECHR, March 6 2008)
- Beldjoudi v France (1992) 14 EHRR 252
- Benamar and others v the Netherlands App no 43796/04 (ECHR, April 5 2005)
- Berrehab v the Netherlands (1988) 11 EHRR 322
- Bochan v Ukraine (no.2) [GC] [2015] ECHR 238
- Bousarra v France App no 35672/07 (ECHR, September 23 2010)
- Budayeva and others v Russia App No 15339/02 (ECHR, March 20 2008)
- Calvelli and Ciglio v. Italy App no 32967/96 (ECHR, 17 Jan 2002)
- COHRE v. Italy, Complaint No. 58/2009, Merits 25 June 2010
- Chahal v the United Kingdom (1996) 23 EHRR 413
- Cyprus v. Turkey [GC], no. 25781/94, ECHR 2001-IV
- Dhabbi v Italy App no 17120/09 (ECHR, April 8 2014)
- D.v. the UK App no 30240/96 (ECHR, 2 May 1997)
- Egamberdiyev v Russia [2014] ECHR 670
- Eshonkulov v Russia [2015] ECHR 47
- Foreign Students v. the United Kingdom, nos. 7671/76 and 14 others, Commission decision of 19 May 1977, Decisions and Reports 9

- Gül v Switzerland [1996] EHRR 5
- H. v Belgium (1987) 1 EHRR 339
- Ismailov v Russia [2009] ECHR 1949
- Jabari v Turkey [2000] ECHR 369
- Jeunesse v. the Netherlands [GC] App no 12738/1 (ECHR, October 3 2014)
- K. and T. v Finland (2000) 31 EHRR 390
- Kaya v Romania App no 33970/05 (ECHR, October 12 2006)
- Kiyutin v. Russia, No. 2700/10, 10 March 2011
- Khalikov v Russia App no 71386/10 (ECHR, February 26 2015)
- Khlaifia and others v Italy [GC] App no 16483/12 (ECHR, December 15 2016)
- Kim v Russia [2014] ECHR 866
- Leyla Şahin v. Turkey [GC], no. 44774/98, ECHR 2005-XI
- Lupsa v Romania App no 10337/04 (ECHR, June 8 2006)
- Mahamed Jama v Malta App no 10290/13 (ECHR, November 26 2015)
- Maslov v Austria [GC] [2008] ECHR 546
- McKay v the United Kingdom [2006] ECHR 820
- M.S.S. v Belgium and Greece [2011] ECHR 748
- Mürsel Eren v. Turkey, no. 60856/00, ECHR 2006-II
- Nideröst-Huber v Switzerland (1997) 25 EHRR 709
- N.v. the UK App no 26565/05 (ECHR, 27 May 2008)
- Osman v Denmark App no 38058/09 (ECHR, February 27 2009)
- Ponomaryovi v. Bulgaria (App no 5335/05) ECHR 28 November 2011
- Plesó v Hungary [2012] ECHR 176
- Rakhimov v Russia [2014] ECHR 749
- Rashed v Czech Republic App no 298/07 (ECHR, November 27 2008)
- R.C. v Sweden [2010] ECHR 307
- S.C. v Romania App no 9356/11 (ECHR, February 10 2015)
- Saadi v Italy (2008) 28 ECHR 123
- Salah Sheekh v the Netherlands App no 1948/04 (ECHR, January 11 2007)
- Santos Pinto v Portugal App no 39005/04 (ECHR, August 20 2008)
- Scordino v Italy (no.1) [GC] [2004] ECHR 412
- Scordino v Italy (no.1) [GC] (2007) 45 EHRR 7
- Sejdic and Finci v. Bosnia and Herzegovina , Application nos. 27996/06 and 34836/06, Council of Europe: European Court of Human Rights, 22 December 2009
- Sentges v. Netherlands App no 27677/02 (ECHR, 8 July 2003)
- Sharifi and others v Italy and Greece [GC] [2014] ECHR 1115
- Soering v the United Kingdom (1989) 11 EHRR 439
- Sulak v. Turkey, no. 24515/94, Commission decision of 17 January 1996, Decisions and Reports 84
- Suo Musa v Malta App no 42337/12 (ECHR, July 23 2013)
- Tanda-Muzinga v France [2014] ECHR 1047

- Timishev v. Russia, nos. 55762/00 and 55974/00, ECHR 2005-XII
- Tuquabo-Tekle and others v the Netherlands App no 60665/00 (ECHR, December 1 2005)
- Van Mechelen and others v the Netherlands (1997) 25 EHRR 647
- Velyo Velev v. Bulgaria, no. 16032/07, ECHR 2014 (extracts)
- Yildiz v Austria App no 37295/97 (ECHR, October 31 2002)