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The European Law Students' Association**

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Foreword

1. WHAT IS ELSA?

ELSA is a non-political, non-governmental, non-profit making, independent organisation which is run by and for students. ELSA has 44 Member and Observer countries with more than 375 Local Groups and 50,000 students. It was founded in 1981 by 5 law students from Poland, Austria, West Germany and Hungary. Since then, ELSA has aimed to unite students from all around Europe, provide a channel for the exchange of ideas and opportunities for law students and young lawyers to become internationally minded and professionally skilled. Our focus is to encourage individuals to act for the good of society in order to realise our vision: “A just world in which there is respect for human dignity and cultural diversity”. You can find more information on <http://www.elsa.org>.

2. LEGAL RESEARCH GROUPS IN ELSA

A Legal Research Group (LRG) is a group of law students and young lawyers carrying out research on a specified topic of law with the aim to make their conclusions publicly accessible. Legal research was one of the main aims of ELSA during our early years. When ELSA was created as a platform for European cooperation between law students in the 1980s, sharing experience and knowledge was the main purpose of our organisation. In the 1990s, our predecessors made huge strides and built a strong association with a special focus on international exchange. In the 2000s, young students from Western to Eastern Europe were facing immense changes in their legal systems. Our members were part of such giant legal developments such as the EU expansion and the implementation of EU Law. To illustrate, the outcome of the ELSA PINIL (Project on International Criminal Court National Implementation Legislation) has been the largest international criminal law research in Europe. In fact, the final country reports have been used as a basis for establishing new legislation in many European countries.

The results of our more recent LRGs are available electronically. [ELSA for Children \(2012\)](#) was published on [Council of Europe's web pages](#) and resulted in a follow up [LRG \(2014\)](#) together with, among others, Missing Children Europe. In 2013, ELSA was involved in Council of Europe's 'No Hate Speech Movement'. [The final report](#) resulted in a concluding conference in Oslo that same year and has received a lot of interest from academics and activists in the field of

discrimination and freedom of speech. The results of the LRG conference, a guideline, have even been translated into Japanese and were presented in the Council of Europe and UNESCO!

3. WHAT IS THE LEGAL RESEARCH GROUP ON MIGRATION LAW?

The International Legal Research Group on Migration Law is a cooperation between ELSA and the Council of Europe (CoE) and the Parliamentary Assembly. The cooperation derived from a need to give law students' across Europe the opportunity to expand their knowledge on this relevant topic. The LRG serves as a significant step towards increasing knowledge about migration law and providing additional learning opportunities to law students everywhere.

In order to conduct the research, CoE provided ELSA a foundation for the Academic Framework to ensure that researching. Based on those materials 28 ELSA National Groups analysed their national legislation and compiled a through-rough report.

Acknowledgements

The achievements of the International Legal Research Group on Migration Law would not have been possible without the kind support and help from many individuals.

The International Coordination Team would first and foremost like to thank and congratulate the **National Research Groups** for their extraordinary effort. More than 312 students and academics from more than 30 countries have participated as Researchers, Coordinators, Linguistic Editors and Supervisors. Thanks to your great work, this project has put migration law on the agenda of many law students and you have provided a valuable source of information for readers who seek to learn more about the legislation of migration around Europe.

Academic and institutional support is crucial for a student initiative. We are very grateful for the assistance we received from **Penelope Denu**, Deputy to the Head of the Secretariat of the Committee on Migration, Refugees and Displaced Persons of the Council of Europe Parliamentary Assembly. Without you, we would not have been able to guarantee the success of the project.

Thankfully yours,

Jake, Kerli, Kristýna, Bruno, Marilena, Ismini, Antonia, Ołegs and Valentin
International Coordination Team of the International Legal Research Group on Migration Law

TABLE OF CONTENTS

Academic Framework	6
National Reports	7
ELSA Albania.....	8
ELSA Armenia	47
ELSA Austria.....	81
ELSA Azerbaijan	130
ELSA Bosnia and Herzegovina	181
ELSA Bulgaria.....	207
ELSA Czech Republic.....	298
ELSA Denmark.....	339
ELSA Finland.....	475
ELSA France	527
ELSA Germany.....	588
ELSA Greece.....	778
ELSA Ireland.....	860
ELSA Italy.....	892
ELSA Latvia	955
ELSA Macedonia.....	1001
ELSA Malta	1034
ELSA the Netherlands.....	1076
ELSA Norway	1113
ELSA Poland.....	1155
ELSA Romania.....	1202
ELSA Russia	1265
ELSA Slovenia.....	1344
ELSA Spain.....	1423
ELSA Sweden.....	1457
ELSA Turkey.....	1506
ELSA Ukraine	1569
ELSA United Kingdom.....	1605

ACADEMIC FRAMEWORK

1. How is the right to asylum regulated in national law?
 - a. Give a description of the national regulations governing asylum;
 - b. What is the procedure for granting asylum and who is responsible?
2. How does your national law regulate immigration from EU member states and non-EU states?
3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.
4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?
5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?
6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?
7. How is migrants' right to access to healthcare regulated within the national legislation?
8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?
9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?
10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?
11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?
12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

NATIONAL REPORTS

[ELSA Albania](#)

[ELSA Latvia](#)

[ELSA Armenia](#)

[ELSA Macedonia](#)

[ELSA Austria](#)

[ELSA Malta](#)

[ELSA Azerbaijan](#)

[ELSA the Netherlands](#)

[ELSA Bosnia & Herzegovina](#)

[ELSA Norway](#)

[ELSA Bulgaria](#)

[ELSA Poland](#)

[ELSA Czech Republic](#)

[ELSA Romania](#)

[ELSA Denmark](#)

[ELSA Russia](#)

[ELSA Finland](#)

[ELSA Slovenia](#)

[ELSA France](#)

[ELSA Spain](#)

[ELSA Germany](#)

[ELSA Sweden](#)

[ELSA Greece](#)

[ELSA Turkey](#)

[ELSA Ireland](#)

[ELSA Ukraine](#)

[ELSA Italy](#)

[ELSA United Kingdom](#)

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Introduction

This Legal research reflects one of today's most important legal matters: Migration's rights and more specifically its regulation on the Republic of Albania.

The research is focused on the integration of migrants, asylum seekers and the migrant rights related to different aspects of their life, such as health care, education, political participation and other related issues.

This research mainly refers in Albanian legislation: The law on Foreigners, Asylum Seekers, Albanian Citizenship, on procedures and documentation for obtaining, reinstatement and removal from Albanian citizenship and the law on treatment of foreigners.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

The Republic of Albania guarantees the right of asylum of a foreigner or stateless person who, because of fear based on persecution, for reasons of race, religion, nationality, membership in a particular social group or political conviction, is located outside the country of his / her nationality or outside the usual residence and has no opportunity or desire to seek protection of that country as a result of such events for the sake of such fear.¹ The Albanian law on asylum refers to responsible authority for asylum and migration/ministry, giving guidance to refer to other laws and bylaw that regulate this area. The Ministry of Internal Affairs is the one that has the major responsibility in the field of migration and asylum. The General Directorate for Border and Migration is responsible in the selection of the asylum seekers, the registration, and the collection of data, the analysis and assessment relating to asylum issues. The Asylum Directorate is the authority for granting, removal and exclusion from the right to asylum and the international protection, a directorate part of the structure of the Ministry of Internal Affairs. Hereinafter when the law has defined the responsible authority/ministry will be substituted with the one that has currently these competences, to make the research more definite and clear.

¹ Article 4 of the Law no 12 (On Asylum in the Republic of Albania) 2014 [Për azilin në Republikën e Shqipërisë]

1.1. General conditions

To be guaranteed the right to asylum an applicant should fulfill some conditions:²

- Submit the request to the competent police authorities at the border crossing points or within the territory of the Republic of Albania and submit the asylum application. In this case, the competent border authorities shall make the case notification and immediately sending to the General Directorate for Border and Migration so that to register and complete the application for asylum, in accordance with the forms approved by the order of the Minister of Internal Affairs.
- Complete the application for asylum at the General Directorate for Border and Migration and complete the application for asylum.

1.2. Specific Procedure and Competent Authorities

The Albanian law also explains the procedure when an asylum is guaranteed and which the competent authorities are. These authorities are as the following:³

- General Directorate for Border and Migration is the responsible body in the relevant ministry on asylum and refugee issues.
- The competent border authority for the treatment of persons seeking international protection is the structure responsible for border and migration.
- The National Commissioner for Asylum and Refugees is the leader of the National Commission for Asylum and Refugees.
- The National Asylum and Refugee Commission is the only competent decision-making authority for appeals against the decisions of the Asylum Directorate.
- For the granting of work permits and the treatment of the work of refugees and persons in protection is Directorate for Employment and Migration Policies in The Ministry of Social Welfare and Youth.
- The Ministry of Internal Affairs and the General Directorate for Border and Migration shall cooperate with the UNHCR Office on Asylum and Refugee Affairs.⁴

Asylum application is completed in written form.⁵ The asylum seeker is obliged to submit all personal data and complete all relevant forms made available by the General Directorate for Border and Migration.⁶ At the time of the application for asylum, the asylum seeker and refugee information officer informs the asylum seeker of the procedures for obtaining refugee status and enables him to contact a legal representative, specialist in refugee affairs, for free legal services.⁷ For the period until the final decision on the application for asylum, the asylum seeker shall be allowed to remain in the territory of the Republic of Albania. The asylum seeker has the right to stay in the reception center during the duration of the refugee status procedure.⁸ The employees

² Article 8 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë]

³ Article 7 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë]

⁴ Article 13 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë]

⁵ Article 34 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë]

⁶ Ibid paragraph 2.

⁷ Ibid paragraph 3.

⁸ Ibid paragraph 4, 5, 6.

of the General Directorate for Border and Migration shall be subject to the obligation to preserve the confidentiality and non-disclosure of the information received, due to the duty to collect, preserve and process personal data for the treatment of refugees or persons under protection during the exercise of their duties even after the end of the functions, unless otherwise provided by law.⁹ The law provides the possibility to have an administrative hearing, with clear conditions and procedures, and also the possibility to review the application. This procedure is as following,¹⁰ first an asylum seeker shall be heard for his or her asylum application by authority Asylum Directorate, who shall take into consideration the circumstances and circumstances in which the applicant is located. The asylum seeker is notified in writing of the date of the hearing, which may not be later than 21 days from the date of filing the full application with the Asylum Directorate. The asylum seeker, at any stage of the procedure, is accompanied, advised or represented by a legal representative, specialist in refugee affairs. During the procedure an asylum seeker should explain the facts, where the reasons and motives for his persecution or the violation of human rights are based, and provide the necessary information, including information on the permanent residence, the itinerary, the prohibitions in other countries and possible asylum applications in other countries, as well as other data needed to clarify the circumstances of the case. The hearing of the asylum seeker is not public and it is guaranteed the confidential development of this hearing.¹¹

The Albanian legislation obligates the Asylum Directorate to initiate administrative procedures and record all relevant data provided by the asylum seeker.¹² Once the application for asylum has been completed with all the necessary data and forms, the asylum and refugee authority issues the asylum seeker with a receipt confirming his identity and receiving the application for asylum, guaranteeing his non-return.¹³ The Asylum Directorate directs the hearing, verifies the facts given, examines and completes the necessary documentation before making the decision. The file also sets out the recommendation given by UNHCR on asylum application.¹⁴ The Asylum Directorate shall take a decision within 30 days from the date of the hearing of the asylum seeker and without delay sends asylum seekers and UNHCR a copy of the decision, but in any case, not later than 5 days from the date of making a decision. The decision might be as following:

-If the application for asylum is accepted, the asylum seeker and refugee information officer shall inform the asylum seeker of the asylum conditions and that the refugee status may be revoked.¹⁵

-If the application for asylum is not accepted, the asylum seeker and refugee informs the asylum seeker in writing of the decision of an individual and reasoned nature, where the right of the

⁹ Ibid paragraph 2.

¹⁰ Article 35 Administrative hearing conditions and procedures and reviewing the application, paragraph 1, 2, 3, 4,5, Law no 121/2014 Law on Asylum in the Republic of Albania.

¹¹ Article 36 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë], parag1

¹² Article 37 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë]

¹³ Ibid paragraph 1.

¹⁴ Ibid paragraph 2.

¹⁵ Ibid paragraph 5.

complainant's right is provided, the body where this complaint may be filed and the deadline within to whom he may exercise this right.¹⁶

The obligation of asylum seeker in Albania:

- Asylum seekers and refugees have the obligation to apply the Constitution, legal order and legal framework of the Republic of Albania.¹⁷
- Asylum seekers and refugees are obliged to cooperate with the competent state bodies of the Republic of Albania and to act in accordance with their measures and instructions.¹⁸
- The asylum seekers freedom of movement, during the period of application and waiting for a decision, may be limited to different reasons¹⁹; to prevent the spread of infectious diseases; because of violation of the law and other by-laws, as well as the measures taken with a view to maintaining public order.
- Asylum seekers and refugees cannot create, unite or support and act in political groups or other organizations that violate the order and security of the Republic of Albania.²⁰

The rights of the asylum seeker:

- The asylum seeker has the right to remain in the territory of the Republic of Albania until the end of the procedure started by him.²¹ Asylum seeker family members, who have come to the Republic of Albania together with the asylum seeker, have the right to stay in accordance with the same procedures as the applicant;
- If the asylum seeker does not understand the language in which the procedure is conducted, he / she is provided with a language interpreter that he understands. The Asylum Directorate has the obligation to make available asylum seekers copies of this law and all subordinate legal acts for its implementation, as well as copies of documents as residence permits in an official language of the UN which may be understandable to them.²²
- Special rights are also given to minors²³, like having a guardian when are unaccompanied, to help with the procedure. Also, an asylum application of an unaccompanied minor shall be treated immediately.²⁴

¹⁶ Ibid paragraph 6.

¹⁷ Article 18 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë], parag 1.

¹⁸ Article 18 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën Shqipërisë], parag 2.

¹⁹ Article 11 Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën Shqipërisë], paragraph 2: *“for verification of their identity; when they do not have identification documents; when they are seized with false documents, unless they have used these documents to leave the country for fear and have declared this fact themselves at the border or when applying for asylum; an international arrest warrant has been issued against them; for the protection of national security and public order”*.

²⁰ Article 19 Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën Shqipërisë].

²¹ Article 14 Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën Shqipërisë].

²² Article 15 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

²³ Article 16 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

²⁴ Article 17 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

1.3. The authorities are not always obligated to grant asylum

Asylum application shall not be accepted if:²⁵

- it is proved that the asylum seeker comes from a safe third place;
- The application for asylum in the Republic of Albania has been refused or is not accepted or the procedure has been suspended and no evidence has been furnished that substantiates the circumstances on which the previous application or new evidence was based.
- Against the decision to refuse the application for asylum, the asylum seeker may appeal within 15 days to the National Commission for Asylum and Refugees and the National Commission for Asylum and Refugees shall take a decision within 30 days from the date of filing the complaint.²⁶

Asylum application shall be refused if:²⁷

- The asylum seeker does not fulfill the conditions for the recognition of the right of asylum under the Albanian law;²⁸
- there is any of the reasons set out in law²⁹ the application is ungrounded;
- coming from a safe third country;³⁰
- Asylum seeker also has the citizenship of a third country whose protection has not been requested.

Asylum seeker can file a complaint with the National Asylum and Refugee Commission against the decision rejecting the asylum.³¹ All decisions on granting, revoking, terminating the removal of refugee status, supplementary protection status, and any other decision-making act of the Asylum Directorate may be appealed to the National Commission for Asylum and Refugees within the deadlines and According to the procedures provided by the Code of Administrative Procedures.³² The decision of the National Commission on Asylum and Refugees may be

²⁵ Article 39 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

²⁶ Ibid paragraph 3 & 4.

²⁷ Article 40 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë], parag 1.

²⁸ Article 4 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

²⁹ Article 5 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë], as following:

like committing a crime against peace, war crime or against humanity, committing a terrorist act, as defined in international conventions;

the threat to public order and national security of the Republic of Albania due to the commission of a serious non-political crime outside the territory of the Republic of Albania prior to entering as an asylum seeker in the territory of the Republic of Albania;

guilty of acts incompatible with the purposes and principles of the United Nations.

to a foreigner under protection or assistance from UN bodies, unless the protection is guaranteed by the Office of the United Nations High Commissioner for Refugees (UNHCR). If this protection or assistance has ceased for any reason, the foreigner receives asylum if he / she meets the conditions set out in the Albanian law.

to an alien who has equal rights and obligations with the citizens of the Republic of Albania, except where the rights and obligations relate specifically to Albanian citizenship.

³⁰ Article 9 of Law no 12 (On Asylum in the Republic of Albania), 2014 [Për azilin në Republikën e Shqipërisë].

³¹ Article 40 of Law no 12 (On Asylum in the Republic of Albania), 2014 [Për azilin në Republikën e Shqipërisë], pg 2&3.

³² Article 47 of Law no 12 (On Asylum in the Republic of Albania), 2014 [Për azilin në Republikën e Shqipërisë], parag 1.

appealed to the competent court for administrative matters in accordance with the legislation in force.³³

As also included in the law³⁴ the asylum seekers may also benefit from humanitarian aid. The law gives information on the termination of the temporary protection.³⁵

This protection concludes: -upon termination of the term; - when the reasons for provisional protection no longer exist; - when a foreigner leaves the Republic of Albania; - if a foreigner has been granted another type of protection under a particular law or an international agreement; - if the foreigner enjoys international protection or resides in the Republic of Albania on a regular basis; - if the foreigner is subject to the deportation measure. During the execution of the deportation measure, the responsible authorities shall respect the rights, freedoms and dignity of the foreigner to whom the temporary protection has been completed.

1.4. Special programs that grant asylum or humanitarian protection to vulnerable persons (e.g. Syrian, unaccompanied children, etc.)

Referring to programs that grant asylum or humanitarian protection, there is one program for asylum seeker in Germany (Albanian ones). REAG-/GARP-Program 2017 Reintegration and Emigration Program for Asylum-Seekers in Germany (REAG) Government Assisted Repatriation Program (GARP).³⁶ This program is to support the Albanians in Albania that have returned voluntary and describes the whole procedure and the types of aid provided under this program.

The IOM applies this project at the order of the Federal Ministry of Internal Affairs and Ministries responsible of the provinces in cooperation with the local and regional administration, humanitarian organizations as well and the United Nations High Commissioner for Refugees (UNHCR). This program serves for the organized preparation and implementation of the return of returnees and migrants. The requirement to benefit from the project is that neither asylum seeker / returnee who submit a request for return, nor any other person or entity responsible for support cannot afford travel expenses. For benefit of return preparation costs (e.g. passport and visa fees, travel to the airport or in the consulate for an interview), the application must be submitted to the relevant social work entity or any other person the other responsible sponsor. For emigration to third countries, you must have valid visas beforehand stay in that state. Within this program, these benefits may be eligible: Travel expenses (by plane, train or bus; fuel costs if you travel by car: in the amount of 250 €.

The International Organization for Migration (IOM) has set up a host camp for immigrants in Gjirokaster.³⁷ Located between Gjirokaster and Lake Viroi, the 3-container camp has a reception capacity of 60 temporary immigrants, which can come from the border with Greece. Currently

³³ Ibid paragraph 2.

³⁴ Article 32 of Law no 12 (On Asylum in the Republic of Albania), 2014 [Për azilin në Republikën e Shqipërisë], par. 5.

³⁵ Article 71 of Law no 12 (On Asylum in the Republic of Albania), 2014 [Për azilin në Republikën e Shqipërisë].

³⁶ http://germany.iom.int/sites/default/files/REAG/REAG-GARP-2017_Infoblatt-Albanisch_Albanien-und-Kosovo-UNSCR-1244.pdf

³⁷ <https://telegrafi.com/iom-kamp-per-refugjatet-ne-gjirokaster/>

there is not much information how this center will work, whether it will be closed, administered by the State Police, or will be a temporary immigration reception center. Although there is still no official data, it is thought that the camp will function as a short-term host country for illegal immigrants entering the Albanian territory. Although the influx of clandestine, mainly from Syria, Afghanistan, or other Middle Eastern and North African countries, has declined compared to the previous year, again there were no reports of the police for illegal violations of Albanian territory.

The Albanian law on Asylum has a defined procedure under which the procedure to get asylum is suspended or terminated. The procedure for granting asylum shall be suspended when the asylum seeker:³⁸ a) Withdraws the application for asylum; b) Does not appear in the hearing of the case, without justified reasons; c) Does not inform on time the responsible authority for asylum and refugees regarding the change of their address without a justified reason or, in some other way, obstructs the notification; ç) Does not participate in the verification of his identity; d) avoids disclosure of facts and circumstances or relevant evidence in its possession for determining the lawfulness of the application; dh) leaves the Republic of Albania during the procedure for examining the application for asylum.

The procedure and deadline for deciding to dismiss the asylum application shall be determined by the instruction of the responsible minister.³⁹

The renewal of the refugee status can be refused when:⁴⁰

- The refugee voluntarily claims in any form whatsoever that he or she enjoys the protection of the country of origin or of any other country of his former habitual residence;
- The foreigner acquires citizenship and enjoys the protection of the country of citizenship acquired;
- There are no circumstances for which the refugee status has been granted;
- the foreigner who has obtained asylum has presented untrue facts and circumstances for obtaining refugee status, which have been decisive in obtaining status;
- When the foreigner has another citizenship;
- has left the territory of the Republic of Albania by issuing a written statement or leaving the Republic of Albania for more than 90 days without notifying the responsible authority for asylum and refugees;
- He has been notified of the removal or expulsion measure.

On the other side the law grants the right to appeal.⁴¹ All decisions on granting, revoking, terminating the removal of refugee status, supplementary protection status, and any other decision-making act of the responsible authority for asylum and refugees may be appealed to the National Commission for Asylum and Refugees within the deadlines and according to the

³⁸ Article 43, Suspension and termination of the procedure for examining the application for asylum.

³⁹ Ibid, paragraph 3.

⁴⁰ Article 45, Revocation, termination or refusal to renew refugee status.

⁴¹ Article 47, Right to Appeal

procedures provided by the Code of Administrative Procedures.⁴² The decision may be appealed to the competent court for administrative matters in accordance with the legislation in force.⁴³

2. How does your national law regulate immigration from EU member states and non-EU states?

According to the legislation of the Republic of Albania an immigrant is a person who has left the territory of its country of origin and is, has been or will be employed or self-employed legally in a profitable, non-profit or public activity, with or without a time limit. However an immigrant may be illegal too. A person will be charged with the status of an illegal immigrant if he/she does not fulfill the condition required by the host state for the entry, transit or the stay of the person in its territory and exercise a profitable, non-profit or public activity in the territory of that State.⁴⁴ If a foreign citizen wants to enter, stays, leaves or pass transit to/from the Republic of Albania must turn up at the border, where is not otherwise defined by bilateral agreement, fulfilling the beloved conditions; having a travel document recognized by the Republic of Albania with a validity period of at least 3 months before the date of its expiration; a valid entry visa or valid residence permit issued by the competent authority of Albania (Ministry of Foreign Affairs).⁴⁵ To enter into the territory the foreigner must not present a threat to the public order and security or to national security and must not violate the international relations between the Republic of Albania and other states; must be not a debtor against of administrative measures imposed on him according to the provisions of this law; must have no record in the national register for foreigners that restrict his/her enter and finally must not present a risk for Public Health in the Republic of Albania. In case of transit, the foreigner must document that he/she is allowed to enter the destination country and leave the territory of the Republic of Albania.

2.1. Entrance of the Foreign Citizen to the Republic of Albania

The entrance of foreign citizen in the territory of the Republic of Albania is regulated by a Visa regime. According to the law, there are 3 types of visa provided for foreigners:

- A-type airport transit visa
- C-type for tourist purpose visa
- D-type for long-stay visa, to apply for residence permit in Albania

Despite of this regime, some foreign citizens does not need a visa to enter in the territory of the Republic of Albania. For these reason, the Council of Ministers approves a list with the name of the countries the citizen of which may skip visa.⁴⁶

Therefore may enter in Albania without visa:

⁴² Ibid paragraph 1.

⁴³ Ibid paragraph 2.

⁴⁴ Article 2 Law no.9668 (For the emigration of albanina citizen for employment purpose) 2006 [Per Migrimin e shtetasve Shqipetar per motive punesimi]

⁴⁵ Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁴⁶ Article 30 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

- A foreign citizens who has a valid, multiple-entry Schengen visa, which has been previously used in one of the Schengen states, or a foreign citizens who has a valid permit of stay in one of the Schengen states;
- A foreign citizens who has a valid, multiple-entry US or UK visa, which has been previously used in the respective country of issuance, or has valid permit of stay in the US or UK.
- A citizen, who is coming in Albania for tourism reasons, from Saudi Arabia, Belarus, Georgia, Qatar, Oman and Russia, may enter the Republic of Albania without the requirement of type “C” visa (short term stay), in the period of time from 31 May until 15 November 2017.⁴⁷

All the above mention foreigner citizen, who are excluded from the request for visa have the right to enter and stay in the territory of the Republic of Albania for a period of time up to 90 days within 180 days of the first entry, except in case where two or more multilateral international agreements are in force or on the basis of the principle of reciprocity or unilateral position expressed by a decision of the Council of Ministers.⁴⁸ Nevertheless if an alien is planning to stay in Albania for more than 90 days during a six month period (90/180 days) and is planning to apply for a residency permit from the migration office he will need a long term visa (Type D). The Ministry of Foreign Affairs is the institution responsible for providing foreign persons with a visa. A foreign citizen who needs a visa to enter into the territory of the Republic must apply for it at Diplomatic and Consular Representations accompanied by the documents requested by the law. After that the application will be examine and decided by the Department of Consular Affairs near the Ministry of Foreign Affairs which request the help of the General Department for the Border and Migration which is a institution under the State Police Department and the State Intelligence Service.⁴⁹

2.2. Residence of Foreign Citizen in the Republic of Albania

A foreign person who has entered in the territory of the Republic of Albania may stay in the country for a short period of time, temporary or permanent period of time. If he/she decides to stay for a short period of time, that time should not exceed 90 days for 180 days without a visa, however staying for a temporary or permanent period of time can be accomplished through the provision of the foreigner with residence permission.⁵⁰

⁴⁷ Decision no.513 of Council of Ministers (For the determination of criteria, procedures and documentation on entry, stay and treatment of foreigners in the Republic of Albania) 2013 [Për përcaktimin e kritereve, të procedurave e të dokumentacionit për hyrjen, qëndrimin dhe trajtimin e të huajve në Republikën e Shqipërisë]

⁴⁸ Ibid

⁴⁹ Guidance nr.264 (On the Cooperation Of the Ministry of Foreign Affairs, Ministry of Interior Affairs and the State Intelligence Service on the procedures for issuing visas to foreigners) 2016 [Mbi Bashkëpunimin e Strukturave të Ministrisë së Punëve të Jashtme, Ministrisë së Punëve të Brëndshme dhe Shërbimit Informativ Shtetëror për procedurat e lëshimit të vizave për të huajt]

⁵⁰ Article 33 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

2.2.1. Temporary Residence Permission

Temporary residence permission is giving to a foreign citizen for the period specified in the application but no more than one. The law provides different reasons why this kind of residence permission may be given, such as:

– *Temporary residence permission for employee persons*

A foreign citizen who has come to work in Albanian for a temporary period of time should request residence permission for employment motives in accordance with the work permission(permit) .Unemployment does not itself constitutes enough grounds to revoke the permission unless the period of unemployment exceeds the duration mentioned at Article 40 point 5 of the law.

If you are a European Union or Schengen area citizen, this permission is not requested to be obtained.⁵¹

– *Temporary residence Permit for Self-Employed Persons*

If a foreign citizen wants to self-employ him at the territory of the Republic of Albania, he/she must request to the border and migration authority to provide him/her with a “residence permit as a self-employed person” limited to the exercise of the activity, as defined in the work permit on the purpose of the intended employment. For obtain this permission the foreign citizen must submit some documentation which needs to meet the requirements for obtaining a "residence permit as a self-employed person.

Citizen of European Union or Schengen Area are not required to obtain a temporary residence permission for self-employed persons.⁵²

– *Residence permission for seasonal employment*

A foreigner person who comes in Albania with the purpose to work for a season must be provided with seasonal employment residence permission if he/she meets the conditions for obtaining residence permission for a period of time of no more than 6 months within a calendar year, with the right of renewal up to 5 consecutive years. **This provision does not apply if you are a European Union or Schengen area citizen.**

– *Residence Permit for a Trainee Free of Charge*

If you are a foreigner citizen and have entered the territory of the Republic of Albania with the purpose to be part of an activity which is related to the increscent of your skills s as well as your qualifications, you must be provided with a residence permit for a limited duration of time. **This provision does not apply if you are a European Union or Schengen area citizen.**⁵³

– *Residence Permit to stay for Youth Exchanges*

Every foreign person who comes in Albanian with the purpose of youth exchange must be provided with residence permission. You will be provided with this permission from the competent authority, for a period of no more than one year only where the activity is closely linked to the youth exchange or the youth mobility scheme. **This provision does not apply if you are a European Union or Schengen area citizen.**

⁵¹ Article 39/3 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁵² Article 41 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁵³ Article 48 Law no 108 (On the treatment of foreigners) 2013 [Per Te Huajt]

– *Residence Permit for Voluntary Services*

If a foreign person is coming to Albania to volunteer he/she must be provided with residence permission for a period of no more than one year only when the activity is closely linked to the voluntary service scheme, which must be legal in Albania. **This provision does not apply if you are a European Union or Schengen area citizen.**

– *Residence permit for scientific research*

A foreign person wanting to do a scientific research in Albania must be provided from the competent authority with a residence permit for a period no more than one year with the condition that an agreement must be signed with an Albanian institution for the research. **This provision does not apply if you are an European Union or Schengen area citizen.**

– *Residence Permit for Students and pupils*

If you are a foreign citizen who has entered and staying in the territory of the Republic of Albania for study purpose at public or private educational institutions has the right to apply for residence permission. The residence permit will be granted to you for a term of not more than one year, if it is your first time and may be extended each time by a year up to completion of school, studies or internship. During you studies you may also work in the territory of Albania. To do so you must have lived in Albania like a student for one year and the work must be outside of your study time. By applying for work permission you will have the right to be employed and may be granted the right to exercise Self-employment activity, observing the maximum limit of 20 hours per week, or equivalent with days or months per year. **This will not be necessary if you are citizens of the European Union and the Schengen area; they are exempted from the work permit.** During the study period, a residence permit for a student cannot be replaced on a residence permit for employment motives. Upon completion of studies, the foreign citizen, may stay in the territory of Albania for work purpose only if he/she will be provided with a work permit, **while EU citizens if registered in an employment office on the basis of a work contract may renew their residence permit for employment purposes.**

2.2.2. Permanent Residence Permission

The foreigner who has entered and is planning to stays in the territory of the Republic of Albania for a permanent period of time must submit a request to be provided with a permanent residence. In order to be granted with this kind of permission the foreign must fulfill some condition provided by the law such as to have legally and concisely stayed in the territory of the Republic of Albania for at least 5 years from the first application for residence permission; to prove that he/she has sufficient income and financial resources that are sufficient and guarantee sustainability and continuity for his/her own livelihood as well as members of his/her family without having to resort to the assistance system social; proves that it covers health insurance, according to the health insurance system for Albanian citizens in the Republic of Albania; provides adequate accommodation for himself/herself and his/her family members in the Republic of Albania; prove that he/she has regularly paid all taxes and duties in the Republic of Albania during his stay; enjoys the legal status of refugees in the Republic of Albania, acquired in accordance with the legislation in force for asylum.

A foreign citizen who is staying in the Republic of Albania for the purpose of pursuing studies or has requested provisional protection or auxiliary protection or he/she is an asylum seeker without a final decision and if he/she is staying only for temporary reasons as seasonal workers will not be provided with permanent residence permission.⁵⁴

However there are some facilities provided by the law in being granted with permanent residence permission. For example if the foreign person proves that his/her parents or grandparents are Albanian citizen. To be granted with the residence permission an alien must apply for it at by sending a request at the Office of Public Service of the Ministry of Interior Affairs as well as at the Local Director for Border and Migration.⁵⁵ The Department of Border and Migration at the Ministry of Interior Affairs examines the fulfillment of the conditions required by law and decides to approve the applicant request or not.

2.3. Employment of Foreigners in the Republic of Albania

In general all foreign citizen who wants to work in the territory of Albania must be provided with a work permission or a work registration certificate by the Ministry of Work Social Affairs and Equal Opportunity but if you are a **citizen of the European Union and the Schengen Area you will be exempt from this provision and you must enjoy equal right as Albanian citizen in the field of employment or self-employment.**

Despite the general rule there are some exempt from the obligation to be provided with work permission. Therefore foreign citizen who fulfils the following conditions are not in need of work permission.⁵⁶

- **Nationals of one of the European Union member states and the Schengen area**, who are legally residing in the territory of the Republic of Albania who enjoy the right to employment, as well as Albanian nationals, except where employment is specifically related to having Albanian citizenship, According to Albanian legislation. Declaration for their employment is done at the relevant employment office by the employer or the self-employed or invested foreigner himself, at the employment office where the activity is located
- Foreign who stay up to 1 month within 1 year as : persons negotiating for an agreement or caring for a pavilion at a fair; business visitors; crew members of aircraft or aircraft; foreign lecturers, researchers or specialists in the field of scientific research entering the territory of the Republic of Albania within the framework of bilateral governmental agreements or educational institutions themselves; trainers coming within the framework of cooperation between governmental institutions or educational

⁵⁴ Article 62 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁵⁵ Decision of Council of Ministers No 513(On defining the criteria, procedures and documentation for entry, and treatment of foreigners in the Republic of Albania) 2013 [Për përcaktimin e kriterëve, të procedurës e të dokumentacionit për hyrjen, qëndrimin dhe trajtimin e të huajve në Republikën e Shqipërisë] ; Guidance nr.265 (On the Cooperation Of the Ministry of Interior Affairs and the State Intelligence Service on the treatment of foreign citizens with legal stay in the territory of the Republic of Albania) 2015 [Mbi Bashkëpunimin e Strukturave të Ministrisë së Punëve të Brëndshme dhe Shërbimit Informativ Shtetëror, për procedurat e trajtimit të shtetasve të huaj me qëndrim të rregullt në territorin e Republikës së Shqipërisë]

⁵⁶Article 72 of Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

institutions themselves; personnel of humanitarian organizations operating under international cooperation programs.

2.4. Leaving the territory of Albania

Every foreign citizen is free to leave the territory of the Republic of Albania unless he/she carries out actions like: using a travel document of another person or fake documents or an invalid document for travel or has entered into the territory of Albania with another person's travel document and when it intends to avoid prosecution for a criminal offense, detention, arrest or execution of a prison sentence.⁵⁷

2.4.1. Deportation and expulsion of foreign citizen

2.4.1.1. Expulsion

In cases where the foreign person staying in the Republic of Albania does not fulfill the conditions required by law to remain in the territory or fulfils them but he/she is working in objection with the provisions requested by labor law or the legislation in force in general and when he/she has been sentenced by an Albanian court for a crime committed for which the Penal Code provides an minimum sentence of no less than two year in prisons, the Department of Border and Migration near the Ministry of Internal Affairs⁵⁸ release the order to leave the territory of Albania. There are two ways of execution these removal orders, by the authority or by the person himself.⁵⁹ The declaration made by a foreign person that he/she will voluntary leave the country should be priority for the authority and they will not execute the order, especially if the persons is part of one of above mention categories⁶⁰ : a) a foreign who has been illegally staying in the territory of the Republic of Albania but has not caused any damaging consequences for Order and public safety, b) Unaccompanied minors c) sick, disabled or disabled persons; d) victims of human beings traffic who wish to return to their country of origin; e) asylum seekers who have been denied asylum or have withdrawn their asylum application and do not have sufficient income for return; f) a foreigner who has regular travel documents but does not have the necessary financial means to stay.

The person who declares that he/she voluntary wish to leave the country must do so in a period of time from 7 to 30 days from the date of the announcement. This period may be extended for more than 30 days taking into account the specific circumstances of each particular case, referring to the specific categories such as: -Children attending schools, when its left no less than 3 months until the end of the child's school year; - A foreigner who has a financial obligation and must liquidate this obligation up to 3 months from the date of notification; - Foreigners with health problems, up to their healthcare to travel or end their stay in isolation or quarantine, according to a decision by state authorities. While executing the order the authority should

⁵⁷ Article 8 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁵⁸ Guidance No.293 (On the treatment procedure for foreign citizens with irregularly situation in the territory of the Republic of Albania) 2015, (Mbi procedurat e trajtimit të shtetasve të huaj me qëndrim të parregullt në territorin e Republikës së Shqipërisë)

⁵⁹ Article 106 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁶⁰ Article 108 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

respect the basic principle like the highest interest of the child, vulnerable persons, family life and health situation of the foreign citizen.

2.4.2.2. Deportation of the foreigner

Deportation of a foreign citizen from the territory means the removal with force of them in cases when it turns out that they have illegally entered the territory and there are proves that they will use it to pass into another country territory; have violated the rules regarding the expiring of visa, residence permission ; have not left the territory of Albania within the time limits of the removal order; or has been sentenced for a crime for which the legislation provides a minimum of 3 years at prison.⁶¹ The removal order will be executed by Local Department of Border and Migration which is also responsible for banning the person in the center or for applying temporary measures, proceeds with all procedural measures such as taking the finger prints or arranging the travel documents. In cases where the foreign person has no financial means to go back the state will give them a loan with the condition to be returned by the foreigner if he request to come to the country again.⁶²

There is also a special reason why a foreign person may be deported from the territory of the Republic of Albania, in case if he/she is declared “unwanted”.

A person may be declared unwanted in cases if he/she acts or propagates against the sovereignty, national security, constitutional order and public security; has been convicted of crimes for which the law provides for a sentence not less than five years in prison; is a members of terrorist organizations or organizations that violate the constitutional order and support actions that are contrary to any organized governance form; is required from international bodies for crime against human rights or has enter into the Republic of Albania with the purpose to commit a crime.⁶³The order for the eviction of a person declared unwanted is produced by the Ministry of Internal Affairs.⁶⁴The execution of a removal order, or deportation is not immediate in some cases, for example the legislation provides the person subject of the order with the right to appeal against it or because the person can't leave due to procedural problems, therefore during this period the foreign must stay in a center which is set up for persons subject of a leaving or deportation order. Banning a person in a center is not the only way; the law guarantees some temporary measure. These measures are taken as an alternative measure to banning a person into a closed center. Temporary measures are provided from article 115 to article 119 and consist in measures such as: the obligation to appear in front of the authority, blocking the travel ticket or the travel documents or the duty to stay in a specific territory.

A different regime is used for children who are not accompanied. An unaccompanied minor to whom a detention order is issued is held in a state social center specifically opened for this purpose, from or to another center within the framework of cooperation with international

⁶¹ Article 109 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁶² Article 112 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁶³ Article 9 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁶⁴ Guidance No. 293 (On the treatment of foreigners in an illegal situation in the territory of the Republic of Albania) 2015 [Mbi procedurat e trajtimit të shtetasve të huaj me qëndrim të parregullt në territorin e Republikës së Shqipërisë]

organizations carrying out missions for children, victims and trafficking or other categories of vulnerable individuals.⁶⁵ A person detained into a closed center is provided by the legislation with several rights such as the right to be informed in his language or a language he understands, the right to human treatment with sufficient food, legal assistance at any time and healthcare or the right to inform the consular representative about his detention.⁶⁶ The law however specifies a category of persons who are protected by it and cannot be expelled. A foreign person who meets the above mention conditions will not be subject of a deportation order, if it's not considered a threat for the country;⁶⁷

a) is provided with a permanent residence permit; b) was born in the Republic of Albania; c) has entered the Republic of Albania as a minor, unaccompanied and is endowed with a permanent residence permit; d) Is provided with a temporary residence permit and has married a foreigner who has a permanent residence permit or an Albanian citizen; e) there are reasonable grounds to suspect that the alien in his country of origin or another country shall be put to death, subjected to torture, inhuman or degrading treatment or punishment for discriminatory reasons; f) is a member of the family of a foreigner who is recognized as a refugee in the Republic of Albania.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The Albanian state manages the emigration of Albanian citizens, evaluating it as a choice of the individual and in respect of the freedom of free movement of citizens. The Authorities that are responsible for this create legal and administrative facilities necessary for Albanian citizens who wish to legally migrate or wish to return. Responsible state authorities create legal and administrative facilities necessary for managing migration through periodic public or individual information on the legal situation and changes that may have been made in the host countries for employment and vocational training. Also they have to support cross-border employment of Albanian nationals through the signing of bilateral / multilateral agreements. The Albanian Government has foreseen many measures in the programs of the respective Ministries, in particular in the program of Ministry of Social Welfare and Youth, Ministry of Foreign Affairs as well as Ministry of Internal Affairs.

On 2013, law no. 108/2013 "On Foreigners" amended brought good provisions dealing with the foreigners. These provisions consists providing different authorities per each responsibility and so on now there are established specific authority per specific responsibility with regard to the foreigners. Due to the multidimensional nature, migratory issues are covered by some state structures. However, the three main institutions are:

⁶⁵ Article 125 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁶⁶ Article 127 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁶⁷ Article 113

3.1. Ministry of Social Welfare and Youth

Ministry of Social Welfare and Youth is responsible for all aspects of labor migration through the Directory of Migration, Returns and Reintegration Policies which deals directly with emigration and immigration. Ministry of Social Welfare and Youth is the competent authority for negotiating seasonal employment agreements with other countries. It is also the national competent authority that drafts policies and proposes changes to the emigration legislation for employment reasons. Ministry of Social Welfare and Youth is the main coordinating authority for law enforcement Emigration of Albanian nationals for employment reasons but also for the implementation of the National Strategy on Migration and its Action Plan (coordination and monitoring system). Other institutions of the Ministry of Social Welfare and Youth that have an impact on the migration process are the National Employment Service, the State Social Service and the Social Insurance Institute. Since 2010, the Migration Centers are available in all Employment Offices and they are organized and functioning under National Employment Service authority. These centers have an important role in the mechanism of reintegration and offer a meaningful support for migrants. The Migration Center Competences are:

- Interview the returned Albanian citizens who volunteered to appear in the counter;
- Provide information on public and private services, in accordance with identified needs (when they exist);
- Give reference to public and private services (when they exist), as well as specific civil society projects in accordance with their needs.⁶⁸

3.2. Ministry of Foreign Affairs

Ministry of Foreign Affairs protects the rights and interests of Albanian emigrants through diplomatic and consular missions in the destination countries. This Ministry collects and disseminates information on employment legislation and social protection of migrant workers' rights as well as designs and determines Cooperation programs with Albanian emigrant communities.

The competences of Ministry of Foreign Affairs (MFA) in the field of migration are related also to the administration of visas and foreign entry documents and consular services for Albanian migrants in host countries (destination countries). The MFA is also responsible for the negotiation process of the Readmission Agreements or Protocols implementing the EU-Albania Readmission Agreement.

The MFA competent body that fulfills the obligations and responsibilities of the MFA in the field of migration are:

The Directory of Consular Affairs: is the responsible MFA structure for dealing with foreigners and policy making that enters their stay in the Republic of Albania. This directory compiles the policies of the consular service activity and also monitors and leads this activity.⁶⁹

⁶⁸ Legal vacuum

⁶⁹ Article 24 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

3.3. Ministry of Internal Affairs

The competencies of the *Ministry of Internal Affairs* concerning migration are mainly exercised by the Department of Border and Migration. The powers of this Ministry in this field include border control, measures against illegal trafficking, issues related to entry, stay and removal of foreigners. The Ministry of Internal Affairs has an important role in signing and implementing readmission agreements. The Minister of Internal Affairs, based on the proposal of the authorities responsible for the treatment of foreigners, issues an expulsion order for a foreigner declared as *persona non grata* (according to the model set out in Annex 7 of this Instruction) and through the central state responsible authority for the treatment of foreigners, informs the foreigner of the act issued.

Through the structures such as the State Police (General Directory for Border and Migration, General Directorate against Organized Crime and Serious Crimes), Directory for Citizenship and Refugees, etc., the Ministry of Internal Affairs is primarily responsible for: ⁷⁰Preventing and combating irregular migration through integrated border management; The control of foreigners during the visa application procedures in the Republic of Albania, in close cooperation with the other structures of the MFA and State Intelligence Service; Border control over the conditions and criteria for entry, stay and transit in the Republic of Albania; Equipping foreigners with residence permits; Controlling the lawfulness of foreigners to stay in the territory and the taking of voluntary departure, expulsion, prohibition of irregular foreigners in the territory and their return to their country of origin or transit; Implementation of readmission agreements with other countries; Reception, interviewing and selection of returned border residents, as well as informing them about reintegration opportunities in the country; Regional and wider cooperation in the field of exchange of statistical data on illegal migration and early warning; Identifying and addressing victims / potential victims of trafficking in person under the National Referral Mechanism and Standard Action Procedures including unaccompanied minors.⁷¹As the responsible authority for treating foreigners entering, transiting or staying in the territory of the Republic of Albania, the Migration Department and State Borders structure is organized at central and local level, extending throughout the territory of the Republic of Albania with 7 regional directories.

3.4. The Ministry of Education and Science

The Ministry of Education and Science is responsible for contributing to the integration of foreign nationals in Albania in the field of education, culture and science, as well as the creation of conditions for the education of Albanian emigrants in their mother tongue. This Ministry is also responsible for the voluntary return of educated and qualified students abroad and cooperation with the responsible authorities of the host countries for the recognition of diplomas and qualifications.

⁷⁰ The national advanced migration profile 2012 – 2014; Article 24 Law no 108 (On the treatment of foreigners) [Per te Huajtj]”

⁷¹ Ministry of Internal Affairs Publication, *The extended migration profile 2012-2014*, 40

3.5. The Ministry of Health

As the leading provider of health services, health promotion, prevention, diagnosis and treatment of diseases, is responsible for providing access to hospital health care according to the scheme provided to the entire population. It supports the integration of returning migrants and internal migrants into the health system, health insurance and social protection. The structure of the Ministry of Health that fulfills the obligations and responsibilities of the Ministry of Health in the field of migration is the Health Care Directorate.⁷²

3.6. The Social Insurance Institute

The Social Insurance Institute (under the Ministry of Finance) negotiates with his counterparts in the host countries for the drafting and signing of social security agreements. These agreements are signed with countries as Italy, Hungary, Greece, France and Germany. The Institute of Statistics (INSTAT) collects and disseminates study data that help to create a clearer picture of the phenomenon of migration.

3.7. Ministry of Integration

Ministry of Integration is responsible for monitoring the fulfillment commitment which derives under the Stabilization and Association Agreement with the EU, where an important place occupies migratory issues.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

Migration as one of the most vulnerable, social and sensitive issues, that has affected recent years not only in Europe but also in other continents. Migration has and will remain one of the most afflicted phenomena that will affect any state, whether in the state of migration or host state. Recent migratory crises⁷³ come and expand where eastern Balkan countries have taken on this expansion due to their geographic position. The way that migration has changed in time, in quality, can only be consulted through statistics and reports published by relevant institutions of the countries concerned by this phenomenon or by various organizations that have the object of regulating this phenomenon. One of the countries that have been affected in recent years by migratory crises is Albania, which has acted in the status of the host country but also in the status of the sending country of origin. Below are some of the most popular target groups that determine the type of migration: A) Asylum seekers; B) Immigrants; C) Transit immigrants; D) Trends on migration flows.

⁷² Ministry of Internal Affairs Publication, *The extended migration profile 2012-2014*, 40

⁷³ Progress reports of the European Union 2016.

4.1. Asylum seekers⁷⁴

Albania is a member country to the Geneva Convention and has adopted a new asylum law in 2014, aligning its legal framework broadly in line with the *acquis*. The country has the necessary institutions and procedures to handle asylum applications. The Asylum Directorate is the first instance body at the Ministry of Interior, which is also responsible for overall policy coordination in this area. Complaints can be deposited in principle at the National Commission on Asylum and Refugees. In 2015, 586 people applied for asylum, of which 480 were from the Iranian People's Mujahedeen (PMOI) and 106 other nationalities. The Asylum Director issued 39 positive decisions, three for additional protection and two negative decisions. By the end of 2015, 830 asylum seekers are awaiting status determination. The degree of recognition for those who undergo a full asylum procedure is over 50%, all nationalities combined. From January to August 2016, 1 443 persons applied for asylum, of which 1 355 were from PMOI. There is a reception center in Babrru with a capacity of 80 beds, which can be expanded to a maximum of 100 beds.

According to the above mentioned we archive the conclusion that: **There is no suitable shelter for unaccompanied minors. The lack of proper reception capacity in Tirana and in particular along the southern border of the country is a source of concern.** Albania cooperates with the European Asylum Support Office (EASO), but this cooperation is not based on a formal agreement. Compared to previous periods there has been a significant increase in asylum seekers, in 2014 there are 409 asylum seekers compared to 2012, where only 16. There are about 158 asylum seekers placed in Albania's territory in 2014. During 2014.⁷⁵ The refugee status was granted to 2 asylum seekers from Kosovo; The subsidiary protection status of 4 asylum seekers, respectively 2 from Kosovo and 2 from Syria, The status of temporary protection was granted to 2 asylum seekers from Kosovo; Resolutions to 32 Syrians, 1 Iranian and 1 South African; Decisions on refusing refugee status were taken against 1 Iranian and 1 Ukrainian. During 2013, the refugee status was granted to 4 asylum seekers respectively 2 from Kosovo, 1 from Syria, 1 from Afghanistan. During 2012 refugee status was granted to 4 asylum seekers respectively 2 from Kosovo, 1 from Syria, 1 from Turkey.

4.2. Immigrants

The total number of foreigners living in Albania has remained close to 0.3% of the local population over the last decade. The number and origin of regular emigrants has not changed significantly. In 2012, about 74% of immigrants are citizens of European origin, while 10% come from Asia, 13% from the United States and 2% from Africa. In 2013, 74% are immigrants of European origin, 12% from Asia, 11% from the United States and 3% from Africa. **In 2014**, emigration from European countries accounted for 75%, while 13% came from the American continent, 10% from the Asian continent and the number of immigrants from other countries was insignificant, about 1-2%. Regarding nationalities, Turkish and Italian nationalities are

⁷⁴ IOM Raport, 2012-2014

⁷⁵ Page 29, Extended Migration Profile.

dominant. Among European emigrants in 2014, 23% were Italians, 20% Turks, 15% from Kosovo and Macedonia and 30% from other countries. About 30% of Asian immigrants came from China. US immigrants account for 61% of American continental immigrants, while 26% of them are Canadians. Migrants from African countries are 3% of the Albanian population. **In 2015**, the total number of foreign nationals living in Albania is 57.616 thousand or 1.99% of the total population.

4.3. Transit migrants

During 2014,⁷⁶ there has been a significant increase in the number of foreigners who are illegally traveling to Albania, about 33.8% of the emigrants were captured within the territory of Albania, while 66.2% were close to the state border and border points. In 2014 it increased by 32.3% the number of arrested persons compared to the previous year. **In 2013**, about 53% of the emigrants were captured inside the Albanian territory, while 47% were close to the state border and border points. The voluntary departure procedure was applied to third-country nationals and these citizens were dealt with at the Reception Center, based on bilateral agreements between Albania and the countries of origin from the immigrants. From 331 in 2013 to 472 in 2014 the number of persons placed in the Closed Center increased by 29%.

4.4. Trends on migration flows

During 2012, the total population in Albania was 2900247 and the number of migratory flows was 7353. **During 2015** the total population was 2889167, with migratory flows occupying a place of 10563. Based on this report, we arrived at the conclusion that the number of migratory flows has not been a huge increase, there were about 3210 the number of persons who came to Albania's territory. Based on the reports of the Ministry of Interior, the migratory flows of those who live and live in Albania continue to be in the same flow, they stand at 0.3% of the total population.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

The European Court of Human Rights has played an important role, protecting migrants despite the fact that the European Convention on Human Rights only includes a few provisions on aliens. ECtHR protects asylum, which, indirectly, is a right that is not recognized by the European Convention on Human Rights on the basis of Article 3 which prohibits torture and inhuman or degrading treatment.⁷⁷ Article 3 of the Convention has provided the most developed case law initiated by Soering in 1990. The State may not act in such a way that the person concerned is exposed to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which

⁷⁶ Extended Migration Profile, 2014, Page 31. (Profili mbi Migracionon ne Shqiperi)

⁷⁷ EP Study, *The influence of EC and ECtHR case law on asylum and migration*,6

would, under international or national law, justify granting protection. The Court has firmly reiterated that this prohibition is absolute and permits no derogation, even for terrorists.⁷⁸

Arriving migrants (including irregular migrants and asylum-seekers) shall be treated with full respect for their human dignity. They shall be provided with necessary social and medical assistance, including emergency treatment. Accommodation facilities (e.g. reception or detention centers), food and living conditions provided to migrants must meet basic standards of decency. Article 5 of the ECHR, which allows the arrest or detention of a person to prevent his affecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition. The Strasbourg Court has also investigated the issue of the right to family reunification through Article 8 of the European Convention, which protects the right to family life. Article 8 of the Convention on the right to family life could also constitute an obstacle to expulsion and allow aliens to uphold their right to the maintenance of the family group in certain cases. At first, the Court dealt with second generation immigrants who often have deeper attachments to their country of immigration than to their country of origin which meant that it had to consider family life as well as the private lives of those concerned.⁷⁹ Article 13 of the ECHR (right to an effective remedy) enables persons that have an arguable claim that the conditions of their detention amount to an ill treatment to complain to an authority capable to provide redress.⁸⁰

Regarding to Albania, we can make a summary of legal acts that have an impact on the migration field, where the most important role is played by the Constitution. The Constitution of the Republic of Albania is the most important safeguard for the protection of human rights. Under Article 17, human rights restrictions cannot undermine the essence of freedoms and rights and in no case may exceed the limits set forth in the European Convention on Human Rights. Also, Article 16 of the Constitution of the Republic of Albania ratified treaties are placed in the second rank after the Constitution, thus understanding that the ratifications have the same legal power as the Constitution.⁸¹ For these reasons, the Constitution of the Republic of Albania is considered as the main instrument foresees these mechanisms. Also, the Civil Procedure Code with the changes made in 2008 provides that in cases of review of the decision that has taken final form is also provided and the case when the ECHR finds violations of the European Convention of Justice and its protocols ratified by Albania. This provision provides that the effective execution of the final decisions of the European Court of Human Rights constitutes one of the main commitments of the High Contracting Parties which, following the ratification of the European Convention on Human Rights, are required to comply with the ECHR Decisions - in any case where they are parties.⁸² This procedure is also foreseen in the Criminal Procedure Code, which provides for the reopening of criminal proceedings, taking into account the decisions of the European Court of Human Rights in cases when they have found a violation

⁷⁸ *Soering vs United Kingdom* | 17 July 1989 | European Court of Human Rights |

⁷⁹ EP Study, *The influence of EC and ECtHR case law on asylum and migration*, 8

⁸⁰ Council of Europe Publication, *Council Of Europe Standards And Guidelines in the field of Human Rights Protection of irregular Migrants*, 7

⁸¹ Article 16 Constitution of Republic of Albania 1998 [Kushtetuta e Republikës së Shqipërisë]

⁸² [Article 494\(ë\) Civil Procedure Code 2008 \[Kodi i Procedurës Civile\]](#)

of the ECHR.⁸³ Also, the Organic Law of the Constitutional Court in its Article 71 / c foresees the obligations arising from the decision-making of the International Courts, including here ECHR decisions.⁸⁴ Albania applies the international standard established by the ECHR in its Articles 1 and 46. The difference between Articles 1 and 46 of the European Convention on Human Rights is based on the fact that Article 1 of the ECHR deals with the obligations which the contracting States are required to take, regardless of the cases of individual violations, while the obligations arising from the article 46 relate only to contracting States that are parties to the relevant proceedings before the Court. The Council of Ministers is the body responsible for overseeing the process of executing the decisions and through the Council of Ministers' Decisions makes this process possible.⁸⁵

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

The legislation of Albania provides a provision for the integration of foreign citizen living in Albania. The law no.108 “On the treatment of foreigners” has a whole chapter about the integration of aliens in the economic, cultural and social life. According to article 143 of the law authorities should ensure the conditions for integration into the economic, cultural and social life of foreigners who have the right of residence in the Republic of Albania, according to the definitions made in the legislation in force for the integration of foreign nationals in the Republic Of Albania. However ECRI on its report on Albania makes it clear that it has no information of any integration program that Albania follows for the foreigners. ECRI has requested that the provision contained at Chapter X of the law must be applied in practice by adopting effective measures on the integration of foreigners, within the new Strategy on Social Inclusion and Social Protection.⁸⁶ **Until now no measures are taken for the integration of foreigners in practice unless the provisions mention at the law.** Regarding to the integration of asylum Law No. 121 “On Asylum in the Republic of Albania” provides conditions for granting asylum, measures for their integration. According to this law a refugee has the right to education, the right to work, rights to social protection and housing and the right to family reunification. Despite this ECHRI at its report on Albania recommends the authorities to adopt the by-laws under Article 86 of Law No. 121/2014 so that refugees’ access to education, employment, housing and health is guaranteed in practice.⁸⁷ **Until now no measures are taken for guaranteed in practice the integration of asylum seeker in the Republic of Albania.** The Ombudsman of the Republic

⁸³ Article 661 Penal Procedure Code 2001 [Kodi Procedures Penale]

⁸⁴ Article 71(c) Organic Law of the Constitutional Court 2000 [Ligji organik per funksionimin e Gjykates Kushtetuese]

⁸⁵ <http://www.kryeministria.al/al/newsroom/vkm/vendime-te-miratuara-ne-mbledhjen-e-keshillit-te-ministrave-date-30-mars-2016&page=7>

⁸⁶ Report of ECHRI on Albania 2015, p. 30 para. 89-90

⁸⁷ Report of ECHRI, 2015, p.30 para.88 (Raporti i ECHRI)

of Albania has made some recommendation according to the crises of refugee and the integration of the returned Albania. In the recommendation regarding the crises the Ombudsman requires from the government of Albania to make possible the recognition of the refugees who have entered the territory of Albania in order to provide them with the necessary documentation for the application in administrative processes regarding their status. Also the Government must declare according to the law “On Asylum in the Republic of Albania” a temporary protection of the persons coming from countries with a common background. Refugees and immigrants must be guaranteed with the access to asylum procedures without discrimination. The recommendation also request from the government to ensure an interaction against racism and xenophobia in order to protect the rights of immigrants and the principle of diversity and tolerance.

7. How is migrants' right to access to healthcare regulated within the national legislation?

The foreigner, who for different reasons may live in the territory of the Republic of Albania, may be registered with the social insurance scheme and contributions to foreign nationals are recorded according to the number of the insurance and, in case it does not exist, the personal number identification that the person has in the passport.⁸⁸ Recording procedures, basic documentation and checking of the accuracy of data transfer, from basic documents to individual contributions cards, are defined by a regulation approved by the Social Insurance Institute. Foreign nationals and stateless persons, employed, self-employed or self-employed persons in registered taxpayers in the Republic of Albania are protected and provided by the law on social security, where foreign nationals have the same rights as Albanian citizens.⁸⁹

- Employees with a constitutional mandate, appointed employees, employees with a permanent contract or term of more than one month.
- Workers with a part-time or part-time contract, which lasts less than 87 (eighty-seven) hours per month
- Full-time or part-time employees, which last for less than seven (seven) calendar days per year
- Owners of legal persons, who exercise managerial functions in the company, as administrators or any other function, which are provided with compulsory
- Self-employed with the status of a natural person exercising economic activity
- Family members, who work and live legally with a self-employed person, a natural person
- Natural persons, self-employed in commercial or service activities, ambulances, who have reached the age of 16, who are not provided as employees or as self-employed

⁸⁸ Article 5 Law no 108 (On the treatment of foreigners) 2013 [Per te Huajt]

⁸⁹ DECISION, Nr. 77, dated 28.1.2015, article 7.

- Employed persons, working part-time or part-time, as domestic workers in the families of others
- Secondary or vocational school students, as well as students, for the programmed time of the tuition and professional practice free of charge for which contributions are paid by the employer to the minimum level
- Persons employed for the first time in entities that conduct economic activities under the Active Processing Regime for a period of up to three months of vocational training for certain qualified professions.
- Persons employed in two or more legal or physical entities
- Employed persons for more than 87 hours per month
- Self-employed in agriculture who are 16 years of age, up to retirement age.

From this social insurance scheme exempted foreign nationals as follows below:

- Work in foreign entities which, under an agreement, do not have the obligation to register with the Albanian tax authorities;
- Are employed in foreign entities that do not have the obligation to register with Albanian tax authorities, who come to Albania to work in a qualified job or service under a service contract,
- are employed in foreign entities which are not obliged to register with the Albanian tax authorities who are sent to Albania to work in a particular job or service under a contract concluded by the foreign employer with a subject registered with the Albanian tax authorities, which is not a subsidiary or unit of the contracting entity, when the conditions are met, as follows:
 - Have an agreement to avoid double taxation, concluded between the Albanian state and the state of the foreign employer;-The registration procedure, the work permit and its duration have been carried out in accordance with the provisions of law no. 108/2013 "On Foreigners";⁹⁰ - Residences and payment obligations, according to fiscal legislation, shall be applied according to the provisions of Law no. 9920, dated 9 May 2008, "On Tax Procedures in the Republic of Albania", as amended;
 - The contracting entity, registered with the Albanian tax authorities, requires every third month from the foreign employer the document confirmed by the social security structures of the respective state regarding the payment of the social insurance contributions, accompanied by the nominal list of foreign employees, which it manages together with the transfer documents in favor of the foreign employer.
- Resident and permanent resident outside the territory of Albania who have activities registered in their name in both states where they perform the duties of the administrator, together with another administrator, permanently resident in Albania.

Foreign nationals cannot register pre-defined in the social insurance scheme based on the moment when they are legally admitted to the country, based on the abovementioned

⁹⁰ <http://www.infocip.org/al/?p=6037>

proceeding, they are registered with a work contract and an ID (passport). In order for foreign nationals to be insured under Albanian social insurance, they must be in employment, so they must have economic ties.

Regarding exchange students, their health insurance is possible based on the agreement that links the Albanian Ministry of Education with the foreign ministries of education of foreign countries. Foreign nationals who are not regular residents in Albania cannot benefit from the social insurance scheme. Health insurance is accessible to all Albanian and foreign nationals who are registered in the social insurance scheme, any other person who is not registered must pay certain fees. Every citizen can obtain health insurance information at health insurance centers. Persons who are not registered in the social insurance scheme and pay taxes do not obtain assistance. The assistance is only obtained when it is paid under the social insurance scheme. Regarding the security of life, everyone gets paid for the service because it is not state-service but a private one and can not be included in the social insurance payment.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Article 16 of the Constitution of the Republic of Albania expressly states that the fundamental rights, freedoms and the obligations provided in this Constitution for Albanian citizens apply equally to foreigners and stateless persons in the territory of the Republic of Albania. An exception to this rule is when the constitution specifically links Albanian citizenship with certain rights and freedoms.⁹¹ Also, the Republic of Albania has ratified the Convention on Human Rights, which in Article 2 states that every individual has the right to education without distinction.⁹² According to the Convention, the holders of the right guaranteed in Article 2 of Protocol No. 1 are children, but also adults, or indeed any person wishing to benefit from the right to education. By maintaining this standard, Albania in the law for “Pre-university education system in the Republic of Albania” recognizes this right to foreign nationals and non-nationals, and also the law “For Higher Education and Scientific Research in Higher Education Institutions in the Republic of Albania” gives the right to continue higher education to all those who have completed secondary education and every other individual that this right is recognized by law and here we can quote the law “On Asylum in Republic of Albania.”⁹³ The foreigner who participates in a practice or training is provided with a residence permit for not more than one year. During recent years the number of foreign students in Albanian universities has increased: from 471 in 2012, 709 in 2013 to 690 in 2014. The decline in the number of foreign students in 2014 is explained by the reform of the higher education and the closure of some private universities in Albania.⁹⁴

⁹¹ Article 16 Constitution of Republic of Albania 1998 [Kushtetuta e Republikës së Shqipërisë]

⁹² Article 2 Protocol no.1

⁹³ Article 5, Law for “Pre-education system in the Republic of Albania”no.69/2012 [Ligji për Edukimin Parauniversitar në Shqipëri]

⁹⁴ Ministry of Internal Affairs Publication, *The extended migration profile 2012-2014*,42

The Asylum Law states that refugees in the Republic of Albania have the right to pursue education in public institutions likewise the Albanian citizen. Public institutions are obliged to register the refugee. The responsible minister determines the evaluation criteria, and the refugee has the right to apply for higher education.⁹⁵ Regarding the education of Albanian children abroad, the Ministry in cooperation with the diplomatic missions, supports the implementation of special programs for teaching Albanian language and for the recognition of the cultural inheritance. Also, regarding readmission, the government has foreseen as a measure for the integration of free professional education for returned migrants into society, thus creating employment opportunities in the domestic market. Nevertheless, it is still necessary to draft a new strategy or document on the integration of returned Albanian citizens.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

The Republic of Albania has defined a clear procedure for the recognition of foreign school and university diplomas. This procedure framework is clarified in the law, bylaws which are also in accordance with the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997. It has an electronic and paper based service for the whole procedure. The information can be provided at the Ministry of Education and Sport (MES) and can be also easily accessed at their website.⁹⁶ Regarding mutual recognition of professional qualifications, the organization of a special session of the state exam for the regulated profession of physicians was approved by order of the Minister of Education and Sports. A new law on crafts was tabled by the government in January and is pending enactment by parliament. For the first time, the law provides for a model of the dual system of vocational education and training.⁹⁷

For the recognition of foreign school and university diplomas the electronic service is to assist citizens applying for the unification of foreign certificates and diplomas belonging to levels 5 to 8 of the Albanian Qualifications Framework issued by foreign higher education institutions. Qualifications at levels 5 - 8 of the Albanian Qualifications Framework include Professional Diploma, Bachelor, Master and Doctorate. The procedure has identified the necessary documentation for the application. The application can be made online or just in writing. In both cases, the applicant must submit by post to the MES the following documentation, for the unification of university certificates and diplomas from level 5 to level 8 of the Albanian

⁹⁵ Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

⁹⁶ <http://www.arsimi.gov.al/al/arsimi/universiteti/njehsimi-i-diplomave-te-huaja>.

⁹⁷ Albania EU 2016 Report, page 36

https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

Qualifications Framework (AQF) and the European Qualifications Framework (EQF) (except of doctoral degrees). The procedure is:⁹⁸ Application form filled in individually, downloaded from the MES official website (if applicable only in paper form) or printed after the online application (if it is applied online); Diploma or certificate certifying the completion of studies (where this is the relevant official document in the country of origin equivalent to the diploma); List of grades and / or diploma supplement; Photocopy of ID card or passport; Hard-copy mandate-payment (in cases where the application is only filed in writing).

The application for recognition and unification of the scientific degree "Doctor(PhD)" shall contain the following documentation:⁹⁹ -Application form filled in individually, which is downloaded from the MES official website (if it is only applied in writing) or printed after the on-line application (if applied online); - A copy of the diploma and its supplement (if any) issued by the relevant institution of higher education, which proves the acquisition of the "Doctor" degree, as well as notarized copies of diplomas for prior university studies; - Doctoral dissertation in hard-copy format (signed and signed by the applicant and the scientific leader. In the absence of signing by the leader, be signed by the secretariat of the higher education institution and stamped) and electronic (in CD format); -Albanian dissertation summary in hard-copy format (signed by the applicant) and electronic (in CD format), 5-10 pages; - Certificate issued by the National Library in Tirana, on the deposit of a copy of the dissertation; - Curriculum Vitae signed by the applicant; - Photocopy of identity card or passport; - Hard-copy payment (when the application is only filed in writing).

Procedure Steps:

In the case of online application, the applicant completes the online application as well as sends the hard-copy documentation to the Ministry of Education and Sports. For not online applications application, the applicant submits documentation to the MES through mail service. The Diploma Recognition Sector shall carry out the verification of the authenticity of the diploma or certificate in cases when these documents are not provided with the Apostille / Legalization stamp or are not authenticated in the country of origin as defined in this Instruction as well as in cases of the documentation issued in the United States of America. The Sector may also seek further information that it deems necessary for the objective assessment of the recognition and unification of the diploma or certificate.

Procedures for obtaining recognition and unification decision:

For the recognition and unification of certificates and diplomas issued at the conclusion of study programs belonging to the 5th to 8th level of the Albanian Qualifications Framework and the European Qualifications Framework, in addition to the "Doctor" degrees, the Commission for Recognition of Diplomas, in the composition of which are employees of the Directorate of Higher Education and Science at MAS and is headed by the director of this directorate. The Diploma Recognition Commission evaluates, recognizes and coordinates, on the basis of the European Qualifications Framework, the Qualification Framework of the country of origin and the Albanian Qualifications Framework, in accordance with the international standards and

⁹⁸ Documents must be original (except diploma) or photocopies same as the original.

⁹⁹ Documents must be original (with the exception of diploma / diplomas) or photocopies aligned with the original.

standards of recognition of qualifications as defined in the documents, International conventions and conventions that include our country, while respecting the provisions of the Albanian legal framework in force. The Diploma Recognition Commission takes the decision for recognition and unification or may decide to return the file to the Sector, for any necessary supplementation in the documentation, according to the respective instruction. The Sector based on the Commission's decision prepares the certification of recognition and unity for each applicant. In cases of non-recognition of the diploma or certificate, the Sector prepares the appropriate answer for the applicant. For the recognition of scientific degrees, the order of the minister in charge of education, ad hoc commissions, according to respective fields, with expert pedagogues of the field of the "Professor" category, which is collected depending on the number of applications and examines the respective files. The chairman of the commission is the Minister of Education and Sports.

The necessary time to get the service and Period of validity:

The procedures for the recognition and unification of diplomas, certificates and degrees obtained at the conclusion of studies conducted abroad when the application file is completed with all the documentation required by this Instruction are completed within 45 days in the case of online application, And within 3 months in cases of application in writing. Certification is always valid (only in the Republic of Albania) unless there are appeals for change and when it is revoked by the Diploma Recognition Commission.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

The fundamental rights and obligations contemplated in the Albanian Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship.¹⁰⁰These rights and obligations contemplated in this Constitution are valid also for legal person as long as it comports with the general purposes of this person and with the core of these rights, freedoms and obligations.¹⁰¹Based on the Albanian Constitution every citizen who has attained the age of 18, even on the date of the elections, has the right to elect and be elected.¹⁰²Citizens who have been declared mentally incompetent by a final court decision are excluded from the right of election.¹⁰³Exempted from the right to be elected shall be the citizens being sentenced to imprisonment upon a formally and substantially final decision, in connection with the commission of a crime, under the rules set out

¹⁰⁰ Article 16 of Law no 8417 (Constitution of the Republic of Albania) 1998, amended [Kushtetuta e Republikës së Shqipërisë].

¹⁰¹ Ibid paragraph 2.

¹⁰² Article 45 of Law no 8417 (Constitution of the Republic of Albania) 1998, amended, [Kushtetuta e Republikës së Shqipërisë], parag 1.

¹⁰³ Ibid paragraph 2.

in a law being approved by three fifth of all the members of the Parliament. In exceptional and justified cases, the law may provide for restrictions of the election right for citizens serving an imprisonment sentence or the right to be elected prior to a final decision being rendered, or the citizens having been deported in connection with a crime or very serious and grave breach of public security.¹⁰⁴The vote is personal, equal, free and secret.¹⁰⁵The Electoral Code based on the principles set by the Albanian Constitution it set the criteria for inclusion of voters in the voter lists. In order to be included in the voter list, a person must meet the following criteria:¹⁰⁶ hold Albanian citizenship; be 18 years old, including those who reach this age on the election date; be not found incapable to act by a final court decision; be registered with the National Civil Status Register; have the registered domicile in the territory of one of the polling units; be registered as a voter in the voter list of only one polling unit.

Following the report from the *OSCE/ODIHR Election Observation Mission, Final Report on the Republic of Albania, Local Elections 21 June 2015*. All citizens aged 18 years or older are eligible to vote, except those found incompetent by a court decision.¹⁰⁷ Non-citizens are not eligible to vote in local elections, irrespective of their length of residency.¹⁰⁸ Blanket restrictions of voting rights for these two groups are not in line with international obligations and standards for democratic elections.¹⁰⁹ Also based on the Law for the Asylum the asylum seekers and refugees cannot create, unite or support and act in political groups or other organizations that violate the order and security of the Republic of Albania.¹¹⁰ Broadening the picture to the international legal framework, there are different documents that guarantee the political right. Political rights of citizens are also provided in the *International Covenant on Civil and Political Rights, which has been ratified from Albania*. All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹¹¹ The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.¹¹² Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:¹¹³

¹⁰⁴ Article 45 of Law no 8417 (Constitution of the Republic of Albania) 1998, amended, [Kushtetuta e Republikës së Shqipërisë], paragraph 3.

¹⁰⁵ *Ibid*, paragraph 4.

¹⁰⁶ Article 44, of Law no. 10 019 (Electoral Code of the Republic of Albania), 2008, amended, [Kodi Elektorale i Republikës së Shqipërisë].

¹⁰⁷ Article 29 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) requires states to “guarantee to people with disabilities political rights and the opportunity to enjoy them on an equal basis with others”.

¹⁰⁸ Article 6.1 of the 1992 European Convention on the Participation of Foreigners in Public Life at Local Level provides that states “grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the five years preceding the elections”. Section I.1.1.b of the 2002 Venice Commission Code of Good Practice in Electoral Matters states that “it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence”.

¹⁰⁹ OSCE/ODIHR Election Observation Mission, Final Report on the Republic of Albania, Local Elections 21 June 2015, page 10.

¹¹⁰ Article 19 of Law no 121 (On Asylum in the Republic of Albania) 2014, [Për azilin në Republikën e Shqipërisë].

¹¹¹ Article 1 of International Covenant on Civil and Political Rights.

¹¹² Article 3 of International Covenant on Civil and Political Rights.

¹¹³ Article 25 of International Covenant on Civil and Political Rights.

- To take part in the conduct of public affairs, directly or through freely chosen representatives;
- To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- To have access, on general terms of equality, to public service in his country.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all people equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹¹⁴ Another international document providing information on political right *Convention on the Participation of Foreigners in Public Life at Local Level*, which has entered into force in 1997.

Currently, the Convention has 8 Contracting States, a small number compared to the number of EC Member States. Albania has ratified it on July 19th, 2005. The Convention defines the following rights: the right of expression, organization and consultation with local native communities; establishment of consulting structures of foreigners at local level;¹¹⁵ the right to vote at administrative elections;¹¹⁶ the right to information.¹¹⁷ The Convention urges the Government of Albania to consult migrant workers on local developments and policies affecting their work and life in Albania. Each Party undertakes to guarantee to foreign residents, on the same terms as to its own nationals:¹¹⁸

- the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises;
- the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defense of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.

Based on the International Covenant on Civil and Political Rights, 1966 all individuals within territory and subject to jurisdiction of a state enjoy their Civil and Political Rights without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Albania's accession in the Convention was in 1991. Even though the political rights of the citizens are mentioned in different

¹¹⁴ Article 26 of International Covenant on Civil and Political Rights.

¹¹⁵ Article 5 of Convention on the Participation of Foreigners in Public Life at Local Level.

¹¹⁶ Article 6 of Convention on the Participation of Foreigners in Public Life at Local Level.

¹¹⁷ Article 8 of Convention on the Participation of Foreigners in Public Life at Local Level.

¹¹⁸ Article 6 of Convention on the Participation of Foreigners in Public Life at Local Level.

documents, the Albanian Constitution and following that Electoral Code, have the defined conditions for granting political rights to foreigner.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

According to the law, Albanian citizenship is acquired by birth, naturalization and by inheritance. A foreign citizen who wants to acquire the Albanian citizenship by naturalization must fulfill some formal condition determined in article 9 of the Law no. 8389 date 05.08.1998 "On Albanian Citizenship". Therefore he/she should have reached the age of 18 years old; should have legally lived in the territory of the Republic of Albania consistently for no less than 5 years; should have a dwelling and sufficient income; should have never been convicted in his/her country or in the Republic of Albania or in a third country, for criminal offenses, for which the law provides the sentences of no less than 3 years in prison except if the punishment is given for political reasons; must have at least initial knowledge of the Albanian Language and finally his/her acceptance does not affect the security of the Republic of Albania.

Despite of the above mentioned conditions, for a foreign person who has reached the age of 18 years old and the Republic of Albania has an scientific, economic, cultural and national interest, the Albanian citizenship may be won by naturalization even if it does not meet the requirements of this law, with the exception that accepting him as an Albanian citizen does not affect the security and protection of the Republic of Albania. A different regime is used for a foreigner who proves that he/she is of Albanian origin on up to two degrees, even from one parent. The time required by the law to have been staying in the Republic of Albania will be reducing at less to 3 years. However the other conditions required by the law that are necessary for obtaining Albanian citizenship will be intact.¹¹⁹ If a foreign person is married to an Albanian citizen for not less than 3 years, if he/she wants, may win the Albanian citizenship by naturalization without fulfilling some normal conditions required by the law for other foreign persons, with the conditions that he/she must have lived continuously and lawfully in the Republic of Albania for at least one year.¹²⁰ If the parents have both acquired Albanian citizenship by naturalization may request that their children that are under 18 years old and living with them have Albanian citizenship too. If the child is at the age of 14-18 years old it's necessary the consent of him/her.¹²¹ As mentioned at the first paragraph, another way of gaining Albanian citizenship is by birth. When a child born within the territory of the Republic of Albania, from foreign parents who are legally resident in the country, may get Albanian citizenship if both of his/her parents' consent so.¹²²

¹¹⁹ Article 9 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

¹²⁰ Article 10 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

¹²¹ Article 11 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

¹²² Article 8 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

11.1. Documents required to be submitted by the Foreign Citizen who acquires Albanian Citizenship by naturalization

The Albanian citizenship may be won by deposits a request to the President of the Republic who is the competent institution for giving citizenship. A foreign person aiming to gain the citizenship should make a request which has to contain the fully identity of the seeker (surname, date of birth, birthplace, nationality), the exact address of the permanent residence and the address where you are waiting for the information about the progress of the application, the reasons for the request of the acquisition of the Albanian citizenship. Together with the request the foreign must submit the following documents:¹²³ Written opinion of the employee who accepts the documents for the level of knowledge of Albanian language ; Birth Certificate ; Residence permit in the Republic of Albania according to the criteria of the law on citizenship(notarized photocopy), if resident in Albania ; House ownership act or the contract of the rent (notarized photocopy);Employment contract or certification by the Tax Office for the persons who are self-employed or investors (notarized photocopy);Documents that prove the availability of sufficient livelihoods; Criminal evidence received from the country of origin and the country where the claimant was legally staying for the 6 last months; Certificate (when is necessary) to certify the Albanian origin of the applicant up to two degree, even from one parent.

11.2. Where should the Request be Deposit?

The request for obtaining the Albanian citizenship may be deposit by the foreign citizen by himself or by his representative provided with a special procuracy in the local police station where the applicant is temporarily resident or in the civil office where he is registered or at the diplomatic or consular representation of the Republic of Albania in the state where he/she is resident¹²⁴ for foreigner citizen who live abroad. After the applicant request has been deposited to one of the above mention institution, the Ministry of Interior, within 6 month from submission date of the application, decides whether or not to present the request to the President of the Republic of Albania.¹²⁵ If the foreign, after becoming known with the decision of the Ministry of Interior to submit or not the request to the President, is not satisfied with he/she can sue that decision to the district court of Tirana. If the Ministry of Interior has decided to send the request, the President of the Republic within three months from the submission of the request of the Ministry of Interior, issue the relevant decree.¹²⁶

The final step that a foreign person must do to win the citizenship is an oath before an official of the Citizen Registration Office to be faithful to the state and for the respect the Constitution and the laws of Albania.¹²⁷ Albanian citizenship becomes effectively the day of oath.

¹²³ Instruction of the Minister of Public Order No. 3583 and the Minister of Public Order Foreign Affairs No. 6252 (On Procedures and Documentation for gaining, regaining and abandoning Albanian citizenship) 2011 [Per procedurat dhe dokumentacionin per fitimin, rifitimindhe heqjen dore nga shtetesia shqiptare]

¹²⁴ Article 17 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

¹²⁵ Article 19 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

¹²⁶ Article 20 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

¹²⁷ Article 23 of the Law no.8389 (On Albanian Citizenship) 1998 [Per shtetesine shqiptare]

A foreign person who may have another citizenship is allowed to acquire the Albanian citizenship and also to maintain the other one. The legislation of the Republic of Albania legitimates dual citizenship.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Specifically, as set out in Regulation (EC) no. 491/2004 of 10 March 2004 establishing the Aeneas program, the latter aiming to promote cooperation between the Community and third countries by contributing to the third countries concerned and in partnership with these countries, must achieve some objectives.¹²⁸ Development of legislation in the field of migrations has specifically aimed the status of returnees, their integration and non-discrimination. Having in mind the demographic, economic and social situation that existed in the country of origin and then studying the capacity of the host countries, a different premise was put in place which directly related to public awareness of the advantages of migration and the consequences of illegal migration. The Geneva Convention together with Protocol of 1967 were two of the acts which provided for the establishment of another purpose which should ensure compliance with the principle of "inaction" and capacity building for asylum seekers and refugees. Albania as a third country should include an effective and preventive policy in the fight against illegal migration, the fight against trafficking in human beings and the smuggling of migrants. Based on the abovementioned regulation, it was decided as one of the goals for third countries the readmission of persons who have entered illegally or remained in the territory of the Member States or of persons who have applied for asylum in the European Union but have not been able to benefit from it or those who benefit from international protection. This readmission procedure should be carried out in full compliance with the law. All these different strands were developed in a balanced manner within the framework of the implementation of the Aeneas program, through supporting 107 projects which were 3 presented by different types of applicants, covering a broad range of regions and countries. Within the project "Establishing Mechanisms for the Sustainable and Effective Implementation of the Readmission Agreements" between Albania, the European Community and third countries interested in this Agreement, which are implemented by the Ministry of Interior.

The project¹²⁹ aims at assisting the Government of Albania (GoA) to fully and successfully implement the obligations that stem from the EC/Albania Readmission Agreement (RA), ratified by the Albanian Parliament on May 1, 2006. In particular, it facilitates the strengthening of the Albanian institutions to implement the third country clause of the RA, which will come into force in 2008. The implementation of the Readmission Agreement is considered a priority

¹²⁸ <https://ec.europa.eu/europeaid/sites/devco/files/publication-aeneas-programme-projects-funded-2004-2006_en_7.pdf>

¹²⁹ Building on mechanisms to effectively and sustainably implement readmission agreements between Albania, the EC and concerned third countries (April 2006 - April 2009)

under the Stabilization and Association Agreement (SAA) concluded between Albania and European Commission on 12 June 2006 and the Albanian National Action Plan for implementation of the SAA.

The project also supports Albanian authorities regarding the issue of return migration within the context of migration management, as envisaged by the National Strategy and Action Plan on Migration, approved by GoA in May 2005. The project gives assistance to Albania for being able to fulfill the future requirements of the EU standard Readmission Agreement, as well as to foster the capacity of Albania to exchange information and best practices concerning the implementation of readmission agreements with third countries, through improved knowledge and expertise of Albanian counterparts. This project runs from 2006 to 2009. The main outcome of this project was the establishment of mechanisms for the implementation of the EC-Albania Readmission Agreement as a good example in the implementation of readmission agreements, and prepared the situation for the entry into force of the Readmission Agreement, the third country clause Agreement in 2008. Regarding the phenomenon of return, readmission and re-integration, Albania has undertaken a very important initiative since 2013. Agreements have been signed with all member states in the European Union and beyond.

The implementation of return, readmission or re-integration is supported by contact officers and Albanian consulates abroad participating in co-operation practices with the authorities of the respective countries to support the return of persons. After refusing asylum from European Union countries to Albanians, this process of perpetration has turned into a volunteer. In the new re-integration¹³⁰ process, many central and local level institutions involved in the implementation of policies for reintegration of returnees are involved. Among the most important are the Ministry of Social Welfare and Youth, Ministry of Education and Sports, Ministry of Health etc. The Ministry of Social Welfare and Youth¹³¹, through the reintegration programs, supported by the International Organization IOM (and not only) is responsible for the reintegration of returned Albanian citizens, specifically a special assistance is given to citizens who have an economic problem, unemployed Can benefit from employment programs. Identify existing needs for professional training of Albanian returnees. One of the main points of the program is the regional training of Albanian citizens for vocational training. The program has enabled the establishment and functioning of Migration Seats at all Local Employment Offices.

Conclusions

In conclusion of this research it can be assumed that the Republic of Albania guarantees the right of asylum of a foreigner or stateless person who, because of the fear of persecution, for reasons related to race, religion, nationality, membership in a particular social group or political conviction, is located outside the country of his/her nationality or outside the usual residence and has no opportunity or desire to seek protection of that country as a result of such events and

¹³⁰ Migration Profile, 2015, Republic of Albania [Profili mbi Migracionin ne Shqiperi]

¹³¹ < http://www.punetebrendshme.gov.al/files/documents_files/EN- Profili_i_Migracionit_2015-2.pdf >

for the sake of such fear. The Albanian law on asylum refers to responsible authority for asylum and migration/ministry, giving guidance to refer to other laws that regulate this area such as the Ministry of Internal Affairs which has the major responsibility in this field.

According to the legislation of the Republic of Albania an alien who wants to enter, stay, leave or pass transit to/from the territory of the Republic of Albania must turn up at the border by fulfilling the conditions required by law.

The entrance of a foreigner citizen to the territory of the Republic of Albania is regulated by a visa regime but citizens who have a valid multiple-entry Schengen visa or Us-UK visa does not need to apply for it. If an Alien is planning to stay for a temporary or permanent period should apply for residence permission. The residence permission for temporary period is not required for citizens of European Union or Schengen if they follow one of the purposes required by law while the residence permission for aliens who are planning to stay for a permanent period will be enable if they fulfill the conditions required by the law.

The Albanian state manages the emigration of Albanian citizens evaluating it as a choice of the individual and in respect of the freedom of free movement of citizens. The Authorities that are responsible for this create legal and administrative facilities necessary for Albanian citizens who wish to legally migrate or wish to return. The European Court of Human Rights has played an important role, protecting migrants despite the fact that the European Convention on Human Rights only includes a few provisions on aliens. Regarding to Albanian legislation the most important role is played by article 16, 17 of the Constitution, the Civil Procedure Code and the Penal Procedure Code, which play an important role in maintaining the European Court of Human Rights Standards.

The ECRI has required from Albania to apply in practice the measures for the integration of foreign citizens living in Albania (for example a real measures must be the adoption of a new Strategy on Social Inclusion and Social Protection) however still no measure is taken for the real integration of the foreigners living in the territory of Albania. The same situation is presented even for asylum seekers. The foreigner, who for different reasons may live in the territory of the Republic of Albania, should be registered with the social insurance scheme and contributions to foreign nationals. Health insurance is accessible to all Albanian and foreign nationals who are registered in the social insurance scheme, any other person who is not registered must pay certain fees.

The Constitution of the Republic of Albania expressly states that the fundamental rights, freedoms and the obligations provided in it for Albanian citizens apply equally to foreigners and stateless persons unless the Constitution otherwise provides.

The recognitions of foreign school and university diplomas the legislation has defined a clear framework which is also in accordance with the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997.

With regard to the citizenship, every alien who has reached the age of 18 years old, has lived in the territory of the Republic of Albania and has never been convicted in his/her country or in the Republic of Albania for a criminal offense may acquire the Albanian citizenship by depositing a request to the President of the Republic of Albania.

In the new re-integration process, many central and local level institutions are involved in the implementation of policies for reintegration of returnees. The most important responsible institutions are the Ministry of Social Welfare and Youth, which in accordance with IOM is responsible for the reintegration of returned Albanian citizens, Ministry of Education and Sports and the Ministry of Health.

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Introduction

During the 20th century, the international community, including Armenia, consistently recruited a number of refugee conventions, directives and laws to provide equal treatment and protection for human rights. In July 1951 the Diplomatic Conference in Geneva adopted the Convention on the Status of Refugees (which entered into force on 4th of October 1951), which was subsequently completed in 1967 by agreement. These documents clearly defined who is a refugee and what legal protection and social rights are given to them. It also defines refugee responsibilities towards a country that has granted him asylum and mentions a group of people, including war criminals, who are not subject to refugee status.

United Nations Convention on the Status of Refugees (1951) (hereinafter “the Convention”) and its Protocol (1967) (hereinafter the Protocol) for the Republic of Armenia (hereinafter “the RA”) entered into force on October 4, 1951 and July 6, 1967 respectively. These important international documents were the basis for adoption of the Law on Refugees and Asylum (hereinafter in the frameworks of this question Law). The first law on Refugees was adopted by the RA National Assembly on March 3, 1999. Afterwards during development of the legislation raises the necessity of adoption a new law which would conform to international principles and guidelines. As a result, on November 27, 2008, the RA National Assembly adopted the RA Law on Refugees and Asylum (hereinafter “the Law”).

This Law is a cornerstone in domestic law relating to asylum and refugee status. The latter regulates the relations relating to the refugee recognition, asylum, as well as guarantees the application of the Convention and the Protocol and recognizes the right all foreigners and stateless people to seek and enjoy asylum in the territory of the Republic of Armenia and at the state border crossing points of the Republic of Armenia, if they meet the requirements specified in this Law for granting asylum. Law defines asylum as the protection afforded to a foreign citizen or a stateless person in the Republic of Armenia, which guarantees the application of the principle of non-refoulement, as well as all rights granted to internationally recognized refugees by the Convention, this law and other legal acts. The Law also provides the basic rights and obligations of asylum seekers and refugees, defines the procedures of provision, termination, deprivation and cancellation of the refugee status, the scope of asylum seekers and refugees with special needs, the consequences of refusing to grant asylum, the grounds for reapplying for asylum, and other crucial issues related to seeking asylum and refugee status.

Besides the abovementioned, the RA Government approves the national migration program every year. On 31 August, 2017 the Government of RA confirmed the National program of Migration by the protocol on the 2017-2021 of strategic measures aimed at the development of the Armenian migration policy. These are visa facilitations, internationalization of education, development of integration policies and more.

So we can state that the government of the RA always pays more attention to the migration and tries to regulate this sphere accordance with the international contracts. For that aim the RA

makes legal appropriate amendments for effective protection of human rights in the area of migration law.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

The list of the competent state bodies of RA, as well as their functions regarding granting asylum to foreign citizens and stateless people (hereinafter referred to as foreigners), refugee recognition, the exercise of asylum seekers' and recognized refugees' rights and other relations in the RA are clearly defined in the RA Law on Refugees and Asylum. According paragraph 1 of Article 34 of the Law the designated Body on Migration Issues is The State Migration Service of Ministry of Territorial Administration and Development of the Republic of Armenia. The processes of refugee recognition and asylum granting in the Republic of Armenia are being implemented through the State Migration Service of the Ministry of Territorial Administration of the Republic of Armenia (hereinafter, “the SMS”).

Paragraph 1 of article 2 of the Law prescribes Asylum as the protection granted to a foreign citizen or stateless person in the Republic of Armenia, which guarantees the application of the principle of non-refoulement defined in Law, as well as all the rights granted under the Convention, present Law, and other legal acts of the Republic of Armenia to refugees recognized as such in the Republic of Armenia. According Paragraph 2 of article 2 of the Law asylum, as defined in the Paragraph 1 of this Article, shall further be extended to any foreign citizen or stateless person recognized as a refugee by another State, if he/she has legally entered the territory of the Republic of Armenia and has one of the resident permits issued based on the legislation of the Republic of Armenia, providing the right to legally reside in the country.

A person, who is seeking asylum in RA, may apply to the SMS in a written form after his / her entry to the territory of the Republic of Armenia, as well as at border crossings (airports) orally or in written form. A person has the right to apply for asylum even if he/she has entered RA illegally. According Paragraph 1 of Article 13 of the Law an asylum application shall be the asylum request or asylum application submitted by a foreign citizen or stateless person to the bodies defined in Paragraphs 2 and 3 of the present Article.

According Paragraph 2 of Article 13 of the Law any statement regardless whether submitted orally, in writing, with the help of gestures, or by any other means of communication, made in person to the Border Guards of the Republic of Armenia (hereafter: border guards) within the State body on national security issues designated by the Government of the Republic of Armenia (hereafter: designated body for national security), at the state border crossing points of the Republic of Armenia, and to the designated body in the territory of the Republic of Armenia, as well as to the state body designated by the Government of the Republic of Armenia for combating crime and unlawful activities and keeping public order (hereafter: Police), which

expresses his/her willingness to find protection in the Republic of Armenia, shall be considered an Asylum Request.

According Paragraph 3 of Article 13 of the Law the written request for asylum submitted by a foreign citizen or a stateless person to the designated body within the territory of the Republic of Armenia shall be considered an Asylum Application. The person must submit an application form defined by the Government of the Republic of Armenia.

According Paragraph 4 of the Article 47 of the Law the asylum application shall be presented by the asylum seeker in writing in Armenian, or in his/her mother tongue or in one of the United Nations languages. When filling in the application, it is necessary to specify the circumstances which caused the asylum seeker to leave the country of his nationality or permanent residence.¹³²

Asylum application requires the following documents:

- a copy of the passport (copies of other identification documents);
- a copy of the birth certificate;
- available documents that, in the opinion of the person applying, prove the persecutions against him/her;
- 4 photographs¹³³.

A person may apply for asylum even if he does not have a passport or other identification document. Upon completion of the above-mentioned actions, the seeker's application will be accepted and registered in the SMS as an asylum seeker in Armenia. According paragraph 1 of Article 51 of the Law Every asylum seeker, with the exception of family members who have refrained from filing an individual asylum application pursuant to Article 13, Paragraph 4 of the present Law, shall participate in the interview conducted by the Designated Body. The Designated Body can make a decision on granting asylum or recognizing as a refugee without an interview, if in the particular case there is sufficient information for making such a decision or asylum seeker is not able or cannot participate in the interview for reasons beyond their will, which have a lasting nature.

Within 15 days after the application is registered in the SMS, an interview with the applicant is carried out by an SMS employee. The main purpose of the interview is to get detailed information about the reasons for leaving the country by the asylum seeker. If the applicant is a woman, the interview may be carried out by the SMS's female worker. If a person does not speak Armenian, then an interview is conducted through an interpreter. The interview is confidential. The Information provided by the person will not be disclosed to the authorities of his country or to any other person. The confidentiality of the interview is guaranteed by law. The SMS within 3 months after filling in the application for asylum will make a decision either recognize a refugee in the RA and grant asylum, or refuse the application. If a person has already been recognized as

¹³² HO- 211-N (ՀՕ-211-Ն) Law of RA on Refugees and Asylum (Փախստականների և ապաստանի մասին ՀՀ օրենք), 2008, Paragraph 6 of the Article 47

¹³³ Decree no. 1147-N of the Government of RA, 10 November 2016.

a refugee by a country which has signed the Convention, only a decision on granting or refusing an asylum will be made on his application¹³⁴.

It is also to be noted that asylum requests and asylum applications for the entire family seeking for asylum can be filed for the entire family by one family member present on the territory of the Republic of Armenia, which, however, shall not impede the right of other family members to file their own individual applications¹³⁵.

In addition to the general procedure for asylum application, it is also possible to apply the accelerated one. This is possible only when the application is obviously groundless, as well as in the case of re-applying. When re-applying where there is a negative final decision on the first application, and the individual has submitted other circumstances that were not included in the first application. These circumstances should not be included in the first application for either good reasons, or being newly emerged. In the case of an accelerated procedure, the SMS will review the application and make a decision within 10 days. Because of the difficulty of obtaining and examining specific information, the SMS may extend the decision making for a maximum of one month.

According paragraph 8 of Article 52 of the Law the seeker needs to be informed within 3 days after the decision is made. Attached to the decision a written notification is also given which includes a description of further actions of the asylum seeker: in case of a positive decision shall contain information on the legislation regulating issues related to his/her further residence issues in the Republic of Armenia, and in case of a negative decision – necessary information on appealing the decision. If the application of asylum seeker has been denied and the person disagrees with it, he/she has the right to appeal the decision in court. According paragraph 1 of Article 57 of the Law Asylum seekers and refugees shall have the right to appeal to the court against any negative decisions issued by the Designated Body to them in the course of the asylum procedure or any other administrative procedure based on the present Law. Appeals may be launched within 30 days after notification on decision.

According to the Law asylum seekers have the right to appeal to the court against any negative decisions issued by the Designated Body to them in the course of the asylum procedure or any other administrative procedure based on the present Law. Appeals may be launched within 30 days after notification on decision. If the deadline is not met, the decision of the Designated Body becomes final. The period for launching an appeal may be renewed if there are valid reasons, which do not fall within the sphere of influences of the appellant. After the reason (reasons) for missing the appeal period disappears, the asylum seeker can present an appeal to the court within 15 days, but not later than within 3 months starting from the day he/she got acknowledgement of the decision by the Designated Body regarding his/her asylum application. Negative decision of the Designated Body shall include information on the right to appeal and the periods for launching an appeal, as well as on applying to respective court. Negative

¹³⁴ HO- 211-N (ՀՕ-211-Ն) Law of RA on Refugees and Asylum (Փախստականների և ապաստանի մասին ՀՀ օրենք), 2008, Paragraph 6 of the Article 52

¹³⁵ HO- 211-N (ՀՕ-211-Ն) Law of RA on Refugees and Asylum (Փախստականների և ապաստանի մասին ՀՀ օրենք), 2008, Paragraph 5 of the Article 47

decisions of the Designated Body on asylum application or refugee recognition shall be considered final, if the asylum seeker did not appeal against¹³⁶.

The Law guarantees the right of asylum seekers and refugees to contact the Office of the United Nations High Commissioner for Refugees at any time. The UNHCR is endorsed by the above-mentioned bodies in the field of oversight and co-operation for the application of the Convention and the Protocol in Armenia. However, as mentioned, the state body that implements the asylum procedure and is responsible for it is the State Migration Service of the RA Ministry of Territorial Administration. The legislation of RA also prescribes humanitarian protection for the asylum seekers and vulnerable persons.

According article 23 of the Law refugees granted asylum in the Republic of Armenia shall have the right to benefit from the social services, state-allowances and other financial assistance, including allowances granted for temporary unemployment, injuries, accidents and work-related diseases, guaranteed free medical care and services by the State, which are defined by the legislation of the Republic of Armenia for the citizens of the Republic of Armenia, as well as shall have the right for social protection with regard to pension security and unemployment prescribed by the legislation of the Republic of Armenia, if they fulfill the requirements set in the legislation of the Republic of Armenia, regulating this concrete area. Asylum seekers and refugees not granted asylum in the Republic of Armenia shall have the right to receive free medical care and services guaranteed by the State for citizens of the Republic of Armenia, if they fulfill the requirements set in the legislation of the Republic of Armenia, regulating this concrete area¹³⁷.

According paragraph 1 and 2 of article 14 of the Law asylum seekers who need accommodation are placed in temporary reception center until the final decision on their asylum application is adopted. In case of impossibility to accommodate in reception center, asylum seekers who are unable to meet the basic livelihood needs are provided with financial assistance in the manner prescribed by the Government of the Republic of Armenia. According article 24 of the Law Asylum seekers and their family members shall be accommodated in the temporary reception centre, as defined in Article 14 of the present Law, and provided with food (three times per day), bed linen, hygienic kits, in case of need, clothes and shoes (hereinafter: subsistence means) by the Designated Body. Also the legislation of RA takes attention to the vulnerable persons e.g. unaccompanied or separated children.

According article 50 of the Law designated Body on Migration Issues appoints a representative for the unaccompanied or separated children asylum seeker(s), which shall be required to represent the best interests of them properly. According paragraph 2 of article 50 of the Law designated body on labour and social issues jointly with the Child Protection Units shall initiate the process of accommodating and appointment of guardian for unaccompanied minor asylum seekers. Moreover, if the accommodation in the temporary reception centre is not appropriate

¹³⁶ HO- 211-N (ՀՕ-211-Ն) Law of RA on Refugees and Asylum (Փախստականների և ապաստանի մասին ՀՀ օրենք), 2008, Article 57

¹³⁷ HO- 211-N (ՀՕ-211-Ն) Law of RA on Refugees and Asylum (Փախստականների և ապաստանի մասին ՀՀ օրենք), 2008, Article 23

designated body on labour and social issues jointly with the Child Protection Units shall initiate the process of accommodation consulting with their representative.¹³⁸

Meanwhile unaccompanied or separated children are accommodated in the temporary reception centre with priority. Besides above mentioned regulations there are not other specific guaranties for vulnerable persons but they also with other asylum seekers have equal rights for getting the social protection set by the Law.

Turning to the grounds for exclusion of refugee protection, according Article 11 of the Law a foreign citizen or stateless person, shall not be considered a refugee, if there are serious reasons to believe that:

- he/she has committed a crime against peace, a war crime, or a crime against humanity, according to the international instruments drawn up to make provisions in respect of such crimes;
- he/she has committed a serious non-political crime outside the Republic of Armenia, before he/she became an asylum seeker in the Republic of Armenia;
- he/she has been guilty of acts contrary to purposes and principles of the United Nations.

Moreover, asylum may be denied to any refugee, who arrives from a safe third country, where he/she does not fear persecution, human rights violation, or refoulement of some requirements of the Law, or external aggression, occupation, foreign domination, internal conflicts, or other events seriously disrupting public order and he/she can lawfully return to that country. Decision on refusal from the recognition as a refugee and from granting asylum shall be established only by the designated body according to the respective procedures prescribed by the Law (Article 53) According article 12 of the Law the recognition as a refugee by the designated body shall be cancelled when it becomes evident that he/she should not be granted a status of a refugee including the case when the grounds for exclusion was applicable for that person during the process of deciding the status.

According article 6 of the Law on foreigners a foreign citizen may enter the territory of Armenia if he/she has a valid passport, on the basis of a document attesting entry visa or residency status and with the permission of the body implementing border control if no other order is defined by the legislation of the Republic of Armenia or international treaties. The entry of foreigners to the territory of the Republic of Armenia, who have arrived at the RA state border, is not prohibited if they arrive with the view of seeking asylum.¹³⁹ Foreigners can exit the RA with a valid passport and a valid document confirming the legality of their stay and residency in the territory of the RA up until the moment of exit.¹⁴⁰

¹³⁸ HO- 211-N (ՀՕ-211-Ն) Law of RA on Refugees and Asylum (Փախստականների և ապաստանի մասին ՀՀ օրենք),, 2008, Paragraph 5 of the Article 50

¹³⁹ http://www.smsmta.am/?menu_id=41

¹⁴⁰ HO- 47-N (ՀՕ-47-Ն) Law of RA on Foreigners (Օտարերկրացիների մասին ՀՀ օրենք),2007, Article 12

2. How does your national law regulate immigration from EU member states and non-EU states?

Although the Republic of Armenia is not EU member state, the cooperation with the European Union is one of the priorities of Armenia's foreign policy. Armenia and EU maintain an active political dialogue. Since Armenia's independence, cooperation with the EU has been essential in carrying out reforms in the fields of economy, justice and state institutions building, strengthening democratic society and institutions dealing with the protection of human rights and fundamental freedoms. In 2004, Armenia joined the European Neighborhood Policy (ENP)¹⁴¹ and the Armenia ENP Action Plan was adopted in 2006.

The 2005 Armenia Country Report highlights areas in which bilateral cooperation could be feasibly and valuably strengthened.¹⁴² It points out the large migration flows produced by Armenia that resulted to a drop in the country's population. Armenia is described as a country of origin and transit of both migrants and victims of trafficking. Specific reference is made to refugees, most of which are ethnic Armenians displaced from neighboring countries due to conflicts.

Refugees are granted basic social and economic rights however, their integration is challenge. Victims of trafficking are transiting from Armenia to the United Arab Emirates, Turkey and Russia for both sexual and labour exploitation. The 2006 ENP Action Plan contains a comprehensive list of specific areas of cooperation under migration issues, which include enhanced dialogue on prevention and control of illegal migration and readmission of own nationals, stateless persons and third-country nationals, modernization of the national refugee system in line with international standards, facilitation of movement and fight against organized crime and trafficking in human beings. In 2009, the EU adopted the Eastern Partnership¹⁴³, as a specific eastern dimension of the ENP Instrument¹⁴⁴.

The Eastern Partnership aims to deepen and strengthen the relation between the EU and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The stronger political engagement envisaged with the EU includes, inter alia, the prospect of a new generation of Association Agreements, visa liberalization and measures to tackle illegal immigration. According to the

¹⁴¹ The European Neighborhood Policy (ENP) was developed in 2004 with the objective of strengthening relationship between the EU and its neighbor countries. The ENP is further enriched with regional and multilateral cooperation initiatives: the Eastern Partnership, the Union for the Mediterranean and the Black Sea Synergy. ENP is proposed to Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine. For more information see the 2011 Review of the ENP, A New Response to a Changing Neighborhood, 25 May 2011 and the 2012 Communication on Delivering on a new European Neighborhood Policy, Brussels, JOIN (2012) 14 final, 15 May 2012.

¹⁴² European Neighborhood Policy, Country Report, Armenia, COM (2005) 72 final, 2 March 2005.

¹⁴³ Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009, 8435/09, available at http://ec.europa.eu/europeaid/where/neighbourhood/eastern_partnership/documents/prague_summit_declaration_en.pdf (accessed on 17 February 2013).

¹⁴⁴ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighborhood and Partnership Instrument, Official Journal L 310, 9 November 2006 (accessed on 17 February 2013), available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:310:0001:0014:EN:PDF>

Roadmap to the autumn 2013 Summit of the Eastern Partnership,¹⁴⁵ by the autumn of 2013 negotiations on the Association Agreement with Armenia should be well advanced, if not finalized. Armenia and the EU started negotiating an Association Agreement in 2010 in order to replace the Partnership and Cooperation Agreement. The Association Agreement will also include a Deep and Comprehensive Free Trade Area (DCFTA).¹⁴⁶ DCFTA negotiations with Armenia should also be well advanced, if not finalized by autumn 2013, and substantial progress should have been made in the area of regulatory approximation, in accordance with the Commission's recommendations. In 2011, the EU-Armenia Mobility Partnership was adopted regulating cooperation in four areas: (1) legal migration and integration, (2) migration and development, and (3) fight against irregular immigration, and (4) asylum and international protection.¹⁴⁷ This is the third EU Mobility Partnership with an Eastern Partnership country, after the ones with Moldova and Georgia. Mobility Partnerships are innovative and comprehensive tools to foster cooperation on migration and mobility issues, including legal migration, the fight against irregular migration, international protection, and migration and development. Important aspects of the EU-Armenia Mobility Partnership along the four areas of cooperation are the following: the facilitation of temporary and circular migration, strengthening of Armenia's capacity to manage migration, the provision of information to potential migrants on opportunities for legal migration to the EU accompanied by pre-departure training, the prevention of brain drain and brain waste (especially through return policies), the support of voluntary return and sustainable reintegration, the enhancement of cooperation with the Armenian diasporas, the fight against irregular migration and human trafficking through strengthened implementation of border management, the enhancement of security of identity documents, the provision of international protection according to best international standards, the facilitation of the asylum seekers' reception and submission of asylum requests and the improvement on exchanging information and best practices for the fight against irregular migration. There has been no evaluation of the progress of implementation of the Mobility Partnership Agreement so far.

¹⁴⁵ Eastern Partnership: A Roadmap to the autumn 2013 Summit, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, JOIN (2012) 13 final, 15 May 2012 (accessed on 17 February 2013), available at

http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_roadmap_en.pdf

¹⁴⁶ In 2011, Armenia made significant progress in the preparations for the DCFTA negotiations by advancing with the implementation of necessary reforms, focusing on sanitary and phytosanitary issues, technical barriers to trade and on intellectual property rights. Following a recommendation from the Commission, in February 2012 the Trade Policy Committee agreed that Armenia had made sufficient progress on implementation of the Commission's key recommendations and that negotiations on a DCFTA could start soon. See Implementation of the ENP in 2011, Regional Report: Eastern Partnership, SWD (2012) 112 final, 15 May 2012, available at http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_regional_report_en.pdf (accessed on 17 February 2013).

¹⁴⁷ Joint Declaration on a Mobility Partnership between the European Union and Armenia, 27 and 28 October 2011 (accessed on 17 February 2013), available at

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dsca/dv/dsca_20121128_15/dsca_20121128_1_5en.pdf. The following EU Member States participate in the Mobility Partnership Agreement: the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the French Republic, the Republic of Italy, the Kingdom of the Netherlands, the Republic of Poland, Romania and the Kingdom of Sweden.

In 2012, Armenia and the EU started negotiations for a Visa Facilitation Agreement and a Readmission Agreement. Visa Facilitation Agreements are signed as an intermediate step towards visa free travel.¹⁴⁸ The Visa Facilitation Agreement was signed on 17 December 2012 and its aim is to facilitate the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Armenia. Issues not covered by the Visa Facilitation Agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence, refusal of entry and expulsion measures are regulated by the national law of Armenia or of the Member States or EU law.¹⁴⁹ The agreement facilitates the issuance of visas for Armenian citizens, especially frequent travelers, reduces the visa fee and waives the visa fee for certain categories of persons. The Readmission Agreement between Armenia and the UE was signed on 19 April 2013. It covers both readmission of own nationals as well as of third-country nationals and stateless persons. However, strict conditions need to be fulfilled for the readmission of third-country nationals or stateless persons to take place.¹⁵⁰

Advice is provided to the Armenian authorities by the EU Advisory Group in areas such as human rights and democracy, justice, liberty security and the DCFTA. In particular with regards to migration, the EU Advisory Group is assisting Armenia in (1) monitoring and providing advice on the implementation of the Migration Action Plan,¹⁵¹(2) raising awareness on the Mobility Partnership Agreement and Visa Facilitation Agreement, (3) elaborating terms of reference for an EC funded support project to the EU-Armenia Mobility Partnership, and (4) advising the State Migration Service in its coordinating role regarding migration management.¹⁵²

It is to be mentioned that the RA legislation does not contain any definition such as *migrant* although this term is being used in a range of legislative acts and official documents. Taking into consideration this fact, the term immigrant was defined as a foreigner or a stateless person having a permanent residence in the Republic of Armenia by Government Decree No. 28 of 21.07.2016. However, domestic legislation does not provide a separate definition of this term. Turning to the legal regulations of immigration, we'd like to mention the fact, that the national law of RA does not separately regulate immigration from EU member and non EU-states. Both EU member and non EU-states are considered to be foreign countries and their citizens are considered as foreigners. Foreigners shall enter the Republic of Armenia through state border crossing points, on the basis of availability of a valid passport, on the basis of an entry visa or a document attesting the residence status and in case of authorization by the public administration body authorized by the Government of the Republic of Armenia carrying out border control,

¹⁴⁸ Implementation of the ENP in 2011, Regional Report: Eastern Partnership, SWD (2012) 112 final, 15 May 2012, available at http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_regional_report_en.pdf (accessed on 17 February 2013).

¹⁴⁹ Article 2, EU-Armenia Visa Facilitation Agreement.

¹⁵⁰ See the Chapter on Readmission for more information.

¹⁵¹ Annex N 1to the Decision of the Government of the RA, N 1593-N, 10 November 2011, Action Plan for the implementation of the concept for the policy of state regulation of migration in the republic of Armenia 2012-2016

¹⁵² See the official website of the European Union Advisory Group to the Republic of Armenia at <http://www.euadvisorygroup.eu/> (accessed on 10 February 2013).

unless another procedure is provided for by this Law or the international treaties of the Republic of Armenia¹⁵³.

At the same time, taking into consideration EU-Armenia cooperation all citizens of the EU Member States, as well as of those applying the Schengen acquis are exempt from visa requirement when visiting Armenia according Government Decision of January 2013. According Article 7 of the law on Foreigners Those States' citizens for whom a regime for arriving in the Republic of Armenia without an entry visa is established, may stay in the territory of the Republic of Armenia for a maximum term of 90 days in a year, unless another term is prescribed by the international treaties of the Republic of Armenia. Moreover, a foreigner may apply to a diplomatic representation or consular office of the Republic of Armenia with a request of obtaining an entry visa of the Republic of Armenia maximum four months before the planned visit¹⁵⁴.

According Paragraph 1 of Article 12 of the Law foreigners may exit from the Republic of Armenia in case of availability of a valid passport and a valid document attesting lawful stay or residence in the territory of the Republic of Armenia till the moment of the exit, unless another procedure is provided for by law or international treaties. It is to be mentioned that According Paragraph 1 of Article 14 of the law in the Republic of Armenia, the following residence statuses are established for foreigners: (a) temporary; (b) permanent; (c) special. Furthermore, Temporary residence status shall be granted to every foreigner, if he or she substantiates that there are circumstances justifying his or her residence in the territory of the Republic of Armenia for one year and a longer term. Such circumstances can be found in Paragraph 1 of Article 15 of the mentioned law. The grounds and terms for granting permanent residence status are given in the Paragraph 1 of Article 16.

Special residence status shall be granted to foreigners of Armenian origin. Special residence status may also be granted to other foreigners who carry out economic or cultural activities in the Republic of Armenia. Special residence status shall be granted for a term of ten years¹⁵⁵. It is also to be mentioned that a whole chapter of the law is dedicated to the voluntary leaving, and expulsion of a foreigner from the territory of the republic of Armenia. So, according Article 30 A foreigner shall be obliged to voluntarily leave the territory of the Republic of Armenia, if: (a) the validity period of his or her entry visa or of residence status has expired; (b) the entry visa has been revoked on the grounds referred to in Article 8(1), (2), and (3) of [this] Law; (c) his or her application for obtaining a residence status or extending the term has been refused; (d) he or she has been deprived of residence status on the grounds referred to in Article 21 of [this] Law. If a foreigner has failed to voluntarily leave the territory of the Republic of Armenia in cases

¹⁵³ HO- 47-N (ՀՕ-47-Ն) Law of RA on Foreigners (Օտարերկրացիների մասին ՀՀ օրենք), 2007, Paragraph 1, Article 6

¹⁵⁴ HO- 47-N (ՀՕ-47-Ն) Law of RA on Foreigners (Օտարերկրացիների մասին ՀՀ օրենք), 2007, Paragraph 6, Article 10

¹⁵⁵ HO- 47-N (ՀՕ-47-Ն) Law of RA on Foreigners (Օտարերկրացիների մասին ՀՀ օրենք), 2007, Paragraphs 1,2, Article 18

provided for in Article 30 of this Law, the public administration body authorized in the field of police of the Republic of Armenia shall institute and file with a court an action on expulsion¹⁵⁶. Turing to the execution of a decision on expulsion, it is to be noted that the public administration body authorized in the field of police of the Republic of Armenia shall carry out a separate registration of expelled foreigners, the data on whom shall be entered into the data bank referred to in Article 8(6) of [this] Law. Expulsion expenses shall be borne by the State Budget of the Republic of Armenia, in case they are not covered by the foreigner¹⁵⁷.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

In the Republic of Armenia authority which specifically deals with migrants is the State Migration Service of Ministry of Territorial Administration and Development of the Republic of Armenia. It's a state agency of the executive department of the Republic of Armenia acting as part of the Ministry of Territorial Administration and Development of the Republic of Armenia, which renders services in the field of migration acting on behalf of the Republic of Armenia in cases prescribed by the law or, in certain circumstances, by the legislation of the Republic of Armenia. Service was established by the Decree of the RA President NH-286-N of 18 November 2009.

The tasks and objectives of the Service are: development of a policy of state regulation of migration procedures and enforcement of that policy within the framework of its jurisdiction; coordination of agencies with functions related to migration: development of migration policy and legal acts ensuring its enforcement; exercising the powers laid down by the laws of the Republic of Armenia in granting asylum to foreign nationals and stateless persons; development and enforcement of the policy of integration of the refugees deported from the Republic of Azerbaijan in 1988-1992 and other displaced persons into the society; development and implementation of relevant projects with the concerned Ministries of the Republic of Armenia, diplomatic missions, as well as international organizations, with a view to preventing illegal migration; development and implementation of a state policy encouraging the immigration of the citizens of the Republic of Armenia.

State Migration Service is not the first authority dealing with migration matters during the history of Republic of Armenia. Until the establishment of service state policy in the sphere of migration has been implemented by the Refugee Committee attached to Council of Ministers of the RA formed in December 1990; the State Agency on Refugee Affairs of the RA established in February 1992, The Department of Refugees and Migration established in the Ministry of Social

¹⁵⁶ HO- 47-N (ՀՕ-47-Ն) Law of RA on Foreigners (Օտարերկրացիների մասին ՀՀ օրենք), 2007, Paragraphs 1, Article 34

¹⁵⁷ HO- 47-N (ՀՕ-47-Ն) Law of RA on Foreigners (Օտարերկրացիների մասին ՀՀ օրենք), 2007, Paragraphs 2,5, Article 36

Security, Employment, Migration and Refugee Affairs on 16 October 1995. The Department of Migration and Refugees attached to the RA Government was established by the Decree of the RA Government No 244 of 21 April 1999. Next authority was the state governance institution “The Staff of the Department of Migration and Refugees attached to the RA Government” established by the Decree of the RA Government No 1898-N of 28 November 2002. The Ministry of Territorial Administration of the Republic of Armenia which included the Migration Agency was established by the Decree of the RA Government No 633-N of 19 May 2005.

Functions, management and other matters connected with the implementation of its tasks and objectives are regulated by charter of State Migration Service¹⁵⁸. For the implementation of its tasks and objectives, the Service performs the following functions in the manner prescribed by the laws of the Republic of Armenia:

- Development of a migration policy concept based on the analysis and assessment of the migration situation and detection of patterns of change;
- Assessment of the migration situation as a result of internal population transfer in the territory of the Republic and analysis of the main development patterns;
- Together with the concerned Ministries of the Republic of Armenia, diplomatic missions, as well as international organizations, development and implementation of projects aimed at the return (return migration) of the population emigrated from the Republic of Armenia;
- Development and implementation of projects regulating population transfers within the framework of its jurisdiction;
- Consideration of the requests for asylum of foreign nationals and stateless persons and granting of legal, social and other assistance to such people in the manner prescribed by the laws of the Republic of Armenia;
- Providing legal and advisory information to the representatives of different migration flows (refugees, asylum seekers, people returning to Armenia, people who want to leave Armenia, etc);
- Within the framework of its jurisdiction, international cooperation in issues related to the field of migration and Participation, in the manner prescribed, in the development of draft international treaties of the Republic of Armenia related to migration;
- Development of draft laws and other legal acts with a view to legal regulation of the fields under the jurisdiction of the Service and their submission to the Government of the Republic of Armenia and the Prime Minister of the Republic of Armenia through the Minister of Territorial Administration of the Republic of Armenia and etc.

The Service is managed by the Head of the Service who is appointed and dismissed by the Prime Minister of the Republic of Armenia as represented by the Minister of Territorial Administration

¹⁵⁸ Decree no. 1515-N of the Government of RA (Establishing “The State Migration Service” State Governance Institution of The RA Ministry of Territorial Administration and Development and on approving the charter and staff structure of the State Migration Service of the RA Ministry of Territorial Administration and Development), 17 December 2009.

of the Republic of Armenia¹⁵⁹ At the same time we'd like to emphasize that there are no such responsible local authority specifically dealing with migrants.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

The majority of refugees and asylum seekers in the Republic of Armenia are from Syria, Iraq, Iran, African countries (Cote d'Ivoire, Mali, Congo) and Ukraine. According to the 2016 year-end data more than 3.313 people have been granted refugee status by the State Migration Service. According to the UNHCR Armenia's report 2015, there were 19955 **persons-of-concern** as of December 31, 2015 (refugees, asylum seekers, persons found in refugee situations by countries) the overwhelming majority of whom (about 17000) were from Syria. Christoph Bierwirth, the UNHCR representative, said in an interview with the Armenpress news agency that the Republic of Armenia has adopted more than 22000 people after the tragic conflict in Syria (the absolute majority were Armenians).¹⁶⁰ The expert also pointed out that according to the data of June 2017, about 15000 of them still live in Armenia, and the rest have left for the Arab states of the Persian Gulf as migrant workers, have taken the opportunity of resettlement or have joined their family members. On 19 June 2017 during the press conference held by the State Migration Service the head of Division for asylum-related issues – Mr. Petros Aghababyan – highlighted that Armenian nationals are obvious majority among the whole asylum-seekers. In his speech Mr. Aghababyan stated that since 2000 until now nearly 4000 foreigners have asked protection and asylum from the Republic of Armenia and 3000 applications have been granted.¹⁶¹ It can be inferred from the above-mentioned that the largest number of transit-migrants in Armenia (about 7,000 people) were in 2011-2016. Here is some statistic data on migration.

Table 1. Distribution of foreigners who have been granted residence status by residence status, age group and sex¹⁶²

The type of residence status	Total		Age and sex									
			0-14		15-29		30-49		50-69		70+	
	Male	Female	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Total	3550	2399	205	124	1553	1088	1231	800	470	311	91	76
Temporary	2448	1569	81	66	1181	839	906	483	253	155	27	26
Permanent	704	625	124	58	202	187	241	255	116	103	21	22
Special	398	205	0	0	170	62	84	62	101	53	43	28

¹⁵⁹ Decree No 1515-N of the Government of RA, Appendix 1 To Decree, 17 December 2009

¹⁶⁰ See in details: <https://armenpress.am/arm/news/895647/hayastanum-yndhanur-armamb-apastanel-en-19-000-pakhstakan20.html>

¹⁶¹ See in details: <https://armenpress.am/arm/news/895458/hayastani-pashtpanutyunic-ogtvelu-hamar-migracion-tsarayutyun.html>

¹⁶² http://www.smsmta.am/?menu_id=178

Table 2. Statistic regarding migrants in the Republic of Armenia (2016)

Country of Nationality	Number of applications	Number of applicants	Suspended or struck out cases	Number of rejected applications	Number of the people having refugee status	Number of people whose refugee status has been respited	Total coefficient
Total number	65	110	29	41	37	43	0.4
Afghanistan				2			
Bahrain	1	1					
Benin	1	1		1			
Turkey	3	3		2			
Iran	16	18	7	13			
Iraq	6	14	1	16	1	5	
Cameroon	2	2			1		
Jordan	1	1					
Yemen	1	1					
Syria	28	59	19	2	29	13	
Ukraine	4	8		2	4		
Stateless persons	2	2		3	2	25	

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

The Republic of Armenia is a member state of Council of Europe, thus it recognizes the legal power of the European Court of Human Rights (hereinafter ECtHR) and its judgments. According paragraph 4 of Article 15 of RA Judicial Code the reasoning of a judicial act of the Cassation Court or the European Court of Human Rights in a case with certain factual circumstances (including the construal of the law) is binding on a court in the examination of a case with identical/similar factual circumstances, unless the latter court, by indicating solid arguments, justifies that such reasoning is not applicable to the factual circumstances at hand.

Moreover, the Court of Cassation shall accept the appeal for examination, where the Court of Cassation finds that the appeal substantiates that the judicial act under review contains commentaries of legal regulations other than made by ECtHR and contradicts prima facie the decisions previously adopted by the European Court of Human Rights. So, under the light of abovementioned we can state that decisions by the ECtHR are binding for the courts of Armenia and are directly applied by them.

At the same time we'd like to emphasis that the decisions by the ECtHR are not only directly applied by the courts of Armenia, but also have a strong influence on the domestic legislation. In particular, based on the decisions delivered by ECtHR against the Republic of Armenia

sometimes certain changes and additions in appropriate laws are being made. It is to be noted that as of 28.10.2017 there are no judgments in respect of Armenia connecting migrants delivered by ECtHR. However, we find it reasonable to analyze well-established case-law of the Court and reflect the fact of implementation of the Court's judgments although not delivered in respect of Armenia .

The right to freedom of movements is guaranteed under Article 2 Protocol No. 4 ECHR, which states in its second paragraph that “everyone shall be free to leave any country, including his own”. However, in exercising control of their borders, member states must act in conformity with ECHR standards. In the inter-state case *Cyprus v. Turkey* The Court stated that in certain specific categories of cases, member states may be required by the ECHR to permit a migrant to enter or to remain: where a migrant meets the criteria for protection of his/her life (Article 2 ECHR) or of his/her physical integrity (Article 3 ECHR); or where deportation or extradition of an alien who had strong family ties in the country concerned could violate the right to respect of his/her family life (Article 8 ECHR).

Migrants seeking entry to a member state of the Council of Europe must be protected from discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom* the Court strictly defined - there should thus be no such discrimination in the process of immigration controls and in the decision of granting entry. All citizens of a third state entering the territory a Council of Europe member state, or falling under its jurisdiction, should be allowed to seek inter- national protection in the state concerned, regardless of their visa regimes. In this case the applicants, citizens of third states, claimed that their husbands were refused permission to remain with them or to join them in the UK. The ECtHR concluded that the applicants had been victims of discrimination on the ground of sex, in violation of Article 14 taken together with Article 8 because, under the domestic law, it was easier for a man settled in the UK than for a woman so settled to obtain permission for his/her non-national spouse to enter or remain in the country for settlement).

Article 29 of the Constitution of the Republic of Armenia guarantees the prohibition of discrimination thus is in line with the ECtHR case-law and states as follows: Discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.

The ECtHR have also recognised a series of **economic, social and cultural rights** for migrants living on the territory of a contracting state. The ECtHR recently stated that, in light of the vulnerable situation of asylum seekers, states' failure to take any measures to alleviate their suffering from extremely poor living conditions could amount to inhuman or degrading treatment. In addition, non-nationals should be guaranteed the right to adequate housing, health, education and work. The jurisprudence of these organs has therefore indirectly established a right of migrants to minimum standards of living. While no specific standards of living can be inferred from the rights guaranteed by the ECHR, the Court has found that, in certain cases, conditions of extreme poverty of vulnerable individuals, such as asylum seekers, may amount to

a violation of Article 3 ECHR. In the landmark case *M.S.S. v. Belgium and Greece*, the ECtHR held that the living conditions of the applicant in Greece during the examination of his claim, combined with his vulnerability and the inaction of the state, amounted to inhuman and degrading treatment. The ECtHR took note of the fact that the applicant had been living in the street for several months “with no resources or access to sanitary facilities, and without any means of providing for his essential needs”, that he had been a “victim of humiliating treatment showing a lack of respect for his dignity”, that he was undoubtedly subject to “fear, anguish or inferiority capable of inducing desperation” and also that the state could have reduced this suffering by a prompt examination of the applicant’s asylum claim. These elements, combined with the prolonged uncertainty of an improvement of his situation, led to the conclusion that the living conditions in which the asylum seeker had found himself were in breach of the ECHR.

Article 23 of Law of the Republic of Armenia on refugees and asylum states that refugees granted asylum in the Republic of Armenia shall have the right to benefit from the social services, state-allowances and other financial assistance, including allowances granted for temporary unemployment, injuries, accidents and work-related diseases, guaranteed free medical care and services by the State, which are defined by the legislation of the Republic of Armenia for the citizens of the Republic of Armenia, as well as shall have the right for social protection with regard to pension security and unemployment prescribed by the legislation of the Republic of Armenia, if they fulfill the requirements set in the legislation of the Republic of Armenia, regulating this concrete area. Furthermore, asylum seekers and refugees not granted asylum in the Republic of Armenia shall have the right to receive free medical care and services guaranteed by the State for citizens of the Republic of Armenia, if they fulfill the requirements set in the legislation of the Republic of Armenia, regulating this concrete area. The law also lists the responsible state bodies on asylum issues.

According to Article 32 In the Republic of Armenia the responsible State Bodies for granting asylum to foreign citizens and stateless persons (hereafter: foreigners), recognizing as refugees as well as facilitation of the rights to asylum seekers and refugees and for all other legal relations stipulated by the present law, are: 1) The Government of the Republic of Armenia; (...), 6) The Designated State Body of the Government of the Republic of Armenia for Labor and Social issues (hereafter: Designated Body on Labor and Social Issues);(...), 8) The Designated State Body of the Government of the Republic of Armenia for Health Issues (hereafter: Designated Body on Health Issues).

Under the ECHR, the right to education is guaranteed by Article 2 Protocol No. 1 ECHR. The ECtHR has raised the right to education to one of the “most fundamental values of the democratic societies making up the Council of Europe”, and, as such, constitutes a right to which every person is entitled. It insisted on the fact that such a fundamental right cannot be interpreted restrictively, and affirmed the universality of the right to education by holding that the exclusion of children because their parents were not regularly registered migrants violated the ECHR and the right to education. In the case of *LeylacSahin v. Turkey* (GC), The Court stated “it is clear that any institutions of higher education existing at a given time come within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such

institutions is an inherent part of the right set out in that provision”. In another case the Court stated “the Court observes that the applicant’s children were refused admission to the school which they had attended for the previous two years. The Government did not contest the applicant’s submission that the true reason for the refusal had been that the applicant had surrendered his migrant’s card and had thereby forfeited his registration as a resident in the town of Nalchik. As noted above, the Convention and its Protocols do not tolerate a denial of the right to education. The Government confirmed that Russian law did not allow the exercise of that right by children to be made conditional on the registration of their parents’ residence. It follows that the applicant’s children were denied the right to education provided for by domestic law. Their exclusion from school was therefore incompatible with the requirements of Article 2 of Protocol No. 1”¹⁶³.

It is to be mentioned that the case-law of ECtHR is being strongly respected by domestic courts when some issue of migration is being examined, for example see decision no. VD/7865/05/16 (ՎԴ/7865/05/16). In the framework of the mentioned case, the court has based its judgment on ECtHR and ECHR standards and made its assessments under the light of following decisions: *The case of Collins and Akasiebie v. Sweden (Dec)* application no. 23944/05, *The case of Matsiukhina and Matsiukhin v. Sweden (Dec.)* application no. 31260/04, *The case of N.v. v. Finland* application no. 38885/02, §167, *The case of NA v. the United Kingdom* application no. 25904/07, § 111.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

As it is stated in ECRI report on Armenia adopted on 28 June 2016, There are currently neither comprehensive integration policies in Armenia, nor practical measures for facilitating migrants’ integration in a structured way. It is worth to be mentioned that the authorities have adopted targeted measures, for instance for people fleeing Azerbaijan in 1988-1992 or, more recently, for all asylum-seekers from Syria. For instance, in May 2004 the Government approved a priority housing program focusing on persons forcibly displaced from Azerbaijan. More recently, for people fleeing Syria, the authorities have adopted various measures covering accelerated refugee status determination procedures and access to refugee status, facilitated naturalisation, simplified granting of short or longer term residence permits, as well as other measures (including exemption or reduction in various taxes and fees) for their prompt administrative integration. In 2014, the State Migration Service opened an “Integration Centre” to accommodate up to 29 persons.

ECRI noted that these programs had been mostly funded by external donors, including intergovernmental organizations such as UNHCR. The Armenian authorities have drawn ECRI’s

¹⁶³ See the Case of Timishev v. Russia, 13 December 2005, paragraphs 65-66

attention to the fact that the economic situation does not allow them to free up resources to fund comprehensive integration policies. However, ECRI noted that various Ministries have actually earmarked funds to support some of the initiatives described above, either directly or through grants to NGOs taking such action.

According to existing laws, citizens, dual citizens, refugees, stateless persons and foreigners are in general treated equally with regards to policies concerning access to housing, employment, education, welfare and health care. It is also to be highlighted that asylum seekers and refugees have the right to seek employment under the same conditions as citizens, and that there are also no general prohibitions on starting up a business as any Armenian citizen would. With regard to the priority housing program adopted for persons forcibly displaced from Azerbaijan, ECRI noted that, during the years 2005-2008, 718 families became owners of apartments. Since 2009, no funds have been allocated from the state budget for that purpose. Despite the lack of funds, ECRI stated that the authorities, in 2015, resolved the situation for 21 families, but the case of 903 families still considered as beneficiaries of the program remains unsolved. According to the Armenian authorities, 9,5 billion AMD would be required to finalize this program.

As it was understood by ECRI, for asylum seekers who are of non-Armenian ethnic background, the recognition rate is lower, and the number of pending procedures higher, ECRI invited the Armenian authorities to take these recommendations into account. In this regard, the recent initiatives of the Academy of Justice to set up courses on the protection of the rights of refugees and application of standards on the status of refugees are welcomed, as well as the cooperation agreement it signed with the UNHCR in March 2016.

In general, ECRI considers that the existing elements of integration policies and programs described above place too much focus on people of ethnic Armenian origin and on the agreed principle that their ethnic background makes integration efforts pointless. This is particularly the case for language policies. According to a Migrant Integration Policy Index (MIPEX) assessment published in 2013, migrants made up 10.5% of the population of Armenia, composed mostly of labour migrants from CIS countries.¹⁶⁴ The results of the 2011 census show that, for Armenian citizens, Russian is the most commonly used second language. However, Syrian-Armenians, for instance, speak Western Armenian, one of two variants of the modern Armenian, and Arabic rather than Russian as a second language. Several NGOs and other International Organisations have drawn ECRI's delegation's attention to cases of possible discrimination in the private sector. For instance, landlords have been reported as charging higher rents for Syrian refugees, and undue linguistic requirements have been found in job adverts. In absence of equality data and statistics, of comprehensive anti-discrimination legislation and of effective recourse mechanisms, it is difficult to assess the extent of this phenomenon.

In this respect, ECRI noted that the documents on migration and human rights protection do contain indicators for assessing the overall efficiency of the implementation of these programs. However, they do not provide indicators that could be used to monitor the actual impact of these programs on the situation of the various vulnerable groups of concern to ECRI. Similarly,

¹⁶⁴ Migration Policy Group (2013): p. 7.

ECRI noted that Armenia neither collects data nor produces statistics on equality in a general and systematic way¹⁶⁵.

In a context where there is no system in place for collecting data and producing statistics on equality, where there are no clear indicators for evaluating the impact of integration-related programs on migrants and refugees, and where the Armenian authorities have to extensively rely on external resources to fund such programs as well as on co-operation with various implementing bodies, ECRI considers that there is an urgent need to prioritise resource mobilization and fund raising initiatives, even prior to adopting comprehensive integration policies in the future.

ECRI recommended to develop a national integration strategy. This strategy should be prepared in consultation with representatives of the vulnerable groups concerned. It should also establish clear co-ordination mechanisms between all relevant ministries, implementing agencies and potential donors. ECRI recommended that the various action plans containing programs for the integration of vulnerable groups include a description of their objectives, understood as changes to be obtained in the situation of all vulnerable groups concerned, a complete set of criteria for assessing their impact on these groups, and a clear financial plan, identifying actions to be funded by the State budget and actions for which financing has to be sought from external donors. This recommendation applies to existing stand-alone programs and to any future programs deriving from the comprehensive integration policies currently being developed.

We'd like to emphasize that the abovementioned recommendation is being in the process of execution now. Action Plan of 2017-221 migration strategy of RA was adopted¹⁶⁶, which contains a special chapter about integration of migrants. In particular, it is planned to entitle a special public authority with the functions dealing with integration of migrants. It is also planned to organize training courses for such employers. What is important, it is planned to ensure a string cooperation between mentioned public authority and relevant international organizations.

7. How is migrants' right to access to healthcare regulated within the national legislation?

First of all, it is to be noted that the social protection legislation does not use the term "migrant" but it uses the term "foreigners", which according to Article 2 of the RA Law on Foreigners includes persons who are not citizens of the Republic of Armenia who have citizenship of another State (foreign citizens) or do not have citizenship of any State (stateless persons). And although the law does not use the term of a separate migrant, it is included in the notion "foreigners". Consequently, legal regulations regarding foreigners are also relevant to migrants, as, in essence, the migrant is a foreigner or stateless person residing in the Republic of Armenia.

¹⁶⁵ ECRI notes that line of action No. 4 of the Action plan for implementation of the policy concept for the state regulation of migration in the republic of Armenia in 2012-2016 includes action for the development of statistics. However, nothing similar can be found in the Action plan for the national strategy on human rights protection.

¹⁶⁶ http://www.smsmta.am/upload/2017_2021.pdf

Consequently, considering the above, we will try to address the right of access to the health care of the foreigner.

In the national legislation the article 85 of the Constitution RA¹⁶⁷ defines everyone's (as Armenian citizens as foreign citizens and refugees) right to healthcare. According to the RA law about healthcare everyone has the right to healthcare in the Republic of Armenia without distinction as to nationality, race, language, sex, religion, age, health, political or other opinion, social origin, property or any other status. Foreign citizens residing in the Republic of Armenia, persons without citizenship and refugees have the right to protection of health in accordance with the legislation of the Republic of Armenia, as well as international agreements of the Republic of Armenia¹⁶⁸. According to the national legislation the right to protection of health implies hygienic, sanitary and anti-epidemic security, favorable conditions for work and leisure, access to medical care and services

According to the RA law about sanitary and epidemiological safety of the population of the Republic of Armenia the foreign citizens residing in the Republic of Armenia have the same rights and responsibilities as the citizens of the Republic of Armenia. In order to ensure the hygienic and anti-epidemic security of Armenia was established the state hygienic and anti-epidemic service (SHAS), whose management is carried out by the chief sanitary doctor. Accordingly foreign citizens have the rights of favorable environment, sanitary and epidemiological safety, the right to receive reliable and complete information and awareness on the environment and sanitary-epidemic situation, right of the development and adoption of decisions and programs relating to sanitary and epidemiological safety of the population, and to participate and monitor their implementation, the right to compensation for damage to health as a result of violation of sanitary rules, the right to appeal against the actions and inaction of officials.

At the same time they are obliged to care for their health, their children's health, and hygiene education, to comply with the sanitary requirement of RA, decisions and orders of the SHAS organisation and the government officials to ensure sanitary and epidemiological safety, and to participate in the implementation of sanitary and anti-epidemic measures. By the decision of the RA Government of March 30, 2006 N 420-N foreign citizens residing in the Republic of Armenia have the right to a doctor, whom they may voluntarily choose as a primary health care¹⁶⁹ (hereinafter PHC) doctor among doctors working in PHC in any health establishment within the administrative boundaries of their permanent residence, they register and make use of the primary health care services on paid basis according to the price list of the health establishment, unless provided otherwise by international treaties of the Republic Armenia. The PHC services are provided free of charge to Armenian citizens and refugees by a PHC doctor chosen by them. Thus primary health care are provided foreign citizens in contrast to the

¹⁶⁷ The Constitution of RA Article 85 (ՀՀ Սահմանադրության 85-րդ հոդված)

¹⁶⁸ RA Law on Healthcare Paragraphs 1 and 2, 40 (Առողջապահության մասին ՀՀ օրենքի 40-րդ հոդվածի 1-ին և 2-րդ կետերը)

¹⁶⁹ The Primary health care is based on more affordable methods and technologies, which includes the treatment of diseases that do not require the most common and in-patient treatment, prevention, promotion of healthy lifestyles and the implementation of measures medical assistance and service, if needed.

refugees on a paid basis. However, the exception is the foreign citizens, whose state and the Republic of Armenia have concluded an international treaty, which has established a privileged of legal status for the citizens of that country. For example, according to the Armenia and Russia treaty about the legal status of Armenian citizens residing permanently in the Russian Federation and Russian citizens residing permanently in the Republic of Armenia¹⁷⁰, Russian citizen has the same rights and responsibilities as Armenian citizen in the area of health. That is, the PHC service is provided free of charge to Russian citizens.

Foreign citizens of Armenian nationality are not granted privileges in the area of health, in contrast to the other legal institutions. Foreign citizens and refugees, like Armenian citizen, have the rights at any time without motivation or reason to change their PHC doctor. Foreign citizens residing in Armenia, like Armenian citizens have the right to choose medical care and person doing it, receive medical care and service in accordance with medical and sanitary-hygienic conditions, as well they may receive the information about their health status and treatment methods, information about possible risk and consequences.

Specialized medical care¹⁷¹ and service are being implemented for foreign citizens, like for Armenian citizens on paid basis¹⁷², however certain individual groups have the right to receive free medical care and service. Foreign citizen who has damaged in emergency situation has the right to receive free medical care and service. Foreign citizen, who is suffering from the dangerous diseases threatening for others, is received free medical care, service and treatment, the diseased has to be treated, in the case of necessary he have to undergo a medical examination and research, otherwise the treatment of the disease is carried out forcibly. As it is already mentioned above, national legislation of RA does not contain a definition of *vulnerable migrant* and its certain legal status. The analyze of domestic legislation makes it clear that migrants and foreigners have the tight to healthcare on an equal basis.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Article 38 of The Constitution of The Republic of Armenia states:

- Everyone shall have the right to education. The programs and duration of compulsory education shall be prescribed by law. Secondary education within state educational institutions shall be free of charge.

¹⁷⁰ The 4th article of the Armenia and Russia treaty about the legal status of Armenian citizens residing permanently in the Russian Federation and Russian citizens residing permanently in the Republic of Armenia defines, that permanent resident enjoy the same rights and freedoms and be bound by the same obligation as the citizens of the residence, unless otherwise provided in this Treaty.

¹⁷¹ The Specialized medical care is based on diagnostics, special treatment methods and sophisticated medical technologies.

¹⁷² See the decision of the RA Government of March 4, 2004 N 318-N.

- Everyone shall, in the cases and under the procedure prescribed by law, have the right to receive free education on a competitive basis within state higher and other vocational education institutions.
- Higher education institutions shall, within the scope prescribed by law, have the right to self-governance, including academic and research freedom.

Within the framework of such regulation the third part is to be underlined. The previous Constitution (reformed in 2005) granted the right to free higher education merely to its citizens. The regulation acknowledged today has rather expanded the scope of subjects including migrants as well. In accordance with the Constitution RA Law on Education gives more comprehensive regulation to this sphere. Article 51 of the law settles the relations that occur concerning the international cooperation in the field of education. According to the last;

- International cooperation in the field of education shall be carried out in compliance with the legislation of the Republic of Armenia and international treaties of the Republic of Armenia. Where international treaties of the Republic of Armenia provide for norms other than those provided for by this Law, the norms of the international treaties shall apply.
- Educational institutions shall be entitled to co-operate with foreign educational, scientific and other organizations in compliance with the legislation of the Republic of Armenia and international treaties of the Republic of Armenia.

Article 25 of the law about "Migrants and asylum" is named "Public education". It provides the following:

- The ones seeking asylum in the Republic of Armenia and the migrants who received asylum have equal rights to education as the citizens of the Republic of Armenia.
- In the matters concerning the accessibility of education, acknowledgement of foreign school certificates, diplomas and scientific degrees, release of taxes and duties and awarding scholarships, migrants who received asylum in the Republic of Armenia have rights equal to citizens of the Republic of Armenia.

This means that migrants are granted the same rights as the citizens of RA in the field of education. According to the same law Ministry of education is given the right to supervise over the process of realizing migrants' right to education. To sum up, the rights of migrants in the field of education are not significantly limited and national legislation treats migrants and foreigners on an equal basis.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

According to Article 25 of the Law on refugees and asylum "Refugees granted asylum in the Republic of Armenia shall be treated as favorable as other foreign citizens with regard to the access to studies, recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. Article 8 of the RA Law on higher and postgraduate professional education provides the opportunity of recognition of qualifications and documents of higher and postgraduate professional education of foreign States and approval of the equivalence thereof. Likewise, according to the Article 20 of the same law "Recognition and confirmation of equivalence of documents of foreign States on scientific degrees and scientific titles of higher and postgraduate professional education shall be carried out in accordance with laws of the Republic of Armenia as well as interstate and intergovernmental treaties and agreements covering this field and concluded between the Republic of Armenia and foreign States".

As native legislation does not provide any norms on recognizing foreign diplomas, the answer to this question is to be searched for in international treaties. The Republic of Armenia has bilateral agreements with more than 30 countries. Those agreements are directed to mutual recognition of diplomas and educational qualifications, e.g. "Agreement between the Government of the Republic of Armenia and the Government of People's Republic of China on mutual recognition of documents concerning education and scientific degrees". Identical agreement exists between Armenia and Lebanon. According to it, the sides should regularly publish the list of acknowledged educational institutions for making the process of mutual recognition of qualifications easier. Another agreement between the governments of Armenia and Lithuania forces the sides to co-operate in the field of education promoting the process of mutual recognition of diplomas and other qualifications.

The agreement about "Cooperation in the field of education" between the countries participating in Commonwealth of Independent States has more global character. The 5th article of the above mentioned agreement states: "The State Parties guarantee termless recognition in the territories of documents of the state sample on secondary, professional, secondary vocational, higher education, retraining of personnel, about award of the academic degrees and academic statuses issued in the State Parties by the time of the conclusion of this agreement".

Separate bilateral agreements in the field of education, in some cases higher education, exist with Great Britain, Czech Republic, Romania, Islamic Republic of Iran, Egypt, Turkmenistan, Russian Federation, Belarus, Ukraine, Cyprus, Argentina, Slovenia and other states. However not many of them unconditionally allow reciprocal recognition of qualifications and scientific degrees. The Bilateral Agreement between Russian Federation and Armenia permits mutual acknowledgement on condition to pass additional training in cases of differences.

Armenia has been one of the full members of Bologna educational system since 2005. The Ministerial Communiqué of Bucharest (2012) about European higher education area underlined the necessity of taking further serious steps towards the solution of the matter relating to mutual recognition of diplomas. Armenia has also ratified the convention of Lisbon (1997) named "Convention on the Recognition of Qualifications concerning Higher Education in the European Region". The convention provides separate norm about migrants. Partially, Each Party shall take all feasible and reasonable steps within the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee-like situation fulfill the relevant requirements for access to higher education, to further higher education programs or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence.

For the purpose of providing the procedural part National Informational Center for Academic Recognition and Mobility was founded in 2005. The Network of National Academic Recognition Information Center (NARIC) jointly with European Network of National Information Center on Academic Recognition and Mobility (ENIC) are international networks that aim to promote the professional and academic recognition of higher education qualifications completed abroad. The NICARM is considered a member of the international network of ENIC-NARIC organizations, which obliged to contribute to the implementation of the challenges mapped out in the Bologna declaration.

As mentioned above the fund NICARM was established with a view of Bologna implementation. The NICARM is responsible for providing information on Armenian and International higher education system to the local and foreign organizations and affiliates.

The tasks to be fulfilled by the NICARM are the following:

- NICARM implements the assessment of foreign qualifications, recognizing it as appropriate according to the provisions of the Lisbon Convention and existing intergovernmental agreements.
- The qualifications acquired abroad are undergoing evaluation and recognition in Armenia. After evaluating a foreign qualification, a complete recognition is granted if there are no significant differences between foreign and national comparable qualifications otherwise, partial recognition is given or denied. Complete, partial recognition or rejection is provided in the form of reference in Armenian or English in accordance with international standards.
- Provides information on national qualifications.
- The qualifications acquired in the Republic of Armenia go through a process of assessment and recognition carried out by the host country (and not Armenia) authorities in accordance with the provisions of the Lisbon Convention, intergovernmental agreements and national legislation. To that end, the NICARM provides information and advice to members of the network, as well as advises individuals who intend to continue their education abroad or work abroad.
- Provides advice on foreign educational systems;

- Contributes to the introduction of the European Diploma Supplement and Credit System (ECTS)
- Provides information on citizens' rights related to their recognition.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

The list of political rights is longer than the ones that are actually connected to making political decisions. The common thing in all of them is that they most often refer only to citizens of Armenia. This cannot be considered a groundless restriction because security is one of the basic concerns of any country, especially for small states like Armenia. The risk is too high that non-citizens may attempt to lead the country in favor of their country of origin rather than their country of residence.

The basic questions concerning the participation of migrants in political decisions are regulated by the Constitution of the Republic of Armenia. Chapter two of the Constitution is named Fundamental Rights of the Human Being and the Citizen, which means that many of those rights are granted to all human beings, including migrants. The fundamental political rights are stated in articles 44-55 which include the freedom of assembly, the freedom of association, the right to create a party and join a political party, the right to vote and right to participate in a referendum, the right to enter public service and so on.

Acknowledging the right and raising one's voice by taking part in a referendum can be considered the most important political decision, as referendum is organized to discover the opinion of residents about the most significant issues. For instance, adopting the Constitution, participating in supranational organizations and adopting treaties which are related to the territorial changes of Armenia are great illustrations of issues that are only decided upon by a referendum. As in many other states, Armenia grants this right only to its citizens. People who do not hold citizenship of Armenia cannot be allowed to suffrage in a referendum. Nevertheless, there is one exception in the Constitution of the Republic of Armenia. It states that the law may prescribe the right of persons not holding citizenship of the Republic of Armenia to take part in the elections of local self-government bodies and in local referenda.

Thus, the Electoral Code of the Republic of Armenia allows the participation of non-citizens in self-government bodies' elections. It states that non-citizens of the Republic of Armenia can take part in local self-government bodies' elections if they have minimum one-year registration in the community register of the population. Therefore, in the law concerning local referenda and local self-government bodies citizenship is not a vital factor since anyone who has a year's registration can participate. It is also regulated by national legislation that persons declared, upon civil judgment of the court having entered into legal force, as having no active legal capacity, as well as persons sentenced and those serving the sentence, upon criminal judgment having entered into legal force, for a grave criminal offense committed intentionally shall not be entitled

to elect or be elected or participate in a referendum. Persons sentenced and those serving the sentence, upon criminal judgment having entered into legal force, for other criminal offenses shall not be entitled to elect as well. As this statement shows, this rule concerns not only citizens but all the human beings, including migrants.

In 2013 the Council of Yerevan endorsed the regime of public hearings. It is stated in the decision that every physical or legal entity that is concerned can take part in public hearings. Public hearings are organized for finding out people's opinion on bills of important laws or decisions: hence this is one more possible solution to the issue concerning migrants' participation in political questions. Anyway, public hearings in Armenia are not mandatory, they are advisory and local self-government bodies are not compelled to be guided by public opinion.

Political rights such as establishing and becoming a member of a political party are also vital since they provide an opportunity to participate in political decisions. These parties are created to form people's will concerning to politics. Parties are elected to take part in National Assembly and form the entire legislation, decide on declaring wars and negotiating to stop them, authorizing other state bodies, ratifying international treaties and so on. As Armenia became a parliamentary republic in 2015 due to the amended form of RA Constitution, National Assembly (parliament of The Republic of Armenia) has turned into the most powerful state body. Deputies are promoted only by political parties and, as a result the role of the latter in a decision-making process has rapidly grown. National legislation demands that no one is compelled to join any political party. Nevertheless, only citizens of Armenia are allowed to form a political party or become a member of one. Thus, migrants who have not acquired citizenship are not entitled to this political right.

The right to petition was granted only to citizens by RA Constitution of 2005. But with the amendments made in 2015 the right to petition was granted to non-citizens too. Consequently, every member of the society has the right to submit, either individually or jointly with others, petition to state and local self-government bodies and officials and to receive an appropriate reply within a reasonable time period. Details shall be prescribed by law.

Besides political rights, Constitution provides people with many other advantages and freedoms some of which can affect the political decisions. It is a generally accepted practice that associations can cooperate with political parties and state bodies to achieve favorable conditions for themselves. Constitution and other legislative acts do not impose a ban for migrants to form and join different associations. Article 45 of Constitution which regulates the Freedom of Associations states that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests. No one may be compelled to join any private association. The Freedom of Associations may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others. The activities of associations may be suspended or prohibited only upon court decision, in the cases and under the procedure prescribed by law. As shown above, migrants are permitted to form any kind of associations and join them. If the union created is powerful enough to influence a political party it can have a

huge impact on making political decisions. This, of course, is not a direct way to participate in a political decision-making process, yet, sometimes it can be a very effective one.

To sum up, the rights allowing migrants to participate in making political decisions is rather limited. The limitation of political rights can be overcome by any migrant as he/she acquires citizenship of The Republic of Armenia. As double nationality is allowed in Armenia, they will be able to take part in the decision-making process both in their country of origin and country of residence at the same time. Prior to acquiring citizenship of RA the scope of their political rights will differ in two countries depending on their status. Moreover, in Armenia there are some restrictions for people who have double nationality. The highest officials of the state, such as the President, the Prime Minister or the Deputy of the National Assembly can only be a citizen of The Republic of Armenia. Except this, there are no other limitations concerning decision making for migrants who have acquired citizenship of The Republic of Armenia.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

According to the law on citizenship adopted by the Republic of Armenia, the citizenship can be required by foreigners who achieved the age of 18 and who were residents in Armenia for last three years (Government decree N 1390) At the same time, in order to obtain citizenship the applicant should have some knowledge of Armenian language, as well as, to be familiar with the Constitution of the Republic of Armenia. In order to start the process of obtaining citizenship, the applicant must visit the Passport and Visa Office (Police of the Republic of Armenia) and in the case of absence the applicant must apply to the Embassy of the Republic of Armenia or consular office with the necessary documents. The list of the necessary documents is defined by the Gov. Decree N 1390.

It is interesting to mention that the RA legislation does not contain any definition such as *migrant* and on its own does not mention about the concept of migration. At the same time, the RA Law on Citizenship does not consist any other separated regulation for migrants, but only regulates it indirectly by defining the rights of foreigners and stateless individuals who are interested in applying for the Armenian citizenship. In particular, the law gives a definition of foreign citizen as a person who is not a citizen of the Republic of Armenia while being a citizen of another state. As for stateless individuals, Article 8 of the same law establishes the absolute absence of citizenship for those people or the lack of proof of having any. In this case, the Republic of Armenia encourages the acquisition of citizenship by stateless individuals, which supposes the opportunity for all migrants of being granted with citizenship or temporary residence status.

By this, the law of the Republic of Armenia defines the cases when individuals can obtain a citizenship by following the procedures 1) if he / she is married to a citizen of the Republic of Armenia or have an Armenian child (2) if his or her parents had previously been citizen of the Republic of Armenia and he/she applied for the citizenship during three years after achieving the age of 18 (3) who have Armenian origins (4) people who renounced their citizenship after 1st of

January 1995 (5) who provided exceptional services to Armenian nation. The Republic of Armenia does not restrict the right of having citizenship of two countries, at the same time, the law clearly defines that the person who had two citizenships¹⁷³ is recognized by the state as a citizen of the Republic of Armenia. This is a provision that applies to individuals whose citizenship had been ceased since 1995, and after what they had received citizenship of another State (in case of receiving new citizenship, the receiver should inform about it within one month to the authorized body of the Government of the Republic of Armenia) or refused Citizenship of the Republic of Armenia unilaterally.

Since adopting a dual citizenship, individuals have all the rights provided for the citizen of the Republic of Armenia. At the same time, they have all the duties and responsibilities as the citizen of the Republic of Armenia, meanwhile counting on exceptional cases stipulated by international treaties or law of the Republic of Armenia. Based on political considerations of the Ministry of Diaspora together with other legal bodies they have to visit to a homeland Armenia at least one-time in order to get the Armenian passport¹⁷⁴. The problem with the process was the thirty days deadline for getting a passport. For this reason, by the decision of the government and taking into account the fact that a person may not always be able to be physically present in the country for thirty days, it is under a citizen's convenience to get his or her passport after receiving a notification about getting a citizenship within ten days¹⁷⁵.

Another step forward by the Ministry of Diaspora was participating in the amendments in Law of the State Registry, in particular the article on citizens' registration process according to which foreigners who have been granted RA citizenship are registered in the RA State Register under the address of the government in order to facilitate the process of registration for citizens who does not have permanent address in Armenia¹⁷⁶.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Still in 1999, the founding document "EU-Armenia Partnership and Cooperation Agreement" came into force, which served as a basis for the joint activities of the European Union and Armenia. Through it, different areas (political dialogue, trade, investment, economy, law-making processes and cultural trends) of common interest have been expanded. In 2004 Armenia was included in the European Neighborhood Policy. The inclusion of Armenia in the European Neighborhood Policy to the EU-Armenia relations is a new quality. First, Armenia had a new status in EU neighboring country. Membership to the ENP gave Armenia a chance to establish political, economic, cultural relations with the EU, to strengthen regional and cross-border cooperation, and to take responsibility for conflict prevention and resolution.

¹⁷³ HO-16 (ՀՕ-16) Law on the citizenship of the Republic of Armenia (ՀՀ քաղաքացիության մասին ՀՀ օրենք), 1998, Article 13

¹⁷⁴ See in details: <http://www.mindiaspora.am/am/erkqaghaqaciutyun>

¹⁷⁵ Ibid

¹⁷⁶ Laws containing amendments to Law on foreigners and Law on citizenship of the Republic of Armenia.

In November 2006, the ENP Action Plan was approved. The Action Plan is a political document outlining the strategic objectives of cooperation between Armenia and the EU. The EU-Armenia Action Plan within the European Neighborhood Policy has had its impact on complying with the EU standards of legislation, legal norms and standards of the Republic of Armenia. This program has created a solid foundation for economic integration, based on the adoption and application of rules and regulations in the field of economy and trade that promote trade, investment and economic growth. Among the top priorities are safe and lawful movement, fighting against illegal migration, trafficking in human beings and smuggling. Twinning and TAIEX tools have been actively used in Armenia. Starting from August 2012, the "Support to Migration Service Strengthening the Migration Management in Armenia in Armenia" EU Twinning Project, with which 2.5 years of expertise has been given to us in connection with various issues related to migration.

The European Neighborhood and Implementation Tools through the TAIEX Instrument: Its assistance has been largely shaped according to the beneficiary countries' respective services of the European Commission and the requirements of the Member States. TAIEX project started in 2012 August 7 and ended on November 6, 2014. The main beneficiary of the program was the State Migration Service of the RA Ministry of Territorial Administration, as well as the RA Ministry of Labor and Social Issues, the RA National Security Service, the RA Police and other state bodies. The project had its impact on the institutional strengthening of the State Migration Service system, legislative reforms, promotion of cooperation and strengthening of communication. The following results have been achieved within the framework of the project.

Component 1:

- Analysis of the RA legal system regulating RA migration and asylum issues.
- Disclosed the gaps of the Armenian legislation and presented with the analysis report and recommendations.
- Legislative amendments have been developed based on these recommendations.

Component 2:

- Structural reforms and tools aimed at strengthening the coordination role of the State Migration Service and the strengthening of cooperation between the state bodies in the field of migration.
- Conducted and submitted research on temporary work plans.
- Checklists have been developed to ensure quality assurance mechanisms in the asylum procedure.
- 3 study visits to Belgium, the Netherlands and Sweden.

Component 3:

- Information Needs Analysis of the State Migration Service has been implemented.
- A study of the feasibility of data processing and rarity system implementation.
- Developed and presented a model for compiling a migration policy report.
- Study visit to Sweden.

As a result, the program was completed successfully and had its results with all 3 components of its activities, such as legislative amendments, strengthening cooperation between state bodies in the field of migration and a migration statistical reporting model.

Turning to the question how the migrants integrated in Armenia are financed, it is to be noted that Armenia is one of the countries which does not have a large number of migrant inflows. By comparing it, we can mention that the number of returning migrants prevails in Armenia. The flow of returning Armenian citizens is historically a new migration flow to Armenia, which has emerged as a result of large-scale migration flows that emerged after independence. Obviously, representatives of this group do not have immigrants in classical terms because of the origin of their country of origin and their citizenship, including their return to their own cultural environment, have no integration issues with immigrants, but instead there is a need for their reintegration.

The issues of reintegration of the citizens who returned to Armenia from the beginning of the process have been in the focus of attention of state bodies, as well as international and non-governmental organizations. Initially, this was expressed by international organizations in Armenia in this field, as well as in bilateral formats with different European countries. The European Union is the largest donor of cooperation for the development of Armenia, which provides support to Armenia since Armenia's independence. Following the signing of the 1999 Partnership and Cooperation Agreement, annual assistance is increasing year by year, and now they are in line with 2014-2025 development strategy of Armenia.

As of 2016, the EU Delegation to Armenia has 129 existing projects with a total budget of 269 million Euros. The implementation of the first implementation of the Mobility Partnership Declaration on the Strengthening Armenia's Capacity in Migration Management, focusing on reintegration measures has given a new impetus to the reintegration of returnees to the RA. The "Targeted Initiative for Armenia" project is funded by the European Union, consisting of 4 components relating to the reintegration of returning citizens to Armenia, strengthening the capacities of RA state bodies and Diaspora organizations on legal migration opportunities and migration issues. The 36-month program has been launched since December 2012 by 6 EU member-states, one of which is France, on behalf of the French Immigration and Integration Office.

Within the framework of the project, on March 11, 2014 the Reintegration Guidance Center was opened at the RA Ministry of Territorial Administration. The Center serves citizens returning to Armenia as a "one window" where they are informed about reintegration opportunities and are guided by their respective services. The Center is closely cooperating with government agencies and civil society organizations that provide reintegration support.

Conclusions

Nowadays the issues of migration law are very actual because of the recent political complicated situation when the increase of the flow of migrants challenged developing and developed

countries including the Republic of Armenia. During this research it becomes obvious that the legislation of the RA does not contain strict regulations in the area of migration and sets effective mechanism for the protection of migrants' rights. Particularly, the legislation of the RA sets not only basic rights of the migrants but provides guaranties for social protection. But also there are some problems in the field of migration conditioned by the economic situation in Armenia. Nowadays the condition and shortage of accommodations are serious problems in the RA.

Moreover, migrants sometimes need legal assistance and translation which also demands financial expenses. Though the international organizations fund certain programs regularly but the issue of fundraising still remains problematic.

So, summing up we can state that though RA's legislation regulates the main issues of migration but because of the rapid development of the society there is a necessity of some legal amendments for more clear formulations which is included also in National program on migration for 2017-2022. Meanwhile besides the necessity of legal regulation the issue of funding is also crucial as it is impossible to ensure effective protection of migrants without sufficient financial means.

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Introduction

Throughout its history the territories of today's Austria have been heavily influenced by migration. In its more recent years Austria has seen refugees from its neighbouring countries, e.g. after the Hungarian uprising in 1956/57, the Prague Spring in 1968 or from Bosnia-Herzegovina in the early 1990s. The recent crisis in the middle east were the cause for an uprising immigration from Afghanistan, Syria, Iraq, Iran and Pakistan¹⁷⁷ 2015 marked the peak of asylum applications caused by the Syrian Civil war. In addition, there is also a rise of more and more African migrants, above all, Somalian and Nigerian Citizens. Austria has not only been a country of destination or transmigration for refugees, but also for labourers e.g. in the course of the "Gastarbeiter"-treaty with Turkey, or resulting from the eastern enlargement of the EU in 2004. With the upcoming general elections and last year's presidential election migration is again a hot topic in everyday life in Austria. The public dialogue is minted by a populist approach were recognized refugees, subjects of subsidiary protection, asylum seekers and labour migrants are treated undifferentiated.

Hereinafter shall be investigated how the migration waves of the last decades have influenced Austria's society and how the country is coping with the effects of long term migration in sectors like health care and education. Another key question is the approach to Islam with the launch of the Islam Act 2015, including a ban on face veils, the ban on foreign religious funding and Islamic kindergartens or schools. What is more, in recent years, a comprehensive administrative reform has been carried out in Austria, which has also caused a change in the administrative structure of migration authorities. In the following, the main players in the Austrian migration policy system will be shown and the change in the administrative structure is to be examined in more detail. As a result, the often complex design of the Austrian migration law shall be presented in a comprehensive way.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Asylum procedure in Austria

Austria is a federal republic with nine federal states¹⁷⁸. Each state has its own legislation. The distribution of competences between the federal government and states is based on Austrian Constitutional Law and, in particular, Articles 10 – 12, wherein the constitutional legislator

¹⁷⁷ <<https://www.integrationsfonds.at/fileadmin/content/migrationintegration-2016.pdf>> accessed 24 September 2017 [German].

¹⁷⁸ Vienna, Lower Austria, Upper Austria, Styria, Tyrol, Carinthia, Salzburg, Vorarlberg and Burgenland.

delegates certain legal areas exhaustively either to the federal government or to federal states.¹⁷⁹ Regarding Article 10 of Austrian Constitutional Law (B-VG), the federal government is responsible for legislation and its execution. There are two instances for the Austrian asylum procedure: the first instance for deciding in admission procedure and regular procedure is the Federal Office for Immigration and Asylum (BFA) with nine regional directorates for each federal state.¹⁸⁰ The second instance for the asylum procedure is the Federal Administrative Court (BVwG).¹⁸¹

1.1.1. Admission procedure

Application of international protection: An application for international protection can be lodged in writing or orally before any police station.

First interview: If such an application is filed, the applicant must be interviewed by any member of the public security service within 48 hours, but no later than 72 hours.¹⁸² The first interview is based on questions regarding the applicant's name, nationality, his flight route and identification by taking his fingerprints. After the first interview, the security authority forwards all documents, including the protocol of the first interrogation, to the BFA and provides the applicant with an order, in accordance with Article 43 BFA Procedures Act (BFA-VG), to show up before the respective regional directorate within 14 calendar days.

Green Card: The asylum seeker receives a green card including his photo, name, date of birth and registration number for the admission procedure. The following initial reception centres (EAST) are responsible for the admissibility proceedings: Traiskirchen, Thalham and Airport Vienna Schwechat.

Responsibility of the state: The BFA has to determine whether Austria is responsible for the asylum procedure. The Dublin III Regulation lays down the criteria for determining the member state responsible for an application lodged in one of the member states by a third-country national or a stateless person ("the Member State responsible").¹⁸³ European Dactyloscopy (EuroDac) is the fingerprint database, which enables authorities to examine whether applicants have "illegally" transited¹⁸⁴ through another member state ("principle of first contact") or have already applied for asylum in another EU member state.

Decision: In case of expected responsibility of Austria, the BFA must determine the asylum procedure and has to provide the asylum seeker with a white card.¹⁸⁵ If the BFA decides the

¹⁷⁹ Binder, Trauner, *Lehrbuch Öffentliches Recht - Grundlagen* (4th edn, Linde 2016) 58 [German].

¹⁸⁰ <<http://www.bfa.gv.at/bundesamt/standorte/start.aspx>> accessed 27 May 2017 [German].

¹⁸¹ See section 1.1.3.1.

¹⁸² paragraph 19 AsylG, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁸³ Article 1 of 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).

¹⁸⁴ For illegal transit see the judgment of the court (Grand Chamber), delivered on 26 July 2017 for C-646/16, especially section 74: "In the light of the usual meaning of the concept of an 'irregular crossing' of a border, it must be concluded that the crossing of a border without fulfilling the conditions imposed by the legislation applicable in the Member State in question must necessarily be considered 'irregular', within the meaning of Article 13(1) of the Dublin III Regulation".

¹⁸⁵ White card contains same information as green card.

responsibility lies with another member state, the BFA must issue a decision regarding the admission procedure with a legal right for appeal within two weeks.¹⁸⁶

1.1.2. Regular Procedure

White Card: After receiving the white card, the asylum seeker is officially in the regular procedure and will be provided with temporary accommodation in a federal facility until the closure of the asylum procedure. The application of international protection automatically contains the application of asylum, the application of subsidiary protection and finally the application of right of residence for humanitarian reasons.¹⁸⁷ The BFA determines if the reasons for asylum according to the Geneva Refugee Convention apply.

Second Interview: The asylum seeker gets invited for the second interview wherein he will be interviewed about his reason(s) for seeking asylum and for the consequences he would face in case of deportation to his country of origin. In all cases, the asylum seeker must be provided with an interpreter who is fluent in the asylum seeker's native language or in a language the asylum seeker is deemed to sufficiently understand. After the interview, the asylum seeker receives a protocol thereof including a translation in the aforementioned language. The BFA must then examine all possible circumstances ex officio and has to issue a decision within 15 months.¹⁸⁸

Decision:

Asylum: According to Article 1 of the Geneva Refugee Convention, the asylum seeker must have a well-founded fear of being persecuted based on their race, religion, nationality, membership of a particular social group and/or political opinion in their country of origin.

With respect to the amendment to the Asylum Act in June 2016, according to Article 3 Asylum Act, the status of asylum is limited to three years for those who applied for asylum after 15 November 2015 or haven't received the decision until the day the changes become law.

(Asyl auf Zeit).¹⁸⁹ The status might be changed ex officio to unlimited residence permission, if none of the reasons for denial according to the exclusion clauses of the Geneva Refugee Convention applies.¹⁹⁰

Subsidiary protection is granted if asylum seeker would face any real risk of violation against human rights in respect of European Convention on Human Rights (ECHR) in case of the alien's rejection at the border, forcible return or deportation to the country of the nationality.¹⁹¹ The decision for granting of subsidiary protection status shall be issued during the international protection process and in conjunction with the asylum status withdrawal ruling as referred to in paragraph 7.¹⁹²

¹⁸⁶ paragraph 16 BFA-VG, BGBl I 2012/87 idF BGBl I 2016/25 [German].

¹⁸⁷ paragraph 75 AsylG 2005, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁸⁸ paragraph 18 AsylG 2005, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁸⁹ paragraph 75 para 24 AsylG, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁹⁰ Kittlberger N, *Asylrecht kompakt* (Lexis Nexis 2016) 115, 116 [German].

¹⁹¹ paragraph 8 of the Asylum Act 2005, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁹² See grounds for revocation of asylum status.

The right of residence for humanitarian reasons is granted if the asylum seeker has such an intense familiar and personal bond in the country of current residence in terms of Article 8 ECHR, is well-integrated and has no criminal records.¹⁹³

Although the United Nations' High Commissioner for Refugees (UNHCR) Austria is not directly involved in the asylum procedure, it must immediately be informed by the Federal Office of Immigration and Asylum about the initiation of any procedure related to an application of international protection (first instance decisions¹⁹⁴ and rejected "airport applications"¹⁹⁵).

Ineligibility for and revocation of asylum status:

Grounds for exclusion of refugee protection: According to paragraph 6 of the Asylum Act an alien shall be rendered ineligible for asylum status if and for as long as she/he enjoys protection pursuant to article 1 section F of the Geneva Convention on Refugees¹⁹⁶; any of the grounds set forth in the exclusion clauses in Article 1 section F, of the Geneva Convention on Refugees exists; there are valid reasons for considering that the alien constitutes a danger to the security of the Republic of Austria or he/she has been convicted, by final judgment of an Austrian court, of a particularly serious crime and, by reason of such punishable act, represents a danger to the community.

In cases where a reason for exclusion exists, an application for international protection may be dismissed in regard to the granting of asylum status without further examination.

Grounds for revocation of asylum status: Regarding paragraph 7 of the Asylum Act, an alien's asylum status shall be withdrawn *ex officio* by administrative decision if a reason for ineligibility for asylum status as referred to in paragraph 6 exists; any of the grounds set forth in the cessation clauses in Article 1 section C of the Geneva Convention on Refugees¹⁹⁷ has arisen or the person having entitlement to asylum has the centre of his/her vital interests in another country. A procedure for the imposition of an asylum status withdrawal ruling shall in all cases be initiated if the alien has become an offender and it is also likely that the conditions referred above exist.

¹⁹³ Article 8 of ECHR; paragraph 9 AsylG, BGBl I 2005/100 idF BGBl I 2017/68.; Kittelberger N, *Asylrecht kompakt* (Lexis Nexis 2016) 18 [German].

¹⁹⁴ paragraph 32 AsylG, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁹⁵ paragraph 63 AsylG, BGBl I 2005/100 idF BGBl I 2017/68 [German].

¹⁹⁶ "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations." Article 1 section F of the 1951 Convention, Handbook and guidelines on procedures and criteria for determining refugee status <<http://www.unhcr.org/3d58e13b4.pdf>> accessed on 14 September 2017.

¹⁹⁷ Grounds regarding article 1 section C of the 1951 Convention are voluntary re-availment of national protection, voluntary re-acquisition of nationality, acquisition of a new nationality, voluntary re-establishment in the country where persecution was feared; the person can no longer, because the circumstances in connexion with which he/she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself/herself of the protection of the country of his/her nationality and being a person who has no nationality he/she is, because the circumstances in connexion with which he/she has been recognized as a refugee have ceased to exist, able to return to the country of his/her former habitual residence, Handbook and guidelines on procedures and criteria for determining refugee status <http://www.unhcr.org/3d58e13b4.pdf> accessed on 14 September 2017.

1.1.3. Legal Remedies

1.1.3.1. Federal Administrative Court

In case of a negative decision, the asylum seeker has a right to appeal with free legal support that has to be submitted within two weeks (for adults) or four weeks (for unaccompanied minors) of the receipt of the decision. The appeal has to be forwarded by the BFA to the Federal Administrative Court (BVwG). On the last page of the decision, the asylum seeker can find the address of the responsible free legal counselling organisation which is contracted by the Federal Chancellery and also an explanation of the rights of appeal.¹⁹⁸ Yet, at first appeal, a representation by an attorney is not mandatory. According to the General Administrative Procedures Act (AVG), decisions of the BVwG have to be taken within six months after the appeal has been submitted. After reviewing the application with the documents, the BVwG can conduct an additional court hearing in the appeal proceedings. This is not obligatory, however. The BVwG may change the decision in any direction (reject, annul or change the decision).

1.1.3.2. Higher Administrative Court and Constitutional Court

In case of a (second) negative decision from the BVwG, the asylum seeker has the right to appeal (again) to the Constitutional Court¹⁹⁹ (VfGH) and/or to appeal with a revision to the Higher Administrative Court (VwGH) within six weeks. For both courts, there is mandatory legal representation but the asylum seeker can apply for free legal aid.

1.2. Amendment of Alien's and Asylum Act (FrÄG 2017)

The first part of the Amendment of Asylum Act and Alien's Act has been passed by the national parliament on 30 June 2017.

The second part of the amendment to the Asylum Act and Alien's Act: Although criticised by UNHCR Austria²⁰⁰ and by NGOs, the recent draft of the government bill contains the following main amendments:

According to paragraph 15b of the Asylum Act, the freedom for the asylum seeker to choose their place of residence shall be restricted for the whole duration of the asylum procedure by an order of the BFA after they are admitted to the regular procedure in Austria. The decision deadline of the BVwG as second instance for appeal procedures will be extended from six months to 12 months. To deportation of asylum seekers who have exhausted instances and facing deportation at any time, asylum seekers are committed to be at certain states in refugee accommodation centres.

¹⁹⁸ NGO Helping Hands Linz <<http://www.helpinghands-linz.at/images/Asylverfahren.pdf>> accessed 31 May 2017 [German].

¹⁹⁹ Article 144 B-VG, BGBl 1930/1 idF BGBl I 2016/106 [German].

²⁰⁰ Note on the Integration of Refugees in the European Union, Statement of UNHCR Austria, <https://www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME_11972/imfname_637401.pdf> accessed 14 September 2017 [German].

2. How does your national law regulate immigration from EU member states and non-EU states?

Matters of admission, deportation and expulsion are regulated by the Aliens Police Act 2005 (FPG) and the Aliens Police Act Executive Order 2005. Questions of settlement and residence of non-Austrian nationals is regulated in the Federal Law on Settlement and Residence in Austria 2005 (NAG). It applies to foreigners, who are defined as anyone not holding an Austrian citizenship. Regulations differ for nationals of states, which are part of the European Economic Area (EEA) and Switzerland on one hand and Third Country Nationals (TCN) on the other. Residence is defined as the “factual or intended stay on national territory with the purpose of establishing an abode for longer than six months per year, the establishment of one’s centre of life or the commencement of permanent occupation.”²⁰¹ The primary correspondent authority is the federal governor and authorized district authorities according to §22 NAG 2005.

2.1. EEA/Swiss nationals

As member of the European Union and the Schengen Area, Austria is subject to Article 49 TFEU ensuring freedom of establishment.²⁰² EEA and Swiss nationals are entitled to admission to Austria for up to three months without obtaining a visa.²⁰³ They can settle in state territory for more than three months depending on their economic situation meaning (self-)employment or other forms of self-subsistence with sufficient health insurance or for the purpose of studying with sufficient health insurance.²⁰⁴ Regardless of whether these requirements persist, EEA/Swiss nationals are entitled to a permanent right to settlement after five years.²⁰⁵ After five years of uninterrupted residence, relatives are entitled to a long-term residence-card.²⁰⁶ The official certificates to document the right of residence in Austrian state territory are Registration Certificate, “Anmeldebescheinigung”: for EEA/Swiss nationals for a stay exceeding 3 months on request. Family members of these, defined in paragraph 52 para 1 NAG, who are EEA/Swiss nationals are authorised to a stay extending three months.²⁰⁷ The subjects have to register with the relevant authority within four months of their entry to state territory. Required are passports and documents certifying the economic self-subsistence, health insurance, school or university admission or family relation.²⁰⁸ Long Term Residence Certificate, “Bescheinigung des Daueraufenthalts”: for EEA/Swiss nationals who obtained residence under paragraphs 51, 52 leg cit after five years of lawful and uninterrupted residence on request.²⁰⁹

²⁰¹ paragraph 2 NAG 2005.

²⁰² Art 49 TFEU.

²⁰³ paragraph 15a FPG 2005.

²⁰⁴ paragraph 51 NAG 2005.

²⁰⁵ paragraph 53a NAG 2005.

²⁰⁶ paragraph 54 NAG 2005.

²⁰⁷ paragraph 52 NAG 2005.

²⁰⁸ paragraph 53 NAG 2005.

²⁰⁹ paragraph 53a NAG 2005.

Residence Card, “Aufenthaltskarte” for third country-relatives of an EEA/Swiss national who remain under paragraph 51 leg cit. Relatives eligible for this title are spouses and civil partnership partners, direct descendants not older than 21, or else older, if they receive alimentation, direct ascendants if they receive alimentation. This title is issued for a maximum length of five years.²¹⁰

These subjects are entitled to a

Long Term Residence Card, “Daueraufenthaltskarte” after the passing of a lawful, uninterrupted residence for the duration of 5 years.²¹¹

The right to residence under paragraphs 51, 52, 54 NAG does not persist for reasons of public safety. It is bound to the submission of documents certifying the circumstances entitling to a stay under paragraph 51 (e.g. (self-)employment); marriage or civil partnership or other forms of familial or economic relationships entitling to residence under paragraph 52 leg cit. In case the circumstances entitling to a residence permit under paragraphs 51, 52 and 54 leg cit cannot be proven or cease to exist, the appropriate authority is to inform the subject as well as the Federal Office for Affairs related to Foreigners and Asylum (BFA), which are authorized to enact an expulsion according to paragraph 66 FPG.

2.2. Third Country Nationals (TCN)

2.2.1. Admission with visa

The admission for TCN to Austria is bound to holding a passport and visa.²¹² Besides transit and tourist visas, Austria issues a residence visa (“D Visa”) which entitles its holder to a stay in Austria between 91 days and six months. The visa is generally issued by the Austrian representation prior to arrival in Austria, under certain circumstances visas may also be issued at the border crossing point.²¹³ D Visas are issued upon request and require a valid travel document an ensured departure and no reasons to deny the issue, which are listed in paragraph 21 para 2 FPG (e.g. insufficient health insurance or funding). D Visas may be applied for for a variety of reasons: long-term admission with no work permit (paragraph 21a leg cit), humanitarian reasons (paragraph 22 leg cit), temporary employment or self-employment (paragraph 24 leg cit), job seeking (paragraph 24a leg cit), the issue of a residence permit (paragraph 25 leg cit).

2.2.2. Procedure for residence permits

Generally, first-time applications have to be filed and decided before admission to national territory. Various exceptions are made, e.g. for family members of Austrian and EEA/Swiss nationals, children, and holders of residency permits. The authority decides per decree.²¹⁴ The application is to be filed with the competent Austrian representation (e.g. embassy) and forwarded to the governors of Austria’s federal states²¹⁵ who may authorise the district

²¹⁰ paragraph 54 NAG 2005.

²¹¹ paragraph 54a NAG 2005.

²¹² paragraph 15 FPG 2005.

²¹³ paragraph 24b FPG 2005.

²¹⁴ paragraph 21 NAG 2005.

²¹⁵ paragraph 22 NAG 2005.

authorities to rule in their names.²¹⁶ Remedies are ruled by the federal administrative court and thereafter by the Supreme Administrative Court.²¹⁷ TCN have to provide a proof of rudimentary German skills with the first time application, exceptions are made for minors and family members to comply with Article 8 of the ECHR.²¹⁸ Extension applications are to be filed with the correspondent local authority within Austria no longer than three months prior to their expiration date.²¹⁹

2.2.3. Types of residence permits

Austria offers different pathways for immigration to TCN: They differ in length, subject, purpose and nationality. Admission to permanent residence for the purpose of employment for TCNs is dependent on professional qualifications of the applying subject and political considerations for the labour market. Subjects can apply for two different titles: The red-white-red card (paragraph 41 NAG) is issued for the duration of 12 months and can be filed for by highly qualified workers, workers in shortage occupations, other key workers, graduates of Austrian universities and artists.²²⁰ The red-white-red card plus (paragraph 41a leg cit) can be granted to red-white-red card holders if employed for ten months within the past twelve months, holders of the blue-card EU if employed for 21 months in the last 24 months²²¹ or family members of holders of the red-white-red cards, blue-card EU or permanent residency.²²² The blue-card EU is issued for TCN, who have completed studies at universities lasting a minimum of three years, have received a binding job offer for at least one year, will earn a certain income and the labour market test reveals that there is not Austrian national available for this position.²²³ Holders of the red-white-red card plus and certain settlement permits are obliged to fulfil Module 1 of the Integration Agreement proving German skills for an in-depth basic conversation within two years after granting of the title. There are exceptions for minors, people in bad health condition and anyone not staying longer than 12 months.²²⁴ The completion of Module 2 is mandatory for anyone applying for the title “long term residence – EU” excluding minors and people in bad health condition.²²⁵ Temporary residence may be granted to TCN as employee sent on temporary duty, as rotational employee, self-employed individual, researcher, artist, in special employment cases, or to students and pupils.²²⁶

²¹⁶ proLibris.at, *Niederlassungs- und Aufenthaltsgesetz: Texte, Materialien, Judikatur* (11th edn. 2015) 37 [German]

²¹⁷ paragraphs 3 (2), 3b NAG 2005.

²¹⁸ paragraph 21a NAG 2005.

²¹⁹ paragraph 24 NAG 2005.

²²⁰ paragraph 20d AuslBG 1975.

²²¹ paragraph 20e AuslBG 1975.

²²² paragraph 41a NAG 2005.

²²³ paragraph 42 NAG 2005.

²²⁴ paragraphs 14, 14a NAG 2005.

²²⁵ paragraph 14b NAG 2005.

²²⁶ paragraphs 58-69 NAG 2005.

2.2.4. Non-voluntary departure

If the requirements set by paragraph 11 NAG are no longer met, the foreigner is to be informed that paragraphs 52 – 61 FPG will be enacted. The responsible authority is the Federal Office for Affairs related to Foreigners and Asylum (BFA). A grace period is set for a voluntary departure (paragraph 55 leg cit), after which the authorities are eligible to deport a TCN according to 46 leg cit.

2.2.5. Voluntary departure

No steps have to be taken regarding the NAG, according to the Act on Registration (MeldeG) a relocation has to be reported with the municipality.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Legal framework

Migration is a cross-sectional matter. It therefore falls within the competence and jurisdiction of various authorities. The “Federal Office for Affairs related to foreigners and Asylum” [“Bundesamt für Fremdenwesen und Asyl”, BFA] can be considered as the “central special authority” for the area of migration.²²⁷ It was established on 1 January 2014 as the successor of the former “Federal Asylum Authority” [“Bundesasylamt”]. Basic provisions concerning the organisation of the BFA are laid down in the “BFA-facility law” [“BFA-Einrichtungsgesetz”]. The “BFA-procedural law” [“BFA-Verfahrensgesetz”] defines the detailed procedural rules of the BFA. Articles 2, 3 and 8 ECHR must be given particular attention by the federal office in the exercise of its tasks, according to paragraph 14 BFA-procedural law.

3.2. Competences of the BFA

According to paragraph 3 para 1 BFA-facility law, the BFA is responsible for the execution of the BFA-procedural law, of the “Asylum Act 2005” [“Asylgesetz 2005”], of the “Aliens' Police Act 2005” [“Fremdenpolizei-Gesetz 2005”] and of the “Federal Basic Care Act 2005” [“Grundversorgungsgesetz-Bund 2005”]. To be more concrete, the Federal Office is responsible for the granting, denial and withdrawal of asylum and subsidiary protection, taking measures terminating a residence, ordering deportation, as well as issuing Austrian documents to foreigners.

Furthermore, according to paragraph 3 para 2 leg cit the BFA is responsible for the exchange of information within the meaning of the Dublin Regulation as well as in cases, in which a contract

²²⁷ Bachmann, Baumgartner, Feik, Fuchs, Giese, Jahekl, Lienbacher, *Besonderes Verwaltungsrecht* [11th edn., Österreich 2016] 197 [German].

concerning the competence to examine an asylum application or an application for international protection is applicable.

Similarly, in accordance with paragraph 5 para 1 leg cit, the BFA has to carry out a “public state documentation” in which relevant facts about the states concerned, together with sources, are to be recorded for the procedure before the BFA.

3.3. Governance system of the BFA

According to paragraph 1 BFA-facility law the Federal Office is directly subordinated to the Federal Minister of the Interior. It has federal jurisdiction and is based in Vienna. In addition, there is one regional directorate office in each federal state. They are not to be qualified as “authorities”.²²⁸ Besides this, the Federal Minister of the Interior is entitled to establish external offices of the regional directorate offices according to paragraph 2 para 2 leg cit as well as first-time-admission-offices [“Erstaufnahmestellen”] according to paragraph 4 leg cit.

The head of the BFA is the so-called “Director”, as stipulated in paragraph 2 para 1 leg cit. In accordance with paragraph 2 para 3 leg cit, he determines the number of organisational units in the Federal Office, in the regional directorates, in the external offices and administers the division of tasks. The staff at the BFA mainly consists of former speakers of the Federal Asylum Office as well as of employees of the aliens’ police.²²⁹ According to paragraph 2a para 1 leg cit, employees of the federal states as well as of the municipality of Vienna can be consulted on the service in the Federal Office. The public security organs must support the Federal Office “in the execution of its tasks”, in accordance with paragraph 2 para 6 leg cit. These organs are entitled to use “direct compulsory force” [“unmittelbare Zwangsgewalt”] while exercising detention warrants, search warrants or identifications as stipulated in paragraph 47 BFA-procedural law.

3.4. Sources of funding

Since the BFA is a federal authority, it is financed by the federal government.

3.5. Monitoring and evaluating system

Complaints against the decisions of the Federal Office for Foreign Affairs and Asylum can be lodged with the federal administrative court [“Bundesverwaltungsgericht”]. The Constitutional Court [“Verfassungsgerichtshof”] and the higher Administrative Court [“Verwaltungsgerichtshof”] control the decisions of the Federal Administrative Court.

3.6. Redress against maltreatment

Certain state organs have the possibility to file administrative complaints [“Amtsbeschwerde”] in order to preserve the objective legitimacy of the administration. Moreover, the national ombudsman board [“Volksanwaltschaft”] can be called in cases of maladministration.

3.7. Excursus

²²⁸ *ibidem*.

²²⁹ Peyr, Neugschwendtner, Schmaus, *Fremdenrecht* [ÖGB 2016] 257 [German].

Residence titles of foreigners who wish to stay or live in the federal territory for more than six months are regulated in the “Settlement and Resident Act” [“Niederlassungs- und Aufenthaltsgesetz”] and not in BFA-provisions. Only residence permits for “exceptionally considerable reasons” stay within the BFA’s scope of competence.

Persons holding a residence title according to Asylum Act 2005 and who are not relatives of EEA-citizens are explicitly excluded from the Settlement and Resident Act. The competent authorities in the scope of the Settlement and Resident Act are provincial state governors [“Landeshauptmänner/frauen”] respectively provincial administrative authorities [“Bezirksverwaltungsbehörden”] during first instance and provincial administrative courts [“Landesverwaltungsgerichte”] during appeal proceedings.²³⁰ The area of migration does not cover the full scope of tasks of these authorities, but is merely a sub-division in addition to numerous other administrative tasks.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Asylum Seekers

The first line graph provides an overview of the fall in number of applications from 2017 in comparison to 2016 and 2015. Due to the humanitarian crisis caused by the Syrian conflict and the instability of some other countries (e.g. Iraq or Libya) in 2015, there was an enormous increase in applications; Austria recorded 88.340²³¹ applications in total. In the following year, the applications went down to 42.285.

From January to June 2017, the number of applications fell back to 12.490 from 22.668 in the period from January to June 2016.²³² The share of citizens from the top four countries went down; Syria from 5,055 to 4,80, Iraq from 1,809 to 644, Nigeria from 927 to 790. The biggest fall compared with 2016 is recorded for Afghans (from 8,002 to 1,971).

Applications from unaccompanied minors (January – June 2017):

January (244), February (195), March (136), April (92), May (107), June (152).²³³

Most of the minors come from Afghanistan, Syria, and Nigeria.²³⁴

²³⁰ Bachmann, Baumgartner, Feik, Fuchs, Giese, Jahekl, Lienbacher, *Besonderes Verwaltungsrecht* [11th edn., Österreich 2016] 183 [German].

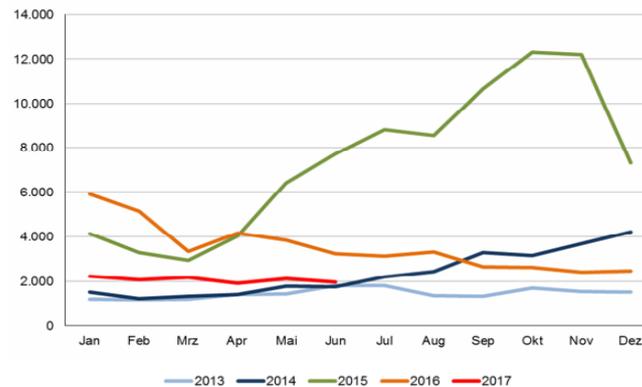
²³¹ Federal Ministry of the Interior, Asylum Statistics 2015 <http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Jahresstatistik_Asyl_2016.pdf> accessed 14 September 2017 [German].

²³² <http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/2017/Asylstatistik_Juni_2017.pdf> accessed 14 September 2017 [German].

²³³ *ibid.*

²³⁴ *ibid.*

First-Time Applications for International Protection in Austria – an Overview



Source: Federal Ministry of the Interior, Asylum statistics May

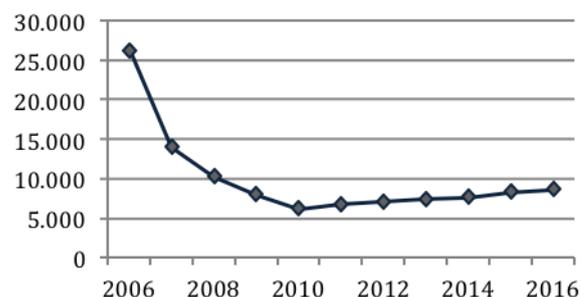
4.2. Trends in Migratory flows

This line graph is based on aliens who acquired Austrian citizenship. Since 2010, the number of naturalised citizens has been increasing slightly each year. In 2016, 8,626²³⁵ persons acquired Austrian nationality. In 2016, the top five countries for naturalised foreigners were Bosnia and Herzegovina (1,262), Turkey (820), Serbia (752), Rumania (258) and Germany (195).

By 2016, Austria had 8,599,200 residents, 6,701,100 of those are Austrians (citizenship), 711,800 are citizens of other EU countries, and 1,186,200 are foreigners ("Fremde").

The majority of foreigners (524,900) have their origins in former Yugoslavia, 271,600 in Turkey and 389,000 in other States.²³⁶

Naturalisation in Austria 2006 – 2016



²³⁵ Statistik Austria

<http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/einbuengerungen/024913.html> accessed 1 July 2017 [German].

²³⁶ Statistik Austria,

<http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/033240.html> accessed 1 July 2017 [German].

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Decisions concerning residence restrictions and expulsion due to convictions of crimes

In *Maslov v Austria*, the Court found a violation of Article 8. Mr Maslov, a Bulgarian national with an unlimited settlement permit for Austria, was deported to Bulgaria due to an exclusion order imposed on him following convictions for aggravated burglaries, extortion and assault. The Court awarded Mr Maslov EUR 3000 non-pecuniary damages and EUR 13,097.06 for costs and expenses.²³⁷ The total of EUR 16,097.06 was paid to Mr Maslov in 2009.²³⁸ In 2005, Mr Maslov was awarded a residence certificate including access to the labour market.²³⁹

In *Yildiz v Austria*, the Yildiz group (Turkish nationals residing in Austria with a daughter born in Austria) was separated due to a residence ban imposed upon the father after accumulating convictions of theft and administrative offences. The Court found that the offenses were not negligible but, due to the moderate fines imposed, were regarded as minor by the Austrian authorities. Further, that the family life is to be examined as presented at the time of the confirmation by the Administrative Court (as already established in *Bouchelkia v France*²⁴⁰), meaning the decision interferes with Article 8 and therefore needs to fulfil the requirements of Art 8 (2), namely accordance with the law and necessity in a democratic society. The Court ruled that the decision was in accordance with national law, paragraph 18 of the 1992 Alien Act, but is unbalanced between the interests of the applicants and the Austrian state. The Court awarded the Yildiz group EUR 8,000.²⁴¹ The total including interest of EUR 8,042.78 was paid in 2003.²⁴² Mr Yildiz was granted a Type D visa until August 2004 and a tourist visa until May 2006. A settlement certificate was issued in 2005, which Mr Yildiz never collected nor did he apply for a residence permit.²⁴³

In *Jakupovic v Austria*, the applicant, a national of Bosnia-Herzegovina, was deported after being issued a residence ban due to two burglary convictions. He had no family ties to Bosnia-Herzegovina since his mother and siblings were resident in Austria. The Court found that the residence ban violated Art 8 since the considerations between respect for family life and prevention of crime are disproportionate.²⁴⁴ Mr Jakupovic was awarded EUR 7,936.09 which

²³⁷ *Maslov v Austria* (no. 1638/03).

<<http://hudoc.echr.coe.int/eng?i=001-87156>> accessed 1 July 2017.

²³⁸ Resolution CM/ResDH (2009) 117.

<<http://hudoc.echr.coe.int/fre?i=001-96907>> accessed 20 July 2017.

²³⁹ *ibid.*

²⁴⁰ *Bouchelkia v France*.

²⁴¹ *Yildiz v Austria* (no. 37295/97).

<<http://hudoc.echr.coe.int/eng?i=001-60703>> accessed 20 July 2017.

²⁴² *ibid.*

²⁴³ *ibid.*

²⁴⁴ *Jakupovic v Austria* (no. 36758/97)

<<http://hudoc.echr.coe.int/eng?i=001-60917>> accessed 21 July 2017.

were paid in April 2009.²⁴⁵ The applicant was awarded a Type C visa in 2003 and an unlimited residence permit in 2005.²⁴⁶

In *Radovanovic v Austria*, the applicant, a national of Serbia and Montenegro at the time, was expelled from Austrian state territory following convictions of aggravated robbery. The residence ban of unlimited duration was in accordance with national law, namely the Aliens Act 1997 and interfered with Art 8. The Court found that the mild conviction shows the minor concern of Austrian authorities towards the prevention of crime and, thus, an indefinite ban is not balanced. The request for non-pecuniary damage was not met.²⁴⁷ Later, the applicant was awarded EUR 8,315 for costs and expenses which were paid in April 2005.²⁴⁸ Mr Radovanovic was awarded a certificate of residence in the same year.²⁴⁹

5.1.1. Law amendments and practical implementation

The Aliens Act 1992 has been replaced twice. In the Aliens Act 1997, major changes relevant to the mentioned cases are the new qualifications of convictions justifying a residence ban (e.g. custodial sentences have to exceed one year,²⁵⁰ compared to three months in the Aliens Act 1992²⁵¹) and the explicit reference to Article 8 para 2 in paragraph 37 para 2 as well as the mandatory assessment of length of residence, integration, family ties and the State's interest in his residence ban (paragraph 37 para 2). An inadmissibility of residence bans if the subject has grown up in Austria has been added in paragraph 38 para 1. In 2005, the Asylum Act 2005, the Settlement and Residence Act 2005 and the Aliens Police Act 2005 were introduced, following a split at the European level.²⁵² The court decisions were published in two major law publications (the Austrian Institute for Human Rights' Newsletter and the *Österreichische Juristenzeitung*) as well as distributed to courts and authorities cognizant of residence matters.²⁵³

5.2. Decision concerning social security of migrants:

In *Gaygusuz v Austria*, the Court found a violation of Article 14. The applicant worked in Austria from 1973 to 1984. After being unemployed, partly certified unfit of employment, and receiving unemployment benefits until 1987, he then was denied Emergency Assistance ("Notstandshilfe") on the grounds of his nationality based on his nationality. Mr Gaygusuz was awarded 200,000 Austrian Schillings for pecuniary damage and 100,000 Austrian Schillings for costs and expenses with interests.²⁵⁴ Austria paid the awarded sum in in September 1996.²⁵⁵ The Austrian Parliament

²⁴⁵ Resolution CM/ResDH (2009) 117.

²⁴⁶ *ibid.*

²⁴⁷ *Radovanovic v Austria* (no. 42703/98)

<<http://hudoc.echr.coe.int/eng?i=001-61720>> accessed 21 July 2017

²⁴⁸ Resolution CM/ResDH (2009) 117.

²⁴⁹ *ibid.*

²⁵⁰ Aliens Act 1997, paragraph 34a.

²⁵¹ Aliens Act 1992, paragraph 18.

²⁵² Ministry for Interior, *Öffentliche Sicherheit* 99.

²⁵³ Resolution CM/ResDH (2009) 117.

²⁵⁴ *Gaygusuz v Austria*.

<http://www.menschenrechte.ac.at/docs/96_5/96_5_08.htm> accessed 21 July 2017.

²⁵⁵ Resolution DH (98) 372.

passed a new law not including the disputed prerequisites which would have entered effect in 2000.²⁵⁶ Before that, the afflicted clauses had been suspended by the Austrian Constitutional Court.²⁵⁷ Following that, the Parliament launched a law bringing the clauses to effect in April 1998. The ruling was published in numerous Austrian law papers (e.g. *Österreichische Juristenzeitung*).²⁵⁸

5.3. Decision concerning the expulsion of asylum seekers:

In *Ahmed v Austria*, the Court found that the expulsion of the applicant, a Somali national, would put him in real risk of being subject to inhuman and degrading treatment thus interfering with Art 3 and awarded him 150,000 Austrian Schillings for costs and expenses.²⁵⁹ The sum was paid to the applicant in May 1996.²⁶⁰ The Austrian Government committed to not deporting the applicant as long as the status of risk persists and guaranteed a stay until March 1998. During the reassessment, the applicant committed suicide.²⁶¹ The ruling was distributed to affected authorities and the Court's evaluation of the situation in Somalia has been applied to cases also from other countries with similar situations.²⁶² Six years later in 2002, the Aliens Act 1997 was amended accordingly, integrating Art 3²⁶³ and, as a result, recognising the principle of non-refoulement.²⁶⁴

In *Mohammad v Austria*, the Court found a violation of Article 13 in conjunction with Article 3. The applicant, a Sudanese national, filed for asylum for the first time in 2010 and was rejected on the ground of the Dublin Regulation. His second request for asylum did not have suspensive effect under Austrian law which the Court ruled as a denying of access to effect remedy. The applicant was awarded EUR 4,868.28 for costs and expenses.²⁶⁵ The amount was paid to the applicant in December 2012.²⁶⁶ The ruling itself and an analysis in a Circular Note of the Federal Chancellery has been disseminated to affected authorities as well as published on the homepage of the Prime Minister's Office.²⁶⁷

5.4. General impact of the ECtHR on Austria's legal system concerning migration

Under the ECHR and the rulings of the ECtHR, the principle of proportionality has been emphasised in the rulings of the Constitutional Court as well as legislature.²⁶⁸ Prior to that, the legislature, judicature and executive were merely limited by the principle, that the state should

²⁵⁶ *ibid.*

²⁵⁷ 54. Notice of the Federal Chancellor, Suspension of the Act on Unemployment insurance.

²⁵⁸ Resolution DH (98) 372.

²⁵⁹ *Ahmed v Austria* (no. 25964/94)

<<http://www.unhcr.org/3ead2e584.pdf>> accessed 19 July 2017.

²⁶⁰ Resolution ResDH (2002) 99.

²⁶¹ *ibid.*

²⁶² *ibid.*

²⁶³ *ibid.*

²⁶⁴ Anagnostou, Does European Human Right matter 734.

²⁶⁵ *Mohammad v Austria* (no. 2283/12).

<<http://hudoc.echr.coe.int/eng?i=001-120073>> accessed 22 July 2017.

²⁶⁶ <<https://rm.coe.int/16804a631d>> accessed 22 July 2017.

²⁶⁷ *ibid.*

²⁶⁸ Helen Keller, Stone Sweet, *Europe of Rights* 373.

not use its power in a disproportionate way as well as the requisite of a legal basis to restrict fundamental rights.²⁶⁹ More precisely, the Constitutional Court now considers the proportionality of interferences with fundamental rights as well as their coverage by public interest.²⁷⁰ The authority responsible for the implementation of Court decisions is the Constitutional Service (Division V) of the Austrian Federal Chancellery cooperating with affected ministries and the Constitutional Court as well as reviewing draft legislation.²⁷¹ Further, the Constitutional Court and the Constitutional Committee of the Austrian National Assembly review federal legislation which interferes with the Convention or judgements.²⁷²

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. General recommendations by the ECRI and national human right bodies

6.1.1. Concerning family reunion:

Family members are defined as parents of underage minors, spouses or civil partners and unmarried children, who are underage when the application is filed.²⁷³ This is criticised by the UNHRC which advocates the inclusion of other family members to whom close ties persist.²⁷⁴ It further finds faults in the Austrian law requirement for the existence of a marriage in the country of origin, which causes difficulties for marriages contracted under religious terms²⁷⁵ as well as the requirements of official documents and the intrusion into privacy through DNA-tests²⁷⁶ and the costs imposed for the issuance of the required documents.²⁷⁷ The minimum age for spouses is set to 21, which contradicts the recommendations.

The entity constitutionally responsible for the protection and promotion of human rights in Austria, “Volksanwaltschaft”, continues to criticise the length of lawsuits in its annual reports.^{278/279}

²⁸⁰ It also criticises the extension of the waiting period for subjects of subsidiary protection from one to three years in 2015.²⁸¹ Other than recommended, family members of subjects of

²⁶⁹ *ibid* 373, 374.

²⁷⁰ *ibid* 374.

²⁷¹ Anagnostou, Domestic Implementation 221.

²⁷² *ibid*.

²⁷³ paragraph 35 para 5 AsylG 2005.

²⁷⁴ UNHCR Österreich, Hoffen auf ein Wiedersehen < http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/02/AUT_UNHCR-FRU_2017.pdf > accessed 22 July 2017 [German].

²⁷⁵ *ibid* 4.

²⁷⁶ *ibid* 20.

²⁷⁷ *ibid* 28.

²⁷⁸ Volksanwaltschaft, Bericht 2014

<<https://volksanwaltschaft.gv.at/downloads/b5cgi/Parlamentsbericht%202014%20Band%20II.pdf>> accessed 22 July 2017 [German].

²⁷⁹ Volksanwaltschaft, Bericht 2016 <<https://volksanwaltschaft.gv.at/downloads/9l6jq/PB40praeventiv.pdf>> accessed 22 July 2017 [German].

subsidiary protection are only entitled to file an application for family reunion three years after awarding the title of subsidiary protection,²⁸² whereas as relatives of refugees are entitled to do so as soon as a positive decision on asylum has been awarded.²⁸³ A discrepancy between subjects of subsidiary protection and refugees further persists concerning the requirements for the awarding, which are proof of residence, insurance and self-subsistence²⁸⁴. Relatives of refugees only need to provide evidence of these if they file the application later than three months after the awarding.²⁸⁵

The procedure for refugees and subjects of subsidiary protection differs widely from the process for relatives of TCN residing under the NAG which differentiates depending on the title of residence.

6.1.2. Concerning long term residence:

TCN are entitled to the legal status “long-term resident EU” after a lawful five-year stay in Austria and fulfilment of the general granting requirements (proof of self-subsistence, insurance and accommodation) as well as proof of German skills for in-depth autonomous language use.²⁸⁶ Exemptions are made for minors and applications with permanently bad physical or mental condition. The general granting requirements are criticised by the UNHCR as the obtaining of self-subsistence and accommodation might pose difficulties²⁸⁷. Deviations from the recommendations exist concerning the allowability of the titles “residence permit for a temporary stay” and “residence permit individual protection” which are only counted for half their duration.²⁸⁸ The period between filing for asylum/subsidiary protection and granting is also counted for half unless it exceeds 18 months.²⁸⁹ Courses on the level requested for “long term resident EU” are funded to the extent of EUR 750 per participant.²⁹⁰ The documents required and fees charged are not disproportionate. The title “long term resident EU” grants unlimited access to the labour market²⁹¹, including the public sector with the exception of duties requiring certain ties to Austria only expected from Austrian nationals.²⁹² It also grants social benefits connected to residency (e.g. child support²⁹³). State laws put long term residents on a level with nationals concerning the guaranteed minimum income (e.g. Vienna²⁹⁴). University tuition fees differ depending on nationality: EEA/Swiss nationals are subject to the same provisions as

²⁸⁰ Volksanwaltschaft, Bericht 2015 <<https://volksanwaltschaft.gv.at/downloads/7kulq/PB39nachprüfend.pdf> 136 accessed> 22 July 2017 [German].

²⁸¹ *ibid* 133.

²⁸² paragraph 35 para 2 AsylG 2005.

²⁸³ paragraph 35 para 1 AsylG 2005.

²⁸⁴ paragraph 60 para 2 AsylG 2005.

²⁸⁵ paragraph 35 para 1, 2 AsylG 2005.

²⁸⁶ paragraph 45 *icw* paragraph 14b NAG 2005.

²⁸⁷ UNHCR, Subsidiär Schutzberechtigte in Österreich <http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/03/Bericht_subsidiaerer_Schutz.pdf > accessed 22 July 2017 [German].

²⁸⁸ paragraph 45 para 2 NAG 2005.

²⁸⁹ paragraph 45 para 12 NAG 2005.

²⁹⁰ paragraph 10 AsylG 2005.

²⁹¹ paragraph 4 AuslBG 1979.

²⁹² paragraph 42a Beamten-DienstrechtsG 1979.

²⁹³ paragraph 2 FamilienlastenausgleichsG 1967.

²⁹⁴ paragraph 5 para 2 WMG 2010.

Austrian nationals, whereas TCNs are obliged to pay tuition fees with exceptions for refugees and subjects of subsidiary protection.²⁹⁵

6.1.3. Concerning Language and Integration Courses:

Austria requires a TCN staying under the titles Red-White-Red Card, Red-White-Red Card plus, all Settlement Permits and Family Member to complete Module 1 of the Integration Agreement meaning proof of German language skills for in-depth basic conversation within two years after granting the title for the first time,²⁹⁶ thus following the commissioner's recommendation to mandatory language classes. The Austrian Integration Fund (ÖIF) can certify language institutes for offering German-integration courses²⁹⁷ which then may receive funding from the state.²⁹⁸ Other than recommended, this courses only focus on a level of language needed for the Integration Agreement.²⁹⁹ Specific courses are offered for poorly and highly educated migrants.³⁰⁰ Language courses for specific professions are currently only available to a certain extent during competency checks at the job centre and for specific fields and are not connected to internships or the like.³⁰¹ Furthermore, efforts of companies promoting language trainings are not yet bolstered through tax cuts or similar benefits.³⁰² Concerning offers directed at stay-at-home parents, the Integration Report 2016 finds a lack of coupling language courses and kindergartens or schools, thus not offering the needed flexibility.³⁰³ In general language courses lack in attractiveness for working migrants due to the lack evening courses, child care and reimbursement for travel expenses.³⁰⁴ On a positive note, the government voted to allocate funds of EUR 75 million for integration measurers, establishing a closer collaboration between the government, the states, the interior ministry, the ministry of integration and the job centre and including asylum seekers with a high probability of granted asylum in basic German courses.³⁰⁵ The involvement of volunteers in language courses has been a crucial part and needs to be promoted through trainings, education and connections between volunteers. Various initiatives have been formed in the past years which desirably should be connected to the states' measures, but no steps into this direction have been taken so far.³⁰⁶ As far as integration courses are

²⁹⁵ paragraph 91 para 1, 2 UG 2002.

²⁹⁶ paragraph 14a NAG 2005.

²⁹⁷ paragraph 1 AsylG 2005.

²⁹⁸ paragraph 10 AsylG 2005.

²⁹⁹ paragraph 3 AsylG 2005.

³⁰⁰ OECD, Making Integration Work <<https://www.oecd.org/els/mig/Making-Integration-Work-Refugees-and-others-in-need-of-protection-flyer-web.pdf>> accessed 22 July 2017.

³⁰¹ BMEIA, Integration Report <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Integrationsbericht_2016/Integration_Report_2016_EN_WEB.pdf> accessed 22 July 2017.

³⁰² *ibid* 53.

³⁰³ *ibid* 43.

³⁰⁴ OECD, Making Integration Work <<https://www.oecd.org/els/mig/Making-Integration-Work-Refugees-and-others-in-need-of-protection-flyer-web.pdf>> accessed 22 July 2017.

¹²⁹ BMEIA, Integration Report <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Integrationsbericht_2016/Integration_Report_2016_EN_WEB.pdf> 22 July 2017. [German]

³⁰⁶ *ibid* 49.

concerned, so are these offered by the ÖIF and are also included in the job centre course program. The Integration Report concludes, that courses are offered to a sufficient extent.³⁰⁷

6.1.4. Concerning employment:

Austria has ratified the European Social Charter but only accepted 76 of 98 paragraphs. In September 2016, a meeting was held to assess possible developments. In the context of migration Art 18 para 3 of the charter is relevant: National labour law restricts foreign workers with complicated admission procedures and the “priority rule” meaning positions can only be filled with TCN if no EEA/Swiss national is available.³⁰⁸ Of further interest here is Article 19 (8): Austria reserves to expel foreigners for various reasons additionally to endangering national security or offending against public interest or morality thus not complying with the standards set by the Charter.³⁰⁹

Austria opens the labour market for applicants for asylum three months after filing the claim, but restricts it to tourism, agriculture and shortage professions as well as a labour market test.³¹⁰ After being granted the asylum status, refugees have full access to the labour market, the same applies to subjects of subsidiary protection.³¹¹ Asylum seekers are dispersed over the national territory based on the population of its municipalities, a practice, which ignores labour market demands and might lead to lower employment rates.³¹² Concerning the evaluation of skills of migrants, there is no systematic assessment³¹³ but the job centre has started to offer competency checks in all states, which not yet have been interwoven with further trainings or job opportunities.³¹⁴ In 2016 the Law on Recognition and Assessment has been enacted and eases the recognition of foreign qualifications, a financial hurdle has yet to be cleared via scholarships.³¹⁵ Refugees are widely treated equal to Austrian nationals concerning social security, whereas subjects of subsidiary protection are often deprived which also is due to the federal authority in matters of social security.³¹⁶

³⁰⁷ *ibid* 55.

³⁰⁸ <https://rm.coe.int/168070729c16> > accessed 22 July 2017.

³⁰⁹ *ibid* 18.

³¹⁰ OECD, Making Integration Work <<https://www.oecd.org/els/mig/Making-Integration-Work-Refugees-and-others-in-need-of-protection-flyer-web.pdf>> > accessed 22 July 2017.

³¹¹ AMS, Anerkannte Flüchtlinge am Arbeitsmarkt <http://www.ams.at/_docs/001_spezialthema_0915.pdf> accessed 22 July 2017 [German].

³¹² OECD, Making Integration Work <<https://www.oecd.org/els/mig/Making-Integration-Work-Refugees-and-others-in-need-of-protection-flyer-web.pdf>> > accessed 22 July 2017.

³¹³ *ibid* 34.

³¹⁴ BMEIA, Integration Report <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Integrationsbericht_2016/Integration_Report_2016_EN_WEB.pdf> accessed 22 July 2017.

³¹⁵ *ibid* 51.

³¹⁶ UNHCR, Subsidiär Schutzberechtigte in Österreich <http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/03/Bericht_subsidiaerer_Schutz.pdf> accessed 22 July 2017.

6.2. Recommendations after the 2015 report from ECRI

6.2.1. Concerning the Integration of Asylum Seekers

The ECRI states, in its report on Austria 2015, that integration measures should also be directed towards asylum seekers and seekers of subsidiary protection³¹⁷. As for now, applicants for asylum are not entitled to the same working rights as refugees. In June 2016, the federal government announced that asylum seekers shall be entitled to unpaid jobs, mainly coordinated by the municipalities.³¹⁸ The Act on Integration 2017 (IntG 2017) also only applies to refugees, subjects of subsidiary protection and TCN holding a residence title, further differentiating between the two former and the later.³¹⁹

6.2.2. Concerning the status of Islam

In the 2015 report, the Islam Act 2015 is criticised for its ban of foreign funding of Islamic religious societies (paragraph 6 para 2 Federal Law on Islam 2015). No steps have been or are about to be taken to undo this measure. On the other hand, by 1 October 2017, the Anti-Face-Covering Act enters into force providing that in public spaces facial features may not be hidden by veils or the like, offences may be fined with up to EUR 150.³²⁰

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Legal framework

Basic provisions regulating health care are laid down in the “Patient Charter” [“Patientencharta”] and the “hospital and sanatoria act” [“Krankenanstalten- und Kuranstaltengesetz”]. Special regulations for foreigners who are in need of assistance and protection are regulated in the framework of the so-called “basic provision” [“Grundversorgung”]. Comprehensive health care for recognised asylum seekers and persons with subsidiary protection can be granted within the framework of the so-called “demand-oriented minimum security” [“bedarfsorientierte Mindestsicherung”]. Due to the federal system in Austria, legislation and its implementation is divided between the federal government and the federal states in many areas.

7.2. Patient Charter

The “Patient Charter” is an agreement between the federal government and the federal states which defines the essential rights of all patients. The federal government and the federal states are mutually dependent on the regulations resulting from the Charter regarding legislation and

³¹⁷ ECRI, ECRI Report on Austria.

³¹⁸ http://www.bmi.gv.at/cms/BMI_Asyl_Betreuung/news/BMI.aspx?id=574E464A724B717863386B3D&page=3&view=1 accessed 14 September 2017 [German].

³¹⁹ paragraph 3 IntG 2017.

³²⁰ paragraph 2 AGesVG 2017.

legal implementation. Article 4 para 2 of the Patient Charter stipulates that “treatment of non-Austrian nationals must be carried out only if the costs of the treatment are borne by the patient himself or a third party”. Exceptions exist for “cases of imminent danger to life, impending delivery or serious health damage that requires immediate treatment”.

7.3. Hospital and sanatoria act

The “hospital and sanatoria act” is a federal law which regulates the principles for admission in hospitals and sanatoria. They are further elaborated in the implementing laws of the federal states. In public hospitals, “absolutely necessary medical assistance” must always be provided, according to paragraph 23 para 1 of the act. What is more, so-called “irrefutable” persons must be hospitalised in accordance with paragraph 22 para 2 leg cit. According to paragraph 22 para 4 leg cit a person has to be considered as “irrefutable” whose “mental or physical condition requires immediate hospitalisation due to danger of life or because of the risk of serious damage to health which cannot be avoided any other way” as well as “in any case, women, when the childbirth is imminent”.

Through a federal state’s law, it is possible to exclude persons who are in need of hospitalisation but not “irrefutable” from hospital care. According to paragraph 29 para 1 leg cit, a person can only be rejected from hospital if he/she is not resident in Austria and if the incurred fees or the anticipated actual treatment costs cannot be paid or sufficiently secured by him/her. Paragraph 29 para 1 leg cit is applicable to all persons, regardless of their citizenship, who present themselves as self-payers, even if the costs are subsequently reimbursed by a foreign social insurance institution.³²¹ This provision could be considered as indirectly discriminatory according to European Union law. Nevertheless, it can be justified in order to protect the “financial equilibrium of the social security system” against “serious threats”.³²²

7.4. Basic care

Foreigners who are in need of assistance and protection are granted full medical care through the framework of the so-called “basic care” [Grundversorgung]. General provisions are stipulated in the “Basic Care Agreement” [“Grundversorgungsvereinbarung”, GVV]. Just like the Patient Charter, the Basic Care Agreement is an agreement between the federal government and the federal states. The latter regulates the allocation of tasks and costs of the basic care between government and states. Based on this, the “Federal Basic Care Act 2005” [“Grundversorgungsgesetz-Bund 2005”] regulates the rights of asylum seekers and certain other foreigners during the admission to the asylum procedure. The rights during the actual asylum procedure are regulated by different basic care laws of each federal state.

The target group of the basic care is defined in Art 2 para 1 GVV as “foreigners who are eligible for assistance and protection”. A person is “eligible for assistance” if he or she “cannot, or not adequately provide, the necessary means of living for him/herself and his/her family members living with him/her from his/her own resources or other persons and institutions”. Persons

³²¹ Stöger, *Ausgewählte Fragestellungen des österreichischen Krankenanstaltenrechts* (Manz 2008) 638 [German].

³²² *ibidem*.

“eligible for protection” are defined as foreigners who are subject to the admission procedure or to admitted procedures, foreigners with denied asylum applications who cannot be deported for legal or factual reasons, foreigners who can be either be subject to deportation custody or to laxer measures or whose temporary basic care is ensured by the federal states until the de-facto deportation or during the first four months after asylum has been granted.

According to Article 6 para 1 leg cit, the following measures have to be taken in the context of health care:

No. 4: Medical examinations in the case of need, during the initial admission into country, according to the regulations of health authorities

No. 5: Assurance of health care within the regulations of the “General Social Security Act” [“Allgemeines Sozialversicherungsgesetz”] by paying health insurance contributions

No. 6: Granting of any necessary additional services not covered by health insurance after considering the individual case

No. 7: Measures for persons in need of care

Basic care of “foreigners who consistently and lastingly threaten the order in an accommodation through their behaviour”, can be restricted or discontinued. According to Art 1 para 2 leg cit, the provisions of Directives 2003/9/EC and 2001/55/EC must be observed. Emergency medical care must not be jeopardised in any case.

Paragraph 2 para 7 of the Federal Basic Care Agreement 2005 implements Art 20 para 5 Directive 2013/33/EU, according to which refugees have to be provided with basic care until the moment of de-facto deportation. Eligible persons have a legal claim to these benefits.³²³

7.5. Demand-oriented minimum security

The structure of demand-oriented minimum security [“bedarfsorientierte Mindestsicherung”] is regulated individually by each federal state. Irrespective of this, all recognized refugees who are not fully self-sustaining as well as persons granted subsidiary protection and third-country nationals of five years of legal residence have to be included in the statutory health insurance.

7.6. Access to information

Formally, all persons in Austria have equal access to health care. Nonetheless, due to information deficits migrants partially face barriers to access health care services. In order to receive comprehensive health care, patients have to show a lot of self-initiative.³²⁴ Major deficits exist for example with regard to supporting structures for disabled persons. Surveys showed that migrants often were not informed about governmental support for caring relatives.³²⁵ What is more, in some cases the health care staff itself lacked the appropriate expertise, so that it could not properly inform the patients about various support options.³²⁶

³²³ Bachmann, Baumgartner, Feik, Fuchs, Giese, Jahekl, Lienbacher, *Besonderes Verwaltungsrecht* [11th edn., Österreich 2016] 196 [German].

³²⁴ European Union Agency for Fundamental Rights, *Inequalities and multiple discrimination in access to and quality of healthcare*, 52.

³²⁵ *ibidem*, 51.

³²⁶ *ibidem*.

In migrant communities, information exchange about health and social services mainly takes place within friends and family or in conversations with friends, neighbours, or relatives.³²⁷ Due to the complexity of our highly developed health care system, it requires a certain degree of socialization in order to use health care services extensively.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. Multinational Legislation

The first Protocol to the **European Convention on Human Rights** (ECHR), which is a multilateral contract under international law, enjoys constitutional status in Austria.³²⁸ According to Article 2 of the first Protocol to the ECHR nobody should be deprived from the right to education.³²⁹ Although this article is drafted negatively, it still guarantees an individual's subjective and constitutional right to education, primarily focussing on the education in elementary school; however, according to the prevailing theory, it also includes all other types of schools, as ruled by the ECtHR in 1975.³³⁰

Moreover, according to Art 6 Abs 3 of the **Treaty of the European Union** (TEU), fundamental rights as guaranteed in the ECHR are part of the fundamental principles of the EU; according to art 6 Abs 2 TEU the EU joins the ECHR; therefore, also Art 2 of the first Protocol to the ECHR is incorporated in the EU; the scope of application is, however, limited to the union legislation.³³¹

8.2. Schooling Obligation Act

All children that **permanently reside** in Austria are according to paragraph 1 para 1 Schooling Obligation Act [Schulpflichtgesetz, SchPflG] subject to nine years of compulsory education, which starts according to paragraph 2 SchPflG with September 1st after reaching the age of 6. This obligation is independent of the child's citizenships as well as the residence or place of abode of their parents. However, as mentioned the child itself needs to permanently reside in Austria, which is not clearly defined under Austrian law as no time limit is given. Therefore, the circumstances on whether the child has the intention to stay permanently or only temporarily have to be considered.³³²

³²⁷ Chamber of Labour Vienna and Federal Ministry of Health, Migration und Gesundheit, wissenschaftlicher Ergebnisbericht, 63 [German].

³²⁸ Wieser B, *Handbuch des österreichischen Schulrechts – Band 1 Verfassungsrechtliche Grundlagen und schulrechtliche Nebengesetze* (NWV 2010) 42 [German].

³²⁹ Meyer-Ladewig J, Nettesheim M, von Raumer S, *EMRK Europäische Menschenrechtskonvention: Handkommentar* (4th edn, Helbing Lichtenstein & Manz 2017) 760 [German].

³³⁰ Wieser B, *Handbuch des österreichischen Schulrechts – Band 1 Verfassungsrechtliche Grundlagen und schulrechtliche Nebengesetze* (NWV 2010) 42, 43 [German].

³³¹ *ibid* 52.

³³² Wieser B, *Handbuch des österreichischen Schulrechts – Band 1 Verfassungsrechtliche Grundlagen und schulrechtliche Nebengesetze* (NWV 2010) 175 [German].

Children that only **temporarily reside** in Austria are according to paragraph 17 SchPflG allowed to attend school under the same circumstances as those that are part of the compulsory education according to paragraph 2 SchPflG.³³³

Apart from reaching the mandatory school age, children must be ready for school, which implies that they are able to follow the lectures without being overextended physically or psychologically. If this is the case, parents or other legal guardians are obliged to sign the child in at the primary school in the belonging district; otherwise children need to be registered in preschool.³³⁴

In case children have already attended school in a foreign country, existing reports do not have to be recognised under Austrian law; however, a placement examination needs to be taken in order to classify if they are able to attend an age-appropriate school level. If this examination is failed, it can be repeated only once; otherwise, the child needs to take the placement test for entering a lower school level. Under certain circumstances, including the constant contribution and sufficient performance of the child during lectures, these placement examinations can remain undone.³³⁵

Service departments which will inform migrants about their own educational obligations and possibilities as well as the ones of their children are available in every Austrian federal state. As parents or legal guardians are responsible for the fulfilment of the schooling obligation and might not be aware of the Austrian schooling obligation, migrants are advised to contact these offices as early as possible in order to prevent any harmful consequences.³³⁶

8.2.1. Extraordinary pupils

Since child migrants often do not have any or just little command of the German language, they are regarded to as **extraordinary pupils** for 12 months.³³⁷ This period can be extended by another 12 months, in case the child is still unable to speak German without fault. Extraordinary pupils attend the same classes as coeval children; however, when grading, the children's language skills will be taken into account. If the child is completely unable to perform due to missing knowledge of the German language, they will not be graded insufficient, but not graded at all. Yet, as soon as the pupil is regarded as an ordinary pupil, the same rules apply as for any other student.³³⁸

According to paragraph 8e para 1 School Organisation Act [Schulorganisationsgesetz, SchOG], **language support classes** must be provided, if more than eight students have been accepted as extraordinary pupils, due to insufficient German language skills, in order to enable them to follow the lecturers in the respective school level. These courses have to be offered for a maximum of two years to an extent of eleven lessons per week according to paragraph 8e para 2

³³³ *ibid.*

³³⁴ Juranek M, *Das österreichische Schulrecht: Einführung in die Praxis* (Verlag Österreich 2016) 55, 56, 176 [German].

³³⁵ Kittelberger N, *Aylrecht kompakt* (Lexis Nexis 2016) 104, 105 [German].

³³⁶ http://www.schulemehrsprachig.at/fileadmin/schule_mehrsprachig/redaktion/hintergrundinfo/info1-16-17.pdf, p.7.

³³⁷ paragraph 4 para 2 lit a School Education Act [Schulunterrichtsgesetz, SchUG] 2001.

³³⁸ Kittelberger N, *Aylrecht kompakt* (Lexis Nexis 2016) 104, 105 [German].

SchUG. Extraordinary pupils do not need to be in the same school, level of school or type of school.³³⁹

In order to ensure that child migrants are not discriminated, a 10-point plan for a non-discriminatory educational system was issued by the members of the initiative for a non-discriminatory educational system (Initiative für ein diskriminierungsfreies Bildungswesen), which for example aims to establish complaints offices, offer workshops in schools, hire school counselors, diversify the teaching staff as well as to include Articles 28, 29, 30 of the Convention on the Rights of Children (CRC) in the Austrian constitutional legislation.³⁴⁰

8.3. Other Possibilities

On the occasion that the migrant is already 15 years old, they are not allowed to enter the standard educational system. Still, there is the possibility to catch up on the **school-leaving qualification**, by applying to be authorized to take this examination at a New Secondary School [Neue Mittelschule]. For preparation purposes, courses at adult educational centres are offered; however, the attendance of those is not obligatory.³⁴¹

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Depending on which education has already been completed in one's country of origin, these diplomas as well as certain exams might get recognised.³⁴²

9.1. School diplomas

According to paragraph 75 para 1 SchUG diplomas regarding school attendance in foreign countries can on request be recognised by the Federal Ministry for Education [Bundesministerium für Bildung, BMB] if the person's **main residence is in Austria**. According to a ruling of the Austrian *Verwaltungsgerichtshof* (Higher Administrative Court, "VwGH") several exams completed abroad can be together recognised in one Austrian diploma as well.

Assuming that the preconditions in paragraph 75 para 3 and 4 are fulfilled and the recognition is successful, the diplomas can be regarded as **equivalent**. Therefore, recognised diplomas provide under paragraph 75 para 5 SchUG the same entitlements as those to which they are equivalent,

³³⁹ Wieser B, *Handbuch des österreichischen Schulrechts – Band 2 Schulorganisationsrecht* (NWV 2011) 39 [German].

³⁴⁰ Report 2016 (Discrimination in the Austrian educational system), 2016, 13, 14 [Bericht 2016 – Diskriminierung im österreichischen Bildungswesen].

³⁴¹ Kittelberger N, *Asylrecht kompakt* (Lexis Nexis 2016) 104, 105 [German].

³⁴² Kittelberger N, *Asylrecht kompakt* (Lexis Nexis 2016) 102 [German].

except if the nostrification is subject to limiting conditions. The recognition functions comprehensively; therefore, it is subject for all legally relevant spheres of life.³⁴³

The recognition under paragraph 75 para 1 SchUG is **not necessary**, whenever the migrant aims at attending a school and the rejection of a placement exam is permissible.³⁴⁴ Furthermore, when intending at pursuing a higher education that requires the successful completion of a school-leaving exam, the recognition of the foreign school-leaving exam must not be recognised, if school was attended successfully for at least eight years. However, if the migrant did not pass the subject German, an external exam [Externistenprüfung] must be taken at a New Secondary School.³⁴⁵

9.1.1. Practical Procedure

As mentioned in Chapter 9.1, the recognition must be requested at the **BMB**. This request must not only include proof of the completed exams, but also one's certificate of birth and proof of a permanent residence in Austria according to paragraph 75 para 2 SchUG. The Federal Ministry then has to decide if the school attendance as well as passed exams meet the requirements of those diplomas, to which they should be equal, according to paragraph 75 para 3 SchUG. Therefore, the foreign school must be comparable with respect to the level of education. Conceding that those conditions are only partially met, certain levels of school or specific subjects must be attended as an extraordinary pupil or an exam must be passed, to which the conditions of paragraph 75 para 4 SchUG apply. Referring to the latter, the BMBF is obliged to issue a founded response according to paragraph 58 para 2 General Administrative Procedures Act [Allgemeines Verwaltungsverfahrensgesetz, AVG], stating which circumstances are used as reference.

If the diploma is recognised, it must be certified, either on the original diploma or a rigidly connected appendix. On the other hand, if the preconditions for the recognition are not fulfilled, the BMs must dismiss the request according to paragraph 75 para 6 SchUG.³⁴⁶

9.2. University diplomas

According to the UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, also referred to as the **Lisbon Recognition Convention**, study time, as well as exams, completed in another member state must be recognised, unless there is a severe difference between the countries. This convention was implemented in Austria as federal law and is therefore directly applicable.³⁴⁷

Furthermore, Austria has concluded several **bilateral and multilateral agreements** regarding the equivalence of academic degrees, which are referred to as *leges specialis* as opposed to the previously mentioned Lisbon Recognition Convention. Additionally, directives of the Council of Europe (CoE), including the directive on the "Recognition of diplomas, certificates and titles

³⁴³ Wieser B, *Handbuch des österreichisches Schulrechts - Band 3 Schulunterrichtsrecht* (NWV 2015) 243 [German].

³⁴⁴ Wieser B, *Handbuch des österreichisches Schulrechts - Band 3 Schulunterrichtsrecht* (NWV 2015) 239, 240 [German].

³⁴⁵ Kittelberger N, *Aylrecht kompakt* (Lexis Nexis 2016) 103 [German].

³⁴⁶ Wieser B, *Handbuch des österreichisches Schulrechts - Band 3 Schulunterrichtsrecht* (NWV 2015) 240-243 [German].

³⁴⁷ Wieser B, *Die Anerkennung von Prüfungen nach § 78 UG* (2nd edn, NWV 2016) 17-18 [German].

awarded after higher education of at least three years' duration", have had a significant influence on the Austrian legislation.³⁴⁸

When recognising foreign degrees, paragraphs 51 para 2 Z 28, 90, 124 para 7 **University Act** [Universitätsgesetz, UG] apply; however, these provisions only refer to the legal basic parameters, giving the universities autonomy for material details. However, for the recognition of only specific exams, paragraph 78 UG applies.³⁴⁹

9.2.1. Practical Procedure

Precondition for the recognition of university diplomas is the submission of proof that the academic degree is crucial for the practice of one's education or career. The recognition of diplomas acquired abroad must be requested at a **university** or university of applied sciences that offers a study program that is equal to the completed one; yet, simultaneous or repeated applications are prohibited under paragraph 90 para 2 UG. Passport, proof of the completed degree including translated information on this study program as well as the intended career must be submitted.³⁵⁰ According to paragraph 90 para 3 UG a notification must be issued by the competent governing body, stating to which Austrian degree the foreign degree is equivalent and therefore which academic title the applicant is allowed to carry.³⁵¹ In case of a successful recognition, a certificate of equivalence is issued; however, a new academic degree is not awarded. Equivalence refers to the fact that the person whose degree was recognised immediately acquires all rights that are according to the Austrian legislation connected to the possession of an Austrian degree.³⁵²

The fee for the recognition process is EUR 150 and needs to be paid in advance. In case the application is dismissed or is withdrawn, the fee expires.³⁵³

9.3. Authentication

Prior to being recognised, foreign diplomas often need to be **authenticated**, depending on the country of origin.³⁵⁴ For demonstrational purposes, some case examples will be given:

Given that the diploma was issued in for example Bosnia-Herzegovina or Serbia, the original diploma has to be presented; however, it does not have to be recognised. If the diploma was received in for instance the Russian Federation or India, the foreign minister of the country of origin has to issue an apostille. In order to being able to recognise diplomas from Iran, Nigeria and Pakistan, not only the foreign minister from the country of origin, but also the representative Austrian authorities in the home country need to issue an apostille. This also applies for diplomas issued in Syria; yet, in 2013, the Federal Ministry for Science, Research and Economy

³⁴⁸ *ibid* 19, Dragaric D, Funk B, Grimberger M, Hauser W, Huber S, Kohler A, Novak M, Schwar B, Winkler, R, *Handbuch des Österreichischen Hochschulrechts – Band 8* (2nd edn, NWV 2012) 259 [German].

³⁴⁹ *ibid* 258; Wieser B, *Die Anerkennung von Prüfungen nach § 78 UG* (2nd edn, NWV 2016) 15, 16 21 [German].

³⁵⁰ Kittelberger N, *Aylrecht kompakt* (Lexis Nexis 2016) 104 [German].

³⁵¹ Dragaric D, Funk B, Grimberger M, Hauser W, Huber S, Kohler A, Novak M, Schwar B, Winkler, R, *Handbuch des Österreichischen Hochschulrechts – Band 8* (2nd edn, NWV 2012) 259 [German]; paragraph 90 para 1-5 UG 2004.

³⁵² *ibid*.

³⁵³ *ibid*.

³⁵⁴ Kittelberger N, *Aylrecht kompakt* (Lexis Nexis 2016) 103 [German].

(Bundesministerium für Wissenschaft, Forschung und Wirtschaft, BWF) recommended to desist from that, in case the presentation of these documents is impossible or connected to major difficulties. If the authenticity of the documents cannot be verified, these documents cannot be authenticated.³⁵⁵

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

For the regulation of participation of migrants in political decisions, the Austrian legislator differentiates between migrants who are European Union citizens and migrants who are third country nationals.³⁵⁶ Whereas European Union citizens enjoy electoral rights at least to some degree, as it will be explained further below, the participation of third country nationals in the process of political decision making is highly restricted in Austria. In fact, third country nationals do not have the right to vote for any of the general representation bodies, which is the National Council [Nationalrat] at federal level, the provincial parliaments [Landtage] at state level and the municipal councils [Gemeinderäte]. For third country nationals, neither the type of residence permit, nor the length of the permanent residence will change anything with regards to the right to vote in these elections.³⁵⁷

In 2003, the Vienna state legislature wanted to extend the right to vote for the municipal council also to third country nationals who have been permanent residents in Austria for more than five years. 37 representatives of the Vienna state legislature immediately appealed the decree and shortly after in 2004 the Austrian Constitutional Court ruled this provision as unconstitutional. The court held that granting third country nationals the right to vote for the municipal council would need an amendment of the Austrian constitution first.³⁵⁸ However, until now the parliament has never agreed upon such an amendment.

Nevertheless, 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.³⁵⁹ A similar obligation to establish such an advisory institution cannot be found in any other state, although there also

³⁵⁵ *ibid* 107.

³⁵⁶ A legal definition of the term “third country national” can be found in several Austrian statutory regulations concerning asylum and migration law. They all define a ‘third country nationals’ as a foreigner who is neither a citizen of one of the member States of the European Economic Area (EEA), nor a citizen of Switzerland (paragraph 2 para 1 Z 6 Settlement and Residence Act [Niederlassungs- und Aufenthaltsgesetz], paragraph 2 para 4 Z 10 Law on the Immigration Police 2005 [Fremdenpolizeigesetz 2005] and paragraph 2 para 1 Z 20b Asylum Act 2005 [Asylgesetz 2005]). Hence, this definition of third country nationals includes stateless persons as well.

³⁵⁷ Joachim Stern and Gerd Valchars, Access to Electoral Rights in Austria (EURO Citizenship Observatory 2013), 3; available online: http://cadmus.eui.eu/bitstream/handle/1814/29803/ER_2013_11-Austria-FRACIT.pdf?sequence=1, accessed 6 June 2017.

³⁵⁸ Austrian Constitutional Court, 30 June 2004, G 218/03 [German].

³⁵⁹ paragraph 38b Steiermärkische Gemeindeordnung 1967.

exists a similar Migration- and Integration Advisory Council [Migrations- und Integrationsbeirat] in the city of Linz in Upper Austria.³⁶⁰ 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.³⁶¹ Neither at state nor at federal level such a migrant advisory council exists in Austria. European Union citizens residing in Austria have the right to vote in municipal elections.³⁶² The relevant EU Council Directive 93/109/EC of 6 December 1993 on local elections has been fully implemented when Austria joined the European Union in 1995.³⁶³ There has been no case law in Austrian courts regarding European Union citizens' right to vote at the municipal level and Austrian law does not provide a possibility for Union citizens to vote for the provincial parliaments or the National Council at any time. Further, Union citizens – just as third country nationals – are not allowed to vote in the elections for the federal president. Only Austrian citizens have the right to vote at state and federal level.³⁶⁴ Taking into account that the acquirement procedure to obtain Austrian citizenship is linked to high fees and the necessity to proof a secure livelihood (which is in comparison to other European countries rather high), it becomes apparent that migrants with low income are systematically excluded from participating in political decision making in Austria.³⁶⁵

With regard to the elections for the European Parliament, European Union citizens with a permanent residence in Austria have to apply for the entry into the register of EU-voters in order to be able to vote in the elections.³⁶⁶ Austria is the only member state where European Union citizens are allowed to vote for the European Parliament at the age of 16.³⁶⁷ Third country nationals are not allowed to vote for the European Parliament.

In 2017, the Austrian law concerning the freedom of assembly was adopted. It now grants the Austrian federal government the right to prohibit the campaign appearances of foreign politicians in Austria under certain circumstances.³⁶⁸ Nevertheless, Austrian law does not prohibit migrants the participation in elections of their country of origin. Therefore, no form of redress is foreseen if migrants are unlawfully impeded to participate in political decisions in their country of origin.

³⁶⁰ <https://www.linz.at/soziales/5207.asp>, accessed 6 June 2017 [German].

³⁶¹ paragraph 38e para 1 Steiermärkische Gemeindeordnung 1967. The right to vote for the migrant advisory council has every third country national, who is older than 16 and has the main residence in the respective municipality (paragraph 91 GemWO 2009).

³⁶² Art 22 TFEU provides the legal basis therefor: “Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.”

³⁶³ Federal Constitutional Law Amendment [Bundes-Verfassungsgesetz-Novelle 1994], BGBl. Nr. 1013/1994.

³⁶⁴ Articles 26 para 1, 60 para 1 and 95 para 1 B-VG.

³⁶⁵ Joachim Stern and Gerd Valchers, Country Report: Austria 2013, <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=2013-28-Austria.pdf>, pages 22-32, accessed 12 September 2017.

³⁶⁶ paragraph 5 para 1 EuWEG.

³⁶⁷ Art 23a para 1 B-VG.

³⁶⁸ paragraph 16 para 2 VersG 1953.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Acquisition of Austrian Citizenship:

Procedure and Requirements. According to Article 6 of the Federal Law concerning Austrian Nationality (1985 Nationality Act, StbG 1986), nationality can be obtained by descent, naturalisation (long-term living in Austria, marriage) or by notification.

11.1.1. By Descent

Children, born in wedlock, obtain Austrian citizenship from birth, if one parent is an Austrian citizen at the time of the child's birth.³⁶⁹ Children born out of wedlock obtain citizenship either if their mother is an Austrian citizen at the time of the child's birth or by legitimation if their mother is a non-Austrian citizen but the child is still a minor and unmarried at the time of their parents' marriage and the father is Austrian citizen at this time.³⁷⁰

Minors, aged 14 and above, may obtain citizenship if they and their legal representative consent to the acquisition of Austrian citizenship.³⁷¹

11.1.2. By Application

Austrian citizenship may be granted to an alien under the following conditions:

- residence in Austria
- at least 30 years of constant residence in Austria or
- at least 15 years of lawful and constant residence in Austria with proof of personal and professional integration or
- at least six years of lawful and constant residence in Austria in case of:
 - granting the refugee status regarding Geneva Convention or
 - citizenship of one of the EEA countries or
 - born in Austria or
 - excellent and extraordinary (expected) performance in science, economics, art or sport in the interest of the Republic of Austria or
 - proof of personal integration meaning sufficient knowledge of the German language (either B2 level or B1 level in addition three years' experience in voluntary work).

general requirements (also by marriage)

- integrity meaning no convictions which have not been abrogated, no pending penal procedures (in Austria as well as abroad) and
- sufficient knowledge of the German language, Austrian history and current affairs proven by undertaking exams or a high school diploma on 8th grade and
- proof of secure livelihood of 36 months in the last six years, however the secure livelihood must be proven mandatorily 6 months before the date of the application and

³⁶⁹ Paragraph 7 para 1 StbG 1985, BGBl 1935/311 idF BGBl I 2017/68 [German].

³⁷⁰ Paragraph 7 StbG 1985, BGBl 1935/311 idF BGBl I 2017/68 [German].

³⁷¹ Paragraph 7a StbG 1985, BGBl 1935/311 idF BGBl I 2017/68 [German].

- no prohibition of entry or stay and no return decision.

11.1.3. By Marriage

The foreign wife/husband of an Austrian citizen may obtain Austrian citizenship after at least six years of lawful residence in Austria if they have been married and living in a common household for at least five years. An EEA citizen may also be granted Austrian citizenship after at least six years permanent residence in Austria.

11.2. Dual Nationality

In general, the Austrian Nationality Act does not allow dual citizenship except for persons who obtain two citizenships at the date of birth. If a person acquires Austrian nationality, they must renounce the other citizenship they are holding. The only exception is stated in Article 28 of the Austrian Nationality Act:

A person shall be permitted to maintain Austrian citizenship

- if the maintenance is in the interest of the Republic of Austria, or
- if personal reasons are worth considering (the law does not regard all personal reasons an individual might deem worth considering as such, for example older relatives living in Austria, career prospects, reasons related to property issues etc.).

Only born Austrians may make use of this legal provision stated under b).³⁷²

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

In 2014, the European Parliament and the Council established the Asylum, Migration and Integration Fund (AMIF) with the Regulation 516/2015/EU.³⁷³ The AMIF serves for the period of seven years from 1 January 2014 to 31 December 2020 and is the main financial instrument with which the European Union supports initiatives in the member states that “promote the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and immigration.”³⁷⁴

At national level, in Austria, the Department III/5/a “Supporting Asylum and Returns” of the Federal Ministry for Internal Affairs [Referat III/5/a “Förderungen Asyl und Rückkehr“ des Bundesministeriums für Inneres, BMI] is the responsible authority for the management and control system of the AMIF in principal. However, for the implementation regarding the

³⁷² 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.

³⁷³ 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.

¹⁹⁸ <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en> accessed 12 June 2017.

measures for the integration of migrants is delegated to the Department VIII.3 of the Federal Ministry for Europe, Integration and Foreign Affairs.³⁷⁵

One of the specific objectives, laid down in Article 3(2)(b), of Regulation 516/2014/EU states that the AMIF aims to promote the effective integration of third-country nationals at national, local and regional levels. However, this does not include all third-country nationals, since, in the opinion of the Austrian Federal Ministry for Europe, Integration and Foreign Affairs asylum seekers are not included in the targeted group of the AMIF. Only third-country nationals lawfully residing in Austria with a long-term residence perspective are considered to be in the targeted group of the AMIF.³⁷⁶

The integration initiatives which are funded by the AMIF focus on the integration of persons with refugee or subsidiary protection status. Furthermore, initiatives supporting a stronger emphasis of the common values for a good social coexistence and projects helping to implement the 50-point-plan for the integration of persons with refugee and subsidiary protection status in Austria are supported financially.³⁷⁷

The total budget of the AMIF is EUR 3.137 billion. Thereof EUR 64.53 million are allocated to Austria for the period of seven years.³⁷⁸ 44% of the national funding in Austria is planned to be used for integration initiatives.³⁷⁹ In the 2017/2018 period, 48 projects were supported by the AMIF in Austria with EUR 6,67 million in total.³⁸⁰

Besides state and federal authorities, local public bodies, non-governmental organisations, humanitarian organisations, private and public law companies and education and research organisations can also be beneficiaries of the programmes. An example for a project funded partly by the AMIF are the Integration- and Education Centres in Salzburg by the Diakonie Flüchtlingsdienst GmbH where third country nationals are supported in finding housing, learning German and are counselled with regard to job applications. A list of all the selected initiatives for Austria which are supported by the AMIF can be found on the website of the

³⁷⁵ National Programme AMIF (13 April 2016), <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Projektfoerderung/AMIF_Austria_National_Programme.pdf> accessed 12 June 2017 [German].

³⁷⁶ Jelena Iljić, 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 12 June 2017 [German]. See also: <<https://www.bmeia.gv.at/integration/projektfoerderung/asyl-migrations-und-integrationsfonds/allgemeines-zum-amif/#>> accessed 12 June 2017 [German].

³⁷⁷ Jelena Iljić, 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 12 June 2017 [German].

³⁷⁸ <<https://www.bmeia.gv.at/integration/projektfoerderung/asyl-migrations-und-integrationsfonds/allgemeines-zum-amif/#>> accessed 12 June 2017 [German].

³⁷⁹ Jelena Iljić, 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 12 June 2017 [German].

³⁸⁰ Integration projects 2017-2018 <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Projektfoerderung/AMIF_2017-2018_Integrationsprojekte_GESAMT.pdf> accessed 12 June 2017 [German].

Austrian Federal Ministry for Europe, Integration, and Foreign Affairs [Bundeministerium für Europa, Integration und Äußeres, BMEIA].³⁸¹

Besides the AMIF, Austria has also been assisted through the European Social Fund (ESF) of the EU with regard to facilitating the integration of migrants into the labour market in particular. The programme focuses on contributing to creating jobs and strengthening social cohesion in Austria. One of the main challenges that are addressed through projects funded by the ESF is the improvement of education outcomes of vulnerable young people including those with a migrant background.³⁸²

The managing authority for the ESF is the Federal Ministry for Work, Social Issues and Consumer Protection [Bundesministerium für Arbeit, Soziales und Konsumentenschutz]. The total budget that the EU contributes to the program for Austrian projects is EUR 442 million.³⁸³

An example for a project partly funded partly by the ESF is the “start2work” project by Caritas Vorarlberg where refugees are supported through German courses and coaching for job application procedures.³⁸⁴

Conclusions

The Austrian asylum procedure has been heavily influenced by international and European Union law provisions, due to the direct applicability of the regulations imposed the European Union, for example, the Dublin Regulation. Moreover, paragraph 3 of the Asylum Act 2005 solely refers to Art 1 of the Geneva Refugee Convention with respect to the definition of who a refugee is. These constant links and interactions between international, European and national provisions complicates this legal field immensely.

Since 2014, the competent authority for asylum procedure is the Federal Office for Immigration and Asylum (BFA). Appeals in asylum procedures are possible to the Federal Administrative Court (BVwG), against whose decisions one can appealed in front of the Austrian Administrative Court and/or Constitutional Court. Whereas in 2015 Austria experienced an enormous increase in asylum applications, leading to 89,098 applications in total; the number has decreased in the past one and a half years. When comparing the period from January to June of 2016 2017, the number was cut in half.

The Austrian legislation concerning foreigners' right to vote is restrictive, as it excludes third country nationals from participating in the main elections of the general representative bodies. Additionally, only absolute minimum standards with respect to voting rights of EU citizens at the municipal level are provided. Taking into account that the acquisition of Austrian citizenship for migrants has a high financial barrier, due to high application fees and the requirement to

³⁸¹ Integrationprojects 2017-2018, <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Projektfoerderung/AMIF_2017-2018_Integrationsprojekte_GESAMT.pdf> accessed 12 June 2017 [German].

³⁸² Employment Austria – ESF <<http://ec.europa.eu/esf/main.jsp?catId=576&langId=en>> accessed 12 September 2017 [German].

³⁸³ ESF in Austria <http://www.esf.at/esf-in-oesterreich/> accessed 12 September 2017 [German].

³⁸⁴ start2work <<http://www.esf.at/projekt/start2work/>> accessed 12 September 2017 [German].

proof secure livelihood, it is apparent that migrants with low income are completely excluded from participating in national political decision-making.

On the other hand, migrant children do also benefit from the Austrian educational system, by giving them the opportunity to be accepted as an extraordinary pupil in the first two years as well as the legal obligation to offer additional courses. Moreover, school and university diplomas might get recognised, depending on the country of origin and the respective curricula. Through the AMIF and ESF the European Union financially supports projects in Austria to facilitate the integration of migrants.

To conclude, the legal framework which regulates migration and related issues is one of the most complex and unclear legal areas in Austria, due to constant changes and amendments of respective different laws, including regulations on immigration, residence, asylum and integration. For instance, the Asylum Act 2005 has been changed ten times; the Settlement and Residence Act has even been changed eleven times - only in the past five years. Furthermore, decisions of the Administrative and Constitutional Court have caused some of these changes.

Table of legislation

Bundes-Verfassungsgesetz, B-VG	Federal - Constitutional Act
<p>Artikel 10 Abs 1</p> <p>Bundessache ist die Gesetzgebung und die Vollziehung in folgenden Angelegenheiten: [.] 3. Regelung und Überwachung des Eintrittes in das Bundesgebiet und des Austrittes aus ihm; Ein- und Auswanderungswesen einschließlich des Aufenthaltsrechtes aus berücksichtigungswürdigen Gründen; Passwesen; Aufenthaltsverbot, Ausweisung und Abschiebung; Asyl; Auslieferung; [...]</p>	<p>Article 10 para 1</p> <p>The Federation has powers of legislation and execution in the following matters: [...] 3. regulation and control of entry into and exit from the federal territory; immigration and emigration including the right of abode for humanitarian reasons; passports; residence prohibition, expulsion and deportation; asylum; extradition; [...]</p>
<p>Artikel 144 Abs 1</p> <p>Der Verfassungsgerichtshof erkennt über Beschwerden gegen das Erkenntnis eines Verwaltungsgerichtes, soweit der Beschwerdeführer durch das Erkenntnis in einem verfassungsgesetzlich gewährleisteten Recht oder wegen Anwendung einer gesetzwidrigen Verordnung, einer gesetzwidrigen Kundmachung über die Wiederverlautbarung eines Gesetzes (Staatsvertrages), eines verfassungswidrigen Gesetzes oder eines rechtswidrigen Staatsvertrages in seinen Rechten verletzt zu sein behauptet.</p>	<p>Article 144 para 1</p> <p>The Constitutional Court pronounces on rulings by an Administrative Court in so far as the appellant alleges an infringement by the ruling of a constitutionally guaranteed right or on the score of an illegal ordinance, an illegal pronouncement on the republication of a law (treaty), an unconstitutional law, or an unlawful treaty.</p>
<p>Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten</p>	<p>Federal Act on the general rules for procedures at the federal office for immigration and asylum for the granting of international protection, the issuing of residence permits for extenuating circumstances reasons, deportation, tolerated stay and issuing of stay terminating measures, furthermore the issuing of documents for aliens, BFA Procedures Act (BFA-VG)</p>

<p>für Fremde geregelt werden (BFA-Verfahrensgesetz – BFA-VG)</p>	
<p>§16 Abs 1 Die Frist zur Erhebung einer Beschwerde gegen einen Bescheid des Bundesamtes beträgt [...] zwei Wochen, sofern nichts anderes bestimmt ist.</p>	<p>Paragraph 16 Section 1 Appeals against a negative first instance decision have to be submitted within 2 weeks, if nothing else is determined.</p>
<p>Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 - AsylG 2005)</p>	<p>Federal Act concerning the Granting of Asylum, (Asylum Act 2005 – AsylG)</p>
<p>§ 19 Abs 1 Ein Fremder, der einen Antrag auf internationalen Schutz gestellt hat, ist durch Organe des öffentlichen Sicherheitsdienstes nach Antragstellung oder im Zulassungsverfahren zu befragen. Diese Befragung dient insbesondere der Ermittlung der Identität und der Reiseroute des Fremden und hat sich nicht auf die näheren Fluchtgründe zu beziehen. Diese Einschränkung gilt nicht, wenn es sich um einen Folgeantrag (§ 2 Abs. 1 Z 23) handelt. Die Befragung kann in den Fällen des § 12a Abs. 1 sowie in den Fällen des § 12a Abs. 3, wenn der Folgeantrag binnen zwei Tagen vor dem bereits festgelegten Abschiebetermin gestellt wurde, unterbleiben.</p>	<p>Paragraph 19 Section 1 An alien who has filed an application for international protection shall be interrogated by agents of the public security service upon the filing of the application or during the admission procedure. Such interrogation shall be conducted in particular with a view to ascertaining the identity of the alien and the route followed by him and shall not refer to the specific reasons for his flight. That restriction shall not apply if the application concerned is a subsequent application (paragraph 2, section (1), subparagraph 23). The interrogation may be dispensed with in the cases referred to in paragraph 12a, section (1), and in the cases referred to in paragraph 12a, section (3), if the subsequent application was filed within two days prior to the date already fixed for deportation.</p>
<p>§ 18 Abs 1 Das Bundesamt und das Bundesverwaltungsgericht haben in allen Stadien des Verfahrens von Amts wegen darauf hinzuwirken, dass die für die Entscheidung erheblichen Angaben gemacht oder lückenhafte Angaben über die zur Begründung des Antrages geltend gemachten Umstände vervollständigt, die Beweismittel für diese Angaben bezeichnet oder die angebotenen Beweismittel ergänzt und überhaupt alle Aufschlüsse gegeben werden, welche zur Begründung des Antrages</p>	<p>Paragraph 18 Section 1 The Federal Office and the Federal Administrative Court shall endeavour ex officio at all stages of the procedure to ensure that information relevant to a decision is adduced or that incomplete information concerning the circumstances invoked in support of the application is supplemented, that the evidence to substantiate such information is specified or that the evidence offered is complete and, in general, that any explanations required in support of the application are provided. If</p>

<p>notwendig erscheinen. Erforderlichenfalls sind Beweismittel auch von Amts wegen beizuschaffen.</p>	<p>necessary, evidence is also to be procured ex officio.</p>
<p>§ 75 Abs 24 Auf Fremde, denen der Status des Asylberechtigten bereits vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 24/2016 zuerkannt wurde und auf Fremde, die einen Antrag auf internationalen Schutz vor dem 15. November 2015 gestellt haben, sind die §§ 2 Abs. 1 Z 15, 3 Abs. 4 bis 4b, 7 Abs. 2a und 51a in der Fassung des Bundesgesetzes BGBl. I Nr. 24/2016 nicht anzuwenden.</p> <p>Für diese Fremden gilt weiter § 2 Abs. 1 Z 15 in der Fassung vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 24/2016. §§ 17 Abs. 6 und 35 Abs. 1 bis 4 in der Fassung des Bundesgesetzes BGBl. I Nr. 24/2016 sind auf Verfahren, die bereits vor dem 1. Juni 2016 anhängig waren, nicht anzuwenden. Auf Verfahren gemäß § 35, die bereits vor dem 1. Juni 2016 anhängig waren, ist § 35 Abs. 1 bis 4 in der Fassung vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 24/2016 weiter anzuwenden. Handelt es sich bei einem Antragsteller auf Erteilung des Einreisetitels gemäß § 35 Abs. 1 um den Familienangehörigen eines Fremden, dem der Status des Asylberechtigten bereits vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 24/2016 rechtskräftig zuerkannt wurde, sind die Voraussetzungen gemäß § 60 Abs. 2 Z 1 bis 3 nicht zu erfüllen, wenn der Antrag auf Erteilung des Einreisetitels innerhalb von drei Monaten nach Inkrafttreten des Bundesgesetzes BGBl. I Nr. 24/2016 gestellt wurde. § 22 Abs. 1 gilt für Verfahren, die mit Ablauf des 31. Mai 2018 bereits anhängig waren, auch noch nach dem 31. Mai 2018</p>	<p>Paragraph 75 Section 24 Paragraph 2, section (1), subparagraph 15, paragraph 3, sections (4) to (4b), paragraph 7, section (2a), and paragraph 51a, as amended by federal law FLG I No. 24/2016, shall not apply to aliens who have already been granted asylum status prior to the entry into force of federal law FLG I No. 24/2016 or to aliens who have filed an application for international protection prior to 15 November 2015.</p> <p>Paragraph 2, section (1), subparagraph 15, in the version existing prior to the entry into force of federal law FLG I No. 24/2016, shall continue to apply to such aliens. Paragraph 17, section (6), and paragraph 35, section (1) to (4), as amended by federal law FLG I No. 24/2016, shall not apply to procedures which were already pending prior to 1 June 2016. Article 35, sections (1) to (4), in the version existing prior to the entry into force of federal law FLG I No. 24/2016, shall continue to apply to procedures pursuant to paragraph 35 which were already pending prior to 1 June 2016. If, in the case of an application for the granting of entry authorization pursuant to paragraph 35, section (1), the applicant is a family member of an alien who had already been granted asylum status by final ruling prior to the entry into force of federal law FLG I No. 24/2016, it shall not be necessary to meet the requirements set out in paragraph 60 (2) 1 to 3 if the application for the granting of entry authorization was filed within three months following the entry into force of federal law FLG I No. 24/2016. Section (1) of paragraph</p>

weiter.	22 shall apply to procedures which were already pending at midnight on 31 May 2018 and shall continue to apply, even after 31 May 2018.
<p>§ 3 Abs 1 Einem Fremden, der in Österreich einen Antrag auf internationalen Schutz gestellt hat, ist, soweit dieser Antrag nicht bereits gemäß §§ 4, 4a oder 5 zurückzuweisen ist, der Status des Asylberechtigten zuzuerkennen, wenn glaubhaft ist, dass ihm im Herkunftsstaat Verfolgung im Sinne des Art. 1 Abschnitt A Z 2 Genfer Flüchtlingskonvention droht.</p>	<p>Paragraph 3 Section 1 An alien who in Austria has filed an application for international protection shall, unless that application is already to be rejected pursuant to article 4, 4a or 5, be granted asylum status if it is satisfactorily established that the alien would be at risk of persecution in the country of origin as defined in article 1 A (2) of the Geneva Convention on Refugees.</p>
<p>§ 7 Abs 1 Der Status des Asylberechtigten ist einem Fremden von Amts wegen mit Bescheid abzuerkennen, wenn</p> <ol style="list-style-type: none"> 1. ein Asylausschlussgrund nach § 6 vorliegt; 2. einer der in Art. 1 Abschnitt C der Genfer Flüchtlingskonvention angeführten Endigungsgründe eingetreten ist oder 3. der Asylberechtigte den Mittelpunkt seiner Lebensbeziehungen in einem anderen Staat hat. 	<p>Paragraph 7 Section 1 An alien's asylum status shall be withdrawn ex officio by administrative decision if:</p> <ol style="list-style-type: none"> 1. a reason for ineligibility for asylum status as referred to in article 6 exists; 2. any of the grounds set forth in the cessation clauses in article 1, section C, of the Geneva Convention on Refugees has arisen or 3. the person having entitlement to asylum has the centre of his vital interests in another country.
<p>§ 6 Ein Fremder ist von der Zuerkennung des Status eines Asylberechtigten ausgeschlossen, wenn</p> <ol style="list-style-type: none"> 1. und so lange er Schutz gemäß Art. 1 Abschnitt D der Genfer Flüchtlingskonvention genießt; 2. einer der in Art. 1 Abschnitt F der Genfer Flüchtlingskonvention genannten Ausschlussgründe vorliegt; 3. aus stichhaltigen Gründen angenommen werden kann, dass der Fremde eine Gefahr für die Sicherheit der Republik Österreich darstellt, oder 4. er von einem inländischen Gericht wegen eines besonders schweren Verbrechens 	<p>Paragraph 6 An alien shall be rendered ineligible for asylum status if:</p> <ol style="list-style-type: none"> 1. and for as long as he enjoys protection pursuant to article 1, section D, of the Geneva Convention on Refugees; 2. any of the grounds set forth in the exclusion clauses in article 1, section F, of the Geneva Convention on Refugees exists; 3. there are valid reasons for considering that the alien constitutes a danger to the security of the Republic of Austria or 4. he has been convicted, by final judgment of an Austrian court, of a particularly serious crime and, by reason of such punishable act, represents a danger to the

<p>rechtskräftig verurteilt worden ist und wegen dieses strafbaren Verhaltens eine Gefahr für die Gemeinschaft bedeutet. Einer Verurteilung durch ein inländisches Gericht ist eine Verurteilung durch ein ausländisches Gericht gleichzuhalten, die den Voraussetzungen des § 73 StGB, BGBl. Nr. 60/1974, entspricht.</p> <p>Abs 2 Wenn ein Ausschlussgrund nach Abs. 1 vorliegt, kann der Antrag auf internationalen Schutz in Bezug auf die Zuerkennung des Status des Asylberechtigten ohne weitere Prüfung abgewiesen werden. § 8 gilt.</p>	<p>community. A conviction by a foreign court which meets the requirements set out in article 73 of the Penal Code, FLG No. 60/1974, shall be deemed equivalent to a conviction by an Austrian court.</p> <p>Section 2 In cases where a reason for ineligibility as referred to in paragraph (1) above exists, an application for international protection may be dismissed in regard to the granting of asylum status without further examination. Article 8 shall apply.</p>
<p>§ 9 Abs 1</p> <p>Einem Fremden ist der Status eines subsidiär Schutzberechtigten von Amts wegen mit Bescheid abzuerkennen, wenn</p> <ol style="list-style-type: none"> 1. die Voraussetzungen für die Zuerkennung des Status des subsidiär Schutzberechtigten (§ 8 Abs. 1) nicht oder nicht mehr vorliegen; 2. er den Mittelpunkt seiner Lebensbeziehungen in einem anderen Staat hat oder 3. er die Staatsangehörigkeit eines anderen Staates erlangt hat und eine Zurückweisung, Zurückschiebung oder Abschiebung des Fremden in seinen neuen Herkunftsstaat keine reale Gefahr einer Verletzung von Art. 2 EMRK, Art. 3 EMRK oder der Protokolle Nr. 6 oder Nr. 13 zur Konvention oder für ihn als Zivilperson keine ernsthafte Bedrohung des Lebens oder der Unversehrtheit infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen Konfliktes mit sich bringen würde. 	<p>Paragraph 9 Section 1</p> <p>An alien's subsidiary protection status shall be withdrawn ex officio by administrative decision if:</p> <ol style="list-style-type: none"> 1. the conditions required for the granting of subsidiary protection status (paragraph 8(1)) do not or no longer exist; 2. the alien has the centre of his vital interests in another country or 3. the alien has obtained the nationality of another State and his rejection at the border, forcible return or deportation to his new country of origin would not constitute a real risk of violation of article 2 or article 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would not represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict.
<p>§ 32 Abs 1</p> <p>Ein Fremder, der einer Erstaufnahmestelle am Flughafen vorgeführt worden ist, kann, soweit und solange die Einreise nicht gestattet wird, dazu verhalten werden, sich zur Sicherung einer Zurückweisung an einem bestimmten</p>	<p>Paragraph 32 Section 1</p> <p>An alien who has been transferred to an initial reception centre at the airport may, for the purpose of guaranteeing his rejection at the border, be required to remain at a specific place in the border control area or in the area</p>

<p>Ort im Grenzkontrollbereich oder im Bereich dieser Erstaufnahmestelle aufzuhalten (Sicherung der Zurückweisung); er darf jederzeit ausreisen.</p>	<p>of this initial reception centre if and for as long as his entry is not permitted (measure to guarantee rejection at the border); he shall be entitled to leave Austria at any time.</p>
<p>§ 63 Abs 1 Einem Asylwerber ist jederzeit Gelegenheit zu geben, sich an den Hochkommissär der Vereinten Nationen für Flüchtlinge zu wenden. Abs 2 Der Hochkommissär der Vereinten Nationen für Flüchtlinge ist unverzüglich zu verständigen, 1. von der Einleitung eines Verfahrens über einen Antrag auf internationalen Schutz; 2. wenn gegen einen Asylwerber ein Verfahren zur Zurückweisung, Zurückschiebung, Ausweisung oder Rückkehrentscheidung, Anordnung zur Außerlandesbringung, Abschiebung oder Aberkennung des Status des Asylberechtigten geführt wird.</p>	<p>Paragraph 63 Section 1 An asylum-seeker shall be given an opportunity at any time to have recourse to the United Nations High Commissioner for Refugees. Section 2 The United Nations High Commissioner for Refugees shall be notified without delay: 1. of the initiation of any procedure relating to an application for international protection; 2. if a procedure is conducted against an asylum-seeker with a view to rejection at the border, forcible return or expulsion or return decision or to the imposition of an order for removal from the country, deportation order or asylum status withdrawal ruling.</p>
<p>§ 14 Abs 1 Einem Asylwerber, dessen Beschwerde gegen eine mit einer zurückweisenden oder abweisenden Entscheidung des Bundesamtes verbundenen Rückkehrentscheidung gemäß § 52 FPG oder Anordnung zur Außerlandesbringung gemäß § 61 FPG keine aufschiebende Wirkung zukam, ist an der Grenzübergangsstelle unter Vorlage der Beschwerdeentscheidung die Wiedereinreise zu gestatten, wenn seiner Beschwerde Folge gegeben wurde und er seine Verfahrensidentität nachweisen kann. Sein Verfahren ist, wenn das Asylverfahren nicht mit der Beschwerdeentscheidung rechtskräftig entschieden wurde, zuzulassen.</p>	<p>Paragraph 14 Section 1 An asylum-seeker whose appeal against a repatriation decision pursuant to paragraph 52 of the Aliens' Police Act or an order for removal from the country pursuant to paragraph 61 of the Aliens' Police Act issued in conjunction with a rejecting or dismissing decision by the Federal Office did not have suspensory effect shall be allowed to re-enter at the border crossing point, by presentation of the appeal decision, if his appeal was accepted and he can furnish proof of his procedural identity. The asylum-seeker's procedure shall be admitted if a final decision on the asylum procedure was not rendered with the appeal decision.</p>

<p>Europäische Menschenrechtskonvention, EMRK</p>	<p>European Convention on Human Rights, ECHR</p>
<p>Artikel 8 Abs 1 Jedermann hat Anspruch auf Achtung seines Privat- und Familienlebens, seiner Wohnung und seines Briefverkehrs. Abs 2 Der Eingriff einer öffentlichen Behörde in die Ausübung dieses Rechts ist nur statthaft, insoweit dieser Eingriff gesetzlich vorgesehen ist und eine Maßnahme darstellt, die in einer demokratischen Gesellschaft für die nationale Sicherheit, die öffentliche Ruhe und Ordnung, das wirtschaftliche Wohl des Landes, die Verteidigung der Ordnung und zur Verhinderung von strafbaren Handlungen, zum Schutz der Gesundheit und der Moral oder zum Schutz der Rechte und Freiheiten anderer notwendig ist.</p>	<p>Article 8 Section 1 Everyone has the right to respect for his private and family life, his home and his correspondence. Section 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>
<p>Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985 – StbG)</p>	<p>Federal Law concerning Austrian nationality, (Nationality Act 1985, StbG)</p>
<p>§ 6 1. Abstammung (Legitimation) (§§ 7, 7a und 8); (BGBl. Nr. 202/1985, Art. I Z 2) 2. Verleihung (Erstreckung der Verleihung) (§§ 10 bis 24) [...]</p>	<p>Paragraph 6 Nationality shall be acquired by 1. Descent (legitimation) (paragraphs 7, 7a and 8); 2. Naturalization (extension of naturalization) (paragraphs 10 to 24) [...]</p>
<p>§ 7 Abs 1 Kinder erwerben die Staatsbürgerschaft mit dem Zeitpunkt der Geburt, wenn in diesem Zeitpunkt 1. die Mutter gemäß § 143 des Allgemeinen Bürgerlichen Gesetzbuches – ABGB, JGS 946/1811, Staatsbürgerin ist, 2. der Vater gemäß § 144 Abs. 1 Z 1 ABGB Staatsbürger ist, 3. der Vater Staatsbürger ist und dieser die Vaterschaft gemäß § 144 Abs. 1 Z 2 ABGB anerkannt hat, oder</p>	<p>Paragraph 7 Section 1 Children shall acquire nationality at the time of their birth if at that time: 1. the mother, as defined in paragraph 143 of the Civil Code, Compendium of Laws and Regulations (JGS) No. 946/1811, is a national; 2. the father, as defined in article 144 (1) 1 of the Civil Code, is a national; 3. the father is a national and he has acknowledged paternity in accordance with paragraph 144 (1) 2 of the Civil Code or</p>

<p>4. der Vater Staatsbürger ist und dessen Vaterschaft gemäß § 144 Abs. 1 Z 3 ABGB gerichtlich festgestellt wurde.</p>	<p>4. the father is a national and his paternity has been judicially declared in accordance with paragraph 144 (1) 3 of the Civil Code.</p>
<p>§ 7a Abs 1 Ein minderjähriger, lediger Fremder, der unehelich geboren wurde und die Staatsbürgerschaft nicht bereits gemäß § 7 erworben hat, erwirbt die Staatsbürgerschaft im Zeitpunkt der Eheschließung seiner Eltern oder im Zeitpunkt der Ehelicherklärung, wenn sein Vater in diesem Zeitpunkt Staatsbürger ist oder, falls er vorher verstorben ist, am Tag seines Ablebens Staatsbürger war.</p>	<p>Paragraph 7a Section 1 An under-age unmarried alien born out of wedlock who has not already acquired nationality pursuant to paragraph 7 shall acquire nationality at the time of his parents' marriage or at the time of the declaration of legitimacy if at that time his father is a national or if, in the event of his earlier death, he was a national at the date of his death.</p>
<p>§ 10 Abs 1 Die Staatsbürgerschaft darf einem Fremden, soweit in diesem Bundesgesetz nicht anderes bestimmt ist, nur verliehen werden, wenn</p> <ol style="list-style-type: none"> 1. er sich seit mindestens zehn Jahren rechtmäßig und ununterbrochen im Bundesgebiet aufgehalten hat und davon zumindest fünf Jahre niedergelassen war; 2. er nicht durch ein inländisches oder ausländisches Gericht wegen einer oder mehrerer Vorsatztaten rechtskräftig zu einer Freiheitsstrafe verurteilt worden ist, die der Verurteilung durch das ausländische Gericht zugrunde liegenden strafbaren Handlungen auch nach dem inländischen Recht gerichtlich strafbar sind und die Verurteilung in einem den Grundsätzen des Art. 6 der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK), BGBl. Nr. 210/1958, entsprechendem Verfahren ergangen ist; 3. er nicht durch ein inländisches Gericht wegen eines Finanzvergehens rechtskräftig zu einer Freiheitsstrafe verurteilt worden ist; 4. gegen ihn nicht wegen des Verdachtes einer mit Freiheitsstrafe bedrohten Vorsatztat oder 	<p>Paragraph 10 Section 1 Except as otherwise provided for in the present federal law, nationality may be granted to an alien only if:</p> <ol style="list-style-type: none"> 1. The alien has lawfully resided in the federal territory for an uninterrupted period of at least ten years, including at least five years as a settled resident; 2. The alien has not been sentenced by a final judgement of a domestic or foreign court to a term of imprisonment for the commission of one or more wilful offences, the punishable acts on which the sentence of the foreign court is based are also punishable under domestic law, and the sentence has been pronounced in proceedings conforming to the principles set out in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), FLG No. 210/1958; 3. The alien has not been sentenced by a final decision of a domestic court to a term of imprisonment for a fiscal offence; 4. No criminal proceedings are pending in a domestic court against the alien on suspicion

<p>eines mit Freiheitsstrafe bedrohten Finanzvergehens bei einem inländischen Gericht ein Strafverfahren anhängig ist;</p> <p>5. durch die Verleihung der Staatsbürgerschaft die internationalen Beziehungen der Republik Österreich nicht wesentlich beeinträchtigt werden;</p> <p>6. er nach seinem bisherigen Verhalten Gewähr dafür bietet, dass er zur Republik bejahend eingestellt ist und weder eine Gefahr für die öffentliche Ruhe, Ordnung und Sicherheit darstellt noch andere in Art. 8 Abs. 2 EMRK genannte öffentliche Interessen gefährdet;</p> <p>7. sein Lebensunterhalt hinreichend gesichert ist oder der Fremde seinen Lebensunterhalt aus tatsächlichen, von ihm nicht zu vertretenden Gründen dauerhaft nicht oder nicht in ausreichendem Maße sichern kann und</p> <p>8. er nicht mit fremden Staaten in solchen Beziehungen steht, dass die Verleihung der Staatsbürgerschaft die Interessen der Republik schädigen würde.</p>	<p>of the commission of a wilful offence liable to a sentence of imprisonment or a fiscal offence liable to a sentence of imprisonment;</p> <p>5. The international relations of the Republic of Austria would not be significantly impaired by the granting of nationality;</p> <p>6. On the basis of his or her conduct hitherto, the alien guarantees that he or she has a positive attitude towards the Republic and neither represents a danger to law and order and public safety nor endangers other public interests as stated in article 8, section 2, of the European Convention on Human Rights;</p> <p>7. The alien's livelihood is sufficiently ensured or the alien is unable to ensure his livelihood on a long-term basis or to an adequate extent for practical reasons not attributable to him and</p> <p>8. The alien does not have relations with foreign States of such a nature that the granting of nationality would be detrimental to the interests of the Republic.</p>
<p>§ 11a Abs 1</p> <p>Einem Fremden ist nach einem rechtmäßigen und ununterbrochenen Aufenthalt von mindestens sechs Jahren im Bundesgebiet und unter den Voraussetzungen des § 10 Abs. 1 Z 2 bis 8, Abs. 2 und 3 die Staatsbürgerschaft zu verleihen, wenn</p> <p>1. sein Ehegatte Staatsbürger ist und bei fünfjähriger aufrechter Ehe im gemeinsamen Haushalt mit ihm lebt;</p> <p>2. die eheliche Lebensgemeinschaft der Ehegatten nicht aufgehoben ist und</p> <p>3. er nicht infolge der Entziehung der Staatsbürgerschaft nach §§ 32 oder 33 Fremder ist.</p>	<p>Paragraph 11a Section 1</p> <p>An alien shall, subject to the requirements set out in section (1), subparagraphs 2 to 8, section (2) and section (3) of paragraph 10, be granted nationality following an uninterrupted period of lawful residence of at least six years in the federal territory if:</p> <p>1. The alien's spouse is an Austrian national and has lived under the same roof as the alien in a legally valid marriage of five years' duration;</p> <p>2. the conjugal partnership of the spouses has not been dissolved and</p> <p>3. He or she is not an alien by reason of deprivation of nationality pursuant to paragraph 32 or 33.</p>

<p>§ 28 Abs 1</p> <p>Einem Staatsbürger ist für den Fall des Erwerbes einer fremden Staatsangehörigkeit (§ 27) die Beibehaltung der Staatsbürgerschaft zu bewilligen, wenn</p> <p>1. sie wegen der von ihm bereits erbrachten und von ihm noch zu erwartenden Leistungen oder aus einem besonders berücksichtigungswürdigen Grund im Interesse der Republik liegt, und – soweit Gegenseitigkeit besteht – der fremde Staat, dessen Staatsangehörigkeit er anstrebt, der Beibehaltung zustimmt sowie die Voraussetzungen des § 10 Abs. 1 Z 2 bis 6 und 8 sinngemäß erfüllt sind, oder</p> <p>2. es im Fall von Minderjährigen dem Kindeswohl entspricht.</p>	<p>Paragraph 28 Section 1</p> <p>An Austrian national shall be permitted to retain his or her nationality in the case of acquisition of foreign citizenship (article 27) if:</p> <p>1. the retention of nationality is in the interests of the Republic by reason of that Austrian national's actual or expected achievements or on grounds particularly deserving of consideration and, insofar as a reciprocal arrangement exists, the foreign country whose citizenship the Austrian national is applying for consents to the retention of his or her nationality and the requirements set out in section (1), subparagraphs 2 to 6 and 8 of paragraph 10 are satisfied <i>mutatis mutandis</i>, or</p> <p>2. In the case of under-age persons, it is in the child's best interests.</p>
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Introduction

During the initial years of its independence, Azerbaijan underwent major challenges, among which occupation of 20% of its territories by the Republic of Armenia engendered massive flow of people within the region. Subsequently, about a million Azerbaijani citizens converted into refugees and internally displaced persons. The economy of the country, gradually, has become a subject to the speedy growth leading to Azerbaijan to become both a country of departure and destination. Furthermore, convenient geographical location of the country has brought about the acceleration of transit migration. All the mentioned factors have contributed to formulation of diverse migration issues among which the integration of migrants has had a pivotal role.

Hence, the report submitted by the ELSA Azerbaijan encapsulates the legislation of the country on rights of migrants in the fields of healthcare, education, political and civic participation. It also scrutinizes the cooperation initiatives of Azerbaijan with the organizations, such as the EU, UNHCR, IOM, etc. to ameliorate the institutional issues regarding the mentioned matter. In the end, report generalizes the main findings, reforms and statistics on integration schemes.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Description of the National Regulations Governing Asylum

The right of asylum is the legal opportunity granted by the state to each person to enter and reside on its territory because of the persecution of that person for political and other reasons in the state of which he is a citizen. The international community is responsible for ensuring the basic rights of an asylum seeker, since they no longer enjoy the protection of any state. This responsibility is formalised in the 1951 UN Convention relating to the status of refugees (and its 1967 Protocol), which has also been signed by the Republic of Azerbaijan. In addition to this Convention, article 14 (1) of the Universal Declaration of Human Rights (to which Azerbaijan is a party state) further provides that “everyone has the right to seek and enjoy in other countries asylum from persecution”³⁸⁵ Moreover, the Republic of Azerbaijan has ratified the 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.³⁸⁶ Azerbaijan has committed itself to the terms of the Geneva Convention of 1951, which is reflected in the Law on the Status of Refugees and Internally Displaced Persons (IDPs) of 21 May 1999 and the Presidential Decree on the Rules for Examination of Applications of

³⁸⁵ International Justice Resource Center, ‘*Asylum & rights of the refugees*’, <<http://www.ijrcenter.org/refugee-law/>> July 15 2017

³⁸⁶ Médecins Sans Frontières, ‘*Ratified conventions by Azerbaijan*’, <<http://guide-humanitarian-law.org/content/conventions/by-country/14-azerbaijan/>> July 16 2017

Refugee Status - National RSD Procedure (November 13 2000) Both the law and the decree describe the procedures and requirements for asylum applications in Azerbaijan.

Although asylum seekers shall enter, like all entrants to Azerbaijan, through regular, established border checkpoints, article 5 of the Law on Refugees and IDPs states that refugees who do not enter the country at these regular border checkpoints "...shall be exempted from amenability envisaged in the legislation..." According to article 11 of the Law on the status of Refugees and IDPs, applicants for refugee status have the right to temporary residence on the territory of Azerbaijan; use of an interpreter (free of charge); temporary employment; obtain medical care; use of living space at the temporary accommodation settlement, which is provided until the refugee status granting procedure is completed; freely practice his/her religion; be in contact with the UNHCR. Article 3 of the Law of the Republic of Azerbaijan on Refugees and IDPs of May 21 1999 is about granting political asylum in the Republic of Azerbaijan to the foreigners and stateless persons. Therefore, based on article 3, we can note the following: Political asylum shall be granted to the foreigners and stateless persons in accordance with article 70, part 1 and article 109, point 21 of the Constitution of the Republic of Azerbaijan.³⁸⁷ Azerbaijan Republic grants political refuge to foreign citizens and stateless persons in accordance with recognized international legal standards. The President of the Azerbaijan Republic settles questions concerning granting political asylum.³⁸⁸

1.2 Procedure for Granting Asylum and Who is Responsible?

The main competent agency for the granting of asylum is State Migration Service, whose capacity includes the issues of applications regarding refugee status. Determination of Refugee Status Department is one of the major branches of the mentioned institution (see Question 3.1. for more detailed information about State Migration Service) Since the Republic of Azerbaijan is a member state to the 1951 Convention Relating to the Status of Refugees, it has incorporated the "refugee" definition into its legislation. Hence, under the Azerbaijani law, refugee is a non-Azerbaijani citizen who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. Article 9 of the Law of the Republic of Azerbaijan on Refugees and IDPs of May 21 1999 refers to the bodies dealing with granting and depriving the refugee and IDP status. Therefore, based on article 3, we can note the following: decisions on granting the refugee and IDP (person displaced within the country) status and depriving the refugee status shall be made by the appropriate executive authorities of the Republic of Azerbaijan.³⁸⁹ A favorable resolution

³⁸⁷ *Law of the Republic of Azerbaijan on "Refugees and IDPs" 1999 [Qaçqınların və məcburi köçkünlərin (ölkə daxilində köçürülmüş şəxslərin) statusu haqqında Azərbaycan Respublikasının Qanunu] [Azerbajani]*

³⁸⁸ *Constitution of the Republic of Azerbaijan 1995 [Azərbaycan Respublikasının Konstitusiyası] [Azerbajani]*

³⁸⁹ *Law of the Republic of Azerbaijan on "The Status of Refugees and IDPs" 1999 [Qaçqınların və məcburi köçkünlərin (ölkə daxilində köçürülmüş şəxslərin) statusu haqqında Azərbaycan Respublikasının Qanunu] [Azerbajani]*

of the application results in the recognition of refugee status for the applicant and his or her relatives. Successful applicants and their families also receive a 'Refugee Card' and, in compliance with the 1951 Convention Relating to the Status of Refugees, are provided with travel documents allowing them to travel beyond the borders of Azerbaijan. Refugee status will not be granted if: a) as established by international legislation, the applicant is held guilty of committing a crime or a military crime against peace or humanity; b) the applicant for refugee status has committed a serious crime of a non-political character before arriving to Azerbaijan; c) the person has been found guilty of committing acts against the objectives and principles of the UN.

1.2.1. Application procedure

Foreigners and stateless persons intending to be granted a refugee status in the Republic of Azerbaijan should directly or via the government agencies (Ministry of Internal Affairs, State Border Service, local executive bodies) apply to State Migration Service of the Republic of Azerbaijan in either border checkpoints, penitentiary institutions or in other territorial areas of Azerbaijan. In case such persons do not possess any relevant documents confirming identification or grounds for a legal entry to the territory of the Republic of Azerbaijan, identification and dactyloscopy procedures should be conducted on the account of the principles of the international law. Immediate information on such persons is provided for the Ministry of Foreign Affairs, afterwards. The Ministry of Internal Affairs, State Border Service and local executive bodies deliver the application of refugee status to State Migration Service of the Republic Azerbaijan within three working days. A person filing the application form on the refugee status should indicate the incentives behind the wish of being granted such status, note personal details, such as, country of origin, place of birth and marital status by mentioning the information on both himself/herself and family members and hand the travel and identification documents over the State Migration Service. However, absence of the aforementioned documents does not adversely affect the decision on the granting of refugee status. If the individual is not able to apply himself/herself due to health conditions and other reasons, plenipotentiary may present the application together with medical documents. The individual is voluntarily placed in the detention centers of illegal immigrants of State Migration Service until the issue of granting refugee status is solved in accordance with the provisions of Migration Code of the Republic of Azerbaijan. The person applying to get a refugee status should be provided with the information on the Law on the status of refugees and IDPs and the Presidential Decree on the Rules for Examination of Applications of Refugee Status by the agency which he/she delivered the application. Then, State Migration Service registers the application and makes a decision of approval or denial on the examination of application according the outcomes brought about after the interview held with the applicant. The positive decision on the examination of application is considered a legal ground for the person to temporarily stay in the territory of the Republic of Azerbaijan. Information on the people being granted a refugee status is included in the Unified Migration Information Database of State Migration Service.

In case the decision on the examination of application is negative, State Migration Service and its local agencies deliver the written notification to the individual within 5 days stating the details on decision and method of appeal to it. In case decision on the examination of application is positive, State Migration Service presents a temporary certificate of identification (until the time when application is scrutinized) to the individual and his/her family members within 24 hours. Information on the family members under 16 years is mentioned in the certificate of one of the parents and when there are no parents, the certificate of guardian or one of the relatives older than 18 and took the upbringing, behavior and guardianship responsibility of the individual in a voluntary way includes such information. Individuals under 16 years coming to Azerbaijan with an intention of getting refugee status are provided with a temporary certificate of identification in case there are neither parents nor guardians. Individual putting in an application for refugee status (with his/her family members) shall participate in compulsory medical review as well as sanitary regulation, vaccination and laboratory examination in treatment-prophylactic institutions when needed. Such examinations carry no charge of fee. Then, individual applying for a refugee status is invited to the interview held by the competent officers of State Migration Service. The interview is conducted on an individual basis and its content is not downright. In the course of the interview, individual should provide officers with detailed information on the reasons of application, his/her previous residence places, travel routes, motives behind resting in the territory of other states, whether the individual has applied for a refugee status in those countries and other necessary facts. In case the individual refuses to inform officers about his/her personal details or consciously provides them with false information, examination of application is terminated within different levels and the granting of refugee status is denied under the legislation of the Republic of Azerbaijan. All the information on individual and his/her family members, as well as the data spoken out during interview are depicted in the inquiry paper. The application, questionnaires, inquiry papers, medical document on prophylactic examination and other necessary documents are considered collection of documents on personal paper. State Migration Service, then, looks through the personal paper of the individual and sends the copy of it to the Ministry of Internal Affairs within a month. The latter conducts investigation on the personal paper and deliver the relevant information to the State Migration Service within a month, as well. The decision of granting or not granting refugee status is made by State Migration Service within three months since the application was registered. In case the decision on granting refugee status is negative, written notification on the right to appeal on the base of administrative and judicial procedure should be delivered within 5 days. Afterwards, State Migration Service provides UNHCR Azerbaijan with a copy of relevant decision no later than 5 days. Then, the individual putting in an application for refugee status and his/her family members are supplied with travel document giving them right of movement in territories other than those of the Republic of Azerbaijan. Duties are charged due to presentation of refugee card and travel document under the Law on the State Duties of the Republic of Azerbaijan. When refugee card is presented to the asylum seekers, temporary certificate is taken back and included in the personal paper of an individual.³⁹⁰

³⁹⁰ The Rules for Examination of Applications of Refugee Status 2000 [Qaçqın statusu verilməsi haqqında vəsatətə

1.2.2. Right to appeal

71st article of the Law of the Republic of Azerbaijan on Administrative Proceedings, furthermore, indicates the right of stakeholders to appeal of administrative act or refusal of issuance of the administrative act. Under the 71.3.2nd article of the same law, individuals' appeal to the higher administrative body or institution having competence to examine the appeal might be on the basis of objection regarding the administrative act. The application shall be complied in a written form and cover the name and the address of administrative body to which appeal is referred; surname, name, patronymic, residence address, procedural situation of the individual (name and address of legal person); administrative act or action (inaction) on which the appeal is based; requirements of the individual putting in an application and their grounds; date of the appeal; signature of the individual. The appeal is scrutinized by the higher administrative body within a month and the decision is taken. If the competent institution has not made any decision regarding the appeal or in case of objection to the decision again, individual has a right to appeal to the Court.³⁹¹

1.2.3. Humanitarian protection

Furthermore, as all the refugees have a right to humanitarian protection³⁹², the procedure of granting asylum and such protection is identical. The humanitarian protection department of the State Committee of the Republic of Azerbaijan on affairs with refugees and IDPs ensures the implementation of regulations on provision of refugees and IDPs with food and other kinds of humanitarian protection as well as collects information on registration, age, gender, education and life standards of refugees and IDPs. Department also examines the transparent and fair share of the protection.³⁹³ The Republic of Azerbaijan delivers its assistance to the refugees from different parts of the world through the Azerbaijan International Development Agency (AIDA) – which, was established within the Ministry of Foreign Affairs of the Republic of Azerbaijan in 2011 to supply social and humanitarian protection, and among its programmes, those contributing to the meet of financial and basic needs of refugees with origins of Palestine (2012 and 2014) and Syria (refugees residing in Jordan), should be specifically stressed.³⁹⁴

baxılması Qaydası [Azerbaijani]

³⁹¹ Law of the Republic of Azerbaijan on the Administrative Proceedings 2005 [İnzibati icraat haqqında Azərbaycan Respublikasının Qanunu]

³⁹² Law of the Republic of Azerbaijan on “The Status of Refugees and IDPs” 1999 [Qaçqınların və məcburi köçkünlərin (ölkə daxilində köçürülmüş şəxslərin) statusu haqqında Azərbaycan Respublikasının Qanunu] [Azerbaijani]

³⁹³ State Committee of the Republic of Azerbaijan on affairs with refugees and IDPs, ‘Mərkəzi aparat’, < <http://www.refugees-idps-committee.gov.az/az/pages/12.html> > accessed September 12 2017 [Azerbaijani]

³⁹⁴ Ministry of Foreign Affairs, Azerbaijan International Development Agency, ‘Proqramlar’, < <http://aida.mfa.gov.az/?options=content&id=2> > accessed 20 September 2017 [Azerbaijani]

1.2.4. Exclusion and revocation of the refugee status. Limitation of right to entry and re-entry

The Law of the Republic of Azerbaijan on the status of the refugees and IDPs endorses the provisions on exclusion and revocation of the protection, as well. An individual will be excluded from the refugee status, if he/she: a) reutilises the protection of country of his/her nationality or permanent residence voluntarily; b) reacquires the citizenship which was voluntarily revoked (on the basis of individual's request) before; c) acquires the citizenship of the Republic of Azerbaijan or any other state and utilises the protection of new country of nationality; d) resettles in the country which was left on the grounds of protection or which the individual resided outside; e) cannot refuse the protection of country of nationality if the grounds on the recognition of refugee status no longer exist; f) is a stateless person and can return to the country of former habitual residence nationality if the grounds on the recognition of refugee status no longer exist. In addition to that, annulment of the refugee status shall be implemented if the refugee: a) provokes fear to the state security or public order; b) was granted this status on the basis of intentional presentation of false information or documents; c) due to serious/particularly serious crimes committed is subject to imprisonment for certain period/life imprisonment based on the binding decision of the Court. Regarding the removal and re-entry of foreigners/stateless persons into Azerbaijan, the Migration Code states that the following grounds might lead to limitation of entry into territory of the Republic: a) on the basis of requirements by national security, security of public order or protection of rights and interests of citizens of the Republic of Azerbaijan or other individuals; b) existence of information on commission of crimes against peace and humanity, terrorism, financing terrorism and war crimes or membership to a certain organized criminal group; c) sentence due to crimes against the citizens or interests of the Republic of Azerbaijan (if conviction was not withdrawn or remunerated); d) removal from the territory of the Republic of Azerbaijan before (if the limitation period didn't cease); e) declaration as a *persona non-grata* (diplomatic term on undesirable persons whose entry into certain territory is prohibited); f) non-compliance with the purposes of visiting the country stated in previous visits to the Republic of Azerbaijan; g) false information about himself/herself or purpose his/her visit in application on visiting the country; h) being subject to the administrative responsibility twice or more than that due to non-compliance with the migration legislation of the Republic of Azerbaijan. Moreover, foreigners/stateless persons attempting to cross the borders of the Republic of Azerbaijan without passport, visa or with non-reliable passport and other documents are not allowed to enter the territory. If the above-mentioned grounds for limitation of entry do not exist, same rules on entry to the territory of Republic of Azerbaijan apply to re-entry, as well.

2. How does your national law regulate immigration from EU member states and non-EU states?

The main goal of national legislation of the Republic of Azerbaijan on migration is to maintain both bilateral and international cooperation with the other states for combating illegal migration, regulating and forecasting migration processes as well as developing migration management system.

Azerbaijan is a member of several international organizations, such as United Nations (UN), Commonwealth of Independent States (CIS), and International Organization of Migration (IOM). It also cooperates with the EU and UNCHR. Azerbaijan carries out joint projects with them to achieve development in the migration issues.³⁹⁵ The cooperation with such organizations helps to harmonize the national law of Azerbaijan with international legal agreements on migration.

3rd article of the Migration Code includes the definitions of “foreigner”, “stateless person”, “labour migrant” and “family members of a foreigner or a stateless person” Under the legislation, foreigner is a person who is not a citizen of the Republic of Azerbaijan and has a citizenship of another country. Stateless person is a person that is not considered a citizen of any country based on their legislations. Labour migrant is a natural person legally moving from one country to another to engage in paid labour activity. According to the Migration Code, wife/husband, children under 18, children older than 18 with no ability to work and parents (that are guarded by individual) of a foreigner or a stateless person are considered family members of his/hers.

2.1. Right to remain and leave as a clause applicable to both the EU and non-EU citizens

Foreigners and stateless persons have a right to remain in and leave the Republic of Azerbaijan through passing the border crossing points by visa or relevant border crossing documents. They can enter the territory of the Republic of Azerbaijan without visas according to the relevant international agreements concluded between foreign states and the Republic of Azerbaijan or if determined by the relevant executive government agencies. Foreigners and stateless persons with refugee status shall use travel document to leave the territory of the Republic of Azerbaijan and not be required a visa when travelling back to the country. However, prohibition on entering the territory of the Republic of Azerbaijan might be imposed for 5 years under specific conditions depicted in the Migration Code (see Question 1.2 for more detailed information) Additionally, temporary restrictions on the right of foreigners and stateless persons to leave might be exhausted based on the following grounds: a) if the right to leave brings about a barrier to the provision of national security (until this ground ceases); b) if arrested in accordance with the Criminal-Procedural Code of the Republic of Azerbaijan or in case preventive measures have been taken (until freed or the termination or cancellation of the period of a preventive measure);

³⁹⁵ State Migration Service of the Republic of Azerbaijan, ‘*International cooperation*’ <<http://migration.gov.az/cat.php?scatid=027&lang=en>> accessed July 5 2017

c) if sentenced (until termination of the sentence determined by the Criminal Code of the Republic of Azerbaijan or until freed from the sentence with an exception depicted in article 17.1.5 of the Migration Code); d) if the compulsory medical measures are implemented for a foreigner/stateless person in accordance with the Criminal-Procedural Code of the Republic of Azerbaijan (until the application of compulsory medical measures is cancelled); e) if sentenced conditionally in addition to supplying them duties mentioned in the Criminal Code of the Republic of Azerbaijan or if freed before the actual period conditionally (until the termination of probation or unpunished part of sentence or cancellation of conditional sentence or supplied duties, respectively – article 17.1.5 of the Migration Code); f) in cases of existence of the Court's binding decision on temporary limitation of right to leave based on not applying the implementation document declared based on administrative acts on the payment of financial demands of tax agencies, Court's decisions and orders within the fixed period inadequately (until the adoption of decision on cancellation of the decision); g) if they commit administrative violation (until the application of the administrative punishment) Foreigners and stateless persons might benefit from the right to temporarily remain in the territory of the Republic of Azerbaijan for the period demonstrated in the visa in cases of existence of such document or for maximum 90 days if visa is not required (cases displayed in the international agreements of which the Republic of Azerbaijan is a party state are exception)

2.1.1. Removal. Permanent residence and work permits

As a country ratifying the 1951 Convention Relating to the status of refugees, the Republic of Azerbaijan enforces the principle of non-expulsion in relation to refugees. However, on the account of the following incentives, foreigners/stateless persons might be a subject to the removal: a) in cases of application of compulsory removal punishment due to commission of a crime; b) in cases of application of compulsory administrative removal punishment due to commission of administrative offence; c) in cases of adoption of removal decision according to the 79th article of the Migration Code. Under the 79th article of the Migration Code, relevant executive institution has a right to adopt decision on the removal of a foreigner or a stateless person owing to subsequent motives: a) in cases of cancellation of visa or decision on expansion of the length of temporary settlement or permission on reside temporarily or permanently; b) if declared *personae-non-grata* (diplomatic term on undesirable persons whose entry into certain territory is prohibited); c) if the expansion of length of temporary settlement is not possible for freed foreigners or stateless persons; d) in cases of refusal to granting refugee status. Adoption of such decision bans foreigners/stateless persons from entering the territory of the Republic of Azerbaijan for 5 years. Removal decision is not taken for foreigners and stateless persons: a) who have been granted refugee status and political asylum; b) who have been a subject of a harm due to human trafficking (for a year); c) who assist prosecution agencies (until the end of prosecution); d) children who have been a subject of harm due to human trafficking. Regarding the direction of the removal, foreigner is referred to the country of nationality and if not possible, to the country from which he/she came to the Republic of Azerbaijan. A stateless person might be delivered to the country: a) of former permanent residence; b) from which

he/she came to the Republic of Azerbaijan; c) that intends to accept the stateless person, and therefore claiming application for that. With regard to people with a dual citizenship, they are referred to the country either of permanent residence or with which an individual has close links. No special regime is implemented on the citizen of EU or non-EU countries regarding the permanent residence permit under the article 52 of Migration Code of the Republic of Azerbaijan. Only foreigners and stateless persons who have temporarily stayed in the territory of the Republic Azerbaijan in accordance with a temporary residence permit may put in an application for permanent residence permit. Regarding the labor activities of migrants, it is worthwhile to mention that, no privilege is given to either the citizens of the EU or the non-EU countries. Under the article 61 of Migration Code of the Republic of Azerbaijan, every foreigner and stateless person may work in the Republic of Azerbaijan after getting a work permit via the employer legal person, individuals engaging in entrepreneurship without establishing a legal person and branch and delegations of foreign legal persons. Under the legislation of the Republic of Azerbaijan following foreigners and stateless persons are exempted from getting work permit: a) who have a permanent residence permit in Azerbaijan; b) who engage in entrepreneurship activities in Azerbaijan; c) who work in diplomatic missions and consulates; d) who work in international organizations; e) chair and deputy-chair of the organizations established on the base of an international agreement; f) those who have been employed by the relevant executive bodies; g) military servants and specialists invited for a service or a work in the Armed Forces of the Republic of Azerbaijan or other armed units created under Azerbaijani legislation; h) accredited officers of mass media in Azerbaijan; i) who are in mission in Azerbaijan no more than 90 days in the field of activities determined by the relevant executive bodies; j) sailors; k) who are a part of pedagogical staff or lecturers invited to teach via lecture courses in higher education institutions; l) artists or coaches and sportsmen/women invited to work in the sports clubs registered in the relevant executive bodies; m) who engage in professional religious activities in the registered religious institutions; n) chair or deputy-chair of branch and/or delegation of foreign legal person in the Republic of Azerbaijan; o) who married a citizen of the Republic of Azerbaijan, in case the citizen is registered in the relevant residence area of the Republic of Azerbaijan; p) who put in an application for refugee status, are granted refugee status or given a political asylum; q) who have citizens of the Republic of Azerbaijan under 18 years or I group invalids under his/her guardianship; r) those who have been employed in cases determined by the relevant executive bodies.³⁹⁶

2.2. National Law on Immigration from the EU Member States

One of the main documents between the EU and Azerbaijan on regulation of migration issues is the Action Plan of the OSCE on cooperation on human trafficking approved in Maastricht in 2003. The III, IV and V Chapters of the Action Plan discuss the regional cooperation and enhancing the relationships among international organizations on realization of recommended measures on migration issues. Furthermore, the Action Plan on mutual cooperation between the

³⁹⁶ Migration Code of the Republic of Azerbaijan 2013 [Azərbaycan Respublikasının Miqrasiya Məcəlləsi] [Azerbaijani]

EU and Azerbaijan was adopted in 2004 to reach the goals of the EU-Azerbaijan Partnership and Cooperation Agreement. Article 4.3.2 of this document is called “Development of cooperation on migration issues” (legal immigration, illegal immigration, visas, asylum procedures, readmission) One of the paragraphs of this article is called “Facilitating the mobilization of people” which concerns the issues, such as exchanging the knowledge on visa procedure, travel document formulated with the harmonized international standards and readmission. Article 4.3.3 of Action Plan is dedicated to the human trafficking mainly focused on women and children as well as cooperation on transferring illegal immigrants. Azerbaijan is keeping cooperation on migration issues with the EU through the Eastern Partnership (EaP). Eastern Partnership (EaP) Panel on Migration and Asylum established in 2011, focuses on areas such as border security and management; capacity for asylum and migration management; international refugee and human rights law; rights of asylum seekers, refugees and migrants; information on neighborhood country legislation and structures; irregular migration and harmonizing legal standards.³⁹⁷ Azerbaijan takes part in different projects of the EU related to the migration policy to reach the harmonization of national law with the EU standards. Several significant achievements have been observed in this process.

2.2.1. Visa facilitation

According to the Agreement between the EU and Azerbaijan on the facilitation of the issuance of visas on November 29 2013, it was desired to facilitate people to people contacts as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties, by facilitating the issuing of visas to citizens of the Union and the Republic of Azerbaijan on a basis of reciprocity.³⁹⁸ Under the mentioned agreement, written application of close relatives or written invitation letter/application for various exchange programmes, cultural, scientific, artistic events, official meetings, etc. is enough for maintaining the reason of travel for the citizens of both the Republic of Azerbaijan and member states of the EU. Furthermore, diplomatic missions and consular services of the Republic of Azerbaijan and member states of the EU are obliged to issue the multiple entry visas for 5 years for the following persons: a) husband/wife, children under 21 or dependent (including those who are adopted) and parents (including guardians) who intend to visit the citizens of the EU member states legally residing in the Republic of Azerbaijan or the citizens of the Republic of Azerbaijan legally residing in the EU member states or the citizens of EU member states legally residing in the country of nationality or the citizens of the Republic of Azerbaijan residing in the Republic of Azerbaijan; b) permanent members of the official delegation who have to regularly participate in the events organised in the Republic of Azerbaijan or one of the member states of the EU and by intergovernmental organisations or in meetings, consultations, negotiations and exchange

³⁹⁷ International Organization for Migration, *Eastern Partnership (EaP) Panel on Migration and Asylum (former Söderköping Process)* < <https://www.iom.int/eastern-partnership-eap-panel-migration-and-asylum-former-soderkoping-process>> accessed May 30 2017

³⁹⁸ Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas 2013

programmes based on official invitation letters addressed to the member states of the EU, the EU or the Republic of Azerbaijan.

Diplomatic missions and consular services of the Republic of Azerbaijan and member states of the EU issue multiple entry visas for a year for persons who have got at least one visa in the previous year and have not violated the rules of remain and leave of the country visited if they are: a) students and doctorates regularly travelling because of educational courses or trainings (including exchange programmes); b) journalists and technical staff accompanying them; c) participants of official exchange programmes organised by sister cities; d) drivers who engage in international freight forwarding or passenger transport services between the territories of the Republic of Azerbaijan and those of the EU Member states by transport means registered in the Republic of Azerbaijan or member states; e) persons who have to travel regularly for medical purposes and those accompanying them; f) specialty holders who participate in international exhibitions, conferences, symposiums, seminars and similar events by travelling regularly to the Republic of Azerbaijan or member states; g) members of civil society organisations who visit the Republic of Azerbaijan or member states of the EU regularly due to educational courses, seminars and conferences (including exchange programmes); h) persons who travel to the Republic of Azerbaijan and member states of the EU regularly and participate in scientific, cultural and artistic events including university and other exchange programmes; i) participants of international sport events and those accompanying them in a professional scope; j) members of official delegation who have to regularly participate in the events organised in the Republic of Azerbaijan or one of the member states of the EU and by intergovernmental organisations or in meetings, consultations, negotiations and exchange programmes based on official invitation letters addressed to the member states of the EU, the EU or the Republic of Azerbaijan; k) businessmen and members of commercial organisations that regularly visit the Republic of Azerbaijan or the EU member states.

It's worthwhile to mention that the members of group (a) and (b) from category of people for whom multiple-entry visas are issued for 5 years (including grandparents and grandchildren); the members of group (a) (including students and teachers accompanying them), (b), (g), (h), (i), (j) from from category of people for whom multiple-entry visas are issued for a year as well as persons with disabilities (with those accompanying them, in necessary conditions); persons presenting the documents on the importance of travel on humanitarian grounds or who have to travel for getting emergency medical treatment, to participate in a funeral of close relative or to visit a close relative with a serious illness (and those accompanying them); retirees; children under 12 are exempted from paying the duties on examination of visa application. Citizens of the Republic of Azerbaijan or member states of the EU with reliable diplomatic passports have a right to enter, leave, transit migration through and remain no more than 90 days within fixed 180 days' period in the Republic of Azerbaijan or member states of the EU. Thanks to the launch of the electronic visa system in Azerbaijan, citizens of all the EU member states have a right to receive their travel document within three working days.

2.2.2. Readmission and mobility partnership

Moreover, the Agreement between the EU and Azerbaijan on the readmission of persons residing without authorization (which aims to tackle irregular migration by effectively readmitting people under the prima facie (upon initial examination) evidences confirming the citizenship of people) was signed on February 28 2014. Under the article 12.3 of the agreement, convoy escorts accompanying persons readmitted to the country of origin are not required to have an entry visa. The Joint Declaration on a Mobility Partnership between the Republic of Azerbaijan and the EU and its participating Member States was also signed in 2013. The project specifically focuses on strengthening the capacity of the government to improve and implement the national migration policy.³⁹⁹ The project achieved significant goals with national institutions of Azerbaijan on the components, such as building of analytical capacities for informed migration policy making, legal migration from and to Azerbaijan, document security, improvement of the asylum decision making procedure, return and reintegration.

2.3. National Law on Immigration from Non-EU Member States

Azerbaijan cooperates with non-EU member states on migration issues according to the rules of international migration agreements and the rules of bilateral agreements between the specific countries. The situation is different comparing to the EU Member States. Generally, the cooperation between non-EU member States and Azerbaijan is based on bilateral agreements, for instance, Azerbaijan signed bilateral agreements on visa-free regimes with Turkey (February 28 1992) and Georgia (February 03 1993). Azerbaijan also signed several bilateral agreements on social protections of migrants with different countries, such as the Agreement on labour activity and social protection of labor migrants between the Government of the Republic of Azerbaijan and the Government of the Republic of Kyrgyzstan on April 23 1997 and the Agreement on cooperation in the field of labor, employment and social protection of population between the Ministry of Labor and Social Protection of the Republic of Kazakhstan and the Ministry of Labor and Social Protection of the Republic of Azerbaijan on May 24 2005. Furthermore, Azerbaijan signed several agreements in the field of migration within the framework of CIS, such as the Convention on legal status of migrant workers and members of their families of the State Parties of the CIS. Azerbaijan is enjoying the visa-free regime with 9 CIS countries. Additionally, Azerbaijan has signed readmission agreements with Montenegro (2017), Switzerland (2016) and Norway (2015) to prevent the irregular migration on a reciprocal basis. Currently, Azerbaijan is conducting negotiations with Russian Federation, Moldova, etc. for the further readmission agreements.

³⁹⁹ International Centre for Migration Policy Development, 'Support to the Implementation of the Mobility Partnership with Azerbaijan (MOBILAZE)' < <http://www.icmpd.org/our-work/capacity-building/multi-thematic-programmes/support-to-the-implementation-of-the-mobility-partnership-with-azerbaijan-mobilaze/> > accessed June 20 2017

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under

After restoring the independence on October 18 1991, challenges on migration led to the establishment of certain government agencies, such as the State Migration Service, State Committee on Affairs with Refugees and Internally Displaced Persons and so on. Migration had become an issue due to economic consequences of the aggression, consequent occupation of territories of Azerbaijan by neighbouring Armenia and the emergence of more than a million refugees and IDPs. On the other hand, being a transit country and growth of a significant number of huge projects in the fields of energy, transport, and others have transformed Azerbaijan into an attractive destination country for migrants. Faced with many challenges of migration processes with their multiple facets, the Republic of Azerbaijan has accomplished reconstruction measures both at legislative and institutional levels to accurately manage these processes.⁴⁰⁰

3.1. The State Migration Service of Azerbaijan Republic

With a view to uniform implementation of state migration policy, improvement of the migration management system, and coordination of activities of relevant public agencies and on the basis of approved State Migration Program of the Republic of Azerbaijan, State Migration Service of the Republic of Azerbaijan was established by the President of the Republic of Azerbaijan, who, taking into account the importance of establishment of a special state authority implementing unified state policy in the migration sphere, signed the Decree on Establishment of State Migration Service of the Republic of Azerbaijan № 560 dated on March 19 2007. In the sphere of migration, the main goals of the State Migration Service of Azerbaijan Republic is to better control national security, ensure economic and demographic development and rational use of workforce as well as to tackle irregular migration processes. Functions of the service agency are enforcing state policies in the field of migration; developing a sophisticated migration management system; to forecast migration processes; preventing illegal immigration; engaging in international cooperation; organizing migration monitoring; granting or denying permissions on temporary and permanent residence to foreign citizens or people without citizenship; maintaining data about migration of Azerbaijani refugees, etc. The service also takes part in holding investigations, analysis and inspections of irregular immigrants in cooperation with Ministry of Internal Affairs, Ministry of National Security, Ministry of Labor and Social Protection and State Border Service of Azerbaijan Republic. To regulate migration processes with single procedures and facilitate the documentation, Decree on Application of “one-stop-shop” principle in the management of migration processes No 69 dated on March 4 2009 was

⁴⁰⁰Ministry of Foreign Affairs of the Republic of Azerbaijan, ‘*Migration*’ (February 26 2013) <<http://www.mfa.gov.az/en/content/118>> accessed July 4 2017

signed by the President of the Republic of Azerbaijan.⁴⁰¹ The application of the mentioned Decree results in the management of migration processes in the country with more prompt and flexible mechanisms, provision of efficiency in this area and elimination of problems to be solved. According to the decree the “one-stop-shop” principle began to be applied in the management of migration processes from July 1 2009, and the competencies of unified state authority on this principle were entrusted to State Migration Service of the Republic of Azerbaijan. In the framework of “one-stop-shop” principle State Migration Service carries out issuance of permits for temporary and permanent residence in the Republic of Azerbaijan and relevant cards to the foreigners and stateless persons, registration of them, extending temporary staying period in the country of the foreigners and stateless persons arriving in the Republic of Azerbaijan, as well as issuance of work permits for engaging in paid labour activity on the territory of the country. Furthermore, the Service participates in citizenship issues and determines refugee status.⁴⁰² To enhance preventive measures against illegal migration and improve the activity of the service, SMS obtained law enforcement status with the Decree No 76 dated April 8 2009.

The agency is headed by the chairman. The organization subdivided into Management, Apparatus and other entities within the State Migration Service. The Management consists of Chief of Service and three Deputy Chief of Service. The Apparatus is divided 14 sectors, among which Migration Policy and Legal Support Head Department, Migration Process Regulation Head Department, Migration Control Head Department and others are the most important. Other entities are State Migration Service of Nakhchivan Autonomous Republic, Regional Migration Departments, Irregular Migrants Detention Centers, Training Center and Medical Institution.⁴⁰³ To better engage in migration matters, the State Migration Service of the Republic of Azerbaijan have established close relations with different international agencies such as, Council of Europe, ICMPD, IOM and so on. The third issue of the newsletter published by MOBILAZE stated that ‘the State Migration Service of the Republic of Azerbaijan is currently implementing a number of institutional and organizational events and carrying out important work to formulate a migration policy in line with up-to-date requirements’⁴⁰⁴ On July 07 2017 at the first meeting of Public Council of SMS the confidence was expressed as ‘the assurance of applicants’ satisfaction which is a main priority for SMS and to realization of flexibility and transparency principles’⁴⁰⁵ Regarding the form of redress, one way would be to submit online application for appeal on the website. On this form person should include text of appeal, resident country and address, personal information, social status and so on.⁴⁰⁶ The Board of

⁴⁰¹ Azerbaijan Republic State Migration Service, ‘*Azərbaycan Respublikası Dövlət Miqrasiya Xidməti*’ <<http://migration.gov.az/cat.php?scatid=001/>> accessed July 7 2017 [Azerbaijani]

⁴⁰² ibid

⁴⁰³ Azerbaijan Republic State Migration Service, ‘*Structure*’ <<https://migration.gov.az/cat.php?scatid=005&lang=en/>> accessed 29 June 2017

⁴⁰⁴ MOBILAZE project, ‘*The Mobility Partnership Newsletter*’ (3rd issue, April 2017) 1

⁴⁰⁵ Azerbaijan Republic State Migration Service, ‘*Azərbaycan Respublikası Dövlət Miqrasiya Xidməti*’ <<https://www.migration.gov.az/post.php?pageid=7139&lang=en&009-041-7139>> accessed August 20 2017

⁴⁰⁶ Azerbaijan Republic State Migration Service, ‘*Azərbaycan Respublikası Dövlət Miqrasiya Xidməti*’ <<https://www.migration.gov.az/cat.php?scatid=002&lang=en>> accessed September 05 2017 [Azerbaijani]

Appeal of the State Migration Service and its Secretariat was established for the implementation of Decree No 762 of the President of the Republic of Azerbaijan on Creation of Boards of Appeal under central and executive bodies of the Republic of Azerbaijan of February 3 2016. Board of Appeal was established for provision of transparency and flexibility in the field of processing complaints of physical and legal persons engaged in entrepreneurial activity, protection of rights and legally protected interests of people in this field. The Board of Appeal conducts analyses on application for appeal to ensure the protection foreigners and their rights of migration.

3.2. The State Committee of the Republic of Azerbaijan on Affairs with Refugees and IDPs

Azerbaijan Soviet Socialist Republic (Azerbaijan SSR) State Committee on affairs with people forced to leave their permanent residence areas was established by the decree (dated September 19 1987) of Azerbaijan SSR Supreme Soviet Presidium to find durable solutions to reception, placement and social protection issues of people who have been forced to depart their permanent dwellings as well as coordinate the activities of economic, administrative and social organizations specializing in the mentioned field. In 1992, the Law of Azerbaijan Republic on Refugees and IDPs was adopted, which required the name of the Committee to be altered. Hence, after a year, in accordance with Decree No 396 by the President of the Republic of Azerbaijan, the Committee changed its name to State Committee of the Republic of Azerbaijan on affairs with Refugees and IDPs.⁴⁰⁷ The State Committee of the Republic of Azerbaijan on Affairs with Refugees and IDPs is a governmental agency within the Cabinet of Ministers of Azerbaijan in charge of regulation of the issues related to refugees and IDPs in Azerbaijan, including humanitarian aid and accommodation matters. According to the Regulation approved by the Decree No 187 of the President of Azerbaijan Republic from February 1 2005, the primary goals of Committee are the temporary settlement, repatriation and social protection of the refugees, the compelled immigrants and the persons, measured to receive the status of the refugee, improvement of their social and domestic conditions in the territories released from occupation, conferring the status of 'refugee' or 'internally displaced person', delivery of the document (certificate) to them, conducting the account of refugees and the IDPs in places of their accommodation, the organization of creation of uniform information base about them, etc.⁴⁰⁸ After the establishment of State Migration Service, major duties regarding the determination of the refugee status have been given to the competence of the aforementioned institution. Therefore, the focus target of the Committee has become the refugees and IDPs from Armenia and Karabakh as well as Meskhetian Turks. The State Committee is divided to various sectors in 46 districts; Management, Resettlement, migration, employment and status

⁴⁰⁷ State Committee of the Republic of Azerbaijan on affairs with Refugees and IDPs, '*Komitə*' <<http://www.refugees-idps-committee.gov.az/az/pages/9.html>> accessed June 17 2017 [Azerbaijani]

⁴⁰⁸ State Committee of the Republic of Azerbaijan on Affairs with Refugees and IDPs, '*Bizim məqsədimiz*' <<http://www.refugees-idps-committee.gov.az/az/pages/10.html>> accessed July 6 2017 [Azerbaijani]

unit, Status sector, Resettlement, migration and employment sector, Repatriation Department, are some of the ones worth mentioning here.⁴⁰⁹

3.3. Other Institutions: Ministry of Foreign Affairs; Ministry of Internal Affairs and Ministry of Labor and Social Protection

The main duties of the Ministry of Foreign Affairs in the migration management are to process visa applications of foreigners through the network of about 60 embassies and consulates of the Republic of Azerbaijan all over the world, to provide consular services to Azerbaijani citizens abroad, to keep the register of Azerbaijani citizens who live in foreign countries on a permanent or temporary basis, to promote and develop cooperation in the field of migration with international organizations and partner countries. International Organization of Migration and the EU are deemed as the essential partners of the country in the fields of border management, asylum issues, visa facilitation, readmission, etc.

Main Passport, Registration and Migration Department of MIA is a separate structural unit that carries out the registration of Azerbaijani citizens, the issuance of identity card and international passport, the registration of the place of residence and stay of persons who live in the Republic of Azerbaijan but do not have citizenship, and issuance of appropriate identity cards as well as the implementation of operational activity for irregular migration, detention and penalization of irregular migrants or delivering them to State Migration Service for their deportation of the country.⁴¹⁰ Issuance of general passports to citizens of the Republic of Azerbaijan is also carried out in the 9 regional divisions of the department. Office of passport; Office of combating against illegal immigration; Office of registration and identity card; Office of organizational and analytical work; Information office for National Automated Passport System (NAPS) are the main branches of the department.

According to the Decree of the President of the Republic of Azerbaijan on measures regarding the improvement of the functions of Ministry of Labor and Social Protection of the Republic of Azerbaijan, the institution is liable to coordinate the activities of the relevant stakeholders from state and non-state sector in the field of labor migration (3.1.7.)⁴¹¹, suggest proposals for adjusting labor migration processes (3.1.40.) and collaborate with executive bodies to emerge suitable conditions for the social protection of labor migrants (3.1.42.)⁴¹²

Since all the mentioned institutions are government agencies, the financial source is the government budget. Furthermore, under the 1st article of the Constitution Law of the Republic of Azerbaijan on additional assurance of the right of confidence of the National Assembly of the

⁴⁰⁹State Committee of the Republic of Azerbaijan on Affairs with Refugees and IDPs, '*Komitənin strukturu*' <<http://www.refugees-idps-committee.gov.az/az/pages/11.html>> accessed July 6 2017 [Azerbaijani]

⁴¹⁰The Ministry of Internal Affairs of the Republic of Azerbaijan, Main Passport, Registration and Migration Department, '*Baş Pasport, Qeydiyyat və Migrasiya İdarəsi*' <<http://www.bpqmi.gov.az/?/az/menu/40//>> accessed July 9 2017 [Azerbaijani]

⁴¹¹Decree No 386 of the President of the Republic of Azerbaijan (on measures regarding improving the functions of Ministry of Labor and Social Protection of the Republic of Azerbaijan) 2011, 5 [Azərbaycan Respublikasının Əmək və Əhəlinin Sosial Müdafiəsi Nazirliyinin fəaliyyətinin təkmilləşdirilməsi ilə bağlı tədbirlər haqqında Azərbaycan Respublikası Prezidentinin fərmanı] [Azerbaijani]

⁴¹² Ibid,8

Republic of Azerbaijan to the Cabinet of Ministers of the Republic of Azerbaijan, Cabinet of Ministers of the Republic of Azerbaijan presents report to the National Assembly of the Republic of Azerbaijan in its 5th meeting of spring session on its activities. Hence, monitoring of the functions and activities of above-mentioned institutions are regulated by the accountability of Cabinet of Ministers to the National Assembly. Individuals have a right to appeal to the administrative acts of the government agencies mentioned above under the article 71 of the Law of Republic of Azerbaijan on Administrative Proceedings (see Question 1.2 for more detailed information) Regarding the cases involving human rights violations, complaints can be given to Ombudsman via third persons or NGOs with applicant's consent within one year according to article 8 of the Constitution Law on the Commissioner for Human Rights of Azerbaijan Republic. Application must comprise the name, patronymic, surname, address, signature, essence of action (inaction) or decision violating the rights of applicant, the place where and time when application was compiled. If the first four criterions have not been depicted in the application, it is not going to be scrutinized unless the decision on existence of very well established grounds and facts was taken. Commissioner should provide the confidentiality of the application on the request of applicants. Sometimes oral applications have been referred to the Commissioner, as well. In the cases of refusal of examination of the application, Commissioner provides applicant with a letter of explanation within 10 days.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

On June 4 2010, under the decree of the President of the Republic of Azerbaijan on approval of regulation on Unified Migration Information Database of State Migration Service of the Republic of Azerbaijan, the database was created to facilitate the registration of foreigners and stateless persons as well as improve the documentation procedures regarding migration and provide the relevant state agencies with necessary information.⁴¹³ Hence, the mentioned database plays a very important role in getting acquainted with statistics regarding different categories of migrants, and generally, migration processes. Besides, the State Statistics Committee of the Republic of Azerbaijan publishes the numerical data on migration by year under the classification entitled "Demographic statistics"⁴¹⁴ Regarding the international organizations, it is worthwhile to mention International Organization for Migration which provides invaluable details on the situation of migration through country reports and different publications. In accordance with current statistics on legal immigration, 689118 applications on registration upon place of stay, 53214 applications for obtaining permission for temporary and permanent residence and 38791

⁴¹³ Decree No 276 of the President of the Republic of Azerbaijan (On approval of Regulation on Unified Migration Information Database of State Migration Service of the Republic of Azerbaijan) 2010, 1 [Azərbaycan Respublikası Dövlət Miqrasiya Xidmətinin vahid miqrasiya məlumat sistemi haqqında Əsasnamənin təsdiq edilməsi barədə Azərbaycan Respublikası Prezidentinin Fərmanı] [Azerbaijani]

⁴¹⁴ The State Statistics Committee of the Republic of Azerbaijan, 'Demografiya' <<http://www.azstat.org/ME/Search/search?departament=21&lang=az>> accessed July 17 2017 [Azerbaijani]

applications on establishment of citizenship have been received by the State Migration Service. Among the illegal immigrants, 2372 foreigners' residence on the territory of the country was legalized, however, in 18540 cases decisions on leaving the country within 48 hours were adopted. 5523 foreigners were expelled from the country in administrative order, furthermore.⁴¹⁵ Regarding the latest data on net migration rate provided by State Statistics Committee of the Republic of Azerbaijan, it was indicated as 1,5 thousand with approximately 3,2 thousand immigrating to and 1,7 thousand emigrating from the country.⁴¹⁶ 51,710 people were given a residence permit in 2016, and in the same year 9,480 people among the foreign applicants for labor activity were granted a work permit under the labor migration quota scheme. 95 foreigners (209 with the family members) intended to further possess a refugee status. Out of those, 73 persons from third country nationals are in the database of State Migration Service as the ones being granted a refugee status. Under the readmission agreement signed between Azerbaijan and the EU, 120 people who have been determined as Azerbaijani citizens were effectively readmitted until 2016.⁴¹⁷ Most of the readmission requests came from Germany (60) and Sweden (45).⁴¹⁸ 3558 persons have migrated to foreign countries because of educational purposes through "State programme on education of Azerbaijani youth in foreign countries in 2007-2015" within the mentioned timeframe.⁴¹⁹ With regard to the statistics on transit migration, the latest publication (conducted in 2003) by the International Organization of Migration states that, in 2002, 348 foreign citizens who aimed to access to the territory of the third country through Azerbaijan's borders with forged documents were detained, and 61 people were detained for this reason in the first half of 2003. In 2002, most of the detained transit migrants were from Afghanistan, Pakistan, India, Iran and some African countries.⁴²⁰ According to the latest figures on transmit migrants in Azerbaijan provided by International Organization for Migration (2003), 92% of legal and 90% of illegal transit migrants stayed more than a year in the country.⁴²¹ People more than 45 years old prevailed among the legal transit migrants (23%), closely followed by 34-44 years olds (22%). Among illegal transit migrants, 34-44 years olds held the majority with 26% indicator.⁴²²

Among the 1421 refugees protected by the UNHCR Azerbaijan, persons from Afghanistan and Chechnya prevail, and asylum seekers from Iran, Pakistan and Syria complete the top 5.

⁴¹⁵ The State Migration Service of the Republic of Azerbaijan, 'Arxiv Statistika', <<http://migration.gov.az/cat.php?scatid=062>> accessed July 17 2017 [Azerbaijani]

⁴¹⁶ The State Statistics Committee of the Republic of Azerbaijan, 'Demografiya.Miqrasiya', <<http://www.azstat.org/ME/Search/details?lang=az&type=2&id=197&departament=11>> accessed July 18 2017 [Azerbaijani]

⁴¹⁷ The State Migration Service of the Republic of Azerbaijan, 'Dövlət Miqrasiya Xidmətində 2016-cı ilin yekunlarına bəsr olunmuş xidməti müşavirə keçirilib' <<https://migration.gov.az/post.php?pageid=6575>> accessed July 18 2017 [Azerbaijani]

⁴¹⁸ MOBILAZE project, 'The Mobility Partnership Newsletter' (3rd issue, April 2017) 14

⁴¹⁹ Ministry of Education of the Republic of Azerbaijan, '2007-2015-ci illərdə Azərbaycan gənclərinin xarici ölkələrdə təhsili üzrə Dövlət Proqramı'nın icrası haqqında məlumat (2007-2015)' <http://xaricdetehsil.edu.gov.az/uploads/Statistika_13.06.2017.pdf> accessed September 21 2017 [Azerbaijani]

⁴²⁰ International Organization for Migration, 'The Next Stop is... Study on Transit Migration through Azerbaijan' (2003) 13

⁴²¹ Ibid, 38

⁴²² Ibid, 35

According to UNHCR Population Statistics-Data-Asylum Seekers⁴²³, Germany(1800), USA(INS/DH)(280), Canada(186), France(166), Sweden(105) are the countries which has the most number of azerbaijani asylum-seekers in 2017. According to the “Migration in the South Caucasus : Links Between Migration and Economics” publication by Alexi Gugushvili within MOBILAZE project (Support to the implementation of the Mobility Partnership with Azerbaijan) Turkey (6264), Uzbekistan (2101), United Kingdom (1798), India (1162) and Bangladesh (976) were the top 5 countries of origin for the work permits in 2015.⁴²⁴ Russian Federation (930), Georgia (782), Turkey (164), Iran (144), Kazakhstan (103) were considered the countries with the most number of permanent residence permits in the same year.⁴²⁵ Starting on early 2000s, the growth rate of the Azerbaijani economy was one of the highest in the world, peaking in 2006 with an incredible 34.5% (World Bank data)⁴²⁶ Azerbaijani officials underlined that, “Especially after the installment of the Baku – Tbilisi – Ceyhan oil pipeline in 1999 and after the activation of Western and other oil companies in the Caucasus the number of legal and irregular labor migrants has notably increased in Azerbaijan. Thus, Azerbaijan has at the same time become a leading labor provider in South Caucasus for other countries, and the gravity center for labor and transit migrants, mostly from the countries of the Near East and South Eastern Asia.” Before 1995 the reason for emigration was associated with the conflict between Azerbaijan and Armenia as well as the collapse of the Soviet Union. After 1995 economics took over as the main factor in emigration. As a result of the strong economic crisis immigration in Azerbaijan as a labour emigration has increased significantly. The main flow of migrants from Azerbaijan headed for Russia and the CIS countries. At the same time, since 1996 Azerbaijani migrants had become interested in emigrating to the West. Most Azerbaijani citizens preferred Germany, as well as the US. The third phase (1998-current) began after the August 1998 economic crisis in Russia, which was a serious blow to the financial hopes of Azeri migrants. They refocused on the West and the Middle East. It significantly reduced the migration flows from Azerbaijan to Russia.⁴²⁷ As a conclusion, it should be mentioned that, most of the immigrants to Azerbaijan come from neighbouring countries, CIS countries and South Asia. The former two hold the majority within the permanent residence permit applications as opposed to the latter one which can frequently be seen in the statistics regarding work permits, asylum seekers and transit migration. Finally, Azerbaijan works hard to implement readmission procedures to tackle irregular migration from and to country.

⁴²³ UNHCR, ‘Population Statistics-Data-Asylum Seekers’ <http://www.popstats.unhcr.org/en/asylum_seekers_monthly> accessed August 24 2017

⁴²⁴ Alexi Gugushvili, ‘Migration in the South Caucasus : Links Between Migration and Economics’ (MOBILAZE,2017) 109

⁴²⁵ Ibid, 108

⁴²⁶ ISET Policy Institute ‘Looking Over the Border: Immigration to Azerbaijan’ <<http://www.iset-pi.ge/index.php/en/iset-economist-blog-2/entry/looking-over-the-border-immigration-to-azerbaijan>> accessed September 8 2017

⁴²⁷ Migration Policy Centre, ‘MPC Migration Profile : Azerbaijan’ <http://www.migrationpolicycentre.eu/docs/migration_profiles/Azerbaijan.pdf> accessed 28 August

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

As Azerbaijan became the member of the Council of Europe (CoE) in 2001, it ratified the European Convention on Human Rights (ECHR) in 2002 and fell under the jurisdiction of the Convention.⁴²⁸ Since that time many applications have been made, but only a few is concerning the current topic of our research. It also should be mentioned that, while some cases are about the people who became internally displaced persons and refugees because of the Nagorno Karabakh conflict (the Republic of Armenia and Republic of Azerbaijan being the parties of conflict), the other cases are about the extradition of Chechens who are Russian citizens. Besides, in spite of recommendations of the European Commission against Racism and Intolerance (ECRI) made several times, Azerbaijan is not party to the Protocol 12 of ECHR which provides general prohibition of discrimination. Although the signature took place in November 12 2003, Azerbaijan has not ratified the Protocol 12 yet. In its National Human Rights Program adopted in 2011, the Government of Azerbaijan recorded Government Agent, executive ministries and the Supreme Court of the Republic of Azerbaijan as the institutions which deal with the implementation of ECtHR judgments.⁴²⁹ Additionally, the mandate of the Plenipotentiary of the Republic of Azerbaijan to the ECtHR was specified by the Presidential decree of the Republic of Azerbaijan of November 8 2003. In accordance with decree, the Government Agent is appointed by the President of Azerbaijan, and coordinates the enforcement of ECtHR judgments with relevant executive bodies, particularly Ministry of Justice and the MFA. Besides, he/she informs the President on cases by and against the Republic of Azerbaijan; conducts negotiations to attain friendly settlements within cases in which the Republic of Azerbaijan involved; investigates the possibility and expediency of claims on breach of Convention which might be raised by the Republic of Azerbaijan; informs ECtHR and Committee of Ministers on implementation of decisions by the Republic of Azerbaijan, etc. Once the ECtHR adopts a formal judgment, it is dispatched to the Supreme Court of the Republic of Azerbaijan by the Office of the Government Agent. The Civil⁴³⁰ and Criminal-Procedural Codes⁴³¹ of the Republic of Azerbaijan indicate that, ECtHR judgment is a ground for re-examination of a case and entitles the Plenum of the Supreme Court to decide on the re-consideration of the cases in which the ECHR has found a violation of the Convention.

Cases concerning migrants are mostly about the violation of article 3 (prohibition of torture, inhuman or degrading treatment or punishment) of the ECHR. Another noticeable side of these

⁴²⁸ Ministry of Foreign Affairs of the Republic of Azerbaijan, '*Azerbaijan and Council of Europe*' (September 10 2014) <<http://www.mfa.gov.az/en/content/857>> accessed June 18 2017

⁴²⁹ National Action Programme on enhancing the efficiency of protection of human rights and freedoms in the Republic of Azerbaijan 2011 [Azərbaycan Respublikasında insan hüquq və azadlıqlarının müdafiəsinin səmərəliliyini artırmaq sahəsində Milli Fəaliyyət Proqramı]

⁴³⁰ Civil Procedural Code of the Republic of Azerbaijan 1999 [Azərbaycan Respublikasının Mülki Prosessual Məcəlləsi]

⁴³¹ Criminal Procedural Code of the Republic of Azerbaijan 1999 [Azərbaycan Respublikasının Cinayət Prosessual Məcəlləsi]

cases is that they all are connected with the extradition of people migrated to Azerbaijan. One of these cases, entitled *Garayev v Azerbaijan* is about an Uzbek citizen who moved to Azerbaijan from Uzbekistan and was accused of the crime of which he insisted he was not guilty. In accordance with the decision, the crime was falsified against him. He sent application before he was extradited to Uzbekistan. Although he had applied for the refugee status to the delegation of United Nations High Commissioner for Refugees (UNHCR) in Azerbaijan, he did not receive any answer to his request. After evaluating case materials and paying attention to the reports of United Nations Human Rights Committee and UN Committee against Torture, ECtHR decided that decision of Azerbaijan about extradition of Mr. Garayev to Uzbekistan where there was not any safeguard for him from torture was in breach of Convention. However, the Court did not find any violation regarding the article 6 (right to a fair trial) of ECHR, as well as article 1 of Protocol 7 (procedural safeguards relating to expulsion of aliens) and article 3 of Protocol 4 (prohibition of expulsion of nationals) even though the claims on these articles have been raised by the Garayev, likewise. In the end, applicant was indemnified to EUR 16.000 due to the moral damage as well as EUR 2.500 as compensation for court expenses. Despite Garayev's EUR 9.000 financial claim, ECtHR held that the copies of receipt allegedly indicating monthly wages of the applicant which were presented as confirmation of the claim, display the full name of another individual. The Court hasn't been delivered any other document of evidence on claim and therefore, rejected the compensation claim of Garayev on pecuniary damages.⁴³² Other two cases were about the extradition of two members of Chechen rebel groups to Russia. In *Chankayev v Azerbaijan* and *Tershiyev v Azerbaijan* cases applicants disputed the decision of extradition to Russian Federation where they could be subject to torture or inhuman treatment. In *Chankayev v Azerbaijan*⁴³³ case, authorities granted extradition for standing before the Russian courts for the crimes he was accused after he served his sentence for the crimes he committed in Azerbaijan. In *Tershiyev v Azerbaijan*⁴³⁴ case circumstances were almost the same, but the difference was Mr. Tershiyev had applied to the UNHCR Azerbaijan for being granted a refugee status, but initially he was rejected and he appealed against that decision. However, in its judgments ECtHR expressed that there was not a violation of article 3 of the Convention as there were not substantial grounds for believing that they would be exposed to ill-treatment and Russia is also High Contracting Party to the Convention and had to guarantee fundamental rights. Furthermore, Tershiyev laid a claim of EUR 50.000 as a means of amelioration of non-pecuniary damages and additional EUR 5.000 for each infringement of his rights. ECtHR considered violation of article 13 in conjunction with article 3 of the Convention as basis of just satisfaction which was later paid to the applicant.

The first case being brought in front of the ECtHR about the protection of right to property under the article 1 of Protocol 1 of the ECHR was one of the most famous cases concerning IDPs- *Chiragov and others v Armenia*⁴³⁵ case. In the case, the Court recognized that Armenia was de-facto in control of Nagorno Karabakh and other 7 adjacent regions (possessing extra-

⁴³² *Garayev v. Azerbaijan* [2010] European Court of Human Rights App no 53688/08 [2010] 1

⁴³³ *Chankayev v. Azerbaijan* [2013] European Court of Human Rights App no 56688/12 [2013] 1

⁴³⁴ *Tershiyev v. Azerbaijan* [2014] European Court of Human Rights App no 10226/13 [2014] 1

⁴³⁵ *Chiragov and others v. Armenia* [2015] European Court of Human Rights App no 13216/05 [2015] 1

territorial jurisdiction) and breached fundamental human rights such as right to property, right to private and family life (as the applicants have lost the connection with the towns they've lived even a while after they became internally displaced, the Court decided that the refusal of access to the own homes of applicants is the breach of right to respect to private and family life as well as to houses of theirs) and right to an effective remedy as almost one million people became IDP because of this conflict and were deprived of their basic humanitarian needs. After Nagorno Karabakh conflict happening between the Republic of Armenia and the Republic of Azerbaijan, about 700 thousand people became internally displaced persons and these people were in emergency situation for basic human needs such as apartments, food supply, etc. According to the Regulations on Settlement of Internally Displaced Persons in Residential, Administrative and Other Buildings Fit for Residence, adopted by the Cabinet of Ministers Resolution No. 200 of December 24 1999, if internally displaced persons inhabited in the apartment during 1992-1994, then the occupancy vouchers which were given to the future owners of the property and proved the property rights, could be suspended till these IDPs could return their homes or provided with flat by government. Also, in cases where the temporary settling of internally displaced persons breaches the housing rights of other individuals, the former must be provided with other suitable accommodation. In *Akimova v Azerbaijan*⁴³⁶ case applicant raised the issue that her right to property was violated as internally displaced persons lived in her apartment without her permission and national courts accepted that Mrs. Akimova had property rights on this apartment, but replacement of these IDPs could not happen as these people did not have any home to move. The ECtHR ruled out that there was a violation of article 1 of Protocol 1 to the ECtHR as it was State's duty to provide these IDPs with houses according to the above mentioned regulations. After the government's payment in amount of AZN 10.000 to the Akimova as well as reach to the friendly settlement between parties of the case, it had been struck out of the list in 2008. Almost the same case was *Gulmammadova v Azerbaijan*⁴³⁷ and *Hasanov v Azerbaijan*⁴³⁸ where in 2010 the Court reiterated that burden of provisions for IDPs cannot be laid on social groups or individuals, but on state. In respect to the former case, the Court has unanimously held that the Republic of Azerbaijan had to pay EUR 3.600 as non-pecuniary damage in addition to any tax that might be charged from the applicant. Regarding *Hasanov v Azerbaijan*, decision of the Court was to award EUR 15176 (EUR 10376 in respect of pecuniary and remaining 4800 in respect of non-pecuniary damage) to the applicant. Both judgments were implemented within 3 months. After these cases, Azerbaijani government took more prompt actions for providing IDPs with houses which began in 2001 and accelerated after 2010.

Owing to the emergence of the aforementioned cases, the Republic of Azerbaijan has accomplished manifold legislative reforms to augment the situation of migrants from distinct groups. The adoption of Law on provision of rights and freedom of individuals in detention facilities in 2012, in this regard, is one of the major outcomes of refinement procedures. The 15th

⁴³⁶ *Akimova v. Azerbaijan* [2006] European Court of Human Rights App no 19853/03 [2006] 1

⁴³⁷ *Gulmammadova v. Azerbaijan* [2010] European Court of Human Rights App no 38798/07 [2010] 1

⁴³⁸ *Hasanov v. Azerbaijan* [2015] European Court of Human Rights App no 46505/08 [2015] 1

article of the Law encompasses the rights of people arrested or imprisoned, which include prohibition of torture and inhuman or degrading treatment or punishment and access to lawyer/legal representative, as well. The Law also stipulates the right to deliver the appeals, suggestions and applications to some human rights institutions, such as ECtHR, Ombudsman of the Republic of Azerbaijan, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), etc.⁴³⁹ Moreover, amendment on the Law on Extradition which came into force in 2015 establishes that in case of existence of grounds to assume the gross violation of a right to a fair trial of the individual, the Republic of Azerbaijan shall refuse to implement extradition procedures.⁴⁴⁰ Regarding cooperational reforms, since January 1 2015 Training of Trainers sessions, study visits, conferences have been organized within the CoE project named “Application of the European Convention on Human Rights and the case-law of the European Court of Human Rights in Azerbaijan” to contribute to the betterment of judicial system and make Human rights Education for Legal Professionals (HELP) materials accessible to the institutions of the Republic of Azerbaijan. In the framework of the blueprint, training sessions on a right to fair trial, family and private life, prohibition of discrimination have also been carried out.⁴⁴¹ Azerbaijan has also actively participated in implementation of ECtHR judgments of which it was not a party state. Interesting example is *Ahmut v the Netherlands* case, focusing on the principle of family reunification. On account of Dutch authorities’ refusal to a minor with dual Moroccan and Dutch nationality who aimed to pay a visit to his father to grant residence permit, the Court held that the article 8 of the Convention has been violated within this case. Azerbaijan has committed itself to implementation of this principle in various agreements, including the readmission agreement signed between her and the EU. Under the 5th article of the treaty, Azerbaijan sends the irregular migrants with their minor children as well as spouse not having a right of residence together to the requesting Member State.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

The European Commission against Racism and Intolerance is a body of the Council of Europe of which the goal is to fight against racism, xenophobia and intolerance for the protection of human rights. After Azerbaijan joined the CoE, the Commission made its first report on

⁴³⁹ Law of the Republic of Azerbaijan on provision of rights and freedom of individuals in detention facilities 2012 [Həbs yerlərində saxlanılan şəxslərin hüquq və azadlıqlarının təmin edilməsi haqqında Azərbaycan Respublikasının Qanunu]

⁴⁴⁰ Law of the Republic of Azerbaijan on amendments to the Law on Extradition of the Republic of Azerbaijan 2015 [“Cinayət törətmiş şəxslərin verilməsi (ekstradisiya) haqqında” Azərbaycan Respublikasının Qanununda dəyişikliklər edilməsi barədə Azərbaycan Respublikasının Qanunu]

⁴⁴¹ Council of Europe, ‘Application of the European Convention on Human Rights and the case-law of the European Court of Human Rights in Azerbaijan’ < <http://www.coe.int/en/web/national-implementation/projects-by-geographical-area/azerbaijan-pcf-echr>> accessed 8 September 2017

Azerbaijan in 2003. Afterwards, within its statutory mandate, the ECRI conducted monitoring of the country and published other three reports on Azerbaijan in 2007, 2011 and 2016.

In its first report, the ECRI appraised what Azerbaijan had done for combating racism and intolerance as it signed several international agreements and adopted codes and other legislations containing anti-discrimination provisions. But the Commission also recommended the country to take actions in some fields, including the need to become aware of the various dimensions of racism and different types of discrimination. Further, the Commission also paid special attention to the refugees. In its first report, the ECRI indicated that, as a result of the Nagorno-Karabakh conflict happening between the Republic of Armenia and Republic of Azerbaijan, there were hundreds of thousands of refugees and IDPs, for the most part ethnic Azerbaijani, on the territory of Azerbaijan. The State Committee on Affairs with Refugees and Internally Displaced Persons was established to help solve the problems. The Commission stressed that, it was aware of difficult humanitarian situation in the country, but also encouraged the government to take further steps to improve access to medical services and schools and other primary needs of all refugees including refugee determination procedure.⁴⁴² It is worthwhile to mention that State Program on enhancing the employment and improving the life standards of refugees and internally displaced persons was approved on July 1 2004. Regarding the recommendation on educational needs of refugees, in 2004 Ministry of Education decided that refugees that either are from Armenia, or were born in the timeframe of 1988-1992 are exempted from paying tuition fees in secondary state schools and universities. Besides, under the Order No 298 of the President of the Republic of Azerbaijan, private institutions, private schools and universities were declared liable to assist refugees and IDPs in providing them with decent work and make discounts from tuition fees. Cabinet of Ministers have adopted some decisions regarding medical needs of refugees and IDPs, as well.⁴⁴³

In its second report published in 2007, the ECRI highlighted that Azerbaijan made progress in the areas of education, combating illegal behavior on the part of law enforcement officials. However, a number of recommendations have not been implemented or have been partially implemented. The Commission emphasized the role of Ombudsman in the field of fighting against racism and called the authorities to ensure the competence of it. The ECRI was satisfied that government took into consideration recommendations about establishing refugee determination procedure. However, the Commission also emphasized that there were still problems with the social rights, although there were legislative provisions for refugees where it was indicated that the refugees have the same rights and duties as the Azerbaijani citizens, unless otherwise provided by the Constitution or legislative acts. In this report, the ECRI recommended Azerbaijan to ensure that the Law on the status of Refugees and Internally Displaced Persons was applied in such way that applicants could benefit from protection, and it

⁴⁴² European Commission against Racism and Tolerance, 'Report on Azerbaijan' (April 15 2003) <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-II-2003-003-ENG.pdf>> accessed June 5 2017

⁴⁴³ The State Committee on Affairs with Refugees and Internally Displaced Persons of the Republic of Azerbaijan, 'Qaçqın və məcburi köçkünlərlə bağlı normativ-hüquqi sənədlər' < <http://www.refugees-idps-committee.gov.az/az/pages/45.html>> accessed July 7 2017 [Azerbaijani]

stressed that for this purpose, it was important that officials should go under training in the human rights field, including right to be free from racism. The Commission especially emphasized that Russian citizens from Chechnya were facing problems in the exercise of the rights and authorities had to take urgent measures to make situation better. It advised to consider granting a temporary status on humanitarian grounds to those who did not have any legal status and would meet the conditions for obtaining this status.⁴⁴⁴ Taking into consideration the recommendations set up by the ECRI, Justice Academy of Ministry of Justice of the Republic of Azerbaijan has co-organized trainings on 2nd, 3rd (November 26-27 2015), 5th, 6th (December 1-2 2015), 8th, 9th (December 15-16 2015), 10th, 11th (December 3-4 2015), 14th articles and 1st article of the 1st Protocol (December 17-18 2015) of the ECHR in the course of project named “Application of European Convention on Human Rights and case-law of European Court of Human Rights in Azerbaijan”. The project was funded and implemented by the EU and the CoE, respectively.⁴⁴⁵

After these recommendations Azerbaijani government began to work more actively in the field which was shown in the third report. The Commission appraised all efforts to reform the judicial system and improve the training dispensed to all the actors in this system, including as regards racist offences and discrimination. A number of measures had been adopted with the aim of simplifying the procedures in force with respect to migrant workers. In this context, a State Migration Service had been established in 2007⁴⁴⁶, a one-stop service point for migrants has been set up, and non-citizens and stateless persons holding a residence permit were no longer required to apply for entry and exit visas. Moreover, in 2010 Presidential decree was given which had to facilitate the refugee’s access to social rights. However, the ECRI also stressed its concern regarding some growing issues. In this report special attention was given refugees and internally-displaced persons who were suffering because of Nagorno-Karabakh conflict together with migrants and asylum seekers. In connection with migrants, ECRI recommended that the authorities closely monitor the situation of non-citizens temporarily or permanently staying in Azerbaijan. Azerbaijan became a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1999. According to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), as far as Azerbaijan was concerned with the migration flows which had changed in recent years and became more complex. As Azerbaijan was not only a country of transit, but also of destination many migrant workers live within its territory, ECRI noted in this connection that, since its second report, the authorities had adopted a number of measures aimed inter alia at simplifying the procedures in this field. With specific regard to migrant workers, they had to possess a valid work permit for working legally. According to the

⁴⁴⁴ European Commission against Racism and Tolerance, ‘*Second report on Azerbaijan*’ (May 24 2007) <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-III-2007-22-ENG.pdf>> accessed June 8 2017

⁴⁴⁵ Justice Academy of the Ministry of Justice of the Republic of Azerbaijan, ‘*Avropa İnsan Hüquqları Konvensiyası və Avropa İnsan Hüquqları Məhkəməsinin presedent hüququnun Azərbaycanada tətbiqi*’, <<http://academy-justice.gov.az/madde.php>> accessed September 9 2017 [Azerbaijani]

⁴⁴⁶ State Migration Service of the Republic of Azerbaijan, ‘*Azerbaijan Republic State Migration Service*’ <<https://migration.gov.az/cat.php?scatid=001&lang=en>> accessed June 11 2017

legislation, it is the employer who should carry out the formalities for obtaining the required work permit. ECRI emphasized that cases had been reported where employers knowingly hired migrant workers without work permits and, for example, subsequently confiscated their passports and other identity documents, imposed extremely harsh working conditions. In addition, any undocumented migrant who was stopped by the authorities could be deported immediately. The persons concerned were usually unaware of the substantive rules governing residence in Azerbaijan; even though the authority that delivering the deportation decision was required to inform the individuals concerned of the remedies available, without access to counselling or legal assistance, they did not have any real means of challenging the deportation measure in the courts before they were removed from the country. As a result of all these shortcomings, ECRI recommended Azerbaijan to provide effective remedies for rights safeguarded by international instruments, to ensure that migrants were not removed from the country without benefitting legal assistance and to adopt Migration Code. ECRI recommended that the Azerbaijani authorities should closely examine the practical impact of the new presidential decree which aimed at ensuring full recognition of the official documents issued to refugees and take all the necessary measures to eliminate the administrative obstacles refugees and asylum-seekers were facing. ECRI was also concerned about information that the refugee status recognition rate in cases examined by the Azerbaijani authorities was extremely low⁴⁴⁷.

In 2014 the ECRI adopted an interim follow-up on Azerbaijan regarding the last recommendations of the Commission. Three main issues were indicated and among them the second one- issue on the protection of migrants have almost been ameliorated via adopting the Migration Code in 2013. This issue was completely eliminated by Azerbaijani government according to ECRI experts.⁴⁴⁸ In its last report published in 2016, ECRI welcomed many developments in the field of integration and protection of migrants, refugees and asylum seekers. Azerbaijan hosted international forums on intercultural dialogues, Ombudsman organized campaigns for promoting tolerance, there were no hate crimes based on ethnic affiliation. The recommendation of ECRI on adopting Migration Code was implemented which laid ground for integration of migrants. Nevertheless, some strict problems occurred again. Article 71.2 of MC stipulates that migrant workers have to leave the country automatically within 10 working days if their employment contract is terminated and they have no other valid legal basis to stay. The Migration Code does not grant them a time period in which to seek alternative employment. Recommendations regarding this problem have been included in the last report, therefore.

Moreover, it should be mentioned that main national human rights body dealing with migrant, refugee and other human rights issues is the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan. Under the 1st article of the Constitution Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman), ombudsman institute was

⁴⁴⁷ European Commission against Racism and Tolerance, 'ECRI Report on Azerbaijan (fourth monitoring cycle) <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-IV-2011-019-ENG.pdf>> accessed June 16 2017

⁴⁴⁸ European Commission against Racism and Tolerance, 'ECRI Conclusions on the implementation of the recommendations in respect of Azerbaijan subject to interim follow-up' (March 19 2014) <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZR-IFU-IV-2014-020-ENG.pdf>> accessed June 20 2017

established to restore the human rights and freedoms depicted in international agreements of which the Republic of Azerbaijan is party state and violated by public and local self-governing institutions and officials as well as prevent human rights violations stipulated in this Constitution Law. Commissioner also implements the functions of national prevention mechanism in the framework of the Protocol of Convention against Torture and other cruel, inhuman or degrading treatment or punishment. In this regard, Commissioner has a right to regularly visit the places which arrested people cannot leave on their own wills. Besides, Commissioner makes suggestions to the National Assembly for the adoption or re-consideration of human-rights related legislation and amnestions. Suggestions are also referred to the President on issues related to pardon, citizenship and political asylum.⁴⁴⁹ Ombudsman of the Republic of Azerbaijan has submitted information on the state of human rights protection of IDPs in the Republic of Azerbaijan to the UNHRC throughout the 8th session of the organisation in 2008. The Commissioner noted the lack of employment of IDPs and recommended to particularly, focus on the improvement of agricultural sector in rural areas to furnish IDPs with necessary economic opportunities.⁴⁵⁰ As a result of realization of alterations, the number of working IDPs has increased to 161.000 and new labor places have dedicated to them within budgetary organisations. 3000 IDPs have been conducted vocational trainings for and loans in amount of AZN 44.000.000 have been given to more than 2.000 IDPs through the National Fond on Support to Entrepreneurship to finance the investment projects of IDPs' entrepreneurship subjects.⁴⁵¹

7. How is migrants' right to access to healthcare regulated within the national legislation?

In Azerbaijan, state institutions took major steps in healthcare system to improve the situation where people can reach thorough medical care. According to the Constitution of the Republic of Azerbaijan, foreigners and stateless persons living or staying temporarily in the territory of the Azerbaijan Republic have the same rights with Azerbaijani citizens if not specified by legislation or international agreements wherein the Azerbaijan Republic is one of the parties. Article 1 of the Law on Protection of Health of Population indicates that medical-social assistance is feasible for all living in Azerbaijan. Regarding the migrants irregularly residing, article 19 of resolution of Cabinet of Ministers on application of discipline rules in the detention centers of illegal migrants illustrates medical and psychological assistance, medical-sanitary provision, medical-inspection to

⁴⁴⁹ Constitution Law of the Republic of Azerbaijan on the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman) 2001 [Azərbaycan Respublikasının İnsan Hüquqları üzrə müvəkkili (ombudsman) haqqında Azərbaycan Respublikasının Konstitusiyaya Qanunu]

⁴⁵⁰ Information presented by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan to the UNHRC (Annex on State of human rights protection of internally displaced persons in the Republic of Azerbaijan) 2008, 4

⁴⁵¹ State Committee of the Republic of Azerbaijan on Affairs with Refugees and Internally Displaced Persons, 'Problemlər', <<http://www.refugees-idps-committee.gov.az/az/pages/18.html>> accessed September 9 2017 [Azerbaijani]

the detained foreigners and their placement in hospitals. In detention center, foreigners can get medical inspection and medical care from dispensary. From the time adopted to center foreigners are passed through medical inspection within 24 hours and each foreigner get medical booklet compiled for them⁴⁵².

Migrants' access to information about healthcare services is provided by the Constitution, the Law on Access to information, the Law on Protection of Health of Population and the Law on Prevention of spread of disease derived from immune deficiency virus of humans. Under the 50th article of the Constitution, everyone has freedom to legally search for, access to, transmit, prepare and share the information.⁴⁵³ Law of the Republic of Azerbaijan on access to information displays that everyone may get information through written inquiries. Moreover, refusal of the written inquiries is forbidden.⁴⁵⁴ In accordance with the article 11 of Law on Protection of Health of Population citizens have right to get regular and correct information about factors affecting their health which is also applicable to the stateless persons living permanently in Azerbaijan as they have the same rights with citizens in the field of healthcare. This information can be delivered to them via mass media or relevant executive authority on base of their inquiry⁴⁵⁵. Also, article 4 of the Law on Prevention of spread of disease derived from immune deficiency virus of humans states that, the Republic of Azerbaijan provides delivery of thorough information about HIV/AIDS prophylaxis to people⁴⁵⁶. Additionally, Azerbaijan is a party state to the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), which means, the government takes measures to realize the article 10 (h) and provides access to specific educational information (such as, family planning) to guarantee the health and well-being for men and women on an equal basis.⁴⁵⁷ In compliance with article 10 of the Law on Protection of Health of the population, stateless persons permanently living in the Republic of Azerbaijan have rights to protect their health conditions on the same bases like citizens of the Azerbaijan Republic. Right to health of foreigners, however, are regulated by the international agreements signed by the Republic of Azerbaijan. Healthcare services both for legal and illegal immigrants are fulfilled by the institutions of Ministry of Healthcare and special medical institutions. Cabinet of Ministers compiles a list of state medical institutions which serve free. Also, the legislation of the Republic of Azerbaijan indicates that migrants can receive immediate and special medical assistant without any restriction and

⁴⁵² "Discipline rules in the Detention Centers of Illegal Migrants" 2016 [Qanunsuz miqrantların saxlanılması mərkəzlərinin daxili intizam Qaydaları]

⁴⁵³ Constitution of the Republic of Azerbaijan 1995 [Azərbaycan Respublikasının Konstitusiyası]

⁴⁵⁴ Law on Access to Information of the Republic of Azerbaijan 2005 [İnformasiya əldə etmək haqqında Azərbaycan Respublikasının Qanunu]

⁴⁵⁵ Law on Protection of the Health of People of the Republic of Azerbaijan 1997 [Əhalinin sağlamlığının qorunması haqqında Azərbaycan Respublikasının Qanunu]

⁴⁵⁶ Law on Prevention of spread of disease derived from immune deficiency virus of humans 1996 [İnsanın immunitətsizliyi virusunun törətdiyi xəstəliyin yayılmasının qarşısının alınması haqqında Azərbaycan Respublikasının Qanunu]

⁴⁵⁷ Convention on the Elimination of All Forms of Discrimination against Women 1979

discrimination. If a foreigner wants to get medical aid from private healthcare institution which does not serve for free, then he/she has to own medical insurance.⁴⁵⁸

Stateless persons residing permanently in Azerbaijan have equal rights with citizens in the medical insurance system unless otherwise provided by law or international treaty to which the Republic Azerbaijan is a party⁴⁵⁹. Medical inspection and treatment for foreigners and stateless persons living permanently in Azerbaijan at oncologic institutions are implemented on paid basis but urgent cancer care to them is free of charge. If stateless people living permanently in the Azerbaijan Republic and people with refugee status given by the Azerbaijan Republic are infected with HIV/AIDS, they take medical care (also specialized medical care) at state hospitals on account of state budget defined by corresponding executive authority for certain amount. Regarding internally displaced persons, they enjoy the right to free medical examination in public medical institution.⁴⁶⁰ The 3rd article of the Law on Prevention of spread of disease derived from immune deficiency virus of humans states that the law also addresses the foreigners and stateless persons. 8th article allows foreigners and stateless persons to voluntarily benefit from the right to medical examination and the examination might be implemented anonymously if they wish so. Foreigners and stateless persons have also the right to medical examination of epidemiological surveillance under the 9th article.⁴⁶¹ Medical assistance to displaced persons is provided directly by medical institutions in the territories where they are placed. Medical assistance to displaced persons placed outside localities is arranged by a corresponding self-government body. Displaced persons are put in public medical institutions on a preferential basis and enjoy all types of medical care free of charge. They are provided with pharmaceuticals free of charge, according to the procedure identified by corresponding self-government bodies provided in accordance with article 10 of the law on social protection of displaced persons and persons equalized to them. Besides, it is important to stress that, Convention on legal status of migrant workers and members of their families of the State Parties of the Commonwealth Independent States (CIS) adopted in 2008 was incorporated into Azerbaijani legislation after the country joined this initiative in 2010. Under the 7th article of convention, migrant workers and their family members enjoy to get free first aid paid medical aid. This article also includes the right of migrant workers and their family members to register the newly-born babies. Under the 17th article of Convention, the Azerbaijan cooperates with other CIS countries in the field of medical insurance of migrant workers.

Since May 2000, on the expense of the means of the UNHCR, the international humanitarian organization Amkor built a clinic that renders medical service to asylum seekers. Asylum seekers and refugees can address to Refugee Clinic for getting medical advice from Monday to Friday

⁴⁵⁸International Organization for Migration, 'Informed Migration: Reference Guide for Migration Practitioners. Azerbaijan' (2004) 22

⁴⁵⁹ Law on Medical Insurance of the Republic of Azerbaijan 1999 [Tibbi sığorta haqqında Azərbaycan Respublikasının Qanunu]

⁴⁶⁰ Law on Protection of the Health of People of the Republic of Azerbaijan 1997 [Əhalinin sağlamlığının qorunması haqqında Azərbaycan Respublikasının Qanunu]

⁴⁶¹ Law on Prevention of spread of disease derived from immune deficiency virus of humans 1996 [İnsanın immunitətsizməzliyi virusunun törətdiyi xəstəliyin yayılmasının qarşısının alınması haqqında Azərbaycan Respublikasının Qanunu]

and from 9:00 to 17:00 during a day. Medical advice is given by general practitioner and in case of emergency patients who need treatment are referred to specialist. UNHCR's health programme concentrated mainly on reproductive health, working through four NGOs which ran clinics and engaged in health promotion activities. The programme included the establishment of Health Action Committees in 15 communities; training of Community Health Advocates; community-based family planning education for IDPs and the local population; the distribution of contraceptives; the establishment and/or upgrading of family planning centers in four regions in partnership with the health authorities; baseline surveys; health outreach activities in 13 IDP settlements conducted by two mobile teams; and train-the-trainer courses. One UNHCR-assisted NGO gave 15,000 consultations to women in 30 settlements. Six functioning reproductive health facilities were handed over to the Ministry of Health in 1999 (of which three were subsequently closed) All women and children who are under the protection of UNHCR to receive medical advice from children's doctor can turn to Clinic operating within UNHCR. Patient can be hospitalized only in cases of emergency and in need of saving life. Some kinds of treatment for instance, treatment of chronic diseases, plastic operation, medical treatment for infertility, construction of dentures and others are not included in the medical care program. The whole list of this kind of treatments is available in the Clinic supported by UNHCR. When talking about refugees' integration to healthcare field, it is noteworthy to say that as a result of contract signed between UNHCR and MediClub of Azerbaijan UNHCR has appointed 2 doctors for providing refugees with medical care on second and third level. Besides, in 1996 Azerbaijan joined the European Agreement on Provision of Medical Care to Persons during Temporary Residence. Article 5 of this agreement states that person concerned for getting medical care has to submit certificate which proves the entitlement to medical care and this proof is submitted in the form of attestation given by competent authorities. If the person concerned has the right according to the legislation of the party which enables all citizens to the right of using medical care, then that person can submit his own passport or identity document instead of aforementioned attestation if the competent authorities of the Contracting Party approves them to be satisfactory. Therefore, this provision is available in Azerbaijan, as well. In the cases of emergency even if the person concerned is not able to submit the certificate or one of the documents referred to on needed time the competent institutions cannot refuse to help medically to that person.⁴⁶²

In 1998, State programme on solving the problems of refugees and internally displaced persons was approved according to the order of president of Azerbaijan Republic. This programme provided a number of measures on social protection of this kind of migrants. These measures have intended to improve the healthcare system for refugees and IDP, to struggle against infectious diseases and the unsanitary conditions where they live, to intensify surveillance on assignment of medical preparations given by international humanitarian organizations and other organizations. Moreover, to organize travelling X-ray laboratories where IDPs live densely, to supply the hospitals of occupied regions with medical equipment, medicine and other necessary stock and to provide refugees and IDPs with free medical inspection and treatment, also with medicinal preparations are the main goals of this programme. Main executive institutions for

⁴⁶² European Agreement on Provision of Medical Care to Persons during Temporary Residence

implementing aforementioned measures are Republican Commission for International Humanitarian and Technical Help and Ministry of Healthcare. According to the Migration Code of Azerbaijan, foreigners and stateless persons, about whom decision on removal from the territory of the Republic of Azerbaijan has been made, can be voluntarily placed in the detention centers for illegal migrants of the relevant executive authority in a way defined by the Law for removal from the territory of the Republic of Azerbaijan within the period envisaged by the Administrative Offences Code and Code of Execution of Punishments of the Republic of Azerbaijan. Article 86.0.16 of this Code indicates that internal discipline rules defines the issues like medical and psychology aid to detained person, provision of medical-sanitary, medical treatment, their placement in hospitals.⁴⁶³ Most recently, in 2013, the Law on compulsory dispensarization of children was adopted to determine the organizational and legal basis of the protection and enhancement of health of children as well as treatment and prophylactic measures among children. According to the 8th article of the Law, compulsory dispensarization measures are also referred to stateless persons and foreigners permanently living in the Republic of Azerbaijan.⁴⁶⁴

Despite not having specific non-discriminatory laws in the field of healthcare, the various legislative acts furnish the rights for stateless persons and foreigners either in the same bases like citizens or stipulated by international agreements of which the Republic of Azerbaijan is a party. Azerbaijan has joined the CEDAW, and provides adequate healthcare facilities and services for migrant women on an equal basis, as well. In cases of discrimination, migrants might appeal to the Ombudsman of the Republic of Azerbaijan (see Question 3 for more detailed information) Appeal stemmed from the actions or inactions of administrative bodies (in this case, Ministry of Healthcare of the Republic of Azerbaijan and Nakhchivan Autonomous Republic, local departments and offices of former and the Republican Center for Hygiene and Epidemiology) might be given based on law on administrative proceedings. (see Question 1.2 for more detailed information).

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

According to the article 45.1 of the Constitution, everyone has a right to study in the language he/she desires. On the grounds of article 22 of the Convention on the Rights of the Child, the Republic of Azerbaijan has implemented relevant measures regarding protection of refugee children or children seeking refugee status, including the enjoyment of right to the education. Furthermore, the right to education is provided on the basis of equal means and primary education is free for all the children. Higher education as well as educational and vocational guidance is accessible to all the children under the article 28. In addition to that, article 6 of the

⁴⁶³ Migration Code of the Republic of Azerbaijan 2013 [Azərbaycan Respublikası Miqrasiya Məcəlləsi]

⁴⁶⁴ Law on compulsory dispensarization of children of the Republic of Azerbaijan 2013 [Uşaqların məcburi dispensarizasiyası haqqında Azərbaycan Respublikasının Qanunu]

Law on the rights of child depicts that all the children enjoy the same rights under this legislation. Children cannot be discriminated on the basis of social and property status, health, racial and national affiliation, language, education, religion, political conviction and residence place of their parents or guardians. Every child has a right to education under the educational legislation of the Republic of Azerbaijan. According to the article 44 of the Law of Republic of Azerbaijan on Education, the education of foreigners and stateless persons in any level is implemented in accordance with: a) the international treaties to which the Republic of Azerbaijan is a party state; b) quota determined by the state; c) agreements signed by educational institutions, legal persons and individuals. Foreign students who get the right to study in Azerbaijan are eligible to receive education visa from consular department of the MFA based on a support letter from the Ministry of Education. With 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. Furthermore, on the grounds of article 7 of the Law of the Republic of Azerbaijan on the Status of Refugees and Internally Displaced Persons, relevant circumstances for refugees and IDPs are provided to learn the Azerbaijani language. Article 6 of the same law states that refugee and internally displaced children have the right to study at kindergartens as well as youngsters and teenagers at educational institutions.

The right of education has been mentioned in the article 7 of Convention on legal status of migrant workers and members of their families of the State Parties of the Commonwealth of Independent States among the rights migrant-workers and their family members enjoy. Moreover, migrant workers' family members have the same rights with the citizens regarding general and additional vocational education in Azerbaijan under the article 13 of the same Convention. Under the same article, party states provide assistance to the family members of migrant workers in learning the state language and do not engender any obstacles regarding learning of their own languages. Azerbaijan cooperates with other CIS states regarding the issues on implementation of vocational education in the fields where labor market has more demands, furthermore. Besides, State Program on resolution of problems faced by the refugees and internally displaced persons, dated September 17 1998 has also some provisions regarding the right of refugees and IDPs to education. The seventh provision of the 3rd chapter states that pupils from the families of internally displaced persons and having the secondary education should be provided with free textbooks and necessary accessories during all forms. The competent authorities on this provision are Ministry of Finance, Ministry of Education and the State Committee on affairs with Refugees and Internally Displaced Persons.

Regarding the projects set out for the educational needs of refugee children, Azerbaijan is one of the six European (alongside with Georgia, Ukraine, Belarus, Russia and Moldova) beneficiary states of the DAFI (Albert Einstein Academic Refugee Initiative) programme that provided 1900 refugee youngster with study opportunities in 2010. 11 Afghan students got total amount of USD 30.257 scholarship in the framework of aforementioned blueprint and 3 students have their graduations in the same year. DAFI Clubs were established in Azerbaijan to reinforce the network of graduates and scholarship holders of DAFI programme. Azerbaijan has been the

only CoE member state generating such clubs. The most recent accessible UNHCR report (2015) on DAFI programme, furthermore, broaches that, the highest average cost of a DAFI programme in the Europe region was recorded in Azerbaijan (USD 4,643). 9 of the scholarship holder refugee students were of Afghan (4), Russian (3) and Iranian (2) origins in the domains of architecture & town planning; commercial and business administration; engineering; mathematics & computer science and social & behavioral science. Students have been supplied with English courses and trainings on information and technology network, as well. Recruitment of an Afghan refugee graduate through DAFI programme by the Embassy of Afghanistan in the Republic of Azerbaijan should be marked as a precious fact, moreover.⁴⁶⁵ In the course of another UNHCR project, entitled CTA (Community Technology Access), computer centers for refugees and returnees have been pitched.⁴⁶⁶ Notwithstanding the fact that, Azerbaijan has not had specific non-discrimination laws in the field of education, abovementioned provisions and some international agreements the country joined form the basis of equality for all in terms of access to information on education facilities and education. Azerbaijan is one of the four European countries (the other three being Albania, Bosnia & Herzegovina and Turkey) ratifying International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. 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 Azerbaijan in accordance with the 30th provision of the Convention. Additionally, access to educational institutions, services, subject to the admission requirements and other regulations of the institutions/services are offered to migrant workers and their family members on the same basis with the nationals of the country.⁴⁶⁷ In cases of discrimination, complaints can be given to Ombudsman via third persons or NGOs with applicant's consent within one year (see Question 3 for more detailed information) Appeal stemmed from the actions or inactions of administrative bodies (in this case, Ministry of Education of the Republic of Azerbaijan and Nakhchivan Autonomous Republic, local departments of former and the State Agency on Vocational Training under the Ministry) might be given based on law on administrative proceedings. (see Question 1.2 for more detailed information).

⁴⁶⁵ UNHCR DAFI 2015 Annual Report 2015, 17,34

⁴⁶⁶ UNHCR Annual Report on the DAFI Programme (Albert Einstein German Academic Refugee Initiative) 2010, 11,30-31

⁴⁶⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2010

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Regarding the recognition of foreign school and university diplomas, it should be noted that, Azerbaijan has ratified the Convention on recognition of higher school diplomas, scientific degrees, educational curriculum obtained in the region of the European states (1996), the Convention on recognition of higher school diplomas, scientific degrees, educational curriculum obtained in the region of Asia and countries of Pacific Ocean (1996), the Convention on recognition of professional specialties (1997) and the Convention on recognition of specialties in the field of higher school in the European region (1997) on the recognition of the diplomas. Besides, Azerbaijan is a party to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (referred to as the Lisbon Convention, developed by the CoE and UNESCO and adopted by national representatives meeting in Lisbon on April 8 - 11 1997) According to Law of the Republic of Azerbaijan on Education, one of the responsibilities of the state in the field of education is to identify the procedures on recognition of education documents issued by foreign countries and provide nostrification services.⁴⁶⁸ After receiving a package of documents, they shall be submitted to the Ministry of Education officers or experts. According to international practice, the procedure for recognition of diplomas being considered takes more than four months. The procedure for recognition of specialties in the higher education area is being implemented based on existing international contracts and recommendations, state educational standards and normative legal acts, which regulate the education system of the Republic of Azerbaijan.

The higher education specialties shall be: a) recognized by the country issued the document; b) specified in the international contracts of the Azerbaijan Republic. The Ministry of Education is the institution in Azerbaijan that issues a certificate of recognition. You shall create an application on www.nostrifikasiya.edu.az and submit a request accompanied by the following documents: a) filing application form; b) document on higher education (original and copy certified by a notary and translated into Azerbaijani); c) appendix to the diploma with details of study programs, their volume, total assessment, results for internship, essays and theses as well as other indicators for educational process (original and copy certified by a notary and translated into Azerbaijani); d) identification document (copies of passport and identity card duly certified by a notary); e) copy of work record card and/or unemployment certificate from the place of residence; f) full-time graduates should submit a document (application form or certificate duly certified) which confirms that they have lived in the city, where the university is located, during their study; g) part-time graduates should submit documents (certified) confirming their attendance at winter and summer sessions during their study; h) copy of military record or

⁴⁶⁸ Law of the Republic of Azerbaijan on Education 1992 [Azərbaycan Respublikasının Təhsil haqqında Qanunu] [Azerbaijani]

certificate of registration for military service.⁴⁶⁹ However, specific procedures are not conducted in cases of applications by refugees, asylum seekers or any other vulnerable groups of migrants. Department on recognition of education documents has been created within the ministry, in accordance with the provisions of the Law on Education of the Republic of Azerbaijan, Regulation on Ministry of Education of the Republic of Azerbaijan, Lisbon Convention, Hague Convention on abolishing the requirement of legalization for foreign public documents and Executive order of the Cabinet of Ministers of the Republic of Azerbaijan for confirmation of regulations on recognition and determination of equivalence of higher education specialties of foreign countries. The main duties of the department are to implement the nostrification procedures, provide the functions of Group of Experts on Nostrification of Ministry of Education and cooperate with international partners to adopt the best foreign practices in the mentioned field. Firstly, the department imposes the reception and research on the documents and delivers the relevant requests, and then presents the prepared personal letter to the Group of Experts on Nostrification. The Department might conduct an additional research in case Group of Experts on Nostrification provides further comment about the significant importance of it. If the decision of Group of Experts on Nostrification is positive, certificate on recognition and determination of equivalence of higher education specialties of foreign countries is presented by the department. Otherwise, the department presents letter of explanation on the reasons of non-recognition.⁴⁷⁰ Applicants have a right to appeal in cases of refusal of the officers to implement the services or due to actions of the officials. 71st article of the Law of Republic of Azerbaijan on Administrative Proceedings, furthermore, indicates the right of stakeholders to appeal of administrative act or refusal of issuance of the administrative act. Under the 71.3.2nd article of the same law, individuals' appeal to the higher administrative body or institution having competence to examine the appeal might be on the basis of objection regarding the administrative act..⁴⁷¹ (see Question 1.2 for more detailed information)

Regarding the specific requirements, the documents on higher education should firstly be legalized in the country of origin. It is worthwhile to mention that, the diplomas and appendixes given in the countries which are party states to the Hague Convention on abolishing the requirement of legalization for foreign public documents should be legalized by apostille certification. Documents provided in other countries should be legalized in accordance with the national legislation by the Ministry of Education before getting legalized by the embassy (consulate) of the Republic of Azerbaijan in that country. Expert fee for recognition and determination of equivalence of higher education specialties of foreign countries are AZN 50 compared to duty fee which is estimated in AZN 15 under the Law on State Duties of the

⁴⁶⁹ Ministry of Education of the Republic of Azerbaijan, 'Tələb olunan sənədlər' <<https://www.nostrifikasiya.edu.az/frontend/az/content/item/10-r%C9%99l%C9%99b-olunans%C9%99n%C9%99dl%C9%99r>> accessed July 14 2017 [Azerbaijani]

⁴⁷⁰ Ministry of Education of the Republic of Azerbaijan, 'Nostrifikasiya' <<http://edu.gov.az/az/page/67>> accessed July 15 2017 [Azerbaijani]

⁴⁷¹ Law of the Republic of Azerbaijan on the Administrative Proceedings 2005 [İnzibati icraat haqqında Azərbaycan Respublikasının Qanunu]

Republic of Azerbaijan.⁴⁷² Under the article 3.4 of Executive order of the Cabinet of Ministers of the Republic of Azerbaijan for confirmation of regulations on recognition and determination of equivalence of higher education specialties of foreign countries, content of study plan and programs, attestation systems, scope of the subjects taught, results of attestations by subjects, internship and its duration and the results of final examination are the main factors taken into account in the process of appraisal by experts.

Under the article 3.7 denial of recognition can be given if: a) duration of study in higher education specialty of foreign country is more than a year less than education standards of Republic of Azerbaijan; b) the rights guaranteed under the education document provided in a foreign country are less than the rights guaranteed under the education document provided in Azerbaijan; c) Azerbaijan Republic does not provide distant study or mix of distant study and full-time education on the relevant specialty. The certificate of recognition and determination of equivalence of higher education specialties of foreign countries is being signed by the Minister of Education of the Republic of Azerbaijan and approved by the official stamp of the ministry. Afterwards, it will be presented to the applicant or its official representative, or delivered via email.⁴⁷³

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Pursuant to article 55 of the Constitution, foreign citizens and stateless citizens may be employed into state organizations in an established order.⁴⁷⁴ Migrants enjoy the right to freedom of speech and expression, also pursuant to article 58 of the Constitution (every person enjoys the right to associate with others, create associations, including trade unions, and to join established associations). Article 8 of the Law on non-governmental organizations (public associations and funds) shows that foreigners and stateless persons may be participants of NGOs operating in the Republic of Azerbaijan. Also, according to the article 9 of this law, foreigners and stateless persons who have a right to permanent residence in Azerbaijan can be founders of an NGO in the territory of the Republic of Azerbaijan. However, foreigners and stateless persons cannot become members of the political parties of the Republic of Azerbaijan.⁴⁷⁵

⁴⁷² Ministry of Education of the Republic of Azerbaijan, 'Tələb olunan sənədlər' <<https://www.nostrifikasiya.edu.az/frontend/az/content/item/10-r%C9%99l%C9%99b-olunan-s%C9%99n%C9%99dl%C9%99r>> accessed July 14 2017 [Azerbaijani]

⁴⁷³ Executive Order of the Cabinet of Ministers of the Republic of Azerbaijan, N 64 (on confirmation of regulations on recognition and determination of equivalence of higher education specialties of foreign countries) 2003 [xarici dövlətlərin ali təhsil sahəsində ixtisaslarının tanınması və ekvivalentliyinin müəyyən edilməsi (nostrifikasiyası) qaydaları”nin təsdiq edilməsi haqqında azərbaycan respublikasının nazirlər kabinetinin qərarı]

⁴⁷⁴ Constitution of the Republic of Azerbaijan 1995 [Azərbaycan Respublikasının Konstitusiyası]

⁴⁷⁵ Law on Non – Governmental Organizations (Public Associations and Funds) of the Republic of Azerbaijan 2000 [Qeyri-hökumət təşkilatları (ictimai birliklər və fondlar) haqqında Azərbaycan Respublikasının Qanunu]

Article 12.2 of the Election Code of Azerbaijan Republic provides that stateless persons regularly residing in the territory of Azerbaijan for more than 5 years have the right to vote in presidential, parliamentary, and municipal elections and on national referendums. According to the article 12.3, 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 should be recognized) Article 15 of this Code, furthermore, indicates that considering the exceptions noted on article 12.2 and 12.3, stateless persons and foreigners are not entitled to right of active and passive suffrage in Azerbaijan Republic. Foreigners, stateless persons, foreign legal persons, also their branches and representatives cannot participate in the nomination and registration of candidates or in election campaigns of registered candidates during elections. Foreigners, stateless persons, and foreign legal persons shall not have the right to conduct a campaign for or against issues to be discussed by a referendum, to be members or initiators of referendum campaign groups, or to take part in referendum activity in any form under the article 15.4 of the Election Code. These will not restrict the rights of foreigners and stateless persons to freedom of opinion and assembly.⁴⁷⁶ Regarding the public participation of migrants, the Commissioner for Human Rights can be indicated as another protection mechanism. The post of the Commissioner was established for prevention and restoration of human rights and freedoms - determined in the Constitution and international agreements which the Republic of Azerbaijan is party to - violated by the state and local self-government authorities, and officials. Ensuring protection of civil and political rights is the one of the main spheres of competence of the Commissioner. According to the article 8.1 of Constitutional Law of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of Azerbaijan Republic, the Commissioner shall examine complaints on violations of human rights from citizens of the Republic of Azerbaijan, **foreigners and stateless persons** as well as legal entities.

As a member state of Council of Europe, Azerbaijan ratified the European Convention on Human Rights on 25 December 2001. In accordance with article 10 of this Convention, everyone has the right to freedom of expression. Article 11 stresses out about freedom of assembly and association, furthermore. Article 14 on prohibition of discrimination indicates that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Pursuant to article 16 on restrictions on political activity of aliens, 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. With the statement on this Convention, Azerbaijan Republic declares that Azerbaijan cannot guarantee the implementation of provisions of this Convention in the occupied territory by the Republic of Armenia. The legislation of Azerbaijan has not described different conditions of participation in political decisions for EU nationals and non-EU nationals. In cases of barriers to political and civil participation, foreigners and stateless persons have a right to appeal to the ombudsman/public advocate institute as this encompasses

⁴⁷⁶ Election Code of the Republic of Azerbaijan 2003 [Azərbaycan Respublikası Seçki Məcəlləsi]

the violation of human rights. According to article 8 of the Constitution Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, complaints can be given to Ombudsman via third persons or NGOs with applicant's consent within one year.⁴⁷⁷ Finally, migrants enjoy the right to assemble in trade unions under the Law of Republic of Azerbaijan on Trade Unions. (with the participation of at least 7 members).

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

Since Migration Code does not cover the refugee and citizenship issues, acquisition of Azerbaijani citizenship is only regulated by the Law on Citizenship of the Republic of Azerbaijan (1998) The second chapter of the Law is entitled as "Acquisition and re-acquisition of citizenship of the Republic of Azerbaijan" Under the article 11, acquisition of citizenship of the Republic of Azerbaijan might have one of these following grounds: a) if the person was born in the territory or from the citizens of the Republic of Azerbaijan; b) if the person is granted a citizenship of the Republic of Azerbaijan; c) if there are grounds under the international agreements to which the Republic of Azerbaijan is party; d) if there are other grounds stipulated by the Law on Citizenship of the Republic of Azerbaijan.

Children with two foreigner or one foreigner and one stateless person parents and who were born in the territory of the Republic of Azerbaijan are not considered the citizens of the Republic of Azerbaijan. However, if the child was born in the territory of the Republic of Azerbaijan and his/her both parents are stateless persons, then he/she is considered a citizen of the Republic of Azerbaijan.

Furthermore, regardless of the origin, racial and national affiliation, sex, education, attitude to the religion, political and other kinds of conviction, the acquisition of the citizenship of the Republic of Azerbaijan might be incorporated into reality if a foreigner or a stateless person : a) lives permanently in the territory of the Republic of Azerbaijan over the last 5 years on a legal basis; b) has a legal source of income; c) took liability to obey the Constitution of the Republic of Azerbaijan as well as its legislation; d) presented a document on the knowledge of the Azerbaijani language. The duration of a foreigner's or a stateless person's permanent stay in the territory of the Republic of Azerbaijan is counted from the day he/she has been granted a permanent residence permit or refugee status determined by the legislation. In case the individual has not left the country more than three months within a year, duration of his/her permanent stay is considered continuous. In the following cases, without fulfilling the criteria on permanently staying 5 years within the territory of the Republic of Azerbaijan, foreigners or stateless persons might acquire Azerbaijani citizenship: a) if an individual has had significant achievements in the field of science, technology, culture or sports; b) if an individual carries

⁴⁷⁷ Constitution Law of the Republic Azerbaijan on "Commissioner for Human Rights (Ombudsman) of Azerbaijan Republic" 2001 [Azərbaycan Respublikasının İnsan hüquqları üzrə müvəkkili (ombudsman) haqqında Azərbaycan Respublikasının Konstitusiyaya Qanunu]

specific interest for the Republic of Azerbaijan or c) other exceptional cases. However, in such instances, relevant executive bodies should confirm the expedient of the acquisition. In case an individual's service for the Republic of Azerbaijan carries a special necessity, the citizenship might be acquired without taking any of the abovementioned criteria into account.

To be submitted with the application form are the following items: a) 4 photos of 3x4 size (colour); b) certificate issued from the place of residence regarding family situation (number of members, etc.); c) receipt of payment of duty fee; d) certificate confirming the residence of a person in Azerbaijan for the past 5 years; e) letter issued by the Ministry of Education, confirming the knowledge of the state language; f) copy of document permitting the individual to reside permanently in the Republic of Azerbaijan; g) copy of registration card of a foreigner/stateless person residing permanently in the Republic of Azerbaijan; h) copy of identification document; i) document stating the legal source of income; j) well-grounded application of relevant state institution of Azerbaijan Republic that invited individuals have significant achievements in the field of science, technology, culture or sports; k) document specifying the attitude of competent authority in country of first nationality to the intention of individual on acquiring the citizenship of the Republic of Azerbaijan (if a country has an international agreement with the Republic of Azerbaijan on prevention of double citizenship) After the initial examination of application by SMS, it is delivered to State Security Service (SSS), Foreign Intelligence Service (FIS) and Ministry of Internal Affairs (MIA) for providing comments. Afterwards, SMS sends the collected materials to Citizenship Issues Commission under the President of the Republic of Azerbaijan to scrutinize them. The President, then, adopts an order on the acquisition of the citizenship of the Republic of Azerbaijan based on the decision of aforementioned Commission. (According to the Constitution of the Republic of Azerbaijan President makes the final decision on acquiring the citizenship) SMS and MFA furnish a letter for the applicants regarding the outcome of the application. However, persons who were stateless until January 1 1992 but registered in the Republic of Azerbaijan and applied to acquire the citizenship until September 30 1999 have to, additionally, present the certificate from the residence place and document on statelessness to MIA, as well. Subsequently, MIA shall provide such applicants with an identification card. The applications should be examined within a month by the competent state authorities. However, individuals have a right to re-apply for the citizenship if the grounds leading to refusal have been ceased.⁴⁷⁸ The application of the foreigner or a stateless person is denied if he/she: a) attempts to change the state structure determined under the Constitution of the Republic of Azerbaijan violently; b) expresses a thought on the violation of the territorial integrity of the Republic of Azerbaijan; c) conducts activities which are considered hazardous for the state security, public order, health and morals for the population; d) advocates racial, religious or national separatism; e) has connections with the terroristic acts.

In case both parents change their citizenship to the Azerbaijani, their children under 14 immediately get the Azerbaijani citizenship, as well. With regard to the children whose parents

⁴⁷⁸ Regulation on examination of the citizenship issues of the Republic of Azerbaijan and their solution methods 1999 [Azərbaycan Respublikasının vətəndaşlığı məsələlərinə baxılması və onların həlli qaydası]

are a foreigner and an individual to whom Azerbaijani citizenship acquired, they can be granted a citizenship only by the application of the parent to whom Azerbaijani citizenship acquired and the permission of a foreigner parent. If citizens of the Republic of Azerbaijan adopt the foreigner or stateless child, the latter automatically get acquired an Azerbaijani citizenship. In case one of the parents adopting a foreigner or a stateless child is the citizen of the Republic of Azerbaijan and another one is a foreigner, the child might get acquired an Azerbaijani citizenship by the consent of both parents. The foreigner child adopted will also automatically get the Azerbaijani citizenship, if one of the parents is the citizen of the Republic of Azerbaijan and another one is a stateless person. Under the article 10 of the Law of the Republic of Azerbaijan on Citizenship, dual citizenship is possible in only two cases: 1) if stipulated by the bilateral agreements to which the Republic of Azerbaijan is party or 2) through the permission of the President. In other cases, the foreign citizenship of the dual citizenship holder is not recognized under the Azerbaijani legislation.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

The EU has implemented major reforms to reach a thorough migration policy and Global Approach to Migration and Mobility adopted in 2005 may be considered one of the most powerful tools in this sense. In accordance with this framework, the EU has started to build up migration cooperation projects with third countries, including the region of EaP. EaP Panel on Migration and Asylum, EaP Panel on Integrated Border Management, Prague Process have been the first main initiatives of the EU in relation to EaP countries in terms of collaboration in mentioned sphere. Moreover, Communication on "A common immigration policy for Europe: principles, actions and tools" developed in 2008 refers to partnership with third countries on the issues related to migration phenomenon as one of the ten principles of EU's migration policy.⁴⁷⁹ Therefore, despite the fact that Azerbaijan is not a member state to the EU (hence, not being able to benefit from the EU integration fund, Asylum, Migration and Integration fund and European Social Fund), the latter has given specific attention to the joint actions with Azerbaijan over the especially, last ten years, by the instruments, such as mobility partnerships, visa facilitation and readmission agreements.⁴⁸⁰

12.1. Support to the Implementation of the Mobility Partnership with Azerbaijan

Azerbaijan and the EU signed the joint declaration on Mobility Partnership in Brussels on December 5 2013. Since 2015, International Center for Migration Policy Development (ICMPD) has been accomplishing the projects specified by the partnership. In the framework of

⁴⁷⁹ European Commission Home and Migration Affairs, 'Global Approach to Migration and Mobility' < https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en > accessed July 15 2017

⁴⁸⁰ European Commission Home and Migration Affairs, 'Eastern Partnership', < https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership_en > accessed July 15 2017

collaboration with ICMPD, the project between Azerbaijan and EU named "Support to the Implementation of the Mobility Partnership with Azerbaijan" (MOBILAZE) has been prepared and the EU and ICMPD signed an agreement on its enforcement on December 31 2015. The duration of project which commenced on January 15 2016 is 3 years. Nine agencies from seven countries, including Republic of Bulgaria, Czechia, Republic of Latvia, Republic of Lithuania, Kingdom of the Netherlands, Republic of Poland and the Republic of Slovakia are the participants within the project. The budget of the project is EUR 2.5 million. Project combines 5 components, noted as following: a) capacity building of the government of the Republic of Azerbaijan in the field of monitoring, analysis and prediction on migration and support to the implementation of migration policy; b) enhancing the management of labor migration and legal migration from and to Azerbaijan as well as raising the awareness on mobility between the Republic of Azerbaijan and the EU; c) capacity building of the authorities of the Republic of Azerbaijan in the field of document security; d) capacity building of the authorities of the Republic of Azerbaijan to develop and implement the national asylum policy as harmonized to the international standards; e) assistance to the continuous reintegration of returnees (voluntary repatriated and readmitted illegal migrants) On the grounds of fifth component, data collection on the existing social protection in Azerbaijan (especially, the protection of health, right to education and allowances for unemployment) and meetings with project coordinators have been implemented.⁴⁸¹ In addition to that, the EU's recommendation on appointment of focal points in relevant ministries to facilitate the communication procedures has been achieved.⁴⁸²

12.2. Consolidation of Migration and Border Management Capacities in Azerbaijan (CMBA)

Some projects assisted by either financial or technical support from the EU have been implemented to build the capacity of the authorities taking responsibility in the integration of migrants. CMBA blueprint whose rendition started on October 22 2014 and planned to be completed in 2017 can be enumerated in this sense. The budget of the project is EUR 3.2 million. Within the project, the officers of Ministry of Foreign Affairs, Ministry of Labor and Social Protection, Ministry of Internal Affairs, State Migration Service and State Border Service have been conducted trainings and seminars for. Seminars and trainings have mainly been carried on the health of the migrants, illegal labor activities of migrants, fight against labor exploitation, labor market information system and readmission and human rights. Publications such as, Assessment Report on Support to Voluntary Repatriation and Reintegration, Assessment Report on Labor market information systems, Standard Operational Procedures on implementation of Support to Voluntary Repatriation and Reintegration and Standard Operational Procedures on finding out and scrutinizing the illegal employment cases of foreigners have been printed,

⁴⁸¹ State Migration Service of the Republic of Azerbaijan, 'Miqrasiya Siyasətinin İnkişafı üzrə Beynəlxalq Mərkəz (MSİBM) tərəfindən həyata keçirilən layihələr' < <https://migration.gov.az/post.php?pageid=6435> > accessed July 16 2017 [Azerbaijani]

⁴⁸² ICMPD and MOBILAZE, 'Analysis Report : Readmission and Reintegration in Azerbaijan' (December 2016) < http://www.icmpd.org/fileadmin/user_upload/Com5_Analysis_report_final.pdf > accessed September 22 2017

furthermore.⁴⁸³ One of the substantial advantages of the CMBA project has been the translation of handbook on European law related to asylum, border and immigration which enlarged the apprehension of Azerbaijani officials on the mentioned domains.⁴⁸⁴

12.3. Asylum Systems Quality Initiative in Eastern Europe and South Caucasus

Asylum Systems Quality Initiative in Eastern Europe and South Caucasus co-financed by the European Commission and the United Nations High Commissioner for Refugees commenced to be implemented since April 2013. The purpose of the project is enhancing and developing the quality of asylum systems and international protection of refugees as well as improving the decency of decision-making on the determination of the refugee status in the mentioned region. The budget of the project is EUR 2 million. Within the project, UNHCR Azerbaijan and State Migration Service of the Republic of Azerbaijan received technical assistance. The first part of the project was completed in 2015 and on December 15-16 2015 the opening ceremony of the 2nd part of the project was held during the Stockholm conference. In the framework of the project, UNHCR established information database on country of origins as well as human rights and protection of refugees.⁴⁸⁵ As an outcome of Asylum Systems Quality Initiative in Eastern Europe and South Caucasus, refugees settling in urban areas are provided with assistance to become self-reliant.

12.4. Supporting the Establishment of Effective Readmission Management in South Caucasus

In the timeframe of 2012-2015, project entitled "Supporting the establishment of effective readmission management in South Caucasus" was carried out by the financial resources of EU, International Organization for Migration and Swiss Agency on Development and Cooperation. The purposes of the project were: a) to support the generation of readmission cases and efficient management systems; b) to build the capacity of the management of migrant reception centers; c) to support the establishment of efficient institutional schemes focusing on reintegration of returnee migrants. In the course of the project, detention centers of State Migration Service as well as aspects on readmission and return procedures determined in the migration legislation of Azerbaijan have been evaluated. The budget of the project was EUR 1 492 457. The main authority implementing the project was International Organization for Migration.⁴⁸⁶ The project's betterment to the regulation of migration processes in Azerbaijan contained the signature of agreements between EU and Azerbaijan on visa facilitation and readmission. (See : Question 2

⁴⁸³ State Migration Service of the Republic of Azerbaijan, 'Beynəlxalq Miqrasiya Təşkilati tərəfindən həyata keçirilən layihələr' < <https://migration.gov.az/post.php?pageid=5763>> accessed July 17 2017 [Azerbaijani]

⁴⁸⁴ IOM Azerbaijan, 'The Launching the Azerbaijani version of the Handbook on European Law Related to Asylum, Border and Immigration' < <http://iom.az/news/news3/>> accessed September 18 2017

⁴⁸⁵ State Migration Service of the Republic of Azerbaijan, 'Birləşmiş Millətlər Təşkilatının Qaçqınlar üzrə Ali Komissarlığı tərəfindən həyata keçirilən layihələr' < <https://migration.gov.az/post.php?pageid=5764>> accessed July 17 2017 [Azerbaijani]

⁴⁸⁶ State Migration Service of the Republic of Azerbaijan, 'Beynəlxalq Miqrasiya Təşkilati tərəfindən həyata keçirilən layihələr' < <https://migration.gov.az/post.php?pageid=5763>> accessed July 17 2017 [Azerbaijani]

Conclusions

Most of the migrants coming to Azerbaijan are the citizens of neighbouring countries, such as Russia, Turkey, Iran and also Arabic countries and Afghanistan. Moreover, Azerbaijan has signed manifold visa facilitation agreements with Japan, Saudi Arabia, Kingdom of Bahrain, Sultanate of Oman, the EU expediting the movement of the citizens of aforementioned states to the country. Besides, the launch of electronic visa system through which citizens of 94 countries, including all the EU Member states can receive their e-travel documents within three working days was another factor causing the rapid increase in immigration to Azerbaijan. Nonetheless, the number of applications to possess a refugee status has not been statistically significant. The major innovation in the migration field has been incorporated into reality by the establishment of the State Migration Service operating under the principle of 'one-stop-shop' according to which the granting of work permits, temporary and permanent residence permits as well as extension of duration of temporary residence permits of foreigners and stateless persons are the responsibilities of the institution. One-stop-shop principle has been considered one of the most transparent and democratic migration management scheme in Azerbaijan and the world. Azerbaijan recognizes that foreigners and stateless persons living or staying temporarily in the territory of the Republic of Azerbaijan possess the same rights with its citizens unless specified by the legislation or an international agreement of which the country is a party. Legislation on refugees and internally displaced persons has also experienced substantial reforms, among which inclusion of provisions on unaccompanied minors and negotiations on subsidiary protection are the most recent successes. Azerbaijan has committed itself to the requirements of international/regional conventions through which considerable rights have been granted to the migrants in the integration in domains of political and civic participation, education and healthcare, particularly. To conduct further refinement in the mentioned sphere, Azerbaijan cooperates with organizations, such as UNHCR, the EU, Council of Europe, etc. Various project held within the framework of the cooperation back the local integration of migrants and enhancing the capacity of country officials in the field and also legal background of it, such as ECHR provisions. All in all, Azerbaijan continues its tradition of respecting migrants' rights and regularly makes reforms to achieve better results in the aforesaid domain.

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Introduction

Bosnia and Herzegovina can be only transit country but not the target country for thousands of refugees, which are trying to reach the more developed states on the west of Europe. Because of the economy situation in BH and some other countries, they are not the countries which will be in the interest of refugees. They know that BH system is not able to give them the relevant social assistance, so they don't want to stay here. In fact, a large number of them fled from their country to avoid the bad situation and it is not the best solution for them if they are willing to stay here. Unfortunately, in BH we have a certain number of empty facilities which can be used for their accommodation. But refugees will take the first chance they get to continue the way toward EU countries.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

The migration and asylum legislation in Bosnia and Herzegovina has been harmonized with relevant EU and international standards. The right to seek and enjoy asylum is a constitutional right in BH based on Universal Declaration on Human Rights.

The area of the migration and asylum of Bosnia and Herzegovina is regulated by the following legal documents:

- Law on Movement and Stay of Aliens and Asylum (“Bosnia and Herzegovina Official Gazette”, no. 36/08 and 87/12);
- Decision on Visas (“Bosnia and Herzegovina Official Gazette”, No. 54/12);
- Rulebook on Visa Issuance for Long-term Stay (Visa D) and the procedure of issuing such visas (“Bosnia and Herzegovina Official Gazette”, No. 104/08);
- Rulebook on issuance of short-term visas (Visa C) and airport transit visas (Visa A) in the diplomatic and consular missions of Bosnia and Herzegovina (“Bosnia and Herzegovina Official Gazette”, No. 69/13);
- Guidelines for the procedures of diplomatic and consular missions of Bosnia and Herzegovina upon a visa application to enter the territory of Bosnia and Herzegovina for the citizens of Kosovo;
- Rulebook on Entry and Stay of Aliens (“Bosnia and Herzegovina Official Gazette”, No. 27/13);
- Law on the Border Control (“Bosnia and Herzegovina Official Gazette”, no. 53/09 and 54/10).

The first law that regulated the issue of immigration and asylum at BH level was the Law on Immigration and Asylum. The provisions of this law were unclear and incomplete and there was

a conflict of competencies between the institutions and some vital issues such as: registration of stay, placement of the foreigner under surveillance, specialized institutions for reception, foreigners – victims of human trafficking, and sanctions for failure to comply with the Law on Immigration and Asylum were insufficiently regulated. Although the aforementioned law due to the numerous gaps and unclear areas caused number of reactions of the bodies authorized in its implementation, it has basically fulfilled its mission, since the area of immigration was harmonized with constitutional set up and created pre-conditions for further legal and institutional development in this area.

1.1. Give a description of the national regulations governing asylum.

Ministry of Security determines the merits of the request for international protection, or whether an alien meets the requirements for recognition of refugee status or subsidiary protection status. The decision on the request for international protection shall be made by the Ministry of Security, Asylum Sector.

The decision on the request for international protection is final and binding (no possibility to appeal against the decision) whilst an alien may initiate an administrative dispute before the Court of Bosnia and Herzegovina within 60 days. In cases of unfounded applications (emergency procedure as defined by law) the deadline for initiating an administrative dispute is shorter and is no longer than 8 days. In case where the procedure at the request shall be suspended by conclusion or rejected, the deadline for initiating an administrative dispute is 8 days and the complaint does not postpone the execution of the decision.

An alien with recognized refugee status has the right to stay for the duration of international protection. Besides his/her stay in Bosnia and Herzegovina they are entitled to the right to work, education, health and social care under the same conditions as nationals of Bosnia and Herzegovina and the right to family reunification.⁴⁸⁷

1.1.1. The Strategy of Bosnia and Herzegovina in the Area of Migration and Asylum (2016-2020)

The Strategy with the belonging Action plan was adopted upon the proposal of Ministry of Security by the Council of Ministers of BH on 31th of March 2016. This comprehensive document aimed to strengthen institutional capacities in the area of migration and asylum, increase the state border control efficacy, set-up a system for monitoring foreigners' integration, harmonisation of national migration and asylum-related legislation with the EU standards. Particular importance rests on the geo-strategic position of Bosnia and Herzegovina, observed migration trends, constitutional legal framework, obligations arising from international treaties, movement towards joint migration policy of the EU and adopted policies of authorized bodies of Bosnia and Herzegovina.⁴⁸⁸

For the implementation of these strategic goals 37 measures were defined together with 173 activities to be implemented by relevant BH institutions in precisely set deadline eventually by

⁴⁸⁷ Ministry of Security of BH Background Information on the Entry, Stay and International Protection of Aliens in Bosnia and Herzegovina, http://msb.gov.ba/inf_zastance/default.aspx.

⁴⁸⁸ Strategy in the area of migrations and asylum (2016-2020).

year 2020. This strategic document came as a result of a joint coordinated effort taken by representatives of competent institutions in BH dealing with the area of migrations and asylum. The document is particularly evident in the context of the Stabilization and Accession Agreement's entry into force, which obligates Bosnia and Herzegovina in the area of migrations and asylum to cooperate intensively with the member states and institutions of the European Union in the areas of visas, border management, migration and asylum.

Identification of relevant legal sources in domestic legislation is very important in the drafting of such a strategic document as this one, for the purpose of legitimacy of the set strategic goals, as well as harmonisation of their content with the provisions of specific laws and bylaws.

There is a series of international treaties that Bosnia and Herzegovina is a party to, which directly or indirectly impact the content and composition of the Strategy in the field of migrations and asylum (2016-2020). Strategy in the field of migrations and asylum (2016-2020) is the provision of Bosnia and Herzegovina's Constitution, Article III paragraph 1. item f), stating that state-level institutions hold exclusive competence to create policies concerning immigration, refugees and asylum. The said provision is one of the legal bases for the adoption of legal and political documents regulating, in a planned, organized and harmonised manner, the activities of competent institutions in this domain, with view to creating the most efficient control mechanism for the said phenomena in Bosnia and Herzegovina.

The Strategy in the field of migrations and asylum (2016- 2020), regulates the following activities:

- competencies of individual institutions of Bosnia and Herzegovina in the field of migrations, asylum and international refugee law (Law on Council of Ministers of Bosnia and Herzegovina, Law on Ministries of Bosnia and Herzegovina and Other Administration Bodies of Bosnia and Herzegovina);
- matters of protection of borders, entry and stay of aliens on the territory of Bosnia and Herzegovina (Law on Border Control, Law on Aliens, and bylaws);
- matters of asylum in the territory of Bosnia and Herzegovina (Law on Asylum, with bylaws);
- competencies and organization of institutions directly involved in law enforcement in practice (Law on Administration, Law on Service for Foreigner's Affairs, Law on Border Police of BiH, Law on State Investigation and Protection Agency, Law on Police Officials, Law on Civil Service);
- other matters of significance for the overall regulation of migrations and asylum (Law on Administrative Proceedings, Law on Administrative Disputes, Law on Personal Identification Number, Law on Citizenship, Law on Protection of personal Data, Law on Protection of Confidential Data, Law on Travel Documents of Bosnia and Herzegovina, Framework Law on Primary and Secondary Education, Criminal Code of Bosnia and Herzegovina).

The bylaws in the field of migrations and asylum adopted in the previous period and presented in the attachment to the Strategy are also considered to be a very important source.

Other relevant legal documents are important part of the strategy, in particular Decision by the Council of Ministers of Bosnia and Herzegovina on instruments for harmonisation of legislation of Bosnia and Herzegovina with *acquis communautaire*.

This document instructs the ministries and other administration bodies in Bosnia and Herzegovina to ensure harmonisation of all domestic legislation with *acquis communautaire*.

1.2. What is the procedure for granting asylum and who is responsible?

Ministry of Security is in charge of the implementation of immigration policy and asylum procedures in BH, and is responsible for the regulation of procedures and methods of organizing services dealing with the issues of the movement and stay of aliens.

Asylum Sector performs administrative and other professional tasks related to the execution and implementation of asylum procedure in BH. The Immigration Sector is responsible for delivering second instance decisions on appeals of aliens on the decisions issued by the Service for Foreigners' Affairs and the Border Police.⁴⁸⁹ Procedures at the border – Pursuant to the *Law on Movement and Residence of Foreigners and Asylum*, if an individual expresses his intention to apply for international protection at a border crossing point in BH, the Border Police is obliged to inform, without delay, the nearest Field of Office of the Service for Foreigner Affairs ("SFFA") which then takes jurisdiction over the asylum seeker. If an individual states the reasons indicating the necessity to apply the principle of non-refoulement, the authority to which they have given such a statement must inform, without delay, the relevant Field Office of SFFA, which then takes jurisdiction over them. When a foreigner has expressed his intention to apply for international protection, the Field Office of SFFA issues them a confirmation of the expressed intention which is valid for up to seven days. After that the Sector for Asylum of the Ministry of Security conducts the registration and the RSD interview.⁴⁹⁰

1.2.1. Registration and asylum procedure

After an asylum application has been submitted, an asylum officer of the Sector for Asylum registers the asylum seeker. Following the registration procedure, an asylum seeker card is issued to the asylum applicant and the nucleus family members accompanying him or her. The asylum seeker card is valid for three months and is regarded as a permission to stay in BH pending a final or enforceable determination of the asylum application. An asylum seeker must apply for extension of an asylum seeker card no later than 15 days prior to the expiration date, and they are assisted to do so by the organizations providing free legal aid.⁴⁹¹ Following the registration process, an interview of the asylum seeker is scheduled by the Sector for Asylum. The Law does not expressly state deadline within which the interview has to be conducted, except that it has to be done "without delay"; in practice, this can take several months, depending on the number of applications that have been submitted at the time. An interview is an oral hearing conducted to establish properly the facts of the case and, as a rule, pursuant to the provisions of the

⁴⁸⁹ Ministry of Security, Sector for Asylum <http://www.msb.gov.ba>.

⁴⁹⁰ Ministry of Security, Sector for Asylum <http://www.msb.gov.ba>.

⁴⁹¹ *ibid*

Administrative Procedure Act. A notification of an interview is sent to the asylum seeker or their legal representative at least eight days prior to the date of the interview.⁴⁹²

1.2.2. Reception, shelter, assistance

Pursuant to the Law on Movement and Residence of Foreigners and Asylum, if an individual expresses his intention to apply for international protection at a border crossing point in Bosnia and Herzegovina, the Border Police is obliged to inform, without delay, the nearest Field Office of the Service for Foreigner Affairs (“SFFA”) which then takes jurisdiction over the asylum seeker. If an individual states the reasons indicating the necessity to apply the principle of *non-refoulement*, the authority to which they have given such a statement must inform, without delay, the relevant Field Office of SFFA, which then takes jurisdiction over them.

When a foreigner has expressed their intention to apply for international protection, the Field Office of SFFA issues them a confirmation of the expressed intention which is valid for seven days maximum. After that the Sector for Asylum of the Ministry of Security conducts the registration and the RSD interview. After an asylum application has been submitted, an asylum officer of the Sector for Asylum registers the asylum seeker. The registration form must be filled in for all adult asylum seekers. Following the registration procedure, an asylum seeker card is issued to the asylum applicant and the nucleus family members accompanying them. The asylum seeker card is valid for three months and is regarded as leave to stay in BiH pending a final or enforceable determination of the asylum application. The asylum seeker card may be extended beyond the expiration date until an enforceable or final decision on the asylum application is taken. The validity period of an asylum seeker card is extended by the Field Office of SFFA, with the approval of the Sector for Asylum. An asylum seeker must apply for extension of an asylum seeker card no later than 15 days prior to the expiration date, and they are assisted in this by the organisations providing free legal aid.

Following the registration process, an interview of an asylum seeker is scheduled by the Sector for Asylum. The Law does not expressly provide for the deadline within which the interview has to be conducted, except that it has to be done “without delay”; in practice, this can take several months, depending on the number of applications as the same time. An interview is an oral hearing conducted to establish properly the facts of the case and, as a rule, pursuant to the provisions of the Administrative Procedure Act, a notification of an interview is sent to the asylum seeker or their legal representative at least eight days prior to the date of the interview. The Law sets an obligation on the Ministry of Security to provide asylum seekers with the appropriate conditions of reception, including those relating to primary health care. An asylum seeker has the right to follow the proceedings through an interpreter or a sign language interpreter³⁸ who will be provided by MoS. They also have a right to use the services of legal counseling in an asylum procedure. Asylum seekers exercise the right to free legal aid from the moment of the expression of their intention to apply for international protection, and from that moment, Ministry of Security, the Border Police and SFFA have a legal obligation to inform asylum seekers of this right. Free legal aid is provided, with the financial support of UNHCR by

⁴⁹² *ibid*

NGOs specialized in providing free legal aid, Association *Vaša prava BH*, which has been providing free legal aid to such categories since 2004, and *Foundation of Local Democracy* NGO, since 2010.⁴⁹³

2. How does your national law regulate immigration from EU member states and non-EU states?

Removal of aliens from BH is a measure undertaken by the Service for Foreigners' Affairs in cases when an alien issued with an executable order to leave BH fails to leave BH voluntarily within the deadline provided in the order for voluntary return. This measure entails the forcible removal of such alien from BH. According to the data from the Service for Foreigners' Affairs Report for 2014 and 2015, there were 5 issued conclusions on the approval of execution of decisions on deportation. Such a low number of forcible removals results from aliens' decisions to voluntarily leave BH by their own accord. Presented indicators show that voluntary return to the country of one's origin is promoted and conducted as a more humane and effective procedure in comparison with forcible removal. Readmission agreements prove to be easier, quicker and cost effective means of removal of aliens, and are used in cases when Bosnia and Herzegovina had signed a readmission agreement with the country to which the alien is sent, provided that the agreement came into force. The Ministry of Security's Service for Foreigners' Affairs is responsible for the admission of third country nationals and stateless persons, as well as for their return from BH.

Ministry of Security's Asylum Sector is first instance authority, whereas the Court of Bosnia and Herzegovina is the second instance handling the submitted appeals. The asylum procedure primarily concerns evaluation if there are grounded reasons for recognizing the international protection in BH in the sense of fulfillment of criteria for provision of such status. Furthermore, in the asylum procedure a special attention is devoted to the principle of "non-refoulement". Upon filed application for international protection (asylum), the first instance authority may reach one of the following decisions:

- The application for international protection (asylum) is approved, and the applicant is granted status of a recognized refugee in Bosnia and Herzegovina;
- The application for international protection (asylum) is approved by deciding that instead of refugee status, the applicant would be granted status of subsidiary protection;
- The application for international protection (asylum) is rejected and the applicant is given a deadline for voluntary departure from Bosnia and Herzegovina;
- The procedure for international protection (asylum) is terminated and the applicant is given a deadline for voluntary departure from Bosnia and Herzegovina;
- The application for international protection (asylum) is terminated and the applicant is given a deadline for voluntary departure from Bosnia and Herzegovina; or

⁴⁹³ *ibid*

- The application for international protection is rejected, but the applicant would not be removed from BH due to the “non-refoulement” principle.

An alien who has exhausted all available legal remedies upon his/her application for international protection that was rejected by a final and binding decision under Article 116 (Decisions upon the application for international protection) Indents c) and f), but for whom it was determined in the asylum procedure that he/she cannot be removed from the territory of Bosnia and Herzegovina for the reasons prescribed by the “non-refoulement” principle would be transferred under competence of the Service for Foreigners’ Affairs. In such a scenario, the alien remains at the BH territory for as long as the reasons for such decision exist. Refusal of entry is a measure implemented in line with the Law by the BH Border Police only towards aliens and stateless persons attempting to legally cross the BH state border and enter BH, but who do not fulfill the conditions for entry stipulated by the Law. In such cases, the BH Border Police refuses entry to such persons and in line with the provisions of the Law issues a decision on refusal of entry. The alien or stateless person may appeal this decision with the Ministry of Security, but filing an appeal does not enable entry into BH. Illegal border crossing entails persons discovered in an attempt to illegally cross the BH state border into or out of BH.

An alien who does not fulfill the general requirements for entry into BH as per Article 19 and 25 of the Law on the Movement and Stay of Aliens and Asylum of BH, and does not come under an international agreement or decision on entry under special conditions, may be refused to entry into BH. The reasons for refusal of entry into BH to aliens were: lack of valid travel document (57%); inability to prove or provide information on the purpose of intended stay (21%); lack of visa for entry, stay, transit through the territory of BH or approval of stay as per the Law (13.5%); lack of sufficient means of subsistence, including health insurance (5%); existing measure of deportation, cancellation of stay or prohibition of entry into the BH territory (1%) and other reasons (2.5%). The majority of refusals of entry at the state border are due to the lack of valid travel document and the lack of visa. A measure of deportation also includes prohibited entry of the alien into Bosnia and Herzegovina in the period varying from 1 to 5 years.⁴⁹⁴

Visa free stay is a right to stay in Bosnia and Herzegovina of an alien who comes from a country with a visa-free regime. Aliens who are exempt from visa entry into the territory of Bosnia and Herzegovina, have the right to enter and stay in the country for up to 90 days over a period of six months from the date of first entry. According to the Article 21 of the Law on Movement and Stay of Aliens and Asylum the Council of Ministers of Bosnia and Herzegovina determines the countries whose citizens can enter Bosnia and Herzegovina without the obligation of obtaining a visa, using a passport or other identification document for entry, exit, transit or stay on the territory of Bosnia and Herzegovina.

Temporary residence is granted for a period of up to one year, provided that the validity of the alien’s passports extends for at least three months past the granted term of temporary residence. Pursuant to the Law on Amendments to the Law on the Movement and Stay of Aliens and Asylum that came into force in November 2012, temporary residence permits may be issued on the following grounds: education, marriage with a BH national, employment based on a work

⁴⁹⁴ The BH Service for Foreigners’ Affairs. “Report on Activities for 2015” Sarajevo, January 2016

permit, employment without work permit, family reunification, ownership over fixed assets, common law marriage of a foreigner with a BH citizen, humanitarian reasons, and on similar grounds or grounds stemming from an International agreement to which BH is a party, stay in a nursing home, medical treatment and other legitimate reasons.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

Public authorities specifically dealing with migrants in Bosnia and Herzegovina are:

- Ministry of Security of Bosnia and Herzegovina;
- Ministry for Human Rights and Refugees of Bosnia and Herzegovina;
- Intelligence – Security Agency of Bosnia and Herzegovina;
- Ministry of Foreign Affairs of Bosnia and Herzegovina;
- Migration Coordination Body of Bosnia and Herzegovina.⁴⁹⁵

3.1. Ministry of Security of Bosnia and Herzegovina

The Ministry of Security is competent for creation, monitoring and implementation of policy on immigration and asylum in Bosnia and Herzegovina and settlement of procedures and means of organization of service dealing with movement and stay of aliens in Bosnia and Herzegovina.⁴⁹⁶ Organizational structure of the Ministry of Security of Bosnia and Herzegovina also contains sectors specifically dealing with migration issues: Sector for Immigration,⁴⁹⁷ Sector for Asylum⁴⁹⁸ and Sector for General and Border Protection.⁴⁹⁹

The Ministry of Security Immigration Sector has two sections: Section for Administrative Affairs, Regulations and Readmission and Section for Analyses, Strategic Planning, Supervision and Training. The Immigration Sector is responsible for monitoring the implementation of legislation of Bosnia and Herzegovina in the field of immigration, monitoring and analyzing conventions which Bosnia and Herzegovina ratified, EU *acquis communautaire* and secondary legislation in the field of immigration and proposing harmonization of legislation of Bosnia and Herzegovina with the EU legislation and international law in the field of immigration. The Sector creates the Migration Profile of Bosnia and Herzegovina and is responsible for collecting and

⁴⁹⁵ A. Mičić and G. Masal, *Bosnia and Herzegovina and the Refugee Crisis in The Region and the European Union*, Parliamentary Research no. 03/10-50-19-134-25/15, 2015, Sarajevo, 5.

⁴⁹⁶ Ministry of Security of Bosnia and Herzegovina, (19 March 2009) <<http://www.msb.gov.ba/onama/default.aspx?id=1669&langTag=en-US>> accessed 4 July 2016.

⁴⁹⁷ Ministry of Security of Bosnia and Herzegovina, *Sector for Immigration*, (19 March 2009) <<http://www.msb.gov.ba/onama/default.aspx?id=1669&langTag=en-US>> accessed 4 July 2016.

⁴⁹⁸ Ministry of Security of Bosnia and Herzegovina, *Sector for Asylum*, (19 March 2009) <<http://www.msb.gov.ba/onama/default.aspx?id=1669&langTag=en-US>> accessed 4 July 2016.

⁴⁹⁹ Ministry of Security of Bosnia and Herzegovina, *Sector for General and Border Protection*, (19 March 2009) <<http://www.msb.gov.ba/onama/default.aspx?id=1669&langTag=en-US>> accessed 4 July 2016.

processing statistical data for the purpose of narrow specialist analyses in the field of immigration and asylum, prepares, proposes and realizes projects within the responsibility of the Sector, keeps databases within the responsibility of the Sector and monitors implementation of policies in the field of immigration and coordinates drafting of proposals for migration policies.

500

An asylum system has been established in Bosnia and Herzegovina. The current legislation, which incorporates international refugee law and EU standards, specifies how and in which way the asylum policy in Bosnia and Herzegovina is regulated, which institutional forms are responsible for implementation of specified policies and implementation of legislation and way of their enforcement. The Ministry of Security, which encompasses the Asylum Sector, is, among others, the responsible ministry in the field of asylum. The Asylum Sector carries out administrative and other expert duties related to implementation of policies and asylum procedures in Bosnia and Herzegovina, carries out duties with regard to preliminary drafts and drafts of legislation in this area, ensures admission, accommodation, food, health care, psycho-social support, access to primary and secondary education, trainings, first level of integration, support to asylum seekers, carries out duties related to the solutions with regard to the EU acquis communautaire and European standards in the field of international protection, carries out duties related to preparation of proposals of bilateral agreements in the field of asylum.⁵⁰¹

3.2. Ministry for Human Rights and Refugees of Bosnia and Herzegovina

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina, among other things, is competent for: Issues regarding asylum and rights of refugees entering Bosnia and Herzegovina; Coordination, guidance and oversight within the Committee for Refugees and Displaced Persons, the activities of Entities and other institutions of Bosnia and Herzegovina responsible for policy implementation in this field; Creation of the immigration and asylum policy of Bosnia and Herzegovina.⁵⁰² The Ministry for Human Rights and Refugees has the Refugees, Displaced Persons, Readmission and Residential Policy Sector organized in four departments, as follows: Department for the Rights of Refugees, Displaced Persons and Returnees; Department for Return, Reception, Coordination of Centers for Taking Care of Refugees and Returnees on the Basis of Readmission, as well as the Department of Residential Policy and Projects and the Department for Supporting the Operations of the Refugees and Displaced Persons Commission of Bosnia and Herzegovina.⁵⁰³

⁵⁰⁰ M. Džaferović, M. Baotić, J. Kožul, ... (et al.), *Strategy in the Area of Migrations and Asylum and Action Plan for the period 2016-2020*, 2016, Sarajevo, Amos Graf, 35.

⁵⁰¹ *ibid* 35-36.

⁵⁰² Council of Ministers of Bosnia and Herzegovina, *Ministry for Human Rights and Refugees of Bosnia and Herzegovina*, <http://www.vijeceministara.gov.ba/ministarstva/ljudska_prava_i_izbjeglice/default.aspx?id=120&langTag=en-US> accessed 6 July 2016.

⁵⁰³ Džaferović, Baotić, Kožul, ... (et al.), *Strategy in the Area of Migrations and Asylum and Action Plan for the period 2016-2020*, 40.

3.3. Intelligence – Security Agency of Bosnia and Herzegovina

Intelligence - Security Agency is responsible for collecting intelligence related to threats against security of Bosnia and Herzegovina, not only inside, but also outside the State. Agency is responsible for analyzing of gathered information and providing it to authorized officials and bodies (highest authorities and its representatives), as well as collecting, analyzing and disseminating intelligence with aim to provide support to the authorized officials, as it is defined by the Criminal Code of Bosnia and Herzegovina, and to other relevant bodies in Bosnia and Herzegovina, when it's necessary for repressing threats to security of Bosnia and Herzegovina. In the area of immigration legislation, the competence of the Intelligence - Security Agency is reflected in the security clearance of foreigners. It is important to emphasize that the Agency carries out its duties in accordance to regulations of Constitution of Bosnia and Herzegovina, including regulations of European Convention for Protection of Human Rights and Main Freedoms and its Protocols, international contracts and agreements that Bosnia and Herzegovina signed or acceded to.⁵⁰⁴

3.4. Ministry of Foreign Affairs of Bosnia and Herzegovina

Ministry of Foreign Affairs of Bosnia and Herzegovina as an administrative body responsible for the implementation of the established policy in line with guidelines defined by the Presidency of Bosnia and Herzegovina that has, in such capacity, some responsibilities regarding the migration management system in Bosnia and Herzegovina, and regularly inspects the operations of diplomatic and consular missions of Bosnia and Herzegovina in the area of visa and passport issuance. On the basis of migration trends in Bosnia and Herzegovina, the Ministry, together with other responsible State bodies and institutions, takes activities aimed at preventing illegal migrations and managing migration processes.⁵⁰⁵

3.5. Migration Coordination Body of Bosnia and Herzegovina

In 2013, the Council of Ministers of Bosnia and Herzegovina appointed by its decision a Migration Coordination Body in BH. The Coordination Body was established at the level of high-ranking officials of the State Border Police of Bosnia and Herzegovina, Service, Immigration Sector, Asylum Sector and SIPA that are all within the Ministry of Security, International legal Affairs and Consular Missions Sector within the Ministry of Foreign Affairs, Refugees, Displaced Persons, Readmission and Residential Policy Sector and the Immigration Sector of the Ministry for Human Rights and Refugees and the technical assistance to the operation of the Coordination Body is provided by the Immigration Sector. The Coordination body is responsible for continuous monitoring of the overall situation in the area of migration and asylum, for encouraging and ensuring inter-ministerial cooperation between relevant institutions dealing with the migration and asylum issues, for assessing future migration trends

⁵⁰⁴ Intelligence – Security Agency of Bosnia and Herzegovina, <<http://www.osa-oba.gov.ba/indexe.html>> accessed 10 July 2016

⁵⁰⁵ Džaferović, Baotić, Kožul, ... (et al.), *Strategy in the Area of Migrations and Asylum and Action Plan for the period 2016-2020*, 39-40.

and suggesting, to the responsible institutions, measures to improve the migration policy as well as for following the implementation of the strategic documents. Furthermore, the Coordination Body creates and proposes to the Minister of Security policies in the area of migration or asylum.⁵⁰⁶

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

When it comes to recent statistics regarding migrants, in last report of Ministry of Security of Bosnia and Herzegovina for 2016 it's written:

- During 2016, 2,243 aliens were refused entry to BH by the BH Border Police.
- Discovered Illegal State Border Crossings
- During 2016, the number of discovered illegal state border crossings in BH was 218 (141 illegal entries and 77 illegal exits from BH), which is an increase by 21.79% when we compare to 2015 when 179 illegal border crossings were discovered.
- Revocation of Residence
- The number of revoked non-visa or temporary residences in 2016 was 508, which is a decrease by 24% in comparison to 2015, when 670 non-visa or temporary residences were revoked. As for revocation of permanent residences in 2016, a decrease of 17.46% was noted due to 52 revoked residences, whereas the year of 2015 marks 63 such revocations.
- Expulsion Orders
- Number of expulsion orders in 2016 amounted to 418, thus showing an increase by 42.18% in comparison to 2015 with a total number of 294 expulsion orders. Also, in 2016, there were 31 issued decisions on revocation of non-visa or temporary residences with a measure of deportation.
- Placing Aliens under Surveillance in the Immigration Centre
- During 2016, 311 aliens were placed under surveillance in the Immigration Centre, which represents a significant increase of 61.14% with comparing to 2015 when only 193 aliens were placed under surveillance.
- Forcible Removal of Aliens from BiH
- For 2016, 18 conclusions on the execution of expulsion decisions were issued, whereas as for 2015 just five of them were issued.

International Protection (Asylum)

In 2016, 79 persons applied for international protection (asylum) in BH, while in 2015 that number was 46. If we search data and compared period from 2007 to 2016, a total of 1,180 persons applied for asylum in Bosnia and Herzegovina.⁵⁰⁷

⁵⁰⁶ Džaferović, Baotić, Kožul, ... (et al.), *Strategy in the Area of Migrations and Asylum and Action Plan for the period 2016-2020*, 41-42.

⁵⁰⁷http://www.mhrr.gov.ba/iseljenistvo/Publikacije/MIGRATION_PROFILE_2016_ENGv2.pdf.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Regarding lawsuits of migrants from Bosnia and Herzegovina in front of European Court of Human Rights, there have been only three of them (**Case of Al Hanchi v. Bosnia and Herzegovina**⁵⁰⁸, **Case of Al Husin v. Bosnia and Herzegovina**⁵⁰⁹, **Case of Al Hamdani v. Bosnia and Herzegovina**⁵¹⁰). All three of them applied to European Court of Human Rights to stop their deportation since a reason for their detention was “threat to national security” and they were afraid that in their country they will be tortured. In all three cases, Court found no reasons that applicants will be tortured so they allowed their deportations. Since this Court has bigger power than national courts, they were obliged to implement their decisions which they did. Unfortunately, these are the cases we could only find regarding this question in Bosnia and Herzegovina.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

Regarding the report of the European Commission against Racism and Intolerance for 2010, in accordance to the principle of non-refoulement as defined by Article 3 of the European Convention of Human Rights, the recommendation for Bosnia and Herzegovina was to ensure that no person will be returned by force to his or her country of origin.⁵¹¹ Also, its duty is to provide social rights to all asylum seekers and provide them real integration in society if they have been living in Bosnia and Herzegovina for a long time. **Amnesty International report** from 2010, emphasizes migrants and asylum seekers lack social rights in the measure they deserve.⁵¹² In their report for 2010⁵¹³, European Commission against Racism and Intolerance (here and after: ECRI) gave a recommendation to the authorities of Bosnia and Herzegovina to provide training for judges, prosecutors and lawyers on the subject of the Law on the Prevention of All Forms of Discrimination (hereinafter: Antidiscrimination Law) in particular and on racial discrimination issues in general. Despite this recommendation, lawyers did not receive any other training on the Antidiscrimination Law except for one information meeting. However, during 2013 and 2014 this situation changed and lawyers started attending trainings which resulted in

⁵⁰⁸<http://hudoc.echr.coe.int/eng?i=001-107450>.

⁵⁰⁹<http://hudoc.echr.coe.int/eng?i=001-108975>.

⁵¹⁰<http://hudoc.echr.coe.int/eng?i=001-108994>.

⁵¹¹<http://hudoc.ecri.coe.int/eng?i=BIH-CbC-IV-2011-002-ENG>.

⁵¹²http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BIH/INT_CCPR_NGO_BIH_104_8146_E.pdf.

⁵¹³ https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bosnia_Herzegovina/BIH-CbC-V-2017-002-ENG.pdf

higher attendance - from 30% had increased to about 50%. ECRI is planning to continue with this set of training programmes both in the Federation and in the RS. ECRI's delegation was also informed that this subject matter became a part of the bar exam for lawyers in the RS which, in long term, can be considered as big success.

7. How is migrants' right to access to healthcare regulated within the national legislation?

Migrants' right to access to healthcare in Bosnia and Herzegovina is mostly regulated by:

- Constitution of Bosnia and Herzegovina;
- Law on Asylum (Official Gazette of Bosnia and Herzegovina, no. 11/16, 16/16);
- Rulebook on the manner of realization of health insurance and medical coverage for the persons with recognized international protection in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 54/10);
- Under the Constitution of Bosnia and Herzegovina, immigration, refugee, and asylum policy and regulations are responsibilities of the Institutions of Bosnia and Herzegovina.⁵¹⁴

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Sector for Refugees, displaced persons, readmission and housing policy, performs within their competence the tasks of ensuring the rights and access to rights guaranteed by law to refugees and persons with to integration assistance that the Ministry of Human Rights and Refugees - Sector for refugees, displaced persons, readmission and housing policy ensures in cooperation with other ministries, institutions and services.⁵¹⁵

Health care systems are basically regulated by the Entity **Laws on Health Care and on Health Insurance**. These laws define general principles for the provision of medical services by various medical institutions, and outline the appropriate procedures for accessing health care facilities. While most people in Bosnia and Herzegovina are covered by **Laws on Health Care and on Health Insurance**, further complicating matters there are also special laws relating to the provision of health care to particular categories of persons, such as refugees.⁵¹⁶ There aren't any special or specific services or programs for vulnerable migrants.

The Office of the United Nations High Commissioner for Refugees (UNHCR)⁵¹⁷ in Sarajevo, in particular, has noted an increased demand from many sectors for improved and comprehensive information on the workings and quality of the health care system in Bosnia and Herzegovina.⁵¹⁸

⁵¹⁴ Art. 3, *Constitution of Bosnia and Herzegovina*

⁵¹⁵ *ibid* 21.

⁵¹⁶ Refugee is an alien or a stateless person who is recognized as such by the Ministry of Security of Bosnia and Herzegovina, in accordance with the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees and this Law: Art. 2, Law on Asylum (Official Gazette of Bosnia and Herzegovina, no. 11/16, 16/16)

⁵¹⁷ Ministry for Human Rights and Refugees of Bosnia and Herzegovina, in consultation with UNHCR, is bound to provide reception conditions for asylum seekers, including accommodation, food, access to health care and education.

According to the **Law on Asylum**, aliens under temporary protection as well as asylum seekers are entitled to primary health care.⁵¹⁹ Under the Law of Bosnia and Herzegovina, asylum seekers are permitted to remain in the territory of Bosnia and Herzegovina until a final decision on their application has been taken. Asylum-seekers shall exercise the aforementioned rights on the basis of their asylum-seeker cards. The funds for the expenses incurred thereby shall be provided by the Ministry from the budget of the Bosnia and Herzegovina institutions, which has been approved for this purpose, or through donations for asylum in Bosnia and Herzegovina.⁵²⁰

In this regard, the Ministry of Human Rights and Refugees has passed **Rulebook on the manner of realization of health insurance and medical coverage for the persons with recognized international protection in Bosnia and Herzegovina**.⁵²¹

Decision by the Council of Ministers of Bosnia and Herzegovina on instruments for harmonisation of legislation of Bosnia and Herzegovina with *acquis communautaire* in general is a very important source in the field of migrants' right to access to healthcare, considering that Bosnia and Herzegovina has the prospective EU membership candidate status.⁵²²

The European Convention on Human Rights and Fundamental Freedoms (1950) is an international legal source of human rights directly applicable in the legal system of Bosnia and Herzegovina, as an integral part of the Constitution, and has supremacy over all domestic valid legislation, including Article 14 of the Convention, which prohibits any form of discrimination, that is directly applicable in the Bosnia and Herzegovina legal system as well as Protocol 12 which contains a general ban on discrimination.⁵²³

According to information from Public Health Institute of Federation of Bosnia and Herzegovina when it comes to migrants right to access to healthcare there is a great need to strengthen cooperation with WHO, UNHCR, UNICEF, UNFPA, UNAIDS, European Commission, International Organization for Migration and other national and international organizations that can help solving the health issues of migrants.

Since April 2016, the Public Health Institute of Federation of Bosnia and Herzegovina has been working on action plans for providing support to migrants in case of mass influx. Unfortunately, the plan is still in the draft stage.

As mentioned previously, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Sector for refugees, displaced persons, readmission and housing policy, performs within their competence the tasks of ensuring the rights and access to rights guaranteed by law to

⁵¹⁸ UNHCR, <<http://www.unhcr.org/bosnia-and-herzegovina.html>> accessed 18 July 2016

⁵¹⁹ Art. 62(1) and 76(1), *Law on Asylum* (Official Gazette of Bosnia and Herzegovina, no. 11/16, 16/16)

⁵²⁰ Art. 76(2), *Law on Asylum* (Official Gazette of Bosnia and Herzegovina, no. 11/16, 16/16)

⁵²¹ *Rulebook on the manner of realization of health insurance and medical coverage for the persons with recognized international protection in Bosnia and Herzegovina*, - issued by the Ministry for Human Rights and Refugees no. 01-31-3594/10 as of May 28, 2010 (Official Gazette of Bosnia and Herzegovina, no. 54/10)

⁵²² *Decision on instruments for harmonisation of Bosnia and Herzegovina's legislation with acquis communautaire* (Official Gazette of BiH No: 23/11).

⁵²³ The Twelfth and Thirteenth Periodic Report of Bosnia and Herzegovina on the International Convention on the Elimination of All Forms of Racial Discrimination

refugees and persons with recognized status of subsidiary protection in Bosnia and Herzegovina, but there are no official data about irregularly residing migrants right to access to healthcare.⁵²⁴

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

In BH a several legal acts regulate children immigrants' education. Regarding the rights of migrants in BH, the most important laws regulating this area are the Law on Foreigners in BH,⁵²⁵ the Law on Movement and Residence of Foreigners and Asylum in BH,⁵²⁶ Law on Immigration and Asylum in BH,⁵²⁷ Law on Immigration and Asylum,⁵²⁸ Law on Asylum of BH.⁵²⁹ On the basis of the aforementioned laws, the bylaws related to the protection of migrants arise.

Law on Movement and Residence of Foreigners and Asylum in BH prescribes in Article 3 that the refugee status is also recognized by the person with whom he/she is married, and its children, as well as other members of the immediate family living in the same household in BH. A foreigner with a recognized refugee status will be allowed to work, to educate, to have health and social protection under the same conditions as citizens of BH, and has the right to family reunification. According to Article 76 of the Law on Asylum, for asylum seekers, as one of their basic rights which belongs to them, is the right to primary and secondary education.

A member of the family of asylum seekers, refugees, foreigner under subsidiary or temporary protection shall be considered to be a spouse, children under the condition they do not have their own families, their juvenile adopted child, juvenile adopted child of each of them, parents or other legal representative of juveniles, adult unmarried children of asylum seekers.

The Regulation on the Manner of Exercising the Right to Education of Persons Recognized by International Protection in BH⁵³⁰ determines a more detailed issue of educating immigrants. This Regulation prescribes the competent authorities, basic principles and special conditions governed by the competent authorities in the process of exercising the right to access to the education system in BH by persons recognized under international protection in BH, the conditions and the way to access the educational system in BH, as well as recognition of the level of education acquired in the country of origin or country of previous residence.

Refugees have the same rights to education as BH's people when it comes to the state education system. Moreover, according to Article 4 of this Regulation, persons who exercise the right to international protection have the right to attend supplementary education carried out within the framework of the regular program and basic education program under the same conditions as

⁵²⁴ Džaferović, Baotić, Kožul, ... (et al.), *Strategy in the Area of Migrations and Asylum and Action Plan for the period 2016-2020*, 21.

⁵²⁵ Official Gazette of BH, No. 88/15.

⁵²⁶ Official Gazette of BH No. 36 / 08/87/12.

⁵²⁷ Official Gazette of BiH, No. 23/99.

⁵²⁸ Official Gazette of BiH No. 23/99.

⁵²⁹ Official Gazette of BiH, No. 11/16).

⁵³⁰ Official Gazette of BiH, No. 67/08.

the children of BH citizens. In addition to supplementary classes, primary school pupils from members with difficulties in mastering the curriculum and are beneficiaries of the Refugee Center in BH under the jurisdiction of the BH Ministry of Human Rights and Refugees, receive supplementary education within that centre.

When it comes to providing assistance to students at the refugee and reception centre, Article 28 of this Regulation prescribes:

- Elementary and secondary school students who are in a poor financial situation, and are beneficiaries of the Refugee-Reception Centre in BH are under the jurisdiction of the Ministry for Human Rights and Refugees, providing transport to school, free textbooks and snacks.
- For the children referred to in paragraph above of this Article, under the same conditions as well as children of BH nationals attending the same school, if the school is located at a distance of more than 2 km from the Refuge and Reception Centre, transport is organized by the Ministry of Human Rights and refugees.

If needed, it will be provided learning one of the languages of the constituent peoples in BH as needed for immigrants' children.

If juveniles immigrants are enrolled in one of the lower or upper grades of elementary education, and they are not able to prove the level of previously completed education, in accordance with the applicable legislation regulating this area in BH, with exception of enrolling the first grade of elementary school, in that case, the competent authorities for the implementation of the above mentioned Regulation will determine the level of knowledge of these persons on the basis of which they will be enrolled in one of the lower or upper grades of primary school.

The following levels of education are provided to persons under the international protection, under the same conditions as citizens of BH: preschool, primary, secondary and higher education.

Law on Movement and Residence of Foreigners and Asylum in BH contains the whole article on non-discrimination of foreigners. It is forbidden to discriminate foreigners on any grounds, such as: gender or sex, race, skin, language, religion, political or other opinion, national or social origin, connection with a national minority, property status, status acquired by birth or other status. In regard with children's right, the Law contains part juveniles' protection. The competent authorities in BH are obliged to treat the juvenile foreigners with special care and respect and to act with them in accordance with the Convention on the Rights of the Child and the regulations in BH related to the care and protection of minors. However, no clear penalties for acting contrary to the above have been prescribed, e.g. for cases of discrimination against juvenile foreigners or their parents.

In general, immigrants' children in Bosnia and Herzegovina have equal access to education system as well as residents' children. There were no cases of any discrimination between children regarding better conditions of learning quality of professional teaching staff. Moreover, a lot of money, time and effort are invested to make Roma children more numerous in BH schools. Many projects have been implemented with the aim of increasing the involvement of these children in the BH education system.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

In BH, each person, whether a resident or an immigrant, has the right to validate his/her secondary or higher education degree. At the state level, the Ministry of Education, Science and Culture of BH is responsible for the recognition/validation of high school diplomas, while the recognition of higher education diplomas is carried out by the Centre for Information and Recognition of Documents in the Higher Education Area.

The legal framework for the recognition of diplomas of higher education institutions is primarily made up of the following documents:

- Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (Lisbon Recognition Convention)⁵³¹,
- Joint declaration of the European Ministers of Education (Bologna Declaration)⁵³²,
- Framework Law on Higher Education in BH ⁵³³,
- Qualification Framework in BH ⁵³⁴,
- Recommendations on the Criteria for Assessment of Foreign Higher Education Qualifications in the Procedure of Recognition for the Purposes of Employment and Further Education⁵³⁵,
- Recommendations on the Recognition of Foreign Higher Education Qualifications in BH to the Persons with Insufficient Documentation or without Documentation⁵³⁶,
- Recommendations on Recognition of Foreign Higher Education Qualifications Acquired Through Cross-border Education⁵³⁷,
- Recommendations on the Recognition of Foreign Higher Education Qualifications Acquired through Joint Programmes⁵³⁸
- ECTS Users Guide.

In BH, there is a Center for Information and Recognition of Higher Education Documents (CIP), established by the BH Council of Ministers in 2008, based on the Framework Law on Higher Education in BH, as an independent administrative organization. This institution is an umbrella institution that should simply implement the process of recognizing foreign diplomas. However, the layers of administration in our country also reflected on this issue. The competence in the process of recognition of higher education diploma in BH have twelve

⁵³¹ Lisbon on 11 April 1997.

⁵³² Convened in Bologna on the 19th of June 1999.

⁵³³ Official Gazette of BH, No. 59/07.

⁵³⁴ Official Gazette of BH, No. 9/13 and 81/13.

⁵³⁵ Official Gazette of BH, No. 16/03.

⁵³⁶ Official Gazette of BH, No. 1/14.

⁵³⁷ Official Gazette of BH, No. 80/15.

⁵³⁸ *Ibid*

institutions. In the Federation of Bosnia and Herzegovina, the process in ten cantons is carried out by the competent ministries of education, in the Republika Srpska it is Ministry of Education and Culture, and in the Brcko District it is Education Department of the District. All these levels of government have their own rules when recognizing diplomas, which are quite similar but non-unified. CIP makes recommendations to the competent ministry on the recognition of diplomas obtained abroad, on the basis of which a certain ministry or faculty makes recognition of the academic title gained. Transparency of the CIP/CIR's work is ensured pursuant to the Law on Freedom of Access to Information in BH, and through submission of reports to the CIP/CIR's Steering Committee, Council of Ministers of BH, Parliamentary Assembly of BH, through issuance of public announcements, and publishing of information on the CIP/CIR website.

Under the Framework Law on Higher Education in Bosnia and Herzegovina, CIP/CIR is in charge of:

- information and recognition in higher education;
- coordination and international exchange of members of academia, students, and programs in higher education;
- representing BiH in international projects in higher education; through the international network of information centres (ENIC/NARIC network), CIP/CIR provides information to the higher education institutions in Bosnia and Herzegovina on higher education institutions and programmes as the basis for recognition of degrees and diplomas for further education at higher education institutions in BH, and it represents Bosnia and Herzegovina in those networks.

In addition to the non-unified system of recognition of foreign diplomas, a distinct price list of these services is an evident problem. The Lisbon Convention recommended that the costs of recognizing foreign qualifications should be as low as possible in order to cover only the basic costs. However, depending on whether you want to continue to study with a foreign degree or want to work in BH, the price of recognition of this diploma is also determined.

With respect to the competence pertaining to the information and recognition of qualifications in higher education, this independence is achieved in accordance with legal, transparent and public procedures.

For example, for a validation of undergraduate degree diploma, with the application shall be accompanied by:

- Diploma/certificate of education abroad;
- Translation of the original diploma/certificate in one of the official languages BH, verified by a court interpreter;
- The curriculum and program on the basis of which the applicant obtained education for which it requires nitrification;
- A testimony of the previous degree of change;
- Evidence of the amount paid for the costs of the validation process one University;
- Certificate of passed exams during the original study and in translation in one of the official BH languages verified by the court interpreter,
- Applicant's CV;

- In the application for diploma validation or the equivalence of public documents, among other information provided, the information that the same request was not previously submitted to another higher education institution or body in BH.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

In BH it is strictly determined that only citizens of BH can participate in politics. According to the BH Election Law,⁵³⁹ Article 1.4 - Right to vote is precisely prescribed that every citizen of BH (with no under 18 years) is entitled to vote and to be elected, in accordance with the provisions of this Law. In order to exercise his voting right, a citizen of BH must be registered in the Central Voter List, in accordance with this Law.

In general, foreign citizens in BH do not have the right to participate in political decisions. According to Article 10 of the Law on Movement and Residence of Foreigners and Asylum in BH, foreign citizens in BH also have no right to establish political parties in BH, nor can be members.

Considering that BH is a country with three constituent nationalities (Bosnians, Croats and Serbs), that there are three presidents, even national minorities (such as Roma and Jews) do not have an adequate way of participating in the decision-making process at the level of BH.

Moreover, the most important judges according to participation of minorities in political decisions in BH is **Sejdic and Finci v. Bosnia and Herzegovina**.

The judgment found discriminatory the constitutional arrangements, put in place by the Dayton Peace Agreement, according to which only people declaring affiliation with Bosnians, Croats or Serbs were eligible to stand for election to the tripartite State presidency and the second chamber of the State parliament. Violation of Article 14 (prohibition of discrimination) taken together with Article 3 of Protocol No. 1 (right to free elections) Violation of Article 1 of Protocol No. 12 to the Convention (general prohibition of discrimination).

10.1. Political Participation as an element of Citizenship

Political participation represents one of the rights and responsibilities that maintain the legal bond between a citizen and a State. In most jurisdictions, the rights to vote, to be elected and to stand for office are what most clearly distinguish a citizen from an alien. Restrictions on these rights, particularly on the suspect grounds of race and ethnicity, are not only discriminatory, but undermine the meaning of citizenship itself.

⁵³⁹ (Unofficial consolidated text - Concluding with the amendments published in the Official Gazette of B&H number:18/13).

10.2. Marginalization

Aside from being an important right linked with citizenship, political participation is particularly important for ethnic minorities and essential to their integration. This is particularly true following an ethnic conflict, where legally entrenched distinctions based on ethnicity can exacerbate tensions, rather than foster the constructive and sustainable relations between all ethnicities that are essential to a viable multiethnic state.

This landmark ruling strikes at the heart of the power-sharing arrangements established under the Dayton Peace Agreement and assesses the compatibility of peace-making mechanisms with the fundamental principle of non-discrimination within the Convention. The court found that while the urgent need to restore peace at the time of the agreement could explain the absence of representatives of other communities at the peace negotiations, the maintenance of the current system fifteen years after the fact no longer satisfied the requirement of proportionality.

10.3. Implementation

Implementation will require a vital review of the Constitution.

In BH, there are cases of dual citizenship, when persons acquire the citizenship of BH and retain the citizenship of the country from which they come. In such cases these persons have the full right to participate in the elections of the country they come from. In BH, polling stations for these citizens are opened and thus have the opportunity to participate in the country they come from, or country of origin, while staying in BH.

In regard with migrants, persons without BH citizenship acquired, there are no specific policy documents which would provide participation in politics in political decisions in their country of residence as well as for unlawfully impeded to participate in political decisions in their country of residence or in their country of origin.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

Law on Citizenship⁵⁴⁰ determines the conditions for the acquisition and cessation of citizenship of Bosnia and Herzegovina, in accordance with the **Constitution of Bosnia and Herzegovina**.

In accordance with the present Law, BH citizenship is acquired:

- By descent;
- By birth on the BH territory;
- By adoption;
- By naturalization;
- By an international agreement.

⁵⁴⁰ “Official Gazette” of Bosnia and Herzegovina, 4/97. This law has been adopted by BiH Parliamentary Assembly and published in the Official Gazette of Bosnia and Herzegovina 13/99.

BH citizenship by descent is acquired by a child born after the entry into force of the Constitution:

- Whose both parents were BH citizens at the time of the child's birth, regardless of the place of the child's birth;
- Whose one parent was a BH citizen at the time of the child's birth, and the child was born on the BH territory;
- Whose one parent was a BH citizen at the time of the child's birth, and the child was born abroad, if the child would otherwise be stateless;
- If the child was born abroad, and one of his/her parents was a BH citizen at the time of his/her birth, provided that by the time the child attains the age of 23 he/she submits the application for registration of BH citizenship to the competent authority.

BH citizenship is acquired by a child born or found on the BH territory after the entry into force of the Constitution, whose both parents are unknown or of unknown citizenship or are stateless, or if the child is stateless.

A foreigner who has submitted an application for acquisition of BH citizenship may acquire it by naturalization if he/she fulfils the following conditions:

- That he/she has reached 18 years of age;
- That he/she has been a permanent resident on the BH territory for at least the years preceding the application;
- That he/she has an adequate knowledge of an alphabet/script and a language of one of the constituent peoples of BH;
- That he/she has not been subject to the security measure of expulsion of a foreigner from the country or to the safeguard measure of removal of a foreigner from BH, by an authority established in accordance with the Constitution, and that this measure is still in force;
- That he/she was not sentenced to a term of imprisonment for a premeditated crime for longer than three years within 8 years of the submission of his/her application;
- That he/she renounces or otherwise loses his/her former citizenship before he/she acquires the BH citizenship, unless a bilateral agreement mentioned in Article 14 provides otherwise. The renunciation or cessation of the former citizenship shall not be required if it is not allowed or cannot be reasonably required;
- That he/she is not subject to criminal proceedings, except when it is not reasonable to require a proof of fulfilling this condition;
- That he/she does not pose a threat to the security of BH;
- That he/she has a permanent source of income in an amount that allows his/her existence or that he/she is able to provide a reliable proof of funds available for his/her support;
- That he/she has settled all taxes or other financial obligations;
- That he/she has signed a statement on accepting the legal system and constitutional order of BH; and
- That he/she has effective assurances of acquisition of BH citizenship.

Naturalization shall not be granted, even when the applicant fulfils the general naturalization requirements, if there are reasonable grounds to believe that the State security and public order and peace will be jeopardized by such act, or if naturalization is not consistent with the State interests for any other reason as determined on the grounds of the overall assessment of the applicant.

A stateless person and a recognized refugee may acquire BH citizenship, without fulfilling requirements, only if he/she has continually resided in BH, as a stateless person or a recognized refugee, for a period of five years preceding the application.

A minor child of a person who has acquired BH citizenship in accordance with paragraph (1) is entitled to BH citizenship, without fulfilling the requirements, if he/she has been granted a refugee status or temporary residence in BH, regardless of the duration of his/her stay.

If the child is over 14 years of age, his/her consent is required.

The Constitution of Bosnia and Herzegovina has restricted the possibility of having dual citizenship, so that is possible only with countries that BH has a relevant bilateral Agreement signed. This concept is also reflected in the BH Law on Citizenship.

Since BH has one of the highest Diaspora to population ratios in the world, it would logical to assume that signing the dual citizenship bilateral agreements has been an issue of huge importance for the government. However, until this day, only three have been signed, Croatia (signed on 29.03.2007), Serbia (signed on 29.10.2002) and Sweden (signed on 20.12.2004).

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Bosnia and Herzegovina divides migration competences among a large number of agencies and though the capacity exists, there is a need to reinforce and enhance existing structures to ensure that the Ministry of Security can liaise promptly and effectively with the EU and other relevant stakeholders.

There is thus a need to strengthen mechanisms for collecting, sharing, and data analysis, and to augment the sharing of information. The strengthening of a structure to serve as point of reference for the EU and other relevant counterparts to attain any information pertaining to migration in BH, as well as an overview of the general situation in the country, would not only serve to enhance communication and efficiency, but also the coherence of migration management, ensuring that all state and non-state actors in BH are able to pursue a consistent agenda.

Building on existing structures of the Ministry of Security, such as the Sector for Immigration, this structure should not be operational, but rather focus on the collection, processing, and analysis of data from all relevant institutions, in order to produce reports and analysis on migration issues. These should be then distributed to all competent bodies in the Ministry of Security and the relevant agencies in order to define policies, enhance strategic planning, and augment operations.

As this strengthened body would be in line with structures existing in the EU and in other countries in the region, such an initiative would assist the process of EU integration as well as enhancing regional cooperation.

The strengthened structure should therefore be supported and capacitated to provide direction with regards to irregular migration as well as security, asylum, and economic migration and development. This would allow policy makers to better understand existing issues and challenges; strengths and weaknesses; and gaps and external needs, in order to create clearly defined baselines for formulating realistic and reasonable implementation plans for national risk assessments, for the effective functioning of the migration management system.

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Introduction

In a time when the world is more globalized than ever before, when it opens its routes for international trading and policy making, when the word “global citizen” is brought to completion, the rule of law has to adapt to the criteria of a newly build society. It has to develop in such a sense so as to provide a common understanding of justice not only on a national, but also on a universal, multicultural level. The law of migration and immigration is one of the systematic branches which specifically reflect these social trends. Introducing humanitarian values as fundamental legal principles and at the same time, regarding the ongoing migration and refugee crisis in Europe, this branch creates a strict scheme for regulating the current events in a righteous way.

As a member state of the European Union, Bulgaria is on the path of adopting the European standards and policies with the aim of providing a judicial system, adequate to the needs of the 21. century. And while a development in the legislation is present, there is still a lot to be done for breaking common stereotypes and preventing the emergence of discrimination and hate crimes. In that sense, Bulgaria receives support and funding by the EU through distinct Funds, targeting the development of the EU migration and integration policies.

The following research analyses basic legal principles and norms on the topic of Bulgaria’s migration and immigration law, aiming to produce a thorough perspective on the development of the country’s legal system in the sphere.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Protection under Bulgarian Legislation

The right to asylum is incorporated in the highest in hierarchy act in Bulgaria – the Constitution. Art.27 para.2 governs the right to asylum granted to foreigners who are persecuted due to their convictions or actions in defence of internationally recognized rights and freedoms. Further, it states that the right and the procedure for obtaining asylum protection are regulated by a special act⁵⁴¹ – The Law on Asylum and Refugees (referred to as *the Act* in this question). It sets forth the rights and obligations as well as the procedures which ensure the various ways of protection provided to foreigners within the territory of the country.⁵⁴² The Act was passed in 2002 and has been amended several times since then. It embodies international obligations⁵⁴³ and transposes

⁵⁴¹ Constitution of the Republic of Bulgaria 1991. Art. 27 para. 3.

⁵⁴² Law on Asylum and Refugee 2002, Art. 1 para. 1.

⁵⁴³ The Geneva Convention Relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 1967 ((promulgated SG No. 36/1992; amended No. 30/1993) (SG, No. 88/1993), the

the provisions of European Union legislation⁵⁴⁴. The procedure on determining the Member State responsible for examining an application for international protection in section IA of the Act applies the rules of various European Regulations on the matter⁵⁴⁵.

First we should examine the legal language used in the Act. The basic terms are clarified in the Additional provisions. The fundamental term foreigner is a legal definition of a person who is not a Bulgarian citizen nor is s/he a citizen of any other European Union Member State, nor a citizen of any country signatory to the European Economic Area Agreement, nor a citizen of the Swiss Confederation, nor is a person citizen of any country as per that country's legislation.⁵⁴⁶ The definition is used in court decisions of the Administrative court of Sofia City when it serves as a second instance for appealing rejection on application for international protection.⁵⁴⁷ The second term of vital importance is listed under § 1 Item 2 as a foreigner seeking protection which is defined as an individual who has expressed his/her desire to be granted protection under the Law on Asylum and Refugees until the completion of his/her application proceedings. The above-mentioned terms will be used forward with their legal definitions as described in the legal act.

Second, the Law on Asylum and Refugees governs the different types of protection which the Republic of Bulgaria can provide to foreigners in need. They are listed under Art. 1 para.2 as follows: (1) Asylum; (2) International protection; (3) Temporary protection. Art. 1a makes a distinction between the above-mentioned terms.

Finally, when exploring the matter on protection within the country's boundaries one should bear in mind that the term "asylum" can have two meanings – (1) asylum as a synonym of protection in general, or (2) the right to asylum as a specific type of protection granted under particular circumstances. The different types of protection, together with the procedures, will be thoroughly examined below.

1.2. Asylum

Asylum is a special type of protection provided when a person is being persecuted due to his/her convictions or actions in defence of internationally recognized rights and freedoms.⁵⁴⁸ The President of the Republic of Bulgaria has the power to grant asylum not only in such cases⁵⁴⁹ but also when the country's interests or particular circumstances indicate the need for such action.⁵⁵⁰ Art. 104 of the Constitution states that the President can assign these powers to the Vice

Convention on the protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁴⁴ Council Directives 2001/55/EC, 2003/9/EC; Chapter Five of Council Directive 2003/86/EC, 2004/83/EC, 2005/85/EC, 2011/95/EC, 2013/32/EC, 2013/33/EC.

⁵⁴⁵ IA, Art. 67a. and following articles Law on Asylum and Refugees Section.

⁵⁴⁶ *ibid.* Additional provisions.

⁵⁴⁷ Case 6562 [2016] Administrative Court Sofia City Report 5716 [2016] [Bulgarian]; 6143 [2016] Administrative Court Sofia City Report 8690 [2016] [Bulgarian]; 6013 [2016] Administrative Court Sofia City Report 5524 [2016] [Bulgarian]; 6012 [2016] Administrative Court Sofia City Report 6644 [2016] [Bulgarian]; 3453 [2016] Administrative Court Sofia City Report 177 [2016] [Bulgarian].

⁵⁴⁸ Constitution of the Republic of Bulgaria 1991 Art. 27 para.2.

⁵⁴⁹ *ibid.* Art. 98 item 10.

⁵⁵⁰ Law on Asylum and Refugees Art. 2 para 1.

President together with the powers to give, take or retrieve Bulgarian citizenship and the power to give amnesty. The current Bulgarian President has issued a special Decree No. 43 from January 23 2017 with which he assigned the right to grant asylum to the Vice President.⁵⁵¹ The President can withdraw asylum if the circumstances which led to its granting have changed or ceased to exist.⁵⁵² An Asylum Committee with advisory functions acts as a supporting body.⁵⁵³ The Committee assists the Vice President in exercising her powers regarding the granting of protection.

The person who wants to be granted asylum has to lodge an application with the President. If s/he lodges an application for asylum with a different organ of the state, the application has to be automatically sent to the President.⁵⁵⁴ Case law supports the established rule - Case form July 23 2009 Administrative Court Sofia City Report 835 [2009] [Bulgarian] and Case 9417 from September 19 2008 Supreme Administrative Court Report 8766 [2008] [Bulgarian]. In cases when the organ of state failed to apply the rule and decided upon the application without having the jurisdiction to do so, the court sends the application for asylum to the competent body – the President. The application for asylum is registered in the administration of the President.⁵⁵⁵

There is no legal obligation for the President or the Vice President to respond to the application. What is more, there is no procedure through which the foreigner can appeal the decision other.

1.3. International Protection

International protection consists of granting refugee or humanitarian status as defined in the Geneva Convention Relating to the Status of Refugees (referred to as the *Refugee Convention*) and the Protocol relating to the Status of Refugees. The body which has jurisdiction to grant such protection is the State Agency for Refugees (referred to as the *Agency*). The Chairman of the Agency has the jurisdiction to provide international protection.⁵⁵⁶

International protection will not be provided if there is an assumption that the person has committed a war crime or a crime against peace and humanity; serious grounds to assume that s/he has committed a serious non-political crime outside the territory of the Republic of Bulgaria; serious grounds to assume that s/he commits, incites, assists, participates in trainings or prepares to commit acts contrary to the goals and principles of the United Nations Organization and its Resolutions regarding the measures against international terrorism; or, serious grounds to believe that s/he is a risk to national security or to society.⁵⁵⁷

International protection can be withdrawn on several occasions listed under Art. 17 of the Act. International protection will be withdrawn if the foreigner wishes to re-avail him/herself to the protection of his/her government or s/he decide to not use the provided protection anymore.

⁵⁵¹ Official website of the Presidency of the Republic of Bulgaria, Указ № 43 от 23 януари 2017г. [Bulgarian] < <https://www.president.bg/cat20/Viceprezident-vazlojeni-pravomoshtia/> > accessed on 23 August 2017 [Bulgarian]

⁵⁵² Law on Asylum and Refugees Art. 18.

⁵⁵³ Decree No. 79 form February 7 2017 Art. 1 para 1

⁵⁵⁴ Law on Asylum and Refugees Art. 58 para. 1.

⁵⁵⁵ *ibid.* Art. 61 para. 1.

⁵⁵⁶ *ibid.* Art. 1a para. 2; Art. 2 para. 3.

⁵⁵⁷ *ibid.* Art. 12 para. 1.

However, if one or some of the mentioned perils in the previous paragraph are found then international or temporary protection will cease.

1.3.1. Refugee Status

A refugee is a person who fulfils the criteria of Art.8 of the Act. Refugee status is granted to a foreigner who for reasons of a well-founded fear of persecution due to his/her race, religion, nationality, political opinion or membership of a specific social group is outside of his/her country of origin and who, for those reasons, is unable or unwilling to avail himself/herself of the protection of that country or return thereto. However, the mere fact that the persecutors attribute the person to a protected group is reason enough for her/him to apply for refugee status, no matter whether or not s/he actually belongs to such. The persecutors can be the State, parties or organization, or non-State agents. The act of persecution can vary in its nature⁵⁵⁸. Refugee status will not be granted if the person can safely and legally travel to safe parts of his/her own country. The prerequisites and the definitions follow the ones provided by the Refugee Convention. Foreigners recognized as refugees under the mandate of the United Nations High Commissioner for Refugees receive refugee status if they are within the territory of Bulgaria.

1.3.2. Humanitarian Status

Art. 9 para.1 states that humanitarian status is granted to foreigners who are not eligible for refugee status and who do not wish or are unable to receive protection from his/her country of origin as s/he may face a risk of suffering serious harm, such as: (1) Death penalty or execution; (2) or, torture or inhumane or degrading treatment or punishment; (3) or, serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. A necessary prerequisite is the unavailability to receive protection in the country of origin. Humanitarian status can be provided on the grounds of other humanitarian nature or for the reasons stated in the Conclusions of the Executive Committee of the UN High Commissioner for Refugees.

1.3.3. Procedure

First, a foreigner who wants to receive international protection has to lodge an application with the Agency. If the request for protection is submitted to a different organ of the State, the latter has the obligation to send the application to the Agency. There is no specific form of the application - it can be both verbal and/or written. Translator or interpreter is provided if the applicant needs one. If the application is verbal, a competent official writes it down.⁵⁵⁹ The Agency creates a personal record of each applicant and keeps his/her documents until the end of the procedure. They conduct personal search of the foreigner, take a photograph and fingerprints, and mark all identifying features under the procedure established by the Ministry of Interior and with respect to the applicant's dignity.

⁵⁵⁸ *ibid.* Art.8 para.5 items 1-6.

⁵⁵⁹ *ibid.* Art. 59.

Second, after the application is registered, a date for an interview is appointed. The applicant must present all substantial evidence for the need of protection. S/he is informed in advance that the interview is audio or audio-visually recorded. Each interview finishes with a protocol which is read to the applicant and signed by him/her. The interview is conducted either in a language requested by the applicant or in a language that s/he understands. The applicant can be assisted by a translator, interpreter, legal representative or a lawyer.

Third, within 4 months of the beginning of the initial procedure the interviewing authority prepares an unbiased and impersonal statement and presents it to the Chairman of Agency together with the personal case of the applicant. Then, within 6 months of the beginning of the procedure, the Chairman decides whether to grant or refuse refugee or humanitarian status. All established facts are taken into account. The maximum length for deciding upon an application is 21 months. The decision is announced to the applicant in a language that s/he can understand. A copy of the approval or refusal is handed in and the applicant should sign it upon receiving.

Fourth, the decisions of the Chairman of the Agency can be appealed within 7 or 14 days of the receiving of the refusal before the Administrative court Sofia City or the Administrative court where the applicant has a current address.⁵⁶⁰ The appeal should be submitted through the Chairman of the Agency. The execution of the decision of the Agency is suspended for the period of the appeal. The hearings are open and the parties are subpoenaed. The decision of the lower court can be appealed before the Supreme Administrative Court, which decision is final.

The status of the applicant is decided by a final court decision, withdrawal of international protection or when the proceeding for the obtaining of status has been ceased.⁵⁶¹ A compulsory administrative measure – withdrawal of the right to remain in the country; forced return to the borders; expulsion; or, prohibition to enter the country is issued after the end of the court proceedings with a final court decision. If international protection or asylum is provided to the person the administrative measure will not be imposed.⁵⁶² The person is also presented with the opportunity to voluntarily leave the country within an expressly stated period. The period after which the person can try to re-enter and receive a status depends on the administrative measure. For example the prohibition to enter the Republic of Bulgaria can be for 5 years or more if circumstances provide for it.⁵⁶³ There is also a procedure on preliminary consideration of a subsequent application for international protection.⁵⁶⁴

People belonging to vulnerable groups can benefit from some special conditions. A psychiatric expert examination or an expert opinion to establish the applicant's age may be conducted if there is such need.⁵⁶⁵ Vulnerable condition should be taken into account during application process. The accelerated procedure cannot be used to determine the status of a special type of vulnerable people (unaccompanied minor or a minor foreigner).⁵⁶⁶ The accelerated procedure can be applied when within 10 days of the application the Agency reaches a decision to deny status

⁵⁶⁰ *ibid.* Art. 88 para 1.

⁵⁶¹ *ibid.* Art. 66.

⁵⁶² *ibid.* Art. 67 para. 1-2.

⁵⁶³ Art. 42 h para 3 Law on Foreigners in the Republic of Bulgaria.

⁵⁶⁴ *ibid.* Art. 76a-76c.

⁵⁶⁵ Art. 63a The Law on Asylum and Refugees.

⁵⁶⁶ *ibid.* Art. 71 para. 1.

due to groundless reasons. Unfortunately, the above mentioned procedural guarantee is not available to other types of vulnerable people such as torture victims who often find it hard to present consistent and nonconflicting facts to support their application due to the trauma of the experience.

1.4. Temporary Protection

Temporary protection is provided in cases of massive entering of foreigners, which are forced to flee their country of origin due to an armed conflict, civil war, act of aggression, breach of human rights or enormous amounts of violence within their country or in some parts of it and therefore they cannot return back. The Council of Ministers of Bulgaria grants temporary protection after a decision of the Council of the European Union is issued. The latter determines the time period of the protection.⁵⁶⁷ In such cases protection is provided to a group of people due to the above mentioned reasons and not on the grounds of individual application and assertions.⁵⁶⁸ Still, temporary protection can be withdrawn if the foreigner does not meet the conditions set out in Act.⁵⁶⁹ The Chairman of the Agency has the power to withdraw the provided protection when the mentioned facts are established. He or she is also the competent body who informs the Council of Ministers for the need of temporary protection or the prolongation of a current one.⁵⁷⁰

Temporary protection has never been provided in Bulgaria.

2. How does your national law regulate immigration from EU member states and non-EU states?

Migration is a ceaseless process and an innate feature of human nature. The derivative term **migrant** is widely used although rarely defined by national legislation due its' universal understanding as *a broader-term of an immigrant and emigrant, referring to a person who leaves one country or region to settle in another, often in search of a better life*⁵⁷¹. Bulgarian legislation does not provide a legal definition of the term either. One of the main legal acts regulating migration uses different terminology. The Law on the Foreigners in the Republic of Bulgaria (referred to as the *Law on the Foreigners*) in its General provisions introduces the term **foreigner** meaning a person who does not have a Bulgarian citizenship or any citizenship at all⁵⁷². However, the broad definition is narrowed by preceding article which refers to the Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families (referred to as

⁵⁶⁷ Art. 1a para. 3; Art.2 para. 2 Law on Asylum and Refugees.

⁵⁶⁸ Handbook for procedure on asylum and protection in Bulgaria, <<http://www.asylum.bg/bg/bg-5/bg5-2/>> accessed on 23 August 2017 [Bulgarian].

⁵⁶⁹ *ibid.* Art. 17 para. 4.

⁵⁷⁰ *ibid.* 48 para. 1 item 1 and 5.

⁵⁷¹ European Migration Network Glossary, version 3.0 (October 2014)

https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary/m_en accessed September 20 2017 [English].

⁵⁷² Art. 2 para. 1-2 Law on Foreigners.

the *Law on Entering, Residing and Leaving*)⁵⁷³. The distinction between the two legal acts is based on the citizenship of the person who wishes to enter, reside or leave the country. As a Member of the European Union, the Republic of Bulgaria adopted the latter act in October 2006 to regulate the specific rules applicable to European Union citizens and members of their families. The act also applies to citizens of countries parties to the European Economic Area Agreement, the citizens of Swiss Confederation and the members of their families, who are not citizens of the European Union, the European Economic Area and Swiss Confederation, but who by virtue of international agreements with the European Union, are entitled to free movement.⁵⁷⁴

Bulgaria as an external boundary of the EU plays an essential role in applying the Union's migration policies with regards to the increased migration flow in recent years. The country also is a popular destination for the citizens of the surrounding non-EU Member states who wish to benefit from the many opportunities the EU membership presents especially in terms of education and work.

2.1. Entering the country

The country shall be entered only on a legal ground after presenting required documents to the respective authorities otherwise a person will be considered an illegal migrant and will be denied permission to stay within the boundaries.⁵⁷⁵ Foreigners under the Law on Foreigners need a valid passport or valid document to travel abroad, and a visa, if such is required, to enter the Republic of Bulgaria. Visa is not required if the foreigner has a valid permission for extended, long-term or permanent residence, or when Council Regulation 539/2001/EC provides for it. There are three types of visas – (1) airport transit visa; (2) short-term visa; (3) long-term visa.⁵⁷⁶ The web page of the Ministry of Foreign Affairs provides further information for the different type of visas and a list of countries whose citizens do not need to apply for visa in order to reside within the country for a short period of time (up to 90 days).⁵⁷⁷ The information is available in English.

On the other hand, EU citizens and others to which the Law on Entering, Residing and Leaving applies are required to present a valid ID or valid passport. A family member who is not EU citizen should have a valid passport and visa, if such is required. If that person has a residence card of a member of the family of EU citizen and accompanies or joins EU citizen, then visa is not required.

Visa is not required, if Council Regulation 539/2001/EC, binding acts of the EU, international agreements or acts of the Council of Ministers of the Republic of Bulgaria state so. If the person has a permission to stay in the country visa is not required either.⁵⁷⁸

Visa or permission to enter the country may be denied on several grounds most of which related to criminal behaviour or disturbing public order.⁵⁷⁹

⁵⁷³ *ibid.* Art. 1 para. 3.

⁵⁷⁴ Art. 1 Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families.

⁵⁷⁵ Art. 21 d para. 2 Law on Foreigners.

⁵⁷⁶ *ibid.* Art. 8-9.

⁵⁷⁷ Official web page of the Ministry of Foreign Affairs in the Republic of Bulgaria <<http://www.mfa.bg/bg/pages/124/index.html>> accessed September 19 2017 [Bulgarian/English version].

⁵⁷⁸ Art. 8 para. 2 and 3 Law on Foreigners.

2.2. Residence in the country

A foreigner may reside in Bulgaria on the grounds of an obtained short or a long-term visa, international agreements on visa free regime, EU acts or permission by the administrative control officials on foreigners.⁵⁸⁰ Foreigners may reside for (1) a short duration – up to 90 days within 180 days period from the moment of entry; (2) for an extended period – up to 1 year; (3) long-term - up to 5 years or (4) permanently for unlimited time. In order to obtain permission for permanent residence, additional conditions should be met such as having a specific status or purpose of stay and obtaining a long-term visa⁵⁸¹.

EU citizens and the members of their families who are not EU citizens can reside within the country for a set period of time or permanently. The period is with a short duration of max. 3 months; (2) long duration of up to 5 years; (3) or, permanently.⁵⁸² If EU citizens or members of their families wish to stay for a long period, they should obtain a certificate of permission from the Migration Directorate of the Ministry of Interior.⁵⁸³ Such person should prove that s/he is (1) employed or self-employed; (2) have a health insurance and sufficient funds to support himself/herself without burdening the national social-security system; (3) or is enrolled in an educational institution.⁵⁸⁴ Issues regarding the national security and public order and health may serve as a ground for restricting the right of free movement to which EU citizens are entitled.⁵⁸⁵

People with valid documents for residence do not have to fulfil any other requirements in order to maintain their status. They are entitled to all rights with the exception of those reserved for Bulgarian citizens.⁵⁸⁶ All people should obey the law and comply with the general rules⁵⁸⁷ otherwise they can be subjected to civil, penal or administrative responsibility⁵⁸⁸.

2.3. Leaving the country

Foreigners can freely leave the country upon presenting their passports or substitute travel documents at the official board checkpoints. A person cannot leave if a compulsory administrative measure is issued against him/her.⁵⁸⁹ The same rule applies to EU citizens and the members of their families.

Types of compulsory administrative measures which can be imposed include: (1) expulsion; (2) withdrawal of the right to reside within the country; (3) prohibition to enter into the country.⁵⁹⁰ Two more measures are added regarding foreigners - return to the country of origin, transit to

⁵⁷⁹ *ibid.* Art.10.

⁵⁸⁰ *ibid.* Art 22.

⁵⁸¹ *ibid.* Art. 24.

⁵⁸² Art. 6-7 Law on Entering, Residing and Leaving.

⁵⁸³ *ibid.*

⁵⁸⁴ *ibid.* Art. 8; Also

<<https://ec.europa.eu/eures/main.jsp?catId=8097&acro=living&lang=en&parentId=7737&countryId=BG&living>> accessed September 19 2017 [English].

⁵⁸⁵ Art. 22 Law on Entering, Residing and Leaving.

⁵⁸⁶ Art. 3 Law on Entering, Residing and Leaving; Art. 3 Law on Foreigners.

⁵⁸⁷ *ibid.*; Also Art. 4 Foreigners.

⁵⁸⁸ Art. 36 Law on Foreigners.

⁵⁸⁹ *ibid.* Art. 6.

⁵⁹⁰ Para 23 para.1 Law on Entering, Residing and Leaving.

third country, and prohibition to leave the country of Bulgaria.⁵⁹¹ Furthermore, foreigners may be forbidden to enter the borders of any EU Member State. Still, even after an issued administrative measure the person is presented with the opportunity to voluntarily leave the country within an expressly stated in the order period.⁵⁹² When imposing the compulsory administrative measures various factors are taken into account such as the duration of the stay, the attribution to a vulnerable group of the person, family background, the existence of a family, cultural or social link to the state of origin.⁵⁹³

Expulsion is imposed when the person is considered to be a real and sufficient threat to national security and public order.⁵⁹⁴ Additional grounds for foreigners can be found in Art. 10 para. 1 points 1-4 of the Law on Foreigners.⁵⁹⁵ On the other hand, deportation (removal) can be imposed only on foreigners when they fail to leave the country after their permission to stay has expired or if they have entered or tried to leave with invalid documents or not through the official border checkpoints.⁵⁹⁶

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Introduction

At present there are three public authorities in the Republic of Bulgaria, specifically established to deal with migrants: The Migration Directorate of the Ministry of Interior, the State Agency for Refugees with the Council of Ministers and the National Council on Migration and Integration.

3.2. The Migration Directorate

It is a national specialized structure in the Ministry of Interior, established in 2003.⁵⁹⁷ It is a legal person, whose tasks include:

- issuing permits for short-term, durable, long-term or permanent stay;
- extending the term of stay of foreigners in the Republic of Bulgaria;
- withdrawing the right to an issued permit for a short-term, durable, long-term or permanent stay, if needed;
- annulling an issued visa or reducing the determined via visa period of stay of a foreigner in the country;

⁵⁹¹ Art. 39a para. 1 Law on Foreigners.

⁵⁹² Art. 39b Law on Foreigners; Also Art. 27 Law on Entering, Residing and Leaving.

⁵⁹³ Art. 44 para. 2 Law on Foreigners.

⁵⁹⁴ Art. 25 para. 1 Law on Entering.

⁵⁹⁵ Art. 42 Law on Foreigners.

⁵⁹⁶ *ibid.* Art. 41

⁵⁹⁷ State Gazette №103 from 25.11.2003.

- carrying out coordination procedures with the Consular Relations Directorate of the Ministry of Exterior for the issuance of residence permits in the Republic of Bulgaria;
- giving opinions on applications for acquisition, restoration and release from Bulgarian citizenship, for issuance of work permits
- giving opinions to other institutions which, in the sense of a normative act, have a bearing on the residence of foreigners in the Republic of Bulgaria;
- providing administrative service to the citizens of the European Union, the citizens of the countries of the European Economic Area Agreement, the citizens of the Swiss Confederation and the members of their families under the Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families;
- imposing coercive administrative measures.⁵⁹⁸

The Migration Directorate is managed by a Director, appointed by the Ministry of Interior. Its structure includes several departments: "Legal Migration and Bulgarian Citizenship", "Countering Illegal Migration", "Special home for temporary accommodation of foreigners - Sofia", "Special home for temporary accommodation of foreigners - Lyubimets".⁵⁹⁹ The Migration Directorate is funded through the budget of the Ministry of Interior, which is a part of the State budget. The work of the directorate is monitored by its director and the Minister of Interior, supported by Inspectorate Directorate. Annual reports, analyzes and program documents are regularly published on the website. In cases involving maltreatment caused by that body, a redress can be obtained in at least three ways: by referring the question to the Minister of Interior, by filing a complaint before the Ombudsman of the Republic of Bulgaria or by commencing a judicial procedure before the competent administrative court.

3.3. The State Agency for Refugees with the Council of Ministers

It is a legal person financed by the State budget with a seat in the capital of Bulgaria and territorial units in the country.

The Agency is managed by a Chairperson who is an executive authority organ entrusted with a special competence. The Chairperson is designated by a decision of the Council of Ministers and is appointed by the Prime Minister. They manage, coordinate and control the implementation of the state policies related to the granting of refugee status and humanitarian status to aliens in the Republic of Bulgaria. According to the Law on asylum and refugees (in force from 01.12.2002), the Chairperson of the Agency shall:

- grant, refuse, withdraw and discontinue international protection in the Republic of Bulgaria;
- withdraw temporary protection;
- suspend and discontinue the procedure for international protection;
- make decisions on applications requesting family reunifications;

⁵⁹⁸ Official website of the Migration Directorate, <<https://www.mvr.bg/migration>> accessed on 23 August 2017

⁵⁹⁹ Official website of the Migration Directorate, <<https://www.mvr.bg/migration>> accessed on 23 August 2017

- notify the Council of Ministers in cases of a necessity for the establishment of temporary protection on the territory of the Republic of Bulgaria or for the extension of the temporary protection period;
- manage and allocate the distribution of budget funds and supervise disbursement for appropriate purposes;
- in coordination with the Minister of Finance and the Minister of Labour and Social Policy, define the expenditure thresholds for in-kind and financial support to aliens who seek or have been granted international protection;
- at the request of the President of the Republic of Bulgaria, give an opinion on an asylum application lodged⁶⁰⁰.

In performing their duties, the Chairperson is assisted by two Deputy Chairmen, who are appointed by the Prime Minister after a proposal of the Chairperson and whose functions are defined by the Chairperson of the Agency⁶⁰¹. The Chairperson establishes a subordinate political cabinet that provides assistance in formulating and developing specific decisions for the implementation of the governmental policy in the field of the Agency's competence⁶⁰².

The Agency is the administration, which supports the Chairperson through technical assistance and provision of administrative services to natural and legal persons. The Agency's staff numbers 303 people on pay roll⁶⁰³. The structure of the Agency includes an inspectorate, an information security officer, a financial controller, a general administration organized in three directorates, a specialized administration, organized in three directorates, and territorial units⁶⁰⁴. A Chief Secretary, appointed by the Chairperson, shall exercise the administrative management of the Agency in accordance with the Chairperson's lawful instructions. The Inspectorate exercises administrative control, monitoring and evaluation over the activities of the Agency. The Transit and the Registration-acceptance centres are territorial offices of the Agency, which work for the registration, accommodation and medical examination of aliens under protection, as well as for the conducting of procedures to determine the State responsible for examining the application for international protection. The employees of the Agency are obliged not to disclose any official information, as well as data related to the personality of the aliens, seeking or receiving protection, which became known during the procedure for granting international protection or during their stay in the territory of the Republic of Bulgaria after obtaining international protection⁶⁰⁵. The Agency is funded by the State budget. In cases of maltreatment, redress can be obtained by filing a complaint before the Council of Ministers, before the Ombudsman or by referring the issue before the competent administrative court.

⁶⁰⁰ Law on asylum and refugees, Art. 48

⁶⁰¹ Law on asylum and refugees, Art. 50

⁶⁰² Defining rules of the State agency for refugees with the Council of Ministers in force from 01.04.2008, Art. 7

⁶⁰³ Official website of the State agency for refugees, <<http://www.aref.government.bg/index.php/bg/za-dab>> accessed on 23 August 2017

⁶⁰⁴ Defining rules of the State agency for refugees with the Council of Ministers in force from 01.04.2008, Art. 8

⁶⁰⁵ Defining rules of the State agency for refugees with the Council of Ministers in force from 01.04.2008, Art. 29

3.4. The National Council on Migration and Migration Integration

It is a collective consultative body, formulating and coordinating the implementation of state policies on migration and integration of foreigners. It has 14 members - Deputy Ministers and Chairmen of State agencies and 2 Chairpersons - the Minister of Interior and the Minister of Labor and Social policy⁶⁰⁶. The Council is assisted by a Secretariat made up of experts from the departments, represented in the Council. Its tasks are related to the development of an updated strategic document on migration and integration on the basis of the existing strategic documents, and its proposal to the Council of Ministers; coordination of the implementation of migration and integration policies on a national and European level; development of amendments' proposals, aiming at a more effective implementation of the migration and integration policies.⁶⁰⁷

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Migration

International migration is the change of usual residence in Bulgaria with a residence abroad or vice versa. Migration growth of a given country territory is the difference between the immigration to and emigration from the area during the year.

The statistics regard persons who have changed their usual residence (current address). The total migration is calculated as of December 31st, 2016.

4.1.1. Migration growth for 2016

According to the official data from the National Statistical Institute⁶⁰⁸ the migration growth for 2016 is -9 329. That means that more people have left the country than they have come in. However, that data only includes the people who have declared change of address. The data also makes it evident that most changes of address happen in the age groups 15-39.

A breakdown of migration statistics by citizenship⁶⁰⁹ shows that only 1 310 of the immigrants in the country have EU citizenship and the remaining 10 677 are from non-EU countries.⁶¹⁰

4.1.2. Asylum- seekers

In the period 1993 - middle of 2017 a total of 81 385 people has searched protection in Bulgaria. Only 12 818 of them were given refugee status, while another 10 950 were given humanitarian

⁶⁰⁶ Decree of the Council of Ministers No 21 / 05.02.2015, Art.4

⁶⁰⁷ Decree of the Council of Ministers No 21 / 05.02.2015, Art. 2

⁶⁰⁸ Official website of the National Statistic Institute

<<http://www.nsi.bg/bg/content/3072/%D0%B2%D1%8A%D0%BD%D1%88%D0%BD%D0%B0-%D0%BC%D0%B8%D0%B3%D1%80%D0%B0%D1%86%D0%B8%D1%8F-%D0%BF%D0%BE-%D0%B2%D1%8A%D0%B7%D1%80%D0%B0%D1%81%D1%82-%D0%B8-%D0%BF%D0%BE%D0%BB>> accessed on 23 August 2017

⁶⁰⁹ ibid

⁶¹⁰ That data includes persons with unknown citizenship as well as people without citizenship.

status and 11 952 had their requests denied. Some of the cases still haven't been reviewed, but the majority of cases, or a total of 41 128, have been terminated.

In 2015, there were 20 391 people who applied for protection from the Bulgarian state. 4 708 of them were granted refugee status and 889 - humanitarian status. There were 623 denials and 14 567 cases were terminated. In 2016 the total number of people searching for protection dropped to 19 418, and in the first half of 2017 only 2 084 applications have been submitted. In 2016, 764 people received refugee status and 587 - a humanitarian one. However, that year also marked an increase in denials – since there were 1 732 such in 2016. This number further increased in 2017, marking at 2 281, with the total number of applications from 2017 being 2 084, meaning that some of the denials are from previously unresolved cases. That comes to show the unwillingness of the Bulgarian authorities to provide protection for migrants.

4.1.3. Immigrants

Most applications in Bulgaria for the period January 2017 - June 2017 have been submitted by Afghan nationals – 828, followed by Syrian nationals – 547, and Iraqi nationals – 314.⁶¹¹ According to the State Agency for Refugees with the Council of Ministers most of the applications in Bulgaria in the last 23 years come from the same three countries in the exactly same order.

4.1.4. Transit migrants

For most migrants Bulgaria is a transit zone on their way to Western Europe. It is very hard to receive a refugee status and the general economic situation makes Bulgaria an undesirable spot for economic migrants. Recent data from the Ministry of the Interior also proves this, showing that 80% of the migrants have been apprehended while trying to illegally exit the country.⁶¹² The exits used are located on the Bulgarian- Serbian border, Serbia being yet another transit zone. The data also show that there is a 7% decrease in transit migrants, compared to the same period in the previous year.

4.2. Trends in migration flows⁶¹³

On the following chart, there is information about the number of people caught without registration either on the border or in the inside of the country. It displays weekly statistics, covering the period between January 2016 and April 2017. Migrants trying to enter the country are marked with red, the ones trying to exit it without registration – with blue, and with green are the ones caught in the inside of the country. There is a clear tendency of a decrease in these

⁶¹¹ Agency on refugees official website <<http://www.aref.government.bg/index.php/bg/aktualna-informacia-i-spravki>> accessed on 23 August 2017

⁶¹²Mixed mountly flows in the Mediterranean compilation of information from 2017 <http://reliefweb.int/sites/reliefweb.int/files/resources/Monthly_Flows_Compilation_Report_No5_May_2017.pdf> accessed on 23 August 2017

⁶¹³ Ministry of Ministry of Internal affairs statistics published on <<http://zakrila.info/%D1%87%D0%B8%D1%81%D0%BB%D0%B0%D1%82%D0%B0/>> accessed on 23 August 2017

numbers. The reason behind this, however, may partially be based on the severe weather conditions in the winter months.

4.3. Camps

However, it should be noted that there is a practice among the Bulgarian authorities to automatically put anyone who is caught on the border in a closed camp before giving them a chance to tell their story or have proceeding for refugee or humanitarian status.

What is more, together with the detention order, there is also a deportation order issued in every case. Both of these orders can be challenged before an administrative court within a period of 14- days. Most of the migrants however do not understand the documents they sign in Bulgarian and the period for appeal turns to be already over before they meet a lawyer who can help their case. Further, there is a practice for detention to be prolonged in every 6 months for a total period of 2 years, all of which time migrants spend in closed camps and in most cases without having valid legal grounds for detention.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Introduction

Pursuant to Art.46 of the European Convention on Human Rights (ECHR) the judgments of the court are binding upon States parties to them.⁶¹⁴ When a judgment finding a violation becomes final, the European Court of Human Rights (ECtHR) forwards the file to the Committee of Ministers of the Council of Europe (CM), which is responsible for monitoring the execution of the Court's judgments. That brings the proceedings before the Court to an end.⁶¹⁵

The CM monitors the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained. For example, Resolution CM/ResDH(2015)44⁶¹⁶ concluded the supervision over four cases against Bulgaria, recognizing the general measures adopted and important steps made in execution of the process, and invited the country to abide their obligations regarding payment of any sums awarded to by the Court. General measures are also being monitored, following the changes in national legislation to reflect the required in the judgment.

There are two big groups of national cases with regard to the main problems in Bulgarian legislation on migration law. The first one is *Al-Nashif v. Bulgaria*⁶¹⁷, which also includes the following cases: *Musa and others v. Bulgaria*, *Hasan v. Bulgaria*, *Basbir and others v. Bulgaria*, *Baltaji v.*

⁶¹⁴ European Convention on Human Rights Art.46, <http://www.echr.coe.int/Documents/Convention_ENG.pdf> accessed on 23 August 2017

⁶¹⁵ Official documents of the Court <http://www.echr.coe.int/Documents/Your_Application_ENG.pdf> accessed on 23 August 2017, p.9

⁶¹⁶ Resolution CM/ResDH(2015)44 <<http://hudoc.echr.coe.int/eng?i=001-153248>> accessed on 23 August 2017

⁶¹⁷ Case of Al-Nashif v. Bulgaria <<http://hudoc.echr.coe.int/eng?i=001-60522>> accessed on 23 August 2017

Bulgaria. The second one is *C.G and others v. Bulgaria*, which includes *Auad v. Bulgaria*, *Kausbal and others v. Bulgaria*, *M. and others v. Bulgaria*, *Madah and others v. Bulgaria*, *Razza v. Bulgaria*, *Amie and others v. Bulgaria*.⁶¹⁸

5.2. Implementation

5.2.1. Al-Nashif v. Bulgaria (group)

This group of cases concerns the issue of the lack of independent control on the State's expulsion measures and orders to leave the country. In *Al-Nashif* the Court stated: "this Court finds that Mr. Al-Nashif's deportation was ordered pursuant to a legal regime that does not provide the necessary safeguards against arbitrariness"⁶¹⁹ - in the light of the lack of judicial review of measures and orders to leave the country, based on national security grounds, as well as the lack of such review of detention pending expulsion.

5.2.1.1. General measures

The response of the Bulgarian authorities was the Aliens Act's amendments from 2007⁶²⁰ in Article 46, namely the introduction of an independent review before the Supreme Administrative Court. Moreover, as from 2003 the Supreme Administrative Court changed its case-law and started examining such appeals, admitting being bound by the Convention in this respect. Since 2011⁶²¹ according to Articles 42(4) and 44(2) of the Aliens act the authorities are required, before deciding to expel an alien, residing permanently in Bulgaria, to take into account their personal and family situation, their level of integration and the strength of their connections with the country of origin. Concerning the possibility to challenge the lawfulness of the detention pending expulsion, a legislative reform was consequently introduced in years 2009⁶²² and 2013⁶²³, namely: time-limits for the detention of aliens pending expulsion were established (Art. 44(8), obligation for the courts to review the lawfulness and necessity of continued detention at six-month intervals, and upon request of the detainee or on their own motion (Art. 46a(4), the time limit for an appeal of the detention order was extended to 14 days (Art. 46a(1).

5.2.1.2. Individual measures

As the 9th Annual report of the CM on the Supervision of the execution of judgments and decisions of the ECtHR (2015) states: "all the applicants who were detained pending expulsion

⁶¹⁸ Third annual report on Execution of judgments of ECHR
<http://www.justice.government.bg/Files/3ti_Obobshten_doclad_636088579783250821.pdf> accessed on 23 August 2017

⁶¹⁹ Case of *Al-Nashif v. Bulgaria* <<http://hudoc.echr.coe.int/eng?i=001-60522>>, para.128

⁶²⁰ State Gazette №29 from 2007

⁶²¹ State Gazette №9 from 2011

⁶²² State Gazette №36 from 2009

⁶²³ State Gazette №23 from 2013

have been released, and the compensation awarded by the European Court as non-pecuniary damage has been paid."⁶²⁴

5.2.2. C.G. and others v. Bulgaria (group)

This group of cases is related to "shortcomings in the judicial control in the area of expulsion or deportation based on national security grounds."⁶²⁵ It concerns the effectiveness of the remedies introduced as a response to the cases in the *Al-Nashif* group.

5.2.2.1. General measures

In regard to the lack of adequate protection against arbitrariness (Articles 8 and 13), the Protection of Classified Information Act has been amended⁶²⁶. Thus, according to Art. 39a, the foreigners and their lawyers are authorized to acquaint themselves with all content on file, while the Supreme Administrative Court is eligible to request the submission of any evidence by the administration, subject to the "need to know" principle.

In regard to the automatic suspensive effect of the appeal, if based on public order, and the risk of ill treatment in the destination country, amendments are currently being discussed in the Government and with the Ministry of Interior.⁶²⁷ Legislative measures are still necessary to give automatic suspensive effect to this remedy. It is necessary to provide that the destination country should be mentioned in a legally binding act and that every change in the destination country should be amenable to appeal.⁶²⁸

In its recent case-law the Supreme Administrative Court has started requiring the provision of specific facts, so as to prove the presence of a threat for the public order, and thus, to enable an assessment of the proportionality of the measures imposed.⁶²⁹

5.2.2.2. Individual measures

According to the information submitted to the CM by Bulgaria in its Updated Action Plan from December 2016 (DHDD (2017)8) "all sums awarded by the European Court were transferred to the applicants' bank accounts".⁶³⁰

In regard to the cases of *Madab and others v. Bulgaria* and *Amie and others v. Bulgaria*, where violations of Art.8 and 13 ECHR have been found, it has been necessary to ensure that the applicants will not be expelled without a proper reexamination of the expulsion orders against

⁶²⁴ 9th Annual Report on the Supervision of the execution of judgments and decisions of the European Court of Human Rights, p. 156; Hudoc executions status of *Al-NASHIF v. Bulgaria* <<http://hudoc.exec.coe.int/eng?i=004-14665>>

⁶²⁵ *ibid*, p. 157

⁶²⁶ State Gazette №89 from 2004

⁶²⁷ Updated action plan (16/12/2016), Communication from Bulgaria concerning the C.G. group of cases against Bulgaria (Application No. 1365/07), p. 3

⁶²⁸ Hudoc executions on C.G. and others v. Bulgaria < <http://hudoc.exec.coe.int/eng?i=004-3769> >

⁶²⁹ Решение №8151/13.06.2014г. по адм. дело №4656/2014 на ВАС; Решение № 3384/07.03.2012 г. по адм. дело № 12314/2011 на ВАС; Решение № 5338/15.04.2011 г. по адм. дело № 2049/2011 на ВАС

⁶³⁰ Updated action plan (16/12/2016), Communication from Bulgaria concerning the C.G. group of cases against Bulgaria (Application No. 1365/07), p. 1

them.⁶³¹ The implementation of these judgments is the following: Mr. Madah's order for expulsion, the revocation of his residence permit and the prohibition from entering the territory of Bulgaria, all imposed in 2005, have been repealed by the Supreme Administrative Court (24.4.2014); Mr. Amie's appeal against the order for expulsion, the revocation of residence permit and the prohibition from entering the territory of Bulgaria, has been dismissed by the Supreme Administrative Court (02.04.2014). The Court based its decision on an older judgment against Mr. Amie from year 2006, where he pleaded guilty of a crime under Art.339, para.1 of the Criminal Code (holding of munitions without the necessary permit). The Committee has already found that no additional individual measure is required in five cases of this group.⁶³²

5.3. Other forms of implementation

On September 21, 2012 it was decided by the Bulgarian General Assembly that the Minister of Justice shall give an annual report on the execution of the judgments of the ECtHR as a step to help bettering the implementation of the ECtHR decisions. The ECtHR's judgments have been translated in Bulgarian and are available on the official website of the Ministry of Justice of the Republic of Bulgaria. The National Institute of Justice has organized several courses for judges in relation to the implementation of Art.8 ECHR.⁶³³

5.4. Conclusion

A number of measures have already been taken in order to address the specific reasons for the violations of the ECHR. This includes law amendments, individual compensation to victims of human rights violations, etc. Their effectiveness is still questionable, but discussions for new amendments are underway.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Awareness-raising campaigns

In 2014, in its fifth monitoring cycle, the European Commission against Racism and Intolerance (ECRI) issued a report on Bulgaria, in which it strongly recommended that the authorities urgently organised an awareness-raising campaign promoting a positive image of and tolerance for asylum seekers and refugees, and ensuring that the public understands the need for international protection.⁶³⁴

⁶³¹ 9th Annual Report on the Supervision of the execution of judgments and decisions of the European Court of Human Rights, p. 157

⁶³² Hudoc executions on C.G. and others v. Bulgaria

⁶³³ Official website of the National Institute of Justice <<http://www.nij.bg>> accessed on 23 August 2017

⁶³⁴ The European Commission against Racism and Intolerance (ECRI) report on Bulgaria (fifth monitoring cycle), adopted on 19 June 2014, published on 16 September 2014

Unfortunately, current events have shown that this recommendation has not been successfully implemented. On the contrary, as the European Union Agency for Fundamental Rights (FRA) stated in its paper, the amount of *violence, harassment, threats and xenophobic speech targeting asylum seekers and migrants remain pervasive, whether committed by state authorities, private companies or individuals, or vigilante groups*.⁶³⁵

A vivid example regarding this phenomenon is the Bulgarian Prime Minister's publicly expressed gratitude to the existing vigilante groups⁶³⁶ in 2016⁶³⁷ and stated that any help to the authorities is welcome.⁶³⁸ These kinds of statements, especially coming from a governing authority, are in contradiction with the obligation to promote a positive image of and tolerance for migrants, seeking international protection. In opposition to this statement the Bulgarian Helsinki Committee filed a complaint with the Prosecutor General, claiming that it constituted incitement to discrimination and ethnic violence.⁶³⁹ As a following reaction the Prime Minister stated that his words were misinterpreted, and that unlawful or inhumane acts will not be tolerated and will be prosecuted.⁶⁴⁰

Moreover, in February 2017 in the city of Elin Pelin⁶⁴¹ residents refused to accept a Syrian family, who was granted a humanitarian status from the State Agency for Refugees, to settle in their municipality. Influenced by the residents' opposing behaviour the town's mayor refused to issue personal identity numbers (EGNs) for the family and to register them in the population register, although he is obliged to do that in correspondence to Article 35 of LAR.⁶⁴² This undoubtedly verifies the sparked tension between local residents and refugees that has been overspread throughout the country and has not decreased in the last years.

As a consequence from such events, in March 2017 ECRI also concluded that since 2013 the situation for asylum seekers and refugees in Bulgaria has not met any development and a reason for that is the lack of relevant information, provided by the authorities, the national specialised body, international organisations or civil society, indicating implementation of the above recommendation.⁶⁴³ Instead of lowering, the levels of xenophobia and intolerance are in fact sharply intensified.

⁶³⁵ *Current Migration Situation in the EU: Hate Crime*, European Union Agency for Fundamental Rights, November 2016

⁶³⁶ Such as "Shipka" (Bulgarian national movement) or "Vasil Levski" (Bulgarian Military Union), who detain and express violence on migrants.

⁶³⁷ Mediapool (2016), 'Russians train vigilante groups in Bulgaria. German TV ZDF film shows how the squads of volunteers operate' ('Руснаци обучават ловци на бежанци в България. Филм на германската телевизия ZDF показва как действат доброволческите отряди у нас'), 9 June 2016.

⁶³⁸ OffNews (2016), *Borissov thanks the vigilante groups, any help was welcome* ('Борисов благодари на хайките за бежанци, всяка помощ била добре дошла'), 10 April 2016.

⁶³⁹ Bulgarian Helsinki Committee (Български хелзинкски комитет) (2016), 'Signal to the Prosecutor General against the Prime Minister relating to his public statements in favour of the vigilante groups' ('Сигнал до главния прокурор срещу министър-председателя във връзка с изявленията му в подкрепа на „хайките за лов на бежанци“'), press release, 11 April 2016

⁶⁴⁰ Mitov, B. (Митов, Б.) (2016), 'Borisov hardens tone against the "hunters" of refugees' ('Борисов втвърди тона срещу "ловците" на бежанци'), Mediapool, 11 April 2016

⁶⁴¹ A town in central western Bulgaria.

⁶⁴² *Vtvoovinite.bg* (2016) *Elin Pelin in rebellion against a Syrian family* ('Елин Пелин на бунт срещу сирийско семейство'), 13 February 2017

⁶⁴³ ECRI Conclusions on the Implementation of the Recommendations in respect of Bulgaria. Subject To Interim Follow-Up, adopted on 23 March 2017, published on 16 May 2017

6.2. Hate Crimes

The above mentioned overall climate in the Bulgarian society without any hesitation leads to increased rates of “hate crimes”. Despite the fact that these types of crimes, committed against others for racial and xenophobic reasons, are specifically enacted in the national legislation,⁶⁴⁴ they are rarely identified, investigated and prosecuted under the criminal law provisions. Furthermore, very often hooliganism or other offences (involving minor to major body harms) are invoked instead, without the discriminatory motives being indicated.

All of this disables the creation of comprehensive statistics on hate crimes in Bulgaria and ironically may lead to the false assumptions that the rate of racist violence cases is not high. In its report from 2014 ECRI establishes that few cases of hate speech have reached court and the conviction rate is very low. This creates an atmosphere in which such attacks are likely to be repeated without any consequences for the criminals.

6.3. The Commission for Protection against Discrimination and the Ombudsman

There are two institutions that have prerogatives in the area of anti-discrimination and could also deal with the various forms of hate crimes. The first one is the Commission for Protection against Discrimination (CPD), which is the state body responsible for protection against discrimination and guaranteeing equal rights. The CPD accepts complaints and signals of acts of discrimination.

The second institution is the Ombudsman of the Republic of Bulgaria. It monitors and advocates any violations of the rights and freedoms of citizens. Complaints and signals to the Ombudsman can be submitted by both Bulgarian citizens and third-country nationals.⁶⁴⁵

In May 2017 the Committee on the Elimination of Racial Discrimination (CERD) expressed its concerns about the effectiveness of the functioning of the CPD and the Ombudsman. In addition to this CERD also noted the lack of public reliance in both institutions and the need of promoting the issuing of complaints, and of ensuring these procedures are accessible to everyone.⁶⁴⁶

The above statements come in relation to the ECRI recommendation towards CPD to produce and publish information on the topic of discrimination, and to explain and widely disseminate in a variety of languages the procedures for issuing discrimination complaints. In regards to this recommendation, CPD has made a significant improvement, providing on its website information in Bulgarian, English, French, German and Russian for its users, who can click on the relevant flag or select one of these languages. The CPD website also contains a built-in translation tool, which converts information into an extensive list of world languages upon the

⁶⁴⁴ Article 162 -163 of the Criminal Code (Наказателен кодекс) - May 1968 (last amendment on 5 July 2017, State Gazette No. 54)

⁶⁴⁵ Article 24, para.1 of the Ombudsman Law (Закон за омбудсманна) – January 2004 (last amendment on 15 February 2013, State Gazette No. 15)

⁶⁴⁶ PRESS RELEASE UN Committee on the Elimination of Racial Discrimination: Bulgarian Institutions Are Not Active Against Racial Discrimination, 16 May 2017 <http://www.bghelsinki.org/bg/novini/press/single/20170516-CERD_C_BGR_CO_20-22/> accessed on 23 August 2017

submission of a complaint. On the other hand, in Article 51, para.1 of the Law for Protection from Discrimination it is clearly stated that any complaint written in a foreign language must be accompanied by a translation into Bulgarian, which limits the possibilities of certain vulnerable groups to submit a discrimination complaint.⁶⁴⁷

6.4. The National Integration Programme

The National Integration Programme does not function well, especially in terms of legislation. At the end of March 2017, the President of Republic of Bulgaria revoked the Decree №208/2016 and the Regulation on the Integration of Refugees adopted by the Decree. The prime minister of the interim government stated that there are no clear criteria laid down in the old regulation to implement the measures of integration and especially the ones related to the foreseen agreement on integration of foreigners⁶⁴⁸. An official new draft regulation on the integration of refugees was published for a public discussion on 7 April (until 21 April) but in general it does not differ substantially from the previous one. Indeed, the new act is more detailed, but in no way gives any further solution to the questions related to the inefficiency of the old one⁶⁴⁹. Up to this moment the government has not yet accepted and put in force a new act.

On the other hand, a positive outlook is the fact that SAR operates an Integration Centre which is directly engaged with the implementation of a National Programme for the Integration of Refugees. The Integration Centre works in close cooperation with governmental institutions such as the Ministry of Labour and Social Policy, the Employment Agency, the Ministry of Education and Science, the State Agency for Child Protection, local administrations, and Sofia Municipality. It partners with non-governmental organisations for exchange of information and coordination in the field of employment, education and social integration of foreigners who have received international protection.

6.5. Conclusion

In conclusion, the recommendations of the European Commission against Racism and Intolerance concerning the integration of migrants have been partially but not sufficiently implemented. As a result, the levels of hatred in the society are rising significantly, and the authorities have not taken any preventive measures against that process. Furthermore, the national human rights bodies are still not easily accessible for complaints, especially to migrants, mainly because of financial and language barriers, which on the other hand contributes to the

⁶⁴⁷ ECRI Conclusions on the Implementation of the Recommendations in respect of Bulgaria.

⁶⁴⁸ Capital.bg (2017) How the “high-qualified” interim government pleased the wishes of the president” (‘Как “много висококачественят” служебен кабинет угоди на президента’), published on 3 April 2017

⁶⁴⁹ Draft Decree of the Council of Ministers to adopt the Regulation on terms and conditions for conclusion, implementation and termination of the agreement on integration of foreigners granted asylum or international protection (Проект на Постановление на Министерския съвет за приемане на Наредба за условията и реда за сключване, изпълнение и прекратяване на споразумението за интеграция на чужденците с предоставено убежище или международна закрила), <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=2635>

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. National legislation

According to Article 35 of the Charter of Fundamental Rights of the European Union the right to benefit from medical treatment has to be established by national laws and practices. In relation to migrants the Bulgarian legislation has implemented this principle and regulated the access to medical assistance of migrants within various acts such as the Law on Health (LH), the Law on Health Insurance (LHI), the Law on Asylum and Refugees (LAR) and a number of secondary legislation acts. For the purposes of this research, the migrants who fall under the scope of these laws would be conditionally divided into two groups:

migrants who have received permanent residence permit and foreign students;
asylum seekers.

7.1.1. Migrants who have received permanent residence permit and foreign students

Migrants who have received permanent residence permit in Bulgaria as well as foreign students and PhD students who have been accepted in higher educational institutions or in scientific organizations in the country have equal rights and obligations to those of the Bulgarian citizens in regard to medical care accessibility.⁶⁵⁰ This means that they have access to health insurance at the National Health Insurance Fund from the date they receive a permanent residence permit, respectively- enrol in the relevant higher education institution or scientific organization.⁶⁵¹ As a consequence, according to Article 35 LHI, they are provided certain rights - to receive medical care within the scope of the package of health-care activities guaranteed by the budget of the National Health Insurance Fund, dental care, to choose a general practitioner (GP), the right of an emergency medical assistance, wherever they are, the right to lodge complaints to the relevant administrative bodies in case of violations of their rights etc. It is of high importance to be noted that according to Article 87, para. 1 LH all medical procedures can only be conducted after an informed consent from the patient.

In order to ensure the accessibility to medical services and guarantee migrants' physical, mental and social well-being, the national legislation in Article 2, point 1 LH states the principle of equal treatment when accessing health services, giving only priority and special health protection to vulnerable groups such as children, pregnant women, mothers of children up to 1 year old⁶⁵² and people with physical disabilities and mental disorders⁶⁵³. Moreover, Article 136 LH firmly states that any form of discrimination against a person based on his genome is forbidden.

⁶⁵⁰ Article 83 para. 1 and 3 in connection to articles 81, and 82 Law on Health (Закон за здравето) - January 2005 (last amendment on 27 December 2016, State Gazette No. 103)

⁶⁵¹ Article 34, para.1, item 2 and 4, Law on Health Insurance (Закон за здравното осигуряване) - July 1999 (last amendment on 9 December 2016, State Gazette No. 98)

⁶⁵² Article 2, point 2 of the Law on Health

⁶⁵³ Ibid Article 2 point 5

In case any form of discrimination occurs, on the basis of which a person has been mistreated or a health care rejected, the law allows individuals to pursue a discrimination case through the court system or through the Commission for Protection against Discrimination.

The National Health Insurance Fund does not pay the treatment of individuals who do not have health insurance or whose rights to it have been disconnected (which happens if the patient has not paid more than three monthly insurance contributions due for a period of 36 months until the beginning of the month preceding the month of the medical care provided). In these cases, if the migrant requires to be provided a medical service, she/he would have to pay its full estimated price.⁶⁵⁴

Out of the scope of the compulsory health insurance shall be conceded medical services, connected to medical aid at emergency status, stationary psychiatric care, prophylactic examinations, tests and midwifery care for all women who are not health-insured, regardless of the manner of birth, ensuring blood and blood products, transplantation of organs, tissues and cells, compulsory treatment and/or compulsory isolation, expertises for degree of damages and durable inability to work, payment of treatment for diseases according to an order, determined by the Minister of Health, medical transport and assisted reproduction⁶⁵⁵. The children up to 16 years of age have the right to medical care out of the scope of the obligatory health insurance⁶⁵⁶.

7.1.2. Asylum seekers

Aliens who have been granted refugee protection or asylum and those who have obtained humanitarian protection also have the same rights and obligations as the Bulgarian citizens, unless the specific right requires Bulgarian citizenship (right to vote in elections, referendums etc).⁶⁵⁷ That means they have the rights and obligations mentioned in the previous paragraph and they also have access to medical care. Although the Law on Health does not mention these specific groups of migrants anywhere, the Law on Health Insurance does include them in Articles 33, para.1, item.4 and 34, para.1, item.3, alongside with migrants who have a permanent residence permit and provides them with the same access to health insurance as migrants with permanent residence permit from the date of the initiation of their refugee or asylum procedure. Article 58(8) of LAR explicitly mentions the obligation of the State Agency for Refugees to provide written (or orally, in case the applicant is illiterate) information to asylum seekers within 15 days from the submission of their application. This information must be provided in a language that the asylum seeker would understand and it is usually translated in the languages spoken by the main nationalities seeking asylum in Bulgaria, such as Arabic, Farsi, Dari, Urdu, Pashto, Kurdish, English and French. It normally comes in the form of a leaflet, provided from the initial application (e.g. at the border) and includes information about the asylum procedure,

⁶⁵⁴ Article 109, para. 1 Law on Health Insurance

⁶⁵⁵ Article 82, para.2 Law on Health

⁶⁵⁶ Ibid, para. 3

⁶⁵⁷ Article 32, para.1 Law on Asylum and Refugees (Закон за убежището и бежанците) - December 2002 (last amendment on 27 December 2016, State Gazette No. 103)

social assistance (that includes health care rights) and other rights and obligations of asylum seekers⁶⁵⁸.

Health care for migrants is provided either by health staff working in small clinics within the centres, or by local GPs chosen by the migrants.

During the procedure and before obtaining international protection or asylum, the asylum seekers' health insurance is paid by SAR.⁶⁵⁹ After a (potentially) successful end of the procedure, they become responsible for the payment of their own health insurance contributions, depending on whether they are employed, self-employed or unemployed.⁶⁶⁰ There are, however, some medicines, laboratory tests and diagnostic procedures that are not covered by the National Health Insurance Fund, and migrants are obliged to pay for these out of their own pocket⁶⁶¹.

In addition to these regular medical services and with the aim of protecting public health, it is required that all registered asylum seekers undergo a medical examination during the period of their international protection acquisition. This examination is carried out at the SAR refugee registration and reception centres by a doctor, nurse or a paramedic. Refugees remain quarantined until the issuing of the results. This medical examination should determine whether the alien, who is seeking for international protection, belongs to a vulnerable group and whether they have special needs.⁶⁶² In this regard, during the procedure of protection acquisition, the interviewer may also, with the alien's consent, request the completion of a medical examination (by a doctor or a psychologist), in order to analyze the presence of any physical or psychological symptoms of previous persecutions or serious violations of the alien's integrity. The alien's refusal to conduct such an examination does not affect the decision of the interviewer whether or not the asylum seeker meets the requirements for international protection. Last but not least, the medical examination may also be initiated by the alien on their expense.⁶⁶³

7.2. Conclusion

To sum up the national legislation provides the necessary regulations to ensure the well-being of migrants. However, there are series of practical problems which intrude the provision of proper medical service. First of all, there is a lack of translators, especially of ones, capable of interpreting rare languages such as Farsi, Persian, Arabic etc. This leads to the situation which might be referred to as "lost in translation". Numerous difficulties occur in the communication between the examining doctors and the patients, which as a consequence, may result in wrong diagnoses or refusal of conducting an examination at all.

⁶⁵⁸ EASO, Stock taking report on the asylum situation in Bulgaria, March 2014, 3.2. Asylum Determination Procedure.

⁶⁵⁹ Article 40, para. 3, item 7 Law on Health Insurance (Закон за здравното осигуряване) - July 1999 (last amendment on 9 December 2016, State Gazette No. 98)

⁶⁶⁰ Ibid article 40 para. 1

⁶⁶¹ Bulgaria: Assessing Health-System Capacity to Manage Sudden Large Influxes of Migrants - joint report on a mission of the Ministry of Health of Bulgaria and the World Health Organization Regional Office for Europe, 2015, Service delivery, p. 11 http://www.euro.who.int/data/assets/pdf_file/0009/300402/Bulgaria-Assessment-Report-en.pdf

⁶⁶² Article 29, para.4 and 5 Law on Asylum and Refugees (Закон за убежището и бежанците) - December 2002 (last amendment on 27 December 2016, State Gazette No. 103)

⁶⁶³ Ibid Article 61, para. 5 and 6

Furthermore, medical professionals also have a hardship adjusting to the cultural peculiarities of the aliens, such as the need of a woman from Iraq to be examined by a female doctor, for example.

All in all, in the future these issues need to be solved and a way to do this might be by conducting trainings of professionals to ensure their capability of providing high-quality healthcare.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. Education

It is a fundamental human right and it is essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. In democratic societies, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role; such that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1, which is named Right to Education and reads that “No person shall be denied the right to education”, would not be consistent with the aim or purpose of that provision.

A clarification in purpose to clear the meaning of this first sentence Article 2, first sentence, of Protocol No. 1 – Right to education requires it to be scoped as a principle, regarding individuals. The right to education covers the right of access to educational institutions existing at this period of time, the transmission of knowledge and intellectual development, but also the possibility of drawing profit from the education received. That is to say, the right to obtain, in conformity with the rules in force in each EU- State, and in one form or another, official recognition of the studies which have been completed by the means of a qualification.

8.2. Article 2 of Protocol No. 1

It concerns elementary schooling, but also secondary education, higher education, and specialized courses. The holders of the right guaranteed in Article 2 of Protocol No. 1 are children, but also adults, or indeed any person wishing to benefit from the right to education. Furthermore, the State is responsible for public but also for private schools. In addition, the State cannot delegate to private institutions or individuals its obligations to secure the right to education for all. And while Article 2 of Protocol No. 1 guarantees the right of one to open and run a private school, it does not give any positive obligation to the States to subsidize any particular form of teaching. Moreover, it cannot be said that the second sentence of Article 2 of Protocol No. 1 to the Convention imposes the admission of a child to a private school. Lastly, the State has a positive obligation to protect pupils in both State and private schools from ill-treatment. The right to education guaranteed by the first sentence of Article 2 of Protocol No. 1 by its very nature calls for regulation by the State, regulation which may vary in time and place,

according to the needs and resources of the community and of individuals. Such regulation shall never injure the material substance of the right to education, nor conflict with other rights enshrined in the Convention. The Convention therefore implements a just balance between the protection of the general interests of the Community and the respect towards the fundamental human rights.

The EU does not have an automated recognition process for accreditation of higher education diplomas received abroad and quite often the individuals have to undergo a national procedure for recognition of a diploma and acknowledgement of the degree of education. The need of a degree recognition, coming from a foreign state, purpose of the recognition of the degree from a foreign school is comes so as to facilitate the access to further education, requalification, obtaining of a degree, and other matters, concerning the applicant. Every member state has the right to determine a national procedure of accreditation of foreign educational diplomas and transcripts. However, the member states are required to follow the basic guidelines and policies of the Union.⁶⁶⁴

8.3. In Bulgaria

National legislation regarding migrant children is provided by Article 9. of Pre-school and School Education Act as it follows:

(1) The compulsory pre-school and school education at state-owned and municipal kindergartens and schools shall be free for children and pupils. The migrant children and their parents have full access to information regarding rights and obligations in terms of applying in Bulgarian schools, they have the possibility to require it from the school administration, where they want to enroll their inheritor.

(2) School education at state-owned and municipal schools shall be free also above the compulsory school age for: 1. Bulgarian citizens; 2. citizens of another Member State; 3. citizens of third countries: (a) holding a permanent residence permit; (b) entitled to long-term or prolonged stay in the country, as well as members of their families; (c) admitted in accordance with acts of the Council of Ministers; (d) admitted in accordance with an international treaty or agreement on these matters; (e) in accordance with a special law; (f) seeking or granted international protection in the country.

(3) Foreign minors, seeking or granted international protection in accordance with the Asylum and Refugees Act, shall receive free education and training at state-owned and municipal kindergartens and schools in the Republic of Bulgaria under the terms and conditions applicable to Bulgarian citizens –from this paragraph we can make a conclusion that Bulgarian legislation treats all kids equally.

There are several key points regarding rights/obligations - right to free education shall be exercised by not paying tuition fees for the training financed from the state budget, and using free-of-charge the facilities for training and development of the interests and abilities of children and pupils. No fees shall be paid also in the case of sitting for state matriculation exams and state

⁶⁶⁴ Europa Youth Portal information site <http://europa.eu/youth/bg/article/37/6604_en> accessed on 23 August 2017

exams for awarding professional qualifications in the theory and practice of the occupation for the purposes of acquiring a secondary education degree. In the cases other than those under paragraph 2, citizens of third countries above the compulsory school age shall be educated at state-owned and municipal schools upon the payment of tuition fees at rates approved by the Council of Ministers.⁶⁶⁵ When the recognition is with the purpose of completing further education, the recognition body concerned is the intended university or school of the applicant. In this case one must contact the higher education institution for further information regarding the procedures for recognition.

In that order we must provide also how exactly migrant children benefit the right of education under Bulgarian legislation – the recognition of the foreign diploma and grades from I to VI classes is done by the headmaster of the receiving school in which the student wishes to continue their education. The legal procedure includes the obligation of students to extend all documents from their previous school, including documents issued by their schools throughout any periods of foreign education. The documents, which are referred to, have to be translated, legalized and authenticated, in accordance to the international treaties of the Republic of Bulgaria from the country of origin. After submitting the following documents to the school administration – application to the headmaster, student diploma and several documents, directly connected to the administration of the receiving school and the legal requirements in Bulgaria, the superior of the local school inspectorate publishes a permission for the applicant to continue their education in this school. There also exists a procedure which offers for the students to complete their get latter grade in the Bulgarian educational system, so as to in order to adapt better. Considering the Bulgarian law – it must be noted that students, which continue their education in grades 9 to 12 in Bulgaria, shall also take a state exam of the Bulgarian language.⁶⁶⁶ There are non-discrimination laws that prohibit any form of discriminatory behaviour towards migrant children and their parents/guardians – they sustain in absolutely same conditions as Bulgarian citizens and they have the same amount of right and obligations.

Their rights are implemented in practice in the Law on protection against discrimination -Article 2 - The purpose of this Law is to ensure for every person the right to: 1. quality before the law; 2. equality of treatment and of opportunities for participation in the public life; 3. effective protection against discrimination.⁶⁶⁷ Article 35 1) Persons, providing training or education, as well as the compilers of textbooks and learning materials, are obliged to give information and to apply methods of training and education in a way, focused on overcoming the stereotype of the roles of women and men in all spheres of the public and family life. (2) The kindergartens, schools and high schools shall include in their educational curricula and plans training on the problems of the equality of women and men.

⁶⁶⁵PreschoolandSchoolEducationalAct<http://lll.mon.bg/uploaded_files/ZAKON_za_preducilisnoto_i_ucilisnoto_obrazovanie_EN.pdf>

⁶⁶⁶ Law on preschool and school education < <http://lex.bg/bg/laws/ldoc/2136641509>> accessed on 23 August 2017

⁶⁶⁷ Law on protection against discrimination < http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/anti-discrimination_law_en.pdf > 23/09/2017

8.4. In conclusion

It shall be pointed out that if the migrant family has received a long-term legal permission to stay in Bulgaria, migrant children follow absolutely the same application requirements as Bulgarian students do and we have observed many aspects of this question in previous ones.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. Introduction

Academic recognition⁶⁶⁸ is a formal written acknowledgment for the value of a foreign educational qualification, corresponds to completed university studies. It can be issued only by educational institutions established and recognised by the State in which it is situated.⁶⁶⁹

Only diplomas for bachelor's degree, master's degree or other types of accredited degrees, issued by the authorized national bodies of the respective State where the education took place, can be recognised. Diplomas issued by non-authorized entities or such that do not correspond with the State requirements in Bulgaria cannot be recognised.

The recognition is done by different State entities with regard to the purpose of the recognition. The general law framework, as well its corresponding procedures, is established in the Academic Recognition Regulation and its related entities.

9.2. The requirements

Since September 2016, there is a simpler procedure for recognition of diplomas, originating from member States of the European Union, or of any of the states of Iceland, Norway, Liechtenstein and Switzerland. Following the updated procedure, the diploma shall be sent with a Bulgarian translation, done by a translator accredited by the Ministry of Foreign Affairs.

For States, parties to a bilateral treaty on that matter, such as Algeria, Armenia, Belarus, Vietnam, Yemen, Cuba, the Former Yugoslav Republic of Macedonia and several others,⁶⁷⁰ and in case of texts with no requirement of an apostille⁶⁷¹, documents should only have a seal of the corresponding entity authorized in the bilateral contract. The required documents in that case

⁶⁶⁸ National center for information and documentation: <<http://nacid.bg/bg/>> accessed on 23 August 2017

⁶⁶⁹ Art.5 of the Regulation on State requirements for recognition of acquired university level education and completed time periods of education in another country <<http://www.lex.bg/laws/ldoc/-549417984>> accessed on 23 August 2017

⁶⁷⁰ Full list on 3.2 Diplomas from States parties to bilateral treaties
<http://nacid.bg/bg/Foreign_Qualifications_in_Bulgaria/> accessed on 23 August 2017

⁶⁷¹ Art. 4 of the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>> accessed on 23 August 2017

only include a university diploma and a translation, authenticated by the Bulgarian embassy or consulate in the respective country.

If the diploma is issued in a State party to The Hague Convention (also known as APOSTILLE) documents should be authenticated by the specific apostille of the country they were issued in.

No other authentication is needed, except for an authenticated Bulgarian translation, completed by an authorized translator.⁶⁷²

If the documents come from a State which does not fall into the mentioned categories, general rules apply. The diploma and attachments to it are authenticated by the ministry, agency or entity which regulates university education in that State. The seal of the Ministry of Foreign affairs of the issuing country must be authenticated by the Bulgarian embassy in that State, or if there is no such embassy, by the embassy of that State in Bulgaria. The Signature and the seals of the consulate service should be authenticated by the Bulgarian ministry of Foreign affairs.⁶⁷³

9.3. Procedure

In order for a foreign diploma to be recognised in Bulgaria, there are certain documents that need to be presented in front of the the National Centre for Information and Documents (NACID). This includes: filled request for academic recognition; original and copy of the diploma of higher educational degree together with a translation made by an authorized translator; original and copy of attachments to the diploma together with a translation made by an authorized translator; copy of identification documents of the person, applying for recognition. The original documents are returned to the applicant in a fourteen-days period.

There is an online option for completing the application through the NACID website.⁶⁷⁴ In this case scanned copies of the documents signed with universal electronic signatures are required. The original documents shall be sent to the centre in a 30-days period, as stated under Art. 8 para.1 (2) (5) If the time period is not met, the procedure is cancelled.

After the recognition is completed, the applicant receives a certificate with the following data: Name of the applicant, user ID, date and place of birth, citizenship, recognised degree, name of the entity and State where the degree was acquired. This certificate is only valid in Bulgaria.

The standard time period for the completion of this procedure is 2 months, as of the date of sending the documents.

Stages: The procedure starts with an acceptance of the request for recognition of educational degree. It is then followed by an examination procedure on the presence of all the required information. Then a check on the academic status of the entity issuing the diploma is taking place. The authenticity of the documents send is finally monitored. If one of these checks shows irregularities, the procedure is stopped. Then an evaluation on the compliance between the data in the diploma and the requirements for acquiring a State diploma is made. The final stage is

⁶⁷² Art. 4 of the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>> accessed on 23 August 2017

⁶⁷³ Bulgarian Ministry of foreign affairs official website <<http://www.mfa.bg/bg/pages/51/index.html>> accessed on 23 August 2017

⁶⁷⁴ National Center for Information and Documentation <<https://portal.nacid.bg/>> accessed on 23 August 2017

coming up with a decision to recognize the diploma or to deny it and informing the applicant on the matter. If denied, the applicant has the right to appeal the decision.

Upon decision, the following criteria are taken into account: the criteria of acceptance in the educational entity, the time period of the studies, the credits and number of classes taken, the difference between classes giving theoretical, practical and specific knowledge on the subject, the resulting knowledge and experienced gained, the criteria of graduation.

9.4. Access to procedures for acknowledgment by asylum-seekers

According to the EU directive 2011/95/EC Art. 28 (2) Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for assessment, validation and accreditation of their prior learning.⁶⁷⁵ This is presented in the national Regulation on State Requirements for Acknowledgment of Acquired Higher Education. For persons, who under unexpected circumstances such as natural disasters, military actions in their country etc. cannot provide document certifying their education can ask from the court to establish the relevant facts.⁶⁷⁶ All Bulgarian citizens, foreigners and asylum-seekers have access to the procedure for acknowledgment of their previous education.⁶⁷⁷

9.5. Conclusion

The *UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997*⁶⁷⁸ is implemented in the Bulgarian legislation, with simpler and faster procedure introduced with regard to States members of the European Union and several other countries which leads to better service and enables all people of the region to benefit fully from the diversity and access between the different States and Bulgaria, and stimulates their efforts to continue their education or to complete a period of studies in higher educational institutions in other States.

⁶⁷⁵ EU directive 2011/95/EC <<http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=CELEX%3A32011L0095> > accessed on 19 September 2017

⁶⁷⁶ National Regulation on State Requirements for acknowledgment of acquired higher education §1 <<http://www.lex.bg/laws/ldoc/-549417984> > accessed on 19 September 2017

⁶⁷⁷ National Regulation on State Requirements for acknowledgment of acquired higher education Art.2 <<http://www.lex.bg/laws/ldoc/-549417984> > accessed on 19 September 2017

⁶⁷⁸ UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 <<https://rm.coe.int/168007f2c7>> accessed on 23 August 2017

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Terms and Definitions under the Constitution of the Republic of Bulgaria

The process of political decision-making in Bulgaria is on the first place described in the Constitution of the Republic of Bulgaria⁶⁷⁹. The Constitution reviews the division of power in the Republic – on legislative, executive and judicial – through the administrative institutions, standing for each of the upper mentioned three branches. While formulating the roles of these institutions, the Constitution also describes their methods of functioning. In these parts of the legislative text⁶⁸⁰, the term “*Bulgarian citizen*” is continually used. An explanation of this term can be found in Art.25 para.1, which states that: “*Any person, whereof at least one of the parents is a Bulgarian citizen, or has been born within the territory of the Republic of Bulgaria, shall be a Bulgarian citizen, unless acquiring another citizenship by decent. Bulgarian citizenship may furthermore be acquired by naturalization.*”⁶⁸¹ Moreover, Art. 26 para.2 states that: “*Any alien citizen in the Republic of Bulgaria shall have the rights and duties under this Constitution, with the exception of such rights and duties, whereof the Constitution and the laws require Bulgarian citizenship.*”⁶⁸²

10.2. Participating by electing

The question of migrants’ eligibility to participate in the making of political decisions in Bulgaria is furthermore addressed in the Election Code of the Republic of Bulgaria⁶⁸³. Section 2 of the Code reviews the rights of people to elect and to be elected in distinct branches of the political apparatus. Participation of migrants in Bulgarian politics is restricted by the declaration of Bulgarian citizenship as one of the requirements for a person to be eligible to vote for National Representatives, a President and Vice President of the Republic of Bulgaria⁶⁸⁴. The right of alien citizens to vote for members of the European Parliament, mayors and municipal councilors, however, is also issued.⁶⁸⁵ The requirements stated for such election to be eligible are, as follows:

- the said person needs to be a national of a member state of the European Union;
- to have attained the age of 18 years by polling day;
- to have not been interdicted;
- to not serve a custodial sentence;
- to enjoy a durable or permanent residence status for the Republic of Bulgaria;
- to have not been deprived of the right to elect in the Member State of which the person is a national;

⁶⁷⁹ Constitution of the Republic of Bulgaria, 1991.

⁶⁸⁰ Constitution of the Republic of Bulgaria, 1991. Art. 65 para. 1, Art. 94 para. 2, Art. 36 para. 1

⁶⁸¹ Constitution of the Republic of Bulgaria, 1991. Art.25 para.1

⁶⁸² Constitution of the Republic of Bulgaria, 1991. Art.26 para.2

⁶⁸³ Election Code of the Republic of Bulgaria, 2011.

⁶⁸⁴ Election Code of the Republic of Bulgaria, 2011. Art. 3. para.1 & 2 & 4

⁶⁸⁵ Election Code of the Republic of Bulgaria, 2011. Art. 3. para.3 & 5

- to state in advance, by a declaration in writing, the desire thereof to exercise their right to vote within the territory of the Republic of Bulgaria;
- 8.1) for European Parliament elections - to have resided in the Republic of Bulgaria or in another Member State of the European Union at least during the last three months;
- 8.2) for municipal elections - to have resided in the respective nucleated settlement at least during the last twelve months.

10.3. Participating by being elected

Accordingly, Article 4 of the Election Code of the Republic of Bulgaria addresses the right of people to be elected, which is once again restrained for alien citizens, when it comes to the election of National Representatives, President and Vice President of the Republic of Bulgaria⁶⁸⁶. The right to be elected as a European Parliament member is, however, granted to any national of a Member State of the European Union, who is not a Bulgarian citizen, under the following conditions:

- to have attained the age of 21 years by polling day,
- to not hold the citizenship of any State which is not a Member State of the European Union,
- to have not been interdicted,
- to not serve a custodial sentence,
- to have not been deprived of the right to be elected in the Member State of which the person is a national,
- to enjoy a durable or permanent residence status for the Republic of Bulgaria,
- to reside in the Republic of Bulgaria or in another Member State of the European Union at least during the last two years,
- to state, by a declaration in writing, the desire thereof to be elected, when it comes to running for the European Parliament.⁶⁸⁷

The right to be elected in municipal elections is also granted to any national of a Member State of the European Union, who is not a Bulgarian citizen, under several conditions:

- not to hold the citizenship of any State which is not a Member State of the European Union,
- to have attained the age of 18 years by polling day,
- to not have been interdicted,
- to not serve a custodial sentence,
- to enjoy a durable or permanent residence status for the Republic of Bulgaria,
- to have resided in the respective nucleated settlement at least during the last twelve months,
- to have not been deprived of the right to be elected in the Member State of which the person is a national,
- to state by a declaration in writing, the desire thereof to be elected.⁶⁸⁸

⁶⁸⁶ Election Code of the Republic of Bulgaria, 2011. Art. 4. para.1 & 2

⁶⁸⁷ Election Code of the Republic of Bulgaria, 2011. Art. 4. para.3

10.4. Participating through election commissions outside the territory of the Republic of Bulgaria

Emigrants from Bulgaria (Bulgarian citizens, residing outside the borders of the Republic) can participate in elections of National Representatives, President and Vice President of the Republic of Bulgaria, and Members of the European Parliament for the Republic of Bulgaria, upon the appointment of section election commissions abroad for each voting section. The procedure is to be completed by the Central Election Commission of Bulgaria no later than twelve days in advance of the polling day⁶⁸⁹.

10.5. Forms of redress

The Constitution of the Republic of Bulgaria does not issue specific forms of redress to be addressed by migrants in the case of unlawful impediment of their right to participate in elections of their country of residence, or of their country of origin, but instead, the Constitution states that: *“Everyone shall have the right to legal defence whenever their rights or legitimate interests are violated or endangered. He shall have the right to be accompanied by legal counsel when appearing before an agency of the state”*⁶⁹⁰, thus issuing a general right of redress in the case of violation of any rights, stated under this Constitution.

10.6. Conclusion

Migrants can participate in the elections of members of the European Parliament, municipal councilors or mayors in the Republic of Bulgaria, as long as they follow a number of criteria, the most important one of them being EU citizenship. Therefore, it is only migrants, coming from an EU country, who can take part in the political life of Bulgaria, while migrants from other countries, are not legally allowed to do so.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Ways for migrants to acquire Bulgarian citizenship

The ways of acquiring a Bulgarian citizenship are regulated by the Bulgarian citizenship Act and are, as follows: by origin, by place of birth, through naturalization, by marriage and by adoption. It should be noted that in 2014 Bulgaria granted citizenship to less than 1 000 migrants.⁶⁹¹

⁶⁸⁸ Election Code of the Republic of Bulgaria, 2011. Art. 4. para.4

⁶⁸⁹ Election Code of the Republic of Bulgaria, 2011. Art. 37. para 1.

⁶⁹⁰ Constitution of the Republic of Bulgaria, 1991. Art. 56.

⁶⁹¹ Eurostat, Migrant integration statistics, <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_-_active_citizenship> accessed on 23 August 2017

11.1.1. By origin

In most cases this way of becoming a citizen would not apply for migrants. However, Article 9 of the BCA stipulates that “Any person who has been fathered by a Bulgarian citizen or whose descent from a Bulgarian citizen has been established by way of a court ruling shall be a Bulgarian citizen by origin.” Therefore, it is possible that an individual, coming to Bulgaria as a migrant, later turns out to be fathered by a Bulgarian. In this case and after a court decision, the individual would be considered a Bulgarian citizen by origin.

11.1.2. By place of birth

According to Article 11 any child found in the territory of the Republic of Bulgaria whose parents are unknown shall be deemed as born in this territory. Consequently, if a migrant family abandons their child or for other reasons, it is found alone in the territory of the country and has unknown origin, it shall acquire a Bulgarian citizenship as a person born on the territory of the country. The two requirements are cumulative and in cases of known origin, Article 11 would not apply.

11.1.3. By naturalization

There are general requirements⁶⁹² every person applying for a Bulgarian citizenship through naturalization should fulfill. They:

- should be of age;
- should have been granted a permission for permanent residence in the Republic of Bulgaria not less than five years ago;
- should have not been sentenced by a Bulgarian court for premeditated crime of general nature and should have not been subject of criminal proceedings for such crime, unless the person concerned has been rehabilitated;
- should have an income and occupation enabling them to support themselves in the Republic of Bulgaria;
- should have a command of the Bulgarian language subject to verification in accordance with a procedure established by an order of the Minister of Education and Culture;
- should be released from their previous citizenship as of the moment of acquiring Bulgarian citizenship.⁶⁹³

The residence requirement is different for refugees, people with humanitarian status and people without citizenship. According to Articles 13 and 14 these groups of people can acquire a Bulgarian citizenship no less than three years after receiving their status. The requirement for them to be released from their previous citizenship does not apply neither.

⁶⁹² Article 12 BCA

⁶⁹³ According to article 16 all the requirements do not apply in case the Bulgarian country has interest of the naturalization or the person concerned has made a special contribution to the Republic of Bulgaria in the social and economic spheres, in the field of science, technology, culture or sports.

11.1.4. By marriage

If a migrant marries a Bulgarian citizen, he or she can apply for a Bulgarian citizenship after three years of residence in Bulgaria instead of the standard five.⁶⁹⁴ What is more, if for any reasons one of the spouses is deprived of a Bulgarian citizenship, that does not affect the citizenship of the other.⁶⁹⁵

11.1.5. By adoption

This applies for children under the age of 14 who are adopted by Bulgarian citizens. In this case the requirements for knowledge of the language, ability to support themselves, to have permission for permanent residence and to have been released of their previous citizenship do not apply.

11.2. Double citizenship

According to Article 3 of the Bulgarian citizenship Act⁶⁹⁶ - “Any Bulgarian citizen who is also a citizen of another state shall only be considered a Bulgarian citizen in the application of the Bulgarian legislation unless otherwise provided for by law.”

Article 12 requires for people applying for a Bulgarian citizenship to have been released from their previous citizenship as of the moment of acquiring the Bulgarian citizenship. However, there are few exceptions to this rule. It doesn't apply for spouses of Bulgarian citizens; for citizens of a member state of the EU, the European economic area and the Swiss Confederation; or for citizens of countries with which Bulgaria has dual agreements. It is also not required for people with refugee or humanitarian status and stateless people.

11.3. Difficulties migrants face in acquiring citizenship

If a migrant acquires citizenship by origin or through their place of birth, that should not cause many difficulties. However, those are pretty exotic cases. On the other hand, the most spread way of acquiring citizenship by foreigners – the naturalization proves to be very difficult for migrants because of the set conditions.

Firstly, there is a requirement that they have permission for permanent residence. But in fact, Bulgarian courts rarely give such permissions to migrants.

Secondly, there is a requirement that they should have an income and occupation enabling them to support themselves in the Republic of Bulgaria. The case with most migrants is that since they don't have permission for residence, they are also not legally allowed to work. And on the other hand, although some of them work and have enough money to support themselves and their families, this fact alone can't be a reason enough for acquiring citizenship.

⁶⁹⁴ Article 13 BCA

⁶⁹⁵ Article 25 BCA

⁶⁹⁶ The text of the Bulgarian citizenship act in English as published by the Bulgarian embassy in London <http://www.bulgarianembassy-london.org/index.php?option=com_content&task=view&id=107> accessed on 23 August 2017

Thirdly, the applicant should not have been sentenced by a Bulgarian court for premeditated crime of general nature and should have not been subject of criminal proceedings for such a crime unless the person concerned has been rehabilitated. That might be a problem if, for example, the migrant has caused a serious car accident, in which case the chances for them to ever acquire a Bulgarian citizenship through naturalization severely drop.

11.4. Conclusion

In conclusion, the possibility for migrants to acquire a Bulgarian citizenship is limited because they are rarely granted permission for permanent residence, as it is evident from the statistics.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. The migration policy of the EU

It is formed with a regard to between two poles – freedom and security – and is closely dependent on the foreign, economic, financial and R&D policy. The European Union strives, in the face of all Member States, to adopt a single coherent approach regarding migration policies within states.

The EU provides Member States with financial resources to support efforts in the areas of legal and irregular migration, return, asylum, border management and integration. During the 2014-20 period, the principal EU financial instruments supporting these areas are the Asylum, Migration and Integration Fund and the Internal Security Fund - Borders and Visa, under which €3.6 billion are allocated directly to Member States. Emergency assistance is also available to Member States throughout their new funding period. During the previous funding period, 2007-13, the previous financial framework allocated €3.7 billion (including emergency assistance) via four Funds: the European Fund for the Integration of third-country nationals, the European Refugee Fund, the European Return Fund and the External Borders Fund.⁶⁹⁷

The Commission granted €5.6 million of emergency support from the European Refugee Fund. The money was used to increase refugee' accommodation, to speed up and raise the quality of processing asylum requests and lastly to provide food, medical and psychological assistance. This emergency support ensured the minimum to answer the needs of conditions for up to 6000 persons seeking international protection.

The Automated surveillance system of the Bulgarian-Serbian border at Border Police Station (BPS) Kalotina is so far, the only one real-working and efficient implement of the program to threating this problem so far. The Programme was announced in 2010, with the whole project coming to a cost of cost 600000 EU. The funding erected an automated system for technical

⁶⁹⁷ Funding in the areas of migration and border management < https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/funding_country_sheet_bg_en.pdf> accessed on 24 August 2017

surveillance of the Bulgarian-Serbian border in the area of Border Crossing Point Kalotina. The existing two surveillance posts were also modernised and automated, and a new surveillance post and a local coordination centre were set up at the Border Police Station premises. This project is vital for the future border management and the reason why can be found in the recent political movements on the Balkan region, but there is logical explanation why - recent political developments in the Balkan region indicate instability formed as a result from migration flows from the Middle East, and these processes create and the resultant pressure on the borders of the Republic of Bulgaria. In 2014 the number of asylum applicants in the Republic of Bulgaria exceeded to 11000, which is approximately twice as many as the number in 2013 and over ten times as many as that of 2012. According to reports of national agencies in 2015-2017 numbers are almost equal. It is important to clearly notice that these emergency measures are not directly connected to the aim of an integrating of migrants or asylum-seekers, but to the with goal possibility of providing a more efficient border policy.

12.2. The 2007-2013 period

Over the 2007-2013 funding period, Bulgaria was allocated €6.9 billion under the European Regional Development Fund (ERDF), the Cohesion Fund and the European Social Fund (ESF). Bulgaria allocated 3.2% (€37 million) of its total ESF budget towards integrating disadvantaged people. These funds support a wide range of sectoral investments, including those that concern the Roma, such as financial help for housing and school infrastructure.

For the 2014-2020 period, Bulgaria will be allocated a total of €7.2 billion in EU funds (current prices), out of which €5.1 billion will come from the ESF and the ERDF. At least 28.7% of this amount will be spent on the ESF, with at least 20% of that going towards promoting social inclusion and combating poverty. The latter amount could also finance Roma-related measures.⁶⁹⁸

12.3. The partnership principle

It proved effective in involving Roma civil society in the planning of operational programmes (OPs) most relevant for Roma inclusion. National authorities took over many of their proposals. Participation of Roma civil society within the monitoring committees will continue during implementation. Positive elements include: combination of mainstream and targeted approaches; clear objectives; support for comprehensive local interventions, including addressing negative stereotypes. Challenges include: need for strengthening coordination at national level and building capacities of municipalities; limited ambition of the objectives and budget allocation for the targeted investment priority.⁶⁹⁹

12.4. Conclusion

There is a lack of efficiency, when it comes to governmental policies in Bulgaria regarding the integration of migrants or asylum-seekers. Several Non-government organizations present to

⁶⁹⁸ Integration policies http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/index_en.htm

⁶⁹⁹ Factsheet about EU funding http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf

give the migrants and asylum-seekers the opportunity to get a cheap private lesson in Bulgarian – which is obviously not enough for creating an efficient integrational process.

In the past years the important role of achieving integration lays on those NGO. On the one hand migrant associations stimulate the development of services that are sensitive to the culture of the immigrants and reflect the demands of the immigrants themselves, but on the other hand the government should implement reasonable integration policies. An example for really working EU project regarding Integration of migrants is Migrants Integration Driving Licence – which was established in past years and it is absolutely free for migrants.

Table of legislation

Provisions in native language	Corresponding translations
<p>Конституция на Република България</p> <p>Член 27 (2) Република България дава убежище на чужденци, преследвани заради техните убеждения или дейност в защита на международно признати права и свободи.</p>	<p>Constitution of the Republic of Bulgaria</p> <p>Art. 27 para. 2 The Republic of Bulgaria shall grant asylum to foreigners persecuted for their opinions or activity in the defence of internationally recognized rights and freedoms.</p>
<p>Конституция на Република България</p> <p>Член 27 (3) Условието и редът за даване на убежище се уреждат със закон.</p>	<p>Constitution of the Republic of Bulgaria</p> <p>Art. 27 para. 3 The conditions and procedure for the granting of asylum shall be established by law.</p>
<p>Конституция на Република България</p> <p>Член. 98 (10) Президентът на републиката: 10. предоставя убежище;</p>	<p>Constitution of the Republic of Bulgaria</p> <p>Art. 98 para. 10 The President of the Republic shall: 10. grant asylum;</p>
<p>Конституция на Република България</p> <p>Член. 104 Президентът може да възлага на вицепрезидента правомощията си по чл. 98, т. 7, 9, 10 и 11.</p>	<p>Constitution of the Republic of Bulgaria</p> <p>Art. 104 The President shall be free to devolve to the Vice President the prerogatives established by Art. 98 items 7, 9, 10 and 11.</p>
<p>Закон за убежището и бежанците</p> <p>Член 1 (1) (Изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Този закон определя условията и реда за предоставяне на закрила на чужденци на територията на Република България, както и техните права и задължения.</p> <p>(2) (Изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Закрилата, която Република България предоставя на чужденци, включва убежище, международна закрила и временна закрила.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 1 (1)(amend. – SG 80/15, in force from 16.10.2015) This Act regulates the terms and the procedure for providing protection to foreigners on the territory of the Republic of Bulgaria, as well as their rights and obligations.</p> <p>(2) (amend. – SG 80/15, in force from 16.10.2015) The protection provided by the Republic of Bulgaria to foreigners, shall include asylum, international protection and temporary protection.</p>
<p>Закон за убежището и бежанците</p>	<p>Law on Asylum and Refugees</p>

<p>Член 1а (Нов – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) (1) Република България предоставя по реда на този закон международна закрила и временна закрила.</p> <p>(2) Международна закрила се предоставя по силата на Конвенцията за статута на бежанците, съставена в Женева на 28 юли 1951 г., и Протокола за статута на бежанците от 1967 г., ратифицирани със закон (обн., ДВ, бр. 36 от 1992 г.; доп., бр. 30 от 1993 г.) (ДВ, бр. 88 от 1993 г.), на международни актове по защита правата на човека и на този закон и включва статут на бежанец и хуманитарен статут.</p> <p>(3) Временна закрила се предоставя в случай на масово навлизане на чужденци, които са принудени да напуснат държавата си по произход, поради въоръжен конфликт, гражданска война, чужда агресия, нарушаване на човешките права или насилие в големи размери на територията на съответната държава или в отделен район от нея и които не могат по тези причини да се завърнат там.</p>	<p>Art. 1a (new – SG 80/15, in force from 16.10.2015) (1) Republic of Bulgaria subject to compliance with this act shall provide international protection and temporary protection.</p> <p>(2) International protection shall be provided by virtue of the Refugees relating to the Status Convention, made in Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees of 1967, ratified by an act (prom. SG 36/92, suppl. SG 30/93) (SG 88/93), of international acts on the protection of human rights and of this act and shall include a refugee status and humanitarian status.</p> <p>(3) Temporary protection shall be granted in case of mass refugees' influx who are forced to leave their state of origin due to armed conflict, civil war, foreign aggression, violation of human rights or heavy violence in the territory of the respective state or in an individual region thereof, and who because of this cannot return there.</p>
<p>Закон за убежището и бежанците</p> <p>Член 2 (Изм. - ДВ, бр. 52 от 2007 г., бр. 80 от 2015 г., в сила от 16.10.2015 г.) (1) Президентът на Република България предоставя убежище в съответствие с определените му правомощия в случаите по чл. 27, ал. 2 от Конституцията, както и когато държавните интереси или особени обстоятелства налагат това.</p> <p>(2) Министерският съвет предоставя временна закрила по чл. 1а, ал. 3, въведена с решение на Съвета на Европейския съюз. Срокът на временната закрила се определя с решението на Съвета на Европейския съюз.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 2. (amend. – SG 80/15, in force from 16.10.2015) (1) The President of the Republic of Bulgaria, subject to compliance with the assigned powers thereto, in cases referred to in Art. 27, par. 2 of the Constitution, and also where state interests or special circumstance require so shall provide asylum.</p> <p>(2) The Council of Ministers shall provide temporary protection under Art. 1a, par. 3, introduced by a Decision of the European Union Council. The term of temporary protection is determined by the decision of the European Union Council.</p>

<p>(3) Председателят на Държавната агенция за бежанците предоставя международна закрила.</p>	<p>(3) The chairman of the State Agency for the Refugees shall provide international protection.</p>
<p>Закон за убежището и бежанците</p> <p>Член 8 (5) Действията на преследване могат да бъдат:</p> <ol style="list-style-type: none"> 1. физическо или психическо насилие, включително сексуално насилие; 2. правни, административни, полицейски или съдебни мерки, които са дискриминационни сами по себе си или се прилагат по дискриминационен начин; 3. наказателно преследване или наказания, които са непропорционални или дискриминационни; 4. отказ на съдебна защита, който се изразява в непропорционално или дискриминационно наказание; 5. наказателно преследване или наказания за отказ да бъде отбита военна служба в случай на военни действия, когато военната служба би предполагала извършването на престъпление или на деяние по чл. 12, ал. 1, т. 1 – 3; 6. действия, насочени срещу лицата по причина на техния пол или срещу деца. 	<p>Law on Asylum and Refugees</p> <p>Art. 8 (5) Actions of persecution can be:</p> <ol style="list-style-type: none"> 1. physical or mental abuse, including sexual abuse; 2. legislative, administrative, police or judicial measures, which are discriminatory by nature, or are applied in a discriminatory way; 3. criminal prosecution or penalties, which are non-proportional or discriminatory; 4. refusal of court defense, resulting in non-proportional or discriminatory penalty; 5. criminal prosecution or penalties for refusal do to military service in case of war activities, where the military service would presume crime commitment or an act under Art. 12, par. 1, item 1 – 3, actions against persons because of their sex or against children. 6. act against people due to their sex or against children
<p>Закон за убежището и бежанците</p> <p>Член 9. (Изм. - ДВ, бр. 52 от 2007 г.) (1) (Изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Хуманитарен статут се предоставя на чужденец, който не отговаря на изискванията за предоставяне на статут на бежанец и който не може или не желае да получи закрила от държавата си по произход, тъй като може да бъде изложен на реална опасност от тежки посегателства, като:</p> <ol style="list-style-type: none"> 1. смъртно наказание или екзекуция, или 	<p>Law on Asylum and Refugees</p> <p>Art. 9. (amend. – SG 52/07) (1) (amend. – SG 80/15, in force from 16.10.2015) Humanitarian status shall be granted to a foreigner not meeting the requirements for granting of a refugee status and who cannot or does not wish to get protection by their state of origin, because they can be exposed to a real risk of heavy encroachments, such as:</p> <ol style="list-style-type: none"> 1. sentence to death or execution, or 2. torture, inhuman or humiliating attitude

<p>2. изтезание, нечовешко или унижително отнасяне, или наказание, или</p> <p>3. тежки заплахи срещу живота или личността на цивилно лице поради безогледно насилие в случай на въоръжен международен или вътрешен конфликт.</p>	<p>or punishment, or</p> <p>3. heavy threat to their life or personality as a civilian due to promiscuous violence in case of internal or international armed conflict.</p>
<p>Закон за убежището и бежанците</p> <p>Член л. 12. (1) (Предишен текст на чл. 12, изм. - ДВ, бр. 52 от 2007 г.) Статут на бежанец не се предоставя на чужденец:</p> <p>1. за когото има сериозни основания да се предполага, че е извършил деяние, което съгласно българските закони и международните договори, по които Република България е страна, е определено като военно престъпление или като престъпление против мира и човечеството;</p> <p>2. за когото има сериозни основания да се предполага, че е извършил тежко престъпление от неполитически характер извън територията на Република България;</p> <p>3. (изм. – ДВ, бр. 101 от 2016 г., в сила от 20.12.2016 г.) за когото има сериозни основания да се предполага, че извършва, подбужда, подпомага, участва в обучение или приготвяне за извършване на действия, противоречащи на целите и принципите на Организацията на обединените нации (ООН), уредени в Преамбюла и в чл. 1 и 2 от Хартата на ООН, както и в резолюциите ѝ, относно мерките за борба с международния тероризъм;</p>	<p>Law on Asylum and Refugees</p> <p>Art. 12. (prev. Art. 12; amend – SG 52/07) Status of a refugee shall not be granted to a foreigner:</p> <p>1. for whom enough evidence exists to suppose that he has committed an act which, according to the Bulgarian laws and the international agreements party to which is the Republic of Bulgaria, is determined as a war crime or as a crime against the peace and mankind;</p> <p>2. for whom there are enough reasons to suppose that he has committed a severe crime of non-political nature outside the territory of the Republic of Bulgaria;</p> <p>3. (amend. - SG 101/16, in force from 20.12.2016) for whom serious grounds exist that he commits, abets, aids, participates in training or preparation for performing activities contradicting the goals and the principles of the United Nations Organisation, settled in the Preamble and Art. 1 and 2 of the Charter of the United Nations and its resolutions on measures to combat international terrorism;</p>
<p>Закон за убежището и бежанците</p> <p>Член 17 (Изм. - ДВ, бр. 31 от 2005 г., бр. 52 от 2007 г.) (1) (Изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Предоставена международна закрила се прекратява, когато:</p>	<p>Law on Asylum and Refugees</p> <p>Art. 17. (amend. SG 31/05; amend. – SG 52/07) (1) (amend. – SG 80/15, in force from 16.10.2015) Provided international protection shall be terminated where:</p> <p>1. with regard to the foreigner the existence</p>

<p>1. по отношение на чужденеца се установи наличието на основание по чл. 15, ал. 1, т. 1 - 5 и 9;</p> <p>2. (изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) чужденецът заяви, че не желае повече да се ползва от предоставената му международна закрила.</p> <p>(2) Предоставен статут на бежанец се отнема, когато по отношение на чужденеца се установи наличието на основание по чл. 12, ал. 1 или чл. 13, ал. 1, т. 6 и 7.</p> <p>(3) Предоставен хуманитарен статут се отнема, когато по отношение на чужденеца се установи наличието на основание по чл. 12, ал. 2 или чл. 13, ал. 1, т. 6 и 7.</p> <p>(4) Временна закрила се отнема на чужденеца, когато се установи наличието на основание по чл. 12, ал. 1, т. 1 - 3 или за когото има сериозни основания да се предполага, че представлява опасност за националната сигурност или за обществото.</p>	<p>of ground under art. 15, items 1 – 4 and item 9 is established;</p> <p>2. (amend. – SG 80/15, in force from 16.10.2015) the foreigner states that they do not wish anymore to enjoy the granted international protection thereto.</p> <p>(2) Provided status of refugee or humanitarian status shall be divested when</p> <p>1. with regard to the foreigner is established the existence of ground under art. 15, para 1, items 1- 5 and 9;</p> <p>2. the foreigner states, that he/she does not wish to enjoy anymore the granted to him/her status.</p> <p>(3) Granted refugee status shall be revoked, when with regard to the foreigner the existence of grounds under Art. 12, par. 1 or Art. 13, par. 1, item 6 and 7 have been identified.</p> <p>Art. 17 (4) Temporary protection shall be revoked of the foreigner when the existence of grounds under Art. 12, par. 1, item 1 – 3 have been identified or about whom there are sound reasons to deem that he/she poses a threat to the national security or to the society.</p>
<p>Закон за убежището и бежанците</p> <p>Член 18 Президентът на Република България може да отнема убежище, когато прецени, че обстоятелствата за неговото предоставяне са се изменили или са отпаднали.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 18. The President of the Republic of Bulgaria can revoke asylum when he deems that the circumstances for its providing have changed or dropped.</p>
<p>Закон за убежището и бежанците</p> <p>Член 48. (1) (Изм. - ДВ, бр. 52 от 2007 г.) Председателят на Държавната агенция за бежанците:</p> <p>1. (изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) предоставя, отказва, отнема и прекратява международна закрила в</p>	<p>Law on Asylum and Refugees</p> <p>Art. 48. (1) (amend. – SG 52/07) The chairman of the State Agency for the refugees shall:</p> <p>1. (amend. – SG 80/15, in force from 16.10.2015) provide, refuse, revoke and terminate international protection in the</p>

<p>Република България; отнема временна закрила в случаите по чл. 17, ал. 4;</p> <p>2. (изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) спира и прекратява производството за предоставяне на международна закрила;</p> <p>3. взема решения по молби за събиране на семейства;</p> <p>4. (изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) взема решения по други молби на чужденците, на които е открито производство за предоставяне на международна закрила или им е предоставена такава закрила в Република България;</p> <p>5. информира Министерския съвет за необходимостта от въвеждане на временна закрила на територията на Република България; информира за необходимостта от удължаване срока на временната закрила;</p>	<p>Republic of Bulgaria, deprive of temporary protection in cases referred to in Art. 17, par. 4;</p> <p>2. (amend. – SG 80/15, in force from 16.10.2015) stop and terminate the proceedings for providing of international protection;</p> <p>3. take decisions on applications for reuniting of families;</p> <p>4. (amend. – SG 80/15, in force from 16.10.2015) take decisions on other applications of the foreigners for whom proceedings for providing international protection or they have been provided with such protection in the Republic of Bulgaria;</p> <p>5. inform the Council of Ministers on the requirement to establish temporary protection in the territory of the Republic of Bulgaria; inform about the requirement of extending the period of temporary protection;</p>
<p>Закон за убежището и бежанците</p> <p>Член 58. (1) Чужденец, който иска да му бъде предоставено убежище, подава писмена молба до президента на Република България. Когато молбата е подадена пред друг държавен орган, той е длъжен незабавно да я изпрати на президента.</p> <p>(4) (Изм. - ДВ, бр. 52 от 2007 г., доп., бр. 101 от 2015 г.) Когато молбата по ал. 3 е направена пред друг държавен орган, той е длъжен незабавно да я изпрати на Държавната агенция за бежанците, която извършва регистрацията по чл. 61, ал. 2 не по-късно от 6 работни дни от първоначалното подаване на молбата.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 58. (1) A foreigner who requests asylum shall file a written application to the President of the Republic of Bulgaria. If the application is filed with another state body he shall be obliged to send it immediately to the President.</p> <p>(4) (amend. – SG 52/07; suppl. – SG 101/15) If the request under para 3 is made before another state body he shall be obliged to send it to the State Agency for the refugees who carry out the registration under Art. 61, par. 2 within 6 work days after the initial filing of the application.</p>
<p>Закон за убежището и бежанците</p>	<p>Law on Asylum and Refugees</p>

<p>Член 59. (1) (Изм. - ДВ, бр. 52 от 2007 г., бр. 80 от 2015 г., в сила от 16.10.2015 г.) Молбата за предоставяне на международна закрила може да бъде в устна, писмена или друга форма, като при необходимост се осигурява преводач или тълковник. Молбата, която не е писмена, се записва от съответното длъжностно лице и се подписва или заверява по друг начин от молителя и от преводача, съответно тълковника.</p>	<p>Art. 59. (1) (amend. – SG 52/07; amend. – SG 80/15, in force from 16.10.2015) The application for provision of international protection can be verbal, written or in other form whereas, in case of necessity, a translator or interpreter shall be provided. The application which is not written shall be recorder by the respective official and shall be signed or certified in another way by the applicant and by the translator, respectively the interpreter.</p>
<p>Закон за убежището и бежанците</p> <p>Член 61. (Изм. - ДВ, бр. 52 от 2007 г.) (1) Молбата за предоставяне на убежище се регистрира в администрацията на президента.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 61. (amend. – SG 52/07) (1) The application for granting asylum shall be registered in the administration of the President.</p>
<p>Закон за убежището и бежанците</p> <p>Чл. 63а. (Нов - ДВ, бр. 52 от 2007 г.) (1) (Изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) След регистрирането се определя дата за провеждане на интервю. Чужденецът, подал молба за международна закрила, се уведомява своевременно за датата на всяко следващо интервю.</p> <p>(2) (Изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Чужденецът е длъжен да представи всички доказателства в подкрепа на молбата си за международна закрила до произнасянето по нея, като в случай че не ги представи, произнасянето се извършва без тези доказателства.</p> <p>(3) (Изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) С чужденеца се провежда интервю, на което се прави аудио- или аудио-визуално записване и се съставя протокол. При започване на интервюто чужденецът се уведомява за осъществяването на аудио- или аудио-визуално записване. Протоколът от</p>	<p>Law on Asylum and Refugees</p> <p>Art. 63a. (New, SG No. 52/2007) (1) (Amended, SG No. 80/2015, in force from 16.10.2015) After registration has been completed, a date for an interview shall be appointed. The applicant for international protection shall be notified in due time of the date of every subsequent interviews.</p> <p>(2) (Amended, SG No. 80/2015, in force from 16.10.2015) The alien must present all the evidence he/she has for substantiating his/her application for international protection prior to the issuance of the decision thereon, and if he/she fails to do so, the decision shall be issued in the absence of such evidence.</p> <p>(3) (Amended, SG No. 80/2015, in force from 16.10.2015) An interview shall be conducted with the alien, in the course of which an audio or audio-visual recording shall be made and minutes shall be taken. Right before the beginning of the interview, the alien shall be informed of the audio or</p>

интервюто и аудио- или аудио-визуалния запис са неразделна част от личното досие на чужденеца.

(4) (Нова - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Интервюиращият орган провежда допълнителни интервюта, ако е необходимо за нуждите на съответното производство.

(5) (Предишна ал. 4, изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Чужденец, подал молба за международна закрила, при заявено от него желание се интервюира от интервюиращ орган или преводач, съответно от тълковник, от същия пол.

(6) (Предишна ал. 5 - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., доп. - ДВ, бр. 101 от 2015 г.) Интервю не се провежда с чужденец, който не може да се грижи за своите работи поради слабоумие или душевна болест или поради обективни причини не може да даде устни или писмени изявления. В случай на съмнение интервюиращият орган се консултира с лекар, за да установи дали състоянието, заради което чужденецът не може да бъде разпитан, е временно, или с траен характер.

(7) (Предишна ал. 6, изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Интервюто се провежда на заявен от чужденеца език. Когато това е невъзможно, интервюто се провежда на разбираем за него език.

(8) (Предишна ал. 7 - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., доп. - ДВ, бр. 101 от 2015 г.) Протоколът се прочита на чужденеца и се подписва от него, от преводача, съответно от тълковника, и от интервюиращия орган. Чужденецът може да прави коментар по протокола и да предостави разяснения по отношение на грешки в превода или неточности,

audio-visual recording. The minutes of the interview and the audio or audio-visual recording thereof shall be an integral part of the applicant's personal case file.

(4) (New, SG No. 80/2015, in force from 16.10.2015) When needed, the interviewing authority shall conduct additional interviews for the purpose of the relevant procedure.

(5) (Previous paragraph 4, amended, SG No. 80/2015, in force from 16.10.2015) An alien who has applied for international protection shall have, at his/her request, the interview conducted by an officer of the interviewing authority or a translator, respectively interpreter, of the same gender.

(6) (Previous paragraph 5, amended, SG No. 80/2015, in force from 16.10.2015) No interviews shall be conducted with an alien who is unable to attend to his/her needs due to mental deficiency or mental disorder or for objective reasons is unable to provide oral or written statements. A consultation with a doctor is made to establish if his condition is permanent or temporary, in the event of a doubt.

(7) (Previous paragraph 6, amended, SG No. 80/2015, in force from 16.10.2015) The interview shall be held in a language requested by the alien. If this is not possible, the interview shall be held in a language that he/she understands.

(8) (Previous paragraph 7, amended, SG No. 80/2015, in force from 16.10.2015) The minutes shall be read out to the alien, and shall be signed by him/her, by the translator or interpreter and by the interviewing authority.

(9) (Previous paragraph 8, amended, SG No. 80/2015, in force from 16.10.2015) A refusal by the alien to sign the transcript of the interview shall be certified by the

<p>отразени в протокола.</p> <p>(9) (Предишна ал. 8 - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., доп. - ДВ, бр. 101 от 2015 г.) Отказът на чужденеца да подпише протокола от интервюто се удостоверява с подписите на двама свидетели. Причините за отказа се отбелязват в протокола. Отказът не е пречка за вземане на решение по молбата за международна закрила.</p> <p>(10) (Предишна ал. 9 - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., изм. - ДВ, бр. 101 от 2015 г.) По време на интервюто може да присъстват законният представител или адвокат, с право да излагат съображения в края на интервюто. Законният представител на непридружения малолетен или непълнолетен чужденец има право и да задава въпроси, допуснати от интервюиращия орган.</p> <p>(11) (Нова - ДВ, бр. 101 от 2015 г.) Интервю може да не се провежда в случаите, когато ще бъде взето положително решение за предоставяне на международна закрила по чл. 8, ал. 9 и чл. 10.</p> <p>(12) (Нова - ДВ, бр. 101 от 2015 г.) Отсъствието на интервю в съответствие с настоящия член не е пречка за вземане на решение по молбата за международна закрила.</p>	<p>signatures of two witnesses. The reasons for the refusal shall be recorded in the minutes.</p> <p>(10) (Previous paragraph 9, amended, SG No. 80/2015, in force from 16.10.2015) In the course of an interview with a minor or underage alien, his/her representative shall have the right to ask questions allowed by the interviewing authority and to present various arguments.</p> <p>(11) Interview may not be conducted in the cases where a positive decision for the asylum will be taken under Art. 8, 9 and 10.</p> <p>(12) The lack of interview in the sense of this Article is not a prerequisite for the inability of a decision on the request for asylum.</p>
<p>Закон за убежището и бежанците</p> <p>Член 66 (1) (Изм. – ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Спрямо чужденец с влязло в сила решение за отказ, прекратяване или отнемане на международна закрила или по отношение на когото производството е прекратено, се прилагат разпоредбите на Закона за чужденците в Република България.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 66. (1) (amend. – SG 80/15, in force from 16.10.2015) The provisions of the Foreigners in the Republic of Bulgaria Act shall apply regarding a foreigner for whom a decision for refusal, termination or revoking of international protection has been enacted, or regarding whom the proceedings have been terminated.</p>
<p>Закон за убежището и бежанците</p>	<p>Law on Asylum and Refugees</p>

<p>Член 67. (1) (Изм. - ДВ, бр. 52 от 2007 г., бр. 97 от 2016 г.) Принудителните административни мерки "отнемане правото на пребиваване", "връщане", "експулсиране" и "забрана за влизане в страната" не се привеждат в изпълнение до приключване на производството с влязло в сила решение.</p> <p>(2) (Изм. - ДВ, бр. 52 от 2007 г., бр. 80 от 2015 г., в сила от 16.10.2015 г.) Принудителните административни мерки по ал. 1 се отменят, когато на чужденеца е предоставено убежище или международна закрила.</p>	<p>Art. 67. (1) (amend. – SG 52/07; amend. – SG 97/16) The compulsory administrative measures "withdrawal of the right of stay", "return", "expulsion" and "prohibition of entry in the country" shall not be fulfilled until finalization of the proceedings with enactment of a decision.</p> <p>(3) Para 1 and 2 shall not apply if there are grounds to suppose that the foreigner seeking or having received protection poses a danger for the national security or who, once convicted by an enacted sentence for a severe crime, poses a danger for the society.</p>
<p>Закон за убежището и бежанците</p> <p>Чл. 71. (1) (Предишен текст на чл. 71 - ДВ, бр. 31 от 2005 г., изм. - ДВ, бр. 52 от 2007 г., изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., изм. - ДВ, бр. 101 от 2015 г.) Ускорена процедура не се провежда по отношение на непридружен малолетен или непълнолетен чужденец, подал молба за международна закрила.</p> <p>(2) (Нова - ДВ, бр. 31 от 2005 г., изм. - ДВ, бр. 52 от 2007 г., изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., изм. - ДВ, бр. 101 от 2015 г.) Ускорена процедура не се провежда, когато молбата за предоставяне на международна закрила е подадена от чужденец, ползващ се от временна закрила.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 71. (1) (Previous Article 71, SG No. 31/2005, amended, SG No. 52/2007, amended, SG No. 80/2015, in force from 16.10.2015) The accelerated procedure shall not be applied with respect to an unaccompanied minor or underage alien who has lodged an application for international protection.</p> <p>(2) (New, SG No. 31/2005, amended, SG No. 52/2007, amended, SG No. 80/2015, in force from 16.10.2015) The accelerated procedure shall not be applied where the application for international protection has been lodged by an alien who is already an alien under temporary protection.</p>
<p>Закон за убежището и бежанците</p> <p>Член 76а. (Нов – ДВ, бр. 101 от 2015 г.) Преди да се пристъпи към разглеждането по същество на последваща молба за международна закрила, се преценява нейната допустимост съгласно чл. 13, ал. 2, т. 4.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 76a. (new – SG 101/15) Before proceeding to consideration by merits of a subsequent application for international protection, its admissibility shall be assessed according to art. 13, par. 2, item 4.</p>
<p>Закон за убежището и бежанците</p>	<p>Law on Asylum and Refugees</p>

<p>Член 76б. (Нов – ДВ, бр. 101 от 2015 г.) (1) В срок до 14 дни от подаването на последващата молба за международна закрила интервюиращият орган единствено въз основа на писмени доказателства, представени от чужденеца, без да се провежда лично интервю, взема решение, с което:</p> <ol style="list-style-type: none"> 1. допуска последващата молба до производство за предоставяне на международна закрила; 2. не допуска последващата молба до производство за предоставяне на международна закрила. <p>(2) За молби, подадени по реда на чл. 58, ал. 4, срокът по ал. 1 започва да тече от получаването на молбата в Държавната агенция за бежанците.</p> <p>(3) Ако в срока по ал. 1 не бъде взето решение, последващата молба за международна закрила се смята за допусната до производство за предоставяне на международна закрила.</p> <p>(4) Решенията по ал. 1 се връчват по реда на чл. 76.</p> <p>(5) На чужденец, подал последваща молба за международна закрила, се извършва регистрация в срок до три работни дни от допускането на молбата му до производство за предоставяне на международна закрила.</p>	<p>Art. 76b. (new – SG 101/15) (1) Within 14 days after the filing of the subsequent application for international protection the interviewing authority based only on written proofs provided by the foreigner, without conducting a private interview, shall take a decision by which:</p> <ol style="list-style-type: none"> 1. they allow the subsequent application to proceedings for provision of international protection; 2. do not allow the subsequent application to proceedings for provision of international protection. <p>(2) For applications filed according to the provision of Art. 58, par. 4 the term under par. 1 shall start elapsing after the receipt of the application in the State Agency for Foreigners.</p> <p>(3) If within the term under par. 1 no decision is taken, the subsequent application for international protection shall be deemed allowed to proceedings for the provision of international protection.</p> <p>(4) The decisions under par. 1 shall be handed over according to the provision of Art. 76.</p> <p>(5) A foreigner having filed a subsequent application for international protection shall be registered within three work days after allowing their application to proceedings for provision of international protection.</p>
<p>Закон за убежището и бежанците</p> <p>Член 76в. (Нов – ДВ, бр. 101 от 2015 г.) (1) При провеждане на процедурата по този раздел чужденците се ползват от правата по чл. 23, ал. 1, чл. 29, ал. 1, т. 8, чл. 29а и чл. 58, ал. 7.</p> <p>(2) При провеждане на процедурата по</p>	<p>Law on Asylum and Refugees</p> <p>Art. 76c. (new – SG 101/15) (1) In carrying out of the procedure under this Section, foreigners enjoy the rights under Art. 23, par. 1, Art. 29, par. 1, item 8, Art. 29a and Art. 58, par. 7.</p> <p>(2) In carrying out of the procedure under</p>

<p>този раздел не се предоставят правата по чл. 29, ал. 1, т. 1 на чужденец, когато:</p> <p>1. (изм. – ДВ, бр. 97 от 2016 г.) подава първа последваща молба за международна закрила единствено с цел да забави или да затрудни изпълнението на приложената му принудителна административна мярка "отнемане на правото на пребиваване в Република България", "връщане" или "експулсиране", или</p> <p>2. подава поредна последваща молба за международна закрила, а предходната му последваща молба е счтена за недопустима по реда на чл. 76б, ал. 1, т. 2 или е разгледана по същество, и за когото връщането в държавата му по произход или в трета сигурна държава няма да доведе до застрашаване на неговия живот или на свободата му на основание раса, религия, националност, политическо мнение или принадлежност към определена социална група или излагане на опасност от изтезание или други форми на жестоко, нечовешко или унижително отнасяне или наказание.</p> <p>(3) Правата по чл. 29, ал. 1, т. 3 – 7 не се предоставят на чужденец, който е в процедура по предварително разглеждане на последваща молба за международна закрила.</p>	<p>this Section the rights under Art. 29, par. 1, item 1 shall not be granted to a foreigner where:</p> <p>1. (amend. – SG 97/16) they are filing a first subsequent application for international protection only in order to delay or to prevent the execution of the applied enforcement administrative measure of “withdrawal of the right of stay in Republic of Bulgaria”, “return” or “expulsion”, or</p> <p>2. they file another subsequent application for international protection, and the previous subsequent application has been considered inadmissible according to the provision of Art. 76b, par. 1, item 2 or has been considered by the merits and for whom returning to their country of origin or to a third safe country will not endanger their life or freedom on the grounds of a race, religion, nationality, political views or affiliation with a specific social group or exposure to a risk of torture or other forms of cruel, inhuman or humiliating attitude or punishment.</p> <p>(3) The rights under Art. 29, par. 1, items 3 – 7 shall not be granted to a foreigner who in in a procedure of preliminary consideration of a subsequent application for international protection.</p>
<p>Закон за убежището и бежанците</p> <p>Член 88. (1) (Предишен текст на чл. 88 - ДВ, бр. 52 от 2007 г.) Жалбата се подава чрез председателя на Държавната агенция за бежанците. Подадената жалба спира изпълнението на решението.</p>	<p>Law on Asylum and Refugees</p> <p>Art. 88. (1) (prev. Art. 88 – SG 52/07) The complaint shall be filed through the chairman of the State Agency for the refugees. The filed complaint shall stop the fulfillment of the decision.</p>
<p>Закон за чужденците в Република България</p> <p>Член 3. (1) Чужденците в Република</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art.3 (1) The foreigners in the Republic of</p>

<p>България имат всички права и задължения според българските закони и ратифицираните международни договори, по които Република България е страна, с изключение на тези, за които се изисква българско гражданство.</p> <p>(2) (Изм. - ДВ, бр. 29 от 2007 г.) По отношение на чужденци, които са акредитирани като членове на чуждестранни дипломатически и консулски представителства, както и на представителства на международни организации в Република България, които се ползват с имунитет и привилегии, се прилагат общоприетите норми на международното дипломатическо и консулско право и международните договори, по които Република България е страна.</p>	<p>Bulgaria shall have all rights and obligations according to the Bulgarian laws and the ratified international agreements to which the Republic of Bulgaria is a party except these for which Bulgarian citizenship is required.</p> <p>(2) (amend. – SG 29/07) With regards to foreigners accredited as members of diplomatic and consular representations, as well as representations of international organisations in the Republic of Bulgaria, who enjoy immunity and privileges, applied shall be universally accepted norms of diplomatic and consular law and the international agreements, to which the Republic of Bulgaria is a party.</p>
<p>Закон за чужденците в Република България</p> <p>Член 4. Чужденците, които пребивават в Република България, са длъжни да спазват законите и установения правов ред, да са лоялни към българската държава и да не уронват престижа и достойнството на българския народ.</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 4. The foreigners staying in the Republic of Bulgaria shall be obliged to observe the laws and the established legal order, to be loyal to the Bulgarian state and not to derogate the prestige and dignity of the Bulgarian people.</p>
<p>Закон за чужденците в Република България</p> <p>Член Чл. 6. (Изм. – ДВ, бр. 97 от 2016 г.) Чужденците, които се намират на територия под суверенитета на Република България, носят гражданска, административна и наказателна отговорност както българските граждани, доколкото специален закон, международен договор или нормите на международното обичайно право не предвиждат друго.</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art.6 (amend. - SG 97/16) Foreigners who are on territory under the sovereignty of the Republic of Bulgaria shall bear civil, administrative and criminal liability as do the Bulgarian citizens, insofar as a special act, an international treaty or the norms of customary international law do not provide otherwise.</p>

<p>Закон за чужденците в Република България</p> <p>Член 8. (Доп. - ДВ, бр. 42 от 2001 г., бр. 37 от 2003 г., изм., бр. 88 от 2005 г., бр. 29 от 2007 г.) (1) (Изм. – ДВ, бр. 97 от 2016 г.) Чужденец може да влезе в Република България, ако притежава редовен паспорт или заместващ го документ за пътуване, както и виза, когато такава се изисква.</p> <p>(2) (Доп. - ДВ, бр. 9 от 2011 г.) Не се изисква виза, когато това е предвидено в Регламент (ЕО) № 539/2001 на Съвета, в други актове на ЕС с обвързващо действие, в международен договор, по който Република България е страна, или в акт на Министерския съвет.</p> <p>(3) (Изм. - ДВ, бр. 9 от 2011 г.) Не се изисква виза и когато чужденецът притежава валидно разрешение за продължително, дългосрочно или постоянно пребиваване в Република България.</p> <p>(4) (Нова - ДВ, бр. 9 от 2011 г.) След приемане и одобряване на заявление за събиране на семейството на членовете на семейството се издават визи по облекчена процедура при условия и по ред, определени с акт на Министерския съвет.</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 8. (amend. – SG 29/07) (1) (amend. - SG 97/16) A foreigner may enter in the Republic of Bulgaria if he/she holds a valid passport or a document for travelling substituting it, as well as a visa, in case such is required.</p> <p>(2) (suppl. – SG 9/2011) Visas shall not be required in case this is provided in Council Regulation (EC) No 539/2001 of 15 March 2001, in other acts of the European Union with binding effect, in an international agreement, to which the Republic of Bulgaria is a party, or in act of the Council of Ministers.</p> <p>(3) amend. – SG 9/2011) Visas shall not be required also in the cases where the foreigner has a valid permit for extended, long-term or permanent residence.</p> <p>(4) (new - SG 9/11) Following the acceptance and approval of an application for family reunion, the family members shall be issued with visas under a simplified procedure under the terms and conditions, set by an act of the Council of Ministers.</p>
<p>Закон за чужденците в Република България</p> <p>Член 9. (Изм. - ДВ, бр. 42 от 2001 г., изм. и доп., бр. 37 от 2003 г., изм., бр. 29 от 2007 г., бр. 9 от 2011 г., бр. 97 от 2016 г.) Визата е разрешение за влизане и пребиваване или летищен транзит.</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 9 (Amend., SG 42/01; amend. – SG 29/07; amend. – SG 9/2011, amend. - SG 97/16) The visa shall be an authorisation for entry and stay or airport transit.</p>
<p>Закон за чужденците в Република България</p> <p>Член 10. (1) (Изм. - ДВ, бр. 9 от 2011 г.)</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 10. (1) The issuing of visa and entering</p>

Отказва се издаване на виза или влизане в страната на чужденец, когато:

1. (доп. - ДВ, бр. 29 от 2007 г., изм. и доп., бр. 97 от 2016 г.) с действията си е поставил или може да постави в опасност международните отношения, сигурността или интересите на българската държава или за когото има данни, че действа против националната сигурност;

1а. (нова – ДВ, бр. 101 от 2016 г., в сила от 20.12.2016 г.) има данни, че извършва, подбужда, участва в приготвяне, подпомагане или обучение за извършване на терористична дейност или че целта на влизането му е да ползва страната като транзитен пункт към трета държава, на чиято територия да извършва тези действия;

2. (доп. - ДВ, бр. 9 от 2011 г.) с действията си е злепоставил българската държава или е уронил престижа и достойнството на българския народ или влизането му в страната може да навреди на отношенията на Република България с друга държава;

3. (изм. - ДВ, бр. 11 от 2007 г., доп., бр. 73 от 2010 г., в сила от 17.09.2010 г., бр. 97 от 2016 г., изм., бр. 101 от 2016 г., в сила от 20.12.2016 г.) има данни, че е член на престъпна група или организация или че извършва или има намерение да извършва контрабанда и незаконни сделки с оръжие, взривни вещества, боеприпаси, пиротехнически изделия, стратегически суровини, изделия и технологии с двойна употреба, както и незаконен трафик на упойващи и психотропни вещества и прекурсори и на суровини за тяхното производство;

4. има данни, че извършва търговия с хора и незаконно въвеждане в страната и извеждане на лица в други държави;

in the country shall be refused to a foreigner when:

1. (suppl. – SG 29/07, amend. and suppl. - SG 97/16) with his activities he has put or could put in danger the international relations, the security or the interests of the Bulgarian State or about whom there are data that he acts against the national security;

1a. (new - SG 101/16, in force from 20.12.2016) there are data that he commits, abets, participates in the preparation, aid or training for performing a terrorist activity or that purpose of entry is to use the country as a transit point to a third country in whose territory to carry out these actions;

2. (suppl. – SG 9/2011) with his activities he has discredited the Bulgarian state or has derogated the prestige and the dignity of the Bulgarian people or by his entrance in the country relations of the Republic of Bulgaria with another country could be harmed;

3. (amend. – SG 11/07; amend. – SG 73/10, in force from 17.09.2010; amend. - SG 101/16, in force from 20.12.2016) there are data that he is a member of a criminal group or organisation or that he implements smuggling and illegal transactions with arms, explosives, ammunitions, pyrotechnical products, strategic raw materials, products and technologies with double use as well as illegal traffic of anaesthetic and psychotropic substances and precursors and raw materials for their production;

4. there are data that he implements trade with people and illegal bringing persons in the country and bringing out of the country persons to other states;

<p>Закон за чужденците в Република България</p> <p>Член 21д (2) Решение за отказ може да бъде издадено и когато се установи, че кандидатът:</p> <ol style="list-style-type: none"> 1. е влязъл в страната или е направил опит да премине през нея не през установените за това места или чрез използване на неистински или преправени документи; 2. пребивава незаконно на територията на Република България към датата на подаване на заявлението; 3. е пребивавал законно и без прекъсване на територията на Република България по-малко от 5 години. 	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 21 d para. 2 Decision on refusal may also be issued when it is established that the applicant:</p> <ol style="list-style-type: none"> 1. has entered the country or attempted to pass through it not through the established points or using false or forged documents; 2. has resided illegally on the territory of the Republic of Bulgaria at the date of submission of the application; 3. has resided legally and continuously on the territory of the Republic of Bulgaria less than 5 years.
<p>Закон за чужденците в Република България</p> <p>Член 22. (1) Пребиваването на чужденците в Република България се осъществява въз основа на:</p> <ol style="list-style-type: none"> 1. (изм. - ДВ, бр. 29 от 2007 г., изм. и доп., бр. 97 от 2016 г.) виза по чл. 9а, ал. 2, т. 3 и 4; 2. (изм. и доп. – ДВ, бр. 97 от 2016 г.) международни договори или договори на Европейския съюз с трети държави за безвизов режим; 3. (нова – ДВ, бр. 97 от 2016 г.) актове на правото на Европейския съюз, които са в сила и се прилагат от Република България; 4. (предишна т. 3 – ДВ, бр. 97 от 2016 г.) разрешение на службите за административен контрол на чужденците. <p>(2) (Изм. - ДВ, бр. 29 от 2007 г., отм., бр. 23 от 2013 г.).</p> <p>(3) (Отм. - ДВ, бр. 23 от 2013 г.).</p> <p>(4) (Нова - ДВ, бр. 109 от 2007 г., изм., бр. 97 от 2016 г.) Разрешението по ал. 1, т. 4 се издава след писмено становище от</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 22 (1) The stay of foreigners in the Republic of Bulgaria shall be admissible on the grounds of:</p> <ol style="list-style-type: none"> 1. (amend. – SG 29/07, amend. and suppl. - SG 97/16) a visa pursuant to art. 9a, para 2, items 3 and 4; 2. (amend. and suppl. - SG 97/16) international agreements or European Union agreements with third countries on visa free regime; 3. (new - SG 97/16) acts of European Union law, in force and applied by the Republic of Bulgaria 4. (previous item 3 - SG 97/16) a permit by the services for administrative control of foreigners. <p>(2) (amend. – SG 29/07; revoked – SG 23/13) (3) (revoked – SG 23/13)</p> <p>(4) (new – SG 109/07, in force from 01.01.2008, amend. - SG 97/16) The permission under Para 1, item 4 shall be issued upon written opinion of State</p>

<p>Държавна агенция "Национална сигурност".</p>	<p>Agency for National Security.</p>
<p>Закон за чужденците в Република България</p> <p>Член 36. (Изм. – ДВ, бр. 97 от 2016 г.) Чужденците могат да излизат от Република България през определените за това места въз основа на паспорти и заместващи ги документи за пътуване, които им дават право да напускат страната.</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 36. (amend. - SG 97/16) The foreigners shall be able to leave the Republic of Bulgaria through the places determined for this on the basis of passports or documents for travelling substituting them giving them the right to leave the country.</p>
<p>Закон за чужденците в Република България</p> <p>Член 39а. (Нов - ДВ, бр. 42 от 2001 г.) (1) (Предишен текст на чл. 39а - ДВ, бр. 23 от 2013 г., прилага се след влизането в сила на решението на Съвета на Европейския съюз за пълното прилагане на разпоредбите на Шенгенското законодателство в Република България) Принудителните административни мерки, които се налагат на чужденците по този закон, са:</p> <ol style="list-style-type: none"> 1. отнемане на правото на пребиваване в Република България; 2. (изм. – ДВ, бр. 97 от 2016 г.) връщане до страна на произход, страна на транзитно преминаване или трета страна; 3. експулсиране; 4. (изм. - ДВ, бр. 23 от 2013 г., прилага се след влизането в сила на решението на Съвета на Европейския съюз за пълното прилагане на разпоредбите на Шенгенското законодателство в Република България, доп., бр. 70 от 2013 г.) забрана за влизане и пребиваване на територията на държавите - членки на Европейския съюз; 5. забрана за напускане на Република България. 	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 39a (New, SG 42/01; prev. text of Art. 39a – SG 23/13) (*) The compulsory administrative measures imposed to the foreigners according to this Act are:</p> <ol style="list-style-type: none"> 1. revoking the right of stay in the Republic of Bulgaria; 2. (amend. - SG 97/16) return to country of origin, country of transit crossing or a third country; 3. expulsion; 4. (amend. – SG 23/13); (*), suppl. – SG 70/13 (*) prohibition to enter and reside on the territory of Member States of the European Union; 5. prohibition to leave the Republic of Bulgaria.
<p>Закон за чужденците в Република България</p>	<p>Law on the Foreigners in the Republic of</p>

<p>Член 39б. (Нов - ДВ, бр. 36 от 2009 г.) (1) (Изм. - ДВ, бр. 23 от 2013 г.) В заповедта за налагане на принудителна административна мярка по чл. 39а, ал. 1, т. 1 и 2 се определя срок от 7 до 30 дни, в който чужденецът трябва да изпълни доброволно задължението за връщане.</p> <p>(2) (Доп. - ДВ, бр. 9 от 2011 г.) За предоставяне на срок за доброволно напускане за повече от 30 дни чужденецът подава молба до съответния компетентен орган, издал заповедта по ал. 1, който се произнася и уведомява чужденеца в тридневен срок. В тези случаи се вземат предвид конкретните обстоятелства във всеки отделен случай, като: продължителност на престоя, здравословно състояние, потребности на уязвимите групи, наличие на посещаващи училище деца и други семейни и социални връзки. Срокът за доброволно напускане може да бъде продължен за не повече от една година.</p> <p>(3) Когато е разрешено доброволно напускане, но съществува опасност от укриване на чужденеца, компетентният орган, издал заповедта по ал. 1, може да издаде заповед за ежедневно явяване в териториалната структура на Министерството на вътрешните работи по местопребиваване.</p> <p>(4) В случай че лицето представлява заплаха за националната сигурност или обществения ред, съответният компетентен орган не предоставя срок за доброволно напускане.</p>	<p>Bulgaria</p> <p>Art 39b. (new - SG 36/09) (1) (amend. – SG 23/13) In the order imposing a compulsory administrative measure under Art. 39a, para 1, Items 1 and 2 shall be specified a term between 7 and 30 days, within which foreigners shall voluntarily fulfil their obligation to return.</p> <p>(2) (suppl. – SG 9/11) In order to be provided a term for voluntary departure longer than 30 days, the foreigner shall submit an application to the competent authority, which has issued the order under Para 1 and which shall decide and notify the foreigner within three days. In such cases the specific circumstances shall be taken into account for each individual case, such as: the length of stay, health status, needs of the vulnerable groups, presence of children attending school and other family and social relations. Term for voluntary departure may be prolonged but for no longer than one year.</p> <p>(3) Where a voluntarily departure has been allowed, but it is probable that the foreigner hides himself, the competent authority issuing the order under Para 1 may issue an order to the foreigner to present himself daily at the territorial structure of the Ministry of Interior at the location of his residence.</p> <p>(4) Where the person presents a threat for the national security or for the public order, the competent authority shall not provide a term for voluntary departure.</p>
<p>Закон за чужденците в Република България</p>	<p>Law on the Foreigners in the Republic of Bulgaria</p>

<p>Член 41. (Изм. - ДВ, бр. 42 от 2001 г., бр. 97 от 2016 г.) Връщане се налага, когато:</p> <ol style="list-style-type: none"> 1. чужденецът не може да удостовери визането си в страната по законоустановения ред; 2. (изм. - ДВ, бр. 36 от 2009 г.) чужденецът не напусне страната до изтичане на разрешението му срок или в сроковете по чл. 39б; 3. (изм. - ДВ, бр. 97 от 2016 г.) се установи, че чужденецът е влязъл и пребивава в страната с неистински или с преправен паспорт или със заместващ го документ за пътуване; 4. (нова - ДВ, бр. 97 от 2016 г.) по отношение на чужденеца има влязло в сила решение за отказ, прекратяване или отнемане на международна закрила или убежище или по отношение на когото производството по Закона за убежището и бежанците е прекратено с влязло в сила решение, освен ако прекратяването е постановено спрямо чужденец, за когото има решение за обратно приемане в Република България и производството не е било възобновявано; 5. (нова - ДВ, бр. 97 от 2016 г.) се установи, че чужденецът е влязъл през границата на страната по законоустановения ред, но се опитва да я напусне не през определените за това места или с неистински, с преправен паспорт или заместващ го документ за пътуване. 	<p>Art. 41.(Amend., SG 42/01, amend. - SG 97/16) Return shall be required when:</p> <ol style="list-style-type: none"> 1. the foreigner cannot certify his/her entering the country lawfully; 2. (amend. - SG 36/09) the foreigner does not leave the country until the expiration of the permitted term or within the terms of Art. 39b; 3. (amend. - SG 97/16) it is established that the foreigner has entered and has resided in the country with a false or forged passport or a document for travelling substituting it; 4. (new - SG 97/16) regarding the foreigner there is an enacted decision for refusal, termination or withdrawal of international protection or asylum, or with regard to whom proceedings under the Asylum and Refugees Act have been terminated with an effective decision, unless the termination has been given towards a foreigner, for whom there is a decision for re-admission into the Republic of Bulgaria and the proceedings have not re-opened; 5. (new - SG 97/16) it is established that the foreigner has crossed the border of the country lawfully, but tries to leave it not at the designated points or with false or forged passport or a document for travelling substituting it.
<p>Закон за чужденците в Република България</p> <p>Член 42. (Изм. - ДВ, бр. 42 от 2001 г.) (1) (Изм. - ДВ, бр. 23 от 2013 г.) Експулсиране на чужденец се налага, когато:</p> <ol style="list-style-type: none"> 1. неговото присъствие в страната създава сериозна заплаха за националната 	<p>Law on the Foreigners in the Republic of Bulgaria</p> <p>Art. 42. (Amend., SG 42/01) (1) (amend. - SG 23/13) Expulsion of a foreigner shall be imposed where:</p> <ol style="list-style-type: none"> 1. his or her presence in the country creates a serious threat to national security or

<p>сигурност или за обществения ред; 2. са налице основания по чл. 10, ал. 1, т. 1 - 4.</p>	<p>public order; 2. the grounds under Art. 10, para 1, items 1 – 4 are present.</p>
<p>Закон за чужденците в Република България</p> <p>Член 42з пара. 3 (Изм. и доп. - ДВ, бр. 36 от 2009 г., изм., бр. 23 от 2013 г., прилага се след влизането в сила на решението на Съвета на Европейския съюз за пълното прилагане на разпоредбите на Шенгенското законодателство в Република България, доп., бр. 70 от 2013 г.) Забраната за влизане и пребиваване на територията на държавите - членки на Европейския съюз е за срок до 5 години. Забраната за влизане и пребиваване на територията на държавите - членки на Европейския съюз може да е за срок, по-дълъг от 5 години, когато лицето представлява сериозна заплаха за обществения ред или за националната сигурност.</p>	<p>Law on the Foreigners in the Republic of Bulgaria Art. 42 h para. 3 (3) (amend. and suppl. - SG 36/09; amend. – SG 23/13; (*), amend. – SG 70/13 (*)) The prohibition for entry and residence in the territory of Member States of the European Union shall be valid for a period of 5 years. The prohibition for entry and residence in the territory of Member States of the European Union may be for a period longer than 5 years, where the person presents a serious threat for the public order or for the national security.</p>
<p>Закон за чужденците в Република България</p> <p>Член 44 (2) (Изм. - ДВ, бр. 36 от 2009 г., доп., бр. 9 от 2011 г.) При налагане на принудителните административни мерки компетентните органи отчитат продължителността на пребиваване на чужденеца на територията на Република България, категориите уязвими лица, наличието на производства по Закона за убежището и бежанците или производства за подновяване на разрешение за пребиваване или друго разрешение, предоставящо право на пребиваване, семейното му положение, както и съществуването на семейни, културни и социални връзки с държавата по произход на лицето.</p>	<p>Law on the Foreigners in the Republic of Bulgaria Art. 44 para. 2 (amend. - SG 36/09; suppl. – SG 9/11)) When imposing compulsory administrative measures, the competent shall take into account the duration of the stay of the foreigner on the territory of the Republic of Bulgaria, the categories of vulnerable persons, presence of proceedings under the Asylum and Refugees Act or of proceedings for renewal of residence permit or of another permit granting right to reside, his family status and the availability of family, cultural and social relations with the country of origin of the person.</p>
<p>Закона за влизането, пребиваването и</p>	<p>Law on Entering, Residing and Leaving the</p>

<p>напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Чл. 1. (1) (Доп. – ДВ, бр. 97 от 2016 г. Сравнение с предишната редакция) Този закон определя условията и реда, при които гражданите на Европейския съюз, които не са български граждани, и членовете на техните семейства могат да влизат, пребивават и напускат Република България.</p> <p>(2) Този закон се прилага и спрямо гражданите на държави - страни по Споразумението за Европейското икономическо пространство, гражданите на Конфедерация Швейцария и членовете на техните семейства, които не са граждани на Европейския съюз, Европейското икономическо пространство и Конфедерация Швейцария, които по силата на сключени международни договори с Европейския съюз имат право на свободно придвижване.</p>	<p>Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 1. (1) (suppl. – SG 97/16) This Act shall regulate the terms and order under which the European Union citizens, who are not Bulgarian citizens and members of their families may enter, reside and leave the Republic of Bulgaria.</p> <p>(2) This Act shall also be applied to the citizens of countries - parties to the European Economic Area Agreement, the citizens of confederation Switzerland and the members of their families, who are not citizens of the European Union, the European Economic Area and Swiss Confederation, who, by virtue of international agreements concluded with the European Union, are entitled to free movement.</p>
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 3 Гражданите на Европейския съюз и членовете на техните семейства, които не са граждани на Европейския съюз, при пребиваването си в Република България имат всички права и задължения според българските закони и международните договори, по които Република България е страна, с изключение на тези, за които се изисква българско гражданство.</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 3 During their residence in the Republic of Bulgaria the European Union citizens and the members of their families, who are not citizens of the European Union, shall have all rights and obligations according to the Bulgarian legislation and the international agreements, to which the Republic of Bulgaria is a party, except the ones for which Bulgarian citizenship is required.</p>

<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 6. (1) (Изм. - ДВ, бр. 21 от 2012 г.) Гражданин на Европейския съюз пребивава в Република България с валидна лична карта или валиден паспорт за срок до три месеца.</p> <p>(2) (Изм. - ДВ, бр. 21 от 2012 г.) Член на семейството, който не е гражданин на Европейския съюз пребивава в Република България с валиден паспорт за срок до три месеца от датата на влизане в страната.</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 6 (1) (amend. – SG 21/12) An European Union citizen shall reside in the Republic of Bulgaria with a valid identity card or a valid passport within a term of up to three months.</p> <p>(2) (amend. – SG 21/12) A family member who is not European Union citizen shall reside in the Republic of Bulgaria with a valid passport within a term of up to three months from the date of entry in the country.</p>
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 7. (1) (Доп. - ДВ, бр. 21 от 2012 г., изм., бр. 53 от 2014 г., бр. 14 от 2015 г.) Гражданин на Европейския съюз може да пребивава в Република България продължително или постоянно, за което му се издава удостоверение от дирекция "Миграция" - МВР, Столичната дирекция на вътрешните работи (СДВР) или областните дирекции на МВР, или оправомощени от директорите длъжностни лица.</p> <p>(2) Продължителното пребиваване е за срок до пет години.</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 7 (1) (amend. – SG 69/08; amend. – SG 93/09, in force from 25.12.2009; suppl. – SG 21/12; amend. – SG 53/14; amend. – SG, 14/2015) European Union citizen may reside in the Republic of Bulgaria durably or permanently, for which a certificate shall be issued by the Directorate "Migration" – MI, the Capital Directorate of Interior (CDI) or the regional directorates of MI, or officials authorised by the directors.</p> <p>(2) The durable residence is for a period of up to five years.</p>
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p>

<p>Член 8 (1) Удостоверението за продължително пребиваване се издава на гражданин на Европейския съюз, който отговаря на едно от следните условия:</p> <ol style="list-style-type: none"> 1. работник е или е самостоятелно заето лице в Република България; 2. (изм. - ДВ, бр. 9 от 2011 г.) притежава здравна осигуровка и необходимите финансови средства за покриване на разходите по пребиваването си и тези на членовете на семейството му, без да са в тежест на системата за социално подпомагане; 3. записан е в учебно заведение за обучение, включително и професионално обучение, и отговаря на условията по т. 2. 	<p>Art. 8 para. 1 The Durable residence certificate shall be issued to a European Union citizen, who meets one of the following requirements:</p> <ol style="list-style-type: none"> 1. is a worker or self-employed person in the Republic of Bulgaria; 2. (amend. – SG 9/11) has health insurance and the financial resources required for covering the expenses with regard to their residence and the members of his/her family, without being a burden to the social support system; 3. is enrolled at an educational establishment for the purpose of studying, including vocational training, and meets the requirements under item 2
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 22 Правото на влизане и правото на пребиваване в Република България на гражданин на Европейския съюз или на член на семейството му може да се ограничава по изключение и на основания, свързани с националната сигурност, обществения ред или общественото здраве.</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 22 The right of entry and the right of residence of European Union citizen or member of his/her family in the Republic of Bulgaria may be restricted by exception and on grounds, connected with the national security, public order or public health.</p>
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 23 (1) Принудителните административни мерки, които се налагат на гражданин на Европейския съюз или на член на семейството му, са:</p> <ol style="list-style-type: none"> 1. отнемане на правото на пребиваване в 	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 23. (1) The compulsory administrative measures, imposed on European Union citizen or member of his/her family, shall be:</p> <ol style="list-style-type: none"> 1. withdrawal of the right of residence in the Republic of Bulgaria;

<p>Република България; 2. експулсиране; 3. забрана за влизане в Република България.</p>	<p>2. expulsion; 3. ban on entry in the Republic of Bulgaria</p>
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 25 (1)(Изм. - ДВ, бр. 21 от 2012 г.) Експулсиране се налага на гражданин на Европейския съюз или на член на семейството му, когато присъствието му в Република България създава истинска, настояща и сериозна заплаха за националната сигурност или за обществения ред.</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 25 para. 1 (amend. – SG 21/12) Expulsion shall be imposed to an European Union citizen or to a member of his/her family, in case his/her presence in the Republic of Bulgaria creates a real, current and serious threat to national security or public order.</p>
<p>Закона за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз, които не са български граждани и членовете на техните семейства</p> <p>Член 27 (3) Сроктът за доброволно напускане не може да бъде по-кратък от един месец, освен ако лицето продължава да застрашава националната сигурност, обществения ред или общественото здраве.</p>	<p>Law on Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families</p> <p>Art. 27 para. 3 The term of voluntary leaving may not be shorter than one month, unless the person continues to threaten the national security, public order or public health.</p>
<p>Закон за убежището и бежанците</p> <p>Чл. 48. (1) (Изм. - ДВ, бр. 52 от 2007 г.) Председателят на Държавната агенция за бежанците:</p> <p>1. (изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) предоставя, отказва, отнема и прекратява международна закрила в Република България; отнема временна закрила в случаите по чл. 17, ал. 4;</p> <p>2. (изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) спира и прекратява</p>	<p>Law on asylum and refugees</p> <p>Art. 48. (1) (Amended, SG No. 52/2007) The Chairperson of the State Agency for Refugees shall:</p> <p>1. (Amended, SG No. 80/2015, in force from 16.10.2015) grant, refuse, withdraw and discontinue international protection in the Republic of Bulgaria; withdraw temporary protection in the cases specified under article 17, paragraph 4.</p> <p>2. (Amended, SG No. 80/2015, in force</p>

<p>производството за предоставяне на международна закрила;</p> <p>3. взема решения по молби за събиране на семейства;</p> <p>4. (изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) взема решения по други молби на чужденците, на които е открито производство за предоставяне на международна закрила или им е предоставена такава закрила в Република България;</p> <p>5. информира Министерския съвет за необходимостта от въвеждане на временна закрила на територията на Република България; информира за необходимостта от удължаване срока на временната закрила;</p> <p>6. издава наказателни постановления по глава осма;</p> <p>7. утвърждава образците на документите, издавани от Държавната агенция за бежанците, с изключение на регистрационната карта;</p> <p>8. прави предложение до Министерския съвет за утвърждаване образците на регистрационните карти;</p> <p>9. определя решаващите органи в Държавната агенция за бежанците, които провеждат производство по реда на глава шеста, раздел Ia;</p> <p>10. (изм. - ДВ, бр. 101 от 2015 г.) определя интервюиращите органи на Държавната агенция за бежанците, които провеждат ускорена процедура в производство по общия ред;</p> <p>11. (изм. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) управлява и разпределя средствата от бюджета, контролира целевото им разходване; съгласувано с министъра на финансите и министъра на труда и социалната политика определя</p>	<p>from 16.10.2015) suspend and discontinue the procedure for international protection;</p> <p>3. make decisions on applications requesting family reunifications;</p> <p>4. (Amended, SG No. 80/2015, in force from 16.10.2015) decide on other applications filed by aliens with respect to whom a procedure for granting international protection has been initiated or aliens who have been granted such protection in the Republic of Bulgaria;</p> <p>5. notify the Council of Ministers of the need to establish temporary protection on the territory of the Republic of Bulgaria; notify of the need to extend the temporary protection period;</p> <p>6. issue penalty warrants under Chapter Eight;</p> <p>7. approve the standard forms of documents issued by the State Agency for Refugees, except for the registration card;</p> <p>8. submit a proposal to the Council of Ministers for the approval of the standard forms of registration cards;</p> <p>9. designate the decision-making authorities of the State Agency for Refugees which shall conduct the procedures under Chapter Six, Section Ia;</p> <p>10. designate the interviewing authorities of the State Agency for Refugees which shall conduct the accelerated procedures under Chapter Six, Section II;</p> <p>11. (Amended, SG No. 80/2015, in force from 16.10.2015) manage and allocate the funds from the budget, supervise their disbursement for the appropriate purposes, in coordination with the Minister of Finance and the Minister of Labour and Social Policy, define the expenditure thresholds for in-kind and financial support to aliens who seek or have been granted</p>
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<p>разходните норми за подпомагане с материални и финансови средства на чужденците, търсещи или получили международна закрила.</p> <p>(2) По искане на президента на Република България председателят на Държавната агенция за бежанците дава мнение по подадена молба за убежище.</p> <p>(3) (Изм. - ДВ, бр. 52 от 2007 г., отм. - ДВ, бр. 101 от 2015 г.)</p> <p>Чл. 50. (1) При изпълнение на своята дейност председателят на Държавната агенция за бежанците се подпомага от двама заместник-председатели.</p> <p>(2) Заместник-председателите се назначават от министър-председателя по предложение на председателя на Държавната агенция за бежанците. Заместник-председателите трябва да са български граждани, които нямат друго гражданство, с висше образование и не по-малко от пет години трудов стаж.</p>	<p>international protection.</p> <p>(2) At the request of the President of the Republic of Bulgaria, the Chairperson of the State Agency for Refugees shall give an opinion on an asylum application lodged.</p> <p>(3) (Amended, SG No. 52/2007) On an yearly basis, and in cases of a substantial change in the general situation in a particular country of origin and in cases of an increased influx of aliens from that state, the Chairperson of the State Agency for Refugees shall define the categories of aliens whose cases shall be reviewed based on the following criteria:</p> <ol style="list-style-type: none"> 1. the nature and degree of respect for human rights in the relevant states or parts thereof; 2. the activities of international organizations in the relevant states; 3. (Amended, SG No. 80/2015, in force from 16.10.2015) the policy of other European Union Member-States with respect to persons seeking protection from the relevant countries of origin. <p>Art. 50. (1) In the performance of his/her activities, the Chairperson of the State Agency for Refugees shall be assisted by two deputy chairpersons.</p> <p>(2) The deputy chairpersons shall be appointed by the Prime Minister on a proposal by the Chairperson of the State Agency for Refugees. The deputy chairpersons shall be Bulgarian nationals who do not hold any other citizenship, and who have a university degree and not less than five years of work experience.</p>
<p>УСТРОЙСТВЕН ПРАВИЛНИК НА ДЪРЖАВНАТА АГЕНЦИЯ ЗА БЕЖАНЦИТЕ ПРИ МИНИСТЕРСКИЯ СЪВЕТ</p> <p>Раздел II.</p>	<p>Defining rules of the State agency for refugees with the Council of Ministers in force from 01.04.2008</p> <p>Section II.</p>

<p>Политически кабинет</p> <p>Чл. 7. (1) Председателят създава на свое подчинение политически кабинет, който го подпомага при формулирането и разработването на конкретни решения за определянето и провеждането на правителствената политика в сферата на неговите правомощия.</p> <p>(2) В политическия кабинет се включват заместник-председателите и експертът, отговарящ за връзките с обществеността.</p> <p>(3) За реализирането на програмата на Министерския съвет политическият кабинет предлага на председателя за утвърждаване стратегически приоритети, цели и решения, свързани с неговата компетентност, и следи за тяхното изпълнение.</p> <p>(4) Политическият кабинет организира и осъществява връзките на председателя с Народното събрание, Министерския съвет, с другите държавни органи и с правителствени и неправителствени организации.</p> <p>(5) Политическият кабинет организира и осъществява връзките на председателя с обществеността, със средствата за масово осведомяване и организира срещи и интервюта с представителите на медиите.</p> <p>(6) (Изм. - ДВ, бр. 75 от 2015 г.) Политическият кабинет събира, обобщава и анализира информацията, необходима за разработването на политиката в областта на международната закрила на чужденците.</p> <p>Глава трета. СТРУКТУРА, ФУНКЦИИ И СЪСТАВ НА АГЕНЦИЯТА</p> <p>Раздел I. Общи положения</p> <p>Чл. 8. (1) Структурата на агенцията включва</p>	<p>Political Cabinet</p> <p>Art. 7. (1) The chairperson shall establish a political cabinet, which shall assist him in formulating and developing specific decisions for the definition and implementation of government policy in the sphere of his / her powers.</p> <p>(2) The Political Cabinet shall include the Vice-Presidents and the expert, responsible for the public relations.</p> <p>(3) For the implementation of the program of the Council of Ministers, the political cabinet shall propose to the President for validation strategic priorities, objectives and decisions related to his / her competence, and shall monitor their implementation.</p> <p>(4) The Political Cabinet shall organize and implement the relations of the Chairperson with the National Assembly, the Council of Ministers, other state bodies and governmental and non-governmental organizations.</p> <p>(5) The Political Cabinet organizes and implements the President's relations with the public, with the mass media and organizes meetings and interviews with the media representatives.</p> <p>(6) The Political Cabinet shall collect, summarize and analyze the information necessary for the development of the policy in the field of international protection of aliens.</p> <p>Chapter Three. STRUCTURE, FUNCTIONS AND COMPOSITION OF THE AGENCY</p> <p>Section I. General</p> <p>Art. 8. (1) The structure of the Agency includes an Inspectorate, an Information Security Officer, a Financial Controller, a</p>
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инспекторат, служител по сигурността на информацията, финансов контролор, обща администрация, организирана в три дирекции, специализирана администрация, организирана в три дирекции, и териториални поделения.

(2) Териториалните поделения на агенцията са:

1. Транзитен център - с. Пъстрогор, община Свиленград;
2. Регистрационно-приемателен център - София;
3. Регистрационно-приемателен център - с. Баня, община Нова Загора;
4. Регистрационно-приемателен център - Харманли;
5. (отм. - ДВ, бр. 78 от 2014 г., в сила от 04.10.2014 г.)

(3) Териториалните поделения по ал. 2 могат да бъдат от отворен или от затворен тип, като към териториалните поделения от отворен тип могат да се създават отделни обособени помещения за настаняване на непридружени малолетни и непълнолетни чужденци, търсеци международна закрила, както и отделни обособени помещения от затворен тип.

(4) Общата численост на персонала на агенцията е 403 щатни бройки.

(5) Числеността на отделните административни звена и на териториалните поделения е посочена в приложението.

(6) Председателят утвърждава структурата на дирекциите, създава, преобразува и закрива отдели, а при необходимост - и сектори към отделите, като определя и техните функции.

Чл. 29. (1) (Изм. - ДВ, бр. 110 от 2013 г., в сила от 21.12.2013 г.) Служителите на

General Administration, organized in three directorates, a specialized administration, organized in three directorates, and territorial units.

(2) The territorial units of the Agency shall be:

1. Transit center in the village of Pastrogor, Svilengrad municipality;
2. Registration and Reception Center - Sofia;
3. Registration and reception center - Banya village, Nova Zagora municipality;
4. Registration and Reception Center - Harmanli;
5. (repealed, SG No. 78 of 2014, in force as of 04.10.2014)

(3) Territorial units under para. 2 may be of open or closed type, and separate detachment rooms for unaccompanied minors and minor aliens seeking international protection as well as separate detached gated premises may be created for the open-ended territorial divisions.

(4) The total number of staff of the Agency is 403 full-time units.

(5) The number of individual administrative units and territorial units is set out in the Annex.

(6) The chairperson shall establish the structure of the directorates, create, transform and close departments and, if necessary, sectors to the departments, defining their functions as well.

Art. 29. (1) The employees of the Agency shall be obliged not to disclose official information, as well as the data related to the person of the alien seeking or who have been granted protection during the procedure for granting international protection or during his / her stay in the

<p>агенцията са длъжни да не разгласяват служебна информация, както и данните, свързани с личността на чужденец, търсещ или получил закрила, станали им известни по време на производството за предоставяне на международна закрила или по време на пребиваването му на територията на Република България след получаване на международна закрила.</p> <p>(2) При встъпването си в длъжност служителите на агенцията подписват декларация за съхраняване и неразпространяване на информацията и данните по ал. 1.</p>	<p>territory of the Republic of Bulgaria after receiving international protection.</p> <p>(2) Upon taking office, the employees of the Agency shall sign a declaration for storing and non-disseminating the information and data under para. 1.</p>
<p>Закон за чужденците в република България</p> <p>Чл. 42 (4) (Нова - ДВ, бр. 9 от 2011 г., доп. - ДВ, бр. 23 от 2013 г.) Преди налагането на експулсиране на чужденец, получил разрешение за дългосрочно пребиваване, се отчитат продължителността на пребиваване на чужденец в Република България, възрастта, здравословното състояние, семейното положение, социалната интеграция, съществуващи връзки в страната или липсата на връзки с държавата по произход. Експулсирането не може да се основава на икономически съображения.</p> <p>Чл. 44. (2) (Изм. - ДВ, бр. 36 от 2009 г., доп. - ДВ, бр. 9 от 2011 г.) При налагане на принудителните административни мерки компетентните органи отчитат продължителността на пребиваване на чужденец на територията на Република България, категориите уязвими лица, наличието на производства по Закона за убежището и бежанците или производства за подновяване на разрешение за пребиваване или друго разрешение,</p>	<p>Aliens Act</p> <p>Art. 42. (4) (Last Amendment - SG No. 23/2013) Prior the expulsion of foreigner having longterm residence permit, the following factors shall be taken into account: foreigner's period of residence in the Republic of Bulgaria, age, health status, family status, social integration, relations within the country and absence of relations with the country of origin. Expulsion cannot be based on economic considerations.</p> <p>Art. 44. (2) (Last Amendment, SG No. 9/2011) When imposing a compulsory administrative measures the competent authorities consider the length of residence of the foreigner in the territory of the Republic of Bulgaria, the categories of vulnerable persons, the existence of pending procedures under the Asylum and Refugees Act or procedures for renewal of the residence permit or another permit, the family status of the foreigner, as well as the presence of family, cultural and social ties with the country of origin</p>

предоставящо право на пребиваване, семейното му положение, както и съществуването на семейни, културни и социални връзки с държавата по произход на лицето.

(8) Настаняването продължава до отпадане на обстоятелствата по ал. 6, но не повече от 6 месеца. За наличието на основанията за принудително настаняване в специален дом се извършват ежемесечни служебни проверки от директора на дирекция "Миграция". По изключение, когато лицето отказва да съдейства на компетентните органи или има забавяне при получаване на необходимите документи за връщане или експулсиране, срокът на настаняването може да бъде продължен допълнително до 12 месеца. Когато с оглед на конкретните обстоятелства по случая се установи, че вече не съществува разумна възможност по правни или технически причини за принудителното извеждане на чужденеца, лицето се освобождава незабавно.

Чл. 46а (Нов - ДВ, бр. 36 от 2009 г.) (1) (Изм. - ДВ, бр. 9 от 2011 г., изм. - ДВ, бр. 23 от 2013 г.) Заповедта за принудително настаняване в специален дом може да се обжалва в 14-дневен срок от фактическото настаняване по реда на Административнопроцесуалния кодекс. Жалбата не спира изпълнението на заповедта.

(4) След изтичане на всеки 6 месеца от настаняването в специалния дом за временно настаняване на чужденци съдът служебно или по молба на заинтересования чужденец се произнася в закрито заседание с определение за

(8) The Accommodation lasts to the decline of the circumstances under Paragraph (6), but not more than 6 months. Every month the director of Migration Directorate makes official examinations for the reasons of forced accommodation. An exception can be made when the person refuses to assist the competent authorities, there is a delay in the process of obtaining the necessary documents for the removal or expulsion or when the person is a threat to the national security or the public order, and the period of accommodation may be extended further to 12 months. When in order of the circumstances of the case is found that there is no reasonable possibility by legal or technical reasons for forced removal of the foreigner, the person is released immediately.

Art. 46a. (Last Amendment - SG No. 23/2013) (1) (Last Amendment - SG No. 23/2013) The Order for a compulsory accommodation in a special shelter can be appealed within fourteen days of the actual accommodation under the terms and conditions of the Administrative Procedure Code. The appeal does not suspend the execution of the order.

(4) (Last Amendment, SG No. 9/2011) After the expiration of each 6 months of accommodation in the special shelter for temporary accommodation of aliens, the court ex officio or upon an application by the alien concerned passes a decision in a closed session, for extension, change or for termination of the accommodation. The decision is subject to appeal under the terms and conditions of the Administrative Procedure Code.

<p>продължаване, замяна или прекратяване на настаняването. Определението подлежи на обжалване по реда на Административнопроцесуалния кодекс.</p>	
<p>Закон за защита на класифицираната информация</p> <p>Чл. 8. Държавната комисия по сигурността на информацията:</p> <ol style="list-style-type: none"> 1. организира, осъществява, координира и контролира дейността по защитата на класифицираната информация; 2. осигурява еднаквата защита на класифицираната информация; 3. осъществява своята дейност в тясно взаимодействие с органите на Министерството на отбраната, Министерството на вътрешните работи, Министерството на външните работи и службите за сигурност и за обществен ред. <p>Чл. 13. Редът за извършване на проверките по чл. 12 се определя с наредба, приета от Министерския съвет.</p> <p>Чл. 39а. (Нов - ДВ, бр. 89 от 2004 г.) (1) Не се извършва проучване за надеждност на лица при или във връзка с осъществяване на конституционното им право на защита.</p> <p>(2) Лицата по ал. 1 получават по право достъп до всички нива на класифицираната информация за времето, необходимо за упражняване на правото им на защита, и при спазване на принципа "необходимост да се знае".</p>	<p>Protection of Classified Information Act</p> <p>Art. 8. The State commission for the security of information shall:</p> <ol style="list-style-type: none"> 1. organise, implement, co-ordinate and control the activity for protection of the classified information; 2. ensure the equal protection of the classified information; 3. implement its activity in close co-operation with the Ministry of Defence, the Ministry of Interior, the Ministry of Foreign Affairs and the services for security and public order. <p>Art. 13. The order for implementing of the checks of art. 12 shall be determined with an ordinance, approved by the Council of Ministers.</p> <p>Art. 39a. (new – SG 89/04) (1) Investigation for reliability shall not be implemented at or in connection with implementing their constitutional right to defense.</p> <p>(2) The persons of para 1 shall receive by right access to all levels of classified information for the time, necessary for exercising their right to defense and observing the principle "need to be known".</p>
<p>Закон за омбудсмана</p> <p>Чл. 24 (1) (Предишен текст на чл. 24 - ДВ, бр. 29 от 2012 г., в сила от 11.05.2012 г.)</p>	<p>The Ombudsman Law</p> <p>Art. 24 (1) Complaints and alerts to the Ombudsman may be submitted by natural</p>

Жалби и сигнали пред омбудсмана могат да подават физически лица без разлика на гражданство, пол, политическа принадлежност или религиозни убеждения.

Наказателен кодекс

Чл. 162. (1) (Изм. - ДВ, бр. 27 от 2009 г., изм. - ДВ, бр. 33 от 2011 г., в сила от 27.05.2011 г.) Който чрез слово, печат или други средства за масова информация, чрез електронни информационни системи или по друг начин проповядва или подбужда към дискриминация, насилие или омраза, основани на раса, народност или етническа принадлежност, се наказва с лишаване от свобода от една до четири години и с глоба от пет хиляди до десет хиляди лева, както и с обществено порицание.

(2) (Изм. - ДВ, бр. 27 от 2009 г., изм. - ДВ, бр. 33 от 2011 г., в сила от 27.05.2011 г.) Който употреби насилие срещу друго или повреди имота му поради неговата раса, народност, етническа принадлежност, религия или политически убеждения, се наказва с лишаване от свобода от една до четири години и с глоба от пет хиляди до десет хиляди лева, както и с обществено порицание.

(3) (Изм. - ДВ, бр. 27 от 2009 г.) Който образува или ръководи организация или група, която си поставя за цел извършването на деяния по ал. 1 и 2 или системно допуска извършването на такива деяния, се наказва с лишаване от свобода от една до шест години и с глоба от десет хиляди до тридесет хиляди лева, както и с обществено порицание.

(4) Който членува в такава организация или група, се наказва с лишаване от

persons, irrespective of their citizenship, gender, political affiliation, or religious beliefs.

Criminal Code

Article 162 Who through speech, publications or other mass media, electronic information systems or other means preaches or abets to racial, national or ethnical hostility, hatred or racial discrimination through the means of communication as the press, mass media, electronic information systems or through the use of another means, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration.

(2) An individual who uses violence against another or damages his property in view of his nationality, race, ethnicity, religion or political convictions, is subjected to a penalty of imprisonment from 1 to 4 years, a fine from five to ten thousand leva and public execration.

(3) (Last amendment, SG No. 27/2009) An individual who forms or leads an organization or a group that has set itself the task of doing activities under para.1 and 2, or systematically tolerates the performance of such activities, is subjected to a penalty of imprisonment for a term from one to six years, a fine from ten to thirty BGN and a public execration.

(4) A person who is a member of such an organisation or group shall be punished by deprivation of liberty for up to three years and by public censure.

Article 163 (Last amendment, SG No. 27/2009) (1) The persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national,

<p>свобода до три години и с обществено порицание.</p> <p>(5) (Нова - ДВ, бр. 28 от 1982 г., в сила от 01.07.1982 г., изм. - ДВ, бр. 92 от 2002 г., в сила от 01.01.2005 г., изм. относно влизането в сила - ДВ, бр. 26 от 2004 г., в сила от 01.01.2004 г., отм. - ДВ, бр. 103 от 2004 г., в сила от 01.01.2005 г.)</p> <p>Чл. 163. (1) (Доп. - ДВ, бр. 27 от 2009 г.) Лицата, които участват в тълпа, събрана за нападение на групи от населението, отделни граждани или техни имоти във връзка с националната, етническата или расовата им принадлежност се наказват:</p> <ol style="list-style-type: none"> 1. подбудителите и предводителите - с лишаване от свобода до пет години; 2. (изм. - ДВ, бр. 103 от 2004 г., в сила от 01.01.2005 г.) всички други - с лишаване от свобода до една година или с пробация. <p>(2) Ако тълпата или някои от участниците са въоръжени, наказанието е:</p> <ol style="list-style-type: none"> 1. за подбудителите и предводителите - лишаване от свобода от една до шест години; 2. за всички други - лишаване от свобода до три години. <p>(3) Ако е извършено нападение и от него е последвала тежка телесна повреда или смърт, подбудителите и предводителите се наказват с лишаване от свобода от три до петнадесет години, а всички останали - с лишаване от свобода до пет години, когато не подлежат на по-тежко наказание.</p>	<p>ethnic or racial affiliation, shall be punished:</p> <ol style="list-style-type: none"> 1. the abettors and leaders - by deprivation of liberty for up to five years; 2. all others - by deprivation of liberty for up to one year or by probation. <p>(2) If the crowd or some of the participants are armed, the punishment shall be:</p> <ol style="list-style-type: none"> 1. for the abettors and leaders - deprivation of liberty for one to six years; 2. for all others - deprivation of liberty for up to three years. <p>(3) If an assault has been made which has resulted in severe bodily injury or death, the abettors and leaders shall be punished by deprivation of liberty for three to fifteen years, and all others - by deprivation of liberty for up to five years, if they are not liable to more severe punishment.</p>
<p>Закон за здравето</p> <p>чл.2 Опазването на здравето на гражданите като състояние на пълно физическо, психическо и социално</p>	<p>Law on Health</p> <p>Article 2 The preservation of the health of the citizens as a state of a complete physical, psychic and social welfare is a national</p>

благополучие е национален приоритет и се гарантира от държавата чрез прилагане на следните принципи:

1. равнопоставеност при ползване на здравни услуги;
2. осигуряване на достъпна и качествена здравна помощ, с приоритет за деца, бременни и майки на деца до една година;
5. особена здравна закрила на деца, бременни, майки на деца до една година и лица с физически увреждания и психически разстройства;

чл. 81 (1) Всеки български гражданин има право на достъпна медицинска помощ при условията и по реда на този закон и на Закона за здравното осигуряване.

(2) Правото на достъпна медицинска помощ се осъществява при прилагане на следните принципи:

1. своевременност, достатъчност и качество на медицинската помощ;
2. равнопоставеност при оказване на медицинската помощ с приоритет за деца, бременни и майки на деца до 1 година;
3. сътрудничество, последователност и координираност на дейностите между лечебните заведения;
4. зачитане правата на пациента.

чл. 82 (1) Извън обхвата на задължителното здравно осигуряване на българските граждани се предоставят медицински услуги, които са свързани със:

1. медицинска помощ при спешни състояния;
2. (нова - ДВ, бр. 59 от 2006 г., в сила от 01.01.2007 г., доп. - ДВ, бр. 41 от 2009 г., в сила от 01.07.2009 г.) профилактични прегледи и изследвания и акушерската

priority and shall be guaranteed by the state through applying the following principles:

1. equality in using health services;
2. providing accessible and qualitative health care, with priority for children, pregnant women and mothers of children up to one year;
5. special health protection of children, pregnant women and mothers of children up to one year of age and handicapped and mentally disordered persons ;

Article 81 Each Bulgarian citizen shall have right to accessible medical care under the conditions and by the order of the Law of the health insurance.

(2) The right to accessible medical care shall be implemented applying the following principles:

1. timeliness, sufficiency and quality of the medical care;
2. equality at rendering medical care with priority for children, pregnant and mothers of children up to 1 year of age;
3. cooperation, consistency and coordination of the activities between the medical establishments;
4. respect to the rights of the patient.

Article 82 . (1) Out of the scope of the compulsory health insurance of the Bulgarian citizens shall be conceded medical services, connected to:

1. medical aid at emergency status;
2. stationary psychiatric care;
3. prophylactic examinations, tests and midwifery care for all women who are not health-insured, regardless of the manner of birth, by scope and by order, determined by an ordinance of the Minister of Health;

<p>ПОМОЩ за всички здравно неосигурени жени, независимо от начина на родоразрешение, по обхват и по ред, определени с наредба на министъра на здравеопазването;</p> <p>3. (предишна т. 2 - ДВ, бр. 59 от 2006 г., в сила от 01.01.2007 г.) стационарна психиатрична помощ;</p> <p>4. (предишна т. 3 - ДВ, бр. 59 от 2006 г., в сила от 01.01.2007 г.) осигуряване на кръв и кръвни продукти;</p> <p>5. (предишна т. 4 - ДВ, бр. 59 от 2006 г., в сила от 01.01.2007 г.) трансплантация на органи, тъкани и клетки;</p> <p>6. (предишна т. 5 - ДВ, бр. 59 от 2006 г., в сила от 01.01.2007 г.) задължително лечение и/или задължителна изолация;</p> <p>7. (предишна т. 6 - ДВ, бр. 59 от 2006 г., в сила от 01.01.2007 г., доп. - ДВ, бр. 41 от 2009 г., в сила от 01.07.2009 г.) експертизи за вид и степен на увреждане и трайна неработоспособност;</p> <p>8. заплащане на лечение за заболявания по ред, определен от министъра на здравеопазването;</p> <p>9. медицински транспорт по ред, определен от министъра на здравеопазването;</p> <p>10. (нова - ДВ, бр. 106 от 2013 г., в сила от 01.01.2014 г.) асистирана репродукция.</p> <p>(2) Всеки български гражданин ползва:</p> <p>1. ваксини за задължителни имунизации и реимунизации, ваксини по специални показания и при извънредни обстоятелства, специфични серуми, имуноглобулини и други биопродукти, свързани с профилактиката на заразните болести, както и техническите средства за прилагането им.</p> <p>2. пълен обем от противоепидемични дейности;</p>	<p>4. ensuring blood and blood products;</p> <p>5. transplantation of organs, tissues and cells;</p> <p>6. compulsory treatment and/or compulsory isolation;</p> <p>7. expertises for degree of damages and durable inability to work;</p> <p>8. payment of treatment for diseases according to an order, determined by the Minister of Health;</p> <p>9. medical transport by order, determined by the Minister of Health;</p> <p>10. assisted reproduction.</p> <p>(2) Each Bulgarian citizen shall use:</p> <p>1. vaccines for obligatory immunisations and re-immunisations, vaccines at special indications and upon extraordinary circumstances, specific serums, immunoglobulins and other bio-products, connected with the prophylactics of the infectious diseases as well as the technical means for their application;</p> <p>2. full amount of anti-epidemic activities;</p> <p>3. access to health activities, included in national, regional and municipal health programmes.</p> <p>(3) The children up to 16 years of age shall have right to medical care out of the scope of the obligatory health insurance.</p> <p>(4) The children, accommodated in medical establishments of art. 5, para 1 of the Law of the medical establishments, shall have right to medical - social care free of charge.</p> <p>Article 83 (1) The foreigners, who have received permanent residence permit in the Republic of Bulgaria is permitted, shall use medical care of art. 81 and 82 equally with the Bulgarian citizens.</p> <p>Article 87, para. 1 The medical activities shall be implemented after expressed informed</p>
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3. ДОСТЪП ДО ЗДРАВНИ ДЕЙНОСТИ, ВКЛЮЧЕНИ В НАЦИОНАЛНИ, РЕГИОНАЛНИ И ОБЩИНСКИ ЗДРАВНИ ПРОГРАМИ.

(3) Децата до 16-годишна възраст имат право на медицинска помощ извън обхвата на задължителното здравно осигуряване.

(4) Децата, настанени в лечебни заведения по чл. 5, ал. 1 от Закона за лечебните заведения, имат право на безплатни медико-социални грижи.

чл. 83 (Изм. - ДВ, бр. 95 от 2006 г., в сила от 24.11.2006 г.) (1) (Доп. - ДВ, бр. 9 от 2011 г.) Чужденците, на които е разрешено дългосрочно или постоянно пребиваване в Република България, се ползват с медицинска помощ по чл. 81 и 82 наравно с българските граждани.

(3) Чуждестранните студенти и докторанти, приети за обучение във висши училища и научни организации у нас по реда на Постановление № 103 на Министерския съвет от 1993 г. за осъществяване на образователна дейност сред българите в чужбина и Постановление № 228 на Министерския съвет от 1997 г. за приемане на граждани на Република Македония за студенти в държавните висши училища на Република България, се ползват с медицинска помощ по чл. 81 и 82 наравно с българските граждани.

чл. 87 (1) Медицинските дейности се осъществяват след изразено информирано съгласие от пациента.

чл. 136 Всяка форма на дискриминация срещу едно лице, основана на неговия геном, е забранена.

consent by the patient.

Article 136 Each form of discrimination against a person, based on his genome, shall be prohibited.

Law on Health Insurance

Articles 33 (1) (Amended, SG No. 110/1999, redesignated from Article 33, SG No. 95/2006, effective 1.01.2007) The following shall be covered by compulsory insurance provided by the National Health Insurance Fund:

4. (supplemented, SG No. 54/2002) all persons who have been recognized refugee status or humanitarian status or who has been afforded a right of asylum in Bulgaria;

Article 35 (1) (Previous text of Article 35, SG No. 48/2015) Any person covered by compulsory health insurance shall be entitled: 1. (amended, SG No. 107/2002, SG No. 48/2015) to receive medical care within the scope of the package of health-care activities guaranteed by the budget of the National Health Insurance Fund;

2. (amended, SG No. 101/2009, effective 18.12.2009) to choose a physician from a primary medical care institution that has concluded a contract with the RHIF;

3. to receive emergency care wherever he or she may be;

4. to obtain information from the Regional Health Insurance Fund about the contracts concluded by the said fund with the medical care providers;

5. to participate in the management of the National Health Insurance Fund through own representatives thereof;

6. to lodge complaints with the Director of the competent Regional Health Insurance Fund about any violation of the law or

<p>Закон за здравното осигуряване</p> <p>чл. 33 (1) Задължително осигурени в Националната здравноосигурителна каса са:</p> <p>4.лицата с предоставен статут на бежанец, хуманитарен статут или с предоставено право на убежище</p> <p>чл. 35 (1) (Предишен текст на чл. 35 - ДВ, бр. 48 от 2015 г.) Задължително осигурените имат право:</p> <ol style="list-style-type: none"> 1. (изм. - ДВ, бр. 107 от 2002 г., изм. - ДВ, бр. 48 от 2015 г.) да получават медицинска помощ в обхвата на пакета от здравни дейности, гарантиран от бюджета на НЗОК; 2. (изм. - ДВ, бр. 101 от 2009 г., в сила от 18.12.2009 г.) да избират лекар от лечебно заведение за първична медицинска помощ, сключило договор с РЗОК; 3. на спешна помощ там, където попаднат; 4. да получават информация от РЗОК за договорите, сключени от нея с изпълнителите на медицинска помощ; 5. да участват в управлението на НЗОК чрез свои представители; 6. да подават жалби пред директора на съответната РЗОК при нарушения на закона и на договорите; 7. (нова - ДВ, бр. 95 от 2006 г., в сила от 01.01.2007 г.) да получат документ, необходим за упражняване на здравноосигурителните им права в съответствие с правилата за координация на системите за социална сигурност; 8. (нова - ДВ, бр. 1 от 2014 г., в сила от 03.01.2014 г.) на трансгранично здравно обслужване по реда на глава втора, раздел XII. 	<p>breach of contract;</p> <ol style="list-style-type: none"> 7. (new, SG No. 95/2006, effective 1.01.2007) to obtain a document required for exercise of the health insurance entitlement thereof in accordance with the rules for coordination of social security schemes; 8. (new, SG No. 1/2014, effective 3.01.2014) to cross-border healthcare in accordance with the procedure laid down in Chapter Two, Section XII. <p>(2) (New, SG No. 48/2015) Persons with compulsory health insurance shall have the right to lodge complaints to the Director of the respective RHIF where they are dissatisfied with the medical activities related to the medical care delivered. Complaints shall be lodged in accordance with the procedure provided for by Chapter Two, Section X, and shall specify reasons and indicate at least one of the following grounds: 1. a medical activity which has been accounted for but not performed;</p> <ol style="list-style-type: none"> 2. medical care quality not meeting the quality criteria laid down in the National Framework Agreements; 3. denied access to medical documentation; 4. amounts of money received by a medical or dental care provider on no legal grounds. <p>Article 34 (1) The health insurance obligation shall arise as follows:</p> <ol style="list-style-type: none"> 2. (amended, SG No. 107/2002, SG No. 95/2006, effective 1.01.2007, supplemented, SG No. 9/2011) in respect of all persons covered under Item 3 of Article 33 (1) herein: as of the date of receipt of a long-term or permanent residence permit; 3. (amended, SG No. 54/2002, SG No. 95/2006, effective 1.01.2007) in respect of all persons covered under Item 4 of Article 33 (1) herein: as of the date of initiation of a procedure for recognition of refugee status
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(2) (Нова - ДВ, бр. 48 от 2015 г.)
Задължително осигурените лица имат право да подават жалби пред директора на съответната РЗОК, когато не са удовлетворени от медицинските дейности, свързани с оказаната медицинска помощ. Жалбата се подава по реда на глава втора, раздел X, като в нея се описват причините и се посочва най-малко едно от следните основания:

1. отчетена, но неизвършена медицинска дейност;
2. качество на медицинската помощ, което не съответства на критериите за качество, определени в националните рамкови договори;
3. отказан достъп до медицинска документация;
4. получени от изпълнителя на медицинска или дентална помощ суми без правно основание.

чл. 34 (1) Задължението за осигуряване възниква:

2. по чл. 33, ал. 1, т. 3 - от датата на получаването на разрешение за дългосрочно или постоянно пребиваване;
3. по чл. 33, ал. 1, т. 4 - от датата на откриването на производство за предоставяне статут на бежанец или право на убежище;
4. по чл. 33, ал. 1, т. 5 - от датата на записването в съответното висше училище или научна организация;

чл.40 (1) Здравноосигурителната вноска на осигуреното лице, определена по реда на чл. 29, ал. 3, се определя върху доход и се внася, както следва:

1. за лицата по чл. 4, ал. 1 и 10 от Кодекса за социално осигуряване - доходът, върху

or for affording a right of asylum;

4. (new, SG No. 18/2006, amended, SG No. 95/2006, effective 1.01.2007) in respect of all persons covered under Item 5 of Article 33 (1) herein: since the date of enrolment at the relevant higher school or research organization;

Article 40 (1) The health insurance contributions in respect of any insured person, due at a rate set according to the procedure established by Article 29 (3) herein, shall be charged on an income arrived at as follows and shall be remitted as follows:

1. in respect of any person under Article 4, Paragraphs 1 and 10 of the Social Insurance Code the income whereon public social insurance contributions are due, arrived at according to the Social Insurance Code; the contribution is deposited by the employer or the organisation and shall be shared by the employer or the organization and by the insured in the following ratio:

- in 2000 and 2001: 80 to 20;

- in 2002 to 2004: 75 to 25;

- in 2005: 70 to 30;

- in 2006: 65 to 35;

- in 2007: 65 to 35;

- in 2008: 60 to 40;

- in 2009: 60:40;

- in 2010 and thereafter: 60:40

(a) the health insurance contributions shall be entirely for the account of the employer or the central-government department, where so provided for in a statute;

(b) in respect of any persons on unpaid leave, who are not subject to health insurance on another ground, the health insurance contribution shall be charged on one half of the minimum amount of contributory monthly income applicable to self-insured

който се дължат вноски за държавното обществено осигуряване, определен съгласно Кодекса за социално осигуряване; вноската се внася от работодателя или ведомството и се разпределя между работодателя или ведомството и осигурения в съотношение:

- 2000 - 2001 г. - 80:20;

- 2002 - 2004 г. - 75:25;

- 2005 г. - 70:30;

- 2006 г. - 65:35;

- 2007 г. - 65:35;

- 2008 г. - 60:40;

- 2009 г. - 60:40;

- 2010 г. и следващите години - 60:40:

а) осигурителните вноски са изцяло за сметка на работодателя или ведомството, когато това е предвидено в закон;

б) за лицата в неплатен отпуск, които не подлежат на осигуряване на друго основание, вноската се определя върху половината от минималния месечен размер на осигурителния доход за самоосигуряващите се лица, определен със Закона за бюджета на държавното обществено осигуряване; вноската е изцяло за сметка на осигуреното лице - когато неплатеният отпуск е по негово желание, и за сметка на работодателя - когато неплатеният отпуск е за отглеждане на дете по реда на чл. 165, ал. 1 и чл. 167а от Кодекса на труда или поради производствена необходимост и престой; вноската се внася чрез съответното предприятие или организация до 25-о число на месеца, следващ този, за който се отнася;

в) осигурителните вноски за здравно осигуряване се внасят едновременно с осигурителните вноски за държавното обществено осигуряване;

persons, as fixed by the Public Social Insurance Budget Act; the said contribution shall be paid entirely for the account of the insured person where the unpaid leave has been granted at the request of the said person, and for the account of the employer, where the unpaid leave is for child care as laid down in Article 165, Paragraph 1 and Article 167a of the Labour Code or due to production necessity and idling; the said contribution shall be remitted care of the relevant enterprise or organization prior to the 25th day of the month next succeeding the month wherefor the said contribution is due;

(c) (amended, SG No. 105/2006) the health insurance contributions shall be remitted simultaneously with the public social insurance contributions;

(d) persons under Article 4, Paragraph 3, items 1, 2 and 4 of the Social Security Code are insured in advance on a monthly income which may not be lower than the minimum amount of contributory monthly income applicable to self-insured persons and the registered farmers and tobacco growers as fixed by the Public Social Insurance Budget Act, and finally on the income accruing from the activity and the income covered under Item 3 during the calendar year, according to the statement with the tax return under the procedure established by Article 6 (9) of the Social Security Code; any registered farmers and tobacco growers producing unprocessed plant and/or animal produce shall not establish a final amount of contributory income in respect of such activity; the contributions shall be remitted at the expense of the self-insured persons on or before the 25th day of the month next succeeding the month whereto the said

г) лицата по чл. 4, ал. 3, т. 1, 2 и 4 от Кодекса за социално осигуряване се осигуряват авансово върху месечен доход, който не може да бъде по-малък от минималния месечен размер на осигурителния доход за самоосигуряващите се лица и за регистрираните земеделски стопани и тютюнопроизводители, определени със Закона за бюджета на държавното обществено осигуряване, и окончателно върху доходите от дейността и доходите по т. 3, през календарната година, съгласно справка към данъчната декларация по реда на чл. 6, ал. 9 от Кодекса за социално осигуряване; регистрираните земеделски стопани и тютюнопроизводители, произвеждащи непреработена растителна и/или животинска продукция, не определят окончателен размер на осигурителния доход за тази дейност; вноските се внасят за сметка на самоосигуряващите се лица до 25-о число на месеца, следващ месеца, за който се отнасят, а окончателната осигурителна вноска най-късно в срока за подаване на данъчната декларация по чл. 50 от Закона за данъците върху доходите на физическите лица;

2а. морските лица се осигуряват изцяло за своя сметка върху избрания месечен осигурителен доход по чл. 4а, ал. 1 от Кодекса за социално осигуряване, като не определят окончателен размер на осигурителния доход за доходите от трудово правоотношение като морски лица; вноската се удържа и внася от работодателя на лицата по реда на чл. 4а, ал. 7 от Кодекса за социално осигуряване;

3. за лицата, работещи без трудово правоотношение:

contributions apply and the final insurance contribution at latest during the term for the filing of the tax returns under Article 50 of the Income Taxes on Natural Persons Act;

2a. seamen shall be insured entirely at their own expense on the selected monthly contributory income referred to in Article 4a, Paragraph 1 of the Social Security Code, and shall not determine a final amount of the contributory income for their income under employment relationships as seamen; the contributions shall be withheld and paid in by the employer of the individuals in accordance with the procedure of Article 4a, Paragraph 7 of the Social Security Code;

3. in respect of any persons who work without entering into an employment relationship:

(a) if the said persons are not covered by health insurance according to the procedure established by Items 1 and 2 and receive a remuneration equal to or greater than the national minimum wage: on the taxable income, after debiting the said income with the expenses needed for the activity; where the remuneration received does not exceed the national minimum wage, after debiting the said remuneration with the expenses allowed for standard deduction, health insurance contributions shall be charged according to the procedure established by Paragraph (5);

(b) (amended, SG No. 101/2009, effective 18.12.2009) if the said persons are not charged health insurance contributions according to the procedure established by Item 1, the health insurance contributions shall be remitted on the taxable income, after debiting the said income with the expenses needed for the activity, regardless of the amount of the remuneration received;

а) ако не се осигуряват по реда на т. 1, 2 и 2а и получават възнаграждение, равно или по-голямо от минималната работна заплата за страната, върху облагаемия доход, след намаляването му с разходите за дейността; когато е получено възнаграждение под минималната работна заплата за страната, след намаляването му с разходите за дейността, осигуряването се извършва по реда на ал. 5;

б) ако са осигурени по реда на т. 1, осигурителните вноски се внасят върху облагаемия доход, след намаляването му с разходите за дейността, независимо от размера на полученото възнаграждение;

в) осигурителните вноски се внасят в съотношението по т. 1 от възложителя до 25-о число на месеца, следващ месеца на изплащане на възнаграждението;

4. за пенсионерите от държавното обществено осигуряване или от професионален пенсионен фонд - размерът на пенсията или сборът от пенсии, без добавките към тях; вноските са за сметка на държавния бюджет и се внасят до 10-о число на месеца, следващ този, за който се отнасят;

5. за лицата във временна неработоспособност поради болест, бременност и раждане, в отпуск за отглеждане на малко дете по реда на чл. 164, ал. 1 и 3 от Кодекса на труда и отпуск при осиновяване на дете от 2- до 5-годишна възраст по реда на чл. 164б, ал. 1 и 4 от Кодекса на труда - минималният осигурителен доход за самоосигуряващите се лица; вноските са за сметка на работодателя и са равни на дължимата от него част от вноската, като се внасят до 25-о число на месеца,

(c) the [health] insurance contributions shall be remitted in the ratio under Item 1 by the client on or before the 25th day of the month next succeeding the month in which the remuneration is paid;

4. in respect of any pensioner from the public insurance or from an occupational pension fund: the amount of the pension or the sum total of the pensions less the supplements thereto; any such health insurance contributions shall be for the account of the State Budget and shall be remitted on or before the 10th day of the month next succeeding the month wherefor the said contributions are due;

5. in respect of any persons temporarily disabled through illness, pregnancy and child-birth, leave for child-care as laid down in Article 164, Paragraphs 1 and 3 of the Labour Code, and leave for adoption of a child aged between 2 and 5 years as laid down in Article 164b, Paragraphs 1 and 4 of the Labour Code: the minimum contributory income applicable to self-insured persons; any such contributions shall be for the account of the employer and shall be equal to the part of the contribution due therefrom, and shall be remitted on or before the 25th day of the month next succeeding the month wherefor the said contributions apply; the [health] insurance contributions in respect of any persons who are insured for their own account, except for the persons under Article 4, Paragraph 9 of the Social Security Code, shall be in the same amount and shall be remitted on or before the 25th day of the month next succeeding the month wherefor the said contributions apply, on the minimum contributory income applicable to self-insured persons or, respectively, to registered farmers and tobacco producers, as

следващ месеца, за който се отнасят; осигурителните вноски за лицата, които се осигуряват за своя сметка, с изключение на лицата по чл. 4, ал. 9 от Кодекса за социално осигуряване, са в същия размер и се внасят до 25-о число на месеца, следващ месеца, за който се отнасят, върху минимален осигурителен доход за самоосигуряващите се лица, съответно за регистрираните земеделски стопани и тютюнопроизводители, определен със Закона за бюджета на държавното обществено осигуряване за съответната година. За възнаграждението по чл. 40, ал. 5 от Кодекса за социално осигуряване осигурителните вноски се дължат по реда на т. 1;

6. за лицата, получаващи доходи на различни основания, посочени в т. 1, 2, 2а, 3, 4 и 5, вноските се внасят върху сбора от осигурителните доходи и в предвидените за тях срокове по реда, определен в чл. 4а, ал. 6 и чл. 6, ал. 11 от Кодекса за социално осигуряване;

7. за служителите на Българската православна църква и други признати по нормативноустановен ред вероизповедания, които не получават възнаграждения за извършвана дейност - минималният осигурителен доход за самоосигуряващите се лица, определен със Закона за бюджета на държавното обществено осигуряване; вноските се внасят до 25-о число на месеца, следващ този, за който се отнасят, от централното ръководство на съответното вероизповедание;

8. за лицата, получаващи обезщетение за безработица - размерът на изплатеното обезщетение; вноските са за сметка на държавния бюджет и се внасят до 10-о

fixed by the Public Social Insurance Budget Act for the relevant year. As to remuneration under Article 40, Paragraph 5 of the Social Security Code, the insurance contributions shall be due under the terms of item 1;

6. in respect of any person deriving income from various sources specified in Items 1, 2, 2a, 3, 4 and 5, the contributions shall be charged on the sum total of the contributory incomes and shall be remitted within the time limits provided thereof according to the procedure established by Article 4a, Article 6, Paragraph 11 of the Social Security Code;

7. in respect of any minister of the Bulgarian Orthodox Church and any other religion recognized according to a statutorily established procedure, who do not receive remunerations for activity performed: the minimum contributory income applicable to self-insured persons, as fixed by the Public Social Insurance Budget Act; any such health insurance contributions shall be remitted by the central governing body of the respective religion on or before the 25th day of the month next succeeding the month wherefor the said contributions are due;

8. in respect of any recipient of unemployment benefit: the amount of the benefit as paid; any such health insurance contributions shall be for the account of the state budget and shall be remitted on or before the 10th day of the month next succeeding the month wherefor the said contributions are due.

(3) item 7 (renumbered from Item 6, SG No. 18/2006) any person in respect of whom a procedure for recognition of refugee status or for affording a right of asylum has been initiated;

Article 109, (Amended, SG No. 110/1999, SG No. 111/2004, SG No. 101/2009,

число на месеца, следващ този, за който се отнасят.

(3), т.7 (предишна т. 6 - ДВ, бр. 18 от 2006 г., в сила от 01.01.2007 г.) лицата в производство за предоставяне на статут на бежанец или право на убежище;

чл. 109 (1) (Изм. - ДВ, бр. 110 от 1999 г., в сила от 01.01.2000 г., изм. - ДВ, бр. 111 от 2004 г., в сила от 21.12.2004 г., изм. - ДВ, бр. 101 от 2009 г., в сила от 01.02.2010 г.)

(1) Здравноосигурителните права на лицата, които са длъжни да внасят осигурителни вноски за своя сметка, се прекъсват, в случай че лицата не са внесли повече от три дължими месечни осигурителни вноски за период от 36 месеца до началото на месеца, предхождащ месеца на оказаната медицинска помощ. Лицата с прекъснати здравноосигурителни права заплащат оказаната им медицинска помощ.

Закон за убежището и бежанците

чл. 29 (4) (Доп. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г.) Чужденецът се настанява в транзитен, регистрационно-приемателен център или на друго място за подслон от Държавната агенция за бежанците след преценка на здравословното състояние, семейното и материалното положение на чужденца при условия и по ред, определени от председателя на Държавната агенция за бежанците. Чужденецът се подлага на медицински преглед и изследвания и остава под карантина, докато станат известни резултатите. При медицинския преглед се установява дали чужденецът, търсещ международна закрила, принадлежи към уязвима група и дали има специални потребности.

(5) (Нова - ДВ, бр. 80 от 2015 г., в сила от

effective 1.02.2010) (1) Any insurance entitlements of persons, who are obligated to remit insurance contributions for their own account, shall be terminated in the cases when the persons have failed to remit more than three outstanding monthly insurance contributions for a period of 36 months until the beginning of the month preceding the month of provision of medical care. Any such persons with terminated health insurance rights shall pay for medical care provided

Law on Asylum and Refugees

Article 29 (4) (Supplemented, SG No. 80/2015, in force from 16.10.2015) Aliens shall be accommodated in a transit centre, a registration-and-reception centre or another type of accommodation facility provided by the State Agency for Refugees following an assessment of the alien's health condition, marital status and financial situation under terms and procedure established by the Chairperson of the State Agency for Refugees. The aliens shall undergo a medical examination and health tests and shall remain under quarantine until the results are ready. The medical examination shall determine whether an applicant for international protection belongs to a vulnerable group and whether he/she has special needs.

(5) (New, SG No. 80/2015, in force from 16.10.2015) The medical examinations shall be carried out at the medical units of the territorial structures. The operation of the medical units shall be ensured by a medical doctor, a nurse or feldscher.

Article 32 (1) (Amended, SG No. 52/2007) An alien who has been granted refugee status shall have the rights and obligations of a Bulgarian national with the exception of:

1. the right to participate in general and

16.10.2015 г.) Медицинският преглед се осъществява в здравни кабинети към териториалните поделения. Дейността на здравните кабинети може да се осъществява от лекар, медицинска сестра или фелдшер.

чл. 32 (1) (Изм. - ДВ, бр. 52 от 2007 г.) Чужденец с предоставен статут на бежанец има правата и задълженията на български гражданин, с изключение на:

1. правото да участва в избори за държавни и местни органи, в национални и местни референдуми, както и да участва в създаването и да членува в политически партии;
2. да заема длъжности, за които със закон се изисква българско гражданство;
3. да бъде военнослужещ;
4. други ограничения, изрично предвидени със закон.

чл. 58 (8) (Изм. и доп. - ДВ, бр. 52 от 2007 г., изм. и доп. - ДВ, бр. 80 от 2015 г., в сила от 16.10.2015 г., предишна ал. 6, изм. - ДВ, бр. 101 от 2015 г.) Молителят, не по-късно от 15 дни от подаването на молбата, се информира писмено на разбираем за него език, за процедурата, която ще се следва, и за неговите права и задължения, както и за организации, предоставящи правна и социална помощ на чужденци. Когато обстоятелствата налагат това, тази информация може да бъде предоставена устно.

чл. 61 (5) (Нова - ДВ, бр. 101 от 2015 г.) При разглеждане на молбите по преценка на интервюиращия орган може да бъде поискано становището на експерт по определени въпроси, свързани с медицински, психологични, културни или

municipal elections, in national and regional referenda, as well as to participate in the establishment of political parties and be a member of such parties;

2. the right to hold positions for which Bulgarian citizenship is required by law;
3. the right to serve in the army;
4. other restrictions explicitly laid down by law.

Article 58 (8) Not later than 15 days after filing the application, the applicant shall be informed in writing in a language he/she understands about the conditions for lodging the application, the procedure to follow, and his/her rights and obligations, as well as the organizations providing legal and social assistance to aliens. Where the circumstances so require, this information may be presented in an oral form.

Article 61 (5) (New, SG No. 101 of 2015) When examining the applications, the opinion of an expert on certain issues related to medical, psychological, cultural or religious aspects, with the children or the sex may be requested at the discretion of the interviewing body .

(6) The interviewing authority may request that a foreigner's medical examination shall be carried out, with his/her consent, in connection with traces that may be of past persecution or serious harm. The alien's refusal to conduct a medical examination is not does not affect the decision. The medical examination may also be carried out at the initiative of the alien and at their expense.

<p>религиозни аспекти, с децата или пола. (6) (Нова - ДВ, бр. 101 от 2015 г.) Интервюиращият орган може да поиска да бъде извършен медицински преглед на чужденеца с негово съгласие във връзка със следи, които може да са от минало преследване или тежки посегателства. Отказът на чужденеца от провеждане на медицински преглед не е пречка за вземане на решение. Медицинският преглед може да се проведе и по инициатива на чужденеца и за негова сметка.</p>	
<p>Наредба за държавните изисквания за признаване на придобито висше образование и завършени периоди на обучение в чуждестранни висши училища</p> <p>Чл. 2. Право на признаване на придобито висше образование и на завършени периоди на обучение в чуждестранни висши училища имат български граждани, чужденци и лица със статут на бежанци, които са се обучавали във висши училища, създадени и функциониращи по законоустановения ред в страната, в която е придобито висшето образование, или са завършени периодите на обучение.</p> <p>Чл. 5. Признаването на висше образование, придобито в чуждестранни висши училища, е официално писмено потвърждение на стойността на дипломата за висше образование или на друг аналогичен документ, издаден от образователна институция, призната от компетентен държавен орган за част от системата на светското висше образование на съответната държава.</p>	<p>Regulation on State Requirements for Recognition of Acquired Higher Education and Completed Time Periods of Education in Another Country</p> <p>Art. 2. The right of acknowledgment of acquired higher education and for completed time periods of studies in foreign universities is available to all Bulgarian citizens, foreigners, and refugees, who have studied at universities, established and functioning according to the law in the State, in which they finished their education.</p> <p>Art. 5. The acknowledgment of Higher education acquired in foreign universities is official written confirmation for the value of the High education diploma or another similar document, issued by educational jurisdiction, approved by competent authority for the part of the Higher education in the respective State.</p> <p>§ 1. Persons, who under unexpected</p>

<p>§ 1. Лица, които по независещи от тях причини, като природни бедствия, крупни аварии или военни действия на територията на държавата, в която са се обучавали, не могат да представят диплома за висше образование или документ, удостоверяващ завършен период на обучение, могат да поискат установяване на тези факти от съда по реда на Гражданския процесуален кодекс.</p>	<p>circumstances such as natural disasters, great emergency or military actions in the country they had their education, cannot provide diploma for higher education or another document certifying finished time period of studies, can ask from the court to establish the relevant fact under the Civil Procedure Code.</p>
<p>Закон за българското гражданство</p> <p>Чл. 3. Български гражданин, който е и гражданин на друга държава, се смята само за български гражданин при прилагането на българското законодателство, освен ако в закон е предвидено друго.</p> <p>Чл. 9 Български гражданин по произход е и всяко лице, което е припознато от български гражданин или чийто произход от български гражданин е установен със съдебно решение.</p> <p>Чл. 11. Смята се, че е родено на територията на Република България дете, намерено на тази територия, чиито родители са неизвестни.</p> <p>Чл. 12. (1) (Предишен текст на чл. 12 - ДВ, бр. 108 от 2013 г.) Лице, което не е български гражданин, може да придобие българско гражданство, ако към датата на подаване на молбата за натурализация:</p> <ol style="list-style-type: none"> 1. е пълнолетно; 2. (доп. - ДВ, бр. 21 от 2012 г.) преди не по-малко от 5 години е получило разрешение за постоянно или дългосрочно пребиваване в Република България; 	<p>Bulgarian Citizenship Act</p> <p>Art. 3 Any Bulgarian citizen who is also a citizen of another state shall only be considered a Bulgarian citizen in the application of the Bulgarian legislation unless otherwise provided for by law.</p> <p>Art. 9 Any person who has been fathered by a Bulgarian citizen or whose descent from a Bulgarian citizen has been established by way of a court ruling shall be a Bulgarian citizen by origin.</p> <p>Art.11 Any child found in the territory of the Republic of Bulgaria whose parents are unknown shall be deemed as born in this territory.</p> <p>Art. 12 Any person who is not a Bulgarian citizen may acquire Bulgarian citizenship if as of the date of filing an application for naturalization:</p> <ol style="list-style-type: none"> 1. is a major; 2. was granted permission for permanent residence in the Republic of Bulgaria not less than five years ago; 3. has not been sentenced by a Bulgarian court for a premeditated crime of a general nature and has not been the subject of criminal proceedings for such a crime unless

3. не е осъждано за умишлено престъпление от общ характер от български съд и срещу него няма образувано наказателно производство за такова престъпление, освен ако е реабилитирано;

4. (изм. - ДВ, бр. 41 от 2001 г.) има доход или занятие, което му дава възможност да се издържа в Република България;

5. (изм. и доп. - ДВ, бр. 41 от 2001 г., изм. - ДВ, бр. 74 от 2009 г., в сила от 15.09.2009 г., изм. - ДВ, бр. 68 от 2013 г., в сила от 02.08.2013 г.) владее български език, което се установява по ред, определен с наредба на министъра на образованието и науката,

и
6. (нова - ДВ, бр. 41 от 2001 г.) е освободено от досегашното си гражданство или ще бъде освободено от него към момента на придобиване на българско гражданство.

(2) (Нова - ДВ, бр. 108 от 2013 г.) Не се изисква освобождаване от досегашното им гражданство за:

1. лица - съпрузи на български граждани;
2. граждани на държава - членка на Европейския съюз, на държава - страна по Споразумението за Европейското икономическо пространство, или на Конфедерация Швейцария;
3. граждани на държави, с които Република България има сключени договори, с които се установява взаимност.

. 13. (Изм. и доп. - ДВ, бр. 41 от 2001 г., доп. - ДВ, бр. 21 от 2012 г., изм. - ДВ, бр. 108 от 2013 г.) Лице, което не е български гражданин, отговаря на условията по чл. 12, ал. 1, т. 1, 3, 4, 5 и би преди не по-малко от 3 години към датата на подаване

the person concerned has been rehabilitated;
4. has an income and occupation enabling him/her to support himself/herself in the Republic of Bulgaria;
5. has a command of the Bulgarian language subject to verification in accordance with a procedure established by an order of the Minister of Education and Culture, and
6. (New SG No. 41/2000) was released from his/her previous citizenship or will be released from his/her citizenship as of the moment of acquiring the Bulgarian citizenship.

Art. 13 Any person who is not a Bulgarian citizen, satisfies the conditions under Article 12, sub-paragraphs 1, 3, 4, 5 and 6 and, not less than three years as of the date of filing the application for naturalization, was granted permission for permanent residence in the Republic of Bulgaria may acquire Bulgarian citizenship if he/she also meets one of the following requirements:

на молбата за натурализация е получило разрешение за постоянно или дългосрочно пребиваване в Република България, може да придобие българско гражданство, ако отговаря и на едно от следните изисквания:

1. не по-малко от 3 години има и продължава да е в законно сключен брак с български гражданин;
2. (отм. - ДВ, бр. 41 от 2001 г.)
3. родено е в Република България;
4. (доп. - ДВ, бр. 21 от 2012 г.) разрешението за постоянно или дългосрочно пребиваване е получено преди да навърши пълнолетие.
5. (отм. - ДВ, бр. 41 от 2001 г.)

Чл. 14. (Изм. - ДВ, бр. 41 от 2001 г., доп. - ДВ, бр. 21 от 2012 г., изм. - ДВ, бр. 108 от 2013 г.) Лице без гражданство може да придобие българско гражданство, ако отговаря на условията по чл. 12, ал. 1, т. 1, 3, 4 и 5 и преди не по-малко от 3 години към датата на подаване на молбата за натурализация има разрешение за постоянно или дългосрочно пребиваване в Република България.

Чл. 25. Лишаването от гражданство на единия съпруг не променя гражданството на другия съпруг и на децата.

1. has been, for at least three years, and still is, legally married to a Bulgarian citizen;
 2. (Repealed SG No. 41/2001);
 3. was born in the Republic of Bulgaria;
 4. was granted permission for permanent residence before he/she became of age;
 5. (Repealed SG No. 41/2001).
- Article 13a(New SG No. 41/2001)
Any person who was granted a refugee status not less than three years before the date of filing the application for naturalization may acquire Bulgarian citizenship if he/she meets the requirements under Article 12, sub-paragraphs 1, 3, 4 and 5.

Art.14 (Amended SG No. 41/2001)
Any person without citizenship may acquire Bulgarian citizenship if he/she satisfies the conditions under Article 12, sub-paragraphs 1, 3, 4 and 5 and, not less than three years as of the date of filing an application for naturalization, was granted permission for permanent residence in the Republic of Bulgaria.

Art.25 Deprivation of citizenship of one of the spouses shall not affect the citizenship of the other spouse and the children.

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Introduction

The following text provides an insight into the legal frameworks regulating the immigration-related issues in the Czech Republic. The introductory chapter explores how the asylum-linked obligations stemming from the international and European law have been translated into the national law. Chapter Two sheds light on the different immigration regimes for immigrants coming from the other EU Member States and from Third Countries, focusing on legal immigration options available for the former and the latter. Chapter Three deals with the specific agents involved in designing and enforcing the immigration policy, followed by the Chapter Four concentrating on migration-related data collection. Chapter Five discusses the relevant case-law of the European Court of Human Rights and its implementation on national level, followed by the Chapter Six exploring the reflections of the recommendations of the European Commission against Racism and Intolerance and other national human rights organisations. Chapter Seven scrutinizes a particular issue of migrants' access to healthcare and various diverging insurance regimes covering medical treatment, while Chapter Eight draws attention to the access to education and Chapter Nine focusing on recognition of university diplomas and qualifications. Chapter Ten presents the political rights conferred to immigrants, Chapter Eleven provides an overview of the ways to acquire the citizenship. The last chapter is devoted to available EU-administered funding programmes aimed at facilitation of migrants' integration.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

When concerned with legal regulation of asylum, first of all it has to be emphasized that Czech asylum (and international protection in general) regulation is strongly connected with the regulation on the level of the European Union. Most parts of Czech regulation (at least when speaking about substantive law) are either directly affected by European legislation (the regulations of the Council of EU) or transposed directives. And also Czech Republic is, as a member state, bound by primary legislation of EU. In combination with international treaties that Czech Republic ratified, it is necessary to perceive the national regulation governing asylum as a complicated and in no way independent legal system, influenced continuously, by external impulses, actual migration situation and political views and powers.

1.1. National Regulations Governing Asylum

The most important regulation of the refugee status (which is within the EU legislation viewed practically as the same as the asylum) worldwide is the Convention relating to the Status of Refugees which in the Czech Republic came into effect on February 24 1992, including the 1967

Protocol amendments.⁷⁰⁰ The Czech Republic is bound by the content of the Convention because of the Article 10 of Czech Constitution which states that “promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order”. And also due to the Article 78 of the Treaty on the Functioning of the European Union which states that the Union's common policy on asylum, subsidiary protection and temporary protection “must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties”.

The conditions for declaration of refugee status according to the Convention are crucial for the Czech regulation governing asylum as there are copied and pasted to the Directive 2011/95/EU 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 (“Qualification Directive”), and so they form fundamental reasons for granting asylum according to the Law n. 325 (Asylum Act) 1999 [Zákon o azylu] as is analysed below.

1.1.1. Asylum

Czech law recognizes several types of granted protection for persecuted or in other way endangered foreign citizens or apatrides. The fundamental form of protection is international protection consisting of asylum and subsidiary protection, when the asylum also has its own sub-forms with different conditions for being granted and based on different sources.

1.1.1.1. Asylum According to the Section 12 Subsection a) of Asylum Act

The definition of fundamental reasons for granting asylum can be found in Section 12 of Asylum Act, and the provision of its Subsection a) could be described as the international asylum as it is based on the Article 43 of Czech Charter of Fundamental Rights and Freedoms⁷⁰¹, stating that ‘the Czech and Slovak Federal Republic shall grant asylum to aliens who are being persecuted for the assertion of their political rights and freedoms’.⁷⁰²

The Asylum Act itself does not define what should be understood as the assertion of the political rights or freedoms, but the Charter of Fundamental Rights and Freedoms in Division 2 recognizes (although that meant primarily for the Czech citizens) several fundamental political rights and freedoms:⁷⁰³

- The freedom of expression and the right to information (Article 17)
- The right to petition (Article 18)
- The right to peaceful assembly (Article 19)

⁷⁰⁰ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 82 [Czech]; *ibid* 80.

⁷⁰¹ Law n. 2 (Charter of Fundamental Rights and Freedoms) 1993 [Listina základních práv a svobod].

⁷⁰² Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 84 [Czech].

⁷⁰³ *ibid* 85.

- The freedom of association and the right to form political parties and political movements and to associate therein (Article 20)
- The right to participate in the administration of public affairs (including the right to vote, Article 21)

The Charter itself also contains in the Article 43 the ground for denying the international asylum exceeding the scope of general reasons for denial defined in the Asylum Act, stating that “asylum may be denied to a person who has acted contrary to fundamental human rights and freedoms”.

1.1.1.2. Asylum According to the Section 12 Subsection (b) of Asylum Act

The grounds for granting asylum contained in the provision of Section 12 Subsection b) are based on the refugee status as we know it from the Convention relating to the Status of Refugees, stating that the asylum shall be granted if the applicant has well-founded fear of being persecuted for reasons of:

- race
- religion
- nationality
- membership of a particular social group
- or for advocating their political opinion
- or, in addition to the wording of the Convention, also **for reason of sex**.⁷⁰⁴

Regarding the term “persecution” the Asylum Act contains in its Section 2 Subsection 4 the definition:

persecution means serious violation of human rights, as well as measures inflicting psychological pressure or any other similar act, or acts that, when combined, constitute persecution in their intensity, if carried out, supported or tolerated by actors of persecution, while:

an actor of persecution or serious harm means the state body, party or organisation controlling a state or a substantial part of its territory of the state of which the foreign national is a citizen or in which the stateless person had his/her last permanent residence. An actor of persecution or serious harm also means a private person, if it can be proved that the state, party or organisation, including any international organisation, controlling the state or a substantial part of its territory are unable or unwilling to provide adequate protection against persecution or serious harm, as is stated in Subsection 6.

But the persecution or serious harm is not constituted if it applies only to a part of the territory of the country and the foreign national or apatride can safely and legitimately travel to another part of the country and settle there, or has access to effective protection from persecution or serious harm. By effective protection are meant adequate steps by the responsible government authorities, party or organisation, including an international organisation controlling the country

⁷⁰⁴ *ibid* 86.

or a substantial part of its territory, focused towards preventing persecution or infliction of serious harm, not merely temporary.⁷⁰⁵

On the contrary of the international asylum according to the Section 12 Subsection a) of Asylum Act, the granting of asylum according to the Subsection b) does not require the actual ongoing prosecution, but only the well-founded fear of being prosecuted. For granting asylum suffices merely the possibility of initiating the prosecution, however the threat has to be real (or at least the applicant has to reasonably suppose and believe that the threat is real). The Asylum Act does not contain any specification of the intensity or frequency of such fear.⁷⁰⁶

1.1.1.3. Asylum for the Purpose of the Family Reunification

A family member of a recognised refugee who has been granted asylum can be granted, in a case of need of a special consideration, asylum for the purpose of family reunification, according to the Section 13 of Asylum Act. This applies only to the “nuclear family”: the spouse or partner (if the marriage or partnership existed before the asylum was granted), unmarried child or sibling under the age of 18 years or reversely the parent of or the adult responsible for the asylum holder under the age of 18 years.

1.1.1.4. Humanitarian Asylum

The asylum for humanitarian reasons, as defined in the Section 14 of Asylum Act, could be together with asylum for the purpose of the family reunification mentioned above, also called as international protection, although both those options are mentioned in the Point 15 of the Qualification Directive.⁷⁰⁷ If there are no reasons found for granting international protection in the form of asylum pursuant to the Section 12 of Asylum Act, but the case is in need of special consideration (by Czech Supreme Administrative Court not very usefully interpreted as a situation where would be inhuman not to grant the protection) asylum may be granted for humanitarian reasons.⁷⁰⁸ Typically those reasons are very high age, serious illness that is unlikely to cure in the state of origin or humanitarian catastrophe.⁷⁰⁹

1.1.1.5. Reasons for Not Granting Asylum

The Asylum Act in its Section 15 also specifies (based on the reasons regulated in the Convention relating to the Status of Refugees) when the granting of asylum is excluded. In case there is a well-founded suspicion that the applicant committed a crime against peace, a war crime, or a crime against humanity, a serious non-political crime outside the country or he/she has been guilty of acts contrary to the purposes and principles of the United Nations. The well-founded suspicion must be based on good reasons and certain foundations in fact, however the administrative authority does not decide guilt or innocence and does not need guilt evidence

⁷⁰⁵ Section 2 Subsection 7 of Law n. 325 (Asylum Act) 1999 [Zákon o azylu]; *ibid* Section 2 Subsection 5).

⁷⁰⁶ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 88 [Czech].

⁷⁰⁷ *ibid* 89.

⁷⁰⁸ *ibid* 90.

⁷⁰⁹ *ibid*.

necessary for the sentencing in the criminal procedure. Based on the Qualification Directive the person is also expelled if he/she incites or otherwise participates in the commission of the mentioned crimes or acts or if he/she enjoys the protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees.⁷¹⁰

1.1.2. Subsidiary Protection

As the reasons for granting asylum are exhaustive, if not fulfilled, the asylum cannot be granted. But there are situations when the applicants do not meet the criteria for granting the international protection in the form of asylum, but there still exists a well-founded concern in their case that if the applicant is returned to the country of origin or of his/her last permanent residence if stateless, he/she would face a genuine risk of serious harm.⁷¹¹

The subsidiary protection serves as the expression of the non-refoulement principle, perceived as the international custom of the expulsion or extradition prohibition in particular situations.⁷¹²

Serious harm according to the Section 14a Subsection 2 of the Asylum Act means imposition or execution of capital punishment, torture or inhuman or degrading treatment or punishment of the applicant for international protection, serious threat to life or human dignity by reason of arbitrary violence in situations of an international or internal armed conflict, or if the foreign national's departure from the country would contradict the international obligations of the Czech Republic.

Subsidiary protection can be also granted for the purposes of family reunification.⁷¹³

1.1.2.1. Exclusion, Withdrawal and Termination of the Subsidiary Protection

The reasons excluding the granting of subsidiary protection are the same as the reasons for excluding the granting of asylum (except the protection or assistance from organs or agencies of the UN). Furthermore, subsidiary protection cannot be granted to a foreign national who has left the country of which the foreign national is a citizen, or if the foreign national is a stateless person, the country of his/her last permanent residence, with the sole intention of avoiding criminal prosecution for crimes that, if committed, exclude the granting of asylum, provided that such crimes are crimes punishable by imprisonment in the Czech Republic.⁷¹⁴

1.1.3. Temporary Protection

Moreover it can be mentioned the existence of the temporary protection. It does not deal with the legal status (and the possible refugee status) of the foreigners in any way and as such is not regulated by Asylum Act, but it still serves as the protection for the people outside their country of origin. It is based on the Directive 2001/55/EC on Minimum Standards for Giving

⁷¹⁰ *ibid* 91.

⁷¹¹ Section 14a of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷¹² Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 93 [Czech].

⁷¹³ Section 14b of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷¹⁴ Section 15a Subsection 3 of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, on the Czech level regulated by special Law n. 221 (Act on Temporary Protection of Aliens) 2003 [Zákon o dočasné ochraně cizinců].

The temporary protection has to be declared by the Government of the Czech Republic or by the Council of the EU and applies on mass fleeing the country for the reasons of armed conflict, civil war or endemic violence, natural disaster, systematic or generalised violations of human rights or systematic or generalised persecution on the grounds of nationality or religion.⁷¹⁵

1.2. Procedure for Granting Asylum

1.2.1. Proceedings Before an Administrative Authority

1.2.1.1. Application Procedure

The competent authority to proceed and decide applications for granting the international protection is the Ministry of the Interior of the Czech Republic (the “Ministry”)⁷¹⁶, in particular its Department for Asylum and Migration Policy. Prior to the fulfilling of the official Application for the international protection the aspiring applicant has to make the Statement of the foreigner on the intention to apply for the international protection, in written form or verbally to the protocol. Subsequently the official Application is written down with the foreigner.⁷¹⁷

The Asylum Act in its Appendix 1 contains the application form which serves for finding out the necessary information for next steps, especially if no other country is competent to consider the application according to the Dublin system⁷¹⁸, if the application is not obviously groundless, if there are not fulfilled conditions for accelerated procedure etc.. The application shall also contain the information on the reasons the applicant has left the country of origin.⁷¹⁹

The fingerprints and the photo are taken, and the body and luggage search may be done if necessary.⁷²⁰

1.2.1.2. The Decision-making Process

For detail information about the reasons of the fleeing the country of origin the applicant is interviewed by the Ministry officers. The applicant is entitled to present there any information important for the decision-making and to provide all documents and other evidence proving his

⁷¹⁵ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 77 [Czech]; ibid 94.

⁷¹⁶ Section 12 Subsection 1 para. (h) of Law n. 2 (Act on System of Ministries and Central Authorities of the State Administration of the Czech Republic) 1969 [Zákon o zřízení ministerstev a jiných ústředních orgánů státní správy České republiky].

⁷¹⁷ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 95 [Czech].

⁷¹⁸ Council Regulation (EC) n. 343/2003, Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-country National.

⁷¹⁹ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 95 [Czech].

⁷²⁰ ibid 96.

statements.⁷²¹ Those information and evidence are the grounds for the decision of the administrative authority, together with the Ministry's own findings about the country of origin and the situation there. These information are collected by the Section for Information about the Countries of Origin subordinated to the Department for Asylum and Migration Policy and shall be used for verification of the information provided by the applicant.⁷²²

In case of lack of evidence the principle of *in dubio pro reo* shall be applied.⁷²³ If the applicant enters or tries to enter the territory of another state, the proceedings shall be discontinued.⁷²⁴

The period to make the decision is 180 days. The administrative authority may prolong the period up to additional 9 months (exceptionally up to 12 months) in materially or legally complex cases, if a large number of applications for international protection is made at one time, or if an applicant for international protection fails to perform his/her obligations according to this Act, and therefore a decision cannot be made within the limited period⁷²⁵

Without deciding *in meritum* the administrative authority may terminate the proceeding for the reasons according to the Section 25 of Asylum Act (e.g. withdrawal of the application by the applicant, lack of cooperation by the applicant, unauthorized entrance to another state...) or to suspend the proceeding by ruling due to an error in a submission, for the health or other serious reasons, or if with respect to a temporarily unstable situation in the country of origin of the applicant there are no reasons to believe that a decision of the Ministry shall be issued within the deadline.⁷²⁶

By deciding *in meritum* the administrative authority grants or not the applicant the international protection or the subsidiary protection. In the decision shall be expressly mentioned all forms of granted or not granted international protection and stated the reasons.⁷²⁷

The application may be also rejected as manifestly unfounded in the accelerated procedure in the time period of 30 days.⁷²⁸

1.2.2. Proceedings Before Court

The applicant is entitled to bring a legal action against the decision of the Ministry in the time period of 15 days since its delivery. The proceeding is held before the administrative court (the Regional court) according to the residence of the applicant. The court either rejects the claim or cancels the decision of the administrative authority, but is not entitled to grant the international protection itself.⁷²⁹ If the case substantially exceeds personal interests of the plaintiff, the applicant is entitled to potentially bring an appeal in cassation to the Supreme Administrative Court.⁷³⁰

⁷²¹ *ibid* 97.

⁷²² *ibid* 99.

⁷²³ *ibid*.

⁷²⁴ Section 25 para (g) of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷²⁵ Section 27 of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷²⁶ Section 26 of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷²⁷ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 100 [Czech].

⁷²⁸ *ibid*.

⁷²⁹ *ibid* 101.

⁷³⁰ *ibid* 102.

1.2.3. The leaving of the territory

After the termination of providing the international protection, or when the decision of the court confirming the non-granting of international protection is in effect or if suspensive effect was not given, the Ministry issues an departure order for the period of maximum of 1 month in which the foreign national is obligated to leave the territory of the Czech Republic.⁷³¹ The foreign national may apply for a leave to remain in the territory visa or residence permit if he/she waits for the decision of the Ministry in regard to the application for long-term residence permit or the decision of the court or if he/she cannot leave the territory in the ordered period (see Section 33 of Law n. 326 Act on the Residence of Foreign Nationals in the Territory of the Czech Republic).⁷³²

Not leaving the territory within the ordered period and so residing in the territory illegally may be grounds for administrative expulsion upon which the foreigner may not be permitted to enter the territory of the Czech Republic of up to 3 years according the Section 119 Subsection 1(c) point 2 of Law n. 326 Act on the Residence of Foreign Nationals in the Territory of the Czech Republic).⁷³³

If the international protection was granted and its holder wishes to leave the territory he/she is obliged to inform the Ministry about the residence outside the territory exceeding 365 days.⁷³⁴ Voluntary return to the country the asylum holder had left because of reasons on which asylum was granted is one of grounds for withdrawal of asylum.⁷³⁵

2. How does your national law regulate immigration from EU member states and non-EU states?

Fundamental legal regulation of immigration to Czech Republic can be found in the Law n. 326 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky] (the 'Residence of Aliens Act'), and regulation of particular issues in specific acts. As we have only limited space in this report, this chapter provides only brief description of the fundamental legal aspects of the residence of foreigner nationals in the Czech Republic, which have three basic forms: short-term, long-term, permanent. The Residence of Aliens Act differs two categories of foreigner nationals: EU member states citizens and their family members, and non-EU states citizens. Czech legislation regarding the immigration recognizes lot of exceptions for specific situations which we do not

⁷³¹ Section 85b; Section 54 Subsection 2 of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷³² Section 78b of Law n. 325 (Asylum Act) 1999 [Zákon o azylu]; '*Vízum strpění*' <<http://www.migrace.com/cs/poradna/informace-pro-cizince/cizinci-ze-zemi-mimo-eu/viza-nad-90-dnu/vizum-strpeni>> accessed 3 September 2017 [Czech].

⁷³³ There are other reasons for administrative expulsion with prohibition of entry of up to 10 years due to their seriousness, see Sections 118-121 of of Law n. 326 Act on the Residence of Foreign Nationals in the Territory of the Czech Republic).

⁷³⁴ Section 52 para (g) of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

⁷³⁵ Section 17 Subsection 1 para (e) of Law n. 325 (Asylum Act) 1999 [Zákon o azylu].

have a space to deal with, and is in continuous process of change influenced by political pressure, but the basic framework we focus on remains mostly the same.⁷³⁶

2.1. Non-EU States Citizens

The third country nationals are allowed to stay on the territory of the Czech Republic in the regime of temporary or the permanent residence. Within these two categories the Czech law recognizes few subcategories and special regimes applying on particular situations, consisting usually of slightly different conditions for granting the residence permit.

2.1.1. Temporary Residence

According to the Section 17 of the Residence of Aliens Act the third country national can stay on the territory of the Czech Republic temporary in four regimes. Without any visa if the common EU visa policy does not require so. On the short-term visa up to a maximum of 90 days, mostly known as the touristic visa, granted according to the directly effective EU regulation regarding the visa policy. In the third regime, on the long-term visa exceeding 90 days, the long-term residence permit for the purpose of studies, scientific research, employment, business, family reunification, protection on the territory or for the purpose of the tolerated stay (if the foreigner plans to stay on the territory more than one year), or the temporary residence permit for the family members of the EU member states citizens. The last regime is the temporary residence on the grounds of the departure order that entitles its holder to temporary residence in the Czech Republic for a period necessary for addressing pressing matters and leaving the territory.⁷³⁷

The visa or the residence permit is fixed on its purpose which has to be followed for the whole duration of the residence on the territory. The purpose can be changed during the stay.⁷³⁸

2.1.2. Permanent Residence

If the third country national lives on the territory of the Czech Republic unceasingly for 5 years (short interruptions like vacation are respected) he/she can apply for the permanent residence permit. If he/she fulfils the conditions the permit shall be granted.⁷³⁹ There are specific permanent residence permits granted for particular reasons and with different condition, for example granting permanent residence permit for humanitarian reasons or reasons worth special consideration does not require any previous residence on the territory.⁷⁴⁰ The permanent residence permit is granted for indefinite period of time and the foreigner is also entitled to apply for Czech citizenship. With regard to the possibility of leaving the country the residence permit

⁷³⁶ *ibid* 147.

⁷³⁷ Ending and revoking a residence permit and leaving the CR, Departure Order <<http://www.mvcr.cz/mvcren/article/third-country-nationals-ending-and-revoking-a-residence-permit-and-leaving-the-cr.aspx?q=Y2hudW09Mw%3D%3D>> accessed 22 July 2017.

⁷³⁸ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlickví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 151 [Czech].

⁷³⁹ *ibid*.

⁷⁴⁰ Section 66 of Law n. 326 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky].

shall be cancelled if the foreign national had resided continuously outside the Czech Republic for a period exceeding six years or outside the territory of Member States of the European Union continuously for a period exceeding 12 months, unless such residence was justified by serious reasons, or for a period exceeding 24 months.⁷⁴¹ The residence permit may be cancelled also for other reasons specified in the Section 77 of Residence of Aliens Act.

2.2. EU Member States Citizens

The EU member states citizens and their family members fall within the scope of more advantageous migration regime, with simplified procedures and sometimes even the same position as Czech citizens.⁷⁴² In compliance with EU Schengen system freedom of movement⁷⁴³ EU citizens can travel within the Schengen area only with personal identification card and are entitled to ask for the confirmation of the temporary residence if they plan to stay on the territory of the Czech Republic for the period longer than 3 months.⁷⁴⁴ They can also apply for the permanent residence permit after 5 years of ceaseless residence.⁷⁴⁵

Very similar regime applies also on the third country citizens family members of the EU member states citizens, specified in the Section 15a of the Residence of Aliens Act as spouse or permanent partner, parent of EU citizen under 21 years of age, descendant under 21 years of age, and also some foreigners if special situations according to this Section apply. They have simplified entry regime and the visa or residence permit granting procedure.⁷⁴⁶

Interesting thing to be mentioned is that Czech regulation grants the same rights as to the other EU member states citizens family members also to the family members of Czech citizens, establishing the equality of all EU citizens family members in addition to the transposed EU legislation.⁷⁴⁷

⁷⁴¹ Section 77 para (c), (d), (g) of Law n. 326 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky].

⁷⁴² Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 148 [Czech].

⁷⁴³ Directive of the European Parliament and of the Council (EC) n. 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

⁷⁴⁴ Section 87a of Law n. 326 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky].

⁷⁴⁵ Section 87g of Law n. 326 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky].

⁷⁴⁶ Pavel Šturma, Věra Honusková (eds.), *Teorie a praxe azylu a uprchlictví* (2nd edn, Univerzita Karlova v Praze, Právnická fakulta, 2012) 148 [Czech].

⁷⁴⁷ *ibid* 149.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Ministry of the Interior of the Czech Republic

The Ministry of the Interior of the Czech Republic is the main public institution dealing with migrants in the Czech Republic, acting in the framework of Law n. 325 (Asylum Act) 1999 [Zákon o azylu], Law n. 326 (Act on the Residence of Foreign Nationals in the Territory of the Czech Republic) 1999, and Law n. 221 (Act on Temporary Protection for Aliens) 2003. The Ministry of the Interior is administrator of the agenda of international migration and international protection in the Czech Republic on the legislative, analytical and realization level, and has its own chapter in the state budget.

3.1.1. Department for Asylum and Migration Policy

In structures of the ministry, Department for Asylum and Migration Policy is responsible for international protection and migration agenda. Priority of the state, represented by the ministry, is to support organized legal migration while minimalizing illegal migration. Among its responsibilities is also the protection of the state borders within the Schengen area and the granting asylum and refugee status and residence permits to aliens,⁷⁴⁸ securing execution of the state administration in this regard and coordination with other departments, governmental and non-governmental organizations including international organizations.⁷⁴⁹ For the purpose of appeals, there is a special body **Commission for Decision-making in Matters of Residence of Foreigners**.⁷⁵⁰

3.1.2. Alien Police Service

Part of this competence is entrusted to the Alien Police Service of the Police of the Czech Republic, with Ministry of the Interior as its superior body providing supervision over it during police's exercise of the state administration.⁷⁵¹ The Alien Police Service is highly specialized body of the Police conducting tasks relating to uncovering illegal migration, applying repressive measures against foreigners staying on the territory of the Czech Republic in contradiction with

⁷⁴⁸ 'Migrační a azylová politika České republiky' (2014) <<http://www.mvcr.cz/clanek/migracni-a-azylova-politika-ceske-republiky-470144.aspx>> accessed 23 July 2017 [Czech].

⁷⁴⁹ 'Úkoly Ministerstva vnitra v oblasti vstupu a pobytu cizinců na území České republiky a mezinárodní ochrany' (2014) <<http://www.mvcr.cz/clanek/migracni-a-azylova-politika-ceske-republiky-470144.aspx?q=Y2hudW09Mg%3d%3d>> accessed 23 July 2017 [Czech].

⁷⁵⁰ 'Komise pro rozhodování ve věcech pobytu cizinců – nový odvolací orgán' (2011) <<http://www.mvcr.cz/migrace/docDetail.aspx?docid=21558937&docType=ART&chnum=7>> accessed 23 July 2017 [Czech].

⁷⁵¹ 'Migrační a azylová politika České republiky' (2014) <<http://www.mvcr.cz/clanek/migracni-a-azylova-politika-ceske-republiky-470144.aspx>> accessed 23 July 2017 [Czech].

the law, carrying out tasks arising from international legal obligations, dealing with criminal activities associated with state border crossing and cross-border criminal activities.⁷⁵²

3.1.3. The Refugees Facilities Administration

Under the authority of the Ministry of the Interior is also The Refugees Facilities Administration. As an organizational unit of the Government, it is under the authority of the deputy minister of the Interior for Internal Safety. These three units of the ministry: The Refugees Facilities Administration, the Asylum and Migration Policy Department and the Foreign Police Service (Alien Police Service) are in charge of the whole agenda of asylum and migration. The Refugees Facilities Administration cooperates with a range of governmental and international institutions, local authorities and non-governmental organisations. It took over the facilities for the detention of foreigners and set up a network of counselling centres in county towns to support foreigners' integration. Through the Refugee Facilities Administration the Czech Republic provides accommodation and other services to a broad focus group of international protection seekers, international protection holders and detained foreigners as required by the law⁷⁵³ in its Centres for the support of integration of foreigners, Detention facility for foreigners, Reception centres, Residential centres, Residential and Integration centre and International asylum centre.⁷⁵⁴

3.2. Protection of migrants' rights

The supervision of these facilities is under the jurisdiction of the **Public Defender of Rights**, because facilities for the detention of foreigners and asylum reception centres are facilities where foreigners are restricted in their freedom and protection of their rights needs to be guaranteed. The Defender carries out preventive systematic visits in these facilities and deals with individual complaints of persons placed in there.⁷⁵⁵

Under the authority of the Government of the Czech Republic also operates The Council of the Government of the Czech Republic for Human Rights with the **Committee for Foreigners' Rights** as one of its expert committees.⁷⁵⁶ It is a permanent advisory body to the Government in the field of the protection of human rights and fundamental freedoms in the territory of the Czech Republic. It was established under Government Resolution n. 809 of 9 December 1998. The Council monitors compliance with the Constitution of the Czech Republic, the Charter of Fundamental Rights and Freedoms and other legislation governing the protection and respect for human rights and fundamental freedoms. The Council further monitors the

⁷⁵² 'Policie České republiky – Služba cizinecké policie: O nás' <<http://www.policie.cz/clanek/o-nas-831034.aspx>> accessed 23 July 2017 [Czech].

⁷⁵³ The Refugee Facilities Administration of the Ministry of the Interior: About us <<http://www.suz.cz/en/>> accessed 23 July 2017.

⁷⁵⁴ The Refugee Facilities Administration of the Ministry of the Interior: Organisational structure <<http://www.suz.cz/en/about-us/organisational-structure/>> accessed 23 July 2017.

⁷⁵⁵ 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.

⁷⁵⁶ 'Vláda České republiky: Výbor pro práva cizinců' <<https://www.vlada.cz/cz/ppov/rlp/vybory/pro-prava-cizincu/uvod-55935/>> accessed 23 July 2017 [Czech].

national implementation of international commitments of the Czech Republic in the field of human rights and fundamental freedoms.⁷⁵⁷

3.2.1. Protection against decisions and operation of public authorities

Against the wrongful decisions, bad operations or maltreatment of above mentioned institutions and bodies the aliens are entitled to use the means of protection according to the Law n. 500 (Administrative Procedure Code) 2004. As a first step protection serves an appeal which shall be lodged to the first instance body that shall pass it to its superior body/institution. The superior body to Department for Asylum and Migration Policy is Commission for Decision-making in Matters of Residence of Foreigners, the superior body to Alien Police Service is Alien Police Service Directorate. Depending on the character of problem the aliens can use also other means of protection according to the Administrative Procedure Code (e.g. the complaint) or they can use administrative justice system according to the Law n. 150 (Code of Administrative Justice) 2002.⁷⁵⁸ Everyone has also the right to compensation for damages caused by unlawful decision of the court, another state authority or public administration or by an incorrect official procedure,⁷⁵⁹ including satisfaction for non-pecuniary damage. With regard to above mentioned authorities and bodies dealing with migrants the relevant administrative authority where to claim this right is the Ministry of Interior.⁷⁶⁰

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

When looking for statistics regarding migration in and through the territory of the Czech Republic we can choose from wide range of sources. Brief summaries can be found in databases or statistics of worldwide operating organizations like United Nations High Commissionaire for Refugees or International Organisation for Migration, or in statistics of regional organisations or institutions like Organisation for Economic Co-operation and Development or Eurostat, the statistical office of the European Union creating complex database and summary report of inter alia migration in the territory of the EU.⁷⁶¹

⁷⁵⁷ Government of the Czech Republic: Government Council for Human Rights <<https://www.vlada.cz/en/ppov/rlp/government-council-for-human-rights-50632/>> accessed 23 July 2017.

⁷⁵⁸ 'Odvolání, rozklad, žaloba, stížnost, žádost, návrh, podnět: Odvolání proti rozhodnutí Ministerstva vnitra nebo Cizinecké Policie' <<http://advokationline.eu/sluzby/cizinecke-pravo/odvolani-rozklad-zaloba-stiznost-zadost-navrh-podnet/>> accessed 3 September 2017 [Czech].

⁷⁵⁹ Article 36 Paragraph 3 of Law n. 2 (Charter of Fundamental Rights and Freedoms) 1993 [Listina základních práv a svobod].

⁷⁶⁰ Section 6 Subsection 2(b) of Law n. 82 (Act on Liability for Damage Caused by Execution of a Public Power by Decision or Incorrect Official Practice) 1998 [Zákon o odpovědnosti za škodu způsobenou při výkonu veřejné moci rozhodnutím nebo nesprávným úředním postupem].

⁷⁶¹ Centrum pro integraci cizinců, 'Kde hledat statistiky týkající se migrace' <<http://www.cicpraha.org/cs/pro-verejnost/zakladni-informace-o-imigraci-v-cr/kde-hledat-statistiky-tykajici-se-migrace.html>> accessed 14 August 2017 [Czech].

The most detailed statistics focused only on the Czech Republic are made by the main public institution dealing with migrants in the Czech Republic – its Ministry of the Interior. This authority proceeds and decides upon applications for granting the international protection and applications for residence permits and is the administrator of the agenda of international migration and international protection in the Czech Republic in general, including the analytical level. The Ministry of the Interior is also in charge of collecting data regarding migrations and of publishing reports and recent statistics.

4.1. The Report on the Situation Regarding Migration

On a regular basis the Ministry create the Report on the Situation Regarding Migration⁷⁶², made in cooperation with nine other ministries of the Czech Republic and based on their common shared data, and in cooperation with Czech Security Information Service. This complex report contains information regarding both legal and illegal migration, international protection statistics, visa policy, Schengen cooperation and on integration of migrants and projects focused on work with them. The report is presented to the government of the Czech Republic and then to the Chamber of Deputies of the Parliament of the Czech Republic and to the National Security Council, and subsequently published on the website of the Ministry.⁷⁶³

The most recent published report is the report published in 2017, containing collection of data from previous year of 2016. As the report contains very detailed data regarding all possible aspects of migration in the territory we present here only the very brief extract.

4.1.1. Immigrants in the Czech Republic

The citizens of Slovakia top the list of **EU member states citizens** in the territory of the Czech Republic with total amount of 107 251⁷⁶⁴ people at the end of 2016, followed by Germany (21 216⁷⁶⁵ people) due to strong business connection and the fact that the Czech Republic and Germany are contiguous states, and by Poland (20 305⁷⁶⁶ people) as another contiguous state.

The list of **non-EU member states citizens** in the territory of the Czech Republic tops Ukraine with total amount of 110 245⁷⁶⁷ people at the end of 2016. This is a long term historical trend as Ukrainian citizens are significant workforce and the most employed foreign nationals by far.⁷⁶⁸ The notional second place takes Vietnam (58 080⁷⁶⁹). The Russian federation takes the notional

⁷⁶² Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) [Czech].

⁷⁶³ Ministerstvo vnitra České republiky, 'Zpráva o situaci v oblasti migrace' (2016) <<http://www.mvcr.cz/migrace/clanek/zprava-o-situaci-v-oblasti-migrace.aspx>> accessed 15 August 2017.

⁷⁶⁴ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 10 [Czech].

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

⁷⁶⁷ Ibid 10.

⁷⁶⁸ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 14 [Czech].

⁷⁶⁹ Ibid.

third place with amount of 35 987⁷⁷⁰ Russian citizens legally living in the territory of the Czech Republic.

In total there lived 496 413⁷⁷¹ foreigners with some form of residence permit in the Czech Republic, not very surprisingly settled mostly in the capital city of Prague (37,4 % of foreigners in the territory of the Czech Republic) and in the Central-Bohemian region (13,1 %) which forms Prague's agglomeration⁷⁷².

Visa granted in 2016 ⁷⁷³				Total amount of temporary residence permit holders in 2016 ⁷⁷⁴					
Russian federation	196 323			Slovakia	62 452				
Ukraine	82 653			Ukraine	29 036				
China	62 915			Germany	16 756				
Turkey	20 694			Russian federation	15 224				
India	17 247			Poland	9 552				
Total amount of permanent residence permit holders in 2016 ⁷⁷⁵				Citizenship granted in 2016 ⁷⁷⁶					
Ukraine	81 209			Ukraine	1 426				
Vietnam	48 571			Russian federation	558				
Slovakia	44 799			Slovakia	419				
Russian federation	20 763			Vietnam	405				
Poland	10 753			Belarus	131				
Foreigners with residence permit in the territory of the Czech Republic ⁷⁷⁷									
2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
392 087	436 301	433 305	425 301	436 389	438 213	441 536	451 923	467 562	496 413

4.1.2. International protection seekers and holders

Despite the current refugee crisis the number of applications for international protection (asylum or subsidiary protection) stays relatively low. In 2016 there were submitted 1 478 applications for international protection, 928 by men and 550 by women, 269 of applicants were children⁷⁷⁸.

⁷⁷⁰ Ibid.

⁷⁷¹ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 9 [Czech].

⁷⁷² Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 11 [Czech].

⁷⁷³ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 4 [Czech].

⁷⁷⁴ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 8 [Czech].

⁷⁷⁵ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 9 [Czech].

⁷⁷⁶ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 32 [Czech].

⁷⁷⁷ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 64 [Czech].

⁷⁷⁸ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part II: Tables: 41 [Czech].

More than a third of the applications were submitted by the citizens of Ukraine (507 of applications)⁷⁷⁹. Currently there are 3 137 people with granted international protection in the Czech Republic, 1 889 in the form of asylum and 1 248 in the form of subsidiary protection.

The first place among the granted international protection but took citizens of Iraq with amount of 101 granted international protections⁷⁸⁰. The list of granted subsidiary protection tops Syria with amount of 88 granted subsidiary protections to its citizens⁷⁸¹.

Applications for international protection ⁷⁸²										
2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	
1 878	1 656	1 258	833	756	753	707	1 156	1 525	1 478	
Countries of origin of applicants for international protection ⁷⁸³										
Ukraine		Iraq		Cuba		Syria		China		
507		158		85		78		68		
Asylum granted – according to countries of origin ⁷⁸⁴										
Iraq		Afghanistan		Azerbaijan		Syria		Turkmenistan		Ukraine
101		5		5		5		5		5

4.1.3. Illegal migration

Regarding the illegal migration in the territory of the Czech Republic the trend caused by refugee crisis, when lot of migrants tried to use the Czech Republic only as a transit country, culminated in 2015 with 8563⁷⁸⁵ people detected during illegal residence or illegal entry.⁷⁸⁶ In 2016 numbers fell down to 5261 people, comparable with pre-crisis numbers of 4822 people in 2014 and 4153 people in 2013 respectively.⁷⁸⁷ This supports the fact that in 2015 Syrians topped the list of illegally staying or residing foreigners in the territory with number of 2 016 detected people⁷⁸⁸, while in all other recent years, including 2016, was on the top of the list Ukraine.⁷⁸⁹

Illegal migrants detected in the territory of the Czech Republic in 2016 ⁷⁹⁰					
Ukraine	Russia	Kuwait	Vietnam	Syria	Afghanistan
1 567	414	338	272	158	157

⁷⁷⁹ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 3 [Czech].

⁷⁸⁰ Ibid.

⁷⁸¹ Ibid.

⁷⁸² Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 151 [Czech].

⁷⁸³ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 3 [Czech].

⁷⁸⁴ Ibid.

⁷⁸⁵ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 113 [Czech].

⁷⁸⁶ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 112 [Czech].

⁷⁸⁷ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 113 [Czech].

⁷⁸⁸ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2015 (Praha, 2016) Part I: 4 [Czech].

⁷⁸⁹ Ministerstvo vnitra České republiky, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky za rok 2016 (Praha, 2017) Part I: 114 [Czech].

⁷⁹⁰ Ibid.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. General Remarks

Although national law does not expressly recognize binding character of European Court of Human Rights' (ECHR) jurisprudence, it is by now well established and overall well respected principle, following from the application precedence of international agreements over national laws⁷⁹¹ and ECHR's role of interpreting the European Convention of Human Rights (hereinafter 'the European Convention'). Moreover, the Constitutional Court ruled in a much debated decision that **the European Convention takes precedence** not only over laws, but constitutional laws as well, which effectively makes it **a part of Czech constitutional order**.⁷⁹²

Therefore, the ECHR directly shapes judicial decisions and courts increasingly rely on its jurisprudence, by which **ECHR's rulings are implemented into judicial practice**. The Constitutional Court takes a leading role in incorporation of references to the ECHR jurisprudence. As some scholars suggested, the Constitutional Court's references are more likely incorporated while establishing new, progressive case law that might be regarded with disapproval.⁷⁹³ Numerous references to ECHR rulings, not limited to those against the Czech Republic, could be found in jurisprudence of the lower courts too,⁷⁹⁴ this phenomenon being especially remarkable for administrative courts' decisions concerning asylum matters.⁷⁹⁵

On the other hand, **the direct impact of ECHR's decisions concerning migrants on legislation** is to some extent limited, given the fact that as an EU member state, the Czech Republic is bound by the EU common asylum and migration legislation. Major amendments of laws, initiated by the ECHR case law development, thus usually affect EU secondary legislation and are implemented in the national context indirectly.⁷⁹⁶ On the other hand, concerning issues that are left open to national regulation of the EU member states, the ECHR case law occasionally leads to amendments of national legislation.⁷⁹⁷ The Constitutional Court procedural rules enable a successful applicant or the government to file an application to repeal the provision that the ECHR regarded as violating the European Convention.⁷⁹⁸

Besides previously mentioned, **the ECHR decisions impact the individual cases before domestic courts** from which applications to the ECHR originated. However, there is no provision providing for automatic reopening of the case when the ECHR ruled for violation.

⁷⁹¹ Art. 10 of the Constitution.

⁷⁹² Case n. Pl. ÚS 36/01 [2002] Constitutional Court <nalus.usoud.cz> accessed August 28 2017.

⁷⁹³ David Kosař and Michal Bobek, *The Application of European Union Law and the Law of the European Convention of Human Rights the Czech Republic and Slovakia* (Eric Stein Working Paper 2/2010, 2010) 18.

⁷⁹⁴ *Ibid.*

⁷⁹⁵ See, e. g. precedent case-law of the Supreme Administrative Court, such as case n. 5 Azs 195/2016 [2016], relied upon by regional courts.

⁷⁹⁶ E. g. landmark case of *M. S. S. v Belgium and Greece* [2011] leading to new Art. 3 § 2 in the Regulation of the European Parliament and the Council n. 604/2013 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 2013 (recast, known as Dublin III).

⁷⁹⁷ See *Rashed v Czech Republic* and *Budrevich v Czech Republic*, discussed below.

⁷⁹⁸ Section 118 of Law n. 182/1993 (Act on Constitutional Court) 1993 [zákon o Ústavním soudu].

The only procedure that might lead to reopening of the case is limited to cases with lasting violation of applicant's human rights and insufficient just satisfaction awarded by the ECHR. If the applicant establishes that both is fulfilled, the Constitutional Court reopens the case and issues a new ruling, remanding the case to lower courts while relying on the ECHR ruling in merits.⁷⁹⁹ Interestingly, this procedure was until the end of 2012 available for criminal cases only.⁸⁰⁰

In spite of limited means of reopening applicants' cases, Czech legal order now provides sufficient means for awarding **just satisfaction for violation of rights** guaranteed under the Charter or the European Convention, in compliance with the ECHR repeated demands. The law provides an express basis for claims of damages based on unlawful detentions,⁸⁰¹ including detentions of migrants in the course of asylum, extradition, expulsion or removal proceedings.⁸⁰²

5.2. Implementation of the ECHR's Rulings against the Czech Republic

The Czech Republic so far stood as a respondent state in five ECHR's cases concerning migration issues. In the case of *Singh v the Czech Republic*⁸⁰³, the ECHR found the length of expulsion custody of 2.5 years excessive, disproportionate and giving rise to violation of Art. 5 § 1 of the European Convention. *Singh* case had no impact other than enforcement of the ECHR just satisfaction award.⁸⁰⁴

Decision in case *Rashed v Czech Republic*⁸⁰⁵ declared violation of Art. 5 § 1, 4 of the European Convention due to insufficient legal grounds for detention of the applicant, an asylum seeker of Egyptian nationality. The ECHR's ruling highlighted undesirable practice of detentions of asylum seekers in transit areas of international airports for longer period of time in inappropriate living conditions, but also criticised prolonged detention of the applicant in legally undefined category of detention facility, 'extended transit areas'.⁸⁰⁶ Together with other national cases challenging legality of detention in the 'extended' transit areas, *Rashed* case led to amendment of section 73 of the Act on the Residence of Foreign Nationals.⁸⁰⁷ Therefore, any further violation

⁷⁹⁹ Section 119 and following of Act on the Constitutional Court.

⁸⁰⁰ Compare section 119 of Act on the Constitutional Court, as applicable until December 31 2012.

⁸⁰¹ Section 6a of law n. 82/1998 (Act on responsibility for damage caused by exercise of power) 1998 [zákon o odpovědnosti za škodu způsobenou při výkonu veřejné moci nezákonným rozhodnutím nebo nesprávným úředním postupem].

⁸⁰² See, e. g. case n. I. ÚS 1665/11 [2011] Constitutional Court <nalus.usoud.cz> accessed August 28 2017.

⁸⁰³ Application n. 60538/00 [2005] ECHR <hudoc.echr.coe.int> accessed September 02 2017.

⁸⁰⁴ The case concerned Indian nationals who were found guilty of a crime and sentenced to expulsion for unlimited time period. They were kept in expulsion custody for more than 2.5 years, while the appropriate authorities were supposed to make practical arrangements for their removal, but remained mostly inactive.

⁸⁰⁵ Application n. 298/07 [2008] ECHR <hudoc.echr.coe.int> accessed September 02 2017.

⁸⁰⁶ The applicant applied for asylum in a transit area of an international airport. The law prescribed that he had to be moved from the transit area to a regular asylum facility 5 days after filing. The deadline was missed by the Ministry of Interior. He was then unlawfully moved to a detention facility that was purportedly 'extended' transit area of the international airport that was in fact a detention centre with significantly more restrictive rules than asylum centre. The ECHR adopted the Public Defender of Right's view that detention in transit space of the international airport causes significant restrictions on individual's human rights and should be used restrictively. Moreover, it found there was no effective means of remedy for the applicant to object the applicant's unlawful detention and to secure immediate release. The ECHR awarded the applicant pecuniary damages.

⁸⁰⁷ Law n. 326/1999 (Act on residence of foreign nationals) 1999 [zákon o pobytu cizinců].

based on the same circumstances as in *Rashed* case has been prevented by merely technical amendment of the law.⁸⁰⁸

The case *Budrevich v Czech Republic*⁸⁰⁹ brought a minor amendment as well, that was materialised in a new section 23c of the Asylum Act.⁸¹⁰ In its ruling, the ECHR noted that courts and the Ministry of Interior in multiple proceedings ignored well-established information suggesting that if his expulsion had been carried out, the applicant would have been exposed to treatment contrary to Art. 3 of the European Convention.

In *Buishvili v Czech Republic*,⁸¹¹ the applicant was also trapped in the transit area, while his appeals against orders barring his entry were unsuccessful. The ECHR found his situation amounted to detention; however, he did not have any effective remedy against unlawful detention securing immediate release. Moreover, due to lack of effective remedy with automatic suspensive effect, this time against a decision on manifestly unjustified asylum request, the ECHR found violation in *Diallo v Czech Republic*,⁸¹² too. In both cases, just satisfaction was enforced,⁸¹³ in *Diallo* case in the form of friendly settlement declaration.

5.3. Implementation of Selected ECHR's Leading Cases on Migrants into Czech Legal Order and Practice

Finally, we focus on some of the most painstaking legal issues faced by Czech courts in the context of human ECHR migration case-law and human rights' protection. Gradual development of judgements leading to ban of Dublin transfers⁸¹⁴ to Hungary emerged over the critical year 2015. After some contradictory judgments from regional courts, the Supreme Administrative settled on the opinion that these transfers are prevented by the existence of systemic flaws in Hungarian asylum system, directly applying *M. S. S. v Belgium and Greece*.⁸¹⁵ The current discussion among (and inside) the courts also focuses on the question of when the competent authorities should evaluate existence of systemic flaws that would not only make the Dublin transfer unlawful, but also render unlawful the asylum seeker's detention prior to the transfer.⁸¹⁶

Last but not least, the issue of detention of minors was repeatedly under scrutiny by courts and the Public Defender of Rights.⁸¹⁷ Recently, the Constitutional Court relied on the ECHR's *A. B. and others v France* [2016], to rule that detention minors in a facility for detention of foreigners,

⁸⁰⁸ Currently, it expressly states that detention in 'extended facilities' administratively belonging to transit area is allowed and has the same legal implications as the actual transit area detention.

⁸⁰⁹ Application n. 65303/10 [2013] ECHR <hudoc.echr.coe.int> accessed September 02 2017.

⁸¹⁰ This section now binds state authorities to look into various resources containing current and precise information about the state, in compliance with Budrevich's reasoning. See explanatory memorandum for the bill n. 314/2015, amending the Asylum Act.

⁸¹¹ Application n. 30241/11 [2012] ECHR <hudoc.echr.coe.int> accessed September 02 2017.

⁸¹² Application n. 20493/07 [2012] ECHR <hudoc.echr.coe.int> accessed September 02 2017.

⁸¹³ Pecuniary compensation amounted to 3.000 €, 5.000 € respectively.

⁸¹⁴ Transfer under art. 20 and following of Dublin III Regulation.

⁸¹⁵ Case n. 5 Azs 195/2016 [2016] Supreme Administrative Court <nssoud.cz> accessed September 02 2017.

⁸¹⁶ Case n. 4 Azs 73/2017 [pending final decision] Supreme Administrative Court <nssoud.cz> accessed September 02 2017.

⁸¹⁷ Public Defender of Rights, 'Facility for Detention of Foreigners Bělá-Jezová. Report on Visi?' (Public Defender of Rights' office, 2016) <<http://bit.ly/2gut6Gd>> accessed September 03 2017.

prior to Dublin III transfer, despite its specific designation as ‘family friendly’, was unlawful and violated the right to family life.⁸¹⁸

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Recommendations of ECRI

The European Commission against Racism and Intolerance issued its latest report on the Czech Republic in 2015, during the fifth monitoring cycle. Although the monitoring report mostly deals with the Roma minority and related issues, it also repeatedly mentions the third-country nationals.

The conclusion of the ECRI report concerning the third-country nationals’ integration reads as follows: „ECRI is not aware of any major problems hindering immigrants’ integration in the Czech Republic, apart from the occasional xenophobic expression from certain political figures (...) (...) it welcomes the setting up of regional Integration Support Centres, which appear to function well and provide useful assistance for foreigners.“⁸¹⁹

Furthermore, the report appreciates the quality of the four existing Asylum Integration Centres, nevertheless, the ECRI criticizes the fact that those are situated in the remote, rural locations, where finding a job or an accommodation is particularly challenging to the migrants. The report specifically points out that one of the Asylum Integration Centres is located in the Roma neighbourhood, suffering from high unemployment rate of the surrounding area.⁸²⁰

On basis of the previous finding, the ECRI proposes a recommendation to move the Asylum Integration Centres to the greater cities, where the migrants could have better prospects of successful integration. Although the Czech executive has not relocated any of the Asylum Integration Centres yet – and nothing indicates that it has an interest to do so – there have been a political pressure from the municipal and regional level, aimed at closing the Asylum Integration Centre in Přebuz, the Roma neighbourhood in the suburb of the Czech city Ústí nad Labem.⁸²¹ The remaining three Asylum Integration Centres – located in the municipalities of Brno, Havířov and Jaroměř – are likely to remain in operation.

6.2. National human rights bodies

There have been a plenty of various non-governmental human rights organisations that entirely or partially cover the agenda of migration and asylum-seeking in the Czech Republic. The Consortium of Migrants Assisting Organizations in the Czech Republic serves as a platform for

⁸¹⁸ Case n. III. ÚS 3289/14 [2016] Constitutional Court <nalus.usoud.cz> accessed August 26 2017.

⁸¹⁹Council of Europe – European Commission against Racism and Intolerance, *ECRI Report on the Czech Republic (fifth monitoring cycle)*, adopted on 16 June 2015, published on 13 October 2015. CRI(2015)35, p. 26-27.

⁸²⁰ Ibid.

⁸²¹ prosím stránky jako idnes nejsou pro Radu Evropy relevantní!!! [Czech]

their coordination. In 2015, multiple organisations under the umbrella of the Consortium issued a common so-called Migration Manifesto⁸²², a document in which they offered several specific policy recommendations that dealt inter alia with the issue of migrants' integration.

Manifesto, in tune with the ECRI report, welcomes the existence of the Asylum Integration Centres. In general, the common voice of the Czech migrants assisting organizations, expressed by the Manifesto, appreciates the evolution of integration policies in the past two decades.

Nevertheless, that is not free of any pitfalls. Manifesto criticizes the lack of attention given to the integration issue on the local (municipal) level.⁸²³

This goes hand in hand with a fact that municipalities often do not have necessary funds for proper integration policies in their municipal budgets. In consequence, the integration policies are overwhelmingly created on the state level and thus represent a „one-size-fits-all“ solution, putting insufficient emphasis on the local differences.

Thus, one of the first policy recommendations made by Manifesto is to enhance the involvement of the Municipal Offices and Regional Offices to the integration policy.⁸²⁴ Additionally, in terms of institutional responsibilities for carrying out the integration agenda, Manifesto suggests to move the integration issue from the Ministry of Interior's agenda to the Ministry of Labour and Social Affairs, arguing that this institutional shift might help changing the dominant perception of the immigrants' integration from the security-related to the employment-centered.⁸²⁵

Manifesto also believes that the Government's Integration Policy should be more inclusive and count on the migrants within the other EU Member States and Third-Country Nationals without the residence permit as well. Furthermore, Manifesto proposes that state officials should, as a part of their professional education programmes, take courses on intercultural communication and intercultural competences.⁸²⁶

The latter subpart of the Manifesto's Integration chapter is called „Gradual Acquiring of Rights“ and mentions that immigrants should be given better prospects of gaining permanent residence permit, state citizenship and so forth. Manifesto also regrets efforts aimed at increasing the threshold needed to be granted residence permits, which can be exemplified by the motion to take obligatory knowledge tests as part of the procedure. Manifesto emphasizes its recommendation to legally enable a regularization of the irregular migrants' residence, on an individual basis.⁸²⁷

The Government of the Czech Republic in its 2016 resolution devoted a special chapter to the regional and local integration efforts. It highlighted the fact that the Ministry of Interior had developed and financially supported the municipal integration activities programmes which aim at improving the relationship between migrants and the host communities.⁸²⁸ The Ministry even

⁸²²Konsorcium nevládních organizací pracujících s migranty v ČR, *Migrační manifest nevládních organizací pracujících s migranty v České republice* (August 2015) <<http://www.migracnimanifest.cz/cz/index.html>> accessed 20 July 2017 [Czech]

⁸²³ Ibid.

⁸²⁴ Ibid.

⁸²⁵ Ibid.

⁸²⁶ Ibid.

⁸²⁷ Ibid.

⁸²⁸Vláda České republiky. *Usnesení vlády České republiky č. 26 ze dne 18. ledna 2016 o aktualizované Koncepci integrace cizinců – Ve vzájemném respektu a o Postupu při realizaci aktualizované Koncepce integrace cizinců v roce 2016* <http://www.mpsv.cz/files/clanky/25571/Priloha_c_2_Aktualizovana_Koncepce_integrace_cizincu__ve_v

published a special Guideline that should help municipalities in the process of applying for support from the state integration assistance funds.⁸²⁹ Although the programme deemed successful by the Czech government, the persisting problem is a reluctance of greater number of municipalities to take part in it.⁸³⁰ Despite the continuing involvement of the Ministry of Labour and Social Affairs in the fulfilment of the integration programmes, the main coordinating body responsible for integration remains the Ministry of Interior. Concerning the recommendation to include other migrant categories (EU nationals and irregular migrants) into the scope of the integration programmes, Government identifies the citizens of other EU Members States as a „complementary target group“⁸³¹, while the category of undocumented migrants was not mentioned in the document, indicating that the Czech authorities intend to strictly insist on the lawful, registered residence as a necessary pre-condition of eligibility for any further rights and entitlements. The document also mentions a support of intercultural education of the officials in charge of processing the migration agenda.⁸³²

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Separation of the Health Insurance

According to the national legal regulation, health insurance could be divided into 4 groups: public health insurance, commercial health insurance for foreigners, reimbursement of the health care based on international documents and reimbursement of the health care by the state outside the extent of public health insurance.⁸³³

7.2. Public Health Insurance

7.2.1. Participation in the Public Health Insurance System

According to Act of Public Health Insurance⁸³⁴, the right to participate in the system of public health insurance have:

- persons with permanent residence in the territory of the Czech Republic
- foreigners without permanent residence, who are employees of an employer, who has seat or permanent residence in the territory of the Czech Republic.

According to Asylum Act⁸³⁵ the right to participate in the system of public health insurance have:

zajemnem_respektu_a_Postup_pri_realizaci_aktualizovane_Koncepce_integrace_cizincu_v_roce_2016.pdf >
accessed 20 July 2017 [Czech]

⁸²⁹ Ministerstvo vnitra, Odbor azylové a imigrační politiky. *Zásady pro poskytování dotací ze státního rozpočtu na výdaje realizované v rámci projektů obcí na podporu integrace cizinců na lokální úrovni v roce 2016.*

⁸³⁰ Vláda České republiky. *Usnesení vlády České republiky č. 26 ze dne 18. ledna 2016* (see above)

⁸³¹ Ibid.

⁸³² Ibid.

⁸³³ ČIŽINSKÝ, Pavel a kol. *Cizinecké právo* (Praha, Linde, 2012) 256 [Czech]

⁸³⁴ Law n. 48 (Act of Public Health Insurance) 1997 [Zákon o veřejném zdravotním pojištění]

⁸³⁵ Law n. 325 (Asylum Act) 1999 [Zákon o azylu]

- persons seeking asylum, who have permanent residence in the territory of the Czech Republic in the duration of the validity of the decision of their asylum confirmation? (§76 Asylum Act)
- applicants of granting the international protection and their children, if their place of birth is the territory of the Czech Republic (§88 Asylum Act), to this category are included foreigners, who are placed into an asylum establishment (§87a Asylum Act)

7.2.2. Rights and Duties of Insureds

Rights and Duties of Insureds are inherent in part four of the Act of Public Health Insurance. Concretely §11 is focused on rights of Insureds. Here is included the right to Health Insurance Company of insured's choice and also the right to health service provider of his choice. An Insured has right to health care, health preparations and special food without direct reimbursement, which are paid by his health insurance company in extent of the Act of Public Health Insurance. If an Insured has doubts, that the health care was not provided in appropriate way, he could file a complaint according to Health Services Act⁸³⁶, part eight – complaints.

Duties are specified in §12 of the Act of Public Health Insurance. The main duty is to pay for the health insurance. Every Insured is obligated to pay for the health insurance. According to the Act of Public Health Insurance §4, payers could be divided into 3 groups:

- Insureds specified in §5 – especially (foreign) self-employed persons
- Employers
- State – in case of foreigners with the legality of residence in the territory of the Czech Republic for the purpose of provision temporary protection
- in case of applicants of granting the international protection, their children born in the territory, foreigners with visa over 90 days for the purpose of the residence toleration and their children

Another Insureds' duty is notification duty (especially the exchange of the insurance company, starting new employment, birth of a baby etc.), avoid behaviour of conscious health damage, undergo preventive health examination etc.

7.3. Commercial Health Insurance for Foreigners

Commercial Health Insurance relates to those, who are not able to participate in public health insurance – self-employed persons, persons without authorization to residence in the territory of the Czech Republic or students without permanent residence.

Commercial Health Insurance includes two types of insurance: insurance of urgent and unsuspensive health care (180j/1) and complex health insurance (180j/7) according to Act on the Residence of Foreign Nationals in the Czech Republic⁸³⁷.

Insurance of urgent and emergency health care is compatible with the certificate of travelling health insurance. Insured is covered for expenses related only with urgent and emergency health

⁸³⁶ Law n. 372 (Health Services Act) 2011 [Zákon o zdravotních službách]

⁸³⁷ Law n. 326 (Act of foreigner's residence in the territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky a změně některých předpisů, ve znění pozdějších předpisů]

care, included with expenses for transport of an insured or his corpse to country of origin (or to state of his permanent residence). The amount of arranged limit for one insurance event is at least 60 000 € (the amount depends on the insurance company, which is the insurance arranged with).

Complex health insurance means provided health care to insured only by contractual health provider of insurer's company without direct reimbursement of expenses for treatment with purpose of observing the same state of health before and after agreement of health insurance. It includes emergency care, preventive health examinations twice a year and also care related with pregnancy of a mother and a childbirth.

According to Antidiscrimination Act⁹ in §1/1 h) everyone has right to equal services without discrimination in access to health care and its providing.

If someone's right to equal treatment is broken, he has right to demand that discriminatory behaviour will not be applied on him anymore and also to get adequate satisfaction. He can file a lawsuit to Constitutional Court of the Czech Republic for broken human rights or event to the European Court of Human Rights.

The Czech health insurance system does not have special programme for migrants in general and everything arises from the Regulation No 883/2004 and 987/2009 of the European Parliament and of the Council.

7.4. Reimbursement of the Health Care Based on International Documents

Health care can be also provided to foreigners based on bilateral international agreements on cooperation in the healthcare sector. These persons are not a part of public health insurance, only the care is covered according to regulation of concrete agreement. These concrete states are Bosnia and Herzegovina (based on international agreement between the government of the Czech Republic and Socialistic Federative Republic of Yugoslavia) and Cuba (based on international agreement between the government of the Czech Republic and the government of the Cuban Republic). The foreigner has to prove the nationality.

Based on international agreements on social security with states: Montenegro, Macedonia, Serbia, Turkey and Croatia can foreigner draw health care for free, but at first he has to submit the appropriate form made out by his insurance institution, or 'The Confirmation of Registration', with which can the insured seeking health care identify himself.⁸³⁸

7.5. Reimbursement of the Health Care by the State Outside the Extent of Public Health Insurance

In some cases is health care covered for foreigners by Czech state. These cases are outside the extent of public health insurance and also outside of international agreements. This special

⁸³⁸ Ministry of Health, 'Mezinárodní smlouvy', (Website of Ministry of Health, International Treaties, 31 October 2012, <http://www.mzcr.cz/Cizinci/obsah/mezinarodni-smlouvy_2632_22.html>, accessed 2 August 2017, [Czech])

situation is specified in Act on the Residence of Foreign Nationals in the Czech Republic, section Health Services during Foreigner's securing in the territory.⁸³⁹

In § 176/1 are specified services, which have to be provided in case of unsuspensive care, if the foreigner's life is immediately in jeopardy, if not providing health services will cause permanent pathological changes, suffering and pain or will lead to death or will lead to changes of foreigner's behaviour, which could put in danger himself or his surroundings. The health services have to be provided in cases related with pregnancy or childbirth, except of abortion of foreigner's request.

Refusal or failure to provide healthcare to human, whose life is in jeopardy, is a criminal act according to Criminal Code §150⁸⁴⁰.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

The right to education belongs into obligations arising out of the 1st Protocol to the European Court of Human Rights, concretely based on the 2nd Article, which says: 'No one can be denied the right to education.' Czech national legal regulation modifies the principles of education in Article 33, Charter of Fundamental Rights and Freedoms⁸⁴¹. The stress is put on the equality of the educational opportunities and the access to education for free.

The modification concerns the right to education for migrants proceeds from the Asylum Act [Zákon o azylu]⁸⁴² 80 (4), which says: 'Applicants for the international protection have an access to the education according to conditions specified in the Education Act⁸⁴³.'

8.1. Primary Education

The Educational Act separates foreigners into two groups – 1. Citizens of the European Union and their dependents and 2. Citizens of the countries out of the European Union.

However, the Act guarantees equal access to the basic education to all children regardless of the country of origin from and also in case when there is no proof of the legality to residence in the territory of the Czech Republic. The Primary Schools are not allowed to consider the authorization to residence, every compulsory education aged child is allowed to attend the primary school.

8.1.1. Compulsory Education

According to the Education Act 36 (2), the compulsory education is applied to the citizens of the Czech Republic, to citizens of another member state of the EU, who stay in the territory of the

⁸³⁹ Law n. 326 (Act of foreigner's residence in the territory of the Czech Republic) 1999 [Zákon o pobytu cizinců na území České republiky]

⁸⁴⁰ Law n. 40 (Criminal Code) 2009 [Trestní zákoník].

⁸⁴¹ Law n. 2 (Charter of Fundamental Rights and Freedoms) 1993 [Listina základních práv a svobod]

⁸⁴² Law n. 325 (Asylum Act) 1999 [Zákon o azylu]

⁸⁴³ Law n. 561 (Education Act) 2004 [Školský zákon]

Czech Republic longer than 90 days and also to other foreigners, who are allowed to stay in the territory of the Czech Republic permanently or temporarily longer than 90 and to applicants of a grant of the international protection.

8.1.2. Preparation for integration to school

The preparation for integration to primary education includes the education of the Czech language and is without any fee for children of the citizens of the EU and for children of those who has the permit to stay in the territory of the Czech Republic, as it arises from the Education Act 20 (5). The preparation is provided by the competent Regional Authority of the child's place of the residence.

8.2. High School Education

The access to high school education is not guaranteed by international documents. According to the Education Act of the Czech Republic is the foreigner's admission to a high school conditioned by the approval of legality to reside on the territory of the Czech Republic. The applicant has to prove that he completed compulsory education and he has to produce the certificate of the equality of his previous school. Moreover, a student has to prove the knowledge of the Czech language to study for free by interview.

If the foreign student applies to the first year of high school studies, the principal follows the Education Act in admission of new students except of the exam in Czech language. If the student applies to higher year, the principal has to take account of applicant's achieved studies and his ability in Czech language.

8.3. University Education

The access to university education arises from the Act of Universities⁸⁴⁴ (Zákon o vysokých školách). The condition for admission is to successfully complete the high school studies. Foreign students can attend the university regardless of the kind of legal residence. Foreign students have the same conditions to study as Czech students if they are able to study in Czech language. Otherwise they have to meet the costs from their own financial resources. However, according to the Act of Universities, there are possibilities to get a scholarship from public grants, university scholarship fund, governmental scholarship within the scope of international development help or the scholarship, which is consistent with international acts that the Czech Republic is engaged by.

⁸⁴⁴ Law n. 111 (Act of Universities) 1998 [Zákon o vysokých školách]

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Although the legal framework of recognition of qualification is to large extent determined by the EU legislative⁸⁴⁵ and international agreements covering the issue, this analysis focuses solely on specific national law procedures and works with international instruments only when appropriate.

9.1. Recognition of Academic Qualification

Recognition of foreign university diplomas, meant any university education obtained outside of the Czech Republic, could be processed in several, to some extent different regimes. The appropriate regime is determined by existence of any international, multi- or bilateral agreement. These agreements establish more favourable treatment than the default procedure provided for in domestic legislation.⁸⁴⁶ In case of doubts whether such agreement exists between the Czech Republic and the foreign country where the diploma was obtained, applicants can refer to the Czech Ministry of Education⁸⁴⁷ or apply directly to it.⁸⁴⁸

9.1.1. Recognition under International Agreements

The Czech Republic is a signatory state to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 (hereinafter 'Lisbon Convention'). The Lisbon Convention is directly applicable to the recognition procedures in the Czech Republic in case the education is obtained in another signatory state. The recognition is to be **granted unless substantial differences are found** between foreign qualification and corresponding qualification in the Czech Republic. The competent authority to handle applications is the Ministry of Education. Otherwise, the process is governed by a procedure of the Higher Education Act,⁸⁴⁹ in connection with the Administrative Procedure Code,⁸⁵⁰ as further described in section 9.1.2.

The most privileged recognition regime is provided under a limited number of bilateral agreements.⁸⁵¹ They provide for mutual equivalence of academic diplomas obtained in the two

⁸⁴⁵ Limited to the issue of recognition of professional qualification.

⁸⁴⁶ Generally, international agreements take precedence over domestic legislative acts. See art. 10 Constitution 1993 [Ústava České republiky]. The precedence is further confirmed in section 106 law n. 111/1998 (Higher Education Act) 1998 [zákon o vysokých školách].

⁸⁴⁷ The Ministry of Education also provides comprehensive information on recognition of academic qualification on their website in English, which served as a main source of information for this piece. See Ministry of Education, 'Academic Recognition' (Ministry of Education, February 9 2016) <<http://www.msmt.cz/eu-and-international-affairs/academic-recognition>> accessed July15 2017 [English]. Additionally, an information booklet in English was released in July 2017, available at <<http://www.msmt.cz/file/42615/>> accessed August 25 2017.

⁸⁴⁸ The application will be forwarded by the Ministry to the appropriate national body.

⁸⁴⁹ Law n. 111/1998 (Higher Education Act) 1998 [zákon o vysokých školách].

⁸⁵⁰ Law n. 500/2004 (Administrative Procedure Code) 2004 [správní řád].

⁸⁵¹ As of May 2017, there are bilateral agreements with Slovakia, Slovenia, Poland, Hungary and Germany in force.

signatory states, or establish more favourable procedures for recognition of academic qualification between the Czech Republic and the other concerned state.⁸⁵²

9.1.2. National Recognition Procedure Legislation

9.1.2.1. Generally about the Recognition Procedure

The last regime represents 'default procedure' in case none of the above mentioned is applicable. It would arguably be the most frequent one in cases of applicants from non-European countries, including international protection beneficiaries. Rules are set in section 89 and following of the Higher Education Act.

In order to obtain recognition of a university diploma or other qualification (e.g. a part of university studies), a formal application in writing is needed. There is no binding form to be used, but the Ministry of Education provides recommended form⁸⁵³ for applicant's convenience. Generally, the application should include, besides the request for recognition: basic information about the applicant (name, address, date of birth); original or legally attested copy of diploma, diploma supplement or other certificate issued by a foreign university (certified translation into Czech could be required); copy of a list of completed courses, if requested (to prove content of the studies); and date and signature of the applicant.⁸⁵⁴

Besides certified translation, it could be requested to verify the diploma by legalization or apostila⁸⁵⁵ (whichever is applicable), unless the Czech Republic waived the requirement for verification.⁸⁵⁶

9.1.2.2. Special Rules Applicable to International Protection Beneficiaries

Concerning applicants who were granted international protection status, either in the Czech Republic or any other EU member state, additional rules apply as to the documents required. It is understood that providing documentary evidence of qualification could be impossible for international protection beneficiaries. In their case, even personal statement or any other means of proving qualification is sufficient.⁸⁵⁷ They are also entitled to treatment similar to the Czech nationals.

⁸⁵² In case of Slovenia, Hungary and Poland, diplomas and other certificates of qualifications covered under the agreement could be used without any formal process of recognition. Academic qualification obtained in Slovakia is recognized as equal to qualification obtained in the Czech Republic without any formalities, with some specific rules. In case of agreement with Germany, a formal application is necessary for recognition of qualification.

⁸⁵³ Form in English for download accessible from: Ministry of Education, 'Academic Recognition' (Ministry of Education, February 9 2016) <<http://www.msmt.cz/eu-and-international-affairs/academic-recognition>> accessed July 15 2017 [English].

⁸⁵⁴ Section 90 of Higher Education Act; section 37 of Administrative Procedure Code.

⁸⁵⁵ I. e. lower level of legalization of official documents for use abroad, as established by the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, concluded in The Hague on October 5 1961.

⁸⁵⁶ Section 90 of Higher Education Act.

⁸⁵⁷ This provision reflects the requirement under Art. VII of the Lisbon Convention.

9.1.2.3. Procedural Rules

The application should be filed with competent authority. That could be either any public university that provides study program similar to the one the applicant graduated from,⁸⁵⁸ the Ministry of Interior or the Ministry of Defence (in case of security forces oriented qualification). The Ministry of Education decides on competence of other bodies, serves as appellate body and issues decision on recognition when delegated the competence by an international agreement. The procedure as such is governed by procedural rules of the Administrative Procedure Code. Official language of the proceedings is Czech; costs for interpreting/translating are born by the applicant.⁸⁵⁹

Once the application is delivered to the competent authority, administrative fee of 3,000 CZK⁸⁶⁰ is payable in order to process the application. The authority then examines the application's formalities and determines whether the foreign qualification matches qualification requirements in the Czech Republic without differences in substantial features. **Only when substantial differences are found, the application is to be dismissed by the public body.**⁸⁶¹ Otherwise, a decision on recognition is issued to the applicant in time limit of 30 days since the application was filed (60 days in difficult circumstances of the case).⁸⁶²

As to remedies available, the applicant has a right to appeal within 15 days; there is no filing fee. Appeal in writing should contain specific reasons why the decision should be overruled.⁸⁶³ The competent appellate body is the Ministry of Education.⁸⁶⁴ Further remedy could be sought through an administrative court, based on an action against the administrative decisions⁸⁶⁵ filed within two months from the appellate decision's announcement.

9.2. Recognition of Other Education

The process of recognition of primary or secondary education is regulated by the Education Act⁸⁶⁶ and is to some extent similar to the process described above. Generally, in order to obtain recognition, an applicant needs to prove qualification that has no substantial differences from qualification obtained in the Czech Republic. The competent body is Regional Authority. It either confirms that the education obtained abroad equals to the Czech one (based on

⁸⁵⁸ List of universities and their study programs available from: Ministry of Education, *'Přehled vysokých škol v ČR'* (Ministry of Education, 2017) <<http://www.msmt.cz/vzdelavani/vysoke-skolstvi/prehled-vysokych-skol-v-cr-3?lang=1>> accessed July 15 2017 [Czech only].

⁸⁵⁹ Section 16 of Administrative Procedure Code.

⁸⁶⁰ Approx. 115 EUR as of July 15 2017.

⁸⁶¹ The term 'substantial differences' is to be understood in the same manner as 'substantial differences' under the Lisbon Convention; determining of whether substantial differences exist is based on comparing and contrasting the 'framework' of the study programs. See case n. 6 As 153/2014 [2015] Supreme Administrative Court <<http://www.nssoud.cz>> accessed August 28 2017.

⁸⁶² Case law relating to recognition of academic qualification deals primarily with procedural aspects of issuing a decision and requirement of exact specification of qualification obtained and equivalent in the 'ruling' of the decision, not only in reasoning. See, e. g., case n. 9 As 77/2009 [2009] Supreme Administrative Court <<http://www.nssoud.cz>> accessed July 15 2017.

⁸⁶³ Section 81 and following of Administrative Procedure Code.

⁸⁶⁴ Section 87 of Higher Education Act.

⁸⁶⁵ Section 65 and following of Law n. 150/2002 Coll. (Act on administrative court procedure) 2002 [soudní řád správní].

⁸⁶⁶ Law n. 561/2004 (Education Act) [školský zákon].

international agreement), or decides that it is valid in the Czech Republic (examination might be requested to show sufficient scope of education) or the application is dismissed.⁸⁶⁷

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

In the Czech Republic, political rights are protected *inter alia* under the Charter of Fundamental Rights and Freedoms (hereinafter 'the Charter'). The Charter distinguishes between beneficiaries of respected rights – as it refers to 'all' natural, respectively legal persons, or 'citizens'. Full scope of political rights is granted only to Czech nationals.⁸⁶⁸ Non-nationals' political rights are restricted, depending on immigration status of a specific person (a short or long term stay or a permanent residency permit), country of origin and foreign citizenship respectively.⁸⁶⁹

In late 2015, the Czech Republic ratified (after 15 years from signature) the Council of Europe's **Convention on the Participation of Foreigners in Public Life at Local Level** (hereinafter 'the Convention').⁸⁷⁰ The ratification the Convention did not significantly upgrade non-nationals' political rights, since a declaration reserving right not to apply parts of the Convention relating to consultative bodies and right to vote was filed; other binding commitments of the Convention had already been met in the national legislation.⁸⁷¹ The government's stances towards non-nationals' political participation in their country of origin is neutral and there are neither facilitating nor inhibiting measures in place.

10.1. Political Rights

According to the Charter, **freedom of expression, right to information, right to petition and freedom of peaceful assembly**⁸⁷² are fully granted to 'all' regardless of their citizenship.⁸⁷³

Concerning the **right of association**,⁸⁷⁴ non-nationals' right of political association in political parties is effectively excluded. Even though not expressly stated in the Charter, non-nationals

⁸⁶⁷ Section 108 and following Education Act.

⁸⁶⁸ Therefore, this chapter works with term 'non-national', covering all foreign citizens residing in the Czech Republic, regardless of legal basis of their stay, instead of 'migrant'.

⁸⁶⁹ Refugees and other international protection beneficiaries do not enjoy any more favourable treatment. They are granted permanent residency permit. See section 76 of Asylum Act.

⁸⁷⁰ Council of Europe, 'List of signatures and Declarations of Treaty 144' (Council of Europe, 2017) <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/144/signatures>> accessed July 15 2017 [English].

⁸⁷¹ For details concerning rights regulated under Chapter A of the Convention, binding for the Czech Republic, see section 10.1.

⁸⁷² Art. 17 and following of the Charter.

⁸⁷³ In case of freedom of assembly, the Charter in its Art. 19 does not specify who benefits from it. The Assembly Act uses term 'citizens', however, there is consensus that all natural persons enjoy freedom of assembly regardless of their nationality. See law n. 84/1990 (Assembly Act)1990 [zákon o právu shromažďovací]; Eliška Wagnerová et al., *Ústava základních práv a svobod. Komentář*² (1st ed. Wolters Kluwer 2012) 462 [Czech].

⁸⁷⁴ Art. 20 of the Charter.

could not become members of any political party, based on provisions of the law.⁸⁷⁵ Public Defender of Rights' office criticised this provision as discriminatory against other EU member states' nationals.⁸⁷⁶ Additionally, some authors pointed out possible violation of Art. 11 of the European Convention.⁸⁷⁷ So far, this problematic issue has not undergone scrutiny of the Constitutional Court. In its other aspects, e.g. economic or social rights, freedom of association is not restricted and could be enjoyed by all, regardless of nationality of residency status.

10.1.1. Right to Vote

Generally, **right to vote** in parliamentary, presidential and regional elections remains strictly **limited to Czech citizens**. However, there are significant differences in the national law's treatment of different groups of migrants, based on foreign nationality of the individual.

Regulation of elections for the European Parliament and municipal elections allows exceptions based on international agreement.⁸⁷⁸ Such international agreement is currently only EU primary law,⁸⁷⁹ providing that right to vote (both in active and passive form) for these elections is also granted to all EU member states' nationals. In case of municipal elections, the national law additionally requires permanent residency status as a condition. Later, judicial interpretation relaxed the relatively strict condition, deciding also temporary residence in the municipality gives rise to the right to vote.⁸⁸⁰ As a result, both temporary a permanent residence enables all EU member states nationals to participate in the European and municipal elections.

For regional and parliamentary elections, however, EU member states nationals' position does not differ from other non-nationals and their right to vote is excluded. As a result, both chambers of the Parliament and all regional assemblies consist only of Czech nationals.

It follows that third country nationals have considerably different legal position when compared to EU member states' nationals, who enjoy more favourable treatment. This fact was also criticised by the Public Defender's office as unjustifiably different treatment of third country nationals, proposing granting right to vote on municipal level to third country nationals too.⁸⁸¹

⁸⁷⁵ Section 1 law n. 424/1991 (act on assembly in political parties and political movements) 1991 [zákon o sdružování v politických stranách a hnutích].

⁸⁷⁶ Public Defender of Rights, 'Občané EU žijící v ČR mají právo účastnit se politického života' (Public Defender of Rights, 2014) <<https://www.ochrance.cz/aktualne/tiskove-zpravy-2017/obcane-eu-zijici-v-cr-maji-pravo-ucastnit-se-politickeho-zivota/>> accessed July 15 2017 [Czech].

⁸⁷⁷ Tomas Grygar 'O (ne)možnosti členství cizinců v politických stranách' [2014] Časopis pro právní vědu a praxi 352 <<https://journals.muni.cz/cpvp/article/view/5366/4454>> accessed July 21 2017 [Czech].

⁸⁷⁸ Section 5 law n. 62/2003 (act on European Parliamentary elections) 2003 [zákon o volbách do Evropského parlamentu]; section 4 law n. 491/2001 on municipal elections 2001 [zákon o volbách do zastupitelstev obcí].

⁸⁷⁹ Art. 20 and 22 Treaty on the European Union 2012 (consolidated version).

⁸⁸⁰ In a precedent case, Regional court in Brno decided that a Slovak citizen had a right to vote in municipal election even though he did not obtain permanent residency permit. He lived in the specific city on the basis of called temporary residence. From the court's perspective, the above cited provision breached the EU law, so the court the EU law directly, against the national law's language. See case n. 64 A 6/2014 [2014] Regional Court in Brno <http://nssoud.cz/files/EVIDENCNI_LIST/2014/64A_6_2014_20140919133208_prevedeno.pdf> accessed July 21 2017 [Czech].

⁸⁸¹ Public Defender of Rights, 'Doporučení k naplňování práva rovného zacházení s cizinci' (Public Defender of Rights, 2010) <https://www.ochrance.cz/uploads/tx_odlistdocument/Zachazeni_s_cizinci.pdf> accessed July 21 2017 [Czech].

The government's 2016 integration strategy paper identified lack of right to vote as one of the key obstacles to deeper political integration of migrants, both on national and local level.⁸⁸² Despite highlighting intensive political debate on broadening the scope of beneficiaries in 2016, the 2017 paper does not anticipate any development and focuses on local participative projects not involving the right to vote.⁸⁸³

10.1.2. Civil Service in State Agencies

Right to hold (not elected) office in public administration was considerably broadened with new Civil Service Act.⁸⁸⁴ The act is applicable to most positions in state administrative bodies. Under the new act, only certain positions requiring Czech citizenship as compulsory could be identified by the government in accordance with public interest. Identified positions usually involve high ranking officials in top levels of government, especially in diplomacy and other strategic areas.⁸⁸⁵ Except for them, all other positions in public administration are open to other EU or European Economic Area member states' nationals as well.⁸⁸⁶ On the contrary, other third country nationals are excluded from positions regulated under the Civil Service Act.

10.2. Other forms of Political Participation

Besides the traditional catalogue of political rights, legal instruments and institutional infrastructure addressing **the issue of political participation and representation** of non-nationals in political decision-making process **remains scarce**. The reason is that national legislation distinguishes between ethnical minorities and national minorities. The Charter grants **minority rights** (art. 24, 25) solely to national minorities that were acknowledged by the state. National minority rights include, among language and other cultural rights, also provisions guaranteeing political representation outside elected representative bodies.⁸⁸⁷ In order to be considered a member of a national minority, one has to identify as a member *and* hold Czech citizenship cumulatively. That means non-nationals could under no circumstances benefit from minority rights.

On the governmental level, this deficit was reflected in establishment of the Human Rights Council's **Committee for Rights of Foreigners**, which task is counselling the government on

⁸⁸² Ministry of Interior, 'Government Resolution n.26 of January 18 2016 on Amended Integration Conception and Progress 2016' 13 <<http://www.mvcr.cz/soubor/aktualizovana-kic-a-postup-pri-realizaci-usneseni-vlady-cr-c-26.aspx>> accessed July 15 2017.

⁸⁸³ Ministry of Interior, 'Government Resolution n.11 of January 9 2017 on progress with performance of amended integration conception 2017' [Usnesení vlády ČR o aktualizované Koncepci intergace cizinců 2017] 9 <<http://www.mvcr.cz/soubor/postup-pri-realizaci-aktualizovane-koncepcie-integrace-cizincu-ve-vzajemnem-respektu-2017-usneseni-vlady-c-11-ze-dne-9-ledna-2017.aspx>> accessed July 15 2017.

⁸⁸⁴ Law n. 234/2014 (Civil Service Act) 2014 [zákon o služebním poměru].

⁸⁸⁵ List of restricted positions as of January 1 2017 available from Ministry of Interior's website <<http://www.mvcr.cz/clanek/poskytnuti-informaci-k-systemizaci-sluzebnich-a-pracovnich-mist-s-ucinnosti-od-1-ledna-2017.aspx>> accessed August 25 2017

⁸⁸⁶ Section 25 of Civil Service Act.

⁸⁸⁷ E. g. through representation in Government's Council for National Minorities and on local level, national minority committees.

new policies and legislation.⁸⁸⁸ Currently, its members consist partly of public administrative officials and partly of members of public, mostly representing non-governmental organisations focusing on integration of migrants. Consultative bodies on local level, as foresaw in Chapter B of the Convention, do not exist.

Overall, many local NGOs, among them the League of Human Rights and Organization for Aid to Refugees, raised criticism of legal framework regulating political rights of non-nationals, arguing that due to lack of political rights enabling political participation on all levels of government, level of political integration of migrants in the Czech Republic remains low.⁸⁸⁹

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

Czech Republic is bounded with the Convention and Protocol relating to the Status of Refugees from 1951, which says in the Art.34: 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'⁸⁹⁰

Other conventions are Convention Relating to the Status of Stateless Persons, Convention on the Reduction of Statelessness and finally the European Convention on Nationality from 1997, valid in the Czech Republic from 1st July 2004.

The fundamental national regulation related to acquiring and losing the nationality is inherent in Art.12 of the Constitution of the Czech Republic which says: 'Acquiring and losing the nationality of the Czech Republic requests the Act about the Nationality'⁸⁹¹ and no one cannot be denaturalized against his will.'

11.1. Acquiring of the Nationality

11.1.1. Acquiring of the nationality by birth

The Czech Republic legislative respects principle *ius sanguinis* – if at least one of the child's parents is the citizen of the Czech Republic, the child acquires automatically the Czech nationality. Exception of this principle is in using *ius soli* in the case the child is born to stateless parents. Using this principle reduces statelessness.

⁸⁸⁸ Just recently, the Committee strongly criticised a bill amending the law n. 326/1999 (act on the residence of foreign nationals) 1999 [cizinecký zákon], claiming that it violates human rights obligations. The bill was nevertheless passed by Parliament and will become effective. It might be challenged at the Constitutional Court.

⁸⁸⁹ See, e. g. Radko Hokovský et al., 'Politics and Policies of Integration in Austria, Hungary, Czechia, Denmark and at the EU Level' (2nd ed., League of Human Rights and European Values Think-Tank, 2013) 294; Organization for Aid to Refugees, 'Participation and Policy Involvement of the Third Country Nationals in Public Life of 9 Central and Eastern EU Member States' (Organization for Aid to Refugees, 2015) <<http://migrant-participation.eu/soubory/55.pdf>> accessed August 25 2017.

⁸⁹⁰ Convention and Protocol relating to the Status of Refugees: The Refugee Convention.

⁸⁹¹ Law n.186 (Act about the Nationality of the Czech Republic) 2013 [Zákon o státním občanství České republiky].

11.1.2. Adoption

A child acquires the Czech nationality after the adoption, if at least one adoptive parent is the citizen of the Czech Republic.

11.1.3. Establishing the Paternity

According to the Act about the Nationality a child born out of marriage to mother with other nationality or stateless and father with Czech citizenship, acquires the Czech nationality:

- §6 by the date when the judgement about establishing the paternity becomes effective
- §7 by the date of concurrent statement of both parents about establishing the paternity

11.1.4. Finding on the territory of the Czech Republic

A child younger than 3 years old found in the territory of the Czech Republic acquires the Czech nationality, if it is not possible to find out his identity by the day of finding.⁸⁹²

11.1.5. Naturalization

The conditions of naturalization are regulated in the Act about the Nationality 11-15. The applicant has to observe all of the conditions at the same time. About the naturalization decides the Ministry of the Interior, however even when the applicant observes all of the conditions, he has no legal claim to the naturalization.

11.1.5.1. Conditions

Act about the Nationality, §13

The Nationality of the Czech Republic is able to observe, if the applicant is integrated to the Czech society, especially if the integration is in family, work or social point and the applicant observes the conditions specified in §14. It is not able to observe the citizenship to an applicant, who endangers the safety of the Republic or its sovereignty or its democratic principles.

Act about the Nationality, §14

According to the Act about the Nationality, §14, the conditions are divided into 8 subsections:

- The naturalization could be accorded, if the applicant has the permission to permanent residence:
 - for at least 5 years
 - in case of the EU citizen for at least 3 years

11.2. The Nationality Dualism

The amendment to the Act about the Nationality brought the possibility of double and more nationality.

⁸⁹²Law n.186 (Act about the Nationality of the Czech Republic) 2013 [Zákon o státním občanství České republiky]

Every foreigner, who has the permission for permanent residence in the territory of the Czech Republic, can receive the citizenship of the Czech Republic, based on an exception of the Ministry of Interior and the condition about losing previous nationality is not valid anymore.

The decision of the Ministry of Interior about not losing the original citizenship is possible in case of acquiring special benefit by naturalization of the foreigner or if the intern regulations of the original state do not permit losing of the nationality.

In other cases is the decision of the Ministry of Interior possible only if the applicant has the permission for permanent residence in the territory of the Czech Republic for at least 5 years, lives in the territory legally for at least 20 years, has not been convicted to a criminal act and he has real and deep relation to the Czech Republic.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Until 2013, the Czech Republic together with the other Member States received support from the General programme Solidarity and Management of Migration Flows (SOLID), which included the following four composing parts: (i) European Fund for Integration of Third-Country Nationals (EIF), (ii) External Borders Fund (EBF), (iii) Return Fund (RF) and (iv) European Refugee Fund (ERF).

For the period 2014-2020, the above mentioned structure was transformed. The new SOLID programme entails only the two financial mechanisms: Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). The past practice of submitting national programmes on annual basis was substituted by the multiannual national programmes that lays down the priorities for the entire time period covered by the SOLID general programme. The national programmes are subject to approval by the European Commission and the Czech Republic ranked among the first countries whose national programmes were approved.⁸⁹³

AMIF, which took over majority of the former EIF, RF and ERF agenda, strives to achieve four main objectives: asylum policy, integration, return policy and solidarity. The Czech Republic was given 27 685 177 Euro from the AMIF for the period 2014-2020.

Second component of the current SOLID programme – the Internal Security Fund – encompasses the following two subparts.⁸⁹⁴

Firstly, the Internal Security Fund Borders (ISF-B) that covers nearly the same portfolio as the former EBF, putting emphasis on external borders protection and visa policy. The Czech Republic received the total amount of 15 155 484 Euro for the purposes of the ISF-B.⁸⁹⁵

⁸⁹³Ministerstvo vnitra České republiky, Odbor fondů EU v oblasti vnitřních věcí. *Obecné informace* (18 February 2016) <<http://www.mvcr.cz/clanek/fondy-eu-v-oblasti-vnitrich-veci-obecne-informace.aspx?q=Y2hudW09MQ%3d%3d>> accessed 20 July 2017 [Czech]

⁸⁹⁴Ministerstvo vnitra České republiky. *Národní program – fond pro vnitřní bezpečnost*. The whole document can be accessed via the following link: <<http://www.mvcr.cz/clanek/fondy-eu-v-oblasti-vnitrich-veci-obecne-informace.aspx?q=Y2hudW09Mw%3D%3D>> accessed 20 July 2017 [Czech]

The second building block of the ISF is called the Internal Security Fund-Police (ISF-P). It has been a completely new area that was not represented in the precursor of the current SOLID. The ISF-P focuses on the area of police cooperation in internal matters, with particular attention given to fight against organized crime and protection of critical infrastructure. The Czech Republic has been entitled to the financial assistance amounting to 17 029 012 Euro under the ISF-P.⁸⁹⁶

The Czech national AMIF programme⁸⁹⁷ mentions the following priorities with regard to integration policy: language, economic self-sufficiency, orientation in the society and relations with its members. The Czech Republic already established twelve so-called Integration Support Centres that are in charge of facilitating the migration programmes on local and regional level. In the 2014-2020 funding period, the Czech Republic considers increasing support for the work of the Integration Support Centres as one of the main priorities.

The national AMIF programme further divides the key objectives in the area of integration into three groups⁸⁹⁸:

- Maintaining and developing regional Integration Support Centres;
- Assistance to Vulnerable Persons;
- Assistance in educational system; provision of legal counselling; support of self-sufficiency.

The national AMIF programme lists several specific, tangible examples how can be the funds from the programme used for the purposes of integration policies⁸⁹⁹:

- Maintaining and developing regional Centres;
- Social and legal counselling, i.e. advice and assistance in areas such as accommodation, means of subsistence, administrative and legal guidance, health, psychological and social care and employment;
- Provision of assistance to vulnerable persons (language courses, counselling, practical support, help in life difficult situations, assistance in dealing with bureaucracy);
- Measures supporting the introductory phase of the integration process, including measures raising the awareness of rights and obligations among the subjects of integration;
- Measures supporting participation in public activities, and their understanding of the core values enshrined in the Charter of Fundamental Rights of the European Union;
- Measures focusing on education, esp. language training;

⁸⁹⁵Ministerstvo vnitra České republiky, Odbor fondů EU v oblasti vnitřních věcí. *Obecné informace* (18 February 2016) <<http://www.mvcr.cz/clanek/fondy-eu-v-oblasti-vnitrich-veci-obecne-informace.aspx?q=Y2hudW09MQ%3d%3d>> accessed 20 July 2017 [Czech]

⁸⁹⁶*Ibid.*

⁸⁹⁷Ministerstvo vnitra České republiky. *Azylový migrační a integrační fond (AMIF)*. The whole document can be accessed via the following link: <<http://www.mvcr.cz/clanek/fondy-eu-v-oblasti-vnitrich-veci-obecne-informace.aspx?q=Y2hudW09MQ%3d%3d>> accessed 20 July 2017 [Czech and English]

⁸⁹⁸*National programme AMIF*, p. 13

⁸⁹⁹*Ibid.*, p. 14

- Activities promoting contacts and dialogue between the subjects of integration measures and the host society and activities promoting acceptance by the host society, also by involving the media;
- Improving the accommodation capacities (for beneficiaries of international protection).

Conclusions

There has been a multitude of takeaways arising out of this legal research study. The Czech Republic translated the crucial international and European legal documents, such as the international Convention relating to the Status of Refugees or the European Qualification Directive. Apart from several relevant constitutional provisions, the bedrock of the Czech asylum-related legislation is the Asylum Act.

Department for Asylum and Migration Policy of the Ministry of Interior is the competent national authority responsible for asylum and migration-related proceedings. If an application is successful, either a temporary residence or a permanent residence permits can be awarded pursuant to the Residence of Aliens Act. The most important administrative agents and bodies, apart from already mentioned Department, are the Refugees Facilities Administration and the Alien Police Service. Migrants can also utilize multiple channels to protect their rights, either by means of the Public Defender of Rights or via the Committee for Foreigners' Rights.

So far, there have been five cases before the European Court of Human Rights that dealt with - among others - issues like excessive length of custody, legality of grounds for detention or deprivation of effective remedy. Nonetheless, ECRI in its latest publicized report has not found any major problems hindering immigrants' integration in the Czech Republic and resorted only to several minor objections related to the way asylum centres are being situated, in tune with the human rights organisations pointing on the need to move more attention to local and municipal level when it comes to integration agenda.

According to the Report on the Situation Regarding Migration, there have been almost 500,000 foreigners legally residing on the Czech territory at the moment. All of them are entitled to participate in the system of public health insurance and education. When it comes to academic qualifications obtained abroad, mutual recognition is guaranteed by Ministry of Education unless substantial differences are found.

All foreigners, regardless their residence or asylum application status, can also freely enjoy all the basic political rights such as freedom of expression, right to information, petition or peaceful assembly. One of the few exceptions is the voting right which is generally limited to the Czech citizens. However, the European and municipal elections enable participation of the other EU Member States' citizens.

The Act about the Nationality lists several options of acquiring the Czech citizenship, although the general rule is gaining citizenship by birth, the Act provides for subsequent acquisitions by means of adoption or naturalization. Czech Republic also utilizes the EU funds to strengthen its

efforts related to migration agenda, with the General programme Solidarity and Management of Migration Flows (SOLID) being the cornerstone of the European financial support.

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Introduction

The Danish legal system is largely based on civil law with statutory laws as the main legal source. However, case-law, constitutional norms, administrative practice and international obligations are also recognized as legitimate legal sources.

In order to prevent confusion while reading this report, it is important to highlight that the concept of a 'migrant' is not legally defined under Danish law. The Aliens Act, which is the only current Danish legislation in this particular area, uses instead the concept of an alien. The legal definition of an alien is negatively defined as any person without Danish citizenship.

The traditional Danish idea of a migrant is a person who has left his/her own country voluntarily, most often to find work, to marry or to study. There are of course also people who have been forced to leave their home, for example in relation to natural disasters, but they are still not recognized as refugees because they fall outside of the categories defined in the convention.⁹⁰⁰

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Introduction to asylum regulation in Denmark

Any foreign citizen has the right to request asylum in Denmark. The rules on asylum are provided in section 7 in the Aliens Act. As a consequence of the Danish opt-out arrangement, Denmark has preserved sovereignty concerning Justice and Home Affairs. Therefore, Denmark is not bound by the rules in the third part, title V in the Treaty on the Functioning of the European Union (hereafter TFEU) or any other legislation based on this part of the Treaty. Even though Denmark has a parallel agreement with EU concerning the Dublin Regulation, Denmark is bound at an intergovernmental level.

Section 8 of the Aliens Act regarding the resettlement of refugees following an agreement with the United Nations High Commissioner for Refugees (Quota Refugees) will not be examined below because the agreement is not usually considered to be a central part of the Danish asylum legislation.⁹⁰¹

1.1.1. Convention Status

Denmark became a party to the Geneva Convention on 17th November 1952. Consequently, Denmark guarantees minimum of protection in compliance with the Convention. Convention

⁹⁰⁰ Refugees.dk, *Legislation and Definitions* < <http://refugees.dk/en/facts/legislation-and-definitions/> > accessed 9 October 2017 [Danish].

⁹⁰¹ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 149 [Danish]

status as a foundation for asylum is governed by section 7(1) of the Aliens Act and concerns individuals covered by the basic protections in Art. 1 of the Geneva Convention. The Convention defines a refugee as an individual with a "... well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, [who] is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."⁹⁰² Section 7(1) incorporates this definition into Danish law. Accordingly, any individual falling within this definition has a right to be protected and be granted asylum in Denmark.

In addition to the incorporation of the Geneva Convention, section 7(1) also covers the non-refoulement principle set out in Art. 33 of the Convention. This principle is the foundation of the negative obligation for member states not to reject or otherwise enforce expulsion upon refugees protected by Art. 1 of the Convention. A residence permit for an individual granted asylum under section 7(1) of the Aliens Act is issued for a maximum of two years at a time.

1.1.2. Protected Status

Protected status is governed by section 7(2) of the Aliens Act. It is an addition to section 7(1) and expands the protection. Individuals covered by the provision are not considered refugees within the meaning of the Geneva Convention but still need protection. Previously, individuals covered by section 7(2) were regarded as refugees with de facto status. Up until 2002, protected status was granted to asylum seekers who were not covered by the Geneva Convention, but where similar circumstances would call for similar treatment of asylum seekers in fear of prosecution or abuse those asylum seekers should receive protection and not be forced to return to a potentially dangerous situation.

An amendment was adopted in 2002 that redefined when the protected status is to be applied. The preparatory works of this amendment explain that Denmark's international obligations should be used as a guideline for when to use protected status as a means to granting asylum. Multiple international conventions are the source for section 7(2) of the Aliens Act according to the preparatory works. Especially compliance with ECHR and the UN Convention against Torture as well as Art. 7 of the CCPR and Art. 37(a) of the CRC, were taken into consideration.

Individuals are granted protected status in situations where returning to their country of origin would mean facing capital punishment, torture or inhumane treatment or punishment.⁹⁰³ This section has a wording very similar to Art. 3 of the Convention for the Protection of Human Rights (hereafter ECHR):

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment," and it is evident that this section is an expansion of the human rights non-refoulement regulation

⁹⁰³ Section 7(2) of the Aliens Act

in section 7(1).⁹⁰⁴ The Danish immigration authorities are obliged to take into account any case law from the European Court of Human Rights and apply the law accordingly.

This became evident in 2011 where the outcome of the case *Sufi and Elmi v. the United Kingdom*⁹⁰⁵ led to a wider interpretation of section 7(2) of the Aliens Act. Prior to this judgment, the protection was only applicable in case the asylum seekers due to an individual situation were subjected to personal threat or persecution. *Sufi and Elmi v. the United Kingdom*, in which it would have been a violation of Art. 3 if the applicants Mr. Sufi and Mr. Elmi were removed to Somalia due to the random and generalised violence they could be subjected to just by being present in certain regions of Somalia, obliged member states to take into account the current situation in the country and whether the mere presence in some regions would be a violation of Art. 3 of the ECHR. This development has resulted first and foremost in the wider interpretation of section 7(2) and subsequently of the new section 7(3) of the Aliens Act, which specifically applies to individuals who are not personally subjected to persecution or other mistreatment, but instead could be subjected to random and generalized violence. See description in Section 1.1.3 below.

When an asylum seeker is granted asylum based on their protected status, the residence permit is issued for a maximum of one year and after one year for a maximum of two years at a time.

1.1.3. Temporary Protected Status

Temporary Protected Status is a relatively recent addition to the Aliens Act and is governed by section 7(3). The explanatory notes to the Act explain that section 7(3) is partially the legislative outcome of the judgment in *Sufi & Elmi v. UK* and partially an attempt to adapt to the increasing number of refugees due to the war in Syria.⁹⁰⁶ It is worth noticing that this addition to the Act has resulted in a remarkably tightening of the rules concerning residence permits and family reunification and the wider interpretation of section 7(2) as described above would most likely have been sufficient to comply with the outcome of the judgment in *Sufi & Elmi v. UK*. The new provision was enacted on 18 February 2015 and granted some groups of refugees who were previously granted protected status under section 7(2) a so-called temporary protected status.

Temporary protected status is granted in situations where the asylum seeker faces capital punishment, torture or inhumane or degrading treatment or punishment due to severe instability and indiscriminate violence against civilians in their home country.⁹⁰⁷

When determining whether the individual asylum seeker is to be granted protected status or temporary protected status, the authorities will base their decision on an assessment of whether the asylum seeker's individual situation will require protection under section 7(2) or whether the situation in the asylum seeker's country will require protection under section 7(3). The temporary protected status allows a refugee to be granted asylum due to the disruption in their country of origin, whilst permitting the Danish immigration authorities to remove an individual to his or her country as soon as the situation in that particular country allow it. Therefore, the rules on residence permits are stricter than those on protected status. Residence permits are

⁹⁰⁴ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 154 [Danish]

⁹⁰⁵ *Sufi and Elmi v. the United Kingdom* (2011) ECtHR Application no. 8319/07 and 11449/07

⁹⁰⁶ Explanatory Notes to Act 2016-05-09 no. 412, LFF 2014-11-14 no. 72 (1)

⁹⁰⁷ Section 7(3) of the Aliens Act

issued for a maximum of one year at a time. After three years the residence permit may be issued for a maximum of two years at a time.

The fifth ECRI report on Denmark criticizes the further tightening of the rules, especially concerning the access to family reunification for individuals with temporary protection status: “With regard to integration policies, ECRI notes that no wide-ranging reform of the rules for family reunification has taken place, as recommended as a matter of priority in its fourth report. On the contrary, the rules have been further tightened, including an extension of the waiting period for beneficiaries of temporary subsidiary protection before they can normally obtain family reunification to three years, in spite of criticism from international bodies, such as the UN Committee on the Elimination of Racial Discrimination (CERD).”⁹⁰⁸

1.1.4. Exception

1.1.4.1. Dublin Regulations

Section 29a of the Aliens act says that an asylum seeker can be refused entry or transferred to another EU-member state under the Dublin Regulations or under an agreement or equivalent arrangement entered into between Denmark and one or more countries in connection with the Dublin Regulation. The Dublin Regulations gives the Danish authorities the opportunity to reject the application and transfer the alien to the responsible member state.

1.1.4.2. First Country of Asylum

The concept of first country of asylum is governed by section 7(4) of the Aliens Act, and allows rejection of asylum seekers in case the alien has already obtained sufficient protection in another country, or if the alien has close ties with another country where the alien must be deemed able to obtain sufficient protection. What lies in sufficient protection has not been defined and is based on an assessment by the Danish Immigration Service. As a minimum the asylum seeker is protected from refoulement, meaning forceful removal to a country, where his life or freedom would be threatened on account of his or hers race, religion, nationality, membership of a particular social group or political opinion. This is an exception to the asylum rules described above and can be applied even if the asylum seeker may otherwise be eligible for residence permit in Denmark.

1.2. Procedure for Granting Asylum

1.2.1. First Stage – Arrival and Registration

Any foreign citizen situated in Denmark has the right to apply for asylum, whether or not that individual is in Denmark legally. In order to obtain asylum an application must be submitted at a police station or at the reception Sandholm Accommodation Centre⁹⁰⁹. There the asylum seeker will be registered and questioned. The asylum seeker will then be assigned accommodation at an

⁹⁰⁸ European Commission against racism and intolerance (ECRI) fifth report on Denmark (9)

⁹⁰⁹ The Danish Immigration Service ‘Applying for Asylum’ <https://www.nyidanmark.dk/en-us/coming-to-dk/asylum/asylum_process/applying_for_asylum.htm>, accessed 7 July 2017

asylum centre. The application will then be sent to the Danish Immigration Service. The process can be divided into three stages.

Under section 48a(1) of the Aliens Act the Danish Immigration Service ought to make a decision on refusal of entry, transfer or retransfer, expulsion and, if occasion should arise, on the return of the alien as soon as possible.

The Danish Immigration Service is a directorate within the Danish Ministry of Immigration and Integration and is the first public authority to review the application for asylum. The Danish Immigration Service is authorized by law to make decisions on application for asylum⁹¹⁰.

The Danish Immigration Service will initially determine whether the Danish authorities are responsible for handling the case, whether the application should instead be handled by another country in accordance with the Dublin Regulation, or whether the asylum seeker's application for asylum can be handled by a safe country outside Europe⁹¹¹. If the asylum seeker's application is not rejected at this stage, the Danish authorities will proceed with the application process.

In case the asylum seeker's application is rejected, appeal against the decision can be brought before The Danish Refugee Appeals Board under section 53a(1)(i) of the Aliens Act.

The Refugee Appeals Board is an independent quasi-judicial administrative body composed of a Chairman, a Deputy Chairman and other members. The Danish Bar and Law Society or the Minister of Justice appoints the members of the Refugee Appeals Board on nomination⁹¹².

Simple majority makes the Refugee Appeals Boards' decisions. The Danish Refugee Appeals Board's decisions are final and cannot be appealed further. Any judicial review is, therefore, limited to legal and not evidential issues⁹¹³

1.2.2. Second Stage – Reviewing the Case

In the case that the asylum seeker's application appears to be manifestly unfounded, the Danish Immigration Service, shall submit the application to the Danish Refugee Council. Section 53b of the Aliens Act provides that the Danish Immigration Service can, after submission to the Danish Refugee Council, decide that an application cannot be appealed to the Refugee Appeals Board. An application can be manifestly unfounded if the asylum seeker claims an identity that is undoubtedly incorrect, if the reasoning for the asylum seeker's application clearly is not covered by section 7 of the Aliens Act, or if the asylum seeker is being evidently untrue about the reasons for seeking asylum.⁹¹⁴ The requirements for rejecting an application on the grounds that it is manifestly unfounded are all based on the premise that the motive for applying for asylum is obviously weak. This screening process provides a fast track process used for applications that are manifestly unfounded by making the decision to deny the application final.

If the application for asylum is not manifestly unfounded, it will most likely go through the standard procedure. The asylum seeker will hereafter be subjected to further questioning by the

⁹¹⁰ Section 46(1) of the Aliens Act

⁹¹¹ Section 29a and section 28, section 25(1)(2) or section 25b of the Aliens Act

⁹¹² Section 53(2-5) of the Aliens Act

⁹¹³ Section 56(1) of the Aliens Act

⁹¹⁴ Section 53b(1)(i-vi) of the Aliens Act

Danish Immigration Service. The questions seek to clarify the asylum seeker's motive for applying for asylum.

The second round of questioning forms the basis of the Danish Immigration Service's decision on whether to grant asylum or to reject the asylum application. It is usually a brief written decision. If the asylum application is rejected, the Refugee Appeals Board will automatically review it⁹¹⁵. The Refugee Appeals Board will make the decision to either uphold the decision of the Danish Immigration Services or to grant the applicant asylum. If the decision is upheld, it will ultimately lead to expulsion due to fact that the decisions of the Refugee Appeals Board are final.⁹¹⁶ If the asylum seeker is granted asylum, the Danish Immigration Service assigns the applicant to the municipal authorities.

1.2.3. Third Stage – Expulsion

If the application for asylum is rejected, it will ultimately lead to the compulsory return of the applicant to the country of origin if the applicant does not leave voluntarily. This situation is governed by section 32a, cf. section 31, of the Aliens Act. Section 31 of the Alien Act sets out that an Alien must not be returned to a country where he will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such country it also sets out that an alien falling within section 7(1) of the Aliens Acts may not be returned to a country where he will risk persecution on the grounds set out in Art. 1(A) of the Convention Relating to the Status of Refugees (28 July 1951), or where the alien will not be protected against being sent on to such country. Section 31(1) reflects Art. 3 of ECHR which regulates the prohibition of torture, whilst section 31(2) reflects the above-mentioned non-refoulement principle.

If the Alien is protected by the above-mentioned regulations, they cannot be forced to return the country of origin and as result will have a de facto residence permit for as long as the above-mentioned regulation applies. The protection above does not apply if the alien is deemed a danger to national security or if, after a final judgment for a particularly dangerous crime, the alien must be deemed a danger to society.

Moreover, a deadline will be set for the expulsion as provided by section 33(1-2) of the Aliens Act. If Alien does not leave Denmark within the deadline he or she will be deemed an illegal Alien, and the Danish police can assist with the compulsory return.

⁹¹⁵ Section 53a(2) of the Aliens Act

⁹¹⁶ Section 56(1) of the Aliens Act

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Basis for Residence Permit

Traditionally, the Danish authorities have distinguished between applications for short-term stay and applications for permanent residence in Denmark. This temporal distinction is still of importance to legislation and administrative practice, as it delimits the scope of the two types of permission that constitutes the formal basis of residence. A stay of a maximum of 90 days generally requires a visa, according to sections 4-4(d) of the Aliens Act, if the alien comes from a country with a visa requirement. If the alien comes from a country exempt from the visa requirement, he or she only has the right to stay in Denmark for a maximum period of 90 days, according section 3 of the Aliens Act together with section 2(b) concerning the right for aliens granted a residence permit to stay in another Schengen country.⁹¹⁷

Residence for a period longer than 90 days generally requires a residence permit under section 5 of the Aliens Act. Both visa and residence permit grants the right to enter into the territory of Denmark provided that an alien without a residence permit or EU residence card or registration certificate is not refused entry in the cases specified in section 28(1)(i)-(vii) of the Aliens Act and according to sections 28(2) and 28(3) of the Act.⁹¹⁸ Substantial relaxations of the requirement regarding formal basis of entry and residence has been enforced. The judicial construction of the relaxations varies according to which group of citizens the alien originates from.⁹¹⁹

2.1.1. Residence Permit – Validity and Substance

Residence permits under sections 7-9f, 9i-9n and 9p of the Aliens Act may be granted with the possibility of permanent residence or with the purpose of temporary residence according to section 11(1) of the Aliens Act. The above-mentioned provisions regarding the substance and validity of residence permits do not apply to residence documents pursuant to EU Regulations, which contain special provisions relating to EU residence card and registration certificate, according to section 6 of the Aliens Act and part 6 of Executive Order no. 474 of 05 December 2011 on EU residence.⁹²⁰

According to section 15(1) of Executive Order no. 1197 of 26 September 2016, a residence permit under sections 7(1) and (2) and also sections 8, 9 and 9d of the Aliens Act is generally granted with the possibility of permanent residence in Denmark. In contrast, a residence permit under sections 7(3), 9a, 9c(3) and (5) and also sections 9i-9n and 9p of the Alien Act is granted with the purpose of temporary residence, according to section 15(6) of Executive Order no. 1197 of 26 September 2016. The granting of a residence permit under sections 9b, 9c(1), (2) and (4) and also 9e and 9f of the Aliens Act depends on a specific assessment whether the permit is granted with the purpose of permanent or temporary residence, as the specific purpose of the

⁹¹⁷ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 28 [Danish].

⁹¹⁸ *Ibid* 29.

⁹¹⁹ *Ibid* 29.

⁹²⁰ *Ibid* 31.

residence must be considered in particular when deciding on granting the permit, according to section 15(2) of Executive Order no. 1197 of 26 September 2016.⁹²¹

A permanent residence permit generally requires that the alien meets a number of conditions such as no criminal record, passed Danish language test and other integration-related matters and also that the person in question has no overdue debts to public authorities.

Special provisions apply to EU-citizens as the right of residence is provided directly in the EU Regulations and, in these cases; the issuing of residence documents is only for confirmatory reasons in accordance with section 41 of the Executive Order on EU Residence. An alien who has no right to stay in Denmark due to the lack of or an expired visa or residence permit must accordingly depart the country, according to section 30(1) of the Aliens Act. If this does not happen voluntarily, the police ensure the departure pursuant to section 30(2), which contains authority to enforce deportation if need be.⁹²²

2.2. Entering into Danish Territory

2.2.1. Nordic Citizens

Citizens of Finland, Iceland, Norway and Sweden are in general entitled to entry into and residence in the Kingdom of Denmark solely due to their citizenship, according to section 1 of the Alien Act. The right is not subject to a prior application or a granted permit.

However, the right of entry and residence is not absolute and conclusive. Section 32 of the Aliens Act provides that a Nordic citizen may be deported and be banned from entry regardless of the wording of the provisions of section 1. The right of residence may also be revoked as a result of a decision on repatriation because of the lack of sufficient financial resources needed for living expenses.⁹²³

2.2.2. Citizens and EU Regulations

Aliens who are citizens of an EU member state or are subject to the Agreement on the European Economic Area (hereinafter referred to as EU citizens) have rights in relation to entering Danish territory and taking short-term residence merely because of the nationality under section 2(1) and (2) of the Aliens Act. To some extent similar rules apply to members of the family.

However, this group of citizens is also subject to some requirements regarding the purpose of the stay and their activities in Denmark (employee, student, self-supporting etc.) if long-term residence in Denmark is applied for.⁹²⁴

It must be noted that also Nordic citizens may be entitled to entry and residence pursuant to EU Regulations, which for one thing can be of importance in relation to deportation.

In addition to the conditions for EU-citizens and their families, there are a number of possibilities for third-country nationals to enter Denmark according to EU law – for example due to the visa waiver under section 2(xvi) of the Visa Executive Order.^{925 926}

⁹²¹ Ibid 31.

⁹²² Ibid 33.

⁹²³ Ibid 41.

⁹²⁴ Ibid 41.

2.2.3. Other Aliens

Aliens who have no right of entry and residence in the capacity of their citizenship or under EU law must in general meet a number of requirements to be permitted entry into and residence in Denmark. Basically, there are three principal types of legal entry into Denmark for this group of aliens. A person can have the right of entry because of a residence permit, such as a residence permit issued by another Schengen country, according to section 2(5) of the Visa Executive Order section 2(5), a visa (or in certain cases a laissez-passer), or as a visa-exempted alien. In all cases a number of formal requirements are linked to possibility of entry, including travel documentation requirements, but in some cases the purpose of the entry also affects the possibility of actual entry even though the person concerned meets the formal requirements.⁹²⁷ Nevertheless, Denmark must, in some cases, permit an alien to enter the country due to international obligations even if the person in question does not meet the general requirements for entry, for example, if the alien claims to be protected by the UN Refugee Convention or to have rights pursuant to the European Human Rights Convention and that those convention rights will be violated if entry is refused.⁹²⁸

2.3. Visa

2.3.1. The Schengen Cooperation

For one thing the purpose of the Schengen cooperation is to create an area without internal borders and, therefore, passport and border controls have been abolished. This is complemented by general rules regarding entry into the Schengen Area at the external borders, including uniform rules regarding the issuing of visa to third-country nationals. The common rules are published in the Schengen Borders Code⁹²⁹ and a distinct framework is established on which standards must be applied to the external border control, including that the standards must prevent entry by third-country nationals if specified conditions are not met.

The proposed Regulation regarding the Schengen Borders Code falls within by the Danish Justice and Home Affairs opt-out from EU cooperation. In light of this, the Schengen Borders Code has been implemented in the law of the Kingdom of Denmark by Act no. 301 of 19 April 2006.⁹³⁰

The framework of the Schengen cooperation further specifies which third-country nationals must be in possession of a visa if crossing the external borders of the Schengen Area and which

⁹²⁵ Executive Order no. 376 of 20 March 2015 on alien's access to Denmark on the basis of a visa

⁹²⁶ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 42 [Danish].

⁹²⁷ *Ibid* 42.

⁹²⁸ *Ibid* 42.

⁹²⁹ Regulation No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders

⁹³⁰ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 44-47 [Danish].

nationals who are exempted. Regulation no. 539/2001⁹³¹ specifies the third countries whose nationals must be in possession of a visa when crossing the external borders (the negative list) and the third countries whose nationals are exempted from this requirement (the positive list).⁹³² When deciding whether a third-country national must be in possession of a visa or not, the authorities look at the merits of each individual case for each individual country based on a number of criteria.

Exemption from the visa requirement is a politically desired commodity for several third countries. The list of countries is dynamic and for that reason the Regulation has been amended several times, because the assessment of the criteria changes continuously, for instance because of the general development in the individual countries.⁹³³

2.3.2. National Regulation

The above-mentioned regulations on the Schengen cooperation, including the Visa Code in particular, set the framework for the administration of issuing visas in the Kingdom of Denmark. However, the general regulations do allow each individual Schengen country some latitude and this is provided for by national legislation. Therefore, the aim is to achieve close local consular cooperation between the Schengen member states' consulates in the individual third countries, thereby taking the requirement of individual assessment on the risk of illegal immigration for each third country into account.⁹³⁴ The increasing demand regarding the possibility of subsequent identification of persons who are entering into the Schengen Area on a visa, in combination with the rules of the Dublin Regulation⁹³⁵ on the transfer of responsibility for examining applications from asylum seekers, cause individual member states to meet the requirement of observing an overall immigration-risk due to the belief that there is no immigration-risk for the member state itself.⁹³⁶

2.3.3. General Formal Conditions

To gain access to applying for a visa, a number of basic requirements must be fulfilled. An application must be submitted to the concerned member state under Art. 5 of the Visa Code. As a consequence of this, it is not possible to submit an application to a consulate of any member state. One reason for this is the wish to prevent "visa shopping" and in general to achieve a shorter processing time. Therefore, the application must be submitted to the member state whose territory constitutes the sole destination of the visit and if the visit includes more than one destination, the member state whose territory constitutes the main destination of the visit in terms of the length or purpose of stay, or if no main destination can be determined, the member

⁹³¹ The Council Regulation (EC) No 539/2001 of 15 March 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

⁹³² Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 47 [Danish].

⁹³³ *Ibid* 47.

⁹³⁴ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 50 [Danish].

⁹³⁵ 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)

⁹³⁶ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 51 [Danish].

state whose external border the applicant intends to cross in order to enter into the territory of the member states.⁹³⁷

If the application is submitted to the member state concerned, the relevant consulate must ascertain whether the application meets the conditions of admissibility⁹³⁸ pursuant to Art. 19(1) of the Visa Code and section 7 of the Visa Executive Order. The conditions are listed in Annex 1.

If the application does not meet the requirements to admissibility, the application is returned to the applicant without further examination pursuant to Art. 19(3) of the Visa Code. In exceptional cases, the consulate can decide to accept the application on humanitarian grounds or for reasons of national interest even though the application does not meet the formal requirements pursuant to Art. 19(4) of the Visa Code and section 7(9) of the Visa Executive Order. The decision is final and cannot be appealed.⁹³⁹

2.3.4. Examination of an Accepted Application

The consulate must assess whether a number of general entry conditions are met before issuing an Schengen visa pursuant to Art. 21 of the Visa Code. The conditions are listed in Annex 2.

If the requirements set out in Annex 2 are fulfilled, a discretionary examination is conducted. It is assessed whether the applicant presents a risk of illegal immigration or a risk to the security of the member state, and whether the applicant intends to leave the territory of the member state before the expiry of the visa applied for. In addition to the application, the knowledge of the local conditions and the specific country's immigration trends are to be considered.⁹⁴⁰

The Danish rules regarding the issuing of visas are mainly specified in the Visa Executive Order mentioned above.⁹⁴¹

In summary, Danish law provides that an alien must visa his passport or other travel documentation before entry into Danish territory unless he is exempted from the visa requirement according to section 3, cf. section 39(2), of the Aliens Act and section 1 of the Visa Executive Order. The groups of aliens who are exempted from the visa requirement are listed in section 2 of the Visa Executive Order, and the list primarily includes aliens from the other Nordic countries and EU member states. Aliens from non-EU states must apply for a visa and the application is examined in accordance with above-mentioned conditions and the current Danish practice.⁹⁴²

Traditionally, the Danish practice has been based on the purpose of the stay and which third country the alien came from. A distinction has generally been made between business stays, cultural stays, private visit stays, and tourist stays and whether the person concerned came from a

⁹³⁷ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 56 [Danish].

⁹³⁸ Less strict conditions for admissibility applies to aliens covered by the EU Regulations under section 7(8) of the Visa Executive Order

⁹³⁹ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 58-57 [Danish].

⁹⁴⁰ *Ibid* 59.

⁹⁴¹ *Ibid* 61.

⁹⁴² *Ibid* 61.

country with a high risk of unauthorised use of the visa.⁹⁴³ Under the new rules, the Danish authorities divide countries into 5 categories: Main Groups I-V. The main groups are listed in Annex 2 of the Visa Executive Order, and the division is based on a general assessment of the risk that aliens from the countries or regions in question do not intend to leave the Schengen Area before the expiry of the visa applied for. Main Group I include countries and regions whose citizens are generally considered to pose a very limited risk of illegal immigration, whereas citizens of Main Group V are considered to pose a particularly high risk.⁹⁴⁴

Section 16(1) of the Visa Executive Order provides that when the examination of an application for a visa involves the assessment of the risk that the alien does not intend to leave the Schengen Area before the expiry of the visa, the authorities must take the concerned person's conditions in the country of origin or residence into account. Among other things, the authorities must also take information about the general conditions in the in the country of origin or residence and known migratory trends into account. Section 16(2) provides that a visa can be issued if the authorities find that there is no doubt as to the alien's intentions to depart the Schengen countries in accordance with an issued visa after an evaluation of the facts mentioned in section 16(1). When assessing the general conditions in the country of origin or residence pursuant to section 16(1) it must be taken into account which main group the country belongs to as provided in section 16(4).

In summary, the main groups are used in those cases where the application has not already been rejected on another basis – typically the general conditions – and where a specific assessment of the risk of unauthorised use of the visa, regardless of the purpose of the application, must be made.⁹⁴⁵

2.4. The Immigration Process

The Danish asylum process varies a lot from case to case. In general, there are four different procedures, divided into three stages. The procedures are listed in Annex 3.

A residence permit on humanitarian grounds can be granted to an alien who is registered as an asylum seeker in Denmark, if significant humanitarian considerations warrant it, cf. the Aliens Act section 9(b).

2.5. Right to Admission, Remain and Leave

During the processing of the case, the asylum seekers are moved to an accommodation. The Immigration Service covers living expenses and Healthcare. Furthermore, internship and language education (Danish or English) is offered.

A temporary residence permit holder, who is permitted to seek permanent residence at some point, can apply to have the residence permit extended, unless there are grounds for revoking the

⁹⁴³ Ibid 62.

⁹⁴⁴ Ibid 62.

⁹⁴⁵ Ibid 62.

permit. For refugees with convention status, the residence permit can only be revoked if there have been fundamental improvements in conditions in the home country⁹⁴⁶.

If the alien leaves Denmark for an extended period of time, or if the concerned person no longer maintains a residence in Denmark, the residence permit can lapse. The general rule is that the permit lapses when the alien has stayed outside Denmark for more than 6 consecutive months, and where the alien has been issued with a residence permit with a possibility of permanent residence and has lived lawfully for more than 2 years in Denmark, the residence permit lapses only when the alien has stayed outside Denmark for more than 12 consecutive months, cf. the Aliens Act section 17(1). If the alien does not return to Denmark within the time limit, the residence permit will automatically lapse.

If the immigrant leaves Denmark to participate in armed conflicts or similar, the residence permit or right to reside in Denmark will be forced to lapse. This special regulation applies to all aliens in Denmark, no matter what the ground for residence is. The regulation means that the permit or right to reside in Denmark will be forced to lapse if the alien participates in activities that threaten, or have the potential to threaten, national security, the public order or the security of other states. A residence permit or a right to reside will be forced to lapse unless this would be in conflict with Denmark's international obligations. If the alien is covered by EU rules, forcing your right to reside in Denmark to lapse can only occur in compliance with the principals that apply for limitation of the right of free movement under EU rules. Under the special regulation one risks being permanently barred from returning to Denmark, and the alien will usually be unable to obtain a new residence permit. However, the alien can apply to be permitted to retain the residence permit/right to reside in Denmark. Dispensation can only be given if proven that there was a valid reason for the travel abroad.⁹⁴⁷

A residence permit for a child under 18 will lapse after three months, if the child has resided outside Denmark for more than three consecutive months in a way that is detrimental to the child's schooling and integration, cf. the Aliens Act section 17(2).

If an alien has refugee status (that is, if you have a residence permit on the grounds of asylum) in Denmark, the residence permit can only lapse if one have chosen to return to the country of origin, or if has been offered protection in a third-country, cf. the Aliens Act section 17(4).

Despite the provision of section 17, a residence permit does not lapse until an alien having for the purpose of permanent residence returned to his country of origin or the country of his former habitual residence has stayed outside Denmark for more than 12 consecutive months, cf. the Aliens Act section 17(a)(1).

If the residence permit lapse, one loses the right to reside in Denmark. This means that if the immigrant wishes to return to Denmark, the concerned person may be denied re-entry.⁹⁴⁸

⁹⁴⁶ The Danish Immigration Service, *Extension of a residence permit* <https://www.nyidanmark.dk/en-us/coming_to_dk/asylum/extension.htm/> accessed 29 September 2017 [Danish].

⁹⁴⁷ The Danish Immigration Service, *If you leave Denmark, Special regulations for residence-permit holders who travel to conflict areas* <https://www.nyidanmark.dk/en-us/coming_to_dk/if_you_leave_denmark/cancellation_connection_travel_conflict_areas.htm> accessed 23 October 2017 [Danish].

⁹⁴⁸ The Danish Immigration Service, *If you leave Denmark and you hold a residence permit on grounds of asylum or family reunification* <<https://www.nyidanmark.dk/en->

2.6. Expulsion and Deportation

According to the Aliens act, “expulsion” means a decision on the lapse of the alien’s residence permit and right to reside in Denmark, and that the person in question cannot re-enter and reside without a new permit (refusal of entry). Expulsion is regulated in part 4 of the Aliens Act. Expulsion is distinguishable from other situations in which an alien is deported - for instance as a result of an expired visa, a rejection of an application for residence permit or because of a revocation of an already granted residence permit - due to the fact that a refusal of entry. A refusal of entry can be issued for a certain amount of years or for life.

An alien can be expelled if the alien concerned must be deemed a danger to national security, a serious threat to the public order, safety or health or because of illegal residence or work. Furthermore, an alien can be expelled if a criminal act is committed.

If a criminal act is committed, and the alien faces criminal prosecution, the Danish Prosecution Service can claim expulsion. If the alien is convicted, the court decides whether the person in question must be expelled after the sentence is served. Being so, decisions on expulsion due to criminal activity is within the jurisdiction of the court. Depending on the nature of the crime and the severity of the sentence, a refusal of entry is issued for 3 years, 5 years, and 10 years or for life. The relevant time period of the refusal of entry runs from the time of the deportation.

During the criminal proceedings the alien will get assigned counsel. The regulation of expulsion due to criminal activity has been intensified substantially over the past ten years. If the alien has ties to Denmark, the expulsion can be perceived as a much more extensive sanction than the actual sentence, and therefore all relevant matters of paramount importance to the assessment of expulsion must be disclosed during the case.

If the expelled alien does not come from a Schengen-country or EU member state, and if the person in question is expelled with a refusal of entry for at least 5 years, the expulsion will be reported to the Schengen Information System (SIS). As a consequence of this, the alien will be registered as a third-country national without entitlement to enter into or stay in the Schengen Area.⁹⁴⁹

An alien, who has been expelled by court order, but where deportation has not been initiated, can get the question reopened if there has been a substantial change in circumstances. If the personal situation indicates that revoking a residence permit would be particularly traumatic, the Danish Agency for International Recruitment and Integration can chose not to do so. The following factors will be taken into consideration: the alien’s ties with the Danish society, the alien’s age, health, and other personal circumstances, the alien’s ties with persons living in Denmark, the consequences of the expulsion for the alien’s close relatives living in Denmark, including in relation to regard for family unity, the alien’s slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence and the

us/coming_to_dk/if_you_leave_denmark/asylum_and_family_reunification/asylum_and_family_reunification.htm
> accessed 29 September 2017 [Danish].

⁹⁴⁹ Homann Advokater, *Udvisning*, < <http://homannlaw.dk/da/raadgivningsomraader/udlaendingeret/udvisning/> > accessed 28 October 2017 [Danish].

risk that the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence.⁹⁵⁰

Aliens covered by EU regulations can only be expelled pursuant to the Aliens Act provided that it is compatible with the EU regulations. Pursuant to Directive 2004/38/EC of The European Parliament and of The Council of 29 April 2004 on the right of citizens of the Unions and their family members to move and reside freely within the territories of the member states, measures taken on grounds of public policy or public security must be in accordance with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

In 2006, an amendment law to the Aliens Act imposed new regulations regarding the access to decide on suspended expulsion. Suspended expulsion is a possibility when there are not sufficient grounds for expelling the individual concerned under present law, or because expulsion must be assumed to be particularly burdensome, in particular because of the alien's ties with the Danish society, the alien's age, health, and other personal circumstances, the alien's ties with persons living in Denmark, the consequences of the expulsion for the alien's close relatives living in Denmark, including in relation to regard for family unity, the alien's slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence and the risk that the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence, cf. the Aliens Act section 26(1).

In case of suspended expulsion, a probation period must be fixed. The probation period is reckoned from the date of the final judgment in the case or, if the alien was not present when judgment was passed, from service of the judgment and expires 2 years after the date of release or discharge from hospital or safe custody or from termination of a stay in a security unit at a residential institution for children and young people. If suspended expulsion was decided in connection with a suspended sentence of imprisonment or a sentence of outpatient treatment allowing deprivation of liberty, the probation period expires 2 years after the date of the final judgment in the case or, if the alien was not present when judgment was passed, 2 years after service of the judgment, cf. the Aliens Act section 24(b). An alien sentenced to suspended expulsion can be expelled if, during the probation period of the suspended expulsion, he commits another offence that may give rise to expulsion and court proceedings are initiated before expiry of the probation period unless a decision of expulsion must be assumed to be particularly burdensome. If an alien is sentenced to suspended expulsion, the court shall guide the alien on the importance thereof when passing the judgment.

An alien, who is not entitled to stay in Denmark, must leave, cf. the Aliens Act section 30(1). If the alien does not leave Denmark voluntarily, the police must make arrangements for his

⁹⁵⁰ The Danish Immigration Service, *Termination of residence permit* < https://www.nyidanmark.dk/en-us/coming_to_dk/studies/termination.htm/> accessed 28 October 2017 [Danish].

departure, cf. section 30(2). The police can forcibly remove expelled individuals from Denmark.⁹⁵¹

2.7. Annex 1: General Formal Conditions

If the application is submitted to the member state concerned, the relevant consulate must ascertain whether the application meets the conditions of admissibility⁹⁵² pursuant to Art. 19(1) the Visa Code and section 7 of the Visa Executive Order. The conditions are:

- The application must be lodged no more than three months before the start of the intended visit, cf. Art. 9(1) of the Visa Code.
- The application must contain the relevant application form, cf. Art. 11 of the Visa Code, documentation of valid travel documentation, cf. Art. 12 of the Visa Code, and photo.
- The applicant's biometric data must be collected, cf. Art. 13 of the Visa Code.
- The visa fee must be collected, cf. Art. 16 of the Visa Code.⁹⁵³

2.8. Annex 2: General conditions in Relation to the Examination of a Visa Application

The consulate must assess whether a number of general entry conditions are met before issuing a Schengen visa, cf. Art. 21 of the Visa Code. The conditions are:

- It must be verified that the travel documentation presented is not false, counterfeit or forged, cf. Art. 21(3)(a).
- The applicant must justify the purpose and conditions of the intended stay and that he has sufficient means of subsistence, both for the duration of the intended stay and for the return trip or is in a position to acquire such means lawfully, cf. Art 21(3)(b). What will be considered as necessary funds will be determined by the Danish diplomatic mission and depends on the length of the stay, and whether the stay is at a hotel or with friends or family.
- The applicant must not be registered as an undesirable in the Schengen Information System (SIS II), cf. Art. 21(3)(c) of the Visa Code .
- The applicant must not be considered a threat to public policy, internal security or public health as defined in Art. 2(19) of the Schengen Borders Code⁹⁵⁴ or to the international relations of any of the member states and not be listed on any UN or EU sanction lists, cf. Art. 21(3)(d) of the Visa Code.
- The applicant must hold a travel insurance policy to cover possible expenses in connection with a return for health reasons or death, indispensable medical treatment

⁹⁵¹ The Danish Immigration Service, *Extension of a residence permit* <https://www.nyidanmark.dk/en-us/coming_to_dk/asylum/extension.htm/> accessed 29 September 2017 [Danish].

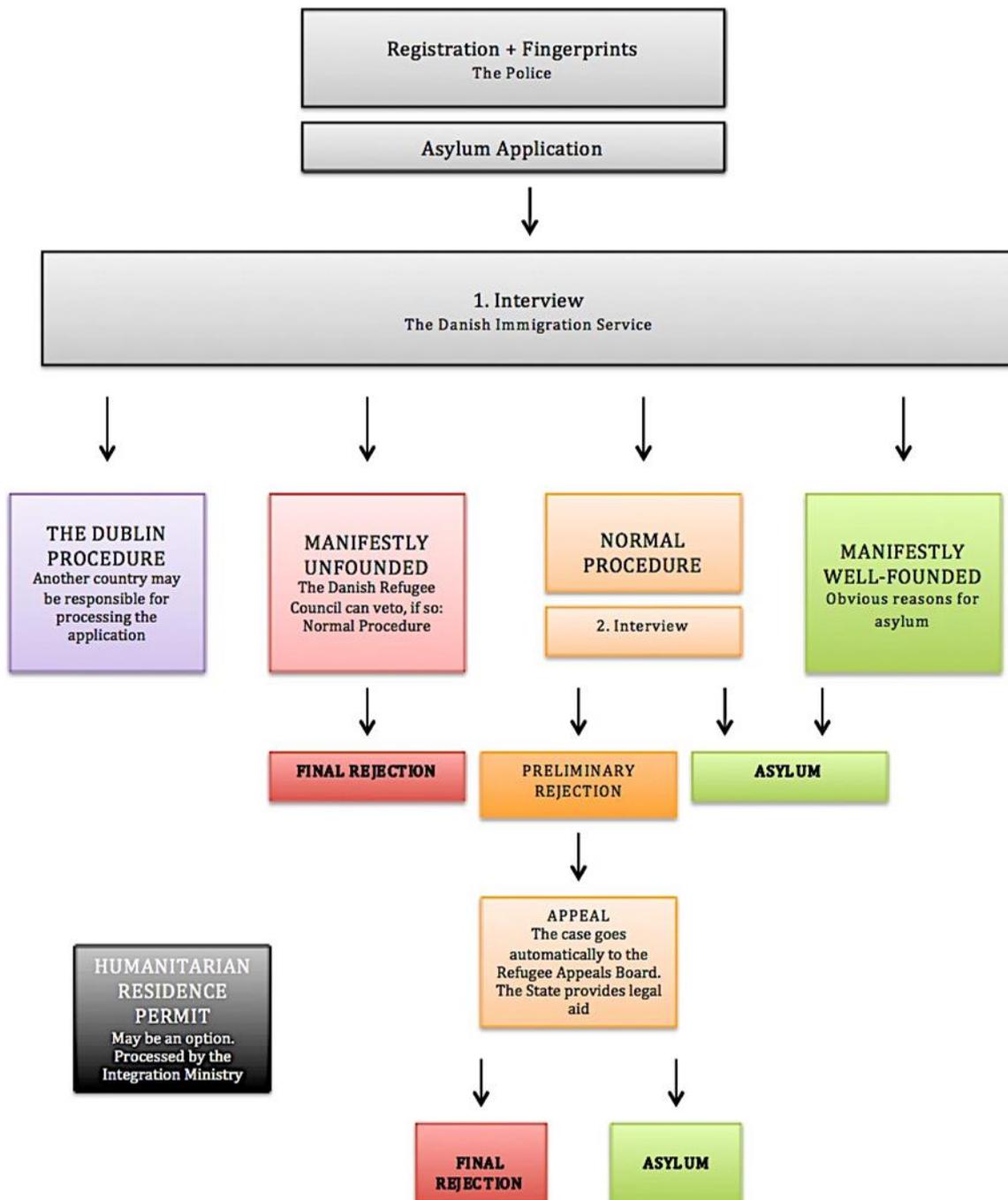
⁹⁵² Less strict conditions for admissibility applies to aliens covered by the EU Regulations, cf. section 7(8) of the Visa Executive Order

⁹⁵³ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 57 [Danish].

⁹⁵⁴ Regulation (EC) No 562/2006 of the European Parliament and of The Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

or acute hospitalisation during the stay. The insurance policy must cover all Schengen countries, and the minimum policy coverage is €30,000. The insurance policy must be valid for the same period as the visa, cf. Art. 21(3)(e), cf. Art. 15 of the Visa Code and section 15 of the Visa Executive Order.⁹⁵⁵

2.9. Annex 3: The Immigration Process



⁹⁵⁵ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 58-57 [Danish].

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The following review of the Danish governmental structure in regard to migration will be structured as an individual review of each of the relevant offices, their individual competences and their internal relations. The legal framework of the offices' work regarding migrants is the Aliens Act of 9 May 2016⁹⁵⁶.

3.1. The Danish Ministry of Immigration and Integration

The Danish Ministry of Immigration and Integration is the highest Danish authority dealing with migrants. According to section 46a(1) of the Aliens Act, decisions by the Danish Immigration Service and the Danish Agency for International Recruitment and Integration may be appealed to the Ministry with a number of exceptions listed in section 46a(1). As the superior authority the Ministry has a number of operational control functions in relation to the subordinate government agencies, i.e. the Danish Immigration Service and the Danish Agency for International Recruitment and Integration, cf. section 46a(5) of the Aliens Act. Due to the powers granted in section 46a(5) and the nature of the superior relation between the Ministry and the agencies, the Ministry may issue binding guidelines regarding procedures within the scope of the Aliens Act and other relevant legislation. The power to issue general guidelines applies to all areas within the fields of work of the agencies.⁹⁵⁷

Danish legal scholars discuss whether the right of appeal to the Ministry, provided by section 46a(1) of the Aliens Act, prevents the Ministry from making individual decisions in specific cases being dealt with by one of the agencies. This reasoning only applies to the types of cases where appeal lies to the Ministry. In cases where appeal lies to either the Immigration Appeals Board or the Refugees Appeals Board there is no right for the Ministry to intervene in decisions made by the agencies, because the boards are independent from the Ministry. The legal theory is unclear about whether this prohibition against intervening in the last mentioned types of cases also applies to intervening in the casework before the agencies make their final decision.⁹⁵⁸

Certain cases regarding residence permit on the grounds of fundamental humanitarian reasons as described in section 9b(1) of the Aliens Act and cases regarding renewal or revocation of these permits are dealt with directly by the Ministry under section 46(3) of the Aliens Act. There is no right of appeal in case of a refused application.⁹⁵⁹

⁹⁵⁶ Act no. 412 of 9 May 2016

⁹⁵⁷ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 34-36 [Danish].

⁹⁵⁸ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 35-36 [Danish].

⁹⁵⁹ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 327 [Danish].

Amendment Act no. 188 of 27 February 2017 has limited the Ministry's powers under the Aliens Act.⁹⁶⁰ The purpose of the Amendment Act is to limit the number of specific cases in which the Ministry has to make decisions. The Immigration Appeals Board and the Refugees Appeals Board now deal with a majority of cases in which the Ministry acted as board of appeal under the former provisions of the Aliens Act.

3.2. The Danish Immigration Service

Section 46(1) of the Aliens Act provides that the Danish Immigration Service is responsible for decisions with legal basis under the Act and subject to a number of exceptions listed in section 46(1). The first exception is the one set out in section 46 (3), cf. section 46(1), of the Aliens Act assigning cases regarding humanitarian residence permits to the Ministry. Cases regarding work permits, education etc. are assigned to the Danish Agency for International Recruitment and Integration under section 46(2), cf. section 46(1), of the Aliens Act and will be further reviewed in Section 3.3. of this report. Authority to make decisions about accreditation and revocation thereof and to issue visa is granted to the relevant diplomatic or consular representatives under section 4d(3)-(4), cf. section 46(1). Other case types and powers have been assigned and granted to the municipal authorities, the police and the National Aliens Centre.⁹⁶¹

The Danish Immigration Service deals with cases regarding asylum, family reunification, visa, residence permits and a number of administrative assignments including accommodation, information on legislation etc.⁹⁶² As mentioned in section 3.1. above, the Service is subordinate to the Ministry and is therefore subject to the general guidelines issued by the Ministry in addition to the Act. Appeal against decisions made by the Service lies to the Ministry subject to a number of exceptions where appeal lies to the Immigration Appeals Board and the Refugees Appeals Board under section 46a(1), and sections 52b and 53a of the Aliens Act.

3.3. The Danish Agency for International Recruitment and Integration

The Danish Agency for International Recruitment and Integration is subordinate to the Danish Ministry of Immigration and Integration. The Agency deals with cases regarding work permits and residence permits issued for the purpose of work, including work as an au pair, education, internship, or doing a Ph.D. in Denmark, according to section 46(2) of the Aliens Act.⁹⁶³

As mentioned in Section 3.1, legal scholars discuss whether the Ministry may intervene in on-going casework conducted by the Danish Agency for International Recruitment and Integration on the ground that the Ministry acts as board of appeal in these types of cases. This does not, however, prevent the Ministry from issuing general guidelines binding on the Agency⁹⁶⁴.

⁹⁶⁰ Act no. 188 of 27 February 2017

⁹⁶¹ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 35 [Danish].

⁹⁶² The Danish Ministry of Immigration and Integration, 'Udlændingestyrelsen (US)' (updated 1 May 2016) <http://uim.dk/us> accessed 25 June 2017

⁹⁶³ The Danish Ministry of Immigration and Integration, 'Styrelsen for International Rekruttering og Integration (SIRI)' (updated 9 February 2017) <http://uim.dk/siri> accessed 25 June 2017

⁹⁶⁴ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 35-36 [Danish].

Amendment Act no. 188 of 27 February 2017⁹⁶⁵ relocated a lot of the Ministry's power as board of appeal to either the Immigration Appeals Board or the Refugees Appeals Board limiting the number of cases in which the afore-mentioned distinction is relevant. Section 52b(2) of the Aliens Act provides that appeal against a number of decisions made by the Danish Agency for International Recruitment and Integration lies to the Immigration Appeals Board and not to the Ministry. Appeal lies to the Immigration Appeals Board in cases regarding residence permit with legal basis within the scope of the Agency's field of work.

3.4. The Immigration Appeals Board

The Immigration Appeals Board is an independent, quasi-judicial administrative body sitting in panels. The Board hears cases regarding family reunification, permanent residence permits, and appeals against decisions regarding deportation and dismissal made by the Danish Immigration Service pursuant to section 52b(1) of the Aliens Act, together with appeals against decisions regarding residence permits made by the Danish Agency for International Recruitment and Integration, according to section 52b(2) of the Aliens Act⁹⁶⁶.

Being an independent administrative body, the Immigration Appeals Board is not subject to instructions from the Danish Ministry of Immigration and Integration. As a result of this independence from the Ministry, the Board is only subject to the Aliens Act. Decisions made by the Immigration Appeals Board may be brought before the Ombudsman or the courts for review⁹⁶⁷.

3.5. The Refugee Appeals Board

The Refugee Appeals Board is an independent, quasi-judicial administrative body, so that the Danish Ministry of Immigration and Integration has no authority over the board and, therefore, the Board is only subject to the Aliens Act. The Board hears appeals against decisions related to asylum made by the Danish Immigration Service, according to section 53a(1) of the Aliens Act⁹⁶⁸.

Section 56(8) of the Aliens Act provides that decisions made by the Immigration Appeals Board are final. The courts have chosen to understand this finality to mean that they are precluded from adjudicating on the Board's assessment of evidence. Only legal questions such as shortcomings in the legal grounds, errors in case administration and illegal exertion of discretion can be reviewed by the courts.⁹⁶⁹

⁹⁶⁵ Act no. 188 of 27 February 2017

⁹⁶⁶ The Immigration Appeals Board, 'Om udlændingenævnet' http://www.udln.dk/da/Om_os.aspx accessed 2 July 2017

⁹⁶⁷ Bjørn Dilou Jacobsen and others, *Udlændingeret* (4th edn, Jurist- og Økonomforbundets Forlag 2017) 36 [Danish].

⁹⁶⁸ The Refugees Appeals Board, 'Opgaver og Kompetencer' http://www.fln.dk/da/Om_os/Opgaver_og_kompetencer.aspx accessed 2 July 2017

⁹⁶⁹ Ibid

3.6. The Municipal Councils Obligations Regarding Integration

According to the Integrations Act section 4 (1) the Municipal Councils are responsible for accommodation placement of refugees that have been allocated in the concerned municipality. The Municipal Councils are also responsible for implementing integration plans and integration programs as well they are responsible for arranging introduction courses for refugees.⁹⁷⁰

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

This Section is an examination of relevant Danish statistics regarding migrants. The Danish Ministry of Immigration and Integration compiles the selected statistics. To put the numbers into perspective the population of Denmark is 5.7 million people as at 1 January 2017, according to Statistics Denmark.⁹⁷¹

4.1. Asylum Seekers

The selected statistics regarding asylum seekers focus on the number of applications and the number of issued residence permits in regard to asylum over the last few years. The numbers are aggregates of all application types in regard to asylum.

In 2012 and 2013, the numbers of applications for asylum were, respectively, 6,148 and 7,557 applications per year. After 2013 there is a large increase in the number of applications for asylum resulting in 14,792 applications in 2014 and 21,316 applications in 2015. After 2015 there is a large decrease in the number of applications, causing the number of applications to drop from 21,316 in 2015 to only 6,266 in 2016. The numbers for 2017 only include the months from 1 January to 31 May 2017. The number of applications for this period is 1,268 and if this rate continues throughout the year, the aggregate number for 2017 will be the lowest number of applicants since 2008, when 2,409 applications were received.⁹⁷²

In order to fully understand the number of issued residence permits in regard to asylum, it is important to note that some application types have a processing time of maximum 10 months, so many permits may be applied for in one year and issued in the following year.⁹⁷³ In 2012, 2,583 permits were issued while 3,889 were issued in 2013 and 6,104 were issued in 2014. 2015 saw a large increase in issued permits due to the large increase in received applications in 2014 and 2015. The number of issued permits in 2015 was 10,849 dropping to 7,493 in 2016, and in the first five months of 2017 the number of issued permits was only 1,558.⁹⁷⁴

⁹⁷⁰ Act no. 1094 (The Integrations Act) 2014.

⁹⁷¹ Statistics Denmark 'Danmark i Tal 2017' (2017) <http://www.dst.dk/da/Statistik/Publikationer/VisPub?cid=21499> accessed 4 July 2017

⁹⁷² The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 4, table 2

⁹⁷³ The Danish Immigration Service, 'Application Processing Times' (updated 3 January 2017) https://www.nyidanmark.dk/en-us/coming_to_dk/processing_times/us/service_goals.htm accessed 5 July 2017

⁹⁷⁴ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 4, table 2

4.2. Immigrants

Immigration being a permanent move to another country, this Sub-Section of the report will focus on the recent numbers of permanent residence permits. The numbers are divided in to three classes, i.e. permits issued in regard to asylum, permits issued in regard to family reunification, and permits issued in regard to occupation or education. The numbers from 2017 include the period from 1 January 2017 to 31 May 2017.

4.2.1. Asylum

During the first five months of 2017, 67 of the above-mentioned permits were issued in regard to asylum. The country with most issued permits is Iraq with 13 permits in the first four months of 2017. In 2016, the total number of issued permits was 385. With 68 issued permits in 2016, Iraq was the country with the largest number of permits, 15 permits more than Burma/Myanmar and Afghanistan in second place.⁹⁷⁵

4.2.2. Family Reunification

In regard to permanent residence permits, the majority of issued permits concern family reunification with 463 issued permits during the first five months of 2017. Of these 84 permits were issued to aliens from Turkey, making Turkey the country with the largest number of issued permanent residence permits in regard to family reunification. In 2016, the country with largest number of issued permits in this area was also Turkey with 264 permits out of 1,939 permits issued in total in 2016.⁹⁷⁶

4.2.3. Occupation and Education

During the first five months of 2017, 158 permanent residence permits were issued in regard to occupation and education in Denmark. If the trend continues throughout the year, the total number will be significantly lower than the number in 2016, which is 763. The country with the largest number of issued permits in 2017 so far is Ukraine with 26 permits. In 2016, the country with the largest number of issued permits was also Ukraine with 150 permits.⁹⁷⁷

4.2.4. Summary

In all, 757 indefinite residence permits were issued during the first four months of 2017. In 2016 the total number of issued permits was 3,087, indicating that the total number for 2017 may be significantly lower than that of 2016.

4.3. Transit Migrants

In this Sub-Section the recent numbers transit migration is examined. The numbers from 2017 include the period from 1 January 2017 to 30 April 2017. The applied definition of transit

⁹⁷⁵ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 17, table 2

⁹⁷⁶ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 17, table 3

⁹⁷⁷ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 18, table 3

migrants is the one used in the report from the Danish Ministry of Immigration and Integration, so that transit migrants are defined as aliens applying for a tourist or transit visa. During the first five months of 2017, the Danish Immigration Service and the Ministry's representatives outside Denmark issued 28,278 tourist or transit visas. The main part of these visas was issued to citizens of China with 9,194 tourist and transit visas.⁹⁷⁸

4.4. Trends in Migratory Flows

This Sub-Section focuses on the trends in migratory flows based on the alien's country of origin. The examination is based on numbers of asylum seekers and, therefore, applications for work permits and residence permits based on occupation and education and applications for family reunification will not be taken into consideration.

Since 2013, the largest group of asylum seekers is from Syria. In 2013, the number of Syrian applicant totalled 1,710 out of a total of 7,557 applicants. In 2014, almost half of the applicants seeking asylum in Denmark were Syrians, with 7,087 Syrian applicants out of a total of 14,792 applicants. 2015 saw the largest number of Syrian applicants with 8,608 applicants out of a total of 21,316 applicants.⁹⁷⁹ This number decreased drastically in 2016 to only 1,253 Syrian applicants, which is consistent with the total number of applicants decreasing to 6,266 in 2016. During the period from 1 January 2017 to 30 April 2017, the number of Syrian applicants was 308 and the total number of applicants was 1,268.⁹⁸⁰

With 2,787 applicants in 2015, Iran had the second largest number of asylum seekers in Denmark.⁹⁸¹ In 2016, that number was only 300 and during the first five months of 2017, only 47 Iranians applied for asylum in Denmark.⁹⁸²

From 2011 to 2012, the number of asylum seekers from Somalia went from 113 in 2011 to 919 in 2012, making Somalis the largest group of asylum seekers in 2012. In 2013, the number increased to 965, making Somalis the second largest group of asylum seekers that year.⁹⁸³ After 2013, the number of Somali asylum seekers dropped steadily, and during the first five months of 2017, only 22 Somalis applied for asylum in Denmark.⁹⁸⁴

During the last 6-7 years, there has been a relatively high number of asylum seekers from Morocco, Afghanistan, Iraq and Russia compared to the numbers of asylum seekers from other countries as well as the total number of asylum-seekers.^{985 986}

⁹⁷⁸ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 20, table 1

⁹⁷⁹ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2015' (completed 2016) 13

⁹⁸⁰ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 5, table 3

⁹⁸¹ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2015' (completed 2016) 13

⁹⁸² The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 5, table 3

⁹⁸³ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2015' (completed 2016) 13

⁹⁸⁴ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2017' (2017) 5, table 3

⁹⁸⁵ Ibid

⁹⁸⁶ The Danish Immigration Service, 'Statistical Overview Migration and Asylum 2015' (completed 2016) 13

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. ECHR and its incorporation in Danish Law

Danish control policy considerations and overall legal principles that determine the control of immigrants' status and residence in Denmark are reflected in the sources of law relevant to Danish immigration law. Even though the Danish Aliens Act governs all legal matters in relation to immigrants' entry and residence, the Act must be interpreted and applied in compliance with international conventions. Conventions on human rights that are relevant to the legal governing foreigners and emanating from intergovernmental cooperation outside the EU are largely ratified by Denmark.

The European Convention on Human Rights (ECHR) was ratified by Denmark in 1953 and, as a further action, incorporated in its entirety into Danish law by Act No. 285 of 29 April 1992 Inkorporeringsloven (Incorporation Act). Upon accession to the ECHR, Denmark undertakes to respect and ensure fundamental human rights of any person within its jurisdiction. The ECHR can be invoked against Danish courts and administrative authorities that have an obligation to apply the Convention in line with other Danish legislation. In addition, the Convention allows anyone to appeal to the European Court of Human Rights (ECtHR) in Strasbourg claiming that a member state has violated the rights protected by the Convention. The ECHR is the only human rights convention that has been incorporated into Danish law in its entirety. Other conventions are part of Danish law by partial references, i.e. that the relevant Danish legislation refers to relevant convention articles, either explicitly or implicitly. It is therefore apparent that Danish authorities respect the ECHR more than other conventions.

5.2. ECtHR Decisions' Implementation and Enforcement in Denmark

5.2.1. Denmark as an Intervening Respondent Member State

Because the ECHR is implemented into Danish law, it is applicable as any other national statute. This means that the decisions are enforced fully when Denmark is intervening as a respondent state in a case.

In May 2016, Denmark intervened in the case *Biao vs. Denmark*, in which Denmark lost. The case concerned whether Danish legislation on reunification was too strict in relation to Article 8 of the ECHR on the right to family life. The case also concerned the 28-year rule that excluded Danish nationals who had been Danish citizens for more than 28 years to meet four family reunification requirements. This 28-year rule was contrary to Article 8 in conjunction to Article 14 on prohibiting discrimination. The ECtHR Grand Chamber therefore held that there had been a violation of Article 14 read in conjunction with Article 8 of the Convention. Therefore, Denmark was to pay the applicant, Ousmane Biao, EUR 6,000 within three months.

Because of Denmark's obligation to the ECHR, which is not only an international obligation but also national obligation due to its status as incorporated into national law, Denmark was bound to pay the compensation awarded to victims of the human rights violations. Furthermore, the

28-year (which was amended to a 26-year rule right before the case) was repealed right after Denmark lost the *Biao vs. Denmark* case. This makes it clear that Denmark implements the case law directly in the domestic law when Denmark is the respondent state.

5.2.2. Danish Courts' Implementation of the Decisions by the ECtHR

According to the Danish Aliens Act § 7(2), a residence permit is issued upon application to an alien if, upon return to his country of residence, he or she risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment. The section is designed and inserted in Danish law in accordance with the relevant articles in the ECHR, in particular Art. 3 of the ECHR. According to the preparatory works of Danish Aliens Act on section 7(2), granting asylum to aliens or expelling them complies with Denmark's obligations under the ECHR as interpreted by the ECtHR. This means that Denmark implements ECtHR case law when interpreting the ECHR and the Aliens Act. Another example is Denmark's Aliens (Amendment) Act of 24 July 2011. The amendments enacted in order to incorporate the practices and case law of the ECtHR regarding treatment of migrants.

The parliamentary report on the incorporation of the human rights conventions provides a detailed review of the courts' application of the ECHR. It concludes that the courts often refer to ECtHR case law on the interpretation and application of the ECHR. There are therefore no doubts that Danish Courts take the decisions of the ECtHR into consideration even when Denmark has not been intervening as a respondent member state, especially in cases concerning migration.

5.3. Supremacy of the Cases of ECtHR over Danish Law

The rule of purpose and rule of presumption have for many years been taken recognized in Danish legal theory and jurisprudence. The rules are used when the courts have doubts about the relation between international law and domestic law. Under these legal principles, provided domestic law does not explicitly conflict with international law, domestic law will be interpreted in line with international law as far as possible. In the Danish case U.1998.800 H (The Maastricht case), the premises deduce that The Courts of Denmark shall consider legislative acts from ECC (former EU) as inapplicable in Denmark, if an extraordinary situation, as a completely opposition with the Danish Constitution should occur.⁹⁸⁷

Through Danish dogmatic legal analysis, it can be concluded that ECtHR case law finds its application through traditional principles of interpretation and is not to be considered a binding and directly applicable source of law in Denmark. It must be considered as a normal obligation under international law and must be handled within the traditional perception of the relationship between Danish law and international law.

The result in concrete cases will often not differ while the ECHR and case law from ECtHR have a great significance. But there can be situations where it is a vital importance, for example, if, at some point in the future, the ECtHR finds that abortion constitutes a violation of the

⁹⁸⁷ Jens Elo Rytter, "Individets grundlæggende rettigheder", (2013), Karnov Group, p. 54, Danish.

ECHR, while abortion does not contravene in Danish Constitution, this will cause serious constitutional conflict. This concludes that although the courts are obliged to include ECtHR case law in its interpretation of Danish law, it is not an unconditional binding source of law. If the dynamic practice of the ECtHR has to be incorporated equal to the ECHR, it will require a transfer of sovereignty, which has yet never taken. The theoretical problem is that since the ECHR legislate in the same area as the Danish Constitution, it can create a significant issue, which can change the content of the constitutional legislation. Therefore, such sovereignty seems to be problematic. Nevertheless, such conflicts have never occurred yet and are still only theoretical assumptions and discussions.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

The Council of Europe founded the European Commission against Racism and Intolerance (ECRI) in 1994 as an independent body for monitoring human rights violations, especially in relation to racism and intolerance. ECRI members are independent and objective and they are designated on the basis of their moral insight and recognized expertise in the areas of racism, xenophobia, anti-Semitism and intolerance. Denmark has reported on the implementation of ECRI since 1997, which has resulted in the preparation of five 5-year cycles reports.

6.1. The Five Reports on Denmark – Recommendations and Implementation

The first report of 1997 emphasized that Denmark had ratified most of the relevant international legal means on combating racism and intolerance. Nevertheless, ECRI recommended that Denmark ratify The European Charter of Regional or Minority Languages. Furthermore, ECRI recommended that Denmark implement the International Convention on Elimination of All Forms of Racial Discrimination in the same way as the implementation of the ECHR in its entirety in 1992. Politically, ECRI recommended Denmark adopt a more offensive policy against racial discrimination, which would result in more certain and precise criminal, civil and administrative law provisions against derogatory racist expressions and provisions that protect minorities against discrimination in the administrative areas of social service, housing, education and healthcare.⁹⁸⁸ As a result of the recommendations in the first report, Denmark ratified The European Charter of Regional or Minority Languages in 2000.⁹⁸⁹ Furthermore, the Danish Ministry of Justice set up a commission to find a sensible solution to the recommendation of Denmark's implementation of the International Convention on Elimination of All Forms of Racial Discrimination.⁹⁹⁰ As recommended, Denmark also adopted new criminal law provisions

⁹⁸⁸ European Commission against racism and intolerance (ECRI) first report on Denmark (1-7).

⁹⁸⁹ European Commission against racism and intolerance (ECRI) second report on Denmark (1).

⁹⁹⁰ Ibid (3).

against racial discrimination.⁹⁹¹ Despite the implementation of the recommendations, ECRI declared in the second report of 2000 that the frequent reports of racism and xenophobic statements in the media and other forums indicate a problem with the implementation of the criminal provisions. Therefore, despite the adopted provisions, ECRI reiterated its recommendation that the Danish authorities adopt a more offensive policy on the matter in the second report.⁹⁹²

The second report of 2000 focuses on the amendments of the Danish Aliens Act and Danish integration policy. The 1999 legislation contained a comprehensive set of rules and initiatives that apply to all foreigners with residence permit in Denmark, including refugees and their family members who are eligible for family reunification. ECRI was positive about the efforts of the Danish authorities to create a comprehensive integration plan but it was concerned that the enacted statute, contrary to its purpose, would create conditions where migrants and refugees would find it difficult to participate in the society's political, economic, social, religious and cultural life on a par with other citizens. Finally, ECRI found that it was still necessary to take action to solve discrimination in different areas, especially in the areas of employment, housing, and access to public services. On the other hand, ECRI also recommended that Denmark ratify the European Convention on Nationality, the European Social Charter and the European Convention on the Legal Status of Migrant Workers. As a result of these recommendations, Denmark ratified the European Convention on Nationality.⁹⁹³ Even though Denmark had implemented some of ECRI's recommendations from the previous report, ECRI found that Denmark had not adopted a more offensive and comprehensive policy on criminalizing derogatory racist expressions. The legislative authorities adopted a new provision in the penal code but the police had brought few cases before the courts.⁹⁹⁴

The third report of 2005 repeatedly recommended the ratification of the European Social Charter and the European Convention on the Legal Status of Migrant Workers. In addition to this, ECRI still recommended that Denmark incorporate the International Convention on Elimination of All Forms of Racial Discrimination. There had been progression in certain areas and Denmark adopted an Act on ethnic equality; however, a number of recommendations from the previous report had not been implemented or only partially implemented. ECRI noted in 2005 that the situation in Denmark had generally worsened, and some politicians and parts of the media continually promoted a negative image of minority groups in general.⁹⁹⁵ ECRI therefore recommended that the Danish authorities take action and further measures in a number of areas. Thus, it was recommended that Denmark ratify Protocol No. 12 to the ECHR. Moreover, legislative changes were recommended, including changes in the Danish Aliens Act and Integration Act, with the aim that these Acts do not in fact have a discriminatory effect on minority groups. Since the publication of the third report, a number of initiatives were launched to ensure that judges receive education and instructions on national and international legal

⁹⁹¹ Ibid (6).

⁹⁹² Ibid (7).

⁹⁹³ European Commission against racism and intolerance (ECRI) third report on Denmark (2).

⁹⁹⁴ Ibid (18).

⁹⁹⁵ Ibid (89).

instruments on racism and racial discrimination.⁹⁹⁶ This was recommended by ECRI in 2000 and had finally been implemented.

The fourth report focuses on ECRI's recommendations concerning Denmark's ratification of Protocol No. 12 to the ECHR and that the Danish legislative authorities should amend the Danish Aliens Act and the Integration Act, so that these Acts will not lead to discrimination of minority groups. It was also recommended that the Danish authorities ensure that the Equal Treatment Board is empowered to hear oral submissions and to examine on its own initiative. Since the Equal Treatment Board only has the power to settle cases on a written basis and cannot hear oral submissions, the lack of jurisdiction is evident. ECRI also recommended that the Danish authorities should extend the powers of the Board, so that it can deal with discrimination outside the employment field on the grounds of colour, religion or belief, national origin and language. Finally, ECRI urged the Danish authorities to implement a wide-ranging reform of the rules on spousal reunification with a view to removing any elements that constitute direct or indirect discrimination.⁹⁹⁷ Denmark implemented a few of ECRI's recommendations from the fourth report. However, these implementations had not been adequate and ECRI reiterated its recommendations from the fourth report in its fifth report.

The fifth report of 2017 is the latest report. ECRI reiterated its recommendation to carry out a wide-ranging reform of the spousal reunification rules. Moreover, ECRI repeated its recommendation to sign and ratify Protocol No. 12 to the ECHR and the recommendation to the authorities to amend the criminal, civil and administrative law, which is still not entirely in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. Danish authorities have not taken any remarkable steps towards reforming the spousal reunification rules in conformity with the recommendations. Why this has not happened yet is discussable but is likely a matter of political priorities by the Danish government, and because of the short period of time from when the report was produced and today.

6.2. Conclusion

In conclusion, Denmark has implemented many initiatives recommended by ECRI. However, it is clear that Denmark does not change its policy in certain areas, which has caused ECRI to reiterate the same objectives for many years. Since 1997, Denmark has implemented several recommendations, among others, the ratification of the European Convention on Nationality and the European Charter of Regional or Minority Languages. A number of initiatives have also been launched to ensure that judges receive education and instructions on national and international legal instruments on racism and racial discrimination, as recommended by ECRI. Nevertheless, in the recent years it has become clear that Denmark has implemented fewer recommendations from ECRI. For example, Denmark has still not implemented Protocol No. 12 to the ECHR, which ECRI has recommended since its third report from 2005. Moreover, since its first report, ECRI has recommended that Denmark amend the criminal, civil and

⁹⁹⁶ Ibid (75-76).

⁹⁹⁷ European Commission against racism and intolerance (ECRI) fourth report on Denmark (41).

administrative law, which is still not entirely in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. Finally, even though Denmark has implemented some of the recommendations of ECRI, it is clear that Denmark does not follow all ECRI recommendations. It seems that the recent Danish political development has reduced the influence of the ECRI.

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Introduction to the Danish Healthcare System

The Danish healthcare system is a fundamental part of the Danish welfare system. Similar to the educational system, it is free for Danish residents to access the majority of healthcare services in Denmark. In 2015, it was estimated that approximately 84 percent of healthcare expenditure is publicly financed.⁹⁹⁸ The healthcare services include primary healthcare, which is accessible to general practitioners, various vaccinations, and some medical specialists.⁹⁹⁹ National legislation also ensures Danish residents free of charge access to public hospital treatments.¹⁰⁰⁰ However, the above-mentioned services are, with some exceptions, only available to Danish residents, cf. section 7 of the Health Act.

The legal framework regarding migrants' rights to access to the healthcare system is predominantly the Aliens Act of 9 May 2016 and the Health Act of 24 September 2016. This report does not go into detail about or discuss the regulation regarding private hospitals. It is nevertheless relevant to point out that private hospitals are not allowed to discriminate patients unless the reason for differential treatment is based on objective criteria, cf. section 2a of the Health Act.

7.2. Medical Emergency Services

In accordance with section 80(1) of the Health Act and section 5(1) of the Executive Order on the right to hospital treatment etc., any human being, regardless of nationality or residency, has the right to be provided with free hospital treatment in case of medical emergency in Denmark. As examples of emergency situations, section 5 (1) of the Executive Order on the right to hospital treatment etc. mentions the following situations: accidents, sudden illness, childbirth or exacerbation of chronic diseases. The last-mentioned Act further provides that hospitals are not allowed to discriminate non-Danish residents when it comes to medical treatments.

In addition to free emergency treatment, any human being, regardless of nationality or residency, may be treated in Danish hospitals even if the emergency situation is over, according to section 80(2) of the Health Act and section 5(2) of the Executive Order on the right to hospital

⁹⁹⁸ The Danish Ministry of Health, 'HEALTHCARE IN DENMARK - AN OVERVIEW', 2017 (1)

⁹⁹⁹ Ibid (13)

¹⁰⁰⁰ Ibid (17)

treatment etc. However, this should only take place if it is estimated that it would be unreasonable to transfer the patient to his/her country of origin for further treatment. In continuation of the extended access to hospital treatment, the treatment may be free of charge and in such cases, free treatment must be considered reasonable, cf. section 5(4) of the Executive Order on the right to hospital treatment etc.

7.3. Healthcare Services to Asylum Seekers and Foreign Nationals without Legal Residence in Denmark

Under section 42a(1) of the Aliens Act section, the Danish Immigration Service pay the healthcare expenses of asylum seekers. For this reason, asylum seekers are not covered by the national healthcare system, which provides Danish residents free of charge access to the majority of healthcare services, including visits to a general practitioner and hospital treatment. It is essential to point out that the Danish Immigration Service only pays for the necessary health services for asylum seekers. Nevertheless, the Danish Immigration Service is responsible for healthcare services until the asylum seeker is issued with a residence permit. If the applicant's request for asylum is refused, the Danish Immigration Service continues to pay potential expenses until the asylum seeker has left the country. Yet the rejected asylum seeker must leave the country by the set departure deadline. As a notable exception, children of asylum seekers are on an equal footing with children who are Danish residents. This means that children of asylum seekers are entitled to the same healthcare services as children with Danish residence.¹⁰⁰¹

Section 42a(2) of the Aliens Act governs the rights of foreign nationals without legal residence in Denmark. In order to distinguish between asylum seekers and foreign nationals without legal residence, the preparatory works of section 42a(2) of the Aliens Act gives the following example:

Foreign nationals who have had residence on another basis than asylum are subject to this section if the residency has been revoked, expired or not been extended.¹⁰⁰² Similarly, for asylum seekers, the Danish Immigration Service pays the expenses that this category of individuals may have in relation to healthcare services. In such cases, the Danish Immigration Service is only obliged to pay the expenses if the healthcare service is necessary for the person's maintenance. The children of other foreign nationals without legal residence in Denmark are also entitled to the same healthcare services as children with Danish residence.

7.3.1. Exemptions

The Danish Immigration Service does not support asylum seekers or foreign nationals who are married to a Danish resident, cf. section 42a(3)(ii) of the Aliens Act. Furthermore, section 42a(4) of the Aliens Act provides that the support of the Danish Immigration Service is excluded if it must be presumed that asylum seekers or foreign nationals have ample funds to cover their expenses regarding healthcare services. Finally, asylum seekers or foreign nationals may be

¹⁰⁰¹The Danish Immigration Service <<https://www.nyidanmark.dk/en-us/coming-to-dk/asylum/conditions-for-asylum-applicants/healthcare.htm>> accessed July 2 2017 [English]

¹⁰⁰² Explanatory Notes to section 42a of the Aliens Act, para 1, number 27, in L 265 (FT 1999/2000). (Se de specielle bemærkninger til § 1, nr. 27 i L 265 (FT 1999/2000), fremsat den 30. marts 2000 af indenrigsministeren, om indsættelse af et nyt stk. 2 i § 42 a).

excluded from the above-mentioned help if their healthcare expenses are paid under the provisions of another Danish Act, cf. section 42a(3)(iv).

7.4. Irregular Migrants

The Danish Immigration service only pays the healthcare expenses of migrants who are registered as migrants. For this reason, asylum seekers and foreign nationals without legal residence must inform the authorities about their address or place of living in Denmark. Migrants who are not registered in the immigration database (irregular migrants), therefore, do not have access to the Danish healthcare system. However, an irregular migrant can always get hospital treatment in case of medical emergency. Even though irregular migrants do not have access to regular healthcare services, there are private clinics with voluntary doctors who offer healthcare services. Information about such clinics is spread via different social institutions that convey the message of free healthcare services to irregular migrants.¹⁰⁰³

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Under section 42g of the Aliens Act it is compulsory for migrant children in the ages of 6-16 to attend school when residing in Denmark and when they fall within section 42a(1) or (2), cf. subsection (3) or section 42k. This applies to situations where the migrant has not yet been issued with a residence permit. Migrant children covered by this provision may participate in separately organized tuition, or other tuition measuring up to the standard required of separately organized tuition.

The Ministry of Immigration and Integration has the authority to lay down rules about which educational programmes and activities to be offered and may, in cooperation with the Minister of Education, decide to which extent migrant children may attend the *folkeskole*, i.e. Danish primary and lower secondary school. These rules may be limited so that they only apply to specific accommodation centres.

When they live at asylum centres migrant children will typically attend school in a so-called *modtagerklasse*, which is a separate, educational offer to migrant children. Thus only migrant children will take part herein. This kind of educational offer is usually organized by the Red Cross and usually takes place at a location separate from the asylum centre. The aim is that migrant children will be able to attend a Danish primary school on a par with native Danes.¹⁰⁰⁴

In general, Danish municipalities decide which specific educational activities are to be offered the individual child, ranging from tuition at a separate school attended solely by migrant children to

¹⁰⁰³ Red Cross report on 'Health clinics for irregular migrants' <<https://www.rodekors.dk/media/2857873/aarsrapport-2016.pdf>> accessed 2 October 2017 [Danish]

¹⁰⁰⁴ Red Cross 'School and Asylum Seekers' <<https://www.rodekors.dk/det-goer-vi/roede-kors-asyl/det-goer-vi/skolegang>> accessed 7 July 2017 [Danish]

additional tutoring for children studying at a regular Danish primary school or lower secondary school.¹⁰⁰⁵

The fact that the municipalities have a considerable amount of influence on how to approach extra educational offers to migrant children and bilingual children, makes it difficult to assess how Denmark as a country approaches the challenge of ensuring migrant children an education equal to that offered to ethnic Danish children.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. General Admission to Universities

The acceptance of diplomas for acceptance onto courses of higher education is regulated in The Consolidated Act of Admission to Bachelor Degrees at Universities¹⁰⁰⁶. Admission to Universities is regulated in The Consolidated Act of Admission to Bachelor Degrees at Universities whether the applicant is a citizen of Denmark, a citizen of another member of the European Union or a citizen of a country from outside of the European Union. According to Section 2, admission to a University requires a high school diploma, specific demands such as a certain proficiency in different areas of high school course material, as well as a certain GPA based on the line of study. It derives directly from Section 3 (8) that foreign school diplomas are determined to grant/deny admission to universities by the Ministry of Higher Education and Science. Evaluation of such foreign school diplomata must be in compliance with The Consolidated Act on assessing foreign Educational Qualifications¹⁰⁰⁷ cf. Section 4 of The Consolidated Act of Admission to Bachelor Degrees at Universities. The individual evaluation of foreign diplomata is based on the diploma's country of origin, but every foreign applicant has the right to have his or her foreign diploma evaluated as stated in The Consolidated Act on assessing foreign Educational Qualifications Section 2 (1). Universities may require a translated version of a foreign diploma cf. The Consolidated Act of Admission to Bachelor Degrees at Universities Section 14 (4).

9.2. Evaluation of Foreign Diplomata

The Consolidated Act on Assessing Foreign Educational Qualifications, through evaluation, has as its purpose the easing and securing of the use and transition of foreign Educational Qualifications in and into the Danish job market, as well as into the Danish educational system cf. Section 1 of the The Consolidated Act on Assessing Foreign Educational Qualifications. The

¹⁰⁰⁵ Sections 1 and 3 of Consolidated Act no. 144 of 03/02/2017

¹⁰⁰⁶ Consolidated Act of Admission to Bachelor Degrees at Universities no. 110, January 30 2017

¹⁰⁰⁷ Consolidated Act on assessing foreign Educational Qualifications no. 579, January 6 2014

act ensures that anyone who wants an evaluation of their diplomata (including refugees and immigrants), and consequently their foreign skillset, has the possibility to do so. This is achieved through a uniform and transparent procedure and, as mentioned before, it is based on the diploma's country of origin. In general, the procedures for evaluating foreign diplomata can be separated into four categories based on their origin:

- Member countries of the European Union
- Nordic countries (in particular)
- Other countries
- Refugees

9.2.1. Member Countries of the European Union

As it is stated in the Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997¹⁰⁰⁸, the purpose of the treaty is to promote recognition of foreign qualifications within the member countries of the European Union. It was ratified in Denmark in 2003, and the Danish Ministry of Higher Education and Science is evaluating foreign diplomas, originating in member countries of the European Union, largely on the Revised Recommendation on Criteria and Procedures for the Assessment of Foreign Qualifications, which was adopted by the Lisbon Recognition Convention Committee at its fifth meeting in Sevres in 2010¹⁰⁰⁹ (the first recommendation was introduced in 2001)¹⁰¹⁰. The recommendation is aimed at all institutions providing higher education, and national authorities in charge of evaluating and recognizing foreign diplomas (as mentioned above, the Ministry of Higher Education and Science has the authority to so in Denmark).¹⁰¹¹

The recommendation furthermore aims at giving applicants valuable information with regards to simplifying procedures and demands, concerning translation, documentation and fees, without burying the applicant in paperwork. The recommendation elaborates on the principle of the Lisbon Convention¹⁰¹² that a foreign education qualification¹⁰¹³ must be recognised in line with a qualification from the host country, unless significant differences can be found. It clarifies what should be perceived as "significant differences" and stresses that, as far as possible, learning outcome and access to additional activities gained from admission to applied education should be valued higher than length and structure of the education.¹⁰¹³ A dedicated manual, the EAR Manual¹⁰¹⁴ outlines the practical procedures to ensure a fair, streamlined recognition of

¹⁰⁰⁸ Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, Treaty No.165

¹⁰⁰⁹ Revised Recommendation on Criteria and Procedures for the Assessment of Foreign Qualifications (adopted by the Lisbon Recognition Convention Committee at its fifth meeting, Sèvres)

¹⁰¹⁰ Uddannelses af Forskningsministeriet, Ministry of Higher Education and Science 'Lissabonkonventionen om anerkendelse' <http://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/internationalt/lissabonkonventionen> updated the May 5 2017, accessed the July 15 2017 [Danish]

¹⁰¹¹ Ibid

¹⁰¹² Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, Treaty No.165

¹⁰¹³ Uddannelses af Forskningsministeriet, Ministry of Higher Education and Science 'Lissabonkonventionen om anerkendelse' <http://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/internationalt/lissabonkonventionen> updated the May 5 2017, accessed , July 15 2017 [Danish]

¹⁰¹⁴ EAR Manual as part of the European Area of Recognition Project

qualifications. Institutions providing higher education follow a customised edition of the EAR Manual, called The European Recognition Manual for Higher Education Institutions¹⁰¹⁵.

In compliance with the Convention on the Recognition of Qualifications concerning Higher Education in the European Region¹⁰¹⁶, the Ministry of Higher Education and Science is evaluating the applicants with diplomata from a member country of the European Union according to the above-mentioned European Recognition Manual for Higher Education Institutions.

9.2.2. Nordic Countries (in particular)

The Nordic countries share a collective agreement¹⁰¹⁷ based on the above-mentioned Convention on the Recognition of Qualifications concerning Higher Education in the European Region. It is stated in the collective agreements Section 1 that applicants from within the Nordic region (Denmark, Norway, Finland, Iceland, Sweden), who are entitled to apply to higher education in their country of origin, have the equal or equivalent right to apply to higher education in any of the Nordic countries, as a native citizen in any of the other Nordic countries. Section 5 regulates the transfer of merit gained at an institution for higher education in one of the Nordic countries to an institution for higher education in any of the other Nordic countries. Furthermore, the Reykjavik Declaration from 2004¹⁰¹⁸ ensures a close cooperation regarding the continued effort to cooperate within the Nordic region to advance cross border education.

9.2.3. Other Countries

The evaluation of diplomata originating from countries other than Nordic countries or member states of the European Union causes difficulties caused by a variety of unknown factors, linked to the aforementioned diplomata. The Ministry of Higher Education and Science evaluates diplomata from other countries based on certain criteria. Those criteria aim to determine if and to what degree a diploma has the sufficient equivalency to a Danish diploma¹⁰¹⁹. The criteria are as follows¹⁰²⁰:

- Whether the education or training process is recognised in Denmark.
- At which point the education or training process has been completed.
- The basis for admission to the higher education or training course - specifically, whether the basis for admission to education in the applicant's country of origin

¹⁰¹⁵ The European Recognition Manual for Higher Education Institutions of 2016

¹⁰¹⁶ Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, Treaty No.165

¹⁰¹⁷ Collective agreement between Denmark, Iceland, Norway and Sweden regarding admission to higher education of September 3 1996 (Unofficial changes have been made through modifying contract agreements March 13 2000, November 3 2006, April 29 2009, October 31 2012 and November 2 2015), <http://www.norden.org/da/om-samarbejdet-1/nordiske-aftaler/aftaler/uddannelse-og-forskning/overenskomst-mellem-danmark-finland-island-norge-og-sverige-om-adgang-til-videregaende-uddannelse> accessed July 15 2017.

¹⁰¹⁸ Reykjavikdeclaration from June 9 2004, revised November 2 2016

¹⁰¹⁹ Uddannelses of Forskningsministeriet, Ministry of Higher Education and Science 'Vurderingsmetoder og -kriterier' <http://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/metoder-og-begreber/vurderingsmetoder-og-kriterier> updated the January 5 2017, accessed July 15 2017 [Danish]

¹⁰²⁰ Ibid

- corresponds to the admission requirements for equivalent Danish education, and whether the access granting education is comparable in length and level.
- The length of the higher education or the education process, - more specifically, if the duration of the education is comparable to the duration of a corresponding Danish education.
 - The objective or objectives of the education or the education process.
 - The structure and professional composition of the education or the education process, including: composition compared to a corresponding Danish education, subjects that are irrelevant to the profession, independent project or special work, extent and amount of time spent on this part of the programme, and lastly basis of research (research-based or not).
 - The relation between theoretical and practical subjects in the education or the education process.
 - Any previous reviews made by the Board (formerly the Board of Higher Education, the Board of Universities and Internationalisation, the Board of International Education / CIRIUS or CVUU) or others.

Based on the above-mentioned criteria, a general impression of the applicant's real proficiency should be available and taken into consideration, according to section 1(1)-(2)¹⁰²¹. If it is concluded (based on the general impression) that an applicant's diploma from foreign country is based on a significantly different foundation in regard to the above-mentioned criteria, the applicant has options to gain an sufficient equivalency as described in Section 9.3.

9.2.4. Refugees

The basis for every evaluation of a foreign diploma is that the foreign diploma is present and available to both the applicant and the authorities. It is common that refugees have lost their diplomas or they have encountered situations that have made it impossible to bring an intact diploma to Denmark. In this event, the Ministry of Higher Education and Science has the authority to issue an instructive declaration of the educational background of an applicant¹⁰²². This can then be used when applying for higher education in Denmark. The instructive declaration is based on information about the country of origin (of the applicant) and every document the applicant can provide regarding his or her education. The applicant may also be asked to undertake examinations in order to prove the authenticity of the provided documents.¹⁰²³ The standard practice of the Ministry of Higher Education and Science is based on the Lisbon Convention as well as the Guide for Credential Evaluators¹⁰²⁴

¹⁰²¹ Consolidated Act on assessing foreign Educational Qualifications no. 579, January 6 2014

¹⁰²² Uddannelses og Forskningsministeriet, Ministry of Higher Education and Science 'Vejledende udtalelse om udenlandsk uddannelse' <http://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/faa-vurdering/vejl-udt>
updated January 4 2017, accessed July 15 2017[Danish]

¹⁰²³ Ibid

¹⁰²⁴ 'Recognise qualifications held by refugees – guide for credential evaluators' <http://www.enic-naric.net/recognise-qualifications-held-by-refugees.aspx> accessed July 15 2017[English]

9.3. Insufficient Proficiency / Non-Acceptance of Foreign Diplomas

There are four different categories (1-4) that determine the acceptance of foreign diplomata. They range from full acceptance to non-acceptance. Category 1 is usually accepted in full and grants as extensive admission to higher education as an equivalent Danish diploma¹⁰²⁵. In rare cases, supplementary courses are needed. Category 2 is usually accepted with the exception of diplomata that lack English and mathematical courses – which in that case must be supplemented for that diploma to achieve recognition. Category 3 diplomata are usually not accepted and Category 4 diplomata grant only admission to a certain area of work or education¹⁰²⁶. In the event of a non-acceptance of a foreign diploma because of insufficient proficiency, the applicant in most cases has the option to supplement with a 1- or 2-year supplementary course at certain institutions. A list of courses that are needed to acquire full acceptance of the foreign diploma can be found on the website of the Ministry of Higher Education and Science. The list accredits the courses in hours and can therefore easily be compared to foreign course-proficiency.

9.4. Other Types of Schools

A few examples of different school types which are uncommon and therefore incompatible with the comparison criteria are so called ‘Waldorfschulen’/’ Rudolf Steinerskole’. Though the ‘Waldorfschulen’ / ‘Rudolf Steinerskole’ don’t follow the conventional education process, their diploma is recognised in Denmark if the final exams were held under the same state-authorised conditions as conventional high schools in the country.¹⁰²⁷

The German Schools within the Danish Minority in Germany provide diplomas that are also recognised as equal to Danish diplomata for admission to higher education as stated in section 3(6) in The Consolidated Act of Admission to Bachelor Degrees at Universities.¹⁰²⁸

9.5. Process of assessments

The process of assessment diplomata differs from the country of origin of the diploma. The process does not only differ in method to assess for each country of origin of the diploma but does also differ in requirements of the diploma depending on the country of origin. The requirements and methods for assessments are stated in the Handbook of Assessment of the Ministry of Higher Education and Science, and it does currently support the assessment of

¹⁰²⁵ Uddannelses og Forskningsministeriet, Ministry of Higher Education and Science ‘Vejledende udtalelse om udenlandsk uddannelse’ <http://ufm.dk/uddannelse-og-institutioner/ankendelse-og-dokumentation/find-vurderinger/eksamenshaandbogen/regler-og-raad/konventionslande> updated December 7 2012, accessed July 13 2017 [Danish]

¹⁰²⁶ Ibid

¹⁰²⁷ Uddannelses og Forskningsministeriet, Ministry of Higher Education and Science ‘Rudolf Steinerskole-eksaminer’ <http://ufm.dk/uddannelse-og-institutioner/ankendelse-og-dokumentation/find-vurderinger/eksamenshaandbogen/regler-og-raad/rudolf-steinerskoler> updated December 7 2012, accessed the July 14 2017 [Danish]

¹⁰²⁸ Consolidated Act of Admission to Bachelor Degrees at Universities no. 110, January 30 2017

diplomata of 35 countries. The handbook provides a clear overview of the process of evaluation for the different types of diplomata from the 35 stated countries.¹⁰²⁹

There is also a database containing previous judgments of cases of recognition of foreign diplomata. It contains judgments made following the methods of assessments stated in the Handbook of Assessments of the Ministry of Higher Education and Science. Both the handbook and the database can be found on the website of the Ministry of Higher Education and Science. The database is largely used when applicants provide a diploma, which originates in a country that is not listed in the handbook of assessment of the Ministry of Higher Education and Science¹⁰³⁰

The entity responsible for the assessment of foreign diplomata is the Ministry of Higher Education and Science.¹⁰³¹

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Introduction

Denmark is a constitutional monarchy and has a representative democracy. This means that politicians are elected to the Danish Parliament (Folketinget) for a limited period of time to govern Denmark. Furthermore, the Danish democracy consists of regional and local councils who are also elected for a limited period of time.

The Danish Parliament is responsible for general tasks in order to run the country, while the regions are primarily responsible for public healthcare services. Moreover, the municipalities (local councils) are responsible for a number of services that are offered to the citizens of local areas. Finally, Denmark is a member of the EU, wherefore the Danish representatives in the European Parliament must be elected as well.

Regarding the Danish monarchy and its influence on the political decisions, it is widely acknowledged that the monarch has no political power. Nevertheless, the monarch is formally involved in some aspects of the political system, such as signing statutes that have been passed by parliament.¹⁰³²

¹⁰²⁹ Uddannelses- og Forskningsministeriet, Ministry of Higher Education and Science, <https://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/find-vurderinger/landehaandbogen>, accessed August 15 2017 [Danish]

¹⁰³⁰ Ibid 121

¹⁰³¹ Uddannelses- og Forskningsministeriet, Ministry of Higher Education and Science, <https://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/find-vurderinger> accessed August 15 2017 [Danish]

¹⁰³² The Danish Parliament <http://www.thedanishparliament.dk/Democracy/Democracy_and_monarchy.aspx> accessed 8 July 2017 [English]

10.2. Parliamentary Elections

Section 32(1) of the Danish Constitutional Act provides that a parliamentary election must be held every four years. The Danish Prime Minister is responsible for the election procedure. Within four years from the last election, the prime minister must call a new election, cf. section 32(3) of the Constitutional Act.

10.2.1. Who can vote?

Section 29(1) of the Constitutional Act provides that a person is only entitled to vote if she or he is a Danish citizen who has reached the voting age (18 years old) and who has a permanent residence in Denmark. A person fulfilling the mentioned requirements is entitled to vote unless he or she is legally incapacitated.

10.2.2. Who can run for the Parliamentary Elections?

Any person who is entitled to vote is automatically eligible to run for parliamentary elections, cf. section 30(1) of the Constitutional Act. However, a candidate for the Danish parliament must be considered worthy to be a member of the parliament. For this reason, section 30(1) of the Constitutional Act specifically provides that no person is eligible to run for the Danish parliament if she or he has been convicted of an offense that makes this person unworthy to be a member of the Danish parliament in the eyes of the public.

10.3. Regional and Municipal elections

Similar to the parliamentary elections the Danish legislation requires regional and municipal elections to be held each four years, cf. section 6(1) of the Local Government Act. Unlike parliamentary elections, the elections to regional and municipal councils must be held on the third Tuesday in November each four years, cf. section 6(2) of the Local Government Act.

10.3.1. Who can vote?

Unlike parliamentary elections, not only Danish citizens are eligible to vote at regional and municipal elections. However, section 1(1) of the Local Government Act provides that any person who is least 18 years old and has permanent residence 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, or someone who has been resident in Denmark for three years prior to the last election date, cf. section 1(1) of the Local Government Act.

10.3.2. Who can run for the Regional and Municipal elections?

Any person who is eligible to vote in the regional and municipal elections is eligible to run for the elections, cf. section 3 of the Local Government Act. However, the candidate must as in parliamentary elections, be worthy to be a member, cf. Local Government Act section 4 (1).

10.4. European Elections - European Parliament

Elections to the European Parliament must be held every five years, cf. section 8 of the Members of the European Parliament Elections Act.

10.4.1. Who can vote?

The right to vote at elections to the European Parliament is held by every person who is at least 18 years old and who is either a Danish citizen, an European citizen with a permanent residence in another EU member state or a citizen of another EU member state, who has permanent residence in Denmark, cf. section 3(1) of the Members of the European Parliament Elections Act. A person fulfilling the mentioned requirements is entitled to vote unless he or she is legally incapacitated.

10.4.2. Who can run for the European Elections?

Any person who is entitled to vote at a European Parliament election is eligible to run for membership of the European Parliament, cf. section 6(1) of the Members of the European Parliament Elections Act. However, the person must be worthy to be a member, cf. section 6(2) of the Members of the European Parliament Elections Act.

10.5. Summary

To influence the Danish political system, Danish legislation has provided migrants with legal residence in Denmark the right to vote and run for regional and municipal elections. However, this is only possible if migrants have resided in Denmark for a period of at least three years prior to the day of the election. In regard to parliamentary elections, it is not possible for anyone without a Danish citizenship to vote or run for parliamentary. Furthermore, Danish legislation excludes non-Europeans from taking part in the European elections. Finally, Danish legislation states that only Danish citizens who are over 18 years old and who have permanent residence in Denmark are entitled to vote at referendums.¹⁰³³

Besides, the abovementioned criteria the Danish legislation doesn't describe any grounds that may determine the exclusion of migrants from participating in political decisions in Denmark. Similarly, there is no regulations or restrictions on migrants' access to participate in political decisions in their country of origin.

¹⁰³³The Danish Parliament
<http://www.thedanishparliament.dk/Democracy/Elections_and_referendums/Referendums.aspx> accessed 8 July 2017 [English]

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. How can Migrants Acquire Citizenship in Denmark?

Section 44(1) of the Constitutional Act of Denmark provides that no alien may acquire Danish citizenship by naturalization except by statute. The Government or any other authority may not simply grant Danish citizenship to an alien on its own initiative, nor can they lay down rules for when a person may become a Danish citizen. Nevertheless, the current Nationality Act¹⁰³⁴ provides that, in certain situations, a person automatically becomes a Danish citizen. The Nationality Act also provides that a person may acquire Danish citizenship by making a declaration. However, there are a number of conditions that must be met first. Otherwise a person may only become a Danish citizen by statute. The practical procedure is that the Minister of Immigration and Integration submits a bill proposing that a number of people will receive Danish citizenship. Prior to this, it will have been established whether the people in question actually fulfil the conditions for becoming Danish citizens. The bill is subsequently passed by a vote in Parliament.¹⁰³⁵

11.1.1. Situations where a Migrant can become a Danish Citizen by Declaration

In accordance with the Nationality Act, different groups of migrants may acquire Danish citizenship without the Danish Parliament passing a bill. As this is a question of migrants' possibilities of acquiring Danish citizenship, this Section of the report does not examine the afore-mentioned possibilities of automatically acquiring citizenship because these rules concern children of Danish citizens, cf. sections 1(1) and 2(1) of the Nationality Act, and children adopted by Danish citizens, cf. section 2a(1) of the Nationality Act. Therefore, this Section only examines the rules that provide specific aliens with the possibility of acquiring Danish citizenship by declaration.

Section 3(1) of the Nationality Act provides that a citizen of Finland, Iceland, Norway and Sweden may acquire Danish citizenship by submitting a written declaration to the State Administration or to the Chief Administrative Officer of the Faroe Islands or Greenland, provided that the conditions listed in sections 3(2) and 3(3) are met. The alien must be more than 18 years old, but must not yet have turned 23, cf. section 3(2)(i), just as the alien, at the time of submitting the declaration, must reside in Denmark, cf. section 3(2)(ii), and must have resided in Denmark for an aggregate period of ten years, of which an aggregate period of at least five years must be within the last 6 years prior to submitting the declaration, cf. section 3(2)(iii). Furthermore, the alien must have no criminal record and must not be charged with a criminal offence, cf. section 3(2)(iv-v).

Pursuant to section 3(3), an alien may acquire Danish citizenship if he has acquired nationality in the above-mentioned countries in another way than by nationalization. He must be over 18 years

¹⁰³⁴ Act on Danish Nationality no. 422 of 6 July 2004

¹⁰³⁵ The Danish Parliament, *My Constitutional Act with Explanations*, 25.

old, have resided in Denmark for the last 7 years and during his residence in Denmark not have been sentenced to imprisonment.

If an alien acquires citizenship under section 3 of the Nationality Act the children of the alien concerned will acquire Danish citizenship as well, cf. section 5.

11.1.2. The Conditions for Acquiring Danish Citizenship

Before the Minister of Immigration and Integration submits a bill proposing that a number of applicants acquire citizenship by nationalization in accordance with the Constitutional Act, it must be determined whether the aliens in question meet the conditions for Danish citizenship by nationalization.¹⁰³⁶ Whether nationalization is to be granted is up to Parliament whose members will vote on this using individual discretion in the specific cases. However, some general guidelines have been laid down by Government Circular no. 10873¹⁰³⁷ as per agreement between four parties represented in Parliament.

In accordance with section 2 of Government Circular no. 10873, an alien applying for citizenship must sign a letter declaring allegiance and loyalty to Denmark. Additionally, the alien must declare that he will comply with Danish law including the Constitutional Act and declare that he will observe fundamental Danish values and principles.¹⁰³⁸

In addition to, the alien must already have been issued with a permanent residence permit and have acquired residence in Denmark, cf. section 5(1) of Government Circular no. 10873. However, this condition does not apply to a number of migrants including Nordic citizens, former Danish citizens, and people of Danish descent, amongst others.¹⁰³⁹

Citizenship by nationalization is also conditional on the migrant having 9 years of uninterrupted residence in Denmark. However, special rules for the length of residence apply to a number of different groups of applicants. These special rules are listed in sections 5-13 of the Government Circular.¹⁰⁴⁰

Pursuant to sections 19-21 of the Government Circular Letter, applicants may not be included in a bill on citizenship if they have been sentenced to an unconditional custodial sentence for 1.5 years or more or have been involved in, or have been found guilty of various kinds of criminal offences specified in section 19. Other applicants who have been found guilty of a criminal offence have to complete a specified waiting period before they qualify to be included in a bill.¹⁰⁴¹

¹⁰³⁶ Ibid

¹⁰³⁷ Government Circular no. 10873 of 13 October 2015 agreed upon by the government party Venstre, Socialdemokraterne, Dansk Folkeparti, Liberal Alliance, Det Konservative Folkeparti

¹⁰³⁸ The Danish Ministry of Immigration and Integration, 'Afgivelse af Erklæring om Troskab og Loyalitet' (updated 18 April 2016) <http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/afgivelse-af-erklæring-om-troskab-og-loyalitet> accessed 10 July 2017

¹⁰³⁹ The Danish Ministry of Immigration and Integration, 'Tidsbegrænset Opholdstilladelse og Bopæl' (updated November 27 2015) <http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/tidsbegrænset-opholdstilladelse-og-bopæl-i-danmark> accessed July 10 2017

¹⁰⁴⁰ The Danish Ministry of Immigration and Integration, 'Ophold' (updated 27 November 2015) <http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/ophold> accessed 10 July 2017

¹⁰⁴¹ The Danish Ministry of Immigration and Integration, 'Kriminalitet' (updated 27 November 2015) <http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/kriminalitet> accessed 10 July 2017

An applicant may not owe a debt to public authorities under section 22 of the Government Circular. In addition to not owning any debt to public authorities, the applicant must also be financially self-supporting in accordance with section 23, i.e. the applicant must not have received any public benefits within the last year, and in within last 5 years he may not have received public benefits for more than 6 months.¹⁰⁴²

Finally, the applicant must pass a Danish language test, cf. section 24 of the Government Circular. In addition to this test, the applicant must also pass the Danish Citizenship Test, cf. section 24(3).¹⁰⁴³

11.2. The Possibility of Double Nationality

On 18 December 2014, the Danish Parliament passed a bill amending the Danish Nationality Act.¹⁰⁴⁴ Below, this act is referred to as the Act on Double Citizenship. The amendment act provides that Danish Citizens who wish to acquire another citizenship will be able to do this without forfeiting their Danish citizenship. There is still the possibility of forfeiting Danish citizenship if the law in the country of which a Danish national wishes to acquire citizenship requires forfeiture of the Danish citizenship.¹⁰⁴⁵

Furthermore, the Act on Double Citizenship provides that aliens who wish to acquire Danish Citizenship will no longer be met with a Danish requirement to renounce their other citizenship. The possibility of double citizenship now depends on whether the legislation in the country of which the applicant already is a citizen allows double citizenship.¹⁰⁴⁶

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Denmark is the only EU member state that does not participate in the implementation of the Asylum, Migration and Integration Fund, which is a specific EU programme funding integration of migrants.¹⁰⁴⁷ However, during the period 2014-2020 Denmark is scheduled to receive approximately DKK 290 million from the European Social Fund in order to support projects that will contribute to and promote social inclusion via education and employment.¹⁰⁴⁸

¹⁰⁴² The Danish Ministry of Immigration and Integration, 'Gæld til det Offentlige' (updated 27 November 2015) <http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/gaeld-til-det-offentlige> accessed 10 July 2017

¹⁰⁴³ The Danish Ministry of Immigration and Integration, 'Dansk kundskaber' (updated 27 April 2016) <http://uim.dk/arbejdsomrader/statsborgerskab/udenlandske-statsborgere-1/betingelser/dansk-kundskaber> accessed 10 July 2017

¹⁰⁴⁴ Act no. 1496 of 23 December 2014

¹⁰⁴⁵ The Danish Ministry of Immigration and Integration, 'Dobbelt Statsborgerskab' (updated 14 December 2016) <http://uim.dk/arbejdsomrader/statsborgerskab/dobbelt-statsborgerskab-1> accessed 10 July 2017

¹⁰⁴⁶ Ibid

¹⁰⁴⁷ <European Commission, Migration and Home Affairs, https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en> accessed 3 October 2017 [English]

¹⁰⁴⁸ The Danish Business Authority, Current expenditure by the ESF priority axes, <<https://regionalt.erhvervsstyrelsen.dk/socialfonden>> accessed 7 October 2017 [Danish]

The purpose of social inclusion is to increase employment among people with difficulties. Specifically, the goal is to ensure young, vulnerable, people to get an education and that people with disadvantages are helped to archive ordinary employment. This means that the social inclusion is narrowed to focus on people with no or limited connection to the job market and who are reliant on supportive efforts to gain access to the job market (people on the edge of the job market). Among this target group comes social security recipients including immigrants and newly arrived, vulnerable, refugees with special challenges such as traumas etc.¹⁰⁴⁹

Therefore, the European Social Fund is not earmarked to the integration of migrants. Nevertheless, it is specifically stated that the social inclusion includes some immigrants and newly arrived refugees. So far circa DKK 14, 5 million has been granted to 15 projects within the scope of the abovementioned fund.¹⁰⁵⁰ For instance, project “Business Training – Social inclusion of vulnerable refugees” was in 2016 granted money to help vulnerable refugees into the job market.¹⁰⁵¹ Another programme is “Onwards the Workplace”-programme, which is one of the major programmes to benefit the inclusion of migrants. The programme aims at putting migrants to work through courses and practice within companies as well as raising the overall ability of work qualifications.¹⁰⁵² Out of 226 participants of projects within social inclusion, it is reported that, up to and including August 2016, 17 of them are immigrants.¹⁰⁵³ Based on our research there are no other EU programmes, which directly or indirectly contribute to or assist Denmark with regard to integration of migrants.

Conclusions

This analysis demonstrates that the Danish legislation concerning aliens is incredibly extensive. One of the reasons for that is the extremely detailed content of the Danish Aliens Act that regulates the entry and residency. Also, Denmark’s international obligations play a not inconsiderable role in this legal field. Moreover, The Danish Aliens Act has been amended several times in recent years, which makes it further difficult to navigate in the Danish immigration system.

It can be concluded that the rules regulating immigration from EU member states and non-EU states are very different. Citizens of EU-member states have rights of entry and residence merely because of nationality. Aliens who have no rights of entry and residence in the capacity of their citizenship or under EU law must, in general, meet a great number of requirements to be

¹⁰⁴⁹ The Danish Business Authority, Journal regarding ESF 2014-2020 – Danish focus areas, <https://regionalt.erhvervsstyrelsen.dk/sites/default/files/media/socialfondsprogram_2014-2020_forkortet_udgave.pdf> accessed 7 October 2017 [Danish]

¹⁰⁵⁰ The Danish Business Authority, Project list of granted funds within focus area: Social inclusion, <<https://regionalt.erhvervsstyrelsen.dk/projektliste?maxResults=15&Fond=S&Indsatsomraade=Aktiv+inklusion>> accessed 7 October 2017 [Danish]

¹⁰⁵¹ The Danish Business Authority, Project list of granted funds within focus area: Social inclusion <<https://regionalt.erhvervsstyrelsen.dk/eu-business-training-social-inklusion-af-udsatte-flygtninge-6>> accessed 7 October 2017 [Danish]

¹⁰⁵² Ibid.

¹⁰⁵³ Statistics given to us, e-mail, from The Danish Business Authority on the 16th of October 2017.

permitted entry into and residence in Denmark. Apart from entry and residency, aliens are able to become Danish citizen. However, it is - with few exceptions - only possible to acquire Danish citizenship by statute. Danish Nationality Law does also allow dual nationality.

The responsible bodies dealing with immigration matters are two government agencies subordinate to the Ministry of Immigration and Integration. Additionally, Denmark has the Immigration Appeals Board and the Refugees Appeals Board dealing specifically with cases regarding migrants. These quasi-judicial bodies are independent and can't seek or accept directions and instructions from the Ministry of Immigration and Integration.

This report also has covered Denmark's incorporation of the ECHR and whether ECtHR case law is a binding source in Danish jurisprudence. Furthermore, Denmark's implementation of the decisions by ECtHR, whether or not the state intervenes as a respondent state, has been discussed. In conclusion, Denmark has amended the Aliens Act in accordance with the decisions of the ECtHR, which form the interpretation of the ECHR. Moreover, many Danish cases are decided by reference to the ECHR, which is interpreted by case-law of the ECtHR. Finally, it is concluded that The Courts of Denmark are obliged to include ECtHR case law in its interpretation of Danish law but this is not an unconditionally binding source of law.

Regarding the implementation of the recommendations of the ECRI, it can be concluded that Denmark has implemented many initiatives during the last couple of years but it is also clear that Denmark does not change its policy in certain areas. This has resulted that ECRI has reiterated the same recommendations several times.

Table of legislation

Danish Wording	English Wording
<p>Grundloven</p> <p>§ 29, stk.1 Valgret til folketinget har enhver, som har dansk indfødsret, fast bopæl i riget og nået den i stk. 2. Omhandlede valgrets alder, medmindre vedkommende er umyndiggjort. Det bestemmes ved lov, i hvilket omfang straf og understøttelse, der i lovgivningen betragtes som fattighjælp, medfører tab af valgret.</p> <p>§ 30, stk.1 Valgbar til folketinget er enhver, som har valgret til dette, medmindre vedkommende er straffet for en handling, der i almindeligt omdømme gør ham uværdig til at være medlem af folketinget.</p> <p>§ 32, stk.1 Folketingets medlemmer vælges for fire år.</p> <p>§ 32, stk.3 Det påhviler statsministeren at foranledige, at nyvalg afholdes inden valgperiodens udløb.</p> <p>§ 44, stk. 1 Ingen udlænding kan få indfødsret uden ved lov.</p>	<p>The Danish Constitutional Act</p> <p>Section 29 (1) Any Danish subject who is permanently domiciled in the Realm, and who has the age qualification for suffrage as provided for in sub-section (2) of this section shall have the right to vote at Folketing elections, provided that he has not been declared incapable of conducting his own affairs. It shall be laid down by statute to what extent conviction and public assistance amounting to poor relief within the meaning of the law shall entail disfranchisement.</p> <p>Section 30 (1) Any person who is entitled to vote at Folketing elections shall be eligible for membership of the Folketing, unless he has been convicted of an act which in the eyes of the public makes him unworthy to be a member of the Folketing.</p> <p>Section 32 (1) The members of the Folketing shall be elected for a period of four years.</p> <p>Section 32 (3) The Prime Minister shall cause a general election to be held before the expiration of the period for which the Folketing has been elected.</p> <p>Section 44 (1) No alien can acquire Danish citizenship</p>

Indfødsretsloven

§ 1, stk. 1

Et barn erhverver dansk indfødsret ved fødslen, hvis faderen, moderen eller medmoderen er dansk.

§ 2, stk. 1

Har et barn af en dansk far og en udenlandsk mor ikke erhvervet dansk indfødsret ved fødslen, erhverver barnet dansk indfødsret ved forældrenes indgåelse af ægteskab. Det er en forudsætning, at barnet på tidspunktet for ægteskabets indgåelse er ugift og under 18 år.

§ 2a, stk. 1

Et udenlandsk barn under 12 år, der er adopteret ved en dansk adoptionsbevilling, bliver dansk statsborger ved adoptionen, hvis barnet adopteres af et ægtepar eller et samlevende par, hvor mindst én af ægtefællerne eller en af de samlevende er dansk statsborger, eller af en enlig dansk statsborger.

§ 3, stk. 1

Den, der er statsborger i Finland, Island, Norge eller Sverige og opfylder betingelserne i stk. 2 eller 3, erhverver dansk indfødsret ved over for statsforvaltningen, Rigsombudsmanden på Færøerne eller Rigsombudsmanden i Grønland at afgive skriftlig erklæring herom.

§ 3, stk. 2

Erklæring kan afgives af personer, der

- 1) er fyldt 18, men endnu ikke 23 år,
- 2) på erklæringstidspunktet har bopæl her i riget,
- 3) har haft bopæl her i riget i sammenlagt

without a bill.

The Nationality Law section

Section 1 (1)

A child acquires Danish citizenship at birth if the father, mother or co-mother is Danish.

Section 2 (1)

If a child of a Danish father and a foreign mother has not acquired Danish nationality at birth, the child acquires Danish nationality when the parents are married. It is a condition that the child at the time of marriage is unmarried and under 18 years of age.

Section 2a (1)

A foreign child under the age of 12, adopted by a Danish adoption permit, becomes a Danish citizen at the adoption if the child is adopted by a married couple or a cohabiting couple, where at least one of the spouses or one of the cohabitants is a Danish citizen, or if the child is adopted by a single Danish citizen.

Section 3 (1)

Anyone who is a citizen of Finland, Iceland, Norway or Sweden and fulfills the conditions of section 2 or 3, acquires Danish citizenship in respect of the state administration, the Ombudsman on Faroe Islands or the Ombudsman in Greenland to make a written declaration thereon.

Section 3 (2)

Declaration can be given by persons who
1) is 18, but not yet 23 years old,

mindst 10 år, heraf sammenlagt mindst 5 år inden for de sidste 6 år,

- 4) er ustraffede og ikke er idømt foranstaltninger efter straffelovens kapitel 9 og
- 5) ikke er sigtede for en lovovertrædelse.

§ 3, stk. 3

Erklæring kan endvidere afgives af personer, der

- 1) har erhvervet statsborgerret i Finland, Island, Norge eller Sverige på anden måde end ved naturalisation,
- 2) er fyldt 18 år,
- 3) har haft bopæl her i riget i de sidste 7 år og
- 4) ikke i løbet af denne tid er idømt frihedsstraf eller foranstaltning, der kan ligestilles med frihedsstraf.

§ 5

Erhverver en person indfødsret ved afgivelse af erklæring i medfør af §§ 3 eller 4, tilkommer indfødsretten også den pågældendes barn, herunder adoptivbarn, medmindre det udtrykkeligt er angivet, at et barn ikke skal være omfattet af erhvervelsen af indfødsret. Det er en forudsætning for et barns erhvervelse af dansk indfødsret, at den erklærende har del i forældremyndigheden over barnet, og at barnet er ugift, under 18 år og bosat her i riget. Er barnet undergivet fælles forældremyndighed, skal den anden forældremyndighedsindehaver meddele samtykke til, at barnet erhverver indfødsret med den erklærende. For et adoptivbarn er det tillige en betingelse, at adoptionen har gyldighed efter dansk ret.

Integrationsloven

§ 4, stk. 1

Kommunalbestyrelsen har ansvaret for boligplacering af flygtninge, der er visiteret til

2) At the time of the declaration, live here in the kingdom,

3) have lived in the kingdom for a total of at least 10 years, of which at least 5 years have passed within the last 6 years,

4) are unpunished and not sentenced pursuant to Chapter 9 of the Criminal Code

5) is not charged with a crime.

Section 3 (3)

Declaration can also be given by persons who

1) has acquired citizenship in Finland, Iceland, Norway or Sweden in another manner than by naturalization,

2) is 18 years old,

3) have been living here in the kingdom for the last 7 years and

4) During this period no sentence or sentence equivalent to imprisonment has been sentenced.

Section 5

If a person acquires a citizen's right of residence by a declaration pursuant to sections 3 or 4, the citizenship shall also include the child's child, including adoptive child, unless expressly stated that a child should not be subject to the acquisition of citizenship. It is a condition for a child's acquisition of Danish citizenship that the declarant is a part of custody of the child and that the child is unmarried, under 18 years of age and residing in the kingdom. If the child is subject to joint custody, the other custodian shall be entitled to custody grant consent to the child acquiring the right of birth with the declarant. For an adoptive child it is also a condition that the adoption is valid under Danish law.

The Integrations Act

den pågældende kommune, jf. kapitel 3, integrationsplaner og integrationsprogrammer for flygtninge og familiesammenførte udlændinge, jf. kapitel 3 a og 4, introduktionsforløb for indvandrere, jf. kapitel 4 a, udbetaling af kontanthjælp til udlændinge omfattet af et integrationsprogram, jf. kapitel 5 og lov om aktiv socialpolitik, udbetaling af hjælp i særlige tilfælde, jf. kapitel 6, og samordning heraf med den øvrige integrationsindsats i kommunen.

Bekendtgørelse af lov om valg af danske medlemmer til Europa-Parlamentet

§ 3, stk. 1

Valgret til Europa-Parlamentet har enhver, der på valgdagen

- 1) har valgret til Folketinget eller
- 2) har dansk indfødsret, har opnået alderen for valgret til Folketinget og har fast bopæl i en af de øvrige medlemsstater i Den Europæiske Union, medmindre vedkommende er under værgemål med fratagelse af den retlige handleevne, jf. værgemålslovens § 6, eller
- 3) er statsborger i en af de øvrige medlemsstater i Den Europæiske Union, har opnået alderen for valgret til Folketinget og har fast bopæl i Danmark eller er registreret i Udenrigsministeriets protokol, medmindre vedkommende er under værgemål med fratagelse af den retlige handleevne, jf. værgemålslovens § 6.

§ 6, stk. 1

Valgbar til Europa-Parlamentet er enhver, der har valgret efter § 3, stk. 1, og som 4 uger før valgdagen opfylder valgretningsbetingelserne bortset fra aldersbetingelsen, jf. dog stk. 2 og 3.

Section 4 (1)

The municipal council is responsible for housing placement of refugees vis-à-vis the municipality concerned, cf. Chapter 3, Integration Plans and Integration Programs for Refugees and Family Aliens, cf. Chapters 3a and 4, Immigration, cf. Chapter 4a, Payment of cash assistance for foreigners covered by an integration program, cf. Chapter 5 and the Act on Active Social Policy, payment of assistance in special cases, cf. Chapter 6, and coordination with the other integration efforts in the municipality.

Members of the European Parliament Elections Act

Section 3 (1)

Franchise for the European Parliament is held by every person who on the day of the election

- (i) is entitled to vote as an elector at Folketing (parliamentary) elections,
- (ii) is a Danish citizen, of voting age in Folketing elections, and is permanently resident in one of the other member states of the European Union, except where deprived of his legal capacity under a guardianship order, cf. section 6 of the Danish Guardianship Act, or
- (iii) is a national of another member state of the European Union, is of voting age in Folketing elections and is permanently resident in Denmark or registered with the Protocol Department of the Ministry of Foreign Affairs, except where deprived of his legal capacity under a guardianship order, cf. section 6 of the Danish Guardianship Act.

Section 6 (1)

§ 6, stk. 2

Den, der er straffet for en handling, der i almindeligt omdømme gør den pågældende uværdig til at være medlem af Europa-Parlamentet, er ikke valgbar, jf. § 37, stk. 3.

§ 8

Medlemmerne vælges for fem år. Deres funktionsperiode begynder og ophører på de tidspunkter, der følger af De Europæiske Fællesskabers regler om almindelige direkte valg af medlemmerne af Europa-Parlamentet.

Bekendtgørelse af lov om kommunale og regionale valg

§ 1, stk. 1

Valgret til kommunalbestyrelsen og regionsrådet har enhver, der på valgdagen er fyldt 18 år, har fast bopæl i kommunen henholdsvis regionen, og som herudover enten

- 1) har dansk indfødsret,
- 2) er statsborger i en af de øvrige medlemsstater i Den Europæiske Union, jf. dog stk. 3 og 4,
- 3) er statsborger i Island eller Norge, jf. dog stk. 3 og 4, eller
- 4) uden afbrydelse har haft fast bopæl i riget i de sidste 3 år forud for valgdagen, jf. dog stk. 3 og 4.

§ 3

Valgbar til kommunalbestyrelsen og regionsrådet er enhver, der har valgret til kommunalbestyrelsen henholdsvis regionsrådet, og som fredagen 46 dage før valgdagen eller, hvis dette ikke er tilfældet, kl. 12 mandagen 43 dage før valgdagen opfylder valgretsbetingelserne bortset fra aldersbetingelsen og betingelsen vedrørende varigheden af forudgående fast bopæl i riget, jf. dog § 4.

Any person who is entitled to vote under section 3(1) and who fulfils the franchise conditions at least four weeks before election day, except for the condition as to age, cf. however subsections (2) and (3), is eligible for the European Parliament.

Section 6 (2)

Any person who has been punished for an act which by general standards makes that person unworthy of being a member of the European Parliament is not eligible, cf. section 37(3).

Section 8

The members are elected for five years. Their terms of office start and expire at times following the rules of the European Community for ordinary MEP direct elections.

Local and Regional Government Elections Act

Section 1 (1)

Franchise for the local council and the regional council is held by every person who, on election day, is above 18 years of age, permanently resident in the municipality or region, respectively, and who also-

- (i) is a Danish citizen;
- (ii) is a national of another member state of the European Union;
- (iii) is a national of Iceland or Norway; or
- (iv) has uninterruptedly been permanently resident in the realm for the past three years prior to election day.

Section 3

Eligibility for the local council and the regional council is accorded to anyone holding the right to vote in local and regional elections, and who not later than Friday 25 days prior to election day or, if this is not the case, not later than noon Monday 22 days

§ 4, stk. 1

Den, der ved endelig dom eller vedtagelse af bøde er straffet for en handling, der i almindeligt omdømme gør den pågældende uværdig til at være medlem af kommunale og regionale råd, er ikke valgbar, jf. § 101. Med straf sidestilles foranstaltninger efter straffelovens §§ 68-70.

§ 6, stk. 1

Medlemmerne af kommunalbestyrelser og regionsråd vælges for 4 år. Mandaterne bortfalder dog ikke, før nyvalg har fundet sted.

§ 6, stk. 2.

Valg til kommunalbestyrelser og regionsråd finder sted den 3. tirsdag i november 2009. Derefter den 3. tirsdag i november 2013 og så fremdeles.

Sundhedsloven

§ 7

Personer, der har bopæl her i landet, har ret til lovens ydelser, jf. dog stk. 4 og 5.

§ 2 a

En sundhedstjenesteyder må ikke i sin virksomhed udøve forskelsbehandling af patienter på baggrund af nationalitet, medmindre forskellen er begrundet i objektive kriterier.

§ 80, stk. 1

Regionsrådet yder akut behandling til personer, som ikke har bopæl her i landet, men som midlertidigt opholder sig i regionen, jf. § 8, ved sit eller ved andre regioners sygehusvæsen.

§ 80, stk. 2

Herudover yder regionsrådet behandling til de i stk. 1 nævnte personer, når det under de foreliggende omstændigheder ikke skønnes rimeligt at henvise personen til behandling i hjemlandet, herunder Færøerne og Grønland, eller personen ikke tåler at blive flyttet til et

prior to election day fulfills the conditions for eligibility, except for the condition as to age and the condition as to the preceding period of being permanently resident in the realm, cf. however section (4).

Section 4 (1)

Any person who by final judgment or acceptance of a fine has been convicted of an act which in the eyes of the public makes him unworthy of being a member of local or regional councils shall not be eligible, cf. section 101. Measures laid down in sections 68-70 of the Penal Code are equal to penalty.

Section 6 (1)

Members of local councils and regional councils are elected for four years. Their seats do not lapse, however, until a new election has taken place.

Section 6 (2)

Elections for local councils and regional councils shall be held on the third Tuesday in November 2009. Thereafter on the third Tuesday in November 2013 and so on.

Health Act

Section 7

Persons residing in this country are entitled to the benefits of the law, cf. 4 and 5.

Section 2a

A health service provider may not discriminate against patients on the basis of nationality in their activities unless the difference is based on objective criteria.

Section 80 (1)

The Regional Council shall provide emergency treatment to persons who do not reside in this country but who temporarily reside in the region, cf. section 8, at their or at other regions' hospital services.

Section 80 (2)

In addition, the regional council shall treat the persons referred to in subsection 1, in cases

sygehus der.

Bekendtgørelse om ret til sygehusbehandling m.v.

§ 5, stk. 1

Personer, der ikke har bopæl her i landet, har ret til akut sygehusbehandling m.v. i opholdsregionen i tilfælde af ulykke, pludseligt opstået sygdom og fødsel eller forværring af kronisk sygdom m.v. Behandlingen m.v. ydes på samme vilkår som til personer med bopæl her i landet.

§ 5, stk. 2

Regionsrådet i opholdsregionen yder herudover sygehusbehandling m.v., når det under de foreliggende omstændigheder ikke skønnes rimeligt at henvise personen til behandling i hjemlandet, herunder Færøerne og Grønland, eller personen ikke tåler at blive flyttet til et sygehus i hjemlandet, herunder Færøerne og Grønland, jf. dog § 16.

§ 5, stk. 4

Behandling efter stk. 2 kan ydes vederlagsfrit, når det under de foreliggende omstændigheder skønnes rimeligt.

Udlændingeloven

§ 2b

Udlændinge, der har opholdstilladelse i et andet Schengenland, har ret til at indrejse og opholde sig her i landet i højst 90 dage inden for en periode på 180 dage, hvorved perioden på 180 dage forud for hver opholdsdag tages i betragtning. I de nævnte 90 dages ophold fradrages den tid, hvori udlændingen inden for de 180 dage har opholdt sig i Danmark eller et andet Schengenland end det land, der har udstedt opholdstilladelsen. Har udlændingen opholdstilladelse i et andet nordisk land, fradrages dog ikke den tid, hvori udlændingen

where it is not considered reasonable in the present circumstances to refer the person to treatment in his or her home country, including the Faroe Islands and Greenland, or the person can not tolerate being moved to a hospital there.

Executive Order on the right to hospital treatment etc.

Section 5 (1)

Persons who do not live in this country, are entitled to emergency hospital treatment, etc., in the region of residence in the event of accident, sudden illness and childbirth or exacerbation of chronic disease etc. Treatment, etc., shall be granted on the same conditions as for persons residing in this country.

Section 5 (2)

In addition, the regional council in the region of residence provides hospital treatment, etc., when it is not considered reasonable to refer the person to treatment in the home country, including the Faroe Islands and Greenland, or the person unable to be moved to a hospital in the home country, including the Faroe Islands and Greenland, cf. however section 16.

Section 5 (4)

Treatment in accordance with section 2 may be granted free of charge, when it is considered reasonable in the circumstances.

The Aliens Act

Section 2(b)

(1) Aliens holding a residence permit for another Schengen country may enter and stay in Denmark for up to 3 months per 6-month period reckoned from the date of their first entry into Denmark or a Schengen country other than that which issued the residence permit. Any such 3-month period will be reduced by any period within the 6-month

har haft ophold i de andre nordiske lande.

Stk. 2. Udlændinge, der har visum gyldigt for alle Schengenlande, har ret til at indrejse og opholde sig her i landet inden for visummets gyldighedsperiode. Varigheden af et sammenhængende ophold eller den samlede varighed af flere på hinanden følgende ophold her i landet må dog ikke overstige 90 dage inden for en periode på 180 dage, hvorved perioden på 180 dage forud for hver opholdsdag tages i betragtning. I de nævnte 90 dages ophold fradrages den tid, hvori udlændingen inden for de 180 dage har opholdt sig i et andet Schengenland. Har udlændingen opholdt sig i Danmark eller et andet Schengenland med opholdstilladelse eller med visum til ophold af mere end 90 dages varighed begrænset til dette Schengenland (langtidsvisum), fradrages denne tid dog ikke.

Stk. 3. Udlændinge, der har visum til ophold af mere end 90 dages varighed med gyldighed begrænset til et andet Schengenland (langtidsvisum), har i medfør af Schengenkonventionens artikel 21 ret til at indrejse og opholde sig her i landet i højst 90 dage inden for en periode på 180 dage, hvorved perioden på 180 dage forud for hver opholdsdag tages i betragtning. I de nævnte 90 dages ophold fradrages den tid, hvori udlændingen inden for de 180 dage har opholdt sig i Danmark eller et andet Schengenland end det land, der har udstedt visummet.

Stk. 4. Udlændinge, der har opholdstilladelse eller tilbagerejsetilladelse udstedt af et andet Schengenland, eller som har visum til ophold af mere end 90 dages varighed med gyldighed begrænset til et andet Schengenland (langtidsvisum), har ret til uden ugrundet ophold at rejse gennem Danmark i medfør af Schengenrænskodeksens artikel 5, stk. 4, litra a.

period during which the alien has stayed in Denmark or in a Schengen country other than the country which issued the residence permit. If the alien has a residence permit for another Nordic country, the period of time during which the alien has resided in other Nordic countries will not be deducted.

(2) Aliens holding a visa valid for all Schengen countries may enter and stay in Denmark within the period of validity of the visa. The duration of an unbroken stay or the total duration of several consecutive stays in Denmark may not exceed 3 months per 6-month period reckoned from the date of the first entry into any Schengen country. Any such 3-month period will be reduced by the period of time in which the alien has stayed in another Schengen country within the 6-month period. If the alien has stayed in another Schengen country and holds a residence permit or a visa for a stay exceeding 3 months and valid only for that Schengen country (long-stay visa), such period of time will not be deducted.

(3) Aliens holding a visa for residence exceeding 3 months and valid only for another Schengen country (long-stay visa) may, pursuant to Article 21 of the Schengen Convention, enter and stay in Denmark for up to 3 months per 6-month period reckoned from the date of their first entry into Denmark or a Schengen country other than that which issued the visa. Any such 3-month period will be reduced by any period of time within the 6-month period during which the alien has stayed in Denmark or in a Schengen country other than the country which issued the visa.

(4) Aliens holding a residence permit or a re-entry permit issued by another Schengen country or a visa for a stay exceeding 3

§ 3

Udlændinge, der efter regler fastsat i medfør af § 39, stk. 2, er fritaget for visum, har ret til at indrejse og opholde sig her i landet i højst 90 dage inden for en periode på 180 dage, hvorved perioden på 180 dage forud for hver opholdsdag tages i betragtning. I de nævnte 90 dages ophold fradrages den tid, hvori udlændingen inden for de 180 dage har opholdt sig i Danmark eller et andet Schengenland. Har udlændingen opholdt sig i Danmark eller et andet Schengenland med opholdstilladelse eller med visum til ophold af mere end 90 dages varighed begrænset til dette Schengenland (langtidsvisum), fradrages denne tid dog ikke.

Stk. 2. En udlænding, der er statsborger i et land, som Danmark forud for Schengenkonventionens ikrafttræden har indgået en bilateral visumfritagelsesaftale med, har uanset stk. 1 ret til at indrejse og opholde sig her i landet i overensstemmelse med bestemmelserne i aftalen.

Stk. 3. For statsborgere i tredjelande, med hvilke Den Europæiske Union har indgået aftaler om fritagelse for visum, finder stk. 1 kun anvendelse i det omfang, det er foreneligt med disse aftaler.

§ 4

Visum udstedes i medfør af visumkodeksens bestemmelser herom til at gælde indrejse og ophold i alle Schengenlande. Visum kan gives til en eller flere indrejser inden for et nærmere fastsat tidsrum. Varigheden af et sammenhængende ophold eller den samlede varighed af flere på hinanden følgende ophold i Danmark og de andre Schengenlande må dog ikke overstige 90 dage inden for en periode på 180 dage, hvorved perioden på 180 dage forud

months and valid only for another Schengen country (long-stay visa) may transit through Denmark without any undue delay pursuant to Article 5(4)(a) of the Schengen Borders Code.

Section 3

(1) Aliens who are exempt from any visa requirements under rules laid down pursuant to section 39(2) may enter and stay in Denmark for up to 3 months during any 6-month period reckoned from the date of their first entry into any Schengen country. Any such 3-month period will be reduced by the period of time in which the alien has stayed in Denmark or another Schengen country within the 6-month period. If the alien has stayed in another Schengen country and holds a residence permit or a visa for a stay exceeding 3 months and valid only for that Schengen country (long-stay visa), such period of time will not be deducted.

(2) Notwithstanding subsection (1), an alien who is a national of a country with which Denmark has concluded a bilateral visa exemption agreement before the coming into force of the Schengen Convention may enter and stay in Denmark in accordance with the provisions of such agreement.

Section 4

(1) Visas are issued pursuant to the relevant provisions of the Visa Code to be valid for entry into and stay in all Schengen countries. A visa may be issued for one or more entries within a specified period. The duration of an unbroken stay or the total duration of several consecutive stays in Denmark and any other Schengen country may not exceed 3 months

for hver opholdsdag tages i betragtning, jf. dog stk. 2.

Stk. 2. Ophold i Danmark eller et andet Schengenland på baggrund af opholdstilladelse eller med visum til ophold af mere end 90 dages varighed begrænset til dette Schengenland (langtidsvisum) medregnes ikke ved beregningen af de 90 dages ophold, der fremgår af stk. 1.

§ 4a

Uanset bestemmelserne i §§ 3-4 kan der i særlige tilfælde udstedes visum, der begrænses til kun at gælde indrejse og ophold i Danmark.

Stk. 2. Der kan i medfør af Schengenkonventionens artikel 18 udstedes visum til længerevarende ophold med gyldighed begrænset til Danmark (langtidsvisum), dog højst med en gyldighedsperiode på 1 år, til en udlænding, der er meddelt opholdstilladelse efter § 8, § 9, § 9 a, stk. 2 eller 3, § 9 c, stk. 1, § 9 d, § 9 f, §§ 9 i-9 n eller 9 p, med henblik på at udlændingen kan indrejse her i landet og få udstedt et opholdskort med biometriske kendetegn.

§ 4b

En udlænding, der har opholdt sig i Danmark eller et andet Schengenland i medfør af §§ 2-3 a, kan i særlige tilfælde få forlænget sin ret til ophold her i landet.

§ 4c

En udlænding kan ikke få visum efter § 4, stk. 1, i 5 år, hvis udlændingen efter indreisen uden fornøden tilladelse opholder sig i Danmark eller i et andet Schengenland ud over det tidsrum, der er angivet i det udstedte visum. Perioden udgør 3 år, hvis opholdet varer op til en måned ud over det angivne tidsrum.

Stk. 2. Stk. 1 finder ikke anvendelse, hvis udlændingen godtgør, at overskridelsen af det

per 6-month period reckoned from the date of the first entry into a Schengen country, but see subsection (2).

(2) A stay in another Schengen country by an alien holding a residence permit or a visa for a stay exceeding 3 months and valid only for that Schengen country (long

Section 4a

(1) Notwithstanding the provisions of sections 3 to 4, a visa limited to be valid only for entry and stay in Denmark may be issued in special cases.

(2) Pursuant to Article 18 of the Schengen Convention, a visa may be issued for a prolonged stay and valid only for Denmark (long-stay visa), but with a maximum period of validity of 1 year, to an alien issued with a residence permit under section 8, section 9, section 9a(2), section 9c(1), section 9d, section 9f or sections 9i to 9n or section 9p to allow the alien to enter Denmark and be issued with a biometric residence card.

Section 4b

The right to stay in Denmark of an alien having stayed in Denmark or another Schengen country pursuant to sections 2 to 3a may be extended in special cases.

Section 4c

(1) An alien is not eligible for a visa under section 4(1) for a period of 5 years if, after entry,

the alien stays in Denmark or in another Schengen country without the requisite permit beyond the period of validity of the visa. The period is 3 years if the stay lasts for up to 1 month beyond the period stated.

(2) Subsection (1) does not apply if the alien proves that the stay in excess of the period

tidsrum, der er angivet i det udstedte visum, skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis en afskæring af udlændingens muligheder for at få visum vil udgøre en åbenbart uforholdsmæssig reaktion i forhold til udlændingens overskridelse af det udstedte visums gyldighed.

Stk. 3. En udlænding kan ikke få visum efter § 4, stk. 1, i 5 år, hvis udlændingen efter indrejsen udvises efter kapitel 4,

indgiver ansøgning om asyl her i landet eller i et andet Schengenland, jf. dog stk. 6,

eller indgiver ansøgning om opholdstilladelse på andet grundlag, jf. dog stk. 4.

Stk. 4. Stk. 3, nr. 3, finder ikke anvendelse, hvis udlændingen ansøger om opholdstilladelse efter § 9, stk. 1, nr. 1 eller 2,

udlændingen ansøger om opholdstilladelse efter § 9 c, stk. 1, på grundlag af en sådan familiemæssig tilknytning, der er nævnt i § 9, stk. 1, nr. 1 eller 2,

udlændingen ansøger om opholdstilladelse efter § 9 i, stk. 1, med henblik på at studere eller § 9 i, stk. 2, med henblik på at deltage i en ph.d.-uddannelse,

udlændingen ansøger om opholdstilladelse efter § 9 c, stk. 4,

udlændingen ansøger om opholdstilladelse efter § 9 a, stk. 2, nr. 1-10 eller 12, eller stk. 3,

udlændingen ansøger om opholdstilladelse efter § 9 p, stk. 1, 1. pkt.,

udlændingen efter indgivelsen af ansøgningen om opholdstilladelse udrejser af Schengenlandene i overensstemmelse med det udstedte visums gyldighed eller hensyn af humanitær karakter afgørende taler derimod.

Stk. 5. Stk. 4 finder ikke anvendelse, hvis der er bestemte grunde til at antage, at det afgørende formål med ansøgningen er at forlænge opholdet her i landet, og det er åbenbart, at

stated in the visa issued was due to circumstances which cannot be held against the alien, or if exceptional

reasons exist, including if a curtailment of the alien's visa prospects will constitute a manifestly disproportionate response to the alien's violation of the validity of the issued visa.

(3) An alien is not eligible for a visa under section 4(1) for a period of 5 years if, after entry, the

alien –

(i) is expelled under Part 4;

(ii) submits an application for asylum in Denmark or in another Schengen country, but see

subsection (6); or

(iii) submits an application for a residence permit on another basis, but see subsection (4).

(4) Subsection (3)(iii) does not apply if –

(i) the alien applies for a residence permit under section 9(1)(i) or (ii);

(ii) the alien applies for a residence permit under section 9c(1) on the basis of such family ties as

are mentioned in section 9(1)(i) or (ii);

(iii) the alien applies for a residence permit under section 9i(1) for the purpose of studying or under section 9i(2) in order to participate in a PhD degree;

(iv) the alien applies for a residence permit under section 9c(4);

(v) the alien falls within section 9a(2)(i) to (x) or (xii) or (3) and applies for a residence permit on that basis; or

(vi) the alien applies for a residence permit pursuant to section 9p(1), 1st sentence,

(vii) the alien following the lodging of the application for residence permit leaves the Schengen countries in accordance with the

ansøgningen ikke kan føre til meddelelse af opholdstilladelse.

Stk. 6. Stk. 3, nr. 2, finder ikke anvendelse, hvis udlændingen har indgivet ansøgning om opholdstilladelse efter § 7 her i landet og medvirker til sagens oplysning, jf. § 40, stk. 1, 1. og 2. pkt., og efter afslag på eller frafald af ansøgningen selv udrejser eller medvirker til udrejsen uden ugrundet ophold

§ 4d

Udlændingestyrelsen kan forhåndsgodkende en virksomhed i Danmark med henblik på at modtage forretningsbesøg af udlændinge fra visumpligtige lande.

Stk. 2. Udlændingestyrelsen skal træffe afgørelse om at inddrage en forhåndsgodkendelse meddelt efter stk. 1, hvis godkendelsen er opnået ved svig, eller hvis betingelserne for godkendelsen ikke længere er til stede. Udlændingestyrelsen kan endvidere træffe afgørelse om at inddrage en forhåndsgodkendelse meddelt efter stk. 1, hvis vilkårene for godkendelsen ikke overholdes.

Stk. 3. En dansk diplomatisk eller konsulær repræsentation i udlandet, som er bemyndiget til at træffe afgørelse vedrørende ansøgninger om visum, jf. § 47, stk. 2, kan akkreditere en virksomhed i udlandet med henblik på at give

validity of the issued visa or considerations of a humanitarian nature make it conclusively inappropriate.

(5) Subsection (4) does not apply if there are definite reasons for assuming that the decisive

purpose of the application is to extend the stay in Denmark and it is manifest that the application

cannot lead to the issuance of a residence permit.

(6) Subsection (3)(ii) does not apply if the alien has submitted an application for a residence

permit under section 7 in Denmark and cooperates in obtaining information for his case, see section 40(1), first and second sentences, and, upon refusal or waiver of the application, departs from Denmark on his own initiative or assists in his departure without undue delay.

Section 4d

(1) The Danish Immigration Service may pre-authorize a company in Denmark to receive business visits from foreign nationals from visa-obliged countries.

(2) The Danish Immigration Service must decide to include a pre-authorization issued pursuant to subsection (1) if the approval is obtained by fraud or if the conditions for approval are no longer present. The Immigration Service may also decide to include a prior approval issued pursuant to subsection (1) if the terms of approval are not observed.

(3) A Danish diplomatic or consular representation abroad, which is authorized to decide on visa applications, cf. section 47(2), may accredit a company abroad to allow visa-obliged foreigners who are permanently affiliated with the company to conduct

visumpligtige udlændinge med fast tilknytning til virksomheden mulighed for at gennemføre forretningsbesøg i Danmark.

Stk. 4. En dansk diplomatisk eller konsulær repræsentation i udlandet, som har akkrediteret en virksomhed i udlandet efter stk. 3, skal træffe afgørelse om at inddrage akkrediteringen, hvis denne er opnået ved svig, eller hvis betingelserne herfor ikke længere er til stede. Den danske diplomatisk eller konsulære repræsentation i udlandet kan endvidere træffe afgørelse om at inddrage en akkreditering meddelt efter stk. 3, hvis vilkårene herfor ikke overholdes.

§ 5

Udlændinge, der ikke efter §§ 1-3 a og 4 b har ret til at opholde sig her i landet, må kun opholde sig her i landet, hvis de har opholdstilladelse.

Stk. 2. Udlændinge-, integrations- og boligministeren kan fastsætte regler om, at børn under 18 år, der har fast ophold hos forældremyndighedens indehaver, er fritaget for opholdstilladelse.

§ 6

Efter ansøgning udstedes der registreringsbevis eller opholdskort til udlændinge, der er omfattet af EU-reglerne, jf. § 2, stk. 4 og 5.

§ 7

Efter ansøgning gives der opholdstilladelse til en udlænding, hvis udlændingen er omfattet af flygtningekonventionen af 28. juli 1951.

Stk. 2. Efter ansøgning gives der opholdstilladelse til en udlænding, hvis udlændingen ved en tilbagevenden til sit hjemland risikerer dødsstraf eller at blive underkastet tortur eller umenneskelig eller nedværdigende behandling eller straf. En ansøgning som nævnt i 1. pkt. anses også som en ansøgning om opholdstilladelse efter stk. 1.

business visits in Denmark

(4) A Danish diplomatic or consular representation abroad that has accredited a company abroad according to subsection (3) shall decide to withdraw accreditation if this is obtained by fraud or if the conditions for this are no longer present. The Danish Diplomatic or Consular Representation abroad may also decide to include accreditation granted pursuant to subsection (3) if the conditions for this are not complied.

Section 5

(1) Aliens who are not entitled to stay in Denmark under sections 1 to 3a and 4b may only stay in Denmark if they hold a residence permit.

(2) The Minister of Immigration and Integration may lay down rules providing that a child under the age of 18 residing permanently with the person having custody of it does not require a residence permit.

Section 6

(1) Upon application, a registration certificate or a residence card will be issued to an alien falling within the EU rules, see section 2(4) and (5).

Section 7

(1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention Relating to the Status of Refugees (28 July 1951).

(2) Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as mentioned in the first sentence hereof is also considered an application for a residence permit under subsection (1).

Stk. 3. I tilfælde omfattet af stk. 2, hvor risikoen for dødsstraf eller for at blive underkastet tortur eller umenneskelig eller nedværdigende behandling eller straf har baggrund i en særlig alvorlig situation i hjemlandet præget af vilkårlig voldsudøvelse og overgreb på civile, gives der efter ansøgning opholdstilladelse med henblik på midlertidigt ophold. En ansøgning som nævnt i 1. pkt. anses også som en ansøgning om opholdstilladelse efter stk. 1 og 2.

Stk. 4. Opholdstilladelse efter stk. 1-3 kan nægtes, hvis udlændingen allerede har opnået beskyttelse i et andet land, eller hvis udlændingen har nær tilknytning til et andet land, hvor udlændingen må antages at kunne opnå beskyttelse. Afgørelse efter 1. pkt. kan træffes, uanset om udlændingen er omfattet af stk. 1-3.

§ 8

Efter ansøgning gives der opholdstilladelse til udlændinge, der kommer hertil som led i en aftale med De Forenede Nationers Højkommissær for Flygtninge eller lignende international aftale, og som er omfattet af flygtningekonventionen af 28. juli 1951, jf. § 7, stk. 1.

Stk. 2. Ud over de i stk. 1 nævnte tilfælde gives der efter ansøgning opholdstilladelse til udlændinge, der kommer hertil som led i en aftale som nævnt i stk. 1, og som ved en tilbagevenden til hjemlandet risikerer dødsstraf eller at blive underkastet tortur eller anden umenneskelig eller nedværdigende behandling eller straf, jf. § 7, stk. 2.

Stk. 3. Ud over de i stk. 1 og 2 nævnte tilfælde gives der efter ansøgning opholdstilladelse til udlændinge, der kommer hertil som led i en aftale som nævnt i stk. 1, og som må antages at

(3) In cases covered by subsection (2) where the risk of death penalty or to be subjected to torture or inhuman or degrading treatment or punishment is the result of a particularly serious situation in the home country characterized by arbitrary violence and assault on civilians, residence permit is granted on application for temporary residence. An application as mentioned in the 1st sentence is also considered as an application for a residence permit pursuant to subsection (1) and (2)

(4) Residence permit pursuant to subsection (1)-(3) can be refused if the alien has already obtained protection in another country or if the foreigner is closely related to another country where the alien is likely to be protected. Decision after 1st sentence. Can be taken regardless of whether the alien is covered by paragraph. 1-3.

Section 8

(1) Upon application, a residence permit will be issued to an alien who arrives in Denmark under an agreement made with the United Nations High Commissioner for Refugees or similar international agreement, and who falls within the provisions of the Convention Relating to the Status of Refugees (28 July 1951), see section 7(1).

(2) In addition to the cases mentioned in subsection (1), a residence permit will be issued, upon application, to an alien who arrives in Denmark under an agreement as mentioned in subsection (1), and who risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin, see section 7(2).

(3) In addition to the cases mentioned in subsections (1) and (2), a residence permit will be issued, upon application, to an alien

ville opfylde grundprincipperne for at opnå opholdstilladelse efter en af udlændingelovens bestemmelser, såfremt de var indrejst i Danmark som asylansøgere.

Stk. 4. Ved udvælgelsen af udlændinge, der meddeles opholdstilladelse efter stk. 1-3, skal der, medmindre særlige grunde taler derimod, lægges vægt på udlændingenes mulighed for at slå rod i Danmark og få glæde af opholdstilladelsen, herunder deres sproglige forudsætninger, uddannelsesforhold, arbejdserfaring, familieforhold, netværk, alder og motivation. Der skal endvidere lægges vægt på hensynet til folkesundheden, medmindre helt særlige grunde taler derimod.

Stk. 5. Opholdstilladelse efter stk. 1-3 skal, medmindre særlige grunde taler derimod, betinges af, at udlændingen medvirker til en særlig sundhedsundersøgelse og giver samtykke til, at helbredsoplysningerne videregives til Udlændingestyrelsen og til kommunalbestyrelsen for den kommune, hvortil udlændingen visiteres, samt underskriver en erklæring vedrørende vilkår for genbosætning i Danmark.

Stk. 6. Udlændinge-, integrations- og boligministeren bestemmer den overordnede fordeling af de udlændinge, der skal gives opholdstilladelse efter stk. 1-3.

§ 9

Der kan efter ansøgning gives opholdstilladelse til

en udlænding over 24 år, som samlever på fælles bopæl i ægteskab eller i fast samlivsforhold af længere varighed med en i Danmark fastboende person over 24 år, der har dansk indfødsret, har statsborgerskab i et af de andre nordiske lande,

who arrives in Denmark under an agreement as mentioned in subsection (1), and who would presumably have met the fundamental conditions for obtaining a residence permit under one of the provisions of the Aliens Act if he had entered Denmark as an asylum-seeker.

(4) In the selection of aliens issued with a residence permit under subsections (1) to (3), the aliens' possibilities of establishing roots in Denmark and benefiting from the residence permit, including their language qualifications, education and training, work experience, family situation, network, age and motivation, must be emphasised unless particular reasons make it inappropriate.

(5) Unless particular reasons make it inappropriate, it must be made a condition for a residence permit under subsections (1) to (3) that the alien cooperates in a special health examination and consents to the health information being transmitted to the Danish Immigration Service and the local council of the municipality to which the alien is allocated, and signs a declaration concerning the conditions for resettlement in Denmark.

(6) The Minister of Justice shall decide the overall distribution of the aliens to be issued with a residence permit under subsections (1) to (3).

Section 9

(1) Upon application, a residence permit may be issued to

(i) an alien over the age of 24 who cohabits at a shared residence, either in marriage or in regular

cohabitation of prolonged duration, with a person permanently resident in Denmark over the age of 24 who –

(a) is a Danish national;

(b) is a national of one of the other Nordic

har opholdstilladelse efter § 7, stk. 1 eller 2, eller § 8,
har haft opholdstilladelse efter § 7, stk. 3, i mere end de sidste 3 år, eller
har haft tidsubegrænset opholdstilladelse her i landet i mere end de sidste 3 år,
et ugift mindreårigt barn under 15 år af en i Danmark fastboende person eller dennes ægtefælle, når barnet bor hos forældremyndighedens indehaver og ikke gennem fast samlivsforhold har stiftet selvstændig familie, og når den i Danmark fastboende person
har dansk indfødsret,
har statsborgerskab i et af de andre nordiske lande,
har opholdstilladelse efter § 7, stk. 1 eller 2, eller § 8,
har haft opholdstilladelse efter § 7, stk. 3, i mere end de sidste 3 år, eller
har tidsubegrænset opholdstilladelse eller opholdstilladelse med mulighed for varigt ophold,
en mindreårig udlænding med henblik på ophold hos en anden i Danmark fastboende person end forældremyndighedens indehaver, når opholdstilladelsen gives med henblik på adoption, ophold som led i et plejeforhold eller, hvis særlige grunde taler derfor, ophold hos barnets nærmeste familie, og når den i Danmark fastboende person
har dansk indfødsret,
har statsborgerskab i et af de andre nordiske lande,
har opholdstilladelse efter § 7, stk. 1 eller 2, eller § 8,
har haft opholdstilladelse efter § 7, stk. 3, i mere end de sidste 3 år, eller
har tidsubegrænset opholdstilladelse eller opholdstilladelse med mulighed for varigt ophold.

countries;
(c) is issued with a residence permit under section 7 or 8; or
d) has held a permanent residence permit for Denmark for more than the last 3 years;
(ii) an unmarried child under the age of 15 of a person permanently resident in Denmark or of that person's spouse, provided that the child lives with the person having custody of it and has not started its own family through regular cohabitation, and provided that the person permanently resident in Denmark –
(a) is a Danish national;
(b) is a national of one of the other Nordic countries;
(c) is issued with a residence permit under section 7 or 8; or
(d) has held a permanent residence permit for Denmark for more than the last 3 years;
(e) is issued with a permanent residence permit or a residence permit with a possibility of permanent residence;
(iii) an under-age alien for the purpose of residence with a person permanently resident in Denmark other than the person having custody of it, provided that the residence permit is issued for the purpose of adoption, residence as a result of a foster relationship or, if particular reasons make it appropriate, residence with the child's closest family, and provided that the person permanently resident in Denmark –
(a) is a Danish national;
(b) is a national of one of the other Nordic countries;
(c) is issued with a residence permit under section 7 or 8; or
(d) has held a permanent residence permit for Denmark for more than the last 3 years;
(e) is issued with a permanent residence

Stk. 2. Opholdstilladelse efter stk. 1, nr. 1, skal betinges af, at ansøgeren og den herboende person underskriver en erklæring om efter bedste evne at ville deltage aktivt i ansøgerens og eventuelle medfølgende udenlandske børns danskuddannelse og integration i det danske samfund.

Stk. 3. Opholdstilladelse til en samlever efter stk. 1, nr. 1, skal betinges af, at den herboende person påtager sig at forsørge ansøgeren. Opholdstilladelse efter stk. 1, nr. 1-3, kan, såfremt helt særlige grunde taler derfor, betinges af, at den herboende person dokumenterer at kunne forsørge ansøgeren.

Stk. 4. Opholdstilladelse efter stk. 1, nr. 1, skal, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, afgørende taler derimod, betinges af, at den herboende person, som det påhviler at forsørge ansøgeren, stiller økonomisk sikkerhed for 50.000 kr. til dækning af eventuelle fremtidige offentlige udgifter til hjælp efter lov om aktiv socialpolitik eller integrationsloven til ansøgeren, jf. stk. 23. Udlændinge-, integrations- og boligministeren fastsætter nærmere regler om den økonomiske sikkerhed. Det angivne beløb er fastsat i 2012-niveau og reguleres fra og med 2013 én gang årligt den 1. januar efter satsreguleringsprocenten, jf. lov om en satsreguleringsprocent.

Stk. 5. Opholdstilladelse efter stk. 1, nr. 1, skal, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, afgørende taler derimod, betinges af, at den herboende person i 3 år forud for afgørelsen om opholdstilladelse ikke har modtaget hjælp efter lov om aktiv socialpolitik eller integrationsloven. Opholdstilladelse efter stk. 1, nr. 1, skal endvidere, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, afgørende taler derimod, betinges af, at

permit or a residence permit with a possibility of permanent residence.

(2) It must be made a condition for a residence permit under subsection (1)(i) that the applicant

and the person living in Denmark sign a declaration stating that, to the best of their ability, they will involve themselves actively in the Danish language course and integration into the Danish society of the applicant and any accompanying foreign children.

(3) It must be made a condition for a residence permit to a cohabitant under subsection (1)(i) that the person living in Denmark undertakes to maintain the applicant. If highly exceptional reasons make it appropriate, it may be made a condition for a residence permit under subsection (1)(i) to (iii) that the person living in Denmark proves that he can maintain the applicant.

(4) Unless exceptional reasons conclusively make it inappropriate, including regard for family unity, it must be made a condition for a residence permit under subsection (1)(i) that the person living in Denmark who shall maintain the applicant provides financial security of DKK 50,000 to cover any future public expenses for assistance granted to the applicant under the Act on an Active Social Policy or the Integration Act, see subsection (23). The Minister of Immigration and Integration shall lay down detailed rules on the financial security. The amount stipulated has been fixed at the 2012 level and will be adjusted as of 2013 once a year on 1 January by the rate adjustment percentage, see the Rate Adjustment Percentage Act.

(5) Unless exceptional reasons conclusively make it inappropriate, including regard for family unity, it must be made a condition for

ansøgeren og den herboende person ikke modtager hjælp efter lov om aktiv socialpolitik eller integrationsloven, i tiden indtil ansøgeren meddeles tidsubegrænset opholdstilladelse. 1. og 2. pkt. omfatter dog ikke hjælp i form af enkeltstående ydelser af mindre beløbsmæssig størrelse, der ikke er direkte relateret til forsørgelse, eller ydelser, der må sidestilles med løn eller pension eller træder i stedet herfor.

Stk. 6. Opholdstilladelse efter stk. 1, nr. 1, skal, medmindre særlige grunde, herunder hensynet til familiens enhed, taler derimod, betinges af, at den herboende person godtgør at råde over en selvstændig bolig af rimelig størrelse, jf. stk. 27.

Stk. 7. Opholdstilladelse efter stk. 1, nr. 1, kan, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, taler derimod, kun gives, såfremt ægtefællernes eller samlevernes samlede tilknytning til Danmark er større end ægtefællernes eller samlevernes samlede tilknytning til et andet land.

Stk. 8. Opholdstilladelse efter stk. 1, nr. 1, kan ikke, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, afgørende taler derfor, gives, såfremt det må anses for tvivlsomt, om ægteskabet er indgået eller samlivsforholdet er etableret efter begge parters eget ønske. Er ægteskabet indgået eller er samlivsforholdet etableret mellem nærtbeslægtede eller i øvrigt nærmere beslægtede, anses det, medmindre særlige grunde, herunder hensynet til familiens enhed, taler derimod, for tvivlsomt, om ægteskabet er indgået eller samlivsforholdet er etableret efter begge parters eget ønske.

Stk. 9. Opholdstilladelse efter stk. 1, nr. 1, kan ikke gives, såfremt der er bestemte grunde til at antage, at det afgørende formål med ægteskabets indgåelse eller etableringen af samlivsforholdet er at opnå opholdstilladelse.

a residence permit under subsection (1)(i) that the person living in Denmark has not received any assistance under the Act on an Active Social Policy or the Integration Act for the last 3 years before the decision on the residence permit is made. Unless exceptional reasons conclusively make it inappropriate, including regard for family unity, it must moreover be made a condition for a residence permit under subsection (1)(i) that the applicant and the person living in Denmark do not receive any assistance under the Act on an Active Social Policy or the Integration Act during the period until the applicant is issued with a permanent residence permit. The first and second sentences hereof do not comprise assistance in the form of small amounts of isolated benefits not directly related to maintenance, or benefits that are comparable with wages or salaries or pension payments or replace such income.

(6) Unless particular reasons make it inappropriate, including regard for family unity, it must be made a condition for a residence permit under subsection (1)(i) that the person living in Denmark proves that he disposes of his own dwelling of a reasonable size, see subsection (27).

(7) Unless exceptional reasons make it inappropriate, including regard for family unity, a residence permit under subsection (1)(i) may only be issued if the spouses' or the cohabitants' aggregate ties with Denmark are stronger than the spouses' or the cohabitants' aggregate ties with another country.

(8) Unless exceptional reasons conclusively make it appropriate, including regard for family unity, no residence permit will be issued under subsection (1)(i) if it must be considered doubtful that the marriage was contracted or the cohabitation was

Stk. 10. Opholdstilladelse efter stk. 1, nr. 1, kan, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, taler derfor, ikke gives, såfremt den herboende person inden for en periode på 10 år inden tidspunktet for afgørelsen for et eller flere forhold begået mod en ægtefælle eller samlever ved endelig dom er idømt betinget eller ubetinget frihedsstraf eller anden strafferetlig retsfølge, der indebærer eller giver mulighed for frihedsberøvelse, for en lovovertrædelse, der ville have medført en straf af denne karakter, for overtrædelse af straffelovens § 213, § 216, stk. 1, § 225, jf. § 216, stk. 1, § 233, stk. 1 og 2, §§ 233 a, 237, 244-246, 250, 260, 261, 262 a eller 266.

Stk. 11. Opholdstilladelse efter stk. 1, nr. 1, kan ikke gives, såfremt ansøgning herom er indgivet samtidig med en ansøgning fra ansøgerens barn om opholdstilladelse efter stk. 1, nr. 2, hvorpå der meddeles afslag efter stk. 19. Dette gælder dog ikke, hvis ansøgerens barn kan henvises til at tage ophold hos nærtstående familie i hjemlandet og hensynet til barnets tarv ikke taler derimod, eller hvis ganske særlige grunde, herunder hensynet til familiens enhed, i øvrigt taler derimod.

Stk. 12. Opholdstilladelse efter stk. 1, nr. 1, litra e, kan, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, taler derimod, kun gives, såfremt den herboende person ikke er idømt ubetinget straf af mindst 1 år og 6 måneders fængsel eller anden strafferetlig retsfølge, der indebærer eller giver mulighed for frihedsberøvelse, for en lovovertrædelse, der ville have medført en straf af denne varighed, ikke er idømt ubetinget straf af mindst 60 dages fængsel for overtrædelse af straffelovens kapitel 12 eller 13, ikke har forfalden gæld til det offentlige,

established at both parties' own desire. If the marriage has been contracted or the cohabitation established between close relatives or otherwise closely related parties, it must be considered doubtful, unless particular reasons make it inappropriate, including regard for family unity, that the marriage was contracted or the cohabitation was established at both parties' own desire.

(9) No residence permit will be issued under subsection (1)(i) if there are definite reasons for assuming that the decisive purpose of contracting the marriage or establishing the cohabitation is to obtain a residence permit.

(10) Unless exceptional reasons make it appropriate, including regard for family unity, no residence permit will be issued under subsection (1)(i) if, within a period of 10 years prior to the date of the decision, a sentence of imprisonment or suspended imprisonment, or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature, for violation of section 213, 216(1), section 225, cf. section 216(1), 233(1) and (2), section 233(a), 237, sections 244 to 246, or section 250, 260, 261, 262a or 266 of the Criminal Code has been imposed by final judgment on the person living in Denmark for one or more offences committed against a spouse or a cohabitant.

(11) No residence permit will be issued under subsection (1)(i) if the application for such permit is submitted simultaneously with an application from the applicant's child for a residence permit under subsection (1)(ii) which is refused under subsection (19). This does not apply if the applicant's child can be required to take up residence with close family in its country of origin and regard for the best interests of the child does not make

medmindre der er givet henstand med hensyn til tilbagebetalingen af gælden og gælden ikke overstiger 100.000 kr.,

ikke i de sidste 3 år forud for ansøgningen om opholdstilladelse har modtaget offentlig hjælp efter lov om aktiv socialpolitik eller integrationsloven bortset fra hjælp i form af enkeltstående ydelser af mindre beløbsmæssig størrelse, der ikke er direkte relateret til forsørgelse, eller ydelser, der må sidestilles med løn eller pension eller træder i stedet herfor,

har bestået Prøve i Dansk 1, jf. § 9, stk. 1, i lov om danskuddannelse til voksne udlændinge m.fl., eller en danskprøve på et tilsvarende eller højere niveau, og

har været under uddannelse eller i ordinær beskæftigelse eller udøvet selvstændig erhvervsvirksomhed i mindst 3 år inden for de sidste 5 år forud for ansøgningen om opholdstilladelse, jf. § 11, stk. 3, nr. 8, og fortsat må antages at være tilknyttet arbejdsmarkedet eller være under uddannelse på tidspunktet, hvor opholdstilladelse vil kunne meddeles.

Stk. 13. Er den herboende person meddelt tidsubegrænset opholdstilladelse efter § 11, stk. 3, eller efter § 11, stk. 12 og 13 eller 16, anses betingelserne i stk. 12, nr. 1-6, for opfyldt.

Stk. 14. Har den herboende person nået folkepensionsalderen eller fået tildelt førtidspension, anses betingelserne i stk. 12, nr. 6, for opfyldt. Hvis en herboende person over 18 år har opnået tidsubegrænset opholdstilladelse på baggrund af et stærkt tilknytningsforhold til Danmark, anses betingelserne i stk. 12, nr. 6, for opfyldt på tilsvarende vilkår, som den herboende efter § 11, stk. 13, ville kunne opnå tidsubegrænset opholdstilladelse.

Stk. 15. Opholdstilladelse efter stk. 1, nr. 2, kan, såfremt væsentlige hensyn taler derfor,

it inappropriate, or if exceptional reasons otherwise make it inappropriate, including regard for family unity.

(12) Unless exceptional reasons make it inappropriate, including regard for family unity, a residence permit under subsection (1)(i)(e) may only be issued if the person living in Denmark –

(i) has not been sentenced to imprisonment for 1 year and 6 months or more, or other criminal

sanction involving or allowing deprivation of liberty for an offence that would have resulted

in a punishment of this duration;

(ii) has not been sentenced to imprisonment for 60 days or more for violation of Part 12 or 13 of

the Danish Criminal Code;

(iii) has no overdue debt to any public authorities unless the deadline for paying the debt has been

extended and the debt does not exceed DKK 100,000;

(iv) has not received any public assistance under the Act on an Active Social Policy or the

Integration Act for the last 3 years prior to the date of the application for a residence permit, other than assistance in the form of small amounts of isolated benefits not directly related to maintenance, or benefits that are comparable with wages or salaries or pension payments or replace such income;

(v) has passed the Danish 1 Examination, see section 9(1) of the Act on Danish Courses for Adult Aliens and Others, or a Danish language test at a corresponding or higher level; and

(vi) has been enrolled in education or has had ordinary employment or has pursued activity

betinges af, at den herboende person ikke modtager hjælp efter lov om aktiv socialpolitik eller integrationsloven, i tiden indtil ansøgeren meddeles tidsubegrænset opholdstilladelse. 1. pkt. omfatter dog ikke hjælp i form af enkeltstående ydelser af mindre beløbsmæssig størrelse, der ikke er direkte relateret til forsørgelse, eller ydelser, der må sidestilles med løn eller pension eller træder i stedet herfor. Opholdstilladelse efter stk. 1, nr. 2, kan endvidere, såfremt væsentlige hensyn taler derfor, betinges af, at den herboende person godtgør at råde over en selvstændig bolig af rimelig størrelse, jf. stk. 27.

Stk. 16. Hvis barnet og en af barnets forældre er bosiddende i hjemlandet eller et andet land, og barnet er over 8 år, kan opholdstilladelse efter stk. 1, nr. 2, kun gives, hvis barnet har eller har mulighed for at opnå en sådan tilknytning til Danmark, at der er grundlag for en vellykket integration her i landet. Ved vurderingen efter 1. pkt. skal der lægges vægt på barnets og begge forældres forhold. 1. og 2. pkt. gælder ikke, hvis ganske særlige grunde, herunder hensynet til familiens enhed, taler derimod.

Stk. 17. Opholdstilladelse efter stk. 1, nr. 2, kan i tilfælde, hvor ansøgeren tidligere har haft opholdstilladelse efter stk. 1, nr. 2, som er bortfaldet efter § 17, kun gives, såfremt hensynet til ansøgerens tarv taler derfor. Ved denne vurdering skal barnets opvækst og familiemæssige og sociale netværk her i landet tillægges særlig vægt. Hvis opholdstilladelsen efter stk. 1, nr. 2, er bortfaldet, som følge af at barnet imod sin vilje har opholdt sig uden for landet på genopdragelsesrejse eller andet udlandsophold af negativ betydning for skolegang og integration, skal dette også tillægges særlig vægt ved vurderingen af hensynet til barnets tarv.

as a self-employed person for at least 3 years within the last 5 years before the date of the application for a residence permit, see section 11(3)(viii), and must still be assumed to participate in the labour market or be enrolled in education on the date when a residence permit can be issued.

(13) If the person living in Denmark has been issued with a permanent residence permit under section 11(3) or under section 11(12), (13) or (16), the conditions of subsection (12)(i) to (vi) are considered to be met.

(14) If the person living in Denmark has reached the age of old-age pension or has been granted anticipatory pension, the conditions of subsection (12)(vi) are considered to be met. If a person over the age of 18 and living in Denmark has been issued with a permanent residence permit on the basis of strong ties with Denmark, the conditions of subsection (12)(vi) are considered to be met on terms corresponding to those on which the person living in Denmark could be issued with a permanent residence permit under section 11(13).

(15) If essential considerations make it appropriate, it may be made a condition for a residence permit under subsection (1)(ii) that the person living in Denmark does not receive any assistance under the Act on an Active Social Policy or the Integration Act during the period until the applicant is issued with a permanent residence permit. The first sentence hereof does not comprise assistance in the form of small amounts of isolated benefits not directly related to maintenance, or benefits that are comparable with wages or salaries or pension payments or replace such income. If essential considerations make it appropriate, it may be made a further condition for a residence permit under

Stk. 18. Opholdstilladelse efter stk. 1, nr. 2, kan ikke gives, såfremt dette åbenbart vil stride mod ansøgerens tarv, jf. stk. 28.

Stk. 19. Opholdstilladelse efter stk. 1, nr. 2, kan, medmindre ganske særlige grunde, herunder hensynet til familiens enhed, taler derfor, ikke gives, såfremt den i Danmark fastboende person eller dennes ægtefælle eller samlever inden for en periode på 10 år inden tidspunktet for afgørelsen for et eller flere forhold begået mod et eller flere mindreårige børn ved endelig dom er idømt betinget eller ubetinget frihedsstraf eller anden strafferetlig retsfølge, der indebærer eller giver mulighed for frihedsberøvelse, for en lovovertrædelse, der ville have medført en straf af denne karakter, for overtrædelse af straffelovens § 210, stk. 1 eller 3, jf. stk. 1, §§ 213, 215, 216, 218, 219, 222, 223, § 224, stk. 1, § 225, jf. §§ 216, 218, 219, 222, 223 eller § 224, stk. 1, §§ 226, 232, § 233, stk. 1 og 2, §§ 233 a, 235, 237, 244-246, 250, 260, 261, § 262 a, stk. 2, eller § 266.

Stk. 20. Opholdstilladelse efter stk. 1, nr. 3, skal, når opholdstilladelsen gives som led i et plejeforhold eller med henblik på ophold hos barnets nærmeste familie, betinges af, at den herboende person påtager sig at forsørge ansøgeren, og at den herboende person ikke modtager hjælp efter lov om aktiv socialpolitik eller integrationsloven, i tiden indtil ansøgeren meddeles tidsbegrænset opholdstilladelse. 1. pkt. omfatter dog ikke hjælp i form af enkeltstående ydelser af mindre beløbsmæssig størrelse, der ikke er direkte relateret til forsørgelse, eller ydelser, der må sidestilles med løn eller pension eller træder i stedet herfor. Opholdstilladelse efter stk. 1, nr. 3, skal, når opholdstilladelsen gives med henblik på ophold hos barnets nærmeste familie, endvidere betinges af, at den herboende person godtgør at råde over en selvstændig bolig af rimelig

subsection (1)(ii) that the person living in Denmark proves that he disposes of his own dwelling of a reasonable size, see subsection (27).

(16) In cases where the child lives with one of its parents in their country of origin or another country, and the child is over the age of 8, a residence permit under subsection (1)(ii) may only be issued if the child has or is able to obtain such ties with Denmark that there is a basis for successful integration in Denmark. The assessment under the first sentence hereof must emphasise the circumstances of the child and both parents. The first and second sentences hereof do not apply if exceptional reasons make it inappropriate, including regard for family unity. (17) In cases where the applicant has previously been issued with a residence permit under subsection (1)(ii) which has lapsed under section 17, a residence permit under subsection (1)(ii) may only be issued if regard for the applicant's best interests makes it appropriate. This assessment must particularly emphasise the child's childhood and adolescence and family and social networks in Denmark. If the residence permit under subsection (1)(ii) has lapsed because the child has unwillingly stayed abroad for re-education purposes or on another stay abroad negatively affecting its schooling and integration, the assessment of the regard for the best interests of the child must also particularly emphasise such situation.

(18) No residence permit will be issued under subsection (1)(ii) if that would be manifestly contrary to the applicant's best interests, see subsection (28).

(19) Unless exceptional reasons make it appropriate, including regard for family unity, no residence permit will be issued under

størrelse, jf. stk. 27.

Stk. 21. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a, § 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, har fået fastsat en udrejsefrist eller har en anden ansøgning om opholdstilladelse under behandling, kan ansøgning om opholdstilladelse efter stk. 1 kun indgives her i landet, hvis Danmarks internationale forpligtelser kan tilsige det. En ansøgning om forlængelse af en opholdstilladelse, der er meddelt efter stk. 1, skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold, jf. 1. pkt.

Stk. 22. Er en opholdstilladelse betinget af, at den herboende person (garanten) har påtaget sig at forsørge ansøgeren, og ydes der senere ansøgeren hjælp efter lov om aktiv socialpolitik eller integrationsloven, skal kommunen kræve betaling for hjælpen hos garanten. 1. pkt. finder ikke anvendelse for offentlige udgifter til hjælp efter lov om aktiv socialpolitik og integrationsloven, som ydes ansøgeren, efter at den pågældende er meddelt tidsbegrænset opholdstilladelse eller en ny opholdstilladelse på et andet grundlag.

Stk. 23. Er en opholdstilladelse betinget af, at den herboende person har skullet stille økonomisk sikkerhed, jf. stk. 4, og ydes der senere ansøgeren hjælp efter lov om aktiv socialpolitik eller integrationsloven, skal kommunalbestyrelsen tvangsinddrive det beløb, der er stillet til sikkerhed, som betaling for hjælpen. Stk. 22, 2. pkt., finder tilsvarende anvendelse.

Stk. 24. Kommunalbestyrelsen kan uden

subsection (1)(ii) if, within a period of 10 years prior to the date of the decision, a sentence of imprisonment or suspended imprisonment, or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature, for violation of section 210(1), section 210(3), cf. subsection (1) thereof, section 213, sections 215 to 219, section 222 or 223, section 224(1) or 225, cf. sections 216 to 219 or section 222 or 223, section 228, 229(1), 230, 232, 235 or 237, sections 244 to 246 or section 250, 260, 261, 262a(2) or 266 of the Criminal Code has been imposed by final judgment on the person permanently resident in Denmark or his spouse or cohabitant for one or more offences committed against one or more under-age children.

(20) It must be made a condition for a residence permit under subsection (1)(iii) when the residence permit is issued as a result of a foster relationship or for the purpose of residence with the child's closest family that the person living in Denmark undertakes to maintain the applicant, and that the person living in Denmark does not receive any assistance under the Act on an Active Social Policy or the Integration Act during the period until the applicant is issued with a permanent residence permit. The first sentence hereof does not comprise assistance in the form of small amounts of isolated benefits not directly related to maintenance, or benefits that are comparable with wages or salaries or pension payments or replace such income. When a residence permit is issued for the purpose of residence with the child's closest family, it must be made a further condition for the residence permit under subsection (1)(iii) that the person living in

samtykke fra den herboende person og ansøgeren afgive en udtalelse til Udlændingestyrelsen til brug for behandlingen af en sag efter stk. 1 om de af kommunalbestyrelsen bekendte forhold vedrørende den herboende person og ansøgeren, som kommunalbestyrelsen skønner vil være af betydning for afgørelsen af sagen.

Stk. 25. Kommunalbestyrelsen afgiver efter anmodning fra Udlændingestyrelsen en udtalelse om, i hvilket omfang den herboende person eller ansøgeren inden for en i anmodningen nærmere angiven periode har modtaget hjælp efter lov om aktiv socialpolitik eller integrationsloven, jf. stk. 5, stk. 15, 1. og 2. pkt., og stk. 20, 1. og 2. pkt.

Stk. 26. Kommunalbestyrelsen indberetter til Udlændingestyrelsen, hvis udlændingen eller den herboende person modtager hjælp efter lov om aktiv socialpolitik eller integrationsloven, og om omfanget af sådan hjælp, jf. stk. 5, stk. 15, 1. og 2. pkt., og stk. 20, 1. og 2. pkt. Kommunalbestyrelsens videregivelse af oplysninger efter 1. pkt. kan ske uden samtykke. 1. og 2. pkt. finder kun anvendelse, hvis opholdstilladelsen er betinget af, at udlændingen og den herboende person ikke modtager hjælp efter lov om aktiv socialpolitik eller integrationsloven, jf. stk. 5, 1. og 2. pkt., og stk. 15, 1. pkt.

Stk. 27. Kommunalbestyrelsen afgiver efter anmodning fra Udlændingestyrelsen en udtalelse om den herboende persons boligforhold, herunder antallet af beboelsesrum og beboere i boligen. Kommunalbestyrelsen kan uden samtykke fra den herboende person til brug for sin udtalelse efter 1. pkt. samkøre Det Fælleskommunale Persondatasystem med Bygnings- og Boligregistret (BBR) med det formål at tilvejebringe oplysning om antallet af beboelsesrum i boligen og antallet af beboere,

Denmark proves that he disposes of his own dwelling of a reasonable size, see subsection (27).

(21) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by him is pending, an application for a residence permit under subsection (1) may only be submitted in Denmark if it may be warranted by Denmark's international obligations. An application for renewal of a residence permit issued under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark, see the first sentence hereof.

(22) Where it was made a condition for a residence permit that the person living in Denmark (the guarantor) undertook to maintain the applicant, and where the applicant is subsequently granted assistance under the Act on an Active Social Policy or the Integration Act, the local authority shall claim reimbursement of the assistance from the guarantor. The first sentence hereof does not apply to public expenses for assistance granted to the applicant under the Act on an Active Social Policy and the Integration Act after the applicant has been issued with a permanent residence permit or a new residence permit on another basis.

(23) Where it was made a condition for a

der er tilmeldt den pågældende adresse. Udlændinge-, integrations- og boligministeren fastsætter nærmere regler om, hvornår det kan anses for godtgjort, at den herboende person råder over en selvstændig bolig af rimelig størrelse, jf. stk. 6, stk. 15, 2. pkt., og stk. 20, 2. pkt., og om kommunalbestyrelsens udtalelse efter 1. pkt.

Stk. 28. Kommunalbestyrelsen afgiver efter anmodning fra Udlændingestyrelsen en udtalelse om, hvorvidt meddelelse af opholdstilladelse efter stk. 1, nr. 2, åbenbart vil stride mod ansøgerens tarv, jf. stk. 18. Kommunalbestyrelsens udtalelse afgives uden samtykke fra den eller de personer, som udtalelsen angår.

Stk. 29. Det beløb, der er angivet i stk. 12, nr. 3, er fastsat i 2011-niveau og reguleres fra og med 2012 en gang årligt den 1. januar efter satsreguleringsprocenten, jf. lov om en satsreguleringsprocent.

Stk. 30. Opholdstilladelse efter stk. 1, nr. 1, skal, medmindre særlige grunde, herunder hensynet til familiens enhed, afgørende taler derimod, betinges af, at udlændingen består en af udlændinge-, integrations- og boligministeren etableret danskprøve på A1-niveau eller en anden danskprøve på et tilsvarende eller højere niveau. Prøven skal være bestået senest 6 måneder fra tidspunktet for udlændingens tilmelding til folkeregisteret eller, hvis udlændingen allerede har opholdstilladelse her i landet, fra meddelelsen af opholdstilladelsen efter stk. 1, nr. 1. Det påhviler udlændingen at fremlægge dokumentation herfor. Hvis udlændingen har aflagt, men ikke bestået prøven inden 6 måneder, kan omprøve finde sted indtil 3 måneder efter udløbet af fristen på 6 måneder. Ved lovligt forfald suspenderes de nævnte frister efter ansøgning herom med en periode

residence permit that the person living in Denmark had to provide financial security, see subsection (4), and where the applicant is subsequently granted assistance under the Act on an Active Social Policy or the Integration Act, the claim recovery authority shall recover the amount provided as security in payment for the assistance. Subsection (22), second sentence, applies correspondingly.

(24) Without the consent of the person living in Denmark and the applicant, the local council may, for the purpose of the examination of an application under subsection (1), issue an opinion to the Danish Immigration Service on circumstances known to the local council concerning the person living in Denmark and the applicant which the local council deems of importance to the determination of the application.

(25) At the request of the Danish Immigration Service, the local council shall issue an opinion on the extent to which the person living in Denmark or the applicant has received assistance under the Act on an Active Social Policy or the Integration Act within a period specified in the request, see subsection (5), subsection (15), first and second sentences, and subsection (20), first and second sentences.

(26) The local council shall report to the Danish Immigration Service if the alien or the person living in Denmark receives assistance under the Act on an Active Social Policy or the Integration Act and on the extent of such assistance, see subsection (5), subsection (15), first and second sentences, and subsection (20), first and second sentences. The local council may transmit information under the first sentence hereof without consent. The first and second sentences hereof will only apply if it is a condition for the residence

svarende til varigheden af det lovlige forfald.

Stk. 31. Kommunalbestyrelsen kan efter anmodning nedsætte den økonomiske sikkerhed efter stk. 4 med 20.000 kr., jf. dog stk. 34, når en udlænding, der er meddelt opholdstilladelse efter stk. 1, nr. 1, inden for den frist, der er nævnt i stk. 30, har bestået danskprøven på A1-niveau, jf. stk. 30, eller en anden danskprøve på et tilsvarende eller højere niveau.

Stk. 32. Kommunalbestyrelsen kan efter anmodning nedsætte den økonomiske sikkerhed efter stk. 4 med 10.000 kr., jf. dog stk. 34, når en udlænding, der er meddelt opholdstilladelse efter stk. 1, nr. 1, har bestået en af Udlændinge-, integrations- og boligministeren etableret danskprøve på A2-niveau eller en anden danskprøve på tilsvarende eller højere niveau. Prøven skal være bestået senest 15 måneder fra tidspunktet for udlændingens tilmelding til folkeregisteret eller, hvis udlændingen allerede har opholdstilladelse her i landet, fra meddelelsen af opholdstilladelsen efter stk. 1, nr. 1. Hvis udlændingen har aflagt, men ikke bestået prøven inden fristen på 15 måneder, kan omprøve finde sted indtil 3 måneder efter udløbet af fristen på 15 måneder. Ved lovligt forfald suspenderes de nævnte frister efter ansøgning herom med en periode svarende til varigheden af det lovlige forfald.

Stk. 33. Kommunalbestyrelsen kan efter anmodning nedsætte den økonomiske sikkerhed efter stk. 4 med 10.000 kr., jf. dog stk. 34, når en udlænding, der er meddelt opholdstilladelse efter stk. 1, nr. 1, har bestået en afsluttende prøve i dansk, jf. § 9 i lov om danskuddannelse til voksne udlændinge m.fl.

Stk. 34. Nedsættelse af den økonomiske sikkerhed efter stk. 31-33 kan alene ske i et sådant omfang, at den økonomiske sikkerhed

permit that the alien and the person living in Denmark do not receive assistance under the Act on an Active Social Policy or the Integration Act, see subsection (5), first and second sentences, and subsection (15), first sentence.

(27) At the request of the Danish Immigration Service, the local council shall issue an opinion on the housing situation of the person living in Denmark, including the number of habitable rooms and occupants of his dwelling. Without the consent of the person living in Denmark, the local council may, for the purpose of its opinion under the first sentence hereof, link the Joint Municipal Personal Data System (Det Fælleskommunale Persondatasystem) and the Building and Housing Register (Bygnings- og Boligregistret, BBR) for the purpose of providing information on the number of habitable rooms in the dwelling and the number of occupants registered at the address in question. The Minister of Justice shall lay down more detailed rules on when it will be considered proved that the person living in Denmark disposes of his own dwelling of a reasonable size, see subsection (6), subsection (15), second sentence, and subsection (20), second sentence, and on the local council's opinion pursuant to the first sentence hereof.

(28) At the request of the Danish Immigration Service, the local council shall issue an opinion as to whether it would be manifestly contrary to the applicant's best interests, see subsection (18), to issue a residence permit under subsection (1)(ii). The opinion of the local council is issued without the consent of the person or persons referred to in the opinion.

(29) The amount stipulated in subsection

udgør mindst 10.000 kr.

Stk. 35. Udlændingen skal ved tilmelding til danskprøven på A1-niveau, jf. stk. 30, og ved tilmelding til danskprøven på A2-niveau, jf. stk. 32, betale et gebyr på 2.400 kr. Hvis udlændingen ikke betaler gebyr, kan udlændingen ikke deltage i prøverne. 1. og 2. pkt. gælder ikke, hvis udlændingen er omfattet af EU-reglerne.

Stk. 36. Udlændinge-, integrations- og boligministeren fastsætter regler om danskprøven på A1-niveau og danskprøven på A2-niveau, jf. stk. 30 og 32, herunder regler om lovligt forfald, hvornår prøverne anses for bestået, udpegning af prøveafholdere, betingelser for at deltage i prøverne, opkrævning af gebyr for at deltage i prøverne, prøvernes indhold og gennemførelse, klagemuligheder, klagefrister og prøver, der kan træde i stedet for danskprøven på A1-niveau og danskprøven på A2-niveau.

Stk. 37. Beløbene, der er angivet i stk. 31-35, er fastsat i 2012-niveau og reguleres fra og med 2013 én gang årligt den 1. januar efter satsreguleringsprocenten, jf. lov om en satsreguleringsprocent.

(12)(iii) has been fixed at the 2011 level and will be adjusted as of 2012 once a year on 1 January by the rate adjustment percentage, see the Rate Adjustment Percentage Act.

(30) Unless particular reasons conclusively make it inappropriate, including regard for family unity, it must be made a condition for a residence permit under subsection (1)(i) that the alien passes a Danish language test at level A1 established by The Ministry of Immigration and Integration or another Danish language test at a corresponding or higher level. The test must have been passed within 6 months of the date when the alien was registered with the Central National Register or, if the alien already holds a residence permit for Denmark, when the residence permit under subsection (1)(i) was issued. In case of lawful excuse, the time limits mentioned may, upon application, be suspended by a period corresponding to the duration of the lawful excuse.

(31) Upon application, the financial security provided under subsection (4) may be reduced by DKK 20,000, but see subsection (34), when an alien issued with a residence permit under subsection (1)(i) has passed the Danish language test at level A1, see subsection (30), or another Danish language test at a corresponding or higher level before the time limit mentioned in subsection (30).

(32) Upon application, the financial security provided under subsection (4) may be reduced by DKK 10,000, but see subsection (34), when an alien issued with a residence permit under subsection (1)(i) has passed a Danish language test at level A2 established by The Ministry of Immigration and Integration or another Danish language test at a corresponding or higher level. The test must have been passed within 15 months of

§ 9a

Der kan gives opholdstilladelse til en udlænding på grundlag af beskæftigelse eller selvstændig erhvervsvirksomhed, jf. stk. 2 og 3.

the date when the alien was registered with the Central National Register or, if the alien already holds a residence permit for Denmark, when the residence permit under subsection (1)(i) was issued. If the alien has taken, but not passed, the test within 15 months, the test may be re-taken up to 3 months after expiry of the 15-month period. In case of lawful excuse, the time limits mentioned may, upon application, be suspended by a period corresponding to the duration of the lawful excuse.

(33) Upon application, the financial security provided under subsection (4) may be reduced by DKK 10,000, but see subsection (34), when an alien issued with a residence permit under subsection (1)(i) has passed a final Danish test, see section 9 of the Act on Danish Courses for Adult Aliens and Others.

(34) The financial security may be reduced under subsections (31) to (33) to such extent only that the financial security amounts to at least DKK 10,000.

(35) When an alien enters for the level A1 Danish language test, see subsection (30), and for the level A2 Danish language test, see subsection (32), the alien shall pay a fee of DKK 2,400. If the alien pays no fee, the alien may not participate in the test. The first and second sentences hereof do not apply to aliens falling within the EU rules.

(36) The Ministry of Immigration and Integration shall lay down rules on the level A1 and level A2 Danish language tests, see subsections (30) and (32), including rules on lawful excuse, requirements for passing the test, appointment of test providers, conditions for enrolling in tests, collection of test enrolment fees, contents and conducting of tests, appeal options, time limits for lodging appeals and tests that may replace the

Stk. 2. Der kan efter ansøgning gives opholdstilladelse til en udlænding, der har indgået aftale eller fået tilbud om ansættelse inden for et fagområde, hvor der er mangel på kvalificeret arbejdskraft (positivlisten),
der har indgået aftale eller fået tilbud om ansættelse inden for et fagområde, hvor ansættelsen indebærer en årlig aflønning på mindst 400.000 kr., som udbetales til en dansk bankkonto.
der har indgået aftale eller fået tilbud om ansættelse som forsker på et universitet eller i en virksomhed i Danmark,
der har afsluttet en uddannelse på kandidat- eller masterniveau og er inviteret til at forske hos en privat eller offentlig forskningsinstitution uden at være ansat eller indskrevet på forskningsinstitutionen (gæsteforsker),
der har indgået aftale eller fået tilbud om ansættelse til et uddannelsesforløb i en virksomhed i Danmark, med henblik på at udlændingen efter uddannelsesforløbet afslutning udnytter de kompetencer, som uddannelsesforløbet har givet, i udlandet (trainee),
der har indgået aftale eller fået tilbud om ansættelse på baggrund af udlændingens særlige individuelle kvalifikationer,
der er ansat på en boreplatform, et boreskib eller en anden sammenlignelig flytbar arbejdsplads, som kortvarigt kommer ind på dansk område,
der har indgået aftale eller fået tilbud om ansættelse inden for landbrugsområdet som fodermester eller driftsleder,
der har afsluttet en dansk kandidat- eller ph.d.-uddannelse senest 6 måneder før ansøgningens indgivelse (etableringskort),
hvis forretningsplan med henblik på at drive

level A1 and level A2 Danish language tests.
(37) The amounts stipulated in subsections (31) to (35) have been fixed at the 2012 level and will be adjusted as of 2013 once a year on 1 January by the rate adjustment percentage, see the Rate Adjustment Percentage Act.

Section 9a

(1) A residence permit may be issued to an alien on the basis of employment or activity as a self-employed person, see subsection (2) and (3).

(2) Upon application, a residence permit may be issued to an alien –

(i) who has concluded a contract of or has been offered employment within a professional field

short of qualified labour (the positive list);

(ii) who has concluded a contact or has been offered employment within a profession field in

which the employment implies an annual pay of of at least DKK 400,000, which is paid to a Danish bank account.

(iii) who has concluded a contact or has been offered employment on a university or a corporation in Denmark,

(iv) who has completed an education at the master's or master's level and are invited to research at a private or public research institution without being employed or enrolled at the research institution (guest researcher),

(v) who has concluded a contact or has been offered an appointment for a course of education in a company in Denmark, in order for the foreigner to take advantage of the competencies that the education process has given abroad after ending the education (trainee),

(vi) an agreement has been made or offered for recruitment based on the foreign

selvstændig erhvervsvirksomhed er positivt vurderet af et ekspertpanel nedsat af Erhvervs- og Vækstministeriet, og som er omfattet af en kvote, jf. stk. 14,

hvis opholdstilladelse efter §§ 7-9, 9 b-9 e, 9 m, 9 n eller 9 p nægtes forlænget efter § 11, stk. 2, jf. § 19, stk. 1, eller inddrages efter § 19, stk. 1, når udlændingen er i et fast ansættelsesforhold af længere varighed eller gennem en længere periode har drevet selvstændig erhvervsvirksomhed og beskæftigelsesmæssige eller erhvervs-mæssige hensyn taler derfor (arbejdsmarkedstilknytning), eller

der har indgået aftale eller fået tilbud om ansættelse i en virksomhed, som er certificeret efter stk. 17, og hvor

ansættelsen indebærer en årlig aflønning på et mindstebeløb, jf. nr. 2,

ansættelsen indebærer, at udlændingen skal arbejde som forsker, jf. nr. 3,

ansættelsen indebærer et uddannelsesophold på højt kvalificeret niveau eller

udlændingens ophold i Danmark, der højst kan udgøre et ophold pr. år, ikke overstiger 3 måneder regnet fra udlændingens indrejse her i landet.

Stk. 3. Der kan efter ansøgning gives opholdstilladelse til en udlænding, der deltager i en ph.d.-uddannelse eller har indgået aftale eller fået tilbud om ansættelse på forskningscenteret European Spallation Source (ESS) i Sverige, hvis deltagelsen eller ansættelsen er knyttet til ESS' forskningsmæssige virksomhed. Opholdstilladelse kan alene meddeles, hvis en tilsvarende deltagelse eller ansættelse i Danmark ville kunne danne grundlag for opholdstilladelse. Opholdstilladelse skal betinges af, at udlændingen forud for afgørelsen om opholdstilladelse eller inden for en frist fastsat i afgørelsen dokumenterer at have ret til at arbejde i Sverige.

individual's special qualifications,

(vii) who is employed on a drilling rig, a drilling ship or another comparable floating workplace, which shortly enters into the Danish territory

(viii) who has concluded a contract or has been offers a recruitment within the field of agriculture as a herdsman or operations manager,

(ix) who has completed a Danish graduate or PhD degree program not later than 6 months prior to the application (establishment card),

(x) whose business plan for self-employment is positively assessed by an expert panel set up by the Ministry of Trade and Growth and subject to a quota, see subsection (14),

(xi) if renewal of his residence permit under sections 7 to 9 or 9b to 9e or section 9m, 9n og 9p is refused under section 11(2), cf. section 19(1), or his residence permit is revoked under section 19(1), provided that the alien has regular employment of prolonged duration or has pursued activity as a self-employed person for a prolonged period, and employment or business considerations make it appropriate (labour market ties); or

(xii) has concluded a contract or has been offered a recruitment in a corporation that is certified according to subsection (17), and where

the employment involves an annual remuneration of a minimum amount, see (ii),

the employment involves that the alien must work as a researcher, see (iii)

the employment involves a high level educational stay or

the alien's stay in Denmark per year does not exceed 3 months as from the alien's entry into Denmark.

(3) A residence permit may be granted to an

Stk. 4. Opholdstilladelse efter stk. 2 og 3 skal betinges af, at udlændingen og personer, der meddeles opholdstilladelse som følge af familiemæssig tilknytning til udlændingen, ikke modtager hjælp efter lov om aktiv socialpolitik. Opholdstilladelse efter stk. 2, nr. 9 og 10 skal endvidere betinges af, at udlændingens forsørgelse og forsørgelsen af personer, der meddeles opholdstilladelse som følge af familiemæssig tilknytning til udlændingen, er sikret gennem egne midler det første år af opholdet her i landet. Opholdstilladelse efter stk. 2, nr. 4, skal endvidere betinges af, at udlændingens forsørgelse og forsørgelsen af personer, der meddeles opholdstilladelse som følge af familiemæssig tilknytning til udlændingen, er sikret gennem egne midler. Opholdstilladelse efter stk. 2, nr. 9, skal endvidere betinges af, at udlændingen ikke modtager dagpenge på dimittendvilkår efter § 54 i lov om arbejdsløshedsforsikring m.v.

Stk. 5. Ansøgning om opholdstilladelse efter stk. 2, nr. 1-8, 10 og 12, og stk. 3 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. En udlænding, som har fået tillagt en anden ansøgning om opholdstilladelse opsættende virkning med hensyn til udrejsefristen, kan også, medmindre særlige grunde taler herimod, indgive ansøgning om opholdstilladelse efter stk. 2, nr. 1-8, 10 og 12, og stk. 3. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 2, nr. 1-8, 10 og 12, og stk. 3 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis

alien who participates in a PhD degree or has concluded a contract or has been offered recruitment at the European Spallation Source (ESS) research center in Sweden, if the participation or recruitment is linked to ESS's research business. A residence permit can only be granted if a corresponding participation or recruitment in Denmark could form the basis for a residence permit. Residence permit shall be subject to the fact that the alien has documented the right to work in Sweden prior to the decision on residence permit or within a time limit specified in the decision.

(4) It must be made a condition for a residence permit under subsection (2) and (3) that the alien and persons issued with a residence permit as a result of family ties with the alien do not receive any assistance under the Act on an Active Social Policy. It must be made a further condition for a residence permit under subsection (2)(ix) and (x) that the maintenance of the alien and of persons issued with a residence permit as a result of family ties with the alien is secured through their own means for the first year of their stay in Denmark. It must be made a further condition for a residence permit under subsection (2)(iv) that the maintenance of the alien and of persons issued with a residence permit as a result of family ties with the alien is secured through their own means. It must be made a further condition for a residence permit under subsection (2)(ix) that the alien does not receive unemployment benefits under the terms of section 54 of the Act on Unemployment Insurance, etc.

(5) An application for a residence permit under subsection (2)(i) to (viii) and (x) and (xii) may only be submitted in Denmark if the

Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, kan ansøgning om opholdstilladelse efter stk. 2, nr. 1-8, 10 og 12, og stk. 3 ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

Stk. 6. Ansøgning om opholdstilladelse efter stk. 2, nr. 11, kan kun indgives af en udlænding, der opholder sig her i landet. Ansøgning om opholdstilladelse efter stk. 2, nr. 11, der indgives, senere end 7 dage efter at der er truffet endelig afgørelse om nægtelse af forlængelse eller om inddragelse af udlændingens opholdstilladelse efter §§ 7-9, 9 b-9 e, 9 m, 9 n eller 9 p, afvises.

Stk. 7. En ansøgning om forlængelse af en opholdstilladelse, der er meddelt efter stk. 2 og 3, skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold, jf. stk. 5, 1. pkt. Stk. 5, 3. pkt., finder tilsvarende anvendelse.

Stk. 8. De regionale arbejdsmarkedsråd afgiver efter anmodning fra Styrelsen for International Rekruttering og Integration en udtalelse om, hvorvidt betingelserne i stk. 2, nr. 1-8, 11 og 12, og § 9 m, stk. 2, er opfyldt. Udtalelsen kan indhentes i elektronisk form.

Stk. 9. Opholdstilladelse efter stk. 2, nr. 1-8, 11 og 12, kan ikke gives, hvis den ansættelse, som udlændingen har indgået aftale eller fået tilbud om, er omfattet af en lovlig arbejdskonflikt. Opholdstilladelse efter § 9 m, stk. 2, kan ikke gives, hvis den ansættelse, som den danske statsborger har indgået aftale eller fået tilbud om, er omfattet af en lovlig arbejdskonflikt.

Stk. 10. En udlænding, der har opholdstilladelse efter stk. 2, nr. 1-8, 10 og 12 og stk. 3, og som har indgået aftale eller fået tilbud om et nyt ansættelsesforhold, kan efter

alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. An alien whose time limit for departure in connection with another application for a residence permit has been suspended may also submit an application for a residence permit pursuant to subsection (2)(i) to (viii), (x) and (xii) and subsection (3) unless particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark or if a time limit for his departure has been determined, an application for a residence permit pursuant to subsection (2)(i) to (viii), (x) and (xii) and subsection (3) cannot be submitted in Denmark unless the stay is due to circumstances which cannot be held against the alien, or if exceptional reasons exist, including if it is warranted by Denmark's international obligations. If a time limit for the alien's departure has been determined, application for a residence permit pursuant to subsection (2)(i) to (viii), (x) and (xii) and subsection (3) shall not be filed in this country unless it is warranted by Denmark's international obligations.

(6) An application for a residence permit under subsection (2)(xi) may only be submitted by an alien staying in Denmark. An application for a residence permit under subsection (2)(xi) submitted later than 7 days after the date of a final decision refusing renewal of or revoking the alien's residence permit under sections 7 to 9 or 9b to 9e or section 9m or 9n or 9p will be dismissed.

(7) An application for renewal of a residence permit issued under subsection (2) and (3) must be submitted before the permit expires

indgivelse af ansøgning om opholdstilladelse i medfør af det nye ansættelsesforhold opholde sig her i landet og arbejde i tiden, indtil der er taget stilling til, om udlændingen kan meddeles opholdstilladelse. Ansøgning om ny opholdstilladelse skal indgives senest på det tidspunkt, hvor udlændingen påbegynder nyt arbejde.

Stk. 11. En udlænding, der har opholdstilladelse efter stk. 2, nr. 1 eller 2 eller nr. 12, litra a-c, eller stk. 3, og som bliver uforskyldt ledig, kan gives opholdstilladelse i op til 6 måneder fra ansættelsens ophør med henblik på at søge nyt arbejde. Udlændingen skal, senest umiddelbart efter at udlændingens ansættelsesforhold er ophørt, indgive ansøgning herom. Stk. 4 og 10 finder tilsvarende anvendelse.

Stk. 12. En opholdstilladelse efter stk. 2, nr. 1, kan forlænges, uanset at fagområdet på tidspunktet for afgørelse om forlængelse ikke er omfattet af positivlisten, hvis udlændingen er i samme ansættelsesforhold, som lå til grund for meddelelse af opholdstilladelsen.

Stk. 13. En opholdstilladelse efter stk. 2, nr. 2, kan forlænges, uanset at den årlige aflønning ikke opfylder mindstebeløbet på tidspunktet for afgørelse om forlængelse, hvis udlændingen er i samme ansættelsesforhold og den årlige aflønning fortsat opfylder den beløbsgrænse, som lå til grund for meddelelse af opholdstilladelsen.

Stk. 14. Opholdstilladelse efter stk. 2, nr. 10, kan gives inden for en årlig kvote på 50. Hvis kvoten i 1. pkt. ikke udnyttes, falder den bort.

Stk. 15. En opholdstilladelse efter stk. 2, nr. 10, kan forlænges, hvis erhvervsvirksomheden er etableret og i al væsentlighed lever op til den forretningsplan, efter hvilken opholdstilladelsen oprindeligt blev givet. Vurderingen efter 1. pkt. foretages af

if the alien is to be considered lawfully resident in Denmark, see subsection (5), 1st sentence. Subsection 5, 3rd sentence apply correspondingly.

(8) At the request of the Danish Agency for Labour Retention and International Recruitment, the Regional Labour Market Council shall issue an opinion as to whether the conditions of subsection (2)(i) to (viii), (xi) and (xii) and section 9m(2) are met. The opinion may be obtained electronically.

(9) Residence permit pursuant to subsection (2)(i) to (viii), (xi) and (xii), cannot be given if the recruitment contracted or offered to the alien is subject to a legal labour dispute. Residence permit pursuant to section 9m(2) cannot be granted if the recruitment contracted or offered to the Danish citizen is subject to a legal labour dispute.

(10) An alien who has been issued with a residence permit under subsection (2)(i) to (viii) or (x) and (xii) and subsection (3) who has concluded a contract of or has been offered new employment may, upon submitting an application for a residence permit on the basis of the new employment, reside in Denmark and work during the period until it has been decided whether the alien can be issued with a residence permit. An application for a new residence permit must be submitted when the alien commences his new job at the latest.

(11) An alien who has been issued with a residence permit under subsection (2)(i) or (ii) or (xii) or subsection (3) and has involuntarily become unemployed may be issued with a residence permit for up to 6 months from the end of the employment for the purpose of seeking new work. The alien shall submit an application to that effect immediately after the alien's employment has ended at the

ekspertpanelet nedsat af Erhvervs- og Vækstministeriet.

Stk. 16. En udlænding, som har indgået aftale om ansættelse i en virksomhed, som er certificeret efter stk. 17, kan påbegynde ansættelsen, hvis udlændingen har betalt gebyr, jf. § 9 h, stk. 1,

har indgivet ansøgning om opholdstilladelse efter stk. 2, nr. 12, og

har fået en foreløbig tilladelse til at påbegynde arbejdet fra Styrelsen for International Rekruttering og Integration.

Stk. 17. En virksomhed kan efter ansøgning certificeres, hvis virksomheden senest samtidig med indgivelse af ansøgningen har betalt et gebyr, jf. § 9 h, stk. 3,

er omfattet af en kollektiv overenskomst eller på tro og love erklærer, at ansættelse i virksomheden sker på sædvanlige vilkår, har mindst 20 fuldtidsansatte i Danmark, ikke er omfattet af en lovlige arbejdskonflikt på tidspunktet for certificeringen,

ikke på tidspunktet for certificeringen har alvorlige udeståender med Arbejdstilsynet, ikke gentagne gange er straffet efter § 59, stk. 5, eller § 60, stk. 1, eller er ifaldet straf efter § 59, stk. 5, eller § 60, stk. 1, i form af en bøde på 20.000 kr. eller strengere straf inden for de seneste 2 år forud for certificeringen og har deltaget i et forudgående vejledningsmøde i Styrelsen for International Rekruttering og Integration.

Stk. 18. En certificering efter stk. 17 gives for højst 4 år ad gangen.

Stk. 19. En certificering forlænges efter ansøgning, medmindre der er grundlag for at inddrage certificeringen efter stk. 20.

Stk. 20. Styrelsen for International Rekruttering og Integration træffer afgørelse om at inddrage en certificering efter stk. 17, hvis certificeringen er opnået ved svig. Styrelsen for International

latest. Subsection (4) and (10) apply correspondingly.

(12) A residence permit pursuant to subsection (2)(i), may be renewed even though the professional field is not included on the positive list at the time of the decision about renewal if the alien is in the same employment on which the issuance of the residence permit was based.

(13) A residence permit pursuant to subsection (2)(ii) may be renewed even though the annual pay does not satisfy the minimum pay threshold at the time of the decision about renewal if the alien is in the same employment and the annual pay still satisfies the pay threshold on which the issuance of the residence permit was based.

(14) Residence permit pursuant to subsection (2)(x) can be given within an annual quota of 50. If the quota in the 1st sentence is not utilized it lapses.

(15) Residence permit pursuant to subsection (2)(x) can be renewed if the business is established and essentially meets the business plan after which the residence permit was originally granted. The expert panel set up by the Ministry of Trade and Growth makes assessment according to 1st sentence.

(16) An alien who has concluded of recruitment in a company which is certified in accordance with subsection (17) can start employment if the alien has paid a fee, cf. section 9h(1)

has submitted an application for a residence permit pursuant to subsection (2)(xii), and has been given a preliminary permission to commence work from the International Recruitment and Integration Board.

(17) A cooperation may, upon application, be certified if the cooperation have paid a fee latest at the time of filing the

Rekruttering og Integration kan endvidere træffe afgørelse om inddragelse af en certificering efter stk. 17, hvis betingelserne for certificeringen ikke længere er til stede. Styrelsen for International Rekruttering og Integration skal i forbindelse med en afgørelse om inddragelse af en certificering efter 1. og 2. pkt. samtidig træffe afgørelse om, at der ikke kan meddeles en ny certificering i en periode på 2 år fra afgørelsestidspunktet.

Stk. 21. Udlændinge-, integrations- og boligministeren fastsætter nærmere regler om certificering m.v., jf. stk. 17-20.

Stk. 22. Det beløb, der er angivet i stk. 2, nr. 2, reguleres årligt med satsreguleringsprocenten, jf. lov om en satsreguleringsprocent, og en tilpasningsprocent, så reguleringen i alt svarer til lønudviklingen i samfundet.

application, cf. section 9h(3),
are subject to a collective agreement or on faith and law declare that recruitment in the company takes place on usual terms,
Have at least 20 full-time employees in Denmark,
Is not subject to a legal labour conflict at the time of certification,
not at the time of certification have serious outstanding positions with the Labor Inspectorate,
has not been repeatedly punished pursuant to section 59 5, or section 60 1, or is punishable pursuant to section 59 (1). 5, or section 60 1, in the form of a fine of DKK 20,000 or more severe punishment within the last 2 years prior to the certification and participated in a prior guidance meeting at the Board of International Recruitment and Integration.

(18) A certification pursuant to subsection (17) is given for a maximum of 4 years at the time.

(19) A certification will be renewed after an application, unless there is a basis for withdrawing the certification pursuant to subsection (20).

(20) The International Recruitment and Integration Board decides to withdraw a certification under subsection (17) if the certification is obtained by fraud. The Board of International Recruitment and Integration may also decide on the withdrawal of a certification pursuant to subsection (17) if the conditions for certification are no longer present. The Board of International Recruitment and Integration must, in connection with a decision to withdraw a certification under the 1st and 2nd sentence, at the same time decide if a new certificate cannot be issued for a period of 2 years from

§ 9b

Der kan efter ansøgning gives opholdstilladelse til en udlænding, der uden for de i § 7, stk. 1 og 2, nævnte tilfælde befinder sig i en sådan situation, at væsentlige hensyn af humanitær karakter afgørende taler for at imødekomme ansøgningen.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives af udlændinge, der opholder sig her i landet, og som er registrerede som asylansøgere efter § 48 e, stk. 2. Ved behandlingen af en ansøgning om opholdstilladelse efter stk. 1 kan Udlændinge-, Integrations- og Boligministeriet uden ansøgerens samtykke indhente de akter, der er indgået i sagen om opholdstilladelse til ansøgeren efter § 7, fra Udlændingestyrelsen eller Flygtningenævnet samt indhente helbredsoplysninger om ansøgeren fra indkvarteringsoperatøren og Udlændingestyrelsen.

Stk. 3. Helbredsbetingsbetaget opholdstilladelse efter stk. 1 er betinget af, at udlændingen fremlægger nødvendig dokumentation for sine helbredsforhold

§ 9c

Der kan efter ansøgning gives opholdstilladelse til en udlænding, hvis ganske særlige grunde, herunder hensynet til familiens enhed og, hvis udlændingen er under 18 år, hensynet til barnets tarv, taler derfor. Medmindre særlige grunde, herunder hensynet til familiens enhed og, hvis udlændingen er under 18 år, hensynet til barnets tarv, taler derimod, betinges opholdstilladelse efter 1. pkt. som følge af en familiemæssig tilknytning til en herboende person af, at de i § 9, stk. 2-20 og 30, nævnte betingelser er opfyldt. Bestemmelserne i § 9, stk. 22-29 og 31-37, finder tilsvarende anvendelse.

the date of decision.

(21) The Ministry of Immigration and Integration shall lay down detailed rules on certification etc., cf. subsection (17) to (20).

(22) The amount specified in subsection (2)(ii), is adjusted annually with the adjustment rate, cf. the Law on Adjustment rate, so that the total regulation equals wage developments in society.

Section 9b

(1) Upon application, a residence permit may be issued to an alien who, in cases not falling within section 7(1) and (2), is in such position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application.

(2) An application for a residence permit under subsection (1) may only be submitted by aliens staying in Denmark who are registered as asylum-seekers under section 48e(2). When examining an application for a residence permit under subsection (1), the Ministry of Immigration and Integration may, without the applicant's consent, obtain the documents of the case file on a residence permit for the applicant under section 7 from the Danish Immigration Service or the Refugee Appeals Board and obtain health information on the applicant from the accommodation operator and the Danish Immigration Service.

(3) It is a condition for a residence permit on health grounds under subsection (1) that the alien produces the requisite evidence of his state of health.

Section 9c

(1) Upon application, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including regard for family unity and, if the alien is under the age

Stk. 2. Der kan efter ansøgning gives opholdstilladelse til en udlænding, der er meddelt afslag på en ansøgning om opholdstilladelse efter § 7, hvis udsendelse af udlændingen, jf. § 30, ikke har været mulig i mindst 18 måneder, udlændingen har medvirket ved udsendelsesbestræbelserne i sammenhængende 18 måneder og udsendelse efter de foreliggende oplysninger for tiden må anses for udsigtsløs.

Stk. 3. Der kan gives opholdstilladelse til:

En uledsaget udlænding under 18 år, der har indgivet ansøgning om opholdstilladelse efter § 7, hvis der efter det, som er oplyst om udlændingens personlige forhold, er særlige grunde til at antage, at udlændingen ikke bør gennemgå en asylsagsbehandling, og hvis der er grund til at antage, at udlændingen ved en tilbagevenden til hjemlandet eller det tidligere opholdsland vil være uden familiemæssigt netværk eller uden mulighed for ophold på et modtage- og omsorgscenter og dermed vil blive stillet i en reel nødsituation. Opholdstilladelsen kan ikke forlænges ud over udlændingens fyldte 18. år.

En uledsaget udlænding under 18 år, der er meddelt afslag på en ansøgning om opholdstilladelse efter § 7, hvis der er grund til at antage, at udlændingen ved en tilbagevenden til hjemlandet eller det tidligere opholdsland vil være uden familiemæssigt netværk eller uden mulighed for ophold på et modtage- og omsorgscenter og dermed vil blive stillet i en reel nødsituation. Opholdstilladelsen kan ikke forlænges ud over udlændingens fyldte 18. år.

Stk. 4. Der kan efter ansøgning gives opholdstilladelse til en udlænding, der udøver litterær virksomhed m.v., og som af en kommunalbestyrelse har fået tilbud om ophold i kommunen som led i kommunens

of 18, regard for the best interests of the child. Unless particular reasons make it inappropriate, including regard for family unity and, if the alien is under the age of 18, regard for the best interests of the child, it must be made a condition for a residence permit under the first sentence hereof as a result of family ties with a person living in Denmark that the conditions mentioned in section 9(2) to (20) and (30) are met. The provisions of section 9(22) to (29) and (31) to (37) apply correspondingly.

(2) Upon application, a residence permit may be issued to an alien whose application for a residence permit under section 7 has been refused, provided that –

- (i) it has not been possible to return the alien, see section 30, for at least 18 months;
- (ii) the alien has cooperated in the return efforts for 18 months consecutively; and
- (iii) return must be considered futile according to the information available at the time.

(3) A residence permit may be issued to –

- (i) an unaccompanied alien under the age of 18 who has submitted an application for a residence permit under section 7 if, from information available on the alien's personal circumstances, there are particular reasons to assume that the alien should not undergo asylum proceedings and if there is reason to assume that the alien will be without any family network or without any possibility of staying at a reception and care centre and will in fact be placed in an emergency situation upon a return to his country of origin or former country of residence. The residence permit cannot be renewed beyond the alien's 18th birthday.

- (ii) an unaccompanied alien under the age of 18 whose application for a residence permit

medlemskab af en international organisation, der er godkendt af kulturministeren efter samråd med udlændinge-, integrations- og boligministeren.

Stk. 5. Der kan gives opholdstilladelse til en udlænding, hvis tilstedeværelse her i landet er påkrævet af efterforsknings- eller retsforfølgningssædvanlige hensyn. Opholdstilladelsen kan ikke forlænges ud over den periode, hvori efterforskningen eller retsforfølgningen pågår.

Stk. 6. Ansøgning om opholdstilladelse efter stk. 1 og 4 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a, § 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, har fået fastsat en udrejsefrist eller har en anden ansøgning om opholdstilladelse under behandling, kan ansøgning efter stk. 4 ikke indgives her i landet. Ansøgning om opholdstilladelse efter stk. 1 kan i sådanne tilfælde kun indgives, hvis Danmarks internationale forpligtelser kan tilsige det. En ansøgning om forlængelse af en opholdstilladelse, der er meddelt efter stk. 1 eller 4, skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold, jf. 1. pkt.

Stk. 7. Opholdstilladelse efter stk. 4 skal betinges af, at kommunalbestyrelsen i den kommune, hvor udlændingen tilbydes ophold, påtager sig at forsørge udlændingen og dennes eventuelle familie under opholdet i kommunen, og at udlændingen underskriver en erklæring om anerkendelse af de grundlæggende værdier i det danske samfund.

under section 7 has been refused if there is reason to assume that the alien will be without any family network or without any possibility of staying at a reception and care centre and will in fact be placed in an emergency situation upon a return to his country of origin or former country of residence. The residence permit cannot be renewed beyond the alien's 18th birthday.

(4) Upon application, a residence permit may be issued to an alien who carries out literary activities, etc., and who has been offered residence in a municipality by the local council as an element in the municipality's membership of an international organisation approved by the Minister for Culture upon consultation with the Ministry of Immigration and Integration.

(5) A residence permit may be issued to an alien whose presence in Denmark is required for the purpose of investigation or prosecution. The residence permit cannot be renewed for a period longer than the investigation or prosecution period.

(6) An application for a residence permit under subsection (1) or (4) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application for a residence permit under subsection (4) cannot be submitted in Denmark. In such cases, an application for a residence permit under subsection (1) may only be submitted if it

§ 9d

Efter ansøgning gives der opholdstilladelse til en udlænding, som tidligere har haft dansk indfødsret, medmindre udlændingens danske indfødsret er frataget ved dom efter § 8 A eller § 8 B i lov om dansk indfødsret.

§ 9e

Der kan gives opholdstilladelse til en udlænding fra Kosovoprovinen i Forbundsrepublikken Jugoslavien, der har eller har haft opholdstilladelse i medfør af lov om midlertidig opholdstilladelse til nødstedte fra Kosovoprovinen i Forbundsrepublikken Jugoslavien (Kosovonødloven), eller som på grundlag af en ansøgning om opholdstilladelse efter § 7 indgivet inden den 30. april 1999 er eller har været registreret som asylansøger efter reglerne i § 48 e, stk. 2, såfremt udlændingen må antages at have behov for midlertidig beskyttelse her i landet.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives af udlændinge, der opholder sig her i landet.

§ 9f

Der kan efter ansøgning gives opholdstilladelse til en udlænding, der her i landet skal virke som religiøs forkynder, en udlænding, der her i landet skal virke som missionær, eller en udlænding, der her i landet skal virke inden for et religiøst ordenssamfund.

Stk. 2. Opholdstilladelse efter stk. 1 skal betinges af, at udlændingen godtgør at have tilknytning til folkekirken eller et anerkendt eller godkendt trossamfund her i landet. Meddelelse af opholdstilladelse efter stk. 1 er

may be warranted by Denmark's international obligations. An application for renewal of a residence permit issued under subsection (1) or (4) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark, see the first sentence hereof.

(7) It must be made a condition for a residence permit under subsection (4) that the local council of the municipality in which the alien is offered residence undertakes to maintain the alien and his family, if any, during the stay in the municipality and that the alien signs a declaration of recognition of the fundamental values of Danish society.

Section 9d

Upon application, a residence permit is issued to an alien who has previously been a Danish national, unless the alien has been deprived of his Danish nationality by judgment pursuant to section 8A or 8B of the Danish Nationality Act.

Section 9e

(1) A residence permit may be issued to an alien from the Kosovo Province of the Federal Republic of Yugoslavia holding or formerly holding a residence permit pursuant to the Act on Temporary Residence Permits for Distressed Persons from the Kosovo Province of the Federal Republic of Yugoslavia (the Kosovo Emergency Act) or being or having been registered as an asylum-seeker under the rules of section 48e(2) on the basis of an application for a residence permit under section 7 submitted before 30 April 1999 if the alien must be assumed to need temporary protection in Denmark.

(2) An application for a residence permit under subsection (1) may only be submitted by aliens staying in Denmark.

Section 9f

betinget af, at antallet af udlændinge med opholdstilladelse efter stk. 1 inden for trossamfundet står i rimeligt forhold til trossamfundets størrelse.

Stk. 3. Opholdstilladelse efter stk. 1 skal betinges af, at udlændingen godtgør at have en relevant baggrund eller uddannelse for at virke som religiøs forkynder eller missionær eller inden for et religiøst ordenssamfund.

Stk. 4. Opholdstilladelse efter stk. 1 skal betinges af, at udlændingen underskriver en løfteerklæring om, at den pågældende i sit virke vil overholde dansk lovgivning.

Stk. 5. Forlængelse af opholdstilladelse efter stk. 1 skal betinges af, at ansøgeren inden 6 måneder efter meddelelsen af opholdstilladelsen har bestået en prøve i dansk på A1-minus-niveau, jf. bekendtgørelse nr. 981 af 28. juni 2016 om danskuddannelse til voksne udlændinge m.fl. og danske samfundsforhold. Udlændinge-, integrations- og boligministeren fastsætter regler om prøven, herunder regler om, hvornår prøven anses for bestået, frist for aflæggelse og beståelse af prøven, om udpegning af prøveafholdere, betingelser for at deltage i prøven, opkrævning af gebyr for at deltage i prøven, klagefrister og prøvens indhold og gennemførelse m.v.

Stk. 6. Forlængelse af opholdstilladelse efter stk. 1 skal endvidere betinges af, at ansøgeren inden 6 måneder efter meddelelse af opholdstilladelse har gennemført et kursus i dansk familieret, frihed og folkestyre, der er etableret af udlændinge- og integrationsministeren. Det påhviler ansøgeren inden for de 6 måneder at fremlægge dokumentation herfor. Fristen på 6 måneder kan efter ansøgning forlænges ved lovligt forfald. 1. og 2. pkt. finder ikke anvendelse, hvis ansøgeren fritages for at deltage i kurset, fordi den pågældende har et tilsvarende

(1) Upon application, a residence permit may be issued to –

(i) an alien who is to act as a religious preacher in Denmark;

(ii) an alien who is to act as a missionary in Denmark; or

(iii) an alien who is to act within a religious order.

(2) It must be made a condition for a residence permit under subsection (1) that the alien proves that he has ties with the Evangelical Lutheran Church in Denmark or a recognised or approved religious community in Denmark. It is a condition for issuance of a residence permit under subsection (1) that the number of aliens affiliated with a particular religious community and holding a residence permit under subsection (1) is reasonably proportionate to the size of the religious community.

(3) It must be made a condition for a residence permit under subsection (1) that the alien proves that he has a relevant background or training to act as a religious preacher or missionary or within a religious order.

(4) It must be made a condition for a residence permit under subsection 1 that the alien signs a declaration of promise that the person in question will comply with Danish law.

(5) It must be made a condition for renewal of a residence permit under subsection (1) that the applicant has passed a Danish language test at level A1 minus, see Executive Order No. 981 of 28 June 2016 on Danish Courses for Adult Aliens and Others, and the Minister of Immigration and Integration shall lay down rules on the test, including rules on requirements for passing the test, the time

kendskab til dansk familieret, frihed og folkestyre.

Stk. 7. Opholdstilladelse efter stk. 1 skal betinges af, at udlændingen og personer, der meddeles opholdstilladelse som følge af familiemæssig tilknytning til udlændingen, ikke modtager offentlig hjælp til forsørgelse under opholdet her i landet.

Stk. 8. Opholdstilladelse efter stk. 1 kan ikke meddeles, hvis der er grund til at antage, at udlændingen vil udgøre en trussel mod den offentlige tryghed, den offentlige orden, sundheden, sædeligheden eller andres rettigheder og pligter.

Stk. 9. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a, § 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, har fået fastsat en udrejsefrist eller har en anden ansøgning om opholdstilladelse under behandling, kan ansøgning om opholdstilladelse efter stk. 1 ikke indgives her i landet. En ansøgning om forlængelse af en opholdstilladelse, der er meddelt efter stk. 1, skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold, jf. 1. pkt.

Stk. 10. Udlændinge- og integrationsministeren fastsætter efter aftale med kirkeministeren nærmere regler om kurset i dansk familieret, frihed og folkestyre, herunder regler om kursets indhold, lovligt forfald, fritagelse for at deltage i kurset, ansøgningsproceduren og opkrævning af gebyr for at deltage i kurset, jf. stk. 6

limit for taking and passing the test, appointment of test providers, conditions for enrolling in the test, collection of test enrolment fees, time limits for lodging appeals and the contents and conducting of tests, etc.

(6) It must also be made a condition for renewal of a residence permit under subsection (1) that the applicant has completed a course on Danish family law, freedom and democracy within 6 months of the issuance of the residence permit. The applicant shall produce proof thereof. Upon application, the time limit of 6 months may be extended in case of lawful excuse. The 1st and 2nd sentence does not apply if the applicant is exempt from attending the course because the person concerned has a corresponding knowledge of Danish family law, freedom and democracy.

(7) It must be made a condition for a residence permit under subsection (1) that the alien and persons issued with a residence permit as a result of family ties with the alien do not receive any public assistance for maintenance during their stay in Denmark.

(8) A residence permit will not be issued under subsection (1) if there is reason to assume that the alien will constitute a threat to public security, public order, health, morals or the rights and duties of others.

(9) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his

§ 9i

Der kan efter ansøgning gives opholdstilladelse til en udlænding med henblik på uddannelse, hvis den pågældende er optaget på en uddannelse eller et kursus ved en uddannelsesinstitution her i landet. Der kan endvidere efter ansøgning gives opholdstilladelse til en udlænding, hvis ganske særlige uddannelsesmæssige hensyn i øvrigt tilsiger det.

Stk. 2. Der kan efter ansøgning gives opholdstilladelse til en udlænding, som deltager i en ph.d.-uddannelse her i landet, hvis udlændingen er indskrevet på et dansk universitet og aflønnes af universitetet eller en virksomhed med tilknytning til udlændingens ph.d.-uddannelse eller udlændingen er indskrevet på et dansk universitet uden at være aflønnet af universitetet eller en virksomhed i Danmark.

Stk. 3. Ansøgning om opholdstilladelse efter stk. 1 og 2 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 1 og 2 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, eller hvis udlændingen har en anden ansøgning under behandling, kan ansøgning efter stk. 1 og 2 ikke indgives her i

departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application for a residence permit under subsection (1) cannot be submitted in Denmark. An application for renewal of a residence permit issued under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark, see the first sentence hereof.

(10) Together with The Church Minister The Minister of Immigration and Integration shall lay down rules on the course in Danish family law, freedom and democracy, including rules on the content of the course, lawful excuse, exemption from attending the course, procedure for applications and collection of participant fees, see subsection (6).

Section 9i

(1) Upon application, a residence permit may be issued to an alien for the purpose of education if the alien has been enrolled in a study programme or a course at an educational institution in Denmark. Upon application, a residence permit may also be issued to an alien if otherwise warranted by exceptional educational considerations.

(2) A residence permit may be granted to an alien who participates in a PhD degree in this country upon application if the alien is enrolled in a Danish university and is paid by the university or a company affiliated with the foreign national's PhD degree or

The alien is enrolled in a Danish university without being paid by the university or a company in Denmark.

(3) An application for a residence permit under subsection (1) and (2) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to

landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

Stk. 4. En ansøgning om forlængelse af en opholdstilladelse efter stk. 1 og 2 skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold efter stk. 3, 1. pkt. Stk. 3, 2. pkt., finder tilsvarende anvendelse.

Stk. 5. Opholdstilladelse efter stk. 2, nr. 1, skal betinges af, at udlændingen og personer, der meddeles opholdstilladelse som følge af familiemæssig tilknytning til udlændingen, ikke modtager hjælp efter lov om aktiv socialpolitik.

Stk. 6. Udlændinge-, integrations- og boligministeren kan fastsætte nærmere regler om meddelelse af opholdstilladelse efter stk. 1, herunder om dokumentation for bestået anerkendt sprogtest og oprettelse af en spærret konto med et beløb svarende til op til 1 års ydelser i form af statens uddannelsesstøtte som betingelse for opholdstilladelse.

Stk. 7. Udlændinge-, integrations- og boligministeren kan efter forhandling med uddannelses- og forskningsministeren fastsætte nærmere regler om studieaktivitet for udlændinge, der er meddelt opholdstilladelse med henblik på at deltage i en professionsbachelor- eller erhvervsakademiuddannelse her i landet.

Stk. 8. Til brug for Styrelsen for International Rekruttering og Integrations afgørelser om meddelelse af opholdstilladelse efter stk. 1 til udlændinge, der er optaget på en uddannelse eller et kursus ved en uddannelsesinstitution her i landet, og som ikke er omfattet af de i medfør af stk. 6 fastsatte regler, afgiver Danmarks Evalueringsinstitut efter anmodning fra uddannelsesinstitutionen en vejledende udtalelse om indhold og kvalitet i følgende uddannelser:

Videregående uddannelser og kurser, der uden

3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, see the 1st sentence, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application under subsection (1) cannot be submitted in Denmark unless it may be warranted by Denmark's international obligations.

(4) An application for renewal of a residence permit under subsection (1) and (2) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark under subsection (3), first sentence. Subsection 3, 2nd sentence applies accordingly.

(5) Residence permit pursuant to subsection (2)(i) shall be subject to the fact that the alien and persons who are granted residence permits as a result of family ties with the alien do not receive assistance under the Act on Active Social Policy.

(6) The Minister of Immigration and Integration may lay down detailed rules on the issuance of residence permits under subsection (1), including on the documentation required to prove that, as conditions for a residence permit, the alien has passed a recognised language test and has opened an escrow account with a balance equalling up to one year's allowances granted under the State Education Grant and Loan Scheme.

(7) Following negotiation with the Minister for Science, Innovation and Higher Education, the Minister of Immigration and Integration may lay down detailed rules on

godkendelse fra en statslig myndighed udbydes på en statsligt godkendt uddannelsesinstitution under statsligt tilsyn.

Uddannelser og kurser inden for grund- og ungdomsuddannelser, der uden godkendelse fra en statslig myndighed udbydes på en statsligt godkendt uddannelsesinstitution, der er under statsligt tilsyn.

Kurser på folkehøjskoler m.v. godkendt efter lov om folkehøjskoler og lov om efterskoler og frie fagskoler (frie kostskoler), som gennemføres uden tilskud efter loven.

Stk. 9. Ministeren for børn, undervisning og ligestilling fastsætter nærmere regler om Danmarks Evalueringsinstituts udtalelser efter stk. 8, herunder om anmodninger og om den anmodende institutions betaling til dækning af Danmarks Evalueringsinstituts udgifter i forbindelse med udtalelser

§ 9j

Der kan efter ansøgning gives opholdstilladelse til en udlænding med henblik på au pair-ophold her i landet.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 1 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger

active studying for aliens issued with a residence permit for the purpose of attending a study programme offered by a university college or an academy of professional higher education in Denmark.

(8) For the purpose of the decisions of the Danish Agency for Labour Retention and International Recruitment about the issuance of residence permits under subsection (1) to aliens who have been enrolled in a study programme or a course at an educational institution in Denmark and who do not fall within the rules laid down pursuant to subsection (4), and at the request of the educational institution, the Danish Evaluation Institute shall issue an advisory opinion on the contents and quality of the following study programmes:

(i) Higher education programmes and courses offered without the approval of the public authorities, but provided by an educational institution approved by the public authorities and subject to state supervision.

(ii) Study programmes and courses within basic education and upper secondary education offered without the approval of a public authority, but provided by an educational institution approved by a public authority and subject to state supervision.

(iii) Courses at folk high schools, etc., approved under the Act on Folk High Schools, Continuation Schools, Schools of Domestic Science and Handicraft Schools (Independent Boarding Schools) run without subsidies under that Act.

(9) The Minister of children, education and gender equality shall lay down more detailed rules on the opinions to be issued by the Danish Evaluation Institute pursuant to subsection (8), including about requests and the fee payable by the requesting institution

ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsiqe det. Hvis udlændingen har fået fastsat en udrejsefrist, eller hvis udlændingen har en anden ansøgning under behandling, kan ansøgning efter stk. 1 ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsiqe det.

Stk. 3. En ansøgning om forlængelse af en opholdstilladelse efter stk. 1 skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold efter stk. 2, 1. pkt. Stk. 2, 2. pkt., finder tilsvarende anvendelse.

Stk. 4. Opholdstilladelse efter stk. 1 skal betinges af, at udlændingen ikke på ansøgningstidspunktet venter barn, medmindre udlændingen på ansøgningstidspunktet allerede opholder sig i Danmark på baggrund af en opholdstilladelse efter stk. 1.

Stk. 5. Opholdstilladelse efter stk. 1 skal betinges af, at udlændingen ikke har stiftet familie.

Stk. 6. Opholdstilladelse efter stk. 1 skal betinges af, at værtspersonen eller dennes ægtefælle eller samlever betaler et beløb på 5.000 kr. til Styrelsen for International Rekruttering og Integration. Beløbet reguleres fra og med 2016 en gang årligt den 1. januar efter satsreguleringsprocenten, jf. lov om en satsreguleringsprocent. Det regulerede beløb afrundes dog til det nærmeste beløb, som er deleligt med 5 kr.

Stk. 7. Opholdstilladelse efter stk. 1 kan, medmindre særlige grunde taler derfor, ikke gives, hvis værtspersonen eller dennes ægtefælle eller samlever inden for en periode på 10 år inden tidspunktet for afgørelsen for et eller flere forhold begået mod en person, der på gerningstidspunktet var au pair hos den domfældte, ved endelig dom er idømt betinget eller ubetinget frihedsstraf eller anden

to cover the expenses of the Danish Evaluation Institute in connection with opinions.

Section 9j

(1) Upon application, a residence permit may be issued to an alien for the purpose of an au pair placement in Denmark.

(2) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application under subsection (1) cannot be submitted in Denmark unless it may be warranted by Denmark's international obligations.

(3) An application for renewal of a residence permit under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark under subsection (2), first sentence. Subsection (2), 2nd sentence applies accordingly.

(4) Residence permit pursuant to subsection (1) shall be subject to the fact that the alien does not expect children at the time of application unless the alien already resides in Denmark on application on the basis of a residence permit pursuant to subsection (1).

(5) Residence permit pursuant to subsection (1) shall be subject to the fact that the alien has not established a family.

(6) Residence permit pursuant to subsection (1) shall be conditional upon the host person

strafferetlig retsfølge, der indebærer eller giver mulighed for frihedsberøvelse, for en lovovertrædelse, der ville have medført en straf af denne karakter, for overtrædelse af straffelovens § 216, stk. 1, § 225, jf. § 216, stk. 1, § 233, stk. 1 og 2, §§ 233 a, 237, 244-246, 250, 260, 261, 262 a eller 266.

Stk. 8. Opholdstilladelse efter stk. 1 kan ikke gives, hvis værtspersonen eller dennes ægtefælle eller samlever inden for en periode på 5 år inden tidspunktet for afgørelsen ved endelig dom er dømt for overtrædelse af § 59, stk. 5, som følge af ulovlig beskæftigelse af en udlænding, der på gerningstidspunktet var au pair hos den domfældte, eller har vedtaget en bøde for en sådan overtrædelse af § 59, stk. 5.

Stk. 9. Opholdstilladelse efter stk. 1 kan ikke gives, hvis værtspersonen eller dennes ægtefælle eller samlever er omfattet af en karensperiode, jf. § 21 a.

Stk. 10. En udlænding, der har opholdstilladelse efter stk. 1, kan udføre ulønnet frivilligt arbejde.

Stk. 11. Udlændinge-, integrations- og boligministeren kan fastsætte nærmere regler om meddelelse af opholdstilladelse efter stk. 1

§ 9k

En udlænding kan i uddannelsesmæssigt øjemed efter ansøgning få opholdstilladelse med henblik på at være praktikant her i landet. En udlænding kan endvidere efter ansøgning få opholdstilladelse som volontør med henblik på at udføre humanitært og socialt arbejde her i landet.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-

or his spouse or cohabitant paying an amount of DKK 5,000 to the Board of International Recruitment and Integration. The amount is adjusted from 2016 once a year on 1 January after the adjustment rate, cf. the Act on a rate adjustment percentage. The regulated amount is rounded up to the nearest amount, which is divisible by DKK 5,00.

(7) Unless particular reasons make it appropriate, no residence permit will be issued under subsection (1) if, within a period of 10 years prior to the date of the decision, a sentence of imprisonment or suspended imprisonment, or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature, for violation of section 216(1) or 225, cf. section 216(1), section 233(1) and (2), sections 233, 237, 244 to 246 or section 250, 260, 261, 262a or 266 of the Criminal Code has been imposed by final judgment on the host or the host's spouse or cohabitant for one or more offences committed against a person who was an au pair placed with the sentenced person at the time of the offence.

(8) No residence permit will be issued under subsection (1) if, within a period of 5 years prior to the date of the decision, the host or the host's spouse or cohabitant has been sentenced by final judgment for violation of section 59(5) as a consequence of illegally employing an alien who was an au pair placed with the sentenced person at the time of the offence, or has accepted a fine for such violation of section 59(5).

(9) No residence permit will be issued under subsection (1) if the host or the host's spouse or cohabitant is subject to a waiting period, see section 21a.

(10) An alien who has a residence permit

reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 1 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, eller hvis udlændingen har en anden ansøgning under behandling, kan ansøgning efter stk. 1 ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

Stk. 3. En ansøgning om forlængelse af en opholdstilladelse efter stk. 1 skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold efter stk. 2, 1. pkt. Stk. 2, 2. pkt., finder tilsvarende anvendelse.

Stk. 4. Udlændinge-, integrations- og boligministeren kan fastsætte nærmere regler om meddelelse af opholdstilladelse efter stk. 1

§ 91

Efter ansøgning gives der opholdstilladelse til en udlænding, der ifølge en aftale mellem Danmark og en anden stat, jf. § 45, er berettiget til et længerevarende ferieophold her i landet og i forbindelse hermed er berettiget til at arbejde her i landet i et nærmere afgrænset omfang. Opholdstilladelsen gives på de betingelser, som aftalen opstiller.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om

pursuant to subsection (1) can perform unpaid voluntary work.

(11) The Minister of Immigration and Integration may lay down detailed rules on the issuance of residence permits under subsection (1).

Section 9k

(1) Upon application, an alien may, for educational purposes, be issued with a residence permit for an internship in Denmark. Upon application, an alien may also be issued with a residence permit as a volunteer to carry out humanitarian and social work in Denmark.

(2) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application under subsection (1) cannot be submitted in Denmark unless it may be warranted by Denmark's international obligations.

(3) An application for renewal of a residence permit under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark under subsection (2), first sentence. Subsection (2) applies accordingly.

(4) The Minister of Immigration and Integration may lay down detailed rules on the issuance of residence permits under subsection (1).

Section 9l

opholdstilladelse efter stk. 1 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, eller hvis udlændingen har en anden ansøgning under behandling, kan ansøgning efter stk. 1 ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

Stk. 3. En ansøgning om forlængelse af en opholdstilladelse efter stk. 1 skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold efter stk. 2, 1. pkt.

Stk. 2, 2. pkt., finder tilsvarende anvendelse

§ 9m

Der kan, hvis væsentlige erhvervs- eller beskæftigelsesmæssige hensyn taler derfor, efter ansøgning gives opholdstilladelse til en udlænding, som har familiemæssig tilknytning til en udlænding med tidsbegrænset eller tidsubegrænset opholdstilladelse efter § 9 a, stk. 2, nr. 1-12, stk. 3 eller 11, eller § 9 p, stk. 1, 1. pkt..

Stk. 2. Der kan efter ansøgning gives opholdstilladelse til en udlænding, som har familiemæssig tilknytning til en dansk statsborger, der er etableret i udlandet og har indgået aftale eller fået tilbud om ansættelse i Danmark, hvis en tilsvarende ansættelse ville kunne danne grundlag for opholdstilladelse til en udlænding efter § 9 a, stk. 2, nr. 1 eller 2. Opholdstilladelse skal betinges af, at den danske statsborger og udlændingen ikke modtager hjælp efter lov om aktiv socialpolitik. Bliver den danske statsborger uforskyldt ledig, kan udlændingen efter ansøgning gives opholdstilladelse i op til 6 måneder fra ansættelsens ophør. Udlændingen skal, senest

(1) Upon application, a residence permit will be issued to an alien who is entitled, pursuant to an agreement between Denmark and another State, see section 45, to a prolonged holiday stay in Denmark and is entitled in that connection to work in Denmark to a specified extent. The residence permit will be issued on the conditions set out by the agreement.

(2) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application under subsection (1) cannot be submitted in Denmark unless it may be warranted by Denmark's international obligations.

(3) An application for renewal of a residence permit under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark under subsection (2), first sentence. Subsection (2), 2nd sentence applies accordingly.

Section 9m

Upon application, a residence permit may be issued to an alien with family ties to an alien holding a time-limited or permanent residence permit under section 9a(2)(i) to (xii), subsection (3) or (11) or section 9p, subsection 1, 1st sentence, if essential business or employment considerations make

umiddelbart efter at den danske statsborgers ansættelsesforhold er ophørt, indgive ansøgning herom.

Stk. 3. § 9, stk. 9, finder tilsvarende anvendelse for ansøgninger om opholdstilladelse efter stk. 1 og 2.

Stk. 4. En opholdstilladelse efter stk. 2 kan forlænges, uanset at fagområdet på tidspunktet for afgørelsen om forlængelse ikke er omfattet af positivlisten, hvis den danske statsborger er i samme ansættelsesforhold, som lå til grund for meddelelse af opholdstilladelsen.

Stk. 5. En opholdstilladelse efter stk. 2 kan forlænges, uanset at den årlige aflønning ikke opfylder mindstebeløbet efter § 9 a, stk. 2, nr. 2, på tidspunktet for afgørelsen om forlængelse, hvis den danske statsborger er i samme ansættelsesforhold og den årlige aflønning fortsat opfylder den beløbsgrænse, som lå til grund for meddelelse af opholdstilladelsen.

Stk. 6. Ansøgning om opholdstilladelse efter stk. 1 og 2 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 1 og 2 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, eller hvis udlændingen har en anden ansøgning under behandling, kan ansøgning efter stk. 1 og 2 ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

it appropriate.

(2) A residence permit may be granted to an alien who has a family relationship with a Danish citizen who is established abroad and has entered into an agreement or has been offered an employment in Denmark if a similar employment could form the basis for a residence permit for a Alien pursuant to section 9a, subsection (2)(1) or (2). Residence permit must be conditional upon the Danish citizen and the foreigner not receiving assistance under the Act on Active Social Policy. If the Danish citizen becomes unaccompanied, the alien may be granted residence permit for up to 6 months from the end of the employment, upon application. The immigrant must submit an application, no later than immediately after the employment of the Danish citizen has ended.

(3) Section 9, subsection (9) shall apply mutatis mutandis to applications for a residence permit pursuant to subsection (1) and (2).

(4) A residence permit pursuant to subsection 2 may be extended, regardless of whether the subject area at the time of the extension decision is not included in the positive list if the Danish national is in the same employment relationship on which the residence permit was based.

(5) A residence permit pursuant to paragraph 2 may be extended, irrespective of the fact that the annual salary does not meet the minimum amount pursuant to section 9a(2)(ii), at the time of the decision, if the Danish citizen is in the same employment relationship and the annual salary still meets the threshold underlying the residence permit.

(6) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in

Stk. 7. En ansøgning om forlængelse af en opholdstilladelse efter stk. 1 og 2 skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold efter stk. 6, 1. pkt. Stk. 6, 2. pkt., finder tilsvarende anvendelse.

Stk. 8. Udlændinge-, integrations- og boligministeren kan fastsætte nærmere regler om opholdstilladelse efter stk. 1.

§ 9n

Der kan efter ansøgning gives opholdstilladelse til en udlænding, som har familiemæssig tilknytning til en udlænding med tidsbegrænset eller tidsubegrænset opholdstilladelse efter § 9 i eller § 9 k, når hensynet til sidstnævnte udlændings ophold her i landet tilsiger det. § 9, stk. 9, finder tilsvarende anvendelse.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1 kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 1 ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, eller hvis udlændingen har en anden ansøgning under behandling, kan ansøgning efter stk. 1 ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

Stk. 3. En ansøgning om forlængelse af en opholdstilladelse efter stk. 1 skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt ophold efter stk. 2, 1. pkt.

Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application under subsection (1) cannot be submitted in Denmark unless it may be warranted by Denmark's international obligations.

(7) An application for renewal of a residence permit under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark under subsection (2), first sentence.

(9) The Minister of Immigration and Integration may lay down detailed rules on residence permits under subsection (1).

Section 9n

(1) Upon application, a residence permit may be issued to an alien with family ties to an alien holding a time-limited or permanent residence permit under section 9i or 9k when warranted by regard for the latter alien's residence in Denmark.

(2) An application for a residence permit under subsection (1) may only be submitted in Denmark if the alien is lawfully resident in Denmark pursuant to sections 1 to 3a or section 4b or 5(2) or pursuant to the EU rules, see section 6, or holds a residence permit under sections 7 to 9f or 9i to 9n or 9p and if no particular reasons make it inappropriate. If the alien is not lawfully resident in Denmark, if a time limit for his departure has been determined, or if another application for a residence permit submitted by the alien is pending, an application under

Stk. 2, 2. pkt., finder tilsvarende anvendelse.

Stk. 4. Udlændinge-, integrations- og boligministeren kan fastsætte nærmere regler om opholdstilladelse efter stk. 1.

§ 9p

Efter ansøgning gives der opholdstilladelse med henblik på beskæftigelse til en udlænding, der ifølge Danmarks internationale forpligtelser, jf. § 45, er berettiget til at arbejde her i landet. Opholdstilladelse på grundlag af artikel 6 og 7 i Associeringsrådets afgørelse nr. 1/80 af 19. september 1980 meddeles dog efter § 9 c, stk. 1.

Stk. 2. Ansøgning om opholdstilladelse efter stk. 1, 1. pkt., kan kun indgives her i landet, hvis udlændingen har lovligt ophold i medfør af §§ 1-3 a eller 4 b eller § 5, stk. 2, i medfør af EU-reglerne, jf. § 6, eller en opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p, og hvis ingen særlige grunde taler herimod. En udlænding, som har fået tillagt en anden ansøgning om opholdstilladelse opsættende virkning med hensyn til udrejsefristen, kan også, medmindre særlige grunde taler herimod, indgive ansøgning om opholdstilladelse efter stk. 1, 1. pkt. Hvis udlændingen ikke har lovligt ophold, jf. 1. pkt., kan ansøgning om opholdstilladelse efter stk. 1, 1. pkt., ikke indgives her i landet, medmindre opholdet skyldes omstændigheder, der ikke kan lægges udlændingen til last, eller hvis der foreligger ganske særlige grunde, herunder hvis Danmarks internationale forpligtelser kan tilsige det. Hvis udlændingen har fået fastsat en udrejsefrist, kan ansøgning om opholdstilladelse efter stk. 1, 1. pkt., ikke indgives her i landet, medmindre Danmarks internationale forpligtelser kan tilsige det.

Stk. 3. En ansøgning om forlængelse af en opholdstilladelse, der er meddelt efter stk. 1, 1. pkt., skal indgives før tilladelsens udløb, for at udlændingen kan anses for at have lovligt

subsection (1) cannot be submitted in Denmark unless it may be warranted by Denmark's international obligations.

(3) An application for renewal of a residence permit under subsection (1) must be submitted before the permit expires if the alien is to be considered lawfully resident in Denmark under subsection (2), first sentence.

(4) The Minister of Immigration and Integration may lay down detailed rules on residence permits under subsection (1).

Section 9p

(1) Following application, a residence permit is granted for employment to an alien who, according to Denmark's international obligations, cf. § 45, is entitled to work in this country. Residence permit pursuant to Articles 6 and 7 of Association Council Decision No. 1/80 of 19 September 1980 is hereby notified pursuant to section 9c (1).

(2) Application for a residence permit pursuant to subsection Paragraph 1, 1st sentence, may only be filed here in the country if the alien is legally resident pursuant to sections 1-3 a or 4b or 5(2), pursuant to EU rules, cf. section 6, or a residence permit pursuant to sections 7-9 f, 9 i-9 n or 9 p, and if no special reasons are make it inappropriate. An alien who has been granted another application for residence permit with suspensory effect regarding the departure date may also, unless special reasons indicate, submit an application for a residence permit pursuant to subsection (1), 1st sentence. If the alien is not legally resident, cf. 1st sentence, an application for a residence permit pursuant to subsection (1), 1st sentence, shall not be filed in this country

ophold, jf. stk. 2, 1. pkt. Stk. 2, 3. pkt., finder tilsvarende anvendelse.

§ 11

Opholdstilladelse efter §§ 7-9 f, 9 i-9 n eller 9 p meddeles med mulighed for varigt ophold eller med henblik på midlertidigt ophold her i landet. Opholdstilladelsen kan tidsbegrænses.

§ 25, pkt.1-2

En udlænding kan udvises, hvis

1. udlændingen må anses for en fare for statens sikkerhed eller
2. udlændingen må anses for en alvorlig trussel mod den offentlige orden, sikkerhed eller sundhed.

§ 25b

En udlænding kan udvises, hvis udlændingen opholder sig her i landet uden fornøden tilladelse.

Stk. 2. En udlænding, som ikke er statsborger i et af de lande, der er nævnt i § 2, stk. 1 (tredjelandstatsborger), og som er pålagt at udrejse af landet straks, eller som ikke udrejser i overensstemmelse med udrejsefristen, jf. § 33, stk. 2, skal udvises af landet, medmindre særlige grunde taler herimod.

§ 28

En udlænding, der ikke har opholdstilladelse eller har fået udstedt registreringsbevis eller opholdskort, jf. § 6, her i landet, og en nordisk statsborger, som ikke har fast bopæl her i landet, kan afvises ved indreisen fra et land, der ikke er tilsluttet Schengenkonventionen, i følgende tilfælde:

Hvis udlændingen har indrejseforbud og ikke har visum udstedt efter §§ 4 eller 4 a, jf. § 3 a, 1. pkt.

Hvis udlændingen ikke opfylder de

unless the stay is due to circumstances which can not be detrimental to the alien or if there are very special reasons, including if Denmark's international obligations may cause it. If the alien has been granted a departure deadline, application for a residence permit pursuant to subsection (1), 1st sentence shall not be filed here in the country unless Denmark's international obligations may require it.

(3) An application for extension of a residence permit issued pursuant to subsection (1), 1st sentence, must be submitted before the expiry of the permit, in order for the alien to be regarded as having a legal residence, cf. subsection (2), 1st sentence. Subsection (2), 3rd sentence, applies accordingly.

Section 11

(1) A residence permit under sections 7 to 9f or 9i to 9n is issued with a possibility of permanent residence or for the purpose of a temporary stay in Denmark. The residence permit may be issued for a limited period of time.

Section 25

An alien may be expelled if: -

1. (i) the alien must be deemed a danger to national security; or
2. (ii) the alien must be deemed a serious threat to the public order, safety or health.

Section 25b

(1) An alien may be expelled if the alien is staying in Denmark without the requisite permit.

(2) An alien who is not a national of one of the countries mentioned in section 2(1) (third-country nationals) and who has been ordered to depart from Denmark immediately, or who fails to depart in accordance with the time limit for departure,

bestemmelser om rejselegitimation, visum og indrejse, som er fastsat efter kapitel 7.

Hvis der efter det, som er oplyst om udlændingens forhold, er grund til at antage, at den pågældende vil tage ophold eller arbejde her i landet uden fornøden tilladelse. Udlændinge, der er omfattet af § 2, stk. 1 eller 2, kan dog ikke afvises af denne grund.

Hvis udlændingen ikke kan forevise dokumentation for opholdets formål og nærmere omstændigheder. Udlændinge, der er omfattet af § 2, stk. 1 eller 2, kan dog ikke afvises af denne grund.

Hvis udlændingen ikke har de nødvendige midler til sit underhold både med hensyn til hele det påtænkte ophold i Schengenlandene og til enten hjemrejsen eller gennemrejsen til et land, der ikke er tilsluttet Schengenkonventionen, og hvor den pågældende er sikret indrejse, og ikke er i stand til på lovlige vis at erhverve disse midler. Udlændinge, der er omfattet af § 2, stk. 1 eller 2, kan dog ikke afvises af denne grund.

Hvis udlændingen ikke er statsborger i et Schengenland eller et land, der er tilsluttet Den Europæiske Union, og er indberettet til SIS II som uønsket i medfør af SIS II-forordningen.

Hvis andre hensyn til Schengenlandenes offentlige orden, forhold til fremmede magter eller sikkerheds- eller sundhedsmæssige grunde tilsiger, at udlændingen ikke bør have ophold her i landet.

Stk. 2. Statsborgere i lande, der ikke er tilsluttet Schengenkonventionen eller Den Europæiske Union, skal afvises ved indreisen fra et land, der ikke er tilsluttet Schengenkonventionen, efter bestemmelserne i stk. 1, nr. 1-7, jf. dog stk. 5.

Stk. 3. En udlænding, der ikke har opholdstilladelse eller har fået udstedt registreringsbevis eller opholdskort, jf. § 6, her i

see section 33(2), must be expelled from Denmark unless particular reasons make it inappropriate.

Section 28

(1) Aliens not issued with a residence permit and not issued with a registration certificate or residence card, see section 6, for Denmark, and nationals of a Nordic country not permanently resident in Denmark may be refused entry on arrival from a country which has not acceded to the Schengen Convention in the following cases:

(i) If the alien has been banned from re-entering and has no visa issued under section 4 or 4a, cf. section 3a, first sentence.

(ii) If the alien does not meet the provisions on travel documents, visa and entry laid down under Part 7.

(iii) If, from information available on the alien, reason is found to assume that he intends to stay or work in Denmark without the requisite permit. Aliens falling within section 2(1) or (2) cannot be refused entry on this ground.

(iv) If the alien cannot present documentation for the purpose and specific circumstances of his stay. Aliens falling within section 2(1) or (2) cannot be refused entry on this ground.

(v) If the alien's means are insufficient for his maintenance both as concerns the entire intended stay in the Schengen countries and for either his return fare or for transit to a country which has not acceded to the Schengen Convention and where he is assured of entry, and he is not able to acquire such means in a lawful manner. Aliens falling within section 2(1) or (2) cannot be refused entry on this ground.

(vi) If the alien is not a national of a Schengen country or a Member State of the European Union, and the alien is the subject of an alert

landet, eller en nordisk statsborger, som ikke har fast bopæl her i landet, kan afvises ved indreisen fra et Schengenland efter bestemmelserne i stk. 1, nr. 1-7, jf. dog stk. 5. En nordisk statsborger kan dog kun afvises efter stk. 1, nr. 2, såfremt den pågældende indrejser fra et ikkenordisk land, jf. § 39, stk. 4.

§ 29a

En udlænding kan afvises eller overføres til et andet EU-land efter reglerne i Dublinforordningen eller efter en overenskomst eller et hertil svarende arrangement, som Danmark har indgået med et eller flere lande i tilslutning til Dublinforordningen.

Stk. 2. Ved Dublinforordningen forstås i denne lov Europa-Parlamentets og Rådets forordning (EU) nr. 604/2013 af 26. juni 2013 om fastsættelse af kriterier og procedurer til afgørelse af, hvilken medlemsstat der er ansvarlig for behandlingen af en ansøgning om international beskyttelse, der er indgivet af en tredjelandsstatsborger eller en statsløs i en af medlemsstaterne, med senere ændringer.

§ 31

En udlænding må ikke udsendes til et land, hvor den pågældende risikerer dødsstraf eller at blive underkastet tortur eller umenneskelig eller nedværdigende behandling eller straf, eller hvor udlændingen ikke er beskyttet mod videresendelse til et sådant land.

Stk. 2. En udlænding, der er omfattet af § 7, stk. 1, må ikke udsendes til et land, hvor den pågældende risikerer forfølgelse af de i flygtningekonventionen af 28. juli 1951, artikel 1 A, nævnte grunde, eller hvor udlændingen

entered in SIS II for the purpose of refusing entry pursuant to the SIS II Regulation.

(vii) If other reasons of public order, relations with foreign powers or reasons of security or health of the Schengen countries warrant that the alien should not be allowed to stay in Denmark. (2) Nationals of countries which have not acceded to the Schengen Convention or are not Member States of the European Union must be refused entry under the provisions of subsection (1)(i) to (vii), but see subsection (5), on arrival from a country which has not acceded to the Schengen Convention.

(3) Aliens not issued with a residence permit and not issued with a registration certificate or residence card, see section 6, for Denmark or nationals of a Nordic country not permanently resident in Denmark may be refused entry under the provisions of subsection (1)(i) to (vii), but see subsection (6), on arrival from a Schengen country. A national of a Nordic country may only be refused entry under subsection (1)(ii) if he enters from a non-Nordic country, see section 39(4).

Section 29 a

(1) An alien may be refused entry, transferred or retransferred to another Member State of the European Union under the rules of the Dublin Regulation or under an agreement or corresponding arrangement entered into between Denmark and one or more countries in connection with the Dublin Regulation.

(2) In this Act, the Dublin Regulation means Council Regulation (EC) No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for determining an asylum application lodged in one of the Member States by a third-country national, as

ikke er beskyttet mod videresendelse til et sådant land. Dette gælder ikke, hvis udlændingen med rimelig grund må anses for en fare for statens sikkerhed, eller hvis udlændingen efter endelig dom for en særlig farlig forbrydelse må betragtes som en fare for samfundet, jf. dog stk. 1.

§ 32 a

Afslag på en ansøgning om opholdstilladelse efter § 7 eller § 8, stk. 1 eller 2, eller afgørelser om bortfald eller inddragelse af en sådan opholdstilladelse skal tillige indeholde afgørelse om, hvorvidt udlændingen kan udsendes, hvis denne ikke udrejser frivilligt, jf. § 31.

§ 33, stk. 1-2:

Afslag på en ansøgning om opholdstilladelse eller på en ansøgning om forlængelse af opholdstilladelse, beslutning om inddragelse af opholdstilladelse, afslag på en ansøgning om udstedelse af et registreringsbevis eller opholdskort, jf. § 6, beslutning om inddragelse af et registreringsbevis eller opholdskort, jf. § 6, beslutning om udvisning efter §§ 25, 25 a eller 25 b og beslutning om udsendelse efter § 27 b skal indeholde en frist for udrejse. Afgørelsen skal endvidere indeholde oplysning om reglerne i stk. 3, 1., 3. og 4. pkt.

Stk. 2. I afgørelser, der er omfattet af stk. 1, fastsættes udrejsefristen til 1 måned, hvis udlændingen er statsborger i et andet nordisk land og har haft bopæl her i landet, hvis udlændingen er omfattet af de regler, der er nævnt i § 2, stk. 4, (EU-reglerne), eller hvis udlændingen hidtil har haft opholdstilladelse. I afgørelser om afslag på ansøgning om opholdstilladelse efter § 9 b og § 9 c, stk. 3, nr. 2, fastsættes udrejsefristen til 15 dage. For andre udlændinge fastsættes udrejsefristen til 7 dage. I påtrængende tilfælde fastsættes udrejsefristen altid til straks. Påtrængende

subsequently amended.

Section 31

(1) An alien may not be returned to a country where he will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such country.

(2) An alien falling within section 7(1) may not be returned to a country where he will risk persecution on the grounds set out in Article 1 A of the Convention relating to the Status of Refugees (28 July 1951), or where the alien will not be protected against being sent on to such country. This does not apply if the alien must reasonably be deemed a danger to national security or if, after final judgment in respect of a particularly dangerous crime, the alien must be deemed a danger to society, but see subsection (1).

Section 32 a

A decision on refusal of an application for a residence permit under section 7 or section 8(1) or (2), or a decision on the lapse or revocation of such residence permit, must also include a decision on whether the alien may be returned from Denmark if he does not voluntarily depart from the country, see section 31.

Section 33:

(1) A decision on refusal of an application for a residence permit or of an application for extension of a residence permit, on revocation of a residence permit, on refusal of an application for the issue of a registration certificate or a residence card, on revocation of a registration certificate or a residence card, on expulsion under section 25, 25a or 25b or on return under section 27b

tilfælde foreligger navnlig, når udlændingen er til fare for statens sikkerhed eller en alvorlig trussel mod den offentlige orden, sikkerhed eller sundhed, når udlændingen har begået et strafbart forhold, når der er tale om svig eller en åbenbart grundløs ansøgning, eller når der er risiko for, at udlændingen vil forsvinde eller unddrage sig udsendelse. Risiko for, at udlændingen vil forsvinde eller unddrage sig udsendelse, foreligger, når udlændingen ikke har medvirket under sagens behandling, eller når der i øvrigt på baggrund af oplysningerne om udlændingen og opholdets varighed og karakter er grund til at antage, at udlændingen vil forsvinde eller unddrage sig udsendelse. Det kan ikke anses for et påtrængende tilfælde, at der er risiko for, at udlændingen vil forsvinde, hvis udlændingen er statsborger i et af de lande, der er nævnt i § 2, stk. 1.

§ 39

Stk. 2. Udlændinge-, integrations- og boligministeren kan fastsætte regler om, i hvilket omfang passet eller rejselegitimationen skal være påtegnet visum til indrejse i eller udrejse af landet. Udlændinge-, integrations- og boligministeren kan endvidere fastsætte nærmere regler om visum, herunder om adgangen hertil, om visummets varighed, om de betingelser, der kan fastsættes for visummet, om sagsfordelingen på visumområdet mellem Udlændingestyrelsen og de danske diplomatiske og konsulære repræsentationer i udlandet og om de grundlæggende hensyn ved behandlingen og afgørelsen af visumsagen.

§ 42 a, stk. 1

En udlænding, der opholder sig her i landet og indgiver ansøgning om opholdstilladelse i medfør af § 7, får udgifterne til underhold og nødvendige sundhedsmæssige ydelser dækket af Udlændingestyrelsen, indtil udlændingen meddeles opholdstilladelse, eller udlændingen

must state a time-limit for departure from Denmark. The decision must further refer to the rules of subsection (3), first, third and fourth sentences.

(2) In decisions falling within subsection (1), the time limit is determined to be one month if the alien is a national of another Nordic country and has been resident in Denmark or if the alien falls within the rules mentioned in section 2(4) (the EU rules) or has hitherto been issued with a residence permit. In decisions refusing an application for a residence permit under section 7, 9b or 9c(3)(ii), the time limit is determined to be 15 days. For other aliens, the time limit for departure is determined to be 7 days. In urgent cases, the time limit for departure is always determined to be immediate. Urgent cases are in particular cases where the alien constitutes a danger to national security or a serious threat to public order, safety or health or where the alien has committed an offence, where it is a case of fraud or a manifestly unfounded application, or where there is a risk that the alien will disappear or evade return. It cannot be deemed an urgent case that there is a risk that the alien will disappear if the alien is a national of one of the countries mentioned in section 2(1).

Section 39

(2) The Minister of Immigration and Integration may lay down rules on the extent to which the passport or travel document must be provided with a visa endorsement for entry into or departure from Denmark. The Minister of Immigration and Integration may further lay down more detailed rules on

udrejser eller udsendes, jf. dog stk. 3 og 4 og § 43, stk. 1. En udlænding som nævnt i 1. pkt., der er blevet meddelt opholdstilladelse i medfør af § 7, stk. 1-3, § 9 b, § 9 c eller § 9 e, får udgifterne til underhold og nødvendige sundhedsmæssige ydelser dækket af Udlændingestyrelsen til og med udgangen af den første hele måned efter tidspunktet for afgørelsen om visitering af udlændingen, jf. integrationslovens § 10, stk. 1, jf. dog stk. 3 og 4.

Stk. 2. Har en udlænding, der ikke er omfattet af stk. 1 eller § 43, stk. 1, efter reglerne i kapitel 1 og 3-5 ikke ret til at opholde sig her i landet, får udlændingen udgifterne til underhold og nødvendige sundhedsmæssige ydelser dækket af Udlændingestyrelsen, hvis det er nødvendigt af hensyn til forsørgelsen af udlændingen, jf. dog stk. 3 og 4.

Stk. 3. Stk. 1 og 2 gælder ikke:

1) Hvis udlændingen har lovligt ophold her i landet i medfør af § 1 eller § 5, stk. 2, eller i medfør af et registreringsbevis eller et opholdskort efter § 6 eller i medfør af en opholdstilladelse efter §§ 9-9 f, 9 i-9 n eller 9 p. En udlænding som nævnt i stk. 1, 1. pkt., der er blevet meddelt opholdstilladelse i medfør af § 9 b, § 9 c eller § 9 e, får uanset 1. pkt. udgifterne til underhold og nødvendige sundhedsmæssige ydelser dækket af Udlændingestyrelsen i den periode, som er nævnt i stk. 1, 2. pkt.

2) Hvis udlændingen har indgået ægteskab med en herboende person, medmindre særlige grunde foreligger.

3) Hvis udlændingens opholdssted ikke kendes.

4) Hvis udlændingen har ret til hjælp til forsørgelse efter anden lovgivning. Stk. 1 gælder dog, uanset om udlændingen har ret til hjælp til forsørgelse efter lov om aktiv socialpolitik.

Stk. 4. Udlændingestyrelsen kan pålægge en

visas, including access to the visa, the conditions for the visa, the distribution of visas in the visa area between the Immigration Service and the Danish diplomatic and consular posts abroad and About the basic consideration of the processing and decision of the visa case.

Section 42a

(1) An alien who is staying in Denmark and submits an application for a residence permit pursuant to section 7 will have the expenses for his maintenance and any necessary healthcare services defrayed by the Danish Immigration Service until the alien is issued with a residence permit or the alien departs from Denmark or is returned, but see subsections (3) and (4) and section 43(1). An alien as mentioned in the first sentence hereof to whom a residence permit has been issued pursuant to section 7(1) or (2) or section 9b, 9c or 9e will have the expenses for his maintenance and any necessary healthcare services defrayed by the Danish Immigration Service up to and including the end of the first full month following the date of the decision on allocation of the alien as set out in section 10(1) of the Integration Act, but see subsections (3) and (4) hereof.

(2) Where an alien not falling within subsection (1) or section 43(1) is not entitled to stay in Denmark under the rules of Parts 1 and 3 to 5, the alien will have the expenses for his maintenance and any necessary healthcare services defrayed by the Danish Immigration Service if necessary for maintenance of the alien, but see subsections (3) and (4).

(3) Subsections (1) and (2) do not apply if –
(i) the alien is lawfully resident in Denmark pursuant to section 1 or 5(2) or pursuant to a

udlænding at betale udgifterne til udlændingens eller dennes families underhold og nødvendige sundhedsmæssige ydelser eller ophold på et indkvarteringssted omfattet af stk. 5, såfremt udlændingen har tilstrækkelige midler hertil. Der kan pålægges betalingspligt efter 1. pkt. for perioden til og med udgangen af den første hele måned efter tidspunktet for afgørelsen om visitering af udlændingen, jf. integrationslovens § 10, stk. 1. Der kan endvidere pålægges betalingspligt efter 1. pkt., indtil en udlænding, der efter reglerne i kapitel 1 og 3-5 a ikke har ret til at opholde sig her i landet, udrejser eller udsendes.

§ 42 g

Børn i den undervisningspligtige alder, der opholder sig her i landet og er omfattet af § 42 a, stk. 1 eller 2, jf. stk. 3, eller § 42 k, skal deltage i særskilt tilrettelagt undervisning eller i en undervisning, der står mål med, hvad der almindeligvis kræves efter den særskilt tilrettelagte undervisning. Udlændinge-, integrations- og boligministeren kan fastsætte nærmere regler for, hvilke uddannelser og aktiviteter der tilbydes, og kan herunder efter forhandling med ministeren for børn, undervisning og ligestilling bestemme, i hvilket

registration certificate or a residence card under section 6 or pursuant to a residence permit under sections 9 to 9f or 9i to 9n. Notwithstanding the first sentence hereof, an alien as mentioned in subsection (1), first sentence, to whom a residence permit has been issued pursuant to section 9b, 9c or 9e will have the expenses for his maintenance and any necessary healthcare services defrayed by the Danish Immigration Service for the period mentioned in subsection (1), second sentence;

(ii) the alien has contracted marriage with a person living in Denmark unless particular reasons exist;

(iii) the alien's place of residence is unknown;
(iv) the alien is entitled to assistance for maintenance under other legislation. Subsection (1) applies even though the alien is entitled to assistance for maintenance under the Act on an Active Social Policy.

(4) The Danish Immigration Service may decide that an alien falling within subsection (1) or (2), cf. subsection (3), who has sufficient means of his own, will not have his or his family's expenses for maintenance and any necessary healthcare services defrayed. If the alien has sufficient means of his own to pay the expenses for his or his family's maintenance and any necessary healthcare services or stay at an accommodation centre falling within subsection (5) or in a dwelling affiliated with such accommodation centre, the Danish Immigration Service may order him to do so. The Danish Immigration Service may lay down more detailed rules on the cases in which an alien as mentioned in the first sentence hereof will not have the expenses for his or his family's maintenance and any necessary healthcare services defrayed, and on the cases in which an alien

omfang de nævnte børn kan deltage i folkeskolens undervisning. Udlændinge-, integrations- og boligministeren kan bestemme, at regler, der fastsættes i medfør af 2. pkt., kun skal gælde for visse indkvarteringssteder. Udlændinge-, integrations- og boligministeren kan ved fastsættelsen af regler i medfør af 2. pkt. fravige § 46.

Stk. 2. En udlænding, som har indgivet ansøgning om opholdstilladelse i medfør af § 7, og som er optaget på en ungdomsuddannelse, kan deltage i ulønnet eller lønnet praktik som led i uddannelsen, indtil udlændingen meddeles opholdstilladelse, udrejser eller udsendes.

§ 42 k

Stk. 1. Udlændingestyrelsen træffer efter ansøgning afgørelse om, at en udlænding, som har indgivet ansøgning om opholdstilladelse i medfør af § 7, har ret til at flytte i egen bolig, indtil udlændingen meddeles opholdstilladelse, udrejser eller udsendes, hvis

1. udlændingen har opholdt sig i Danmark i mindst 6 måneder fra indgivelse af ansøgning om opholdstilladelse i medfør af § 7,
2. Udlændingestyrelsen har truffet afgørelse om, at udlændingen kan opholde sig i Danmark under asylsagens behandling, jf. herved § 48 e, stk. 2,
3. udlændingen kan forsørge sin husstand,
4. boligen er placeret i en kommune, hvortil der kan visiteres flygtninge på grundlag af de aftalte eller fastsatte kommunekvoter, jf. integrationslovens § 8,
5. boligen er egnet til beboelse af den pågældende husstand og
6. udlændingen indgår en kontrakt med Udlændingestyrelsen i overensstemmelse med stk. 5.

as mentioned in the second sentence hereof may be ordered to pay such expenses. The Danish Immigration Service may lay down more detailed guidelines for the calculation of the expenses for a person's maintenance and any necessary healthcare services, including determine average fees for a given service over a given period of time.

Section 42 g

(1) Children of school age who are staying in Denmark and fall within section 42a(1) or (2), cf. subsection (3), shall participate in separately arranged tuition or in tuition measuring up to the general requirements for the separately arranged tuition. The Minister of Refugee, Immigration and Integration Affairs may lay down more detailed rules for the study programmes and activities to be offered and may decide after negotiation with the Minister for Education to what extent the said children can participate in the tuition of the municipal school system. The Minister of Refugee, Immigration and Integration Affairs may decide that rules laid down pursuant to the second sentence hereof will only apply to certain accommodation centres. The Minister of Refugee, Immigration and Integration Affairs may deviate from section 46 when laying down rules pursuant to the second sentence hereof.

(2) An alien who has submitted an application for a residence permit pursuant to section 7 and who has become enrolled in an upper secondary education course may accept an unpaid or paid internship as part of his education until the alien is issued with a residence permit, departs from Denmark or is returned.

Section 42 k

(1) Upon application, the Danish

Stk. 2. Stk. 1 gælder ikke for

1. udlændinge, der er administrativt udvist i medfør af § 25,
2. udlændinge, der er udvist ved dom,
3. udlændinge, der er idømt betinget eller ubetinget fængsel for strafbart forhold begået her i landet,
4. udlændinge, der er omfattet af udelukkelsesgrundene i flygtningekonventionen af 28. juli 1951,
5. udlændinge, hvis opholdstilladelse er bortfaldet i medfør af § 21 b, stk. 1,
6. udlændinge, hvis ansøgning om opholdstilladelse efter § 7 behandles efter § 53 b, og
7. udlændinge under 18 år, medmindre Udlændingestyrelsen efter en konkret vurdering finder, at hensynet til den mindreåriges tarv taler derfor.

Stk. 3. En udlænding, der er flyttet i egen bolig, jf. stk. 1, og medlemmer af dennes husstand har ret til at få udgifter til nødvendige sundhedsydelser dækket af Udlændingestyrelsen, jf. § 42 a, stk. 1, jf. stk. 3.

Stk. 4. En udlænding, der er flyttet i egen bolig, jf. stk. 1, og medlemmer af dennes husstand har ret til aktivering og undervisning i samme omfang som udlændinge, der er omfattet af § 42 a, stk. 1 og 2, jf. stk. 3, hvis den pågældendes beskæftigelsesforhold ikke er til hinder herfor.

Stk. 5. Udlændingestyrelsen indgår en kontrakt med udlændingen om indkvarteringen i egen bolig. Det skal indgå i kontrakten som et vilkår, at udlændingen medvirker til oplysning af sin sag om opholdstilladelse i medfør af § 7, jf. § 40, stk. 1, 1. og 2. pkt., og efter afslag på eller frafald af ansøgningen om opholdstilladelse

Immigration Service shall decide that an alien who has submitted an application for a residence permit pursuant to section 7 is entitled to move into his own dwelling until the alien is issued with a residence permit, departs from Denmark or is returned, provided that:-

- (i) the alien has stayed in Denmark for at least 6 months from his submission of an application for a residence permit pursuant to section 7;
- (ii) the Danish Immigration Service has decided that the alien may stay in Denmark during the asylum proceedings, see in this respect section 48e(2);
- (iii) the alien is able to maintain his household;
- (iv) the dwelling is located in a municipality to which refugees may be allocated on the basis of the agreed or fixed municipal quotas, see section 8 of the Integration Act;
- (v) the dwelling is suitable for habitation by the members of the alien's household; and
- (vi) the alien concludes a contract with the Danish Immigration Service in accordance with subsection (5).

(2) Subsection (1) does not apply to –

- (i) aliens who have been administratively expelled pursuant to section 25;
- (ii) aliens who have been expelled by judgment;
- (iii) aliens who have been sentenced to imprisonment or suspended imprisonment for an offence committed in Denmark;
- (iv) aliens who meet the exclusion criteria of the Convention Relating to the Status of Refugees (28 July 1951);
- (v) aliens who have lost their residence permit pursuant to section 21b (1).
- (vi) aliens whose application for a residence permit under section 7 is being

medvirker til udrejsen uden ugrundet ophold, jf. § 40, stk. 6, 1. pkt. Udlændingestyrelsen vejleder i forbindelse med indgåelse af kontrakten udlændingen mundtligt og skriftligt om vilkårene for indkvartering i egen bolig, herunder navnlig kravet om medvirken.

Stk. 6. Udlændingestyrelsen træffer, medmindre helt særlige grunde taler derimod, afgørelse om, at en udlænding, som er flyttet i egen bolig efter stk. 1, og som ikke længere opfylder betingelserne herfor eller ikke overholder vilkårene i den indgåede kontrakt, jf. stk. 5, skal tage ophold på et indkvarteringssted efter Udlændingestyrelsens nærmere bestemmelse.

Stk. 7. Udlændingestyrelsen fastsætter nærmere regler om boligens egnethed, jf. stk. 1, nr. 5.

§ 46

Stk. 1. Afgørelser efter denne lov træffes med de undtagelser, der fremgår af stk. 2-4, og af § 4 d, stk. 3 og 4, § 9, stk. 22, 23 og 31-33, §§ 46 a-49, § 50, § 50 a, § 51, stk. 2, 2. pkt., § 56 a, stk. 1-4, § 58 i og § 58 j, jf. dog § 58 d, 2. pkt., af Udlændingestyrelsen.

Stk. 2. Afgørelser efter § 9 a, § 9 h, stk. 1, nr. 4-10, 13 og 14, § 9h, stk. 8, 1. Pkt., jf. § 9 h, stk. 1, nr. 4-10, 13 og 14, og stk. 3, §§ 9i-9 n og 9 p, afgørelser vedrørende forlængelse, bortfald og inddragelse af opholdstilladelser meddelt efter §§ 9 a, 9 i-9 n og 9p, bortset fra afgørelser om bortfald efter § 21 b, og afgørelser efter § 33 i forbindelse med sådanne sager træffes af Styrelsen for International Rekruttering og Integration. Det samme gælder afgørelser efter § 4 a, stk. 2, i forlængelse af at en udlænding er meddelt opholdstilladelse efter § 9 a, §§ 9 i-9 n eller 9 p, og afgørelser efter § 25 b, stk. 2, når

examined under section 53b; and

(vii) aliens under the age of 18 unless the Danish Immigration Service finds, upon specific assessment, that regard for the best interests of the minor makes it appropriate.

(3) An alien who has moved into his own dwelling, see subsection (1), and members of his household are entitled to have expenses for necessary health services covered by the Danish Immigration Service, see section 42a(1), cf. section 42a(3).

(4) An alien who has moved into his own dwelling, see subsection (1), and the members of his household are entitled to activation and tuition to the same extent as aliens falling within section 42a(1) and (2), cf. section 42a(3), unless prevented by his employment situation.

(5) The Danish Immigration Service shall conclude a contract with the alien about accommodation in his own dwelling. It must be made a condition of the contract that the alien cooperates in obtaining information for the assessment of his application for a residence permit pursuant to section 7, see section 40(1), first and second sentences, and, upon refusal or waiver of the application for a residence permit, cooperates in his departure without undue delay, see section 40(6), first sentence. In connection with the conclusion of the contract, the Danish Immigration Service shall provide the alien with oral and written guidance on the conditions for accommodation in his own dwelling, including in particular the requirement of cooperation.

(6) Unless highly exceptional reasons make it inappropriate, the Danish Immigration Service shall decide that an alien who has moved into his own dwelling under subsection (1) and who no longer meets the

Styrelsen for International Rekruttering og Integration har pålagt udlændingen at udrejse straks, eller når udlændingen ikke udrejser i overensstemmelse med en udrejsefrist, der er fastsat af Styrelsen for International Rekruttering og Integration.

Stk. 3. Afgørelser efter § 9 b, afgørelser vedrørende forlængelse og inddragelse af opholdstilladelse meddelt efter § 9 b og afgørelser efter § 33, stk. 4, træffes af udlændinge-, integrations- og boligministeren.

§ 46a, stk. 1

Udlændingestyrelsens afgørelser kan bortset fra afgørelser om afvisning truffet efter regler udstedt i medfør af § 9 g, stk. 1, 2. pkt., samt de afgørelser, der er nævnt i § 9 g, stk. 3, § 9 h, stk. 8, 1. pkt., § 9 h, stk. 9, 1. pkt., jf. stk. 5, 1. pkt., jf. stk. 1, § 11, stk. 10, § 29 c, stk. 1, § 32 a, § 33, § 42 a, stk. 7, 3. pkt., § 42 a, stk. 8, 1. og 2. pkt., og stk. 10, § 42 b, stk. 1, 3 og 7-9, § 42 d, stk. 2, § 46e, § 52 b, stk. 1 og 3, § 53 a og § 53 b, påklages til udlændinge-, integrations- og boligministeren. Udlændingestyrelsens afgørelser efter § 42 k og § 42 l kan ikke påklages, for så vidt angår boligens geografiske placering.

§ 46a, stk. 5

Udlændinge-, integrations- og boligministeren kan træffe bestemmelse om og fastsætte nærmere regler for Udlændingestyrelsens behandling af de sager, der er omfattet af stk. 1 og 3 og § 46, stk. 1, og Styrelsen for International Rekruttering og Integrations behandling af de sager, der er omfattet af stk. 2

relevant conditions or does not comply with the conditions of the contract concluded, see subsection (5), shall stay at an accommodation centre determined by the Danish Immigration Service.

(7) The Danish Immigration Service shall lay down detailed rules on the suitability of the dwelling, see subsection (1)(v).

Section 46

(1) Decisions pursuant to this Act are made by the Danish Immigration Service, except as provided in subsections (2) to (4) and by sections 4d (3) and (4), section 9(22),(23) and (31) to (33), section 46a to 49, section 50, 50a, 51(2), second sentence, 56a(1) to (4), 58i and 58j, but see section 58d, second sentence.

(2) Decisions under section 9a, section 9h(1) sentence 4 to 10 and sentence 13 to 14 and subsection (8) first sentence, cf. subsection (1) sentence 4 to 10 and sentence 13 to 14 and subsection 3, and sections 9i to 9n, decisions on the renewal, lapse and revocation of residence permits issued under sections 21b and decisions under section 33 in connection with such cases are made by the Danish Agency for International Recruitment and Integration. The same applies to decisions under section 4a(2) made following the issuance of a residence permit to an alien under section 9a or sections 9i to 9n and to decisions under section 25b(2) when the Danish Agency for International Recruitment and Integration has ordered the alien to depart from Denmark immediately, or when the alien does not depart in accordance with a time limit for departure determined by the Danish Agency for International Recruitment and Integration.

(3) Decisions under section 9b, decisions on the renewal and revocation of residence

og § 46, stk. 2.

§ 53 a, stk. 1, 1. pkt.

For Flygtningenævnet kan indbringes klager over afgørelser, som Udlændingestyrelsen har truffet om følgende spørgsmål, jf. dog § 53 b, stk. 1:

§ 52b, stk. 1

For Udlændingenævnet kan indbringes klager over følgende afgørelser, som Udlændingestyrelsen har truffet:

- 1) Afslag på ansøgninger om opholdstilladelse efter §§ 9, 9 d, 9 e og 9 f.
- 2) Afslag på ansøgninger om opholdstilladelse efter § 9 c, stk. 1.
- 3) Afslag på ansøgninger om forlængelse af opholdstilladelse meddelt efter § 9, § 9 c, stk. 1, § 9 d, § 9 e og § 9 f, jf. nr. 1 og 2, herunder afgørelser om lovligt forfald, jf. § 9, stk. 30, afgørelser om fritagelse og lovligt forfald, jf. § 9 f, stk. 6, og afgørelser om inddragelse af sådanne opholdstilladelser, jf. § 11, stk. 2, og § 19.
- 4) Afslag på ansøgninger om tidsubegrænset opholdstilladelse, jf. § 11.
- 5) Afgørelser om afvisning af ansøgninger om opholdstilladelse efter § 9, stk. 21, § 9 c, stk. 6, og § 9 f, stk. 9, jf. nr. 1 og 2, samt afgørelser om afvisning af en ansøgning om opholdstilladelse, jf. § 47 b.
- 6) Afgørelser om udvisning efter § 25, nr. 2, og §§ 25 a og 25 b.
- 7) Afgørelser om afvisning efter § 28.
- 8) Afgørelser om fastsættelse af alder i forbindelse med en ansøgning om opholdstilladelse efter § 9 eller § 9 c, stk. 1, som følge af en familiemæssig tilknytning til en herboende person.
- 9) Afgørelser om lovligt forfald, jf. § 9, stk. 32.
- 10) Afgørelser om ophævelse af indrejseforbud, jf. § 32, stk. 7 og 9.

permits issued under section 9b and decisions under section 33(4), are made by the Minister of Immigration, Integration and Housing.

Section 46a (1)

(1) Apart from the decisions mentioned in section 9g(1), second sentence, and section 9g(3), section 9h(8), first sentence, section 9h(9), first sentence, cf. subsection (5), first sentence, cf. subsection 1, section 11(10), section 29c(1), section 32a, section 33, section 42a(7), third sentence, section 42a(8), first sentence and second sentence and subsection (10), section 42b(1), (3) and (7) to (9), section 42d(2), section 46e, section 52b(1) and (3), section 53a and section 53b, appeal against decisions made by the Danish Immigration Service lies to the Minister of Immigration, Integration and Housing. No appeal lies against decisions made by the Danish Immigration Service under sections 42k and 42l as regards the geographical location of the dwelling.

Section 46a (5)

The Minister of Immigration, Integration and Housing may make decisions on and lay down more detailed rules for the examination by the Danish Immigration Service of cases falling within subsections (1) and (3) and section 46(1), and the examination by the Agency for International Recruitment and Integration of cases falling within subsection (2), and section 46(2).

Section 53a (1)

For the Refugees Appeals Board, complaints may be brought against decisions made by the Immigration Service on the following questions, cf. section 53b (1):

Section 52b (1)

For the Immigration Appeals Board, complaints may be brought against the following decisions made by the Immigration

- 11) Afgørelser om afslag på visum og afgørelser om annullering eller inddragelse af et allerede meddelt visum efter §§ 4-4 c, hvor Udlændingestyrelsen har truffet afgørelse som 1. instans.
- 12) Afgørelser om betaling af gebyrer efter § 9 h, stk. 1, nr. 1-3, 10, 11, 14 og 15.
- 13) Afgørelser om identitetsfastlæggelse, tilbagerejsetilladelse og laissez-passer, medmindre udlændingen tidligere har været asylansøger, har en verserende asylansøgning under behandling eller ansøger om asyl, inden Udlændingenævnet træffer afgørelse.
- 14) Afgørelser efter § 42 a, stk. 11-13.
- 15) Afgørelser om fremmedpas.
- 16) Afgørelser efter § 21 b, medmindre udlændingen er meddelt opholdstilladelse efter udlændingelovens § 7 eller § 8, stk. 1 eller 2.
- 17) Afslag på sletning af den liste, der er nævnt i § 29 c, stk. 1, i forbindelse med genoptagelse efter § 29 c, stk. 5.

§ 53 b, stk. 3

Udlændingestyrelsen underretter Flygtningenævnet om afgørelser, som ikke har kunnet indbringes for nævnet, fordi Udlændingestyrelsen har truffet bestemmelse herom efter stk. 1. Flygtningenævnet kan bestemme, at bestemte grupper af sager skal kunne indbringes for nævnet.

§ 56, stk. 1:

Flygtningenævnets formand eller den, formanden bemyndiger dertil, henviser en sag til behandling efter § 53, stk. 6 eller 8-14.

LBK nr 144 af 03/02/2017

Service:

- 1) Refusal of applications for residence permit pursuant to sections 9, 9 d, 9 e and 9 f.
- 2) Refusal of applications for residence permit pursuant to section 9c (1).
- 3) Refusal of applications for extension of residence permit pursuant to sections 9, 9c (1), 9d, 9e and 9f, cf. subsection 1, sentences 1 and 2, including decisions regarding lawful decay, cf. section 9f (6), and decisions regarding forfeiture of such residence permits, cf. sections 11 (2) and 19.
- 4) Refusal of applications for time limitless residence permit, cf. section 11.
- 5) Decisions regarding refusal of applications for residence permit pursuant to sections 9 (21), 9c (6) and 9f (9), first second sentence, and decisions regarding refusal of an application for residence permit, cf. section 47b. "
- 6) Decisions concerning deportation pursuant to section 25, no. 2, and sections 25 a and 25 b.
- 7) Decisions concerning refusal pursuant to section 28.
- 8) Decisions on the determination of age in connection with an application for a residence permit pursuant to section 9 or section 9 c (1), as a result of a family relationship with a resident.
- 9) Decisions regarding lawful decay, cf. section 9 (32).
- 10) Decisions concerning the abolition of entry ban, cf. section 32 (7) and (9).
- 11) Decisions on refusal of visa and decisions on cancellation or withdrawal of an already issued visa pursuant to sections 4-4 c, where the Immigration Service has made a decision as the first instance.
- 12) Decisions on payment of fees pursuant to section 9h (1), no. 1 to 3, 10, 11, 14 and 15.

§ 1

Kommunalbestyrelsen kan træffe beslutning om, at kommunen opretter og driver et særligt tilbud om grundskoleundervisning til tosprogede børn og unge.

Stk. 2. Kommunalbestyrelsen fastlægger mål og rammer for det særlige tilbuds grundskoleundervisning, herunder bevillinger og økonomiske rammer, tilbuddets omfang med hensyn til klassetrin, elevtal, specialundervisning og anden specialpædagogisk bistand, undervisning i fritiden, antal skoledage og rammer for klassedannelsen, elevernes undervisningstid og skoledagens længde.

Stk. 3. Kommunalbestyrelsen kan beslutte, at det særlige tilbud omfatter tilbud om optagelse i en fritidsordning.

Stk. 4. Beslutninger efter stk. 1-3 træffes på møder i kommunalbestyrelsen.

§ 3

Kommunalbestyrelsen kan henvise tosprogede børn og unge i den undervisningspligtige alder til et særligt tilbud om grundskoleundervisning efter § 1, stk. 1, hvis det vurderes, at eleverne har et ikke uvæsentligt behov for sprogstøtte i form af undervisning i dansk som andetsprog, og det vurderes at være pædagogisk påkrævet at henvise eleverne til det særlige tilbud.

Stk. 2. Henvisningen efter stk. 1 skal ophøre, når eleverne vurderes at kunne deltage i undervisningen i en almindelig klasse i folkeskolen, og senest efter 2 års forløb.

Stk. 3. En kommunalbestyrelse kan efter overenskomst med en anden kommune henvise elever til undervisning efter stk. 1 ved et tilbud om særlig grundskoleundervisning i den anden kommune.

13) Decisions on identification, resettlement allowance and laissez-passer, unless the immigrant has previously been an asylum seeker, has a pending asylum application under consideration or applying for asylum before the Immigration Appeals Board make a decision.

14) Decisions pursuant to section 42a (11) to (13)

15) Decisions on alien's passport

16) Decisions pursuant to section 21b, unless the alien has been granted a residence permit pursuant to section 7 or section 8 (1) or (2) of the Danish Aliens Act.

17) Rejection of deletion of the list mentioned in section 29c, paragraph. 1, in connection with resumption pursuant to section 29c, subsection 5.

Section 53 b (3):

(3) The Danish Immigration Service informs the Refugee Appeals Board about the decisions which have not been appealed to the Board because the Danish Immigration Service has so resolved under subsection (1). The Refugee Appeals Board may resolve that it must be possible to appeal certain groups of cases to the Board.

Section 56 (1)

The chairman of the Refugee Appeals Board or a person authorised by the chairman shall refer a case to be considered under section 53(6) or (8) to (14).

The Executive Order no. 144 af 03/02/2017

Section 1

(1) The municipal council can decide that the municipality should establish and run a special offer of primary school tuition for bilingual children and youth.

(2) The municipal council determines purpose and framework of the special offers' primary

**Bekendtgørelse 2017-01-30 nr. 110
om adgang til bacheloruddannelser ved
universiteterne**

(bacheloradgangsbekendtgørelsen)

§ 2

Adgang til en bacheloruddannelse forudsætter en gymnasial eksamen, opfyldelse af specifikke adgangskrav, samt opfyldelse af eventuelle karakterkrav.

§ 3

Ved en gymnasial eksamen forstås i denne bekendtgørelse:

6) Færøsk studentereksamen, Grønlands gymnasiale Uddannelse, færøsk højere forberedelseksamen, færøsk højere handelseksamen, den erhvervsgymnasiale uddannelse til højere handelseksamen fra Grønland, færøsk højere teknisk eksamen, den erhvervsgymnasiale uddannelse til højere teknisk eksamen fra Grønland og eksamen fra Duborg-Skolen og A. P. Møller Skolen.

8) Dansk/Fransk Baccalauréat (DFB), Europæisk Baccalauréat (EB), International Baccalaureate (IB), Option Internationale du Baccalauréat (OIB) og dansk-tysk studentereksamen (DIAP)

§ 4

Ved specifikke adgangskrav forstås i denne bekendtgørelse bestemte gymnasiale fag på henholdsvis A-, B- eller C-niveau, jf. reglerne for gymnasial uddannelse eller for erhvervsuddannelse.

§ 14

Ansøgning om optagelse gennem kvote 1 og 2 sker digitalt ved brug af optagelsesportalen www.optagelse.dk, med mindre universitetet har tilbudt, at ansøgningen kan indgives på anden måde, jf. bekendtgørelse om digital kommunikation ved ansøgning om optagelse på videregående uddannelse.

Stk. 4. Universitetet kan fastsætte regler om, at

school tuition, including authorisation and the economic framework, the offers' scope regarding curricula, number of pupils, special needs education offers and other special needs assistance, extra curriculum tuition, number of school days, framework for formation of classes, the tuition hours and the length of the school day.

(3) The municipal council can decide that the special offer shall also include an option of after school care.

(4) A decision pursuant to subsection (1) to (3) is made at municipal council meetings.

Section 3

(1) The municipal council can refer bilingual children and youth of school age to a special offer primary school tuition see section 1(1) if it assesses that the pupil has a significant need for linguistic assistance in the form of education in Danish as a secondary language, and it is assessed that it is.

(2) A referral under subsection (1) must subsidize when the pupil is regarded able to participate in regular tuition in the Danish public school and at the latest after two years.

(3) A municipal council can upon agreement with another municipality refer pupils to special offer primary school tuition under subsection (1) in another municipality.

Consolidated Act of Admission to Bachelor Degrees at Universities no. 110 of the 30th of January 2017

(2)

Admission to a bachelor-education requires a high school degree, compliance of specific demands as well as eventual demands to grades/GPA.

(3)

eksamensbeviser m.v., der fremsendes ved ansøgning om optagelse og indskrivning på bacheloruddannelse, og som ikke er affattet på dansk, et andet nordisk sprog eller et eller flere andre sprog, som universitetet behersker, skal være vedlagt en oversættelse til ét af disse sprog. Regler om krav til oversættelse af eksamensbeviser m.v. offentliggøres på universitetets hjemmeside.

Lovbekendtgørelse 2014-06-01 nr. 579 om vurdering af udenlandske uddannelseskvalifikationer m.v

§ 1

Loven har til formål at sikre adgang til at få udenlandske uddannelseskvalifikationer vurderet med henblik på at lette tilgangen til det danske arbejdsmarked og til det danske uddannelsessystem samt sikre bedre mulighed for at få godskrevet danske og udenlandske uddannelseskvalifikationer i en dansk uddannelse.

§ 2

Ret til at få foretaget en vurdering har

1. alle, der har udenlandske uddannelseskvalifikationer, jf. dog stk. 2 og 3,

§ 3

Vurderingen tager udgangspunkt i en sammenligning af de slutkompetencer, som henholdsvis de udenlandske og de danske uddannelseskvalifikationer er udtryk for.

Stk. 2. Vurderingen efter stk. 1 omfatter

1. en vurdering af afsluttede udenlandske uddannelsers niveau i forhold til niveauer i den danske uddannelsesstruktur eller

2. en vurdering af udenlandske uddannelseskvalifikationer i forhold til en bestemt dansk uddannelse.

In this Consolidated Act a high school degree will be interpreted as:

6) Faroese university entrance examination, Greenlandic high school education, Faroese higher preparatory examination, Faroese higher commercial degree, the business high school education for a higher commercial degree from Greenland, Faroese higher technical examination, business high school education for higher technical examination from Greenland and degrees from Duborg-Skolen and A. P. Møller Skolen.

8) Danish/French Baccalauréat (DFB), European Baccalauréat (EB), International Baccalauréat (IB), Option Internationale du Baccalauréat (OIB) and Danish-German university entrance examination (DIAP).

Section 4 Specific admission requirements are interpreted as specific high school subject at respectively level A, B or C in this Consolidated Act cf. regulations for high school education or regulations for business education.

(14)

Application for admission via Quota 1 and 2 is performed digitally at www.optagelse.dk unless the university is offering a different type of application process cf. the Consolidated Act on Digital Application for Admission to Higher Education.

(4)The university can determine regulations concerning diplomata etc. that have been sent to apply for admission and enrolment to bachelor-education and that are not drafted in Danish, one other Nordic language or one or more languages that the university is capable of understanding, so that those need to enclose a translation to above mentioned languages. Regulations regarding requirements for translation of diplomata etc. are published on the university's website.

Bekendtgørelse 2011-05-12 nr. 474 om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen)

§ 21

EU-statsborgere med ret til tidsbegrænset ophold efter denne bekendtgørelse skal ansøge om registreringsbevis senest 3 måneder efter indreisen, hvis opholdet forventes at vare mere end 3 måneder. EU-statsborgere med ret til ophold efter § 3, stk. 4, eller § 8, stk. 3, skal dog ikke ansøge om registreringsbevis.

Stk. 2. Registreringsbeviset udstedes ikke for noget bestemt tidsrum. Hvis en EU-statsborger ændrer opholdsgrundlag, skal den pågældende ansøge om nyt registreringsbevis.

§ 22

Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 3, stk. 1-3, kan betinges af, at den pågældende foreviser gyldigt identitetskort eller pas og enten fremlægger bevis for at udøve selvstændig erhvervsvirksomhed her i landet eller fremlægger en bekræftelse fra en arbejdsgiver eller et ansættelsesbrev som dokumentation for at have lønnet beskæftigelse her i landet.

Stk. 2. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 4, stk. 1, kan betinges af, at den pågældende foreviser gyldigt identitetskort eller pas og fremlægger dokumentation for at have fast beskæftigelse hos en tjenesteyder, der er etableret i EU, og for sit arbejde her i landet.

Stk. 3. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 5, kan betinges af, at den pågældende foreviser gyldigt identitetskort eller pas og fremlægger dokumentation for at være tilmeldt en institution som nævnt i § 5, stk. 1, erklæring om eller dokumentation for at råde over sådanne

Consolidated Act on assessing foreign Educational Qualifications no. 579 of the 6th of January 2014

Section (1) This law aims at ensuring admission to getting foreign educational qualifications evaluated with intend to ease access to the danish job market and education system as well as ensuring a better opportunity to get acceptance of a foreign diploma and educational qualifications in danish education.

(2) The right to have an assessment descend to

1. Everyone who has foreign educational qualifications, cf. but paragraphs 2 and 3,

(3) The estimate originates in a comparison of real proficiencies, which has its basis in foreign and danish educational qualifications.

(3)(2)

The estimate in **(3)(1)** consists of:

(3)(2)(1)

An estimate of the proficiency of a completed foreign education in comparison to the proficiency of in the danish educational system

Or

(3)(2)(2)

An estimate of the proficiency of a completed foreign education in comparison to the proficiency of a particular education in the danish educational system.

The Executive Order no. 474 of 05 December 2011 on EU residence

Section 21

(1) EU nationals with a right of time-limited residence under this Order shall apply for a

indtægter eller midler til sit underhold, at den pågældende ikke kan antages at ville falde det offentlige til byrde, samt dokumentation for at være dækket af en sygeforsikring som nævnt i § 5, stk. 2.

Stk. 4. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 6, kan betinges af, at den pågældende foreviser gyldigt identitetskort eller pas og fremlægger dokumentation for at råde over sådanne indtægter eller midler til sit underhold, at den pågældende ikke kan antages at ville falde det offentlige til byrde, og dokumentation for at være dækket af en sygeforsikring som nævnt i § 6, stk. 2. Ved bedømmelsen af, hvilke indtægter og midler der må anses som tilstrækkelige, skal der tages hensyn til EU-statsborgerens personlige situation. Kravet vil altid være opfyldt, hvis EU-statsborgeren råder over indtægter eller midler, der svarer til summen af de ydelser, som den pågældende ville kunne modtage efter § 25, stk. 12, og § 34 i lov om aktiv socialpolitik.

Stk. 5. Udstedelse af registreringsbevis efter stk. 1-4 kan nægtes, hvis hensyn til den offentlige orden, sikkerhed eller sundhed tilsiger dette, eller hvis der er tale om misbrug af rettigheder eller om svig.

§ 23

Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 8, stk. 1, og §§ 9-12, kan betinges af, at den pågældende foreviser gyldigt identitetskort eller pas, registreringsbevis eller opholdskort for den hovedperson, den pågældende slutter sig til eller ledsager, og dokumentation for, at der består den relevante familiemæssige tilknytning til hovedpersonen. Er der tale om familiemæssig tilknytning på baggrund af ægteskab, registreret partnerskab eller fast

registration certificate within three months of entry if the residence is expected to last for longer than three months. EU citizens entitled to stay pursuant to section 3(4), or section 8 (3), however, shall not apply for a registration certificate.

(2) The registration certificate is issued for an unspecified period. An EU national who changes his basis of residence must apply for a new registration certificate.

Section 22

(1) Issue of registration certificate to an EU citizen covered by section 3 1-3 may be conditional upon the person presenting a valid identity card or passport and providing proof of self-employment in the country or providing confirmation from an employer or letter of employment as proof of having paid employment in that country.

(2) Issue of registration certificate to an EU citizen covered by section 4 1 may be conditional upon the person providing valid ID cards or passports and providing documentation for the permanent employment of a service provider established in the EU and for his work in the country.

(3) Issue of registration certificate to a EU citizen covered by section 5 may be conditional upon the person providing a valid identity card or passport and submitting documentation to be enrolled in an institution as mentioned in section 5 1, statement or documentation to possess such income or funds for his maintenance that the person concerned can not be expected to fall publicly burdened, as well as documentation to be covered by a health insurance as mentioned in section 5(2).

(4) Issue of a registration certificate to an EU citizen covered by section 6 may be conditional upon the person providing a valid

samlivsforhold, er udstedelsen af registreringsbeviset betinget af, at det pågældende familiemedlem og hovedpersonen erklærer, at formålet med ægteskabets eller det registrerede partnerskabs indgåelse eller samlivets etablering ikke alene er at opnå et selvstændigt opholdsgrundlag for den pågældende. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 8, stk. 1, og §§ 9-12, er betinget af, at den hovedperson, den pågældende slutter sig til eller ledsager, erklærer at have etableret et reelt og faktisk ophold i Danmark. Hvis der er grunde til at antage, at der er tale om misbrug af rettigheder, skal der forevises dokumentation for, at hovedpersonen har etableret et reelt og faktisk ophold i Danmark.

Stk. 2. Udstedelse af registreringsbevis efter stk. 1 kan nægtes, hvis hensyn til den offentlige orden, sikkerhed eller sundhed tilsiger dette, eller hvis der er tale om misbrug af rettigheder eller om svig.

Stk. 3. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 10, jf. § 2, stk. 1, nr. 1, 2 og 6, kan betinges af, at hovedpersonen fremlægger erklæring om eller dokumentation for at råde over sådanne indtægter eller midler til sit og EU-statsborgerens underhold, at de pågældende ikke kan antages at ville falde det offentlige til byrde.

Stk. 4. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 8, stk. 1, eller §§ 9-10, jf. § 2, stk. 1, nr. 3-5, § 11 eller § 12, jf. § 2, stk. 1, nr. 3-5, kan betinges af, at hovedpersonen fremlægger dokumentation for at råde over sådanne indtægter eller midler til sit og familiemedlemmets underhold, at de pågældende ikke kan antages at ville falde det offentlige til byrde. Ved bedømmelsen heraf skal der tages hensyn til hovedpersonens og

identity card or passport and submitting documentation to possess such income or funds for his maintenance that he / she can not be expected to Would drop the public to burden, and documentation for being covered by health insurance as mentioned in section 6 2. In assessing which revenue and funds may be considered sufficient, account must be taken of the personal situation of the EU citizen. The requirement will always be fulfilled if the EU citizen has income or funds corresponding to the sum of benefits that the person concerned could receive pursuant to section 25 12 and 34 of the Act on Active Social Policy.

(5) Issue of registration certificate pursuant to subsection 1-4 may be denied, in the interests of public order, safety or health, or in the case of abuse of rights or fraud.

Section 23

(1) It may be made a condition for the issue of a registration certificate to an EU national falling within sections 8 to 12 of this Order that he presents a valid identity card or passport, a registration certificate or a residence card for the principal person whom the EU national joins or accompanies, and evidence of the existence of the relevant family relationship with the principal person. In case of family ties on the basis of marriage, registered partnership or regular cohabitation, it is a condition for the issue of the registration certificate that the family member in question and the principal person declare that the purpose of contracting the marriage or the registered partnership or establishing the cohabitation was not solely to obtain an independent basis of residence for the person in question. It is a condition for the issue of a registration certificate to an EU national falling within sections 8 to 12 of this Order

dennes families personlige situation. Kravet vil altid være opfyldt, hvis hovedpersonen og familiemedlemmet råder over indtægter eller midler, der svarer til summen af de ydelser, som de pågældende ville kunne modtage efter § 25, stk. 12, og § 34 i lov om aktiv socialpolitik. Stk. 5. Udstedelse af registreringsbevis til en EU-statsborger, der er omfattet af § 8, stk. 1, eller §§ 9-12, jf. § 2, stk. 1, nr. 6, kan betinges af, at hovedpersonen fremlægger dokumentation for, at alvorlige helbredsmæssige grunde gør det absolut nødvendigt, at hovedpersonen personligt plejer den pågældende.

§ 24

En tredjelandstatsborger, der har ret til tidsbegrænset ophold efter § 4, stk. 2, skal ansøge om opholdskort senest 3 måneder efter indreisen, hvis opholdet forventes at vare mere end 3 måneder. Opholdskortet efter 1. pkt. benævnes »Opholdskort for udstationeret tredjelandstatsborger« og udstedes for varigheden af den pågældendes påtænkte ophold. Hvis tredjelandstatsborgeren ændrer opholdsgrundlag, skal den pågældende ansøge om nyt opholdskort.

§ 25

Familiemedlemmer, der er tredjelandstatsborgere og har ret til tidsbegrænset ophold efter denne bekendtgørelse, skal ansøge om opholdskort senest 3 måneder efter indreisen, hvis opholdet forventes at vare mere end 3 måneder. Tredjelandstatsborgere med ret til ophold efter § 8, stk. 3, skal dog ikke ansøge om

that the principal person whom the said person joins or accompanies declares that he has established genuine and effective residence in Denmark. If there are reasons for a presumption of abuse of rights, evidence must be submitted to prove that the principal person has established genuine and effective residence in Denmark.

(2) An application for a registration certificate under subsection (1) hereof may be refused on grounds of public policy, public security or public health, or in case of abuse of rights or fraud.

(3) It may be made a condition for the issue of a registration certificate to an EU national falling within section 10, cf. section 2(1)(i), (ii) and (vi), of this Order that the principal person submits a declaration of having such income or means at his disposal for the support of himself and the EU national that the persons in question are presumed not to become a burden on the public authorities.

(4) It may be made a condition for the issue of a registration certificate to an EU national falling within sections 8 to 10, cf. section 2(1)(iii) to (v), section 11 or section 12, cf. section 2(1)(iii) to (v), of this Order that the principal person submits evidence of having such income or means at his disposal for the support of himself and the family member that the persons in question are presumed not to become a burden on the public authorities. In the assessment thereof, the personal situation of the principal person and his family must be taken into account. The condition is always satisfied if the principal person and the family member have income or means at their disposal corresponding to the sum of the benefits for which they would be eligible under section 25(12) and section 34 of the Act on an Active Social Policy.

opholdskort. Opholdskortet efter 1. pkt. benævnes »Opholdskort for familiemedlem til en unionsborger« og udstedes for 5 år fra udstedelsestidspunktet eller for varigheden af hovedpersonens påtænkte ophold, jf. dog 3. pkt. Opholdskortet efter 1. pkt. til en tredjelandstatsborger, der har ret til tidsbegrænset ophold som familiemedlem til en tredjelandstatsborger, der er omfattet af § 4, stk. 2, benævnes »Opholdskort for familiemedlem til en tredjelandstatsborger« og udstedes for varigheden af hovedpersonens påtænkte ophold. Hvis et familiemedlem, der er tredjelandstatsborger, ændrer opholdsgrundlag, skal den pågældende ansøge om nyt opholdskort.

§ 26

Udstedelse af opholdskort til en tredjelandstatsborger, der er omfattet af § 4, stk. 2, kan betinges af, at den pågældende foreviser gyldigt pas og fremlægger dokumentation for at have fast beskæftigelse hos en tjenesteyder, der er etableret i EU, dokumentation for sit arbejde her i landet, dokumentation for sin ret til ophold og arbejde i det land, hvori tjenesteyderen er etableret, og dokumentation for sin mulighed for at vende tilbage til hjemlandet eller til det land, hvori tjenesteyderen er etableret, efter levering af tjenesteydelsen. Udstedelse af opholdskort efter 1. pkt. kan nægtes, hvis hensyn til den offentlige orden, sikkerhed eller sundhed tilsiger dette, eller hvis der er tale om misbrug af rettigheder eller om svig.

Stk. 2. Udstedelse af opholdskort til en tredjelandstatsborger, der er omfattet af § 8, stk. 1, eller §§ 9-12, kan betinges af, at den pågældende foreviser gyldigt pas, registreringsbevis eller opholdskort for den

(5) It may be made a condition for the issue of a registration certificate to an EU national falling within sections 8 to 12, cf. section 2(1)(vi), of this Order that the principal person submits evidence proving that serious health grounds strictly require the personal care of the EU national by the principal person.

Section 24

A third-country national who is entitled to a permanent stay pursuant to section 4 2, must apply for a residence card within 3 months of entry if the stay is expected to last more than 3 months. The residence card after 1st sentence. Referred to as 'Residence Card for posted third-country national' and issued for the duration of his intended stay. If the third-country national changes residence, he or she must apply for a new residence card.

Section 25

Family members who are third-country nationals and have a right of time-limited residence under this Order shall apply for a residence card within three months of entry if their residence is expected to last for longer than three months. The residence card under the first sentence hereof is referred to as a 'Residence card of a family member of a Union citizen' and is issued for five years from the date of issue or for the envisaged period of residence of the principal person, but see the third sentence hereof. The residence card under the first sentence hereof for a third-country national with a right of time-limited residence as a family member of a third-country national falling within section 4(2) of this Order is referred to as a 'Residence card of a family member of a third-country national' and is issued for the envisaged period of

person, den pågældende slutter sig til eller ledsager, og dokumentation for, at der består den relevante familiemæssige tilknytning. Er der tale om familiemæssig tilknytning på baggrund af ægteskab, registreret partnerskab eller fast samlivsforhold, er udstedelsen af opholdskortet betinget af, at det pågældende familiemedlem og hovedpersonen erklærer, at formålet med ægteskabets eller det registrerede partnerskabs indgåelse eller samlivets etablering ikke alene er at opnå et selvstændigt opholdsgrundlag for den pågældende. Udstedelse af opholdskort til en tredjelandstatsborger, der er omfattet af § 8, stk. 1, eller §§ 9-12, er betinget af, at den hovedperson, den pågældende slutter sig til eller ledsager, erklærer at have etableret et reelt og faktisk ophold i Danmark. Hvis der er grunde til at antage, at der er tale om misbrug af rettigheder, skal der forevises dokumentation for, at hovedpersonen har etableret et reelt og faktisk ophold i Danmark.

Stk. 3. Udstedelse af opholdskort efter stk. 2 kan nægtes, hvis hensyn til den offentlige orden, sikkerhed eller sundhed tilsiger dette, eller hvis der er tale om misbrug af rettigheder eller om svig.

Stk. 4. Udstedelse af opholdskort til en tredjelandstatsborger, der er omfattet af § 10, jf. § 2, stk. 1, nr. 1, 2 og 6, kan betinges af, at hovedpersonen fremlægger erklæring om eller dokumentation for at råde over sådanne indtægter eller midler til sit og tredjelandstatsborgerens underhold, at de pågældende ikke kan antages at ville falde det offentlige til byrde.

Stk. 5. Udstedelse af opholdskort til en tredjelandstatsborger, der er omfattet af § 8, stk. 1, eller §§ 9-10, jf. § 2, stk. 1, nr. 3-5, § 11 eller § 12, jf. § 2, stk. 1, nr. 3-5, kan betinges af, at hovedpersonen fremlægger dokumentation

of the principal person. A family member who is a third-country national and changes his basis of residence must apply for a new residence card.

Section 26

1) Issuance of a residence card to a third-country national who is covered by section 4 2 may be conditional upon the person providing valid passports and providing documentation for the permanent employment of a service provider established in the EU, documentation of his work in the country, proof of his right of residence and work in the country where he / In which the service provider is established and documentation of his or her ability to return to the home country or to the country in which the service provider is established after delivery of the service. Issuance of residence card after 1st sentence. May be denied for reasons of public order, safety or health, or in the case of abuse of rights or fraud.

(2) Issuance of a residence card to a third-country national who is covered by section 8 1, or sections 9-12 may be conditional upon the person providing a valid passport, registration certificate or residence card of the person to which he or she joins or accompanies it, and proof that the relevant family relationship exists. In the case of family affiliation based on marriage, registered partnership or permanent partnership, the issue of the residence card is conditional upon the family member and the protagonist declaring that the purpose of the marriage or the registered partnership's establishment or cohabitation is not only to achieve a Independent residence for the person concerned. Issuance of a residence card to a third-country national who is

for at råde over sådanne indtægter eller midler til sit og familiemedlemmets underhold, at de pågældende ikke kan antages at ville falde det offentlige til byrde. Ved bedømmelsen heraf skal der tages hensyn til hovedpersonens og dennes families personlige situation. Kravet vil altid være opfyldt, hvis hovedpersonen og familiemedlemmet råder over indtægter eller midler, der svarer til summen af de ydelser, som de pågældende ville kunne modtage efter § 25, stk. 12, og § 34 i lov om aktiv socialpolitik.

Stk. 6. Udstedelse af opholdskort til en tredjelandstatsborger, der er omfattet af § 8, stk. 1, eller §§ 9-12, jf. § 2, stk. 1, nr. 6, kan betinges af, at hovedpersonen fremlægger dokumentation for, at alvorlige helbredsmæssige grunde gør det absolut nødvendigt, at hovedpersonen personligt plejer den pågældende.

§ 27

Indtægter og midler som nævnt i § 22, stk. 4, 3. pkt., § 23, stk. 4, 3. pkt., og § 26, stk. 5, 3. pkt., opgøres uden fradrag af skat, arbejdsmarkedsbidrag, ATP-bidrag og eventuelle andre kollektive pensionsbidrag. Tilsvarende gælder for beregningen af ydelser efter § 25, stk. 12, og § 34 i lov om aktiv socialpolitik som nævnt i § 22, stk. 4, 3. pkt., § 23, stk. 4, 3. pkt., og § 26, stk. 5, 3. pkt. I det omfang indtægter er finansieret ved danske offentlige tilskud, medregnes de ikke ved opgørelsen af den pågældendes indtægtsforhold, medmindre der er tale om arbejdsløshedsdagpenge, som den pågældende godtger at være berettiget til at modtage her i landet, eller offentlige ydelser, der er udtryk for en tilknytning til arbejdsmarkedet.

Stk. 2. Kommunalbestyrelsen i den kommune, hvor udlændingen bor eller opholder sig, afgiver efter anmodning fra den myndighed,

covered by section 8 1, or sections 9-12, is conditional upon the principal person to whom he or she joins declares to have established a real and actual residence in Denmark. If there are grounds for believing that there is an abuse of rights, documentation must be provided that the protagonist has established a real and effective stay in Denmark.

(3) Issuance of residence card pursuant to subsection 2 may be refused, in the interests of public order, safety or health, this or if there is abuse of rights or fraud.

(4) Issuance of a residence card to a third-country national who is covered by section 10, cf. section 2 1, Nos. 1, 2 and 6 may be conditional upon the protagonist providing a declaration or documentation for the disposal of such income or funds for the maintenance of his or her third-country national that the person concerned can not be expected to burden the public authorities.

(5) Issuance of a residence card to a third-country national who is covered by section 8 1, or sections 9-10, cf. section 2 1, No. 3-5, § 11 or section 12, cf. section 2 1, No. 3-5 may be conditional upon the protagonist submitting documentation to possess such income or funds for his or her family's maintenance that the person concerned can not be expected to fall publicly at burden. In assessing this, account must be taken of the personal situation of the main character and his family. The requirement will always be fulfilled if the protagonist and the family member have income or funds corresponding to the sum of the benefits that they could receive pursuant to section 25 12 and 34 of the Act on Active Social Policy.

(6) Issuance of a residence card to a third-country national who is covered by section 8

der efter § 33 skal træffe afgørelse i sagen, en udtalelse om, hvorvidt en person, der er omfattet af § 22, stk. 4, § 23, stk. 4, eller § 26, stk. 5, råder over indtægter eller midler, der mindst svarer til summen af de ydelser, som den pågældende ville kunne modtage efter § 25, stk. 12, og § 34 i lov om aktiv socialpolitik. Der anmodes normalt kun om en udtalelse efter 1. pkt., hvis det ikke kan udelukkes, at den pågældende ville kunne modtage ydelser efter § 34 i lov om aktiv socialpolitik.

Tidsubegrænset ophold:

§ 28

Der udstedes efter ansøgning bevis for ret til tidsubegrænset ophold til en EU-statsborger, der opfylder betingelserne herfor efter denne bekendtgørelse.

Stk. 2. Til et barn under fem år, der alene på grund af sin alder ikke er omfattet af stk. 1, kan der efter ansøgning udstedes bevis for ret til tidsubegrænset ophold, når et sådant bevis udstedes til forældremyndighedens indehaver.

§ 29:

Der udstedes efter ansøgning tidsubegrænset opholdskort til en tredjelandsstatsborger, der opfylder betingelserne for tidsubegrænset ophold efter denne bekendtgørelse. Det tidsubegrænsede opholdskort fornyes automatisk hvert 10. år.

Stk. 2. Ansøgning om tidsubegrænset opholdskort efter stk. 1 skal indgives, før den pågældendes opholdskort udstedt efter §§ 24 eller 25 udløber.

Stk. 3. Til et barn under fem år, der alene på grund af sin alder ikke er omfattet af stk. 1, kan

1, or sections 9-12, cf. section 2 1, No. 6, may be conditional upon the protagonist providing evidence that serious health reasons make it essential that the protagonist personally cares for the person concerned.

Section 27:

(1) Income and means as referred to in section 22(4), third sentence, section 23(4), third sentence, and section 26(5), third sentence, of this Order must be calculated without any deduction of taxes, labour market contributions, contributions to the Danish Labour Market Supplementary Pension Scheme (ATP), the Special Pension Scheme (SP) and any other collective pension contributions. The same applies to the calculation of benefits under section 25(12) and section 34 of the Act on an Active Social Policy as referred to in section 22(4), third sentence, section 23(4), third sentence, and section 26(5), third sentence, of this Order. To the extent that the income is financed by Danish public funds, it is not included in the calculation of the income of the person in question unless it is unemployment benefits and the person in question proves his eligibility for such benefits in Denmark, or public benefits reflecting ties with the labour market.

(2) At the request of the authority which is to decide the application under section 33 of this Order, the local council of the municipality in which the alien lives or resides shall issue an opinion as to whether a person falling within section 22(4), 23(4) or 26(5) of this Order has income or means at his disposal corresponding at least to the sum of the benefits for which he would be eligible under section 25(12) and section 34 of the Act on an Active Social Policy. An opinion under the first sentence hereof is normally

der efter ansøgning udstedes tidsubegrænset opholdskort, når et sådant tidsubegrænset opholdskort udstedes til forældremyndighedens indehaver.

Bekendtgørelse 2015-20-03 nr. 376 om udlændinges adgang til Danmark på grundlag af visum (Visumbekendtgørelsen)

§ 1

En udlænding skal have sit pas eller andet rejsedokument viseret forud for indrejse her i landet, medmindre den pågældende er fritaget for visum, jf. § 2.

§ 2

Følgende udlændinge er fritaget for visum:

5) Udlændinge med opholdstilladelse eller langtidsvisum i et andet Schengenland, der efter Schengenkonventionens artikel 21, stk. 1 eller 2, er fritaget for visum for indrejsen.

6) Udlændinge, der efter Den Europæiske Unions regler er fritaget for visum for indrejsen.

§ 7

Ansøgning om visum kan kun tages under behandling, hvis ansøgningen er antagelig i visumkodeksens forstand, jf. stk. 2-7.

Stk. 2. Ansøgningen kan tidligst indgives 3 måneder inden starten på det forventede ophold. Ansøgningen indgives efter udløbet af et eventuelt tidligere udstedt visum. Dog kan ansøgningen indgives inden udløbet af et tidligere udstedt visum, hvis det tidligere udstedte visum gælder for flere indrejser og har en gyldighedsperiode på mindst 6 måneder.

Stk. 3. Ansøgningen indgives ved brug af ansøgningsskemaet, der er optrykt som bilag til visumkodeksen.

Stk. 4. Udlændingen skal fremlægge et gyldigt pas eller andet rejsedokument.

only requested if it is not indisputable whether the persons in question would be eligible for benefits under section 34 of the Act on an Active Social Policy.

Permanent residence:

Section 28

(1) Upon application, proof of a right of permanent residence is issued to an EU national who satisfies the conditions therefor under this Order.

(2) Upon application, proof of a right of permanent residence may be issued to a child under five years of age who does not fall within subsection (1) hereof solely due to his age where such proof is issued to the person having custody of the child.

Section 29:

(1) Upon application, a permanent residence card is issued to a third-country national who satisfies the conditions for permanent residence under this Order. The permanent residence card is renewed automatically every ten years.

(2) An application for a permanent residence card under subsection (1) hereof must be submitted before the applicant's residence card issued under section 24 or 25 of this Order expires.

(3) Upon application, a permanent residence card may be issued to a child under five years of age who does not fall within subsection (1) hereof solely due to his age where such permanent residence card is issued to the person having custody of the child.

Executive Order No. 376 of 20 March 2015 on Aliens' Access to Denmark on the Basis of a Visa (The Visa Executive Order)

Section 1

Aliens shall have their passport or other travel document endorsed with a visa before

Rejsedokumentet skal, medmindre der er tale om et begrundet hastetilfælde, være gyldigt i mindst tre måneder efter den påtænkte dato for udrejse af Schengenlandene. Rejsedokumentet skal være udstedt inden for de seneste ti år. Rejsedokumentet skal mindst indeholde to tomme sider.

Stk. 5. Et fotografi af udlændingen skal indscannes eller optages i forbindelse med indgivelsen af ansøgningen.

Stk. 6. Udlændingens fingeraftryk skal optages, medmindre udlændingen er fritaget for dette krav, eller der er optaget fingeraftryk af den pågældende i forbindelse med en tidligere visumansøgning inden for de seneste 59 måneder. 1. pkt. finder dog ikke anvendelse ved indgivelse af ansøgning til en repræsentation, hvor Visuminformationssystemet (VIS) ikke er taget i brug.

Stk. 7. Der skal betales visumgebyr, medmindre udlændingen er fritaget herfor efter reglerne i visumkodeksen.

Stk. 8. Stk. 2, stk. 4, 2. og 3. pkt., og stk. 7 finder ikke anvendelse ved ansøgning om visum indgivet af udlændinge omfattet af EU-reglerne, jf. § 9.

Stk. 9. Uanset stk. 2-7 kan en ansøgning undtagelsesvis tages under behandling af humanitære grunde eller af hensyn til nationale interesser.

§ 16

I det omfang bedømmelsen af en visumansøgning beror på myndighedernes vurdering af, om udlændingen har til hensigt at forlade Schengenlandene inden visummets udløb, jf. § 8, stk. 2, nr. 9, lægger myndighederne blandt andet vægt på tilgængelige oplysninger

entering this country, unless they are exempt from visa requirement, see section 2.

Section 2

The following groups of aliens are exempt from visa requirement:

5) Aliens who hold a residence permit or a long-term visa in another Schengen country, and who are exempt from visa requirement under article 21(1) or (2) of the Schengen Convention.

6) Aliens who are exempt from visa requirement under the rules of the European Union.

Section 7

(1) An application for a visa will only be processed if the application is admissible in accordance with the Visa Code, see subsections (2) to (7)

(2) An application shall be submitted no more than 3 months before the start of the intended visit. The application shall be submitted after the expiration of a possible, previously issued visa. However, the application may be submitted before the expiry of a previously issued visa if the previously issued visa is valid for multiple entries and has a validity period of at least 6 months.

(3) An application must be submitted using the application form printed as an annex to the Visa Code.

(4) The alien must submit a valid passport or other travel document. The travel document must – except in justified cases of emergency – be valid

for at least 3 months after the intended date of departure from the Schengen countries. The travel document must have been issued within the previous 10 years. The travel document must contain at least 2 blank pages.

(5) A photograph of the alien must be

om udlændingens situation i hjemlandet, eventuelle tidligere ophold i Danmark eller andre Schengenlande, formålet med det planlagte ophold samt eventuel tilknytning til herboende personer. Myndighederne lægger endvidere vægt på oplysninger om de generelle forhold i udlændingens hjemland samt kendte immigrationsmønstre.

Stk. 2. Udlændingen kan meddeles visum, hvis myndighederne efter en vurdering af oplysningerne nævnt i stk. 1 finder, at udlændingen utvivlsomt har til hensigt at forlade Schengenlandene inden visummets udløb.

Stk. 4. Ved vurderingen af de generelle forhold i udlændingens hjemland og kendte immigrationsmønstre lægger myndighederne i øvrigt vægt på, hvilken af de i bilag 2 anførte hovedgrupper udlændingen tilhører, idet der også kan lægges vægt på regionale forskelle med hensyn til risikoen for ulovlig indvandring.

Europaparlamentet og Rådets Forordning (EF) Nr. 810/2009 af 13. juli 2009 om en fællesskabskodeks for visa (visumkodeks)

Artikel 5

1. Følgende medlemsstater har kompetence til at behandle og træffe beslutning om ansøgning om et ensartet visum:

den medlemsstat, hvis område udgør rejsens (rejsernes) eneste bestemmelsessted, hvis rejsen omfatter mere end et bestemmelsessted, den medlemsstat, hvis område udgør rejsens (rejsernes) væsentligste bestemmelsessted for så vidt angår varighed eller formål med opholdet, eller hvis det væsentligste bestemmelsessted ikke kan fastslås, den medlemsstat, hvis ydre grænser ansøgeren agter at passere ved indrejse på medlemsstaternes område.

scanned or taken in connection with the submission of the application.

(6) The fingerprints of the alien must be taken, unless the alien is exempt from this demand, or fingerprints of the person in question have been taken within the past 59 months in connection with a previous visa application. The first sentence is not to be used on submission of an application to a mission where the Visa Information System (VIS) is not in use.

(7) A fee for the visa application must be paid unless the alien is exempt from this in accordance with the Visa Code.

(8) Subsection (2), subsection (4), second and third sentence, and subsection (7) do not apply to visa applications presented by aliens covered by the EU rules, see section 9.

(9) Irrespective of subsections (2) to (7) an application can be processed for humanitarian reasons or reasons of national interests.

Section 16

(1) Insofar as the assessment of a visa application is based on the evaluation of whether the alien intends to leave the Schengen countries before the expiry of the visa applied for, see section 8(2)(9), the authorities take into account the available information regarding the alien's situation in the home country, possible previous visits to Denmark or other Schengen countries, the purpose of the intended visit, and possible relations to persons living in Denmark. The authorities also attach importance to information about the general conditions in the alien's home country and known immigration patterns.

(2) The alien can be granted a visa if the authorities, based on an evaluation of the information mentioned in subsection (1), find

2. Følgende medlemsstat har kompetence til at behandle og træffe beslutning om en ansøgning om et ensartet visum med henblik på transit:

i tilfælde af transit gennem blot én medlemsstat den pågældende medlemsstat, eller

i tilfælde af transit gennem flere medlemsstater den medlemsstat, hvis ydre grænse ansøgeren agter at passere ved begyndelsen af transitten.

3. Følgende medlemsstat har kompetence til at behandle og træffe beslutning om en ansøgning om et lufthavnstransitvisum:

i tilfælde af transit gennem en enkelt lufthavn den medlemsstat, hvor transitlufthavnen er beliggende, eller

i tilfælde af transit gennem to eller flere lufthavne den medlemsstat, hvor lufthavnen for første transit er beliggende.

4. Medlemsstaterne samarbejder om at forhindre, at der hverken kan ske behandling af eller træffes beslutning om en ansøgning, fordi den medlemsstat, der har kompetence i overensstemmelse med stk. 1, 2 og 3, ikke er til stede eller repræsenteret i det tredjeland, hvor ansøgeren indgiver ansøgningen i overensstemmelse med artikel 6.

Artikel 9

1. Ansøgninger indgives højst tre måneder inden starten på det forventede ophold. Indehavere af et visum til flere indrejser kan indgive ansøgningen inden udløbet af visummet, der er gyldigt i en periode på mindst seks måneder.

Artikel 11

1. Hver enkelt ansøger forelægger et udfyldt og underskrevet ansøgningsskema, jf. bilag I. Personer, der er indskrevet i ansøgerens rejsedokument, forelægger et særskilt ansøgningsskema. Mindreårige forelægger et ansøgningsskema underskrevet af en person, der udøver den endelige eller midlertidige forældremyndighed eller juridisk værgemål.

that there are no doubts as to the alien's intentions to depart the Schengen countries in accordance with an issued visa.

(4) When assessing the general conditions in the alien's home country and known immigration patterns, the authorities attach importance to which of the main groups listed in Annex 2 the alien belongs to, and importance may also be given to regional differences with regard to the risk of illegal immigration.

Regulation (EC) No 810/2009 Of the European Parliament and of The Council of 13 July 2009 establishing a Community Code on Visas (The Visa Code)

Article 5

1. The Member State competent for examining and deciding on an application for a uniform visa shall be:

(a) the Member State whose territory constitutes the sole destination of the visit(s);

(b) if the visit includes more than one destination, the Member State whose territory constitutes the main destination of the visit(s) in terms of the length or purpose of stay; or

(c) if no main destination can be determined, the Member State whose external border the applicant intends to cross in order to enter the territory of the Member States.

2. The Member State competent for examining and deciding on an application for a uniform visa for the purpose of transit shall be:

(a) in the case of transit through only one Member State, the Member State concerned; or

(b) in the case of transit through several Member States, the Member State whose external border the applicant intends to cross to start the transit.

3. The Member State competent for

2. Konsulaterne stiller vederlagsfrit ansøgningskemaet til rådighed og gør det almindeligt og let tilgængeligt for ansøgerne.

3. Ansøgningskemaet forefindes på følgende sprog:

det eller de officielle sprog i den medlemsstat, hvortil der anmodes om visum

værtslandets officielle sprog

det eller de officielle sprog i værtslandet og det

eller de officielle sprog i den medlemsstat, hvortil der anmodes om visum, eller

i tilfælde af repræsentation det eller de officielle sprog i den repræsenterende medlemsstat.

Ud over de sprog, der er omhandlet i litra a), kan ansøgningskemaet foreligge på et andet af Den Europæiske Unions institutioners officielle sprog.

4. Hvis ansøgningskemaet ikke findes på det eller de officielle sprog i værtslandet, stilles en oversættelse af det på dette eller disse sprog til rådighed for ansøgerne.

5. Der udarbejdes en oversættelse af ansøgningskemaet til det eller de officielle sprog i værtslandet inden for rammerne af det lokale Schengensamarbejde, jf. artikel 48.

6. Konsulatet informerer ansøgerne om, hvilke(t) sprog der kan anvendes til at udfylde ansøgningskemaet.

Artikel 12

Ansøgeren fremlægger et gyldigt rejsedokument, der opfylder følgende kriterier:

Det skal være gyldigt i mindst tre måneder efter datoen for den forventede udrejse fra medlemsstaternes område, eller, i tilfælde af flere rejser, efter datoen for den seneste forventede udrejse fra medlemsstaternes område. Hvis der er tale om et begrundet hastetilfælde, kan dette krav dog frafalde.

Det skal indeholde mindst to tomme sider.

Det skal være udstedt inden for de seneste ti år.

examining and deciding on an application for an airport transit visa shall be:

(a) in the case of a single airport transit, the Member State on whose territory the transit airport is situated; or

(b) in the case of double or multiple airport transit, the Member State on whose territory the first transit airport is situated.

4. Member States shall cooperate to prevent a situation in which an application cannot be examined and decided on because the Member State that is competent in accordance with paragraphs 1 to 3 is neither present nor represented in the third country where the applicant lodges the application in accordance with Article 6.

Article 9

1. Applications shall be lodged no more than three months before the start of the intended visit. Holders of a multiple-entry visa may lodge the application before the expiry of the visa valid for a period of at least six months.

Article 11

1. Each applicant shall submit a completed and signed application form, as set out in Annex I. Persons included in the applicant's travel document shall submit a separate application form. Minors shall submit an application form signed by a person exercising permanent or temporary parental authority or legal guardianship.

2. Consulates shall make the application form widely available and easily accessible to applicants free of charge.

3. The form shall be available in the following languages:

(a) the official language(s) of the Member State for which a visa is requested;

(b) the official language(s) of the host

Artikel 13

1. Medlemsstaterne indsamler ansøgerens biometriske identifikatorer, som omfatter et ansigtsbillede og ti fingeraftryk fra vedkommende, i overensstemmelse med de beskyttelsesforanstaltninger, der er fastlagt i Europarådets konvention til beskyttelse af menneskerettigheder og de grundlæggende frihedsrettigheder, i Den Europæiske Unions charter om grundlæggende rettigheder og i FN's konvention om barnets rettigheder.

2. Ansøgeren skal give personligt fremmøde ved indgivelsen af den første ansøgning. På det tidspunkt indsamles følgende biometriske identifikatorer for ansøgeren:

et fotografi, som scannes eller tages, når ansøgningen indgives, og

ti fingeraftryk fra vedkommende, som optages fladt og indsamles digitalt.

3. Når fingeraftryk, der er indsamlet fra ansøgeren i forbindelse med en tidligere ansøgning, for første gang indlæses i VIS mindre end 59 måneder før datoen for den nye ansøgning, kopieres de over i den senere ansøgning.

I tilfælde af rimelig tvivl om ansøgernes identitet indsamler konsulatet dog fingeraftryk inden for den i første afsnit nævnte periode.

Kan det endvidere på det tidspunkt, hvor ansøgningen indgives, ikke straks bekræftes, at fingeraftrykkene blev indsamlet inden for den i første afsnit nævnte periode, kan ansøgeren anmode om, at de indsamles.

4. I overensstemmelse med artikel 9, stk. 5, i VIS-forordningen lagres det fotografi, der er vedlagt hver ansøgning, i VIS. Ansøgeren skal ikke give personligt fremmøde med henblik herpå.

De tekniske krav til fotografiet skal stemme overens med de internationale standarder, som er fastsat i Organisationen for International

country;

(c) the official language(s) of the host country and the official language(s) of the Member State for which a visa is requested; or

(d) in case of representation, the official language(s) of the representing Member State.

In addition to the language(s) referred to in point (a), the form may be made available in another official language of the institutions of the European Union.

4. If the application form is not available in the official language(s) of the host country, a translation of it into that/those language(s) shall be made available separately to applicants.

5. A translation of the application form into the official language(s) of the host country shall be produced under local Schengen cooperation provided for in Article 48.

6. The consulate shall inform applicants of the language(s) which may be used when filling in the application form.

Article 12

The applicant shall present a valid travel document satisfying the following criteria:

(a) its validity shall extend at least three months after the intended date of departure from the territory of the Member States or, in the case of several visits, after the last intended date of departure from the territory of the Member States. However, in a justified case of emergency, this obligation may be waived;

(b) it shall contain at least two blank pages;

(c) it shall have been issued within the previous 10 years.

Article 13

1. Member States shall collect biometric identifiers of the applicant comprising a photograph of him and his 10 fingerprints in accordance with the safeguards laid down in

Civil Luftfarts (ICAO) dokument 9303, del 1, 6. udgave.

5. Fingeraftryk skal optages i overensstemmelse med ICAO-standarderne og Kommissionens beslutning 2006/648/EF af 22. september 2006 om tekniske specifikationer for standarderne for biometriske identifikatorer i forbindelse med udviklingen af visuminformationssystemet.

6. De biometriske identifikatorer indsamles af kvalificerede og behørigt bemyndigede medarbejdere ved de kompetente myndigheder, jf. artikel 4, stk. 1, 2 og 3. Under konsulaternes tilsyn kan de biometriske identifikatorer også indsamles af en honorær konsuls kvalificerede og behørigt bemyndigede medarbejdere som omhandlet i artikel 42 eller af en ekstern tjenesteyder som omhandlet i artikel 43. Den eller de pågældende medlemsstater giver i tilfælde af tvivl konsulatet mulighed for at foretage kontrol af fingeraftryk, som er blevet optaget af den eksterne tjenesteyder.

7. Følgende ansøgere er fritaget for kravet om at afgive fingeraftryk:

børn under 12 år

personer, for hvilke det er fysisk umuligt at optage fingeraftryk. Hvis det er muligt at optage fingeraftryk af færre end ti fingre, skal det maksimale antal fingeraftryk optages. Hvis dette kun er midlertidigt umuligt, skal ansøgeren dog afgive fingeraftrykkene i forbindelse med den næste ansøgning. De kompetente myndigheder, jf. artikel 4, stk. 1, 2 og 3, skal kunne kræve en yderligere forklaring på, hvorfor det midlertidigt er umuligt. Medlemsstaterne sikrer, at der er vedtaget hensigtsmæssige procedurer med henblik på at sikre beskyttelse af ansøgerens værdighed i tilfælde af vanskeligheder med registreringen stats- og regeringschefer og medlemmer af den nationale regering med ledsagende ægtefæller

the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the European Union and in the United Nations Convention on the Rights of the Child.

2. At the time of submission of the first application, the applicant shall be required to appear in person. At that time, the following biometric identifiers of the applicant shall be collected:

— a photograph, scanned or taken at the time of application, and

— his 10 fingerprints taken flat and collected digitally.

3. Where fingerprints collected from the applicant as part of an earlier application were entered in the VIS for the first time less than 59 months before the date of the new application, they shall be copied to the subsequent application. However, where there is reasonable doubt regarding the identity of the applicant, the consulate shall collect fingerprints within the period specified in the first subparagraph.

Furthermore, if at the time when the application is lodged, it cannot be immediately confirmed that the fingerprints were collected within the period specified in the first subparagraph, the applicant may request that they be collected.

4. In accordance with Article 9(5) of the VIS Regulation, the photograph attached to each application shall be entered in the VIS. The applicant shall not be required to appear in person for this purpose.

The technical requirements for the photograph shall be in accordance with the international standards as set out in the International Civil Aviation Organization (ICAO) document 9303 Part 1, 6th edition.

samt medlemmer af deres officielle delegation, når de er indbudt af medlemsstaters regeringer eller af internationale organisationer i officielt øjemed

regenter og andre højtstående medlemmer af en kongefamilie, når de er indbudt af medlemsstaters regeringer eller af internationale organisationer i officielt øjemed.

8. I de tilfælde, der er omhandlet i stk. 7, registreres der et »ikke relevant« i VIS i overensstemmelse med VIS-forordningens artikel 8, stk. 5.

Artikel 16

1. Ansøgere betaler et visumgebyr på 60 EUR.

2. Børn i aldersgruppen seks til og med elleve år betaler et visumgebyr på 35 EUR.

3. Visumgebyret revideres løbende for at afspejle de administrative udgifter.

4. Der opkræves ikke visumgebyr for ansøgninger fra personer i en af følgende kategorier:

børn under seks år
skoleelever, studerende, universitetsuddannede under videreuddannelse og ledsagende lærere, der tager ophold i studie- eller uddannelsesøjemed

forskere fra tredjelande, der rejser med det formål at udføre videnskabelig forskning som defineret i Europa-Parlamentets og Rådets henstilling 2005/761/EF af 28. september 2005 om lettelse af medlemsstaternes udstedelse af ensartede visa til kortvarigt ophold til forskere fra tredjelande, som rejser inden for Fællesskabet med henblik på videnskabelig forskning

repræsentanter for nonprofitorganisationer i alderen op til 25 år, der deltager i seminarer, konferencer, sportsarrangementer, kulturelle

5. Fingerprints shall be taken in accordance with ICAO standards and Commission Decision 2006/648/EC of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System (20).

6. The biometric identifiers shall be collected by qualified and duly authorised staff of the authorities competent in accordance with Article 4(1), (2) and (3). Under the supervision of the consulates, the biometric identifiers may also be collected by qualified and duly authorised staff of an honorary consul as referred to in Article 42 or of an external service provider as referred to in Article 43. The Member State(s) concerned shall, where there is any doubt, provide for the possibility of verifying at the consulate fingerprints which have been taken by the external service provider.

7. The following applicants shall be exempt from the requirement to give fingerprints:

(a) children under the age of 12;

(b) persons for whom fingerprinting is physically impossible. If the fingerprinting of fewer than 10 fingers is possible, the maximum number of fingerprints shall be taken. However, should the impossibility be temporary, the applicant shall be required to give the fingerprints at the following application. The authorities competent in accordance with Article 4(1), (2) and (3) shall be entitled to ask for further clarification of the grounds for the temporary impossibility. Member States shall ensure that appropriate procedures guaranteeing the dignity of the applicant are in place in the event of there being difficulties in enrolling;

(c) heads of State or government and members of a national government with

eller uddannelsesmæssige begivenheder tilrettelagt af nonprofitorganisationer.

5. Følgende kan fritages for visumgebyr: børn i aldersgruppen fra seks til og med elleve år

indehavere af diplomatpas og tjenestepas unge i alderen op til 25 år, der deltager i seminarer, konferencer, sportsarrangementer, kulturelle eller uddannelsesmæssige begivenheder tilrettelagt af nonprofitorganisationer.

Medlemsstaterne sigter mod at harmonisere anvendelsen af disse undtagelser inden for det lokale Schengensamarbejde.

6. I individuelle tilfælde kan det undlades at opkræve visumgebyr, eller det kan nedsættes, når dette har til formål at fremme kulturelle eller sportslige interesser samt interesser på området udenrigspolitik, udviklingspolitik og andre områder af vital offentlig interesse eller af humanitære årsager.

7. Visumgebyret opkræves i euro, i den lokale valuta i tredjelandet eller i den valuta, der normalt anvendes i det tredjeland, hvor ansøgningen indgives, og det refunderes kun i de tilfælde, der henvises til i artikel 18, stk. 2, og artikel 19, stk. 3.

Opkræves visumgebyret i en anden valuta end euro, fastsættes størrelsen af det visumgebyr, der opkræves i den pågældende valuta, efter den referencekurs for euro, som Den Europæiske Centralbank har fastsat, og den revideres med jævne mellemrum. Det beløb, der opkræves, kan rundes op, og konsulaterne sikrer inden for rammerne af lokale Schengensamarbejdsordninger, at de opkræver lige store gebyrer.

8. Ansøgeren modtager en kvittering for det visumgebyr, der er betalt.

Artikel 19

1. Det kompetente konsulat kontrollerer, om:

accompanying spouses, and the members of their official delegation when they are invited by Member States' governments or by international organisations for an official purpose;

(d) sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose.

8. In the cases referred to in paragraph 7, the entry 'not applicable' shall be introduced in the VIS in accordance with Article 8(5) of the VIS Regulation.

Article 16

1. Applicants shall pay a visa fee of EUR 60.

2. Children from the age of six years and below the age of 12 years shall pay a visa fee of EUR 35.

3. The visa fee shall be revised regularly in order to reflect the administrative costs.

4. The visa fee shall be waived for applicants belonging to one of the following categories:

(a) children under six years;

(b) school pupils, students, postgraduate students and accompanying teachers who undertake stays for the purpose of study or educational training;

(c) researchers from third countries travelling for the purpose of carrying out scientific research as defined in Recommendation No 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research (21);

(d) representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports,

ansøgningen er indgivet inden for den frist, der er angivet i artikel 9, stk. 1
ansøgningen indeholder de elementer, der er omhandlet i artikel 10, stk. 3, litra a), b) og c)
ansøgerens biometriske data er blevet registreret, og om visumgebyret er blevet opkrævet.

3. Konstaterer det kompetente konsulat, at betingelserne i stk. 1 ikke er opfyldt, kan visumansøgningen ikke antages, hvorefter konsulatet straks

returnerer ansøgningen og de dokumenter, ansøgeren har forelagt
destruerer de indsamlede biometriske data tilbagebetaler visumgebyret og ikke foretager yderligere behandling af ansøgningen.

4. En ansøgning, der ikke opfylder kravene i stk. 1, kan undtagelsesvis betragtes som antagelig af humanitære grunde eller af hensyn til nationale interesser.

Artikel 21

1. Ved behandlingen af en ansøgning om et ensartet visum skal det undersøges, om ansøgeren opfylder indrejsebetingelserne i artikel 5, stk. 1, litra a), c), d), og e), i Schengengrænsekodeksen, og der skal navnlig lægges vægt på at vurdere, om ansøgeren udgør en risiko for ulovlig indvandring eller for medlemsstaternes sikkerhed, og om ansøgeren agter at forlade medlemsstaternes område før udløbet af det visum, der ansøges om.

2. I forbindelse med hver enkelt visumansøgning konsulteres VIS i overensstemmelse med artikel 8, stk. 2, og artikel 15 i VIS-forordningen. Medlemsstaterne sikrer, at alle søgekriterierne i henhold til artikel 15 i VIS-forordningen anvendes fuldt ud med henblik på at undgå afvisninger på forkert grundlag og falske identificeringer.

cultural or educational events organised by non-profit organisations.

5. The visa fee may be waived for:

(a) children from the age of six years and below the age of 12 years;

(b) holders of diplomatic and service passports;

(c) participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non-profit organisations.

Within local Schengen cooperation, Members States shall aim to harmonise the application of these exemptions.

6. In individual cases, the amount of the visa fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.

7. The visa fee shall be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and shall not be refundable except in the cases referred to in Articles 18(2) and 19(3). When charged in a currency other than euro, the amount of the visa fee charged in that currency shall be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank. The amount charged may be rounded up and consulates shall ensure under local Schengen cooperation that they charge similar fees.

8. The applicant shall be given a receipt for the visa fee paid.

Article 19

1. The competent consulate shall verify whether:

3. Konsulatet undersøger, om ansøgeren opfylder indrejsebetingelserne, og kontrollerer: at det fremlagte rejsedokument ikke er falsk eller forfalsket
ansøgerens redegørelse for formålet med og vilkårene for det forventede ophold, og om den pågældende har de fornødne subsistensmidler, såvel i den påtænkte opholdsperiode som til hjemrejsen til hjemlandet eller bopælslandet eller gennemrejse til et tredjeland, hvor den pågældende er sikret indrejse, eller er i stand til at skaffe sig disse midler på lovlig vis
om ansøgeren er en person, om hvem der er indgivet indberetning til Schengeninformationssystemet (SIS) med henblik på at nægte indrejse
at ansøgeren ikke betragtes som en trussel mod nogen af medlemsstaternes offentlige orden, indre sikkerhed eller folkesundhed som defineret i artikel 2, nr. 19, i Schengengrænsekodeksen eller internationale forbindelser og navnlig på dette grundlag ikke er indberettet som uønsket i medlemsstaternes nationale databaser
at ansøgeren i givet fald har en passende og gyldig rejsesygeforsikring.

4. Konsulatet kontrollerer i givet fald længden af såvel tidligere som forventede ophold for at sikre sig, at ansøgeren ikke har overskredet den maksimale længde af det tilladte ophold på medlemsstaternes område, uanset om der eventuelt er givet tilladelse til ophold i form af et nationalt visum til længerevarende ophold eller udstedt opholdstilladelse af en anden medlemsstat.

5. Vurderingen af subsistensmidler under det forventede ophold foretages på grundlag af varigheden af og formålet med opholdet og under henvisning til de gennemsnitlige priser i den eller de pågældende medlemsstater for

the application has been lodged within the period referred to in Article 9(1),
the application contains the items referred to in Article 10(3)(a) to (c),
the biometric data of the applicant have been collected, and
the visa fee has been collected.

3. Where the competent consulate finds that the conditions referred to in paragraph 1 have not been fulfilled, the application shall be inadmissible and the consulate shall without delay:

return the application form and any documents submitted by the applicant,
destroy the collected biometric data,
reimburse the visa fee, and
not examine the application.

4. By way of derogation, an application that does not meet the requirements set out in paragraph 1 may be considered admissible on humanitarian grounds or for reasons of national interest.

Article 21

1. In the examination of an application for a uniform visa, it shall be ascertained whether the applicant fulfils the entry conditions set out in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code, and particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

2. In respect of each application, the VIS shall be consulted in accordance with Articles 8(2) and 15 of the VIS Regulation. Member States shall ensure that full use is made of all search criteria pursuant to Article 15 of the VIS Regulation in order to avoid false rejections

billig indkvartering og forplejning, ganget med det antal dage, som opholdet varer, på grundlag af de vejledende beløb, som medlemsstaterne fastsætter i overensstemmelse med artikel 34, stk. 1, litra c), i Schengengrænsekodeksen. Dokumentation for underhold og/eller privat indlogering kan også udgøre bevis for tilstrækkelige subsistensmidler.

6. I forbindelse med behandling af en ansøgning om lufthavnstransitvisum kontrollerer konsulatet navnlig:

at det fremlagte rejsedokument ikke er falsk eller forfalsket

den pågældende tredjelandstatsborgers afrejse- og bestemmelsessted, og om den forventede rejserute og lufthavnstransitten danner et sammenhængende mønster

beviset for den videre rejse til det endelige bestemmelsessted.

7. Behandlingen af en ansøgning baseres navnlig på ægtheden og troværdigheden af den fremlagte dokumentation og på rigtigheden og troværdigheden af de udsagn, der er fremsat af ansøgeren.

8. Under behandlingen af en ansøgning kan konsulatet, hvis det er berettiget, indkalde ansøgeren til samtale og kræve yderligere dokumentation.

9. Et tidligere visumafslag medfører ikke automatisk afslag på en ny ansøgning. En ny ansøgning vurderes på grundlag af alle tilgængelige oplysninger.

and identifications.

3. While checking whether the applicant fulfils the entry conditions, the consulate shall verify:

(a) that the travel document presented is not false, counterfeit or forged;

(b) the applicant's justification for the purpose and conditions of the intended stay, and that he has sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is in a position to acquire such means lawfully;

(c) whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;

(d) that the applicant is not considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;

(e) that the applicant is in possession of adequate and valid travel medical insurance, where applicable.

4. The consulate shall, where applicable, verify the length of previous and intended stays in order to verify that the applicant has not exceeded the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit issued by another Member State.

5. The means of subsistence for the intended

stay shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed, on the basis of the reference amounts set by the Member States in accordance with Article 34(1)(c) of the Schengen Borders Code. Proof of sponsorship and/or private accommodation may also constitute evidence of sufficient means of subsistence.

6. In the examination of an application for an airport transit visa, the consulate shall in particular verify:

(a) that the travel document presented is not false, counterfeit or forged;

(b) the points of departure and destination of the third-country national concerned and the coherence of the intended itinerary and airport transit;

(c) proof of the onward journey to the final destination.

7. The examination of an application shall be based notably on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant.

8. During the examination of an application, consulates may in justified cases call the applicant for an interview and request additional documents.

9. A previous visa refusal shall not lead to an automatic refusal of a new application. A new application shall be assessed on the basis of all available information.

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Introduction

This research aims at providing a comprehensive overview of Finland's legislation governing migration. Both substantive and procedural aspects are considered as we present, chapter by chapter, the right to asylum; immigration from EU Member States as compared to immigration from non-Member States; statistics regarding migrants in Finland; the national implementation of decisions of the European Court of Human Rights; the national implementation of the recommendations of the European Commission Against Racism and Intolerance; migrants' access to healthcare in Finland; migrant children's right to education under national legislation; recognition of foreign school and university diplomas in Finland; political participation of migrants in the Finnish society; acquisition of citizenship; and European Union assistance and funding with regard to the integration of migrants in Finland.

As these topics cover a wide range of issues including integration of migrants in Finland and their rights linked to various aspects of their lives - inter alia, healthcare, education and political participation - this research goes beyond merely providing a structural guide to Finland's migration laws and instead considers immigration and the life as a migrant in Finland in a wider context. However, as a descriptive study, we offer no causal or other hypothesis. The conclusion of this research summarizes the main points presented in each section but refrains from making any normative statements or suggestions.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

The right to asylum in Finland is regulated in the Aliens Act (*Ulkomaalaislaki*) 2004, where asylum is categorized under international protection. Under the Act, international protection means refugee status or subsidiary protection.¹⁰⁵⁴ Refugee status is granted to those who are given asylum or accepted by Finland under the refugee quota, as well as to those family members who have been issued with a residence permit on the basis of family ties and who are considered refugees.¹⁰⁵⁵ Aliens Act defines a refugee as an alien who meets the criteria laid down in Article 1 of the Refugee Convention.¹⁰⁵⁶ Subsidiary protection is considered if the requirements for granting asylum are not met.¹⁰⁵⁷ Before May 16 2016, Finland could grant asylum seekers humanitarian protection if the requirements for asylum or subsidiary protection were not met.

¹⁰⁵⁴ Aliens Act 2004, s 3(1)(13).

¹⁰⁵⁵ Aliens Act 2004, s 106(1).

¹⁰⁵⁶ Aliens Act 2004, s 3(1)(11).

¹⁰⁵⁷ Aliens Act 2004, s 88(1).

Since May 16 2016, humanitarian protection has no longer existed due to an amendment to the Aliens Act.¹⁰⁵⁸

1.1. A Description of the National Regulations Governing Asylum

According to the Aliens Act, aliens residing in Finland are granted asylum if they reside outside their home country or the country of permanent residence because they have a well-founded fear of being persecuted there. The reason for persecution must be ethnic origin¹⁰⁵⁹, religion¹⁰⁶⁰, nationality¹⁰⁶¹, membership in a certain social group¹⁰⁶², or political opinion¹⁰⁶³. According to the Aliens Act, actors of persecution or serious harm include the State; parties or organisations controlling the State or substantial part of the territory of the State; or non-State actors, if it can be demonstrated that the actors of protection¹⁰⁶⁴ are unable or unwilling to provide protection against persecution or serious harm.¹⁰⁶⁵ It is assumed that because of this fear, aliens are unwilling to turn to the country concerned for protection.¹⁰⁶⁶

Aliens Act opens the content of the definition of persecution, but it does not define the persecution exhaustively since aspects of each individual case must also be taken into account when defining persecution.¹⁰⁶⁷ According to the Aliens Act, acts are considered as persecution if they are sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental human rights. Similarly, an accumulation of various measures of the same level of seriousness, including violations of human rights, is considered persecution. The Aliens Act gives a list of examples of forms the acts of persecution may take. For example, acts of persecution may take the form of acts of physical or mental violence, including acts of sexual violence.¹⁰⁶⁸

¹⁰⁵⁸ The Finnish Immigration Service, 'Decisions on international protection' <http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/asylum_and_international_protection> accessed August 16 2016; Act amending the Aliens Act 2016.

¹⁰⁵⁹ Origin means colour, descent or membership of a particular ethnic group. Aliens Act 2004, s 87(b)(2)(1).

¹⁰⁶⁰ Religion includes, in particular the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief. Aliens Act 2004, s 87(b)(2)(2).

¹⁰⁶¹ Nationality includes citizenship of a State, or lack thereof and membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State. Aliens Act 2004, s 87(b)(2)(3).

¹⁰⁶² When assessing the reasons for persecution, a group can be considered to form a particular social group if: 1) the members of the group share a common background or an innate characteristic or belief that is so fundamental to identity or conscience that they cannot be forced to renounce it; and 2) the group is perceived as being different by the surrounding society. A common characteristic of a social group may also be sexual orientation, which, when assessing reasons for persecution, cannot include acts considered to be criminal. Gender-related aspects do not themselves alone create a presumption of persecution. Aliens Act 2004, s 87(b)(3–4).

¹⁰⁶³ Political opinion means in particular an opinion, thought or belief on potential actors of persecution and on their policies or methods. Aliens Act 2004, s 87(b)(2)(4).

¹⁰⁶⁴ Protection can be provided by the State or an international organization controlling the State or a substantial part of the territory of the State, which is willing and able to provide protection. The protection must be effective and of a lasting nature. Aliens Act 2004, s 88(d).

¹⁰⁶⁵ Aliens Act 2004, s 88(c).

¹⁰⁶⁶ Aliens Act 2004, s 87(1).

¹⁰⁶⁷ Tapio Kuosma, Turvapaikka ja pakolaisasema: Kansainvälisen suojelun periaatteet (Nordbooks 2016), 26 [Finnish].

¹⁰⁶⁸ Aliens Act 2004, s 87(a).

Notwithstanding the criteria mentioned above, an asylum seeker does not have an absolute right to asylum. A person will not be granted asylum if they have committed or if there are reasonable grounds to suspect that they have committed a crime against peace, a war crime or a crime against humanity; a serious nonpolitical crime before arrival in Finland; or an act that violates the aims and principles of the United Nations.¹⁰⁶⁹ Additionally, if there is a possibility for the asylum seeker to receive internal protection, asylum is not granted.¹⁰⁷⁰

International protection may be cancelled. Refugee status or subsidiary protection status is cancelled if, when applying for asylum, the applicant has knowingly given false information or has concealed facts and this has affected the outcome of the decision. When considering a cancellation of refugee status or subsidiary protection status, an individual investigation is conducted.¹⁰⁷¹

1.2. Procedure for Granting Asylum and Responsible Parties

The asylum procedure is administrative and regulated by the Aliens Act. With a reference to the Administrative Judicial Procedure Act (*Hallintolainkäyttölaki*) 1996, Aliens Act also regulates appellate procedure.

The main bodies throughout the asylum granting process are the Finnish Immigration Service and the police or border control authorities. The Finnish Immigration Service, police and the Border Guard supervise compliance with the provisions of the Aliens Act and any provisions issued under it. Border control authorities supervise compliance with the provisions on aliens' entry into and departure from the country.¹⁰⁷² The competent Administrative Court and the Supreme Administrative Court handles the appellate procedure.

1.2.1. Asylum Procedure

First, an asylum seeker must file an application for international protection with the police or border control authorities upon entering Finland or as soon after entering as possible.¹⁰⁷³ After that, the competent authority is the Finnish Immigration Service that handles the asylum investigation and renders a decision.

Asylum investigation has two main procedural steps: asylum interrogation and asylum interview.¹⁰⁷⁴ The objective of asylum interrogation is to establish the identity, travel route, and entry into the country of an alien applying for a residence permit on the basis of international protection. The objective of an asylum interview is to establish the grounds given by the applicant for the persecution he or she has faced in his or her home country or country of

¹⁰⁶⁹ Aliens Act 2004, s 87(2–4).

¹⁰⁷⁰ Aliens Act 2004, s 88(e)(1).

¹⁰⁷¹ Aliens Act 2004, s 108, The Finnish Immigration Service, 'Withdrawal and cancellation of international protection'

<http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/withdrawal_and_cancellation_of_refugee_status> accessed August 29 2017.

¹⁰⁷² Aliens Act 2004, s 212.

¹⁰⁷³ Aliens Act 2004, s 95.

¹⁰⁷⁴ Janne Aer, *Ulkomaalaisoikouden perusteet* (Alma Talent Oy 2016) 265 [Finnish].

permanent residence, or for other violations of his or her rights or related threats.¹⁰⁷⁵ Both proceedings are oral proceedings and the Finnish Immigration Service must provide interpretation or translation if the alien does not understand the Finnish or Swedish language used by the authorities under the Language Act (*Kielilaki*) 2003.¹⁰⁷⁶

Applications for international protection are processed under normal or accelerated procedure. The requirements for issuing a residence permit are assessed individually for each applicant by taking account of the applicant's statements on his or her circumstances in the state in question and of real time information on the circumstances in that state obtained from various sources. In this individual assessment the Finnish Immigration Service takes into account vulnerability of the applicant, for example in the cases of unaccompanied children or Syrian applicants, but even vulnerable individuals' applications are processed in accordance with the Aliens Act.

After obtaining the available statement, authorities shall decide on the matter in favour of the applicant on the basis of his or her statement if the applicant has contributed to the investigation of the matter as far as possible and if the authorities are convinced of the veracity of the application with regard to the applicant's need for international protection. If the application is rejected, a decision on refusal of entry¹⁰⁷⁷ or deportation¹⁰⁷⁸ is issued at the same time, unless special reasons have arisen for not making a decision on removing the applicant from the country.¹⁰⁷⁹ The applicant will be given 7–30 days to leave Finland voluntarily: usually this “period of grace” is 30 days. It is noteworthy that the refusal of entry or deportation cannot be enforced until the decision of the Finnish Immigration Service becomes final. The decision becomes final when the applicant doesn't appeal within the time limit or the Administrative Court makes a negative decision.¹⁰⁸⁰ The general rule is that the Finnish Immigration Service has to make a decision within 6 months after application has been filed, but depending on the circumstances of the case it could take 15, 18 or 21 months.¹⁰⁸¹

Asylum seeker has the right to use a counsel when initiating and processing the application for international protection.¹⁰⁸² Asylum seeker also has the right to legal aid if he or she fulfils the qualifications regulated in the Legal Aid Act (*Oikensapulaki*) 2002. Legal aid covers both the asylum and appellate procedure, but legal aid does not include the attendance of an assistant in

¹⁰⁷⁵ Aliens Act 2004, s 97(1–2).

¹⁰⁷⁶ Aliens Act 2004, s 203.

¹⁰⁷⁷ According to the Aliens Act section 142, refusal of entry means, inter alia, removing from the country an alien who did not hold a residence permit upon entry into the country, has not been issued with a residence permit or residence card after his or her entry into the country or if his or her right of residence has not been registered after his or her entry into the country as provided in this Act. In this text, refusal of entry does not refer to Article 13 of the Schengen Borders Code.

¹⁰⁷⁸ According to the Aliens Act section 143, deportation means, inter alia, removing from the country an alien who continues to reside in the country after his or her residence permit, registered residence or residence card has expired.

¹⁰⁷⁹ Aliens Act 2004, s 98.

¹⁰⁸⁰ Aliens Act 2004, s 147(a), The Finnish Immigration Service, ‘Refusal of entry’.

<http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/refusal_of_entry> accessed August 30 2017.

¹⁰⁸¹ The Finnish Immigration Service, *Turvapaikkahakemuksen käsittelyaika arvioidaan puhuttelussa* (May 19 2016) <http://www.migri.fi/nain_palvelemme/kasittelyajat/kasittelyajat_-_kansainvalinen_suojelu/1/0/turvapaikkahakemuksen_kasittelyaika_arvioidaan_puhuttelussa_54130>

> accessed July 14 2017 [Finnish]; Aliens Act 2004, s 98(a).

¹⁰⁸² Aliens Act 2004, s 8.

the asylum interview unless the counsel is necessary for particularly serious reasons or the asylum seeker is under 18 years of age without a guardian.¹⁰⁸³

1.2.2. Appellate Procedure

If an applicant is not satisfied with the decision of the Finnish Immigration Service, the decision may be appealed to the Administrative Court. There are four Administrative Courts in Finland that handle appeals on international protection: the Administrative Court of Helsinki, the Administrative Court of Eastern Finland, the Administrative Court of Northern Finland and the Administrative Court of Turku.¹⁰⁸⁴ An appeal must be submitted to the Finnish Immigration Service or the competent Administrative Court within 21 days from receipt of service.¹⁰⁸⁵ The Administrative Court of Helsinki's average length of hearing on asylum matters is 7,5 months.¹⁰⁸⁶ If the Administrative Court makes a negative decision the decision on refusal of entry or deportation is enforceable.¹⁰⁸⁷

A decision of an Administrative Court may be appealed to the Supreme Administrative Court if the Supreme Administrative Court grants leave to appeal, and it is possible to simultaneously apply for a prohibition of enforcement of the decision. An application for leave to appeal to the Supreme Administrative Court will not prevent the enforcement of the decision unless expressly ordered otherwise by the Supreme Administrative Court. A leave to appeal may be granted if it is important for the application of the Act to other similar cases, or for the sake of consistency in legal practice, to submit the case to the Supreme Administrative Court for a decision or if there is some other weighty reason for granting the leave. An appeal must be delivered to the Supreme Administrative Court within 14 days from receipt of service.¹⁰⁸⁸ The Finnish Immigration Service has the right to appeal against a decision of an administrative court quashing or amending a decision of the Finnish Immigration Service.¹⁰⁸⁹

The appellate procedure consists mainly of written proceedings, but when necessary, an oral hearing shall be conducted for purposes of establishing the facts of the case. An Administrative Court shall conduct an oral hearing if a private party so requests. The same applies to the Supreme Administrative Court when it is considering an appeal against the decision of an administrative authority. The oral hearing requested by a party need not be conducted if the

¹⁰⁸³ Aliens Act 2004, s 9.

¹⁰⁸⁴ If the decision has been made in the Finnish Immigration Services asylum units as follows: for Southern area the competent Administrative Court is Administrative Court of Helsinki; for Eastern area the competent Administrative Court is Administrative Court of Eastern-Finland; for Northern area the competent Administrative Court is Administrative Court of Northern-Finland; and for Western area the competent Administrative Court is Administrative Court of Turku.; Aliens Act 2004, s 193.

¹⁰⁸⁵ Aliens Act 2004, ss 190 and 197.

¹⁰⁸⁶ Administrative Court of Helsinki, 'Helsingin hallinto-oikeuden tilastoja' (July 12 2017) <<https://oikeus.fi/hallintooikeudet/helsinginhallinto-oikeus/fi/index/tilastot.html>> accessed July 14 2017 [Finnish].

¹⁰⁸⁷ Aliens Act 2004, s 200(1).

¹⁰⁸⁸ Aliens Act 2004, s 196 and 198. The Finnish Immigration Service, 'Refusal of entry' <http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/refusal_of_entry> accessed August 30 2017.

¹⁰⁸⁹ Aliens Act 2004, s 195.

claim is dismissed without considering its merits, or immediately rejected, or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason.¹⁰⁹⁰

An asylum seeker who has gotten a negative decision must leave Finland. Returning means that an asylum seeker that has gotten a refusal of entry or deportation decision will either leave Finland voluntarily or will be removed from Finland.¹⁰⁹¹ The Aliens Act stipulates many grounds for refusal of entry, but the most important ground considering asylum seekers is that an alien who has entered the country without a residence permit and who is required to hold a visa or residence permit to stay in Finland but who has not applied for one or has not been issued with one may also be refused entry.¹⁰⁹² The police and the border control authorities are responsible for enforcing the refusal of entry or deportation.¹⁰⁹³

In a decision on refusal of entry or deportation, the alien may be prohibited from entering the country. A prohibition of entry is ordered if no time for voluntary return is issued or if the person has not left the country within the time period set in the voluntary return decision. A prohibition of entry is ordered for a fixed term of a maximum of five years or until further notice. An alien who has been sentenced for an offence of aggravated or professional nature may be prohibited entry until further notice.¹⁰⁹⁴

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Immigration to Finland

In Finland, the main regulative acts concerning generally all types of immigration and also living as an immigrant are the Aliens Act 2004 (*Ulkomaalaislaki* 301/2004), the Act on the Promotion of Immigrant Integration 2010 (*Laki kotoutumisen edistämisestä* 1386/2010), the Act on the Application of Residence-Based Social Security Legislation 1993 (*Laki asumiseen perustuvan sosiaaliturvalainsäädännön soveltamisesta* 1573/1993), the Nationality Act 2003 (*Kansalaisuuslaki* 359/2003), the Non-Discrimination Act 2014 (*Yhdenvertaisuuslaki* 1325/2014) and the Act on the Integration of immigrants and Reception of Asylum Seekers 2006 (*Laki maahanmuuttajien kotoutumisesta ja turvapaikanhakijoiden vastaanottamisesta* 1269/2006).

The Aliens Act is the main regulation governing immigration: it is a comprehensive law that sets out the conditions for entering into Finland, residing in Finland, determines the requirements for visas and residence permits and regulates international protection in general. This section of study aims at providing a general view of the key points of immigration from EU member states and non-EU states to Finland. The Aliens Act will be the centre of focus.

¹⁰⁹⁰ Administrative Judicial Procedure Act 1996, ss 37– 38.

¹⁰⁹¹ Aliens Act 2004, s 146(a).

¹⁰⁹² Aliens Act 2004, s 148.

¹⁰⁹³ Aliens Act 2004, s 151.

¹⁰⁹⁴ Aliens Act 2004, s 150.

The general eligibility requirements for admission into Finland are regulated in Chapter Two of the Aliens Act also in Article Six of the Schengen Borders Code. Entry to Finland is granted to persons holding a valid travel document and a visa or a residence permit, documents that prove the intent of the stay and sufficient funds to stay, and on the condition that the person has not been prohibited entry to Finland and is not considered a danger to public order, security or health or Finland's international relations.¹⁰⁹⁵

2.2. Immigration from EU Member States

The regulatory framework of the European Union has an immense influence and impact on national law of member states in general. Migration law makes no exception to this. However, EU laws on migration law are mostly directives and due to their non-self-executing nature, they also leave room for national consideration since they need to be transposed into national legislation. Immigration from one EU Member State to another is regulated by The Treaty on European Union (art 3 s 2), The Treaty on the Functioning of the European Union (art 21) and The Charter of Fundamental Rights of the European Union (art 45). All three are primary sources of European Union law and thus vertically and directly applicable in all the Member States. EU also has competency when it comes to legal and illegal immigration. Council regulations and directives complete the harmonization in this field of law.¹⁰⁹⁶

The most important EU-derived contribution to the immigration legislation is that EU citizens are not required to apply for a residence permit whenever residing in Finland. However, there are certain limitations to freedom of movement and residence as will be further explained. Legislation in Finland distinguishes between three main categories of immigrants: citizens of another EU Member State and comparable persons, third country nationals with long-term EU resident status and third country nationals. In addition to these categories there are refugees seeking asylum and permit for residence on the grounds of international protection. Regulation of asylum seekers is covered in the previous Section 1 in this study.

2.2.1. Short-term Residence of EU Citizens

The Aliens Act regulates the requirements for entering Finland and residing in Finland as well as determines the requirements for visas and residence permits, international protection and various other affairs. Chapter 10 of the Aliens Act regulates the residence of EU citizens and comparable persons in Finland. A 'comparable person' in this context is a citizen of one of the following Schengen countries: Liechtenstein, Norway, Iceland or Switzerland.¹⁰⁹⁷

To reside in Finland, an EU citizen must have a valid identity card or a passport.¹⁰⁹⁸ This "paper-requirement" is the sole requirement for the free movement within the Union. Residence of less than three months needs not to be registered. Neither is registration required in a case where a resident has stayed for more than three months but is continuously seeking employment and, in

¹⁰⁹⁵ Aliens Act 2004 , ch 2 s 11.

¹⁰⁹⁶ Rafaelli Rosa, *Immigration Policy* (2017).

¹⁰⁹⁷ Aliens Act 2004, s 3 ss 2.

¹⁰⁹⁸ *ibid* s 155.

addition, is likely to be employed within in a reasonable time.¹⁰⁹⁹ In fact, this makes the only exception to the registration rule that will be further explained below. Denial of entry or removal of an EU citizen is allowed if public order and security or public health so require.

2.2.2. Residence Exceeding the Limit of Three Months

EU citizens may reside in Finland for more than three months under the following conditions: they 1) are either self-employed or paid employees or practice trade; or 2) have sufficient funds to stay; or 3) are enrolled at an accredited educational institution with a principal purpose to follow the course(s) and they have sufficient means to support themselves and their family members over the time of residence.¹¹⁰⁰ The Finnish Immigration Service website provides a guide of the sums required for secured income.¹¹⁰¹

2.2.3. Citizens of Other Nordic Countries

Special regulations apply to the citizens of other Nordic countries and their family members as agreed between these countries. The secure means of support requirement does not apply if the alien is a citizen of another Nordic country. In addition, citizens of Nordic countries are allowed to reside in Finland without registration if the stay altogether lasts less than six months.¹¹⁰²

2.2.4. Family Members of EU Citizens

Family members of EU citizens, who are not EU citizens themselves, are issued a residence card if their intent is to stay in the country for over three months. According to the Aliens Act, section 154, a family member is considered to be: 1) his or her spouse, 2) his or her descendant who is under age of 21, 3) his or her direct relatives in the ascending line and who are dependent on him or her, 4) EU citizens guardian, if she or he is a minor and the guardian is considered a family member, 5) persons living continuously in a marriage-like relationship in the same household regardless of their sex are comparable to a married couple if they have lived in the same household for at least two years.¹¹⁰³ The first residence card is issued for five years, after which extension cards are issued for continuous residence.¹¹⁰⁴

2.3. Registration, Residence and Legal Effects

Application of registration is to be submitted to the Finnish Immigration Service within three months from the date of entry to the country.¹¹⁰⁵ The processing fee for registration application is 54 euros (2017).¹¹⁰⁶ Registration does not constitute or establish legalities *ipso facto* - it simply

¹⁰⁹⁹ *ibid* s 158 ss 3.

¹¹⁰⁰ *ibid* ch 10.

¹¹⁰¹ Finnish Immigration Service website <http://www.migri.fi/income_requirement> accessed 4 July 2017.

¹¹⁰² 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).

¹¹⁰³ Aliens Act, ch 10 s 154.

¹¹⁰⁴ Aliens Act, ch 10 s 161.

¹¹⁰⁵ Moving to Finland - EU Citizens <http://www.infopankki.fi/en/moving-to-finland/eu-citizens#Oleskeluoikeuden_rekisteröinti> accessed June 15 2017.

¹¹⁰⁶ Processing fees in Finnish Immigration Service <http://www.migri.fi/our_services/processing_fees> accessed July 4 2017.

verifies a right and a state of affairs that already exists under the European Union Treaties and directives.¹¹⁰⁷ Therefore, the procedure is significantly different compared to immigrants coming from third countries. By neglecting registration one will be subject to a sanction for a violation of law, the sanction being sentence to fine.¹¹⁰⁸ Registration provides access to important benefits pursuant to the Municipality of Residence Act (*Kotikuntalaki* 201/1994).¹¹⁰⁹

Finland is being divided regionally into municipalities. After the registration procedure has been completed and confirmed, the immigrant is granted a status of municipality inhabitant. The same applies with third country citizens who have been granted a residence permit by either a fixed-term or a continuous permit.

Municipality of residence provides, inter alia, access to social security, which consists of health care and other social services. However, only permanent residence leads to access to residence-based social security such as family, housing allowance and pension allowances. Principally, students are not entitled to residence-based social security due to the nature of their stay that is temporary on the grounds of studying. A person is not considered to move to Finland to reside in the country permanently if he or she moves to the country exclusively for the purpose of studies. Under the Act on the Application of Residence-Based Social Security Legislation, a person applying for an asylum in Finland is not considered to be a permanent resident either during the period of time under which he or she stays in the country without a legally valid decision on asylum application or waiting for deportation. Neither is a person who has obtained a residence permit on the basis of temporary need for protection considered to be in Finland on a permanent basis.¹¹¹⁰ Act on the Application of Residence-Based Social Security Legislation applies from the date of arrival to those whose residence in Finland is considered to be on a permanent basis. The legality requirement of Section 3(c) provides that the permanent basis requirement is met if a person has been granted a residence permit with one year's right to reside in the country.¹¹¹¹

2.4. Immigrants from Non-EU States

2.4.1. General Provisions

The requirements for entering into Finland are notably different for third country nationals. Third country nationals are required to hold a valid Schengen visa or a residence permit when entering and residing in Finland unless they come from a country for which no visa is required and the duration of stay is less than 90 days.¹¹¹² In addition, they must meet the general criteria.¹¹¹³

¹¹⁰⁷ Government proposal for amending the Aliens Act 2004 (*HE 205/2006 laiksi ulkomaalaislain muuttamiseksi*).

¹¹⁰⁸ Aliens Act 2004, s 185.

¹¹⁰⁹ Moving to Finland - Municipality of Residence in Finland <<http://www.infopankki.fi/en/moving-to-finland/registering-as-a-resident/municipality-of-residence-in-finland>> accessed June 28 2017.

¹¹¹⁰ Act on the Application of Residence-Based Social Security Legislation, ch 2 (*Laki asumiseen perustuvan sosiaaliturvalainsäädännön soveltamisesta "Soveltamisalaki" 1573/1993*).

¹¹¹¹ *ibid*

¹¹¹² Aliens Act 2004, ch 3.

¹¹¹³ *ibid* ch 2.

2.4.2. Finnish Immigration Service

The Finnish Immigration Service is an independent organ that has the competence to handle residence permit applications and to render decisions by applying the law. The Immigration Service has drawn up their own code of conduct regarding the application of the law in order to reach the purpose and intent of the law. Decisions must be based strictly on the law, but since the law leaves room for discretion and interpretation, the instructions exist to secure coherence and equality in the decision-making.

2.4.3. Residence Permits

A residence permit entitles a person to stay in the country with the intent to immigrate permanently or temporarily. Residence permits are either fixed-term (B-permit) or continuous (A-permit). Third country nationals with a status of long-term EU residence are entitled to an EU residence permit (P-EU or P-EY). Since their introduction in 2012, all residence permit cards now include biometric identifications that consist of fingerprints and a headshot.¹¹¹⁴ Processing fees vary from 168 to 520 euros, depending on the permit type. In order to obtain a residence permit the applicant must meet the general criteria which is similar to the criteria for entering the country. Residence permit may be refused if, inter alia, the applicant is considered a danger to public order, security or health or a danger to Finland's international relations.¹¹¹⁵ A residence permit can also be revoked by the authorities on several grounds, for instance, if the applicant has deliberately given false information.¹¹¹⁶

The grounds for issuing a residence permit play a significant role in practise. If a residence permit is issued for an employed person and the permit has a restriction allowing work only for a certain employer, the holder of the residence permit is not allowed to change employer unless the field of works remains the same. For instance, if a person has been issued a permit on the grounds of employment that is, say, cleaning, changing jobs is prohibited until a new residence permit has been issued. However, issuance of a new employment permit is not possible until the employment has been assured by a contract, i.e. employer's cooperation in the application is inevitable and the whole process has multiple stages. Secured means of support is the underlying precondition for this regulation. In comparison, unrestricted employment is allowed for immigrants who have been issued a residence permit on the basis of family ties.¹¹¹⁷

2.4.4. Permit Types

2.4.4.1. B-Permit

The first residence permit is always fixed-term and may usually be extended for one year.¹¹¹⁸ Exceptions apply if the residence permit has been issued on the grounds of diplomatic or

¹¹¹⁴ Finnish Immigration Service - Residence permits <<http://www.migri.fi>> accessed June 25 2017.

¹¹¹⁵ Aliens Act, s 36.

¹¹¹⁶ Finnish Immigration Service - Revoking the permit <http://www.migri.fi/working_in_finland/revoking_the_permit> accessed June 25 2017.

¹¹¹⁷ Aliens Act, ch 5.

¹¹¹⁸ *ibid* ch 4.

consular mission, victim of trafficking human beings, refugee status or subsidiary protection or studies. Extended permit must be applied for before the previous permit expires and extended permit must be applied for in Finland, otherwise the application will be processed as a new fixed-term permit. Extended permits are granted for up to four years maximum.¹¹¹⁹

2.4.4.2. A-Permit

Continuous permits are valid until further notice. In order to obtain an A-permit, the applicant must have been a resident in Finland for four years without interruption. Regular holidays and travels are allowed in between. In addition, the temporary residence permit has to be valid when applying for a continuous permit. A-permits are marked in the residence permit with a letter A on the residence permit.¹¹²⁰

2.4.4.3. P-Permit

Letter P on the residence permit stands for a right to permanent residence. After continuous, non-interrupted legal residence for over 4 years with an A-permit, one is granted with a P-permit.¹¹²¹

2.4.4.4. P-EU / P-EY Permit

Third country nationals who have been granted a status of a long-term EU residence are entitled to EU residence permit (P-EU or P-EY).¹¹²²

2.5. Leaving the Country

2.5.1. Voluntary Leaving

In case an applicant receives a negative decision to a residence permit application while staying in the country, he or she is required to leave Finland during a brief 'period of grace' which is normally 30 days from the notice. The same applies if the applicant has withdrawn his or her residence permit or asylum application.¹¹²³ If the applicant does not leave within the grace period, he or she will receive a sanction that is refusal of entry to the Schengen area.¹¹²⁴

There are no legal barriers for a voluntary return to one's home country from Finland. In practise, voluntary leaving may be hindered by financial barriers. If certain criteria are met, the Finnish Immigrant Service may provide assistance for returning home on request.¹¹²⁵ Assistance may consist of for instance return tickets, help with acquiring a travel document and reintegration assistance.

¹¹¹⁹ Finnish Immigration Service - Permit Types <http://www.migri.fi/residence_permits/permit_types> Accessed June 13 2016.

¹¹²⁰ *ibid*

¹¹²¹ *ibid*

¹¹²² *ibid*

¹¹²³ <http://www.migri.fi/information_elsewhere/leaving_finland> accessed September 4 2017

¹¹²⁴ *ibid*

¹¹²⁵ <http://www.migri.fi/download/61070_vapaehtoisen_paluu_esite_en.pdf?07b203cbf8bdd488> accessed September 4 2017.

2.5.2. Deportation of a Migrant

Deportation takes place either when an extension permit application has been declined after period of legal stay or due to criminal activity committed by the immigrant. Deportation or removal will be enforced by the police or the Border Guard.¹¹²⁶

Grounds for deportation are regulated in Section 149 of the Aliens Act. An immigrant may be deported if she or he resides in the country without a valid residence permit, has committed an offence that, according to the Criminal Code, may follow with imprisonment for a year or more, or if he or she can be shown to endanger other people's safety, Finland's national security or relations with a foreign state.¹¹²⁷ However, a long term resident with an EU blue card may be deported only if he or she poses an immediate and sufficiently serious threat to public order or security. Grounds for deporting an EU citizen and their family members are regulated in Section 167, which provides that deportation is allowed only if the immigrant fails to meet the requirements for the right of residence or if he or she poses a danger to public order or safety.¹¹²⁸

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. The Finnish Immigration Service: Organisational Structure

In Finland, the government agency taking care of issues related to migration is Finnish Immigration Service (in Finnish: earlier *Ulkomaalaisvirasto*, nowadays *Maahanmuuttovirasto*). Its activities are legally defined by the Finnish Immigration Service Act¹¹²⁹ and by a correspondent government regulation¹¹³⁰. In its operations the government agency applies to great extent the Finnish Aliens Act¹¹³¹ as well as the so-called Dublin III Regulation¹¹³².

The agency is led by a Director General appointed by the government. The rest of the personnel is formed by public officers and employees appointed by the Director General, if this hasn't been delegated to another public officer by an inner order.¹¹³³ The agency is divided into profit units according to its functions: the substantive units are those named Citizenship, Asylum,

¹¹²⁶ *ibid*

¹¹²⁷ Aliens Act 2004, s 149.

¹¹²⁸ Aliens Act 2004, s 168.

¹¹²⁹ Finnish Immigration Service Act 156/1995 [Laki Maahanmuuttovirastosta].

¹¹³⁰ Government decree on Finnish Immigration Service 13.3.2002/193 [Valtioneuvoston asetus Maahanmuuttovirastosta].

¹¹³¹ Aliens Act 2004.

¹¹³² Council regulation (EC) No 604/2013.

¹¹³³ Government decree on Finnish Immigration Service 13.3.2002/193 [Valtioneuvoston asetus Maahanmuuttovirastosta].

Immigration and Reception, while the administrative units cover fields such as Customer Relations, Country Information and e-Services.¹¹³⁴

3.2. The Finnish Immigration Service: Tasks

The agency, which is supervised by the Ministry of the Interior, operates with all matters related to immigration, asylum, refugee status and citizenship. It also maintains the reception system for refugees arriving to Finland. According to the agency's website, its aim is to promote "controlled immigration, good administration and human and basic rights" while implementing the Finnish immigration policy. Its tasks also include taking a general specialist role in regard to political decision-making, national and international cooperation and public discussion.¹¹³⁵

3.3. The Finnish Immigration Service: Reprobation and Media Attention

During the year 2015, Finland faced an extraordinarily massive influx of migrants. In the beginning of the year 2016, roughly 35,000 applications for asylum had been placed at Finnish Immigration Service, the ordinary number being somewhere around 5,000 per year. Consequently, the agency was struggling to maintain an effective working rhythm that would correspond to the amount of applications. This caused criticism of delays and the quality of the decisions in the Finnish media.

In January 2017, the Director General of the Immigration Service was reproved by the Government's Attorney General for an erroneous interpretation of the national law. The Aliens Act had been modified in the previous spring, when the possibility to seek asylum on the grounds of humanitarian protection had been removed from the law.

Consequently, the Director General had advised not to process any applications based on the need of humanitarian protection during spring 2016, even though the modification was to enter into force only in May 2016. Following to the reprobation by the Government's Attorney General in the beginning of 2017, the Director General appeared in the media admitting to having evaluated the situation erroneously.¹¹³⁶

¹¹³⁴ Finnish Immigration Service – Organisation <http://www.migri.fi/about_us/organisation> Accessed July 15 2017.

¹¹³⁵ Finnish Immigration Service – Introduction <http://www.migri.fi/about_us> Accessed July 15 2017.

¹¹³⁶ Helsingin Sanomat, 'Maahanmuuttoviraston Vuorio oikeuskanslerin moitteista: "Minulla meni harkinta pieleen"' <<https://www.hs.fi/politiikka/art-2000005072796.html>> accessed July 15 2017.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Statistics in Finland

4.1.1. Statistics Finland

The authority collecting statistic data related to the country's population is Statistics Finland (*Tilastokeskus* in Finnish). On their website, several statistics can be found regarding migration flows and the establishment of migrants in Finland. The most descriptive statistics regarding migrants are probably the ones that present the number of people of a migrant or foreign origin, dividing the group into different categories. Foreign citizens, persons born outside of Finland, persons whose first language is other than Finnish and persons with a "foreign background" are all taken into account as separate groups.

According to the definition of Statistics Finland, all persons who have at least one parent born in Finland are considered to be of Finnish origin. These persons are, for obvious reasons, not present in the statistics considering migrants. On the contrary, all the persons whose both parents, or the only parent if only one of the parents is known, are born outside of Finland, are considered to have a foreign background.¹¹³⁷ In the statistics of Statistics Finland, these persons are then divided into subcategories as stated above.

4.1.2. Finnish Immigration Service

Another authority that collects statistical data on migrants in Finland is the Finnish Immigration Service. They register the number of applications for residence permits and asylum, as well as the decisions taken in response to the applications.¹¹³⁸

While the Centre of Statistics gives a more general view on the subject, the Finnish Immigration Service focuses on providing statistics related to migration. Besides the division between residence permit and asylum seekers, neither of the two institutions goes into detail regarding the reasons of migration. There is no specific data available regarding the purposes of migration, and it is therefore hard to specify how big of an amount of all migrants is formed by those who come to Finland for example for working or educational purposes.

4.2. Changes in Migration

4.2.1. General Statistics

In 2012, the number of foreign citizens in Finland was 195,511. In 2013 the equivalent number was 207,511 and in 2014 it went up to 219,675. In 2015 there were 229,765 foreign citizens, while in 2016 they amount was 243,639. Between 2015 and 2016 the number of foreign citizens has increased by 13,874 persons. The growth was slightly bigger compared to the previous year,

¹¹³⁷ Statistics Finland – Migration <<http://www.stat.fi/tup/maahanmuutto/maahanmuuttajat-vaestossa.html>> accessed July 15 2017.

¹¹³⁸ Finnish Immigration Service – Statistics <<http://tilastot.migri.fi/>> accessed July 15 2017.

when the number had increased by 10,090 persons. Between 2012 and 2014 the number of foreign citizens had increased by about 12,000 persons per year; by 12,000 persons between 2012 and 2013; and by 12,164 persons between 2013 and 2014.¹¹³⁹ In the past five years, the number of foreign citizens has therefore increased consistently. However, an acceleration of the movement can be found between the years 2015 and 2016 – i.e. in 2015, the number of foreign citizens had grown faster compared to the other years.

4.2.2. Asylum Applications and Residence Permits

In 2015, a total of 32,477 asylum applications were brought to the attention of Finnish Immigration Service. In 2016, the number was significantly smaller: only 5,657 asylum applications were placed. In 2016, 2,538 applications had been made by June 2017. As for applications for a residence permit, in 2015 the immigration service received 68,203 of such applications. In 2016, the amount was 71,960 applications. By June 2017, 33,974 applications for a residence permit had been placed.¹¹⁴⁰

In the light of the statistics provided by the Finnish Immigration Service, it can be concluded that the year 2015 was exceptional in regard to the number of asylum seekers. Comparing to the previous statistics by Statistics Finland, we recall a faster growth of the number of foreign citizens between the years 2015 and 2016. However, the statistics regarding the number of asylum applications is more representative of the exceptional situation caused by a sudden migratory flow in 2015. Considering, furthermore, the amount of applications for a residence permit, a slight growth can be seen between the years 2015 and 2016. However, the two types of applications are not to be mixed: as receiving an asylum also means receiving a permit of residence, there is no straight correlation between the number of asylum and residence permit applications.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

In general, Finland has a history as a country with a few immigrants within its borders, but this has changed in the recent years¹¹⁴¹ and the number of migrants will likely keep increasing in the future. It is clear that the Finnish migrant law needs to be modified. Since the migrant law in general has a dynamic nature,¹¹⁴² it leads to many challenges in ensuring a fair, just and rapid legal process. A residence permit can be granted on grounds of studying, working, family ties, as well as on some other grounds. The most relevant domestic laws in cases concerning migration are

¹¹³⁹ Statistics Finland <http://vertinet2.stat.fi/verti/graph/Graphserver.aspx?&ifile=quicktables/Maahanmuuttajat/kansa_1&lang=3&riid=3&cx=880&y=660&gskey=2&mimetype=htm> accessed July 15 2017.

¹¹⁴⁰ Finnish Immigration Service <<http://tilastot.migri.fi/#applications/21205?start=564>> Accessed July 15 2017.

¹¹⁴¹ Eeva Nykänen – Elina Pirjatanniemi – Olli Sorainen – Ida Staffans, *Migration law in Finland*. (Wolters Kluwer 2011) 16.

¹¹⁴² *ibid* 13.

the Constitution of Finland (Act no. 731/1999) and the Aliens Act (Act no. 301/2004), which apply to aliens' entry into and departure from Finland as well as to their residence and employment in Finland. Constitution of Finland, Article 9 paragraph 4 states that the right of foreigners to enter and to remain in Finland is regulated by an Act. It also states that a foreigner shall not be deported, extradited or returned to another country if 'in consequence the person in question is in danger of a death sentence, torture or other treatment violating human dignity'. The Administrative Procedure Act (434/2003) guarantees fair procedure. The fact that Finland has had a low number of immigrants is reflected in the case law: Finland has received many judgments from the European Court of Human Rights, but almost none of them have concerned migration law. In general, Finland has violated the ECHR mostly in procedural rights and in matters concerning freedom of expression.¹¹⁴³

5.1. Implementation of the Decisions of the ECtHR in which Finland Has Been the Respondent State

Finland has been the respondent State only in two judgements of the ECtHR that concern migrants. In *Senchishak v Finland* (no. 5049/12) the applicant alleged that the Finnish authorities would violate Article 3 (prohibition of torture) and Article 8 (right to respect for private and family life) of the Convention if she was expelled to Russia, where she was originally from. The applicant had appealed the denial of a residence permit based on family ties, because her adult daughter lived in Finland. The applicant's state of mental and physical health was weakened, so there was also a question about the applicant being dependant on her daughter. The ECtHR held that the Article 3 would not be violated if the applicant was expelled to Russia (para 48). The Court also argued that the relationships between parents and adult children do not fall within the protective scope of Article 8 unless 'additional factors of dependence, other than normal emotional ties, are shown to exist' (para 55). Because the Court declared that there was no family life between the applicant and her daughter within the meaning of Article 8, the complaint was declared inadmissible in relation to the Article 8 (paras 57-58). By this judgement the ECtHR clarified the grounds of family ties, which is important, since many Finnish residence permits are granted on grounds of family ties.¹¹⁴⁴ However, this decision did not require any action or implementation in Finland because no violation of the ECHR was discovered.

In *N. v. Finland* (38885/02) the ECtHR confirmed, by six votes to one, that the applicant's expulsion to the Democratic Republic of Congo would amount to a violation of Article 3 of the Convention (para 167). The Court heard a new witness who had not witnessed in the national court proceedings. Therefore, the Court stated that 'it cannot be said ... that the position of the Court contradicts in any respect the findings of the Finnish courts. Neither is there any indication that the initial asylum interview was in any way rushed or otherwise conducted in a superficial manner?'. However, the Court declared that the applicant may face revenge from the relatives of dissidents for his past activities in the service of President Mobutu. The Court also

¹¹⁴³ For example Matti Pellonpää – Monica Gullans – Pasi Pölönen – Antti Tapanila, *Euroopan ihmisoikeussopimus* (Talentum Helsinki 2012) 268 [Finnish].

¹¹⁴⁴ *Maahanmuuton tunnustukset* 2016. [Finnish].

noted that the publicity of the asylum case in Finland, not intended by the applicant, might further engender feelings of revenge. Additionally, the applicant appealed to family ties as a ground but the Court found that no separate issue arose under Article 8. The court did not order any damage to be paid and held that the finding of the violation of the ECHR would be sufficient for any non-pecuniary damage.

The ECtHR judgements in which Finland has been the respondent State may be enforced through compensation awarded to the victim of the human rights' violation and through law amendments.¹¹⁴⁵ Additionally, the Supreme Court of Finland has confirmed that a judgement of the ECtHR may also be a reason to reverse the earlier decision of a Finnish court.¹¹⁴⁶

5.2. Implementation of the Decisions of the ECtHR in General

In general, all the judgements of the ECtHR are also implemented through “human rights’ friendly interpretation” in courts in which also the judgements of the ECtHR must be considered.¹¹⁴⁷ Nowadays, judgements of the ECtHR have a considerable role in the Finnish case law concerning migrants. The Supreme Administrative Court frequently refers to the ECtHR decisions. The Supreme Administrative Court has referred to the ECtHR case law approximately in a quarter of its cases concerning any migrant related issues during the past year (August 2016 - August 2017). The role of the ECtHR has become more and more significant especially in cases that concern asylum and the Article 13 of the ECHR: in the asylum cases in the Supreme Administrative Court the reference to the case law of ECtHR was more common than not referring to it. However, because the ECtHR deals with very specific questions, there is not always suitable case law available to help in the interpretation of legal issues.¹¹⁴⁸

It is difficult to research how frequently the Immigration Service is considering the ECtHR case law in its decisions because the decisions of the Immigration Service are confidential. The same problem arises with the decisions of the Administrative Courts because most of the decisions of the Administrative Courts are not found from public sources.

Presumably, the Finnish case law will change in the future for several reasons, including the increasing number of migrants. Additionally, nowadays also the Finnish Immigration Service (also known as *Migr*) has the right to appeal to the Supreme Administrative Court for the decisions of administrative courts, which increases the number of appellate cases.¹¹⁴⁹ This right was previously reserved for those individuals who had received a negative decision from the court. This affects not only the amount of the cases but it also requires that the Supreme Administrative Court will create new guidelines for decision-making.¹¹⁵⁰ A breach of the ECHR may in some cases lead to modifications in the legislation. Changing legislation, however, can be

¹¹⁴⁵ Matti Pellonpää, *Euroopan ihmisoikeussopimus* (Gummerus Kirjapaino Oy. Jyväskylä. 2005) 196,197. [Finnish].

¹¹⁴⁶ KKO 1998:33 (judgment of the Supreme Court).

¹¹⁴⁷ Matti Pellonpää, *Euroopan ihmisoikeussopimus* (Gummerus Kirjapaino Oy. Jyväskylä. 2005) 62. [Finnish].

¹¹⁴⁸ Juha Lavapuro, *Euroopan ihmisoikeustuomioistuimen noudattamien tulkintaperiaatteiden kansallisesta sovellettavuudesta* (Defensor Legis 2011/4) 477 [Finnish].

¹¹⁴⁹ Anna-Maija Juvonen, *Maahanmuuton juridiikkaa, käytännön käsikirja* (Edilex libri. Porvoo. 2012) 12. [Finnish].

¹¹⁵⁰ Anna-Maija Juvonen, *Maahanmuuton juridiikkaa, käytännön käsikirja*, (Edilex libri. Porvoo. 2012) 13. [Finnish].

seen as a slower way to achieve results than changing practice.¹¹⁵¹ As previously mentioned, immigration law is dynamic and this can lead to various challenges.

5.3. Recent Amendments to the Finnish Aliens Act Discussed in the Light of the ECtHR Case Law

The dynamics of immigration law, as discussed above, are also seen in the recent amendments to the Finnish Aliens Act. The amendments affect mainly asylum seekers but also other migrants. The amendments have raised discussion on the issue of the human rights of migrants as these amendments have mostly weakened of the rights of migrants. However, because the amendments are relatively new, it remains to be seen whether they have led or will lead to the violations of the ECHR. Nonetheless, the amendments may be discussed in the light of the case law of the ECtHR. Some of these amendments are discussed in the following paragraphs.

Firstly, residence permit on humanitarian protection grounds was abolished from the law in 2016¹¹⁵²: Previously according to the Finnish Aliens Act an alien residing in Finland was issued with a residence permit on the basis of humanitarian protection if there were no grounds for granting asylum or providing subsidiary protection, but he or she could not return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation due to an international or internal armed conflict or a poor human rights situation. The humanitarian protection clause was a national protection category and was not based on the international human rights law¹¹⁵³. For example, the absolute prohibition of refoulement, based on the case law of ECtHR¹¹⁵⁴, is still covered by the subsidiary protection category in the Section 88 of the Finnish Aliens Act and the Section 147 prohibiting refoulement.

Secondly, the legal aid for asylum seekers was restricted.¹¹⁵⁵ According to the new Section 9 of the Finnish Aliens Act, asylum seekers have a right to legal aid in the asylum interview only if it is necessary for particularly substantial reasons or if the asylum seeker is an unaccompanied minor. Additionally, the appeal process to the administrative courts and to the Supreme Administrative Court has been accelerated in asylum cases. Previously the deadline for an appeal was 30 days, which was decreased to 21 days to administrative courts and 14 days to the Supreme Administrative Court. Only appeals to administrative courts have an automatic suspensive effect on the enforcement of the negative decision of the Finnish Immigration Service. After the appeal to the Supreme Administrative Court, the applicant can be removed from the country unless the Supreme Administrative Court has granted their application for a prohibition of enforcement. In some cases, even the appeal to an administrative court does not have automatic suspensive effect

¹¹⁵¹ Satu Heikkilä, *Euroopan ihmisoikeustuomioistuimen tuomioiden täytäntöönpanon valvonta*, (Lakimies 1/2008) 74. [Finnish].

¹¹⁵² Government proposal for amending the Aliens Act [HE 2/2016 laiksi ulkomaalaislain muuttamisesta].

¹¹⁵³ Government proposal for amending the Aliens Act [HE 2/2016 laiksi ulkomaalaislain muuttamisesta].

¹¹⁵⁴ *Soering v. the UK*, Judgement of 7 July 1989, Appl. No. 14038/88, *Cruz Varas and Others v. Sweden*, Judgement of 20 March 1991, Appl. No. 15576/89, *Vilvarajah and Others v. United Kingdom*, Judgement of 30 October 1991, Appl. Nos. 13164/87, 13447/87, 13448/87, *Chahal v. UK*, Judgement of 15 November 1996, Appl. No. 22414/93.

¹¹⁵⁵ Government proposal for amending the Aliens Act [HE 32/2016 laiksi ulkomaalaislain ja eräiden siihen liittyvien lakien muuttamisesta].

on the enforcement of a negative decision. The asylum applicant can apply for a prohibition of enforcement from the administrative court but he or she may nevertheless be speedily removed from the country.¹¹⁵⁶ All the legislative changes have raised concerns of the erosion of legal safeguards for asylum seekers and an increased risk of refoulement.¹¹⁵⁷

Previously, according to the Section 51 of the Finnish Aliens Act, aliens residing in Finland were issued a temporary residence permit if they could not be returned to their home country or to the country of permanent residence for temporary reasons of health or if they could not actually be removed from the country. This section has been altered in a way that if it is possible for the alien to return **voluntarily** to their home country, it is not possible to obtain resident permit under this section. This amendment has raised concerns that it could create groups of people who live outside the civil society as undocumented immigrants. Finland has traditionally had very few undocumented migrants and, consequently, there is no established system to protect the legal rights of undocumented migrants¹¹⁵⁸.

The ECHR and its supplementary protocols have, naturally, a significant role, but human rights have received specific meaning especially by the decisions of the ECtHR.¹¹⁵⁹ The Constitution of Finland guarantees the strong position of human rights: it states that 'the public authorities shall guarantee the observance of basic rights and liberties and human rights' (s 22). This also supports a human rights-friendly interpretation of law. The Finnish practice and case law related to the amendments are still evolving, as is the law itself. Only time will tell whether Finland can continue to uphold high human rights standards as it has done in the past.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Recommendations of the European Commission Against Racism and Intolerance

European Commission against Racism and Intolerance (hereinafter ECRI) has published its most recent conclusion report regarding Finland on March 17 2016.¹¹⁶⁰ These conclusions are based on the response submitted by Finnish authorities on October 12 2015 upon ECRI's

¹¹⁵⁶ According to an interview of an experienced refugee lawyer Marjaana Laine from Refugee Advice Centre *Pakolaisneuvonta* legal office by YLE News, there are now more cases where an asylum seeker's removal from the country is cancelled at the last minute or where a cancellation comes only after an asylum seeker has been returned to their home country. Eero Mäntymaa, *Zaki pakkopalautettiin yöllä Afganistaniin, aamulla hän olisi saanut jäädä Suomeen – mokasiko poliisi?*, YLE uutiset July 5 2017.

¹¹⁵⁷ Committee Against Torture: *Concluding observations on the seventh periodic report of Finland*, adopted by the Committee at its fifty-ninth session (7 November – 7 December 2016) 3-4.

¹¹⁵⁸ Non-discrimination ombudsman: *Yhdenvertaisuusvaltuutetun lausunto hallituksen esitykseen 170/2014 laeiksi kansainvälistä suojelua bakevan vastaanotosta annetun lain ja ulkomaalaislain muuttamisesta*, January 26th 2015.

¹¹⁵⁹ Matti Pellonpää – Monica Gullans – Pasi Pölönen – Antti Tapanila, *Euroopan ihmisoikeussopimus* (Talentum Helsinki 2012) 65 [Finnish].

¹¹⁶⁰ ECRI Report On Finland (Fourth Monitoring Cycle), Council of Europe 2016.

request for information on the measures taken to implement ECRI's recommendations. According to a publication on migration by Statistics Finland, immigration rate hit its peak in the year 2016.¹¹⁶¹ That was surely something unexpected during at the times of drafting the recommendation and the conclusions. The overall conclusion was that the ECRI's recommendations on the actions to be taken to improve integration of immigrants and against alien hatred have mostly been implemented.

6.2. Non-Discrimination Ombudsman

The Finnish Non-discrimination Ombudsman was founded in 2015. It replaced the former Ombudsman for Minorities. The Non-discrimination Ombudsman is currently not empowered to bring matters before the courts by her own initiative, as ECRI had recommended, but her mandate now covers a wider range of prohibited grounds of discrimination than the previous Ombudsman's mandate. It covers nearly all types of discrimination except for discrimination on the grounds of gender, which in turn is falling under the Equality Ombudsman.¹¹⁶² Non-discrimination Act enumerates the powers under which the Ombudsman can receive and process complaints. In 2016, the amount of complaints received by the Ombudsman had nearly doubled, mostly due to the law reform but most likely also due to the refugee crisis.¹¹⁶³ Furthermore, at the end of the year 2016 the Finnish Police publication announced that the numbers of hate crime reported to the police had increased more than 50 per cent in year 2015 compared to the previous year.¹¹⁶⁴ Compiler of the report, Tero Tihveräinen, noted that this should not be attributed solely to the increased number of immigrants and refugees alone don't explain the numbers, as other factors may have contributed this outcome as well.¹¹⁶⁵

Despite ECRI's recommendation, thus far no local or regional branch offices for the Non-Discrimination Ombudsman have been established. In addition, the ECRI has recommended the National Discrimination Tribunal's mandate to be extended and enabled to award damages to victims of discrimination. At the time being, damages can be awarded under the Non-Discrimination Act.¹¹⁶⁶ Unlike the Non-Discrimination Ombudsman, the National Discrimination Tribunal is empowered to bring matters before either a district court or an administrative court. Decisions of the Tribunal are legally binding. Despite the attempts to reach the Non-Discrimination Ombudsman for any further commentary on the unimplemented recommendations, so far we have been unable to get any response.

¹¹⁶¹ Statistics Finland: *Immigration rose to a new record level in 2016* <http://www.stat.fi/til/muutl/2016/muutl_2016_2017-05-17_tie_001_en.html> accessed June 30 2017.

¹¹⁶² A news article an an interview of Non-Discrimination Ombudsman Kirsi Pimiä March 18 2016 <<https://yle.fi/uutiset/3-8754336>> accessed June 19 2017.

¹¹⁶³ *ibid*

¹¹⁶⁴ Publication of Finnish Government basing on the report conducted by Police University College <http://valtioneuvosto.fi/artikkeli/-/asset_publisher/1410869/poliisin-tietoon-tulleiden-viharikosten-maara-kasvoi> accessed June 12 2017.

¹¹⁶⁵ *ibid*

¹¹⁶⁶ Non-Discrimination Act 2014, s 9 (*Yhdenvertaisuuslaki* 1325/2014).

6.3. Hate Crimes in Finland

ECRI's recommendations on improving measures to ensure monitoring of racist acts were considered having been implemented properly.¹¹⁶⁷ In its report, Finland had provided information on the several steps taken to improve authorities' ability to recognise hate crime incidents. In addition, police officers and prosecutors have participated in certain training events on racist criminal offences and the monitoring of hate crime. Yet ECRI notes that it is too early to assess the impact of these actions.¹¹⁶⁸ The Criminal Code of Finland does not recognise the term 'hate crime'.¹¹⁶⁹ Nevertheless, hate as a motive of committing a crime may aggravate the sanctions. Ethnic agitation is also forbidden by the law and punished by a fine or imprisonment.¹¹⁷⁰ The Police University College conducts an annual study on alleged hate crimes. The most recent official study covers the year of 2015. One of its many findings was that the most common criminal offence having racist features was an assault.¹¹⁷¹

Although the ECRI's recommendations apply to specific instances, it does not provide a full view of the development in the fight against racism and intolerance in Finland. An example of intolerance worth mentioning is a patriotic picketing movement called "Finland First" (*Suomi Ensín*) that has been in the headlines rather a lot during the year 2017. The organisation behind it has an official political agenda to strive for an independent currency, border controls for controlling illegal immigration and political independence.¹¹⁷² In practise, the picketing has turned out to be more than a harmless demonstration. Picketers had a tent set up in the Central Railway Station, an important public square in Helsinki for approximately five months since February 2017, until the Finnish Police ordered the dispersal of their camp on Monday 26 June 2017.¹¹⁷³ Picketers had failed to comply with the orders of the Police to pay attention to the general order and security. Picketers had also assaulted multiply bystanders, and this finally led to coercive measures taken by the authorities. The "Finland First" movement is seen to represent pure racism stemming from alien hatred as one of the consequences of the refugee crisis.

6.3.1. UN's Concerns on Hate Crime in Finland

The UN Member States have reviewed the situation of human rights in Finland rather recently, in May 2017.¹¹⁷⁴ In the UN's Periodic Review of Human Rights other Member States expressed

¹¹⁶⁷ ECRI Conclusion on the Implementation of the Recommendations <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-IFU-IV-2016-022-ENG.pdf>> accessed May 24 2017.

¹¹⁶⁸ *ibid*

¹¹⁶⁹ Finnish Government Publication <http://valtioneuvosto.fi/artikkeli/-/asset_publisher/1410869/poliisin-tietoon-tulleiden-viharikosten-maara-kasvoi> accessed June 2 2017.

¹¹⁷⁰ The Criminal Code of Finland, in English here: <https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>.

¹¹⁷¹ Report of the Police University College in Finnish <http://www.theseus.fi/bitstream/handle/10024/117042/Raportti_125_verkko.pdf?sequence=1> Accessed June 1 2017.

¹¹⁷² The Official Website of "Suomi Ensín" <<http://suomiensin.net/>> accessed June 14 2017

¹¹⁷³ A news media article considering "Finland First" manifestation and Police intervention <<https://yle.fi/uutiset/3-9690546>> accessed June 15 2017.

¹¹⁷⁴ Publication of Finnish UN association summarizing UN's Periodic Review of Human Rights Situation in Finland 2017 <<http://www.ykliitto.fi/uutiset-ja-tiedotus/uutisarkisto/vihapuhe-ja-lahisuhdevakivalta-suomen->

two main concerns on the human right situation in Finland: hate speech and violence towards women and children. The representatives of other UN Member States also pointed out Finland's tightened asylum policy.¹¹⁷⁵

7. How is migrants' right to access to healthcare regulated within the national legislation?

The right to health is a fundamental human right guaranteed by many international and European human rights instruments. Everyone's, including migrants' access to healthcare without discrimination is a key element of this right. However, in Finland, the requirements to access public healthcare as well as the range of services provided vary amongst different groups of migrants. As the basis for access to healthcare in Finland is legal residency, migrants who are not registered as residents have fairly restricted access to public healthcare services.

7.1. Overview of the National Health System

A short description of the Finnish health system is needed to understand how access to healthcare is defined in the national legislation. According to the Constitution of Finland, the state and public authorities are responsible for promoting the health of the population and ensuring adequate social, health and medical services to all.¹¹⁷⁶ The national Ministry of Social Affairs and Health is responsible for the overall functioning and general policies of social and health services. In the Finnish healthcare system, which is divided into public and private healthcare, most of the healthcare services are organized by the municipal health system as municipalities are required by law to arrange and provide adequate social and healthcare services to their residents. Private healthcare services are meant to supplement the mainly tax-funded public healthcare system. Municipalities are responsible for providing both primary and specialized healthcare services to inhabitants within their borders.¹¹⁷⁷

7.2. Constitutional Basis of Migrants' Right to Healthcare

As there is no specific legislation in Finland concerning migrants' right to access healthcare, the Constitution of Finland provides a basis for the evaluation of the national legal framework on access to healthcare. According to Section 1 of the Constitution of Finland, the Constitution guarantees the inviolability of human dignity and the freedom and rights of the individual and promotes justice in society. The Constitution protects the fundamental rights of all individuals in its territory regardless of, inter alia, their gender, race, nationality, or the nature of their stay.

suurimpia-ihmisoikeusongelmia> Also in English here:
<<http://www.formin.finland.fi/public/default.aspx?nodeid=50036&contentlan=2&culture=en-US>> both accessed July 5 2015.

¹¹⁷⁵ Publication of Finnish UN association summarizing UN's Periodic Review of Human Rights Situation in Finland 2017 <<http://www.ykliitto.fi/uutiset-ja-tiedotus/uutisarkisto/vihapuhe-ja-lahisuhdevakivalta-suomen-suurimpia-ihmisoikeusongelmia>> accessed June 4 2017.

¹¹⁷⁶ The Constitution of Finland 1999 [*Suomen perustuslaki*], s 19(3).

¹¹⁷⁷ Ministry of Social Affairs and Health, 'Health Services' <<http://stm.fi/en/health-services>> accessed June 30 2017.

Section 19(1) of the Constitution of Finland defines the fundamental right to health and healthcare services. It states that ‘those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care’. The article gives everyone a subjective right to the level of income and access to services that secure the minimum level of decent living conditions. This includes, for example, the right to emergency care.¹¹⁷⁸

According to the Constitution, public authorities are responsible for providing adequate healthcare services to all as is further specified by law.¹¹⁷⁹ However, as stated by the Constitutional Law Committee, equal right to health services is not an absolute right in the sense that it cannot under any circumstances be restricted or that different groups of people could not be treated differently.¹¹⁸⁰ Thus, restricting certain individuals’, such as migrants’, access to healthcare is not against the Constitution as long as the right to receive indispensable subsistence and care is secured in all situations.

7.3. Access to Healthcare for Different Migrant Groups

The right to access to healthcare is further defined in the Act on the Status and Rights of Patients 1992. As stated in Section 3 of the Act, ‘every person who is permanently resident in Finland is without discrimination and regardless of his nationality entitled to healthcare required by his state of health within the resources available to healthcare at the time in question’. Specific provisions apply to persons who are staying in Finland temporarily.¹¹⁸¹ In addition, urgent medical care in public healthcare is always provided to every individual staying in Finland regardless of the nature of their stay or their legal status.¹¹⁸² Any further right to receive public healthcare services depends on the person’s right of residence and the nature of their stay as stated in the Municipality of Residence Act 1994.

7.3.1. Third-country Nationals

Third-country nationals are defined as individuals who are not citizens of EU- and EEA-countries or citizens of Switzerland. Third-country nationals’ right to healthcare services depends on the legal nature of their stay. If a third-country national resides in Finland legally and permanently as stated in the Municipality of Residence Act 1994, they will get a municipality of residence. A person’s stay in Finland is considered to be permanent if they have a continuous fixed-term residence permit or a permanent residence permit as stated in the Aliens Act 2004. A person with a municipality of residence is entitled to the same healthcare services as Finnish citizens. Therefore third-country nationals with a continuous or a temporary residence permit or a permanent residence permit have the right to receive full healthcare services offered by the municipality.

¹¹⁷⁸ Government proposal for amending the constitutional provisions of the Constitution 1993, 69 [HE 309/1993 perustuslakien perusoikeussäännösten muuttamisesta]; Statement of the Constitutional Law Committee 20/2004, 2.

¹¹⁷⁹ The Constitution of Finland 1999 [*Suomen perustuslaki*], s 19(3).

¹¹⁸⁰ Government proposal for amending the constitutional provisions of the Constitution 1993 [HE 309/1993 perustuslakien perusoikeussäännösten muuttamisesta].

¹¹⁸¹ Act on the Status and Rights of Patients 1992 [*Laki potilaan asemasta ja oikeuksista*], s 3.

¹¹⁸² Health Care Act 2010 [*Terveydenhuoltolaki*], s 50; Act on Specialised Medical Care 1989 [*Erikoissairaanhoitolaki*], s 3 (2).

A person with a temporary fixed-term residence permit can get a municipality of residence and thus full access to public healthcare services if their residence permit is valid for at least one year and when taking into consideration the circumstances, i.e. their purpose is to reside in Finland permanently.¹¹⁸³

7.3.2. Asylum Seekers

Asylum seekers are in a special position in regard to access to healthcare services. Based on the Act on the Reception of Persons Applying for International Protection and on the Identification of and the Aid to Victims of Trafficking in Human Beings 2011, asylum seekers have a right to receive other healthcare services deemed necessary by a medical professional in addition to the urgent medical care that is offered to all in accordance with Section 50 of the Health Care Act. These healthcare services are a part of reception services given to all asylum seekers in Finland.¹¹⁸⁴ Asylum seekers' healthcare services are organized by reception centres. In addition to costs incurred by the treatment, reception centres will also cover the costs of medicines prescribed by a doctor. The state will compensate for the costs of healthcare for reception centers as part of the reception costs.¹¹⁸⁵ In some cases, however, asylum seekers can be charged a fee for the health services pursuant to the Act on Client Fees in Social Welfare and Healthcare.¹¹⁸⁶

All asylum seekers undergo a basic health examination on arrival. A healthcare professional will make an assessment of the need for health services based on each asylum seeker's individual situation, their state of health, and the length and continuation of their stay in Finland. Even though asylum seekers' stay in Finland isn't seen as continuous or permanent in legal terms, in reality their stay may continue for several years. Consequently, providing asylum seekers only emergency care cannot be considered adequate. The Ministry of Social Affairs and Health has emphasized that asylum seekers should also be provided with other necessary health services, including maternity care and necessary treatment of chronic illnesses.¹¹⁸⁷ Underage asylum seekers have an even wider access to healthcare in Finland as they are entitled to the same healthcare services as persons with a domicile in Finland.¹¹⁸⁸

7.3.3. Undocumented Migrants

At present, undocumented migrants' access to healthcare services is very limited in Finland. Like in many other European countries, undocumented migrants are only entitled to emergency care

¹¹⁸³ Municipality of Residence Act 1994 [*Kotikuntalaki*], s 4(5).

¹¹⁸⁴ 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.

¹¹⁸⁵ Ilmo Keskimäki, Eeva Nykänen and Hannamaria Kuusio, *Paperittomien terveyspalvelut Suomessa* (National Institute for Health and Welfare, Report 11/2014) 21 [Finnish].

¹¹⁸⁶ Act on the Reception of Persons Applying for International Protection and on the Identification of and the Aid to Victims of Trafficking in Human Beings 2011 [*Laki kansainvälistä suojelua hakevan vastaanotosta sekä ihmiskaupan uhrien tunnistamisesta ja auttamisesta*], ss 3(2) and (3).

¹¹⁸⁷ Government proposal for an act on the reception of persons seeking international protection 2010, 58 [HE 266/2010 laeiksi kansainvälistä suojelua hakevan vastaanotosta ja eräiden siihen liittyvien lakien muuttamisesta].

¹¹⁸⁸ 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.

at their own cost. Under current legislation municipalities are obliged to provide public healthcare services and specialized medical care only to those individuals whose home municipality it is. Other groups of people such as undocumented migrants are not entitled to any other healthcare services besides medical care in urgent cases.

There is no specific legislation regarding undocumented migrants' access to healthcare and thus their right to access to health services has to be deduced from the applicable general legal framework. Undocumented migrants may access emergency care in accordance with the Health Care Act. According to Section 50 of the Health Care Act 2010: urgent medical care, also including urgent oral healthcare, mental healthcare, substance abuse care and psychosocial support are provided for patients regardless of their place of residence. In the Health Care Act, urgent medical care is defined as the immediate intervention and treatment of urgent cases that cannot be postponed without risking the worsening of the condition or further injury. However, as the Health Care Act or its supplementary regulation does not further define the meaning or scope of urgent medical care, it is unclear what kind of health issues are covered by urgent medical care.¹¹⁸⁹

Some Finnish municipalities, i.e. Helsinki, Espoo and Vantaa, have decided to provide undocumented migrants other health services in addition to the urgent medical care. These services usually include healthcare for particularly vulnerable migrants such as pregnant women and children.¹¹⁹⁰ In addition, special volunteer-run clinics such as the Global Clinic provide free healthcare services for undocumented migrants.¹¹⁹¹

As undocumented migrants do not have a municipality of residence in Finland, municipalities can collect a fee of the emergency care they have received. According to the Act on Client Fees in Social Welfare and Healthcare 1992, the fee collected can't be higher than the amount that the production cost of the services. However, municipalities are not obliged to collect a fee for the healthcare services provided and they may use lower rates or provide the health services free of charge. In any case, undocumented migrants can't be denied access to urgent medical care even if they do not have sufficient funds to pay for the treatment.

In 2014, the government of Finland made a proposal that would have obliged municipalities to offer undocumented migrants wider access to necessary healthcare services in addition to the emergency care. In addition, the proposal would have granted undocumented migrants under the age of 18 access to the same healthcare services as Finnish citizens. However, the Parliament did not reach an agreement on the government's proposal and to date, there has been little progress in the legislation process to ensure wider access to healthcare for undocumented migrants.¹¹⁹²

¹¹⁸⁹ Ilmo Keskimäki, Eeva Nykänen and Hannamari Kuusio, *Paperittomien terveyspalvelut Suomessa* (National Institute for Health and Welfare, Report 11/2014) 24-25 [Finnish].

¹¹⁹⁰ City of Helsinki 'Paperittomien henkilöiden julkinen terveydenhuolto Helsingissä' <<https://www.hel.fi/sote/fi/palvelut/palvelukuvaus?id=3677>> accessed September 6 2017 [Finnish]; Helsingin Sanomat 'Vantaa tarjoaa jatkossa Espoon ja Helsingin tavoin hoitoa alaikäisille ja raskaana oleville paperittomille' <<http://www.hs.fi/kaupunki/art-2000005212416.html>> accessed September 7 2017 [Finnish].

¹¹⁹¹ Paperittomat-hanke 'Global Clinic' <http://www.paperittomat.fi/?page_id=1691&lang=en> accessed September 5 2017.

¹¹⁹² Government proposal on the obligation of the municipality to arrange certain healthcare services to foreigners and to amend the Act on Cross-Border Healthcare 2014 [HE 343/2014 laiksi kunnan velvollisuudesta järjestää eräitä

7.4. Challenges in Migrants' Access to Healthcare

Accessibility of healthcare services is a key component of the right to health. This means that healthcare services must be physically and economically available for all persons without discrimination. In addition, everyone must receive and have access to information concerning health related issues and available health services.¹¹⁹³ Migrants in general and especially vulnerable migrant groups may face difficulties in accessing the healthcare services they are entitled to due to cultural and religious differences, language barriers and lack of information.¹¹⁹⁴

The Finnish healthcare system has faced new challenges as the number of migrants has increased. According to studies and reports on migrants' health and access to healthcare services in Finland, migrants often lack awareness of the Finnish healthcare system and their entitlement to health services.¹¹⁹⁵ Migrants do not utilize health examinations and screenings, rehabilitation or mental health services as much as the general population which may indicate that health services do not reach the most vulnerable migrant groups who need those services the most. Migrant groups such as asylum-seekers, migrant women, elderly migrants and migrants with mental health issues are at particular risk of having very limited access to the health services they need.¹¹⁹⁶ Apart from the lack of information, language difficulties and cultural differences may create barriers to migrants' access to health services. Healthcare personnel need more education in caring for migrants from different cultures and backgrounds.¹¹⁹⁷

Vulnerable migrant groups such as asylum seekers and migrant women often have special health needs that require specialized care. In Finland there are some special programmes and services that provide specific assistance to certain migrant groups. Centres for Torture Survivors in Helsinki and Oulu are run by the Helsinki and Oulu Deaconess Institutes and offer rehabilitation services to tortured refugees and asylum seekers.¹¹⁹⁸ The Finnish Association for Mental Health has established a SOS Crisis Centre that provides various crisis services, for example counselling and rehabilitation courses, for migrants free of charge.¹¹⁹⁹

terveydenhuollon palveluja eräille ulkomaalaisille ja laiksi rajat ylittävistä terveydenhuollosta annetun lain muuttamisesta].

¹¹⁹³ International Organization for Migration 'Migration and the Right to Health in Europe' <http://www.migrant-health-europe.org/files/Right%20to%20Health_Background%20Paper.pdf> accessed September 7 2017, 8.

¹¹⁹⁴ Kristian Wahlbeck and others, *Quality and Equality of Access to Healthcare Services: HealthQUEST Country Report for Finland* (STAKES, Reports 1/2008) 48-49.

¹¹⁹⁵ Ibid. 48-49; National Audit Office of Finland, 'Kotouttaminen sosiaali- ja terveydenhuollossa' (Performance Audit Report 3/2014) <https://www.vtv.fi/files/3854/3_2014_Kotouttaminen_sosiaali-_ja_terveydenhuollossa.pdf> accessed September 4 2017, 51 [Finnish].

¹¹⁹⁶ National Audit Office of Finland, 'Kotouttaminen sosiaali- ja terveydenhuollossa' (Performance Audit Report 3/2014) <https://www.vtv.fi/files/3854/3_2014_Kotouttaminen_sosiaali-_ja_terveydenhuollossa.pdf> accessed September 4 2017, 43-45 [Finnish]; Anu Castaneda and others, *Maahanmuuttajien terveys ja hyvinvointi – Tutkimus venäläis-, somalialais- ja kurditaustaisista Suomessa* (2 edn, THL Report 61/2012) 10-11 [Finnish].

¹¹⁹⁷ Kristian Wahlbeck and others, *Quality and Equality of Access to Healthcare Services: HealthQUEST Country Report for Finland* (STAKES, Reports 1/2008) 49.

¹¹⁹⁸ Helsinki Deaconess Institute 'Rehabilitation of torture survivors' <<https://www.hdl.fi/en/services/torture-and-trauma>> accessed September 7 2017.

¹¹⁹⁹ The Finnish Association for Mental Health 'Support and Help for Foreigners' <<https://www.mielenterveysseura.fi/en/support-and-help/support-and-help-foreigners>> accessed September 7 2017.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

The authorities must treat all children primarily as children and consider their best interest regardless of the residence status of their parents. In decisions concerning a child, the child's best interest must always be assessed on a case-by-case basis. The fundamental rights to which children are entitled include the right to health care and the right to basic education.

According to the Convention on the Rights of the Child, in all actions concerning children undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child must be taken as a primary consideration.¹²⁰⁰ This obligation is directed at all authorities and applies to all children living in Finland regardless of their status. The Finnish Aliens Act also stipulates that in any decisions issued under the Act, special attention shall be paid to the best interest of the child and to circumstances related to the child's development and health.¹²⁰¹

In Finland every child has the right to basic education, but some problems have arisen regarding access to school. Especially undocumented children have an extremely vulnerable position in the society, mainly because of the lack of permanent residence. They are not registered in the Population Information System and if the parents of undocumented children are not residents of a municipality, this means that the children are also at risk of being excluded from child welfare services. Because of this, it is even more vital that the undocumented children are not denied access to school.

8.1. The Right to Basic Education Under ECHR

Under the ECHR, the right to education is guaranteed by Article 2 Protocol No. 1 ECHR. It states that '[n]o person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'¹²⁰². This right should also be implemented in accordance with the principle of non-discrimination. The ECtHR has raised the right to education to one of the 'most fundamental values of the democratic societies making up the Council of Europe'¹²⁰³, and, as such, it constitutes a right to which every person is entitled. The Court has stated, on the fact that such a fundamental right cannot be interpreted restrictively, and affirmed the universality of the right to education by holding that the exclusion of children, because their parents were not regularly registered migrants, violated the ECHR and the right to education.¹²⁰⁴

¹²⁰⁰ The United Nations, "Convention on the Rights of the Child." Treaty Series 1577 (1989): 3. Print

¹²⁰¹ Aliens Act 301/2004, amendments up to 1152/2010 included, ch 1 s 6.

¹²⁰² Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952.

¹²⁰³ Guide on Article 2 of Protocol No. 1 – Right to education Council of Europe/European Court of Human Rights, 2017 <http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf>.

¹²⁰⁴ Hélène Lambert, The Position of Aliens in Relation to the European Convention on Human Rights, Council of Europe, December 2006, 46.

8.2. The Right to Basic Education in Finland

The According to the Finnish Constitution, every child has the right to free basic education.¹²⁰⁵

The Finnish Constitution states:

Everyone has the right to basic education free of charge. Provisions on the duty to receive education are laid down by an Act. The public authorities shall guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship. The freedom of science, the arts and higher education is guaranteed.

Accordingly, every child has the right to free basic education and must be able to reach school regardless of his or her parents' legal status. The Constitution of Finland and the international human rights treaties impose an obligation to guarantee these rights to all people in areas within the state's jurisdictions. This applies also to persons who are staying in the state illegally¹²⁰⁶.

Basic education in Finland is provided as compulsory education¹²⁰⁷. In practice, this includes classes of primary school grades 1-9. In addition to teaching, a child has the right to receive the books, other learning materials and tools needed free of charge at school. In Finland, many other services such as student care services are also offered alongside the unpaid basic education free of charge. During the school day, pupils also receive a free meal.

8.3. Compulsory Education and Access to School

All children residing in Finland permanently are subject to compulsory education; consequently, they must receive basic education. In Finland, compulsory education usually begins in August of the year when the child reaches 7 years and ends when the basic education has been completed or 10 years have elapsed since the beginning of compulsory schooling. As previously mentioned, all the migrant children do have the right to basic education but not necessarily right to compulsory education without a permanent resident status¹²⁰⁸.

In this case, the question of this link between the right to education and compulsory education *is* the migrant child's genuine opportunity to be able to have access to school. Every child with the right to compulsory education is entitled to enter school. However, as stated in the Constitution of Finland, the municipality must provide basic education for all children in its territory¹²⁰⁹, including migrant children without the right to compulsory education. Thus, the constitutional obligation for municipalities to provide basic education is extensive. The Basic Education Act¹²¹⁰ does not require that the child's residence in the municipality needs to be permanent or that the municipality should be the home of the child. Compulsory education is limited to permanent residents only.

¹²⁰⁵ The Constitution of Finland 11 June 1999, 731/1999, amendments up to 1112 / 2011 included Chapter 2 Section 16

¹²⁰⁶ Paperittomat – hanke, Paperittoman lapsen oikeus perusopetukseen – julkaisu <http://www.paperittomat.fi/wp-content/uploads/2014/04/paperittomanlapsen_oikeusperusopetukseen_julkaisu_VALMIS.pdf>

¹²⁰⁷ Basic Education Act 628/1998 Amendments up to 1136/2010

¹²⁰⁸ Basic Education Act 628/1998 Amendments up to 1136/2010.

¹²⁰⁹ The Constitution of Finland 11 June 1999, 731/1999, amendments up to 1112 / 2011 included Chapter 2 Section 16

¹²¹⁰ Basic Education Act 628/1998 Amendments up to 1136/2010.

In spite of the quite precise wording of the Constitution, there have been differing interpretations of the legislation before the Parliamentary Deputy Ombudsman's position in December 2013. The Parliamentary Deputy Ombudsman has reaffirmed that under Finnish law, all children, including undocumented, have the right to free basic education¹²¹¹. The interpretation of the Constitution had in the past led to a situation where not all school-age children had access to school because of the missing status of a permanent resident in a municipality. After the Ombudsman's statement, also the Ministry of Education and Culture of Finland informed, that they will step up the guidance directed at municipalities and regional government agencies so that in the future they would interpret the law correctly, providing basic education to all children in Finland's territory¹²¹².

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

In Finland the recognition of higher education diplomas is divided into two types of administrative decisions: the "general" recognition from the Finnish National Agency for Education (later, the FNAE) which recognizes the level and comparability of the education, and the recognition of professional qualification which gives the right to practice a profession in Finland. All degrees do not need to be recognized.

9.1. Legislation

Finland has ratified the Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 with a declaration to Article II.2.¹²¹³ It states that the Republic of Finland retains the competence to make recognition decisions to higher education institutions.

Finland has implemented rules of recognition and comparability of qualifications from international agreements and treaties of the European Union to The Act on Eligibility for Public Posts Provided by Higher Education Studies Completed Abroad (1385/2015) [*Laki ulkomailla suoritettujen korkeakouluopintojen tuottamasta virkakelpoisuudesta*] and to the Act on Recognition of Professional Qualifications (1384/2015) [*Laki ammattipätevyyden tunnustamisesta*]. The latter does not regulate requirements for posts in the fields of police, border guards and army or posts that

¹²¹¹The Parliamentary Deputy Ombudsman "Kunnan tulee järjestää perusopetusta kaikille kunnassa asuville lapsille", April 2014, <<http://www.oikeusasiamies.fi/Resource.phx/pubman/templates/2.htx?id=1022>>.

¹²¹²Ministry of Education and Culture of Finland, Media Bulletin September 22 2015, '*Opetus- ja kulttuuriministeri Sanni Gråhn-Laasonen: Oikeus esi- ja perusopetukseen kuuluu myös turvapaikanhakijalapsille*'.

¹²¹³ At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any time thereafter, each State, the Holy See or the European Community shall inform either depository of the present Convention of the authorities which are competent to make different categories of decisions in recognition cases.

have legal education as an eligibility requirement, and it applies only to residents from ETA-area or people who have a solid connection to it.

The Government Decree on Studies Supplementing Higher Education Studies Completed Abroad (1460/2015) [*Valtioneuvoston asetus ulkomailla suoritetuista korkeakoulupintoista täydentävistä opinnoista*] amended the rules for the recognition of supplementary studies. The higher educational institution can require complementary studies if the recognition requires not more than one third of the total extent of the higher education studies leading to the degree and if the degree completed is recognized as comparable to a Finnish higher education degree. In the recognition of a study module, the higher educational institution can require complementary studies not more than one half of the total extent of a module completed in Finland, when the study module completed abroad is recognized as comparable to a study module completed in Finland.

9.2. Authorities

The educational requirements for certain professions or the right to practice a profession are provided by the law. Requirements are set for 81 different public professions mainly in the health care and education sectors. The educational requirement laid down by law means that specific legislation determines what kind of specific education you need to work in that position in Finland.

There are four different ways to recognize a degree depending on why the recognition is needed. It can be done by The Finnish National Agency for Education, field-specific authorities, employers, and higher education institutions or other educational institutions. Refugees or any other vulnerable groups do not have any special procedures. All applications will be processed in compliance with current legislation.

The Finnish National Agency for Education decides the equivalence of foreign and Finnish higher education studies. It decides eligibility of the qualifications or degrees for posts with eligibility requirements and also gives expert opinions on foreign degrees. Decisions either equate foreign higher education studies to certain Finnish studies or recognize the professional qualifications. Foreign higher education qualifications can be equated to a Finnish degree if Finland has a statutory qualification requirement for a certain post. The regulated professions which have a statutory eligibility requirement in Finland are listed on the FNAE's website¹²¹⁴.

Field-specific authorities decide on professional qualifications on the basis of a foreign degree in accordance with their competence: for instance, acting as a special veterinarian requires the approval of The Finnish Food Safety Authority, and acting as an attorney requires the approval of the bar association.

Employers themselves evaluate the qualifications given by a foreign education institution when choosing their employees if the position in question does not require a certain or specific level of education or professional qualification.

¹²¹⁴ 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].

Higher education institutions and other educational institutions can decide on the recognition of a postgraduate study diploma or a degree by a foreign institution when applying to postgraduate studies. Therefore, there is no need for a decision by the FNAE or any other competent authority while applying to higher studies. However, educational institutions can still ask for advice from The Finnish National Agency for Education on academic recognition issues.¹²¹⁵

Only the FNAE makes administrative decisions on the eligibility of a degree for a regulated profession. The applicant may also need a decision on one's right to act in a certain profession in Finland in addition to the general recognition of one's eligibility. The right could be acquired by the same body granting the right to practice that profession on the basis of a degree or education in Finland.

For example, if a person applies for a position of a state official with an eligibility requirement of a doctor's degree one will only need a recognition by the FNAE. If the same person applies for the position of a doctor instead, the applicant will need the right to practice in that profession. In this case the professional qualification can be acquired from the authority managing the profession in Finland (here, the National Supervisory Authority for Welfare and Health). If both recognition of foreign education and the right to practice a profession are needed, they can be obtained simultaneously. In the evaluation of the right to practice a certain profession in Finland, weight can be given to education, work experience, and supplementing studies or internship, while the recognition process takes into account only the equivalency of the degree in Finland.

9.3. Procedure

When recognition is required, the procedure starts with finding the right authority overseeing the profession in question. Recognition can be applied for if an education is completed in a foreign country and the applicant is a graduate, has a diploma and the degree is similar to the Finnish degree. For filing an application, officially certified copies of the diploma, translations and identification of the applicant are needed.

A foreign university degree can be recognized as equivalent to a Finnish bachelor's or master's degree, lower or higher postgraduate licentiate degree or a doctoral degree. The degree must be equivalent to the complexity and orientation of degrees to Universities in Finland to which it is admitted.¹²¹⁶

The recognized degree must be completed and it has to be a part of the official education system in that country. A decision on the recognition can only be made by individual application and every application will be addressed individually. The recognition of a foreign qualification does not transform it to its Finnish equivalent: a Finnish degree title can only be obtained by completing a Finnish degree.

¹²¹⁵ The National Agency for Education, 'Recognition of degrees and international comparison' <<http://www.oph.fi/english/services/recognition>> accessed July 2 2017 [Finnish].

¹²¹⁶ The National Agency for Education, 'Recognition of foreign diplomas in Finland' <http://www.oph.fi/download/177026_Esite_2016_EN.pdf> accessed July 2 2017 [Finnish] > accessed July 2 2017.

A decision by the FNAE is requested by submitting a signed application form with annexes to the FNAE.¹²¹⁷ Within one month of receiving an application, the FNAE sends a receipt by email to the applicant. The average processing time of the application is three to four months after the applicant has provided all the necessary documents to the FNAE. An application fee is charged. The applicant has the right to appeal the decision to the Administrative Court and an appeal request form is attached to the FNAE's decision. The decision is given in Finnish or Swedish.

Most common causes that prevent the recognition of a foreign education are that the education is not a part of that country's official education system, the degree is in a different level in the Finnish education system, or Finland has no eligibility requirement laid by law for that post. If the degree is a part of that country's official system but cannot be recognized, the FNAE also provides expert opinions. An opinion can be given on a completed degree that is a part of the official education system of the country where it was obtained. It does not give eligibility for a post requiring specific qualification or level of studies. However, an expert opinion by the FNAE can be helpful for finding a job or applying to applying for further education. The opinion is given in Finnish or Swedish and describes the level and content of the degree. It can be sought by submitting a completed application with attachments to the FNAE. The form and instructions are on the FNAE website in Finnish, Swedish and English. The document will be sent by mail to the applicant or his contact person in Finland.¹²¹⁸

The processing time of an application for expert opinion is about three months, depending on the FNAE's need to consult outside experts. A decision for the recognition of professional qualifications must be rendered within four months from the date the application was submitted. There is no established time period for addressing the eligibility of higher education. The FNAE does not offer in-person customer service; therefore, all needed assistance is given by phone or e-mail.

Fees for applications are listed on the FNAE's website. Fees charged for the applications are between 234€ and 353€. Cancelled application is 62€ and the final decision of the recognition of professional qualifications 55€.¹²¹⁹ The fee includes a decision on the recognition of the level of a higher education degree, where applicable.

Between 1997 and 2016, the Finnish National Agency for Education made over 10,500 administrative decisions on the eligibility of a foreign university degree for a regulated post. Of the abovementioned decisions 67 appeals were made (0.64 % of all the decisions).

¹²¹⁷ The Finnish National Agency for Education, 'Applying for a decision' <http://www.oph.fi/english/services/recognition/applying_for_a_decision> accessed July 2 2017.

¹²¹⁸ Phone interviews with Maisa Montonen, Opetusneuvos (Finnish honorary title) at Finnish National Agency for Education (Turku, Finland July 12 2017 at 8:31 & July 14 2017 at 10:59, 12:09).

¹²¹⁹ The Finnish National Agency for Education, 'Applying for a decision' <http://www.oph.fi/english/services/recognition/applying_for_a_decision>

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

The participation of migrants in political decisions is enabled through voting rights within the Finnish society at both municipal and state level. The right to vote and participate in political decision-making is dependent on the timeframe of residence or citizenship in Finland. The ability of migrants to participate in the action of political parties will also be referred to in this section, since political parties are traditional actors when dealing with political decision-making and societal activity. This section will begin with the examination of the right to vote and continues to present the options for standing for elections and participating directly in political decision-making, and concludes with an introduction to the possibilities granted by freedom of assembly and freedom of association that are traditional features of the Finnish society. In summary, the various regulations that guarantee migrants the right to participate in political action within the Finnish society are dissected in this chapter of the research report.

10.1. Voting as Participation in Political Decisions

Success in enabling the proper integration of migrants in the society is one characteristic of a well-functioning democracy. In 2014, Finland ranked third in political participation in the Migrant Integration Policy Index and the good ranking is linked especially to the participatory rights and education of migrants.¹²²⁰ Despite the legal guarantees for migrants to participate in political action, their voting activity in elections is to some extent a concern and needs to be improved for democracy to function in a well-balanced manner.¹²²¹

10.1.1. Voting in National Elections and Referendums

According to Chapter 2, Section 14, Subsection 1 of the Constitution concerning Electoral and Participatory Rights, every Finnish citizen above the age of 18 has the right to vote in national elections (parliamentary and presidential elections) and referendums. As stated in the Constitution, voting in national elections requires citizenship status. The requirements for gaining citizenship are covered in a later section of this research report. The Finnish Constitution regulates the holding of municipal and national elections and referendums and the Ministry of Justice is the highest electoral authority in Finland, promoting and monitoring electoral and participatory rights.¹²²² The appellate authority, in the case of elections, is the Administrative Court and also migrants are entitled to file for a complaint if their rights are violated. If migrants are not included in the register of eligible voters, even if eligible, they may issue a written demand for rectification to the Local Register Office as stated in Chapter 3, Section 24 of the Election

¹²²⁰ Migrant Integration Index (2014) <www.mipex.eu/political-participation> accessed July 9 2017.

¹²²¹ Ministry of Justice *'Avoim ja yhdenvertainen osallistuminen – Valtioneuvoston demokraatiapolitiittinen selonteko'* (2015) 17 [Finnish].

¹²²² Ministry of Justice *'Democracy and Voting'* <<http://oikeusministerio.fi/en/democracy-and-elections>> accessed July 9 2017.

Act. The appellate authority for the decisions made by the Local Register Office is the Administrative Court.

Since 2012, 50,000 Finnish citizens have been able to initiate a citizens' initiative pursuant to Chapter 4, Section 53, Subsection 3 of the Constitution and this has been seen as an improvement to the functioning of direct democracy. Section 3 of the Citizens' Initiative Act states that a Finnish citizen who is entitled to vote can set up a citizens' initiative and under Section 6 it is stated that any Finnish citizen entitled to vote can support the initiative. This gives also migrants who have gained citizenship the possibility to participate in initiatives that attempt to affect Finnish legislation directly. So far, the citizens' initiative concerning equal marriage rights is the only initiative that has been accepted by the Parliament of Finland, taking effect in March 1 2017.¹²²³

Information concerning elections and electoral rights is offered in the official languages of Finland, but due to the diversification of languages used by Finnish citizens and people residing in the country, information is being offered also in other languages. Improving the coverage concerning elections is a perpetual priority for the Ministry of Justice as the highest electoral authority. Municipal elections held in 2008 were the first occasion when information was distributed in 11 languages besides the official languages of Finnish, Swedish and Sami.¹²²⁴ In the elections of 2017, information was given in 18 different languages besides the Finnish, Swedish and Sami languages.¹²²⁵ This improves the possibilities for migrants to participate in their local political decisions.

10.1.2. Voting in Municipal Elections

Besides national elections, there are municipal elections that are held every four years. Municipal councils are the highest authority in the municipalities and they have the power to make decisions concerning, inter alia, municipal tax and health care services. The Municipality of Residence Act regulates the basis on which the residence of a certain municipality is determined. According to Chapter 2, Section 4, the Municipality of Residence Act is applicable when the person moving to Finland is a Finnish citizen or a citizen of a European Union Member State or a citizen of Liechtenstein, Norway, or Switzerland, and has registered their residence in Finland if required to do so, or is a family member of a person who has residence of municipality. The Municipality of Residence Act is also applicable when the person 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. If a migrant fulfils one of these qualifications stated in the Municipality of Residence Act and becomes a resident of a certain municipality, they may gain additional rights, including voting rights, in the municipality of their residence.

¹²²³ 'Same-sex marriage law goes into effect in Finland', Yle (March 1 2017) <www.yle.fi/uutiset/osasto/news/same-sex-marriage-law-goes-into-effect-in-finland/9486556> accessed July 9 2017.

¹²²⁴ Ministry of Justice 'Avoin ja ybdenvertainen osallistuminen – Valtioneuvoston demokratiapoliittinen selonteko' (2015) 30 [Finnish].

¹²²⁵ Ministry of Justice 'Tietoa vuoden 2017 kuntavaaleista eri kielillä' <www.vaalit.fi/fi/index/vaalit/kunnallisvaalit/tietoakunnallisvaaleistaerikielilla.html> accessed July 9 2017.

According to Chapter 5, Section 20, Subsection 1 of the Local Government Act, the right to vote in municipal elections is granted to people who are citizens of Finland, Iceland, Norway, or of any European Union Member State, have turned 18 by the end of the election day and have their residence of municipality according to the Municipality of Residence Act, by latest on the 51st day before 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. According to Subsection 2, expatriates working for the European Union or for an international organisation operating in Finland, as well as their family members, are entitled to vote if they fulfil the qualifications of age and residence of municipality and have registered to the Population Information System and have informed the Local Register Office of their will to vote in municipal elections by latest on the 52nd day before the election day. Migrants have therefore various possibilities to participate in local political decisions. Regardless, the voting activity of foreign citizens in municipal elections has varied between 15–20%, but the statistics show no data concerning the voting activity of migrants who have gained Finnish citizenship and are no longer classified under the status of a foreigner.¹²²⁶

10.2. Standing for Elections as Participation in Political Decisions

When discussing sustainable democracy policies, the attendance of less active groups is essential. In order to improve the voting activity rates within less active groups, such as migrants and the youth, it is crucial to attract people representing these groups as candidates in elections.¹²²⁷ Political parties are considered as the main actors in political decision-making and becoming a member of a political organisation is one way of participating in political decisions. Political parties have regulations concerning their memberships, and the Political Party Act regulates the functioning of political parties. The Political Party Act was modified in 2012 to allow foreign citizens who are eligible to vote in municipal elections or European Parliament elections to become supporters of a political party in the process of registering a new party.¹²²⁸ The most common way to become nominated as a candidate in elections is to become nominated by a registered party. The party has the right to decide which candidates are accepted and according to Chapter 13, Section 183 of the Election Act there is no right to appeal to a decision regarding the nomination of candidates.

The Election Act regulates the organising of elections and is applicable to all elections held in Finland. The Act regulates the eligibility of candidates, and these regulations vary depending on the election being held. According to Chapter 9, Section 108 and 119 concerning parliamentary elections, parties that are registered to the party register and constituency associations established by at least 100 persons, who are entitled to vote in that election district, are entitled to nominate candidates. Every Finnish citizen, who is entitled to vote and is not declared as incompetent, is

¹²²⁶ Ministry of Justice 'Avoim ja yhdenvertainen osallistuminen – Valtioneuvoston demokratiapoliittinen selonteko' (2015) 28 [Finnish].

¹²²⁷ *ibid* 22.

¹²²⁸ *ibid* 35.

eligible to be nominated as candidate in parliamentary elections as stated in Chapter 3, Section 27 of the Constitution. According to Chapter 11, Section 146 and 150 concerning municipal elections, registered parties and constituency associations established by at least 10 persons, who are entitled to vote in that particular municipality, are entitled to nominate candidates. According to Chapter 10, Section 71 of the Municipality Act, eligible candidates are people 1) whose residence is in the municipal in question, 2) have the right to vote in municipal elections in some municipality, and 3) are not incompetent. Section 70 also states that a written consent is required when running as candidate. Hence the right to stand for elections is also accessible to migrants if they have gained citizenship or have lived in Finland for two years and have become entitled to vote in municipal elections. Eligibility to run for President of the Republic is restricted under Chapter 5, Section 54 of the Constitution to native-born Finnish citizens, so migrants are not eligible to become President of the Republic.

10.3. Freedom of Assembly and Freedom of Association

Participation in political decision-making becomes accessible to migrants through freedom of assembly and freedom of association that are granted under Chapter 2, Section 13 of the Constitution. Freedom of assembly guarantees all people the right to organise an assembly or demonstration or take part in these without being required to obtain a permit. The Assembly Act regulates the gathering of assemblies and demonstrations and guarantees that everyone's rights are respected. The Constitution also regulates the freedom of association. Associations and organisations are important actors when influencing political decisions, so belonging to these organisations can be seen essential when discussing taking part in political decisions. Belonging to an association is not dependent on the origin of the person, so according to the Constitution this is valid also when it comes to migrants being members of an association. According to Chapter 3, Section 10, Subsection 1 of the Associations Act, members of an association can be individual people, communities or foundations. Subsection 2 regulates that if the primary intention of the association is to influence state affairs, members of the association are to be Finnish citizens or foreigners who have residence in Finland. The right and ability to join associations is important for all members of the society, since associations have the power to affect political decisions and law-making by giving statements while the government is enacting acts.¹²²⁹

10.4. Participatory Rights of European Union Citizens

European Union citizens have some additional participatory rights compared to migrants coming from non-EU states. EU-nationals are eligible to stand for elections and vote in municipal and European Parliament elections in the country of their residence. As stated in the previous paragraphs, voting in the country of residence, instead of the country of origin, requires a separate notice to the Local Register Office of the will to vote in Finland in municipal elections or in the European Parliament elections. In the case of the European Parliament elections, after

¹²²⁹ *ibid* 22.

this notice has been made, the person is registered to the voting register in Finland and is excluded from voting registers in other EU Member States as stated in Chapter 3, Section 18, Subsection 5 and Chapter 12, Section 161 of the Election Act. Pursuant to Chapter 12, Subsections 167 and 177, a citizen of the European Union can be nominated as a candidate in one Member State only and the Population Register Centre of Finland verifies that the EU-national is eligible to stand for elections in Finland.

10.5. Migrants' Participation in Political Decision-Making

Various reports state that the rate of political participation of migrants correlates with the form of participation they have been accustomed to in their country of origin. Living and integrating to an open democracy can be a slow process for migrants who have migrated to Finland from an authoritarian country. Institutional factors in the country of origin, for example the level of democracy, and in the country of residence, for example legislation concerning citizenship, electoral rights and integration procedures, affect the participation of migrants in political decisions.¹²³⁰ Finland also recognises dual nationality, so electoral rights gained through citizenship apply also to dual citizens. Whether these people are still eligible to vote in their country of origin is dependent on the legislation of that particular country since not all states accept dual nationality.

As stated in the previous chapters, the ability of migrants to participate in political decisions is to some extent dependent on their status and time of stay in Finland. Citizenship is required when voting in parliamentary and presidential elections, but voting in municipal elections is open to non-citizens when they fulfil the other requirements presented in the previous chapters. Migrants whose stay has been determined as temporary fall outside the participatory rights in municipal and other elections.¹²³¹ Even if the requirements to vote are not fulfilled, there are other forums to participate in political decisions. The Finnish democracy guarantees all people the right of assembly and the right of association and political decisions can be affected also through organised lobbying.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Acquisition of Citizenship

The legal provisions regarding Finnish citizenship – applying for citizenship, requirements for acquiring citizenship as well as dual nationality – are stipulated in *kansalaisuuslaki* (Nationality

¹²³⁰ Wass H and Weide M, *Äänestäminen osana poliittista kansalaisuutta – Maahanmuuttotaustaisten äänioikeutettujen osallistuminen vuoden 2012 kunnallisvaaleissa* (Ministry of Justice 2012) 18 [Finnish].

¹²³¹ Ahokas L, Weide M and Wilhelmsson N, *Maahanmuuttajien yhteiskunnallisen osallistumisen tukeminen julkishallinnossa ja puolueissa* (Ministry of Justice 2011) 16 [Finnish].

Act). It took effect in September 2011. There are five different grounds for acquisition of Finnish citizenship, as it may be based on one of the following:

- the nationality of one of the applicant's biological or adoptive parents (parentage principle)
- applicant's place of birth being Finland (birthplace principle)
- applicant's parents' marriage to each other (legitimation)
- application (naturalisation) or
- declaration.¹²³²

The parentage principle is the primary way for acquiring citizenship in Finland. The parentage principle means that a person's citizenship is determined by the citizenship of the mother, father or both.

The birthplace principle means that a person's citizenship is determined by his or her place of birth. When the mother is a citizen of Finland, the child will automatically become a citizen of Finland regardless of the country of birth. The only requirement is that the mother has not lost her Finnish citizenship before the child is born. If the child's father is a citizen of Finland when the child is born and he is married to the child's mother, the child will automatically become a citizen of Finland. Likewise, if the child's father has died before the birth of the child but he was a citizen of Finland and married to the child's mother, the child will also become a citizen of Finland. If only the child's father is a citizen of Finland when the child is born and the child is born in Finland, the child may obtain Finnish citizenship.

If a person wishes to acquire Finnish citizenship by application, there are general requirements for naturalisation according to the Nationality Act. Exceptions to the following general requirements may be made only as laid down in the Act. One may obtain Finnish citizenship if the applicant

- has reached the age of 18 or marries before turning 18;
- meets the residential period requirement, i.e. the applicant has been a permanent resident and domiciled in Finland for the past five years without interruption (continuous period of residence) or a total of seven years since he or she turned 15, with two of these years without interruption (accumulated period of residence);
- meets the integrity requirement: has not committed any punishable act other than one subject to a petty fine or been placed under a restraining order;
- has not materially failed to pay maintenance or any debt under public law (such as taxes and fines);
- can provide a reliable account of one's livelihood¹²³³ and
- has satisfactory oral and written skills in the Finnish or Swedish language or knows Finnish or Swedish sign language.

However, these requirements will not be considered until the applicant's identity is reliably established, as this is a common requirement for acquiring Finnish citizenship. The applicant can prove his or her identity with documents (for example, a passport) or by providing otherwise

¹²³² Finnish Immigration Service <http://www.migri.fi/finnish_citizenship> accessed August 30 2017.

¹²³³ for example, *KHO* 2017:40 (judgement of the Supreme Administrative Court).

reliable information on his or her identity and family. Furthermore, the applicant cannot be naturalised even if he or she would meet the requirements, if there is reasonable doubt that the naturalising may endanger the safety of the country or law and order, if the main purpose of acquiring citizenship is to exploit an advantage of Finnish citizenship without purpose to settle in Finland, or if naturalising is because of some other cogent reason against the state's advantage when considering an application in a comprehensive way.

However, the Nationality Act includes some exceptions when it comes to the requirements of naturalisation by application. According to the law, exceptions to the language skills requirement can be granted if the lack of Finnish citizenship would otherwise make it unreasonably difficult for an applicant to keep his or her full-time, permanent job in Finland, or if an applicant is at least 65 years old and he or she is in Finland as a refugee or he or she is under humanitarian protection; an applicant's health prevents him or her from acquiring the required language skills¹²³⁴; an applicant has arrived in Finland as an adult and is illiterate (unable to read and write); or an applicant gives an otherwise special and weighty reason for granting an exception.

Acquisition of Finnish citizenship by declaration is only available to specific groups of individuals: those whose one parent is a Finnish citizen, former Finnish citizens and citizens of other Nordic countries who have lived in Finland for at least five years without interruption. Contrary to naturalisation by application, discretion cannot be exercised in matters of declaration. If the person submitting the declaration meets the requirements, the authorities must grant citizenship to him or her. On the other hand, if any single requirement remains unfulfilled, Finnish citizenship cannot be acquired by declaration.

A child obtains citizenship from his or her Finnish father if the child is born outside of Finland and the establishment of paternity abroad can be accepted in Finland, or if the child is born in Finland but paternity is established only after the child is 18 years of age or marries before the age of 18. Furthermore, an adopted child aged 12-17 years whose adoptive parent is a Finnish citizen can be naturalised by declaration. No other requirements need to be met.

A young person who is 18-22 years old and has lived in Finland for a long time may acquire citizenship if he or she has lived in Finland for a total of a minimum of ten years, the last two without interruption, and has not been sentenced to imprisonment.¹²³⁵ If the applicant was born in Finland the minimum period of residence is six years. Living in another Nordic country up to the age of 16 is equivalent to the same period lived in Finland, but in this case, only a maximum of five years prior to making the declaration will count.

If the applicant's identity has been established reliably and the other requirements for naturalisation are met, he or she may acquire Finnish citizenship by application. Application form may be submitted online or on paper to the Finnish Immigration Service. All the required documents, such as a certificate of one's language skills, must be attached to the application. Citizenship is granted by the Finnish Immigration Service. If citizenship is acquired by declaration, the declaration form with its attachments should be submitted in person to one of the service points of the Finnish Immigration Service. If the applicant is abroad, the declaration

¹²³⁴ for example, *KHO* 2016:55 (judgement of the Supreme Administrative Court).

¹²³⁵ for example, *KHO* 2017:89 (judgement of the Supreme Administrative Court).

form with its attachments should be submitted in person to a Finnish mission, embassy or consulate.¹²³⁶

11.2. Multiple nationality (dual nationality)

Finland accepts multiple nationality. If a Finnish citizen also holds a citizenship of another state, Finnish authorities will consider that person to be a Finnish citizen both in Finland and abroad. However, the Finnish Nationality Act does not contain a specific clause allowing multiple nationality. On the other hand, it contains no provisions restricting multiple nationality.¹²³⁷

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

In Finland, the Ministry of Economic Affairs and Employment is responsible for the integration of migrants and coordinates the various programmes that are established in order to improve integration. Multi-sectoral cooperation between ministries working with migration issues is regulated under the Act on the Promotion of Immigrant Integration, which entered into force in 2011. Under the Ministry of Economic Affairs and Employment, a specialised Centre of Expertise in Integration of Immigrants, that supports the integration of migrants into the Finnish society, has been established.¹²³⁸ On the regional level, Centres for Economic Development, Transport and the Environment (ELY Centres) are responsible for implementing measures related to integration. Besides ELY Centres, Economic Development (TE) Offices and municipalities, non-governmental organisations and other communities are important actors in integration and they are granted financial assistance for integration programmes.¹²³⁹

12.1. Support from EU programmes

12.1.1. Financing Through Structural Funds

Applying financing from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) is coordinated through a special website *Structuralfunds.fi* and both authorities and non-state actors are able to apply for financing through this channel.¹²⁴⁰ Searching for programmes including the word 'integration' gives 54 results, of which eight programmes have already come to an end. The authorities coordinating these programmes are the regional ELY Centres but the actual actors vary from universities, organisations and cities. Programmes that

¹²³⁶ Finnish Immigration Service

<http://www.migri.fi/finnish_citizenship/child/finnish_father/citizenship_declaration> accessed August 30 2017.

¹²³⁷ Finnish Immigration Service

<http://www.migri.fi/download/16429_Suomen_kansalaisuus_eng.pdf?f18949c851bdd488> accessed August 30 2017.

¹²³⁸ Ministry of Economic Affairs and Employment *'Non-discrimination and cooperation are a prerequisite for successful integration of immigrants'* <<http://tem.fi/en/integration-of-immigrants>> accessed July 19 2017.

¹²³⁹ 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 July 19 2017.

¹²⁴⁰ Structuralfunds.fi <<http://www.rakennerahastot.fi/web/en#.WW-6-GV2D88>> accessed July 19 2017.

have been funded are promoting integration, inter alia, through art, language and entrepreneurship.¹²⁴¹ The Ministry of Economic Affairs and Employment has launched a national Agenda on Growth Through International Expertise [*Kasvua kansainvälisistä osaajista -agenda*] in 2016. The agenda is partly funded by ERDF and ESF and the financing is allocated to projects that channel international expertise in order to promote the growth and internationalisation of businesses. ESF-funded projects are to be related to employment and the mobility of labour.¹²⁴²

12.1.2. Financing Through AMIF

The Asylum, Migration and Integration Fund (AMIF) finances national and regional programmes concerning migration related initiatives. AMIF and the Internal Security Fund (ISF) were established within the framework of EU Home Affairs Funds for the programming period of 2014–2020. In Finland, the Ministry of the Interior is responsible for the management of the EU Home Affairs Funds and coordinates the national programmes and their implementation. Public and private legal persons are eligible to apply for financing from these funds but private individuals are not eligible.¹²⁴³ Financing from these funds is granted to various actors in the field of integration: for example, the Finnish Immigration Service, reception centres, cities, municipalities, Refugee Advice Centre, Finnish Red Cross and other organisations.¹²⁴⁴ There are over 60 projects that have been funded by AMIF and the range of projects varies from improving the databases and resources of immigration officials to improving the detection and prevention of mental health problems and providing care. For example, projects that have been funded by AMIF include the Finn Church Aid project that aims to produce language guides that facilitate learning Finnish in reception centres. Three “*Sylvia*” projects focus on the integration of migrants to municipalities and offer financial and knowledge-based support for municipalities.¹²⁴⁵

12.2. Future Development of Integration Programmes

In addition to actively applying for EU funding and implementing programmes regarding integration, Finland also seeks new ways of improving integration. Finland is the first country in Europe to launch a Social Impact Bond (SIB) Scheme under the European Investment Fund (EIF). In this programme, the focus is on the integration of migrants and refugees into the

¹²⁴¹ Rakennerahastotietopalvelu 'EAKR- ja ESR-hankeet Suomessa kaudella 2014-2010' <https://www.eura2014.fi/rrtiepa/haku.php?keywords=kotouttaminen&rahasto%5B%5D=eakr&rahasto%5B%5D=<=esr&toimintalinja=&erityistavoite=&maakunta=&seutukunta=&kunta=&hakusana=&hankeoodi=&organisaatiotyyppe=&hakijanNimi=&ytunnus=&viranomainen=&toimenpidekokonaisuus=&luokittelutieto=&lang=fi&normhaku=Hae> accessed July 19 2017 [Finnish].

¹²⁴² 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 September 11 2017 [Finnish].

¹²⁴³ Home Affairs Funds <<http://eusa-rahastot.fi/en/frontpage>> accessed July 19 2017.

¹²⁴⁴ *Turvapaikka-, maahanmuutto- ja kotouttamisrahaston hankkeet* (updated February 23 2017) <http://eusa-rahastot.fi/documents/3488306/4171114/amif_hankelista_230217.pdf/0c91019b-9726-4d67-a8e8-6da662bf537e> accessed September 19 2017 [Finnish].

¹²⁴⁵ *ibid*

labour market through training and job-matching assistance.¹²⁴⁶ Furthermore, cooperation with EU Member States will be emphasised when launching new projects related to international cooperation. Member States have agreed on various themes that are implemented in Member States and Finland has committed to themes concerning employment, youth employment, learning and skills and social inclusion. Projects funded by the ESR will cooperate with similar projects in other Member States and good practices concerning integration are shared.¹²⁴⁷

Conclusions

This research has provided a comprehensive overview of Finland's legislation governing migration, with special focus on the integration of migrants and migrants' rights linked with various aspects of their lives in Finland, such as, inter alia, healthcare, education and political participation.

Chapter 1 described, both from substantive and procedural points of view, the right to asylum as governed by the Aliens Act 2004: as international protection, asylum is granted either under refugee status or under subsidiary protection. It bears special note that since May 16 2016, pursuant to an amendment to the Aliens Act, humanitarian protection as grounds for asylum no longer exists in Finland. Chapter 2 compared the applicable regulative acts governing immigration from EU Member States and non-EU states: as legislation in Finland distinguishes between citizens of another EU Member State and comparable persons, third country nationals with long-term EU resident status and third country nationals, the differences between treatment of these categories as well as procedural aspects of the residence application were explained. Chapter 3 presented the Finnish Immigration Service as the main government agency taking care of issues related to migration and Chapter 4 presented Statistics Finland, the authority collecting statistic data related to the country's population, as well as relevant recent statistics. Chapter 5 covered the impact and implementation of the European Court of Human Rights' decisions, focusing on the cases *Senchishbak v Finland* and *N. v. Finland* in which Finland was the respondent State. Chapter 6 took note of two important authorities, the European Commission against Racism and Intolerance and the Finnish Non-discrimination Ombudsman. Additionally, it covered hate crimes in Finland and also mentioned how UN Member States had expressed their concern regarding Finland's tightened asylum policy. Chapter 7 described migrant's access to Finnish healthcare, the right to which is governed by national legislation as there is no specific legislation in Finland concerning migrants' right to access healthcare; specific challenges, such as undocumented immigrants' and vulnerable groups' access to healthcare as well as the migrants'

¹²⁴⁶ European Investment Fund 'Investment Plan for Europe: First social impact bond scheme in Europe supports integration in Finland' June 2 2017 <http://www.eif.org/what_we_do/equity/news/2017/efsi_epiquis_payment_by_results.htm> accessed July 19 2017.

¹²⁴⁷ Rakennerahastot.fi 'ESR:n kansainvälisen yhteistyön toinen koordinoitu haku avautuu loppusyksystä – nyt on mahdollista hakea kansainvälisen yhteistyön valmisteluhankkeita' <https://www.rakennerahastot.fi/etusivu/-/asset_publisher/a0X5B5jWrSqc/content/esr-n-kansainvalisen-yhteistyon-toinen-koordinoitu-haku-avautuu-loppusyksysta---nyt-on-mahdollista-hakea-kansainvalisen-yhteistyon-valmisteluhankkeita/maximized> accessed September 11 2017 [Finnish].

lack of information, language difficulties and cultural difficulties were pointed out. Chapter 8 examined the link between the right to education and the access to school and the difficult situation of especially undocumented migrant children. Chapter 9 explained how foreign school and university diplomas are recognized in Finland, as this is an important aspect of the integration of migrants to the Finnish society as students or employees. Chapter 10 presented the different ways migrants can participate in the political decision-making in Finland; Chapter 11 explained how migrants may, pursuant to the Nationality Act, acquire Finnish citizenship; and finally, Chapter 12 explained how the assistance and funding of migration-related issues works as cooperation between different domestic bodies and European Union funding.

As a descriptive study, we refrain from drawing any conclusions regarding the Finnish migration laws and the issues presented in this research. As each chapter covers a specific topic that relates to migration, the big picture that may be drawn out of the individual chapters would perhaps be the dynamic nature of migration and the interconnection but also at times conflicts between national legislation, EU legislation and international law. Many chapters have highlighted the unprecedented challenges caused by the sudden influx of migrants in 2015 as well as the importance of the recent amendments to the Aliens Act. As Chapter 5 concluded, the Finnish practice and case law related to the amendments are still evolving, as is the law itself. It remains to be seen whether Finland can continue to uphold high human rights standards despite the concerns regarding, inter alia, the tightened asylum policy.

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Introduction

Although it is not possible to accurately determine how many persons were « migrants » at any particular point in history, evidence of co-existing sedentary and migratory lifestyles can be found in all periods of world history. In 1965, it is estimated that there were some 75 million migrants worldwide.

By 2000, that number had grown up to 175 million and reached 232 million in 2013, and it will not stop increasing with climate change in the future.

In a globalised and unstable world, governments are facing migration management challenges they were never confronted with before.

Europe was for a long time mostly a land of emigration. In the past decades, for various historical, economical and geopolitical reasons, it became a land of massive immigration.

In the past few years, European Members States have been acknowledging both a willingness to deal with migration-related issues together, and have simultaneously been undeniably inward looking, showing isolationism on this matter.

France, as a member of the European Union and the Council of Europe, is not an exception to this trend.

Far from political passions and speeches, the following legal analysis is an opportunity to objectively appreciate the positioning of France on migrant-related issues.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. The Legal Framework of the Right to Asylum in France

The term “asylum” refers generally to ‘the protection that a State grants on its territory or in some other place under the control of certain of its organs to a person who comes to seek it’.¹²⁴⁸ The right to asylum is primarily regulated in France by its constitutional value affirmed by the French Constitutional Council on its decision of August 13th 1993. Therefore, the Preamble of the current French Constitution of 1958 states that “any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic”¹²⁴⁹. The legal framework about the right of asylum is heavily based on the Geneva Convention on refugees of July 28th 1951 which defines the term ‘refugee’¹²⁵⁰ and the European Union

¹²⁴⁸ María-Teresa Gil-Bazo, Asylum as a General Principle of International Law (Volume 27 Issue 1, Int J Refugee Law 2015), page of the abstract

¹²⁴⁹ The Law Library of Congress, “Refugee Law and Policy : France” (June 2016) <<https://www.loc.gov/law/help/refugee-law/france.php>> accessed 20 July 2017

¹²⁵⁰ UN Convention relating to the Status of Refugee of the 28th of July 1951, Article 1

Regulation of February 18th 2003 establishing the criteria and mechanisms that determine the Member State responsible for examining an asylum application lodged in one of the Member States by a national of one third countries (hereinafter “the Dublin Regulation” or “Dublin II”). Those international sources are integrated and codified in Book VII of the Code of Entry and Residence of Aliens and the Right of Asylum (from the French acronym CESEDA)¹²⁵¹.

1.2. Issues Related to the Right of Asylum

According to a public official report of the Accounting Court, France's asylum procedures take two years which is too long for the assessments of asylum seekers' situations¹²⁵². Furthermore the report pointed that the majority of asylum seekers have their applications rejected and 96% (in 2015) of those rejected remain in France and aren't deported.

But these statistics were registered before the European and national reforms resulting from the migratory crisis of summer 2015.¹²⁵³ Following this, French authorities decided to strongly regulate the right of asylum by introducing the law of the 29th of July 2015.

1.3. Status of Asylum Seekers in France

1.3.1. Forms of Protection under the Right of Asylum

A person seeking asylum may be granted refugee status or subsidiary protection.¹²⁵⁴ The refugee status can be obtained under the regular procedure given by the French Office for the Protection of Refugees and Stateless Persons (OFRPA)¹²⁵⁵, or by the Dublin regulation implemented by Prefectures¹²⁵⁶, or by the border procedure giving competence to the Judge of Freedoms and Detention¹²⁵⁷ or the accelerated procedure managed by Prefectures then OFPRA¹²⁵⁸. In France, OFPRA recognizes refugee status on the basis of a definition of the Geneva Convention¹²⁵⁹. A refugee is any person who : “As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable

¹²⁵¹ European Pro Bono Alliance, “What is the Right of Asylum in France?” <<http://www.europeanprobonoalliance.org/index.php/all-news/134-by-vigo-cabinet-d-avocats-for-the-european-pro-bono-alliance>> accessed 21 July 2017

¹²⁵² 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

¹²⁵³ *ibid*

¹²⁵⁴ Ministère de l'Intérieur, “Les grands principes du droit d'asile” <<https://www.immigration.interieur.gouv.fr/Asile/Le-droit-d-asile/Les-grands-principes-du-droit-d-asile>> accessed 19 July 2017 [French]

¹²⁵⁵ Forum Réfugiés & Cosi, “Regular Procedure” <<http://www.asylumineurope.org/reports/country/france/asylum-procedure/procedures/regular-procedure>> accessed 21 July 2017

¹²⁵⁶ Forum Réfugiés & Cosi “Dublin” < <http://www.asylumineurope.org/reports/country/france/asylum-procedure/procedures/dublin> > accessed 22 July 2017

¹²⁵⁷ Code of Entry and Residence of Aliens and the Right of Asylum Article R213-2 [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹²⁵⁸ Code of Entry and Residence of Aliens and the Right of Asylum Article L723-2 [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹²⁵⁹ OFPRA, *Le statut de réfugié* (22 Avril 2016) <<https://www.ofpra.gouv.fr/fr/asile/les-differents-types-de-protection/le-statut-de-refugie>> accessed 22 September 2017 [French]

or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"¹²⁶⁰ This is commonly referred to as conventional asylum. Refugee status can also be granted under the constitutional asylum for "foreigners persecuted in their country because of their action in favour of freedom"¹²⁶¹.

To be considered for asylum, the asylum seeker must meet the requirements of one of the two definitions above (for example, being outside the country of his nationality) and has to fulfil other requirements:

- Not to be already benefiting from an asylum protection in another Member State of the European Union.
- Not to benefit from refugee status and protection in another State or to requalifying for them there¹²⁶².

1.3.2. The Rights of Asylum-Seekers and Persons whose Protection Has Been Accepted

Under international humanitarian law, France should protect the human rights of asylum seekers. Those rights are primarily the non-refoulement right, the freedom of movement, the right to liberty and security and the right to family life¹²⁶³. Yet it seems normal that asylum seekers and those whose application is accepted enjoy different rights in France. Asylum seekers have access to education, care and a financial allowance while refugees, beneficiaries of subsidiary protection or stateless status enjoy more extensive rights (right of residence in France for them and their families, access to social rights, the organization of their integration, the possibility of naturalization, etc.)¹²⁶⁴.

1.4. The Bodies in Charge of Granting Asylum

Several bodies are involved throughout the asylum granting process¹²⁶⁵. In the first place, the *Office français de protection des réfugiés et apatrides* (the French Office for the Protection of Refugees and Stateless Persons – OFPRA), a public administrative body, is responsible for examining asylum applications on the basis of the Geneva Convention and subsidiary protection¹²⁶⁶. The OFPRA also insures the legal and administrative protection of those who have been granted asylum or beneficiaries of subsidiary protection. Any of its decisions may be challenged before

¹²⁶⁰ *Ibid* 3, Article 1 A2

¹²⁶¹ Service public, « Statut de réfugié, protection subsidiaire ou temporaire : quelles différences ? » (1^{er} Novembre 2015) <<https://www.service-public.fr/particuliers/vosdroits/F299>> accessed 22 September 2017 [French]

¹²⁶² Ministry of the Interior General - Directorate for Foreign Nationals in France, *Guide for Asylum Seekers in France* (November 2015) 15

¹²⁶³ International Justice Resource Center, "Asylum and the rights of refugee" <<http://www.ijrcenter.org/refugee-law/>> accessed 19 July 2017

¹²⁶⁴ Ministère de l'Intérieur, "Les droits des bénéficiaires d'une protection" <<https://www.immigration.interieur.gouv.fr/Asile/Les-droits-des-beneficiaires-d-une-protection>> accessed 19 July 2017 [French]

¹²⁶⁵ Denis-Linton Martine, *The Right to Asylum* (Eds Dalloz, 2017)

¹²⁶⁶ Law No 52-893 of the 25 July 1951 on the right to asylum [Loi relative au droit d'asile] [French] ; article L. 721-2 Code of Entry and Residence of Foreigners and the Right to Asylum

the *Cour nationale du droit d'asile* (the National Asylum Court – CNDA) and, in the last resort, before the *Conseil d'Etat* (the Council of State – CE), the administrative supreme court. In addition, the mission of the *Haut Commissariat des Nations Unies pour les Réfugiés* (Office of the United Nations High Commissioner for Refugees - UNHCR) is to protect refugees by finding durable solutions and to ensure that the Geneva Convention is applied. The composition of the CNDA that considers appeals even includes a qualified person appointed by the UNHCR¹²⁶⁷.

1.5. The Asylum Application Submission with the Prefecture

As regards the procedure for granting asylum, submitting an application with the prefecture is the first stage. The 2015 new legislation¹²⁶⁸ has established “the single counter” which gathers the prefecture services and the *Office français de l'immigration et de l'intégration* (the French Immigration and Integration Office – OFII). On the one hand, the prefecture services register asylum applications and issue certificates of asylum applications. On the other hand, the OFII is responsible for welcoming and accommodating asylum seekers. A prefecture officer notes information dealing with personal records, entry and residence conditions, ... in order to determine whether or not France is responsible for examining the asylum application. Under the “Dublin III¹²⁶⁹ procedure”, if the French state has not authority, the application is transferred to the other state. Conversely, the prefect hands the certificate of asylum application over and the OFPRA is referred. Concerning asylum applications filed abroad, the Office is solely responsible for examining asylum applications filed on the French territory. Nonetheless, a foreign national can request an asylum visa to French consular authorities in his home country. Once having obtained the aforesaid visa, he is allowed to come to France and carry on with the procedure for granting asylum. Moreover, since 1982¹²⁷⁰, an asylum application can be submitted at the border – only in national major airports. The Minister of the Interior has authority on whether to admit an undocumented migrant in consultation with the OFPRA. The Office hands down a decision within 48 hours after having auditioned the asylum seeker. If his admission to the territory is denied, he can claim for the quashing of the decision before the president of an administrative court within 48 hours. On the contrary, the admission to the territory leads to the examination of the asylum application by the OFPRA according to the regular procedure.

1.6. The Processing of the Asylum Application by the OFPRA

¹²⁶⁷ Ministry of the Interior General - Directorate for Foreign Nationals in France, *Guide for Asylum Seekers in France* (November 2015) 14

¹²⁶⁸ Decree No 2015-1298 related to the enforcement of the Law No 2015-925 of the 29 July 2015 on the right to asylum) 16 October 2015 [Décret pris pour l'application de la loi n.2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile et relative à la procédure applicable devant la Cour nationale du droit d'asile] [French]

¹²⁶⁹ 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

¹²⁷⁰ Decree No 82-442 of 27 May 1982 related to the enforcement of the order No 45-2658 of 2 November 1945 on the entry into the French territory) [Décret pris pour l'application de l'ordonnance No 45-2658 du 2 novembre 1945 modifiée relative aux conditions d'entrée et de séjour des étrangers en France, en ce qui concerne leur admission sur le territoire français] [French]

The processing of the asylum application by the OFPRA constitutes the second stage of the procedure for granting asylum. Once the certificate is issued, the asylum seeker has to submit a claim to the Office within 21 days. He gives details of his personal records, his studies, his national service, his places of residence, his itinerary to France ... The Office and asylum seekers owe a duty of mutual cooperation¹²⁷¹. After the introduction of the request, a protection officer considers the case within 6 months. Under the fast-track procedure, it is within 15 days when the foreigner comes from a state said to be a safe country of origin, when the asylum seeker has presented forged documents, he has misrepresented or represents a serious threat to public order. One of the most important steps of the procedure for granting asylum is the one-on-one interview. The asylum-seeker can be assisted by an interpreter, his counsel or a human rights organization representative. The protection officer relies on written and oral statements, the file documents, information on the situation of the country of origin collected by the Office resource centre in order to appreciate the asylum application. Afterwards, the Chief Executive Officer eventually decides whether or not to grant asylum or subsidiary protection. Indeed, the procedure to grant humanitarian protection is similar to the one to grant asylum. Beneficiaries from the subsidiary protection are under the legal and administrative protection of the OFPRA. The prefecture delivers them a temporary residence permit with the mention “privacy and family life” for a period of one year which may be renewed.

1.6. The Procedure for Unaccompanied Children

Unaccompanied children have to submit an application to the prefecture firstly too. As a legal representative is required, the public prosecutor appoints an administrator responsible for taking administrative steps. He represents and assists the unaccompanied child during all the procedure for granting protection, including the appeal process. If the child benefits from State wardship decided by the judge, Child Care Agency services will be in charge.

1.7. The Appeal Process

Three types of OFPRA’s decisions may be challenged before the CNDA within one month: a refusal of asylum, a decision which grants humanitarian protection even though the asylum seeker considers he has to be recognised as a refugee and a decision of exclusion or revocation of the protection. The Court rules in 5 months at the most. Under the fast-track procedure, this is no more than five weeks. The CNDA can reverse the decision of the OFPRA. According to the *Conseil d’Etat’s* case law¹²⁷², the CNDA judge is able to grant international protection himself by replacing his decision to the OFPRA denial one. In the event of a dismissal of the appeal, the *Conseil d’Etat* can overrule a CNDA ruling. The Council checks the legality of the procedure and punishes legal errors.

¹²⁷¹ Code of Entry and Residence of Aliens and the Right of Asylum, article L723-4 [Code de l’entrée et du séjour des étrangers et du droit d’asile]

¹²⁷² *Mme B* [1988] Conseil d’Etat, No 85234, Recueil Lebon [French]

1.8. The Exclusion of the International Protection

The application is rejected when one may consider that the asylum seeker represents a serious threat to national security or this latter has been convicted in France for a terrorist crime or offence or liable to imprisonment for a term of 10 years and represents a serious threat to society. In case of denial of his asylum application, the asylum seeker is not allowed to remain on the French territory. Either he leaves deliberately France within 30 days¹²⁷³ or he is subjected to a compulsory deportation measure¹²⁷⁴ - in other words, an obligation to leave the country.

1.9. The Revocation of the Protection

The CESEDA (articles L.711-3 and seq.) sets the legal framework of the revocation of the protection.¹²⁷⁵

1.9.1. The Revocation of the Asylum

According to the article 1F of the Convention of Geneva, any person who has committed a crime against peace, a war crime or a crime against humanity may be deprived of the asylum protection. By the same token, any refugee who has committed a crime aside from his host country or guilty of acts contrary to the purposes and principles of the United Nations can also be removed of his status.

1.9.2. The Revocation of the Humanitarian Protection

Under the article L.712-2 of the CESEDA, the beneficiary from the subsidiary protection can be deprived of this latter if he has committed a crime targeted by the article 1F of the Convention of Geneva, including crimes committed in France. If the asylum seeker has committed, before arriving in France, a crime which is not targeted by the article 1F but indictable in France and has left his country solely to avoid proceedings in his country, he can also lose his protection. Eventually, if he is said to represent a serious threat for public order, public safety and national security, he can be stripped of his humanitarian protection too.

1.10. The Re-Entry into the State and Reconsideration of the Application

Following a final decision of refusal, in the event of developments which could modify the first assessment of his situation, an asylum-seeker can request a re-examination of his application, after having applied once again to the prefecture for asylum based residency¹²⁷⁶. These developments have to be subsequent to the denial decision and unknown prior to that one. The provisional residence permit, delivered by the prefecture, is valid for a term of 15 days. The

¹²⁷³ Code of Entry and Residence of Aliens and the Right of Asylum Article L511-1, II [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹²⁷⁴ Law No 2016-274 of 7 March 2016 on Foreigners Law in France) [Loi relative au droit des étrangers en France] [French]

¹²⁷⁵ OFPRA, *L'exclusion et le refus de statut* (Exclusion and revocation of the status, 20 November 2015) <<https://ofpra.gouv.fr/fr/asile/l-exclusion-et-le-refus-de-statut>> accessed 18 September 2017 [French]

¹²⁷⁶ OFPRA, *Les réexamens* (Reconsideration, 28 October 2015) <<https://ofpra.gouv.fr/fr/asile/les-reexamens>> accessed 18 September 2017 [French]

asylum seeker has 8 days to submit a new application to the OFPRA. Considering those developments and earlier facts, if the Office concludes that he does not meet the necessary requirements for being granted protection, the claim is inadmissible.

2. How does your national law regulate immigration from EU member states and non-EU states?

The principal element concerning the way the French national law regulates immigration, is the distinction between the immigrants coming from EU Member States and those coming from non-EU Member States. This distinction is clearly mentioned in the national Code regulating the entry and the residence of non-French nationals in the country as well as their right to asylum. The aforementioned Code includes a first part for EU nationals and a second part for non-EU nationals. More specifically, the second title of the first book of the national Code, regulates the entry and the residence of EU nationals and their families¹²⁷⁷. On the contrary, the third title of the first book of the Code concerns the citizens of some other countries not specifying which these countries are as it is mainly referring to bilateral and multilateral conventions in which France is taking part¹²⁷⁸. Finally, the second book of the national Code regulates very extensively the immigration procedure for non-EU Member states' citizens¹²⁷⁹.

Looking at the national Code, we can find out that the second book that is regulating immigration from non-EU Member states, is much longer than the first one concerning immigration from EU Member states. However, this is explained by the principle of the European citizenship¹²⁸⁰. The European citizenship is one of the main principles governing European Union which justifies the reason why national law includes a differentiation between EU Member States and non-EU Member States¹²⁸¹. This differentiation results to a different treatment between the two categories of immigrants, a treatment that is more favourable to the immigrants coming from an EU Member States as facilitating the entry and the residence of EU Member States' citizens in the territory of other EU Member States has always been one of the main objectives of the European Union¹²⁸².

Based on the principle of the European citizenship, that constitutes a source of confidence making the entry and residence of EU nationals in France easier, we will present, on one hand, the regulation of immigration from EU Member States, on the other hand, the regulation of immigration from non-EU Member States and finally, the common points that exist between the two regulations.

¹²⁷⁷ Code of the entry and the residence of foreigners and the right to asylum of 2017, Second Title, Law No 2006-911 of the 24th of July 2006, article 23-I [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹²⁷⁸ *ibid*, Third Title.

¹²⁷⁹ *ibid*, Second Book.

¹²⁸⁰ Consolidated version of Treaty on the Functioning of the European Union [2012] OJ C326/49, article 20§1: « Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union »; article 20§2a: « the right to move and reside freely within the territory of the Member States ».

¹²⁸¹ Emanuel Aubin, *Droit des étrangers* (Gualino Eds, 2014), 55 [French].

¹²⁸² *ibid*, 54.

However, before we elaborate the whole immigration procedure in France, it is important to note that the French national code on migration, does not define “migrants”. It uses the *a contrario* definition of non-French nationals to explain that the present code is applicable to all those who enter the country or want to stay in France for a short or a long time and who do not have the French nationality¹²⁸³. This is the reason why in order to define migrants, it prefers to keep a more neutral approach by underlying that these articles are applicable to non-French nationals.

2.1. Regulation of Immigration from EU Member States

The second title of the French national Code is applicable to citizens of EU Member States, citizens of the Member States of the European Economic Area (EEA – Island, Norway and Liechtenstein) and citizens of the Swiss confederation. These regulations are also applicable to their family members.

The article L.121-1 of the national Code states that an EU national has the right to reside in France for more than three months if he is not considered as a threat to the public order and if he satisfies one of the conditions that the Code mentions¹²⁸⁴. As a result, the EU citizen who wants to stay in France should exercise a professional activity in France (para 1°) or, should have sufficient resources in order not to become an unreasonable charge for the country (para 2°) or, should be registered to an institution or a university in France (para 3°) or, should be a descendant or ascendant of the partner accompanying an EU citizen that satisfied the first or second condition of the article (para 4°) or, should be a partner or a child accompanying the citizen who satisfies the third condition of the article.

Furthermore, the EU citizens that have obtained a diploma in a French institution and want to exercise a profession in the country, are exempted from the detention of a residence title according to the article L.121-2 of the national Code.

The national Code also regulates immigration of EU Member States' citizens concerning their families as their family members can stay in France even if they are not citizens of an EU Member State. These members are qualified as “members of the family of an EU citizen” and have a different treatment from the other non-EU citizens.

More specifically, the article L.121-3 of the Code states that the family member that satisfies the conditions mentioned in the paragraphs 3 and 4 of the article L.121-1 (mentioned above) have the right to reside in the French territory for more than three months. Nevertheless, there are certain conditions that should be taken into consideration. First, the first paragraph of the article underlines that the family member who wants to stay in France for more than three months should not be a threat to the public order. If the family member is more than 18 years old and not less than 16 years old exercising a profession in France, they must acquire a residence title limited to 5 years.

¹²⁸³ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.111-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹²⁸⁴ Law n° 2006-911 of the 24th of July 2006, article 23-II.

However, the EU citizens do not benefit from a total liberty. The most important condition that they should fulfil is not to constitute a threat to the public order, otherwise the EU citizen will be denied the residence title and will be held off the country¹²⁸⁵.

In all cases, immigrants from EU Member States that do not have the French nationality, have the right to stay in the French territory for three months without any justification. It is possible for them to extend their residence in France, if they satisfy one of the conditions of the article L.121-1 of the code.

Finally, a permanent residence permit is also possible if the EU citizen stays in France in a legal way and constantly for more than five years¹²⁸⁶.

As we can see, the citizens of the UE have the statute of “*super-privileged*” in comparison to the others according to national law, European law and European jurisprudence¹²⁸⁷.

2.2. Regulation of Immigration from Non-EU Member States

Immigrants coming from non-EU Member states must satisfy many conditions in order to justify in a more effective way the reason why they want to reside in the French territory. As the regulation for non-EU citizens is very extensive, we will present the most important elements that describe the way these immigrants can enter and reside in France.

2.2.1. The Right to Admission/ The Documents Required

Not all non-EU citizens are obliged to have a visa. The distinction between those who need a visa and those who do not is based on objective elements like the duration and the regularity of their residence in France as well as their effective relation with a citizen of the EU¹²⁸⁸.

2.2.1.1. *The Visa Requirement*

The article L.211-1 of the national Code states that to enter the French territory, every non-EU national should have a visa and documents required from international conventions, European regulations and a proof of housing or any other documents that French authorities may demand. All these documents are controlled by the French Minister in charge of immigration in conformity with the article R.211-1 of the code. Furthermore, if the non-EU national wants to exercise a profession in France, they should prove it to enter the country.

It is important to consider that EU Member States have adopted a common policy concerning the countries whose nationals need a visa to enter the country¹²⁸⁹. There are many criteria used to establish the list with these countries, like the international relations with the non-EU countries, the threats related to security and the existence of readmission conventions¹²⁹⁰.

¹²⁸⁵ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.121-4 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹²⁸⁶ *ibid*, article L.122-1.

¹²⁸⁷ Delphine Duro-Bugny, “L'étranger”, in Jean-Bernard Auby (Eds Dalloz, 2010), *L'influence du droit européen sur les catégories de droit public*, 382 [French].

¹²⁸⁸ Emanuel Aubin, *Droit des étrangers* (Gualino Eds 2014), 84 [French].

¹²⁸⁹ Council regulation (EC) n° 539/2001 of 13 March 2001 OJ L.81/1.

¹²⁹⁰ Emanuel Aubin, *Droit des étrangers* (Gualino Eds 2014), 85 [French].

2.2.1.2 *The Exemptions*

There are also many hypotheses in which non-EU citizens do not need a visa for entering the country.

First, France has signed several conventions exempting nationals of non-EU countries from taking a visa if they want to stay in France for a short period of time. Furthermore, the family members of an EU citizen who have acquired a residence title for a long time do not need a visa. The EU has also exempted nationals of countries close to the European borders by giving the possibility to citizens of Montenegro, Serbia and Bosnia-Herzegovina to reside in EU countries without a visa¹²⁹¹. There is also a list with exemptions regarding the profession of the non-EU citizens who want to stay in France as it is the case for diplomatic agents¹²⁹².

2.2.2. The Entry Refusal

France can refuse the entry of a non-EU national to the country if it can constitute a threat to the public order or, if the object of a prohibition to circulate in the country¹²⁹³. Every refusal should be motivated from the French authorities¹²⁹⁴. However, we should take into consideration the fact that only the non-EU nationals can be prevented from entering France in conformity with the article 5 of the CE regulation establishing a Community Code called « Schengen borders »¹²⁹⁵.

Moreover, it is crucial to note that these articles are not applied to the immigrants that ask for asylum as for them, there is a special procedure regarding the evaluation of the immigrant's situation and to the respect of the right to ask for asylum (article R.213-1 of the national Code).

2.2.3 The Acquisition of the Residence Title

The non-EU citizens, who want to stay in France for more than three months, need to have a residence title in conformity with the article L.311-1 of the national Code. The procedure to acquire the title is very extensive and can take a long time as we can see in the first part of the third book of the Code. The aforementioned article underlines that a non-EU citizen should have a visa of a long stay having a duration of at least one year (para 1°) or, a temporary card of residence (para 3°) or, a card of residence of 10 years or more (para 5°) etc.

However, the French authorities can refuse to furnish an immigrant with a residence card as there is no obligation for the country to accept all non-EU citizens¹²⁹⁶. The denial should be motivated and notified to the applicant.

¹²⁹¹ Council regulation (CE) n° 1244/2009 of 30 november 2009 OJ L.336.

¹²⁹² Council regulation (CE) n° 539/2001 of 13 March 2001 OJ L.81/1.

¹²⁹³ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.213-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹²⁹⁴ *ibid*, article L.213-2.

¹²⁹⁵ Council regulation (CE) n° 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, OJ L.77.

¹²⁹⁶ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.511-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

2.3. The Common Points of Both Regulations

Even if there is a clear distinction between EU and non-EU citizens in the Code, there are also some common points that we could take into consideration to understand more profoundly the immigration procedure in conformity with the national law.

2.3.1. The Rights That Immigrants Are Entitled To

The national Code does not state precisely which are the rights that the immigrants are entitled to. As far as EU Member States' citizens are concerned, they have the same rights with the French citizens apart from their participation in the elections and in vacancies of the public sector that require the French citizenship. As the French law states in the Code, they can stay in France in order to work, to study and to participate in the economy of the country. For the non-EU Member States' citizens, the French law is more precise as it states that they have the right to circulate in the country and to work like all French citizens¹²⁹⁷.

2.3.2. The Right to Leave France

The French Code clearly mentions the possibility for all immigrants to leave the country when they want. There are no obligations or any legal barriers that the immigrants must respect concerning their return to their country. The French law has even created a public assistance that is given to every immigrant that wants to go back to their motherland if they are unemployed in France¹²⁹⁸.

However, there is only the article L.331-1 of the French Code that underlines that the only barrier that exists, concerns the loss of their right to stay and to work in France. If they accept to acquire the public assistance for the return to their country of origin, they lose all the other rights and they have a permanent title of two months until they leave the country.

2.3.3. The obligation to leave France

The First Chapter of the First Title of the Book V of the French Code underlines the possibility for the French authorities to demand that an immigrant leaves the country or that they do not return to the country or that they do not circulate in the country.

Firstly, the article L.511-1 of the French Code enumerates several cases that permit the administrative authorities of France to ask a foreigner to leave the French territory if he is not an EU citizen.

However, that does not mean that French authorities cannot oblige an EU citizen to also leave the country. The article L.511-3 of the same Code enumerates many cases in which an EU citizen will have to leave the country with the most important being from one hand, the non-satisfaction of the legal conditions (para^o1) and on the other hand, the possibility that the

¹²⁹⁷ Code of the entry and the residence of foreigners and the right to asylum of 2017, article R.321-1, R.322-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹²⁹⁸ Code of the entry and the residence of foreigners and the right to asylum of 2017, article D.33-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

resident becomes a threat for the public order (para^o3) or that he abuses his right to stay in the country (para^o2).

As a result, it is crucial to understand that the obligation to leave the country if France asks for it, exists for both cases, EU citizens and non-EU citizens even if the conditions are stricter for those who take part in the second group.

Moreover, even if an immigrant can be asked to leave the country, there is a chance for them to stay in France if they renew their resident card. However, if the obligation to leave is based on grounds of public order, the immigrant cannot change their status and they are obliged to leave in conformity with the administrative decision that has been taken¹²⁹⁹.

2.4. The Expulsion

As far as the expulsion measures are concerned, the article L.521-1 of the Code does not create a distinction between EU citizens and non-EU citizens. Both can be expelled for the same reasons even if for the EU citizens, the criteria that could justify their expulsion are more precise as the threat to the society should be real, actual and sufficiently serious. These criteria do not exist for the non-EU citizens.

First, non-EU citizens can be expelled if this measure is necessary for the public order and for the national security. Another reason why non-EU citizens can be expelled, concerns terrorism or actions of provocation, discrimination, hate and violence against a specific person or a group of people. Even if there is a great number of exemptions that prevent the expulsion measures from being implemented, public order, terrorism, discrimination and violence are the main reasons why the French authorities can take these measures against foreigners.

The article L.521-5 of the Code states that expulsion is possible even for EU citizens if their attitude constitutes a real, actual and sufficiently serious threat for the fundamental interests of the society. The article also underlines that the same expulsion measures that can be implemented against non-EU citizens, they can also be implemented against EU citizens.

However, the whole regulation concerning the expulsion measures is very serious as the foreigner should be notified before being expelled and has the right to respond to the French authorities. The only exception to this rule that can justify the absence of notification is urgency¹³⁰⁰.

¹²⁹⁹ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.511-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹³⁰⁰ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.521-6 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. All Migrants Related Questions Fall Within the Purview of the Ministry of Internal Affairs

Nowadays, there is no Ministry specifically in charge of dealing with migrants.¹³⁰¹ All questions regarding immigration, integration and asylum fall within the purview of the ministry of Internal Affairs. This ministry is divided into seven entities called *Directions Générales* (General Directorates, hereby referred to as DG), subdivided into central directorates and, if relevant, into sub-directorates. Migrants related questions fall within the purview of the *DG des étrangers en France* (*DG of aliens in France*, hereby referred to as DGEF)¹³⁰², that aims to conceive and pilot the immigration and integration policies¹³⁰³.

3.2. The DGEF Relies on Two National Public Law Bodies that Are Specifically Dealing with Migrants

The first one is *l'Office Français de l'Immigration et de l'Insertion* (French Office of Immigration and insertion, hereby referred to as OFII). The second one is *l'Office Français de protection des réfugiés et apatrides* (French Office for the Protection of Refugees and Stateless persons, hereby referred to as OFPRA). Both are under the guardianship of the ministry of Internal Affairs.

Both are national public law bodies, but the OFII is a state operator – therefore the control of the parent ministry is tight- while the OFPRA has a financial and administrative autonomy, with functional independence, according to article L721-1 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (Code on the entry and residence of aliens and on the right of asylum, hereby referred to as CESEDA).

A circular of the Prime Minister of March 26th 2010 aims to generalize the conclusion of “contrats d'objectifs et de performance (‘‘objectives and performance contract » hereby referred to as COP) between national public law body and their parent ministry, in order to fix and assure the execution and implementation of specific strategic orientations. Both OFII and OFPRA

¹³⁰¹ Migrants related questions are inherently transversal and therefore fall under the competence of several ministries. Therefore, some ad hoc interministerial entities were created to encourage collective action such as the interministerial commission for the housing of immigrated population or the inter-ministerial mission for the protection of women victims of violence.

¹³⁰² According to a decree dated 12 August 2013, the DGEF is composed of 3 directorates, each in charge of a specific immigration related question, and into sub-directorates if relevant: directorate of immigration (with the sub directorate of visa, sub directorate of stay, and sub directorate of fight against irregular fraud), the directorate of asylum, and directorate of welcoming, accompanying aliens and nationality.

¹³⁰³ Fighting against illegal immigration fall within the purview of the *DG de la Police Nationale*. As this DG or its operator – *l'office central pour la repression de l'immigration et de l'Emploi d'étrangers sans titre* (the Office in charge of repression of illegal immigration and employment of untitled foreigners)- do not provide any kind of assistance to migrants their actions will not be discussed.

have concluded such contracts that are in both cases renegotiated every three years – see below.
1304

People working in those two entities are public servants; if someone is mistreated by an agent and the agent behaviour is in violation of statutory obligations, a disciplinary sanction can be taken according to article 29 and following of the law n° 83-634 du 13 July 1983. If it is the result of the breach of a criminal rule, it should be brought before the criminal courts, with regard to the criminal procedure court.

3.2.1. The OFII

Created by the law n°2009-323 of March 25th 2009 and a decree of the same day, it is the only state operator in charge of the integration of migrants during the first five years of their stay in France according to article L. 5223-1 of the *Code du Travail* (Labour Code). Its missions are related to immigration, integration, welcoming asylum seekers, and support of voluntary return and reinsertion.

3.2.1.1. Organization, Governance and Sources of Funding

It is administered by a board of directors composed of representatives of the state, of the staff and of qualified personalities designed by the parent minister. This board approves most of the strategic decisions of the OFII, especially regarding the COP.

The OFII is composed of a central direction, under the authority of a general director, named by decree¹³⁰⁵. This general director is assisted by a general secretary and a deputy director. To fulfil its missions, some *plateformes d'accueil regionales* (regional welcoming platforms) have been set up in all French regions, including overseas territorial collectivities. OFII also has some branches abroad in eight countries¹³⁰⁶, in the context of voluntary return and reinsertion.

3.2.1.2. Resources

Most of the OFII's resources come from allocated taxes according to articles L.311-13 and D311-18-2 CESEDA¹³⁰⁷. Taxes represented 83% of the OFII resources in 2011¹³⁰⁸. OFII also receives public service grants (*subvention pour charge de service public*); the amount is determined every year in the finance act. It also benefits from European subventions.

¹³⁰⁴ Those COP are not available online

¹³⁰⁵ Decision of the 31 December 2013 regarding the organization of OFII : http://www.ofii.fr/IMG/pdf/OFII_-_Organisation_generale_decision_consolidee_v_15_mars_2017.pdf, accessed 25 September 2017 [French]

¹³⁰⁶ Morocco Tunisia Romania Mali Senegal Cameroon and Armenia, but also in Greece and Italy through liaison officers

¹³⁰⁷ Since the finance law for 2012, those resources are capped; the extra resources fall in the general budget of the state.

¹³⁰⁸ Roger Karrouchi, 'L'office français de l'immigration et de l'intégration : pour une politique d'intégration réaliste et ambitieuse', (*Rapport d'information n°47, 16 October 2012*), <<http://www.senat.fr/rap/r12-047/r12-0476.html#toc55>> accessed 25 September 2017 [French]

3.2.1.3. Missions and Forms of Assistance Provided

Regarding immigration, the OFII is in charge of registering and validating long-term visas (more than three months). It is also in charge of organizing and financing the mandatory medical appointments that every migrant has to do when they arrive in France.

Regarding integration, OFII mostly provides language training and a civic training, according to article L 311-9 CESEDA. Those trainings, entirely financed by OFII, mostly take place in the context of a contract concluded between the new comer and the state and called “*contrat d’intégration républicaine*”. Created in 2003 and formerly called “*contrat d’accueil et d’intégration*”, it has been refunded by the immigration law of 7 March 2016. The following of those training is notably supposed to be taken into consideration for the renewal of a stay title¹³⁰⁹.

Regarding asylum seekers, OFII is in charge of the first welcoming of those persons and is therefore in charge of managing, coordinating and financing the *plateformes territoriales d’accueil pour demandeurs d’asile* (welcoming platforms for asylum seekers), in accordance to article L 744-1 and following CESEDA. It also manages and allocates the spots in the *centre d’accueils pour demandeurs d’asile* (asylum seekers welcoming centers. It also grants the financial aid that all asylum seekers are allowed to receive (*allocation pour demandeur d’asile*), according to article L744-P and following CESEDA.

Regarding help to return and reinsertion, the OFII oversees voluntary returns. It can grant some material and financial support to develop some reinsertion project, mostly economic development project¹³¹⁰.

3.2.2. The OFPRA

3.2.2.1. Missions and forms of assistance provided

The OFPRA has been created by a law dated July 25th 1952. It is in charge of investigating and ruling on asylum and statelessness claims accordingly to the Geneva Convention of July 28th 1951 and the New York convention of September 28th 1954 – which are now codified in the CESEDA. The OFPRA also provides legal advice in the context of asylum claims in waiting areas. Its decisions regarding asylum claims can be appealed before the national court of asylum (*Cour Nationale du Droit d’asile*), according to article L731-1 CESEDA.

Secondly, OFPRA deals with all events of civilian life of people that benefit from international protection (change of name, reconstitution of civil documents...).

¹³⁰⁹ In a recent report dated, the French Senate underlined that this integration mechanism was quite a failure despite the reform of March 2016. It notably points out that the language training level is below the European standards, that the civic training is too thick and academic and therefore quite unsuitable. Roger Karrouchi, ‘L’office français de l’immigration et de l’intégration : pour une politique d’intégration réaliste et ambitieuse’, (*Rapport d’information n°660, 19 July 2017*), <<http://www.senat.fr/rap/r16-660/r16-660.html>>, accessed 25 September 2017 [French]

¹³¹⁰ Roger Karrouchi, ‘L’office français de l’immigration et de l’intégration : pour une politique d’intégration réaliste et ambitieuse’, (*Rapport d’information n°47, 16 October 2012*), <[http://www.senat.fr/rap/r12-047/r12-0475.html - toc35](http://www.senat.fr/rap/r12-047/r12-0475.html_toc35)> accessed 25 September 2017 [French]

3.2.2.2. *Organization, Governance and Sources of Funding*

According to article L722-1 CESEDA, this entity is administered by a board of directors composed of two deputies, two senators, and representatives of the ministry of internal affairs, of the ministry of foreign affairs and other ministries and a representative of the office's staff.

All the decisions regarding asylum claims are dispensed in the name of the general director of the office, name by decree of the President of the Republic.

Most of the OFPRA resources come from public service grant subventions (99% of its resources), grant by the Ministry of Internal Affairs¹³¹¹. The rest comes from European funds.

3.2.2.3. *Monitoring and Evaluation System*

Its main interlocutor is the *Direction de l'Asile* (Central division of asylum) of the DGEF. A COP has been concluded between OFPRA, the Ministry of Internal affairs and the ministry of Budget in 2016-2018.

According to article L 721-4 CESEDA, every year the OFPRA should release a report about its activity. This report is transmitted to the Parliament and made public afterwards.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

The term 'migrants' here will be used to cover 'economic' migrants: both those originating from the European Union and from third countries. It will also include those who have come to France seeking asylum, those who have been granted refugee status by the state, and transit migrants (those for whom France is not the final destination).

4.1. General Migration Situation

When we discount those who re-entered France and French citizens born abroad, net migration in 2016 comes to 252,643.^{1312, 1313} This calculation can be seen to be a reliable indication of migration flows as it does not inflate figures by counting those who have been in France for less than 12 months.¹³¹⁴

From 2006 onwards, net immigration as measured by the National Institute of Statistics and Economic Studies (INSEE) has increased steadily, by 67,000 each year from 2014-2016 inclusive.¹³¹⁵ This report shows a stable but increasing upwards trend in migration figures; however, one must factor in that INSEE's statistics have included Mayotte since 2014 and so

¹³¹¹ As stated in program 303 "immigration and asylum" with regard to the official classification used for the vote of the state budget in the financial act".

¹³¹² OECD *International Migration Database* <stats.oecd.org/Index.aspx?DataSetCode=MIG> (2017) accessed 19 July 2017

¹³¹³ 253,000 according to INSEE: 'Flux d'entrée selon le lieu de naissance ou la nationalité en 2015' in *Données annuelles de 2006 à 2015* <insee.fr/fr/statistiques/2861375> accessed 19 July 2017 [French]

¹³¹⁴ Article 2.1(a), (b), (c) Regulation (EC) 862/2007

¹³¹⁵ INSEE, 'Composantes de la croissance démographique, France' in *Évolution de la population : Bilan démographique 2016* (2017) [French]

there is a difference in data collection before this year.¹³¹⁶ Therefore the increase in immigration after 2013 may not necessarily reflect as large a change in the number of migrants arriving in France.

France continues to attract foreign students, currently 298,902, which represents an increase of almost 50,000 10 years ago.¹³¹⁷ The highest proportion of entrants (42.5%) originates from Africa, a quarter from Europe and 17% from Asia.

4.1.1. Demographic Divisions by Geographical Origin

Looking at the geographical origins of immigrants who came to France in 2015, data from the 2016 national census shows that 39.5% originate from Europe, the greatest proportion from Italy, Portugal and Spain¹³¹⁸. Almost the same proportion arrives from African countries (35.6%), mostly Algeria, Morocco and Tunisia¹³¹⁹. This is not surprising as there has traditionally been high migration from the francophone countries forming the Maghreb. However, in Mediterranean Arab countries “the period immediately preceding the revolts [Arab Spring of 2011] was one of intense emigration...particularly to France”¹³²⁰.

4.2. Categories of Migrants

4.2.1. Migration Within the European Union

As mentioned, 39.5% of migrants in 2015 came from Europe. This is to some extent due to geographical proximity, but also to the free movement rights conferred within the European Union. Eurostat gave a provisional number of 1.5 million for 2016.¹³²¹ This is an exponential increase of 20,000 between 2014 and 2015, and of 40,000 between 2015 and 2016. Yet, since data is only available from 2014 and only a provisional number for 2015 and 2016, it is premature to attempt any analysis of long-term trends from it.¹³²²

4.2.2. Non-European Asylum Seekers and Refugees

In 2016 there were 84,270 asylum seekers in France counted by Eurostat, a number which has not stopped increasing since 2010. In that year 28,755 asylum seekers were granted asylum, a success rate of a third of the seekers. Whilst the largest proportion of non-EU asylum seekers are between the ages of 18-34, almost a fifth of them are children.¹³²³

¹³¹⁶ Eurostat *Immigration by age group, sex and citizenship* available at <ec.europa.eu/eurostat/data/database> (migr_imm1ctz 2017) accessed 19 July 2017

¹³¹⁷ Campus France, *L'essentiel des chiffres clés* (2016) [French]

¹³¹⁸ INSEE *Origine géographique des immigrants arrivés en France en 2015* <insee.fr/fr/statistiques/2861345#tableau-Donnes> (2017) accessed 19 July 2017 [French]

¹³¹⁹ Percentages of EU and non-EU migrants differ from the aforementioned report of Eurostat (see n1) as this study does not look at those already living in France

¹³²⁰ Philippe Fargues, Christine Fandrich *Migration After the Arab Spring* (MPC Research Report 2012/09)

¹³²¹ Eurostat *Population on 1 January by age group, sex and citizenship* available at <ec.europa.eu/eurostat/data/database> (migr_pop1ctz 2017) accessed 19 July 2017

¹³²² When data was first collected under Article 3 of Regulation (EU) No 1260/2013 and Article 3 of Regulation (EC) No 862/2007

¹³²³ Eurostat *Distribution by age of (non-EU) first time asylum applicants in the EU and EFTA Member States, 2016* <[ec.europa.eu/eurostat/statistics-explained/index.php/File:Distribution by age of \(non-](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Distribution_by_age_of_(non-)

4.2.3. Transit Migrants

Transit migrants, whose destination country is not France, may stay in informal camps and abandoned buildings. Various NGOs have estimated the population of the informal encampments. After the dismantling of the 'Calais Jungle' camp in October 2016, where migrants were supposed to have been redirected to reception centres, reports have surfaced of more than 400 migrants returning and living rough around the former 'jungle'¹³²⁴. Although there is no legal duty to claim asylum in the first EU state they reach, member states may return asylum seekers to their country of entry for processing of their claim, which contributes to the clandestine nature of this section of migrants¹³²⁵. This makes the true number of transit migrants, who often go undocumented, very difficult to evaluate. In 2016, 91 985 non-EU irregular migrants were apprehended in France¹³²⁶.

4.2. 'Economic' Migrants

By subtracting the number of asylum claims from the figure of annual immigration, we arrive at an estimate of 168,730 purely economic migrants in 2016. Yet many migrants included in this figure may have migrated for reasons of family reunification, after retirement or even for long-term study whilst working and it must be made clear that this is a very rough estimation which cannot cover the various reasons for migration to France.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Implementation Mechanisms of ECtHR Decisions in France

5.1.1. Authority and Influence of ECtHR Decisions

As a Member of the European Convention on Human Rights (hereby referred to as the ECHR or the Convention), France is bound by the Convention and has a positive duty to execute any decisions rendered by the European Court of Human Rights (hereby referred to as the ECtHR) against itself. As a result, the French Parliament may vote new laws to comply with a decision of the ECtHR and the French Government may be bound to award damages to claimants.

Furthermore, ECtHR decisions against other Member States influence French legislation and uses. NGOs such as *France Terre d'Asile* often write reports pointing at the lack of conformity of

[EU\) first time asylum applicants in the EU and EFTA Member States, 2016 \(%25\) YB17.png](#) (2017) accessed 19 July 2017

¹³²⁴ Henry Samuel "Hundreds" of migrants back in Calais weeks after 'Jungle' camp torn down" *The Telegraph* (London, 1 February 2017)

¹³²⁵ 'Dublin III' Regulation EU No 604/2013

¹³²⁶ Eurostat *Statistics on Enforcement of Immigration Legislation* < http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation#Almost_one_million_non-EU_citizens_were_apprehended_in_the_EU_in_2016.2C_which_was_approximately_50.C2.A0.25_less_than_in_2015> accessed 1 September 2017

administrative measures with the standards set by the ECtHR. The Independent Constitutional Authority called *Défenseur des Droits* (Rights Defender) also issues report regularly underlining inconsistencies between French law and ECtHR decisions. Those reports aim to create incentives to make change in practice and in the law.

5.1.2. Administrative Courts

According to the ECtHR¹³²⁷, States are free to control the entry of non-nationals on their territory due to the principle of State sovereignty. Once the non-national has entered a country, which is a State party to the Convention, this country is bound by its ECHR obligations in regard to that non-national. Administrative courts will mostly deal with the conditions of stay and expulsion of non-nationals. As public matters, cases are dealt with by the administrative court circuit, with the *Conseil d'Etat* (the French Supreme Administrative Court) at its top.

5.1.3. The French Constitutional Court

According to the *Conseil Constitutionnel* (French Constitutional Court), “foreigners hold all constitutional human rights that are recognised to people residing on the French territory”¹³²⁸. Under the ECHR, States are also bound by both positive and negative obligations to respect Convention rights when regulating immigration. It is necessary to assess whether those constitutional human rights equate human rights protected by the Convention, as well as their interpretation by the Court.

The *Conseil Constitutionnel* is solely concerned with constitutional review: its role is solely to determine whether a statutory provision — a *Loi* (a text of law) or an *Article de Code* (a Code article) — is compliant with the French Constitution of 4th of October 1958. If the *Conseil Constitutionnel* deems a law to be unconstitutional, the said text of law will be automatically censored. Before the enactment of a law, a request may be addressed to the *Conseil Constitutionnel* to assess the constitutionality of the bill by the President of the Republic, the Prime Minister, the President of the *Assemblée Nationale* (National Assembly, 1st House of Parliament), the President of the *Sénat* (Senate, 2nd House of Parliament), 60 deputies (*Assemblée Nationale*'s members) or 60 senators¹³²⁹. Since 2008, after the enactment of a law, a request may be addressed during proceedings before a court to the Supreme Court of that circuit to have a request lodged to the *Conseil Constitutionnel* in order to assess the constitutionality of a law¹³³⁰.

5.1.4. Types and Implementation of ECtHR Decisions

We will here examine the correlation between ECtHR decisions and subsequent law amendments as well as Constitutional and Administrative case law at the French national level. The Convention protects two different types of rights: intangible and derogable rights. We will

¹³²⁷ *Abdulaziz, Cabales and Balkandali v UK* (1995) EHRR

¹³²⁸ *Loi relative à l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France* (1993), Constitutional Council, n° 93-325 DC, O.J. 18 August 1993, p11722, cons. 3 [French]

¹³²⁹ Article 61, French Constitution of 4th October 1958

¹³³⁰ Article 61-1, French Constitution of 4th October 1958: *Question Prioritaire de Constitutionnalité* (Priority Question of Constitutionality).

review ECtHR decisions and their implementation concerning migrants in relation to these two types of rights.

5.2. Implementation of ECtHR Decisions Concerning Intangible Rights

5.2.1. ECtHR Decisions on Article 3 of the Convention

5.2.1.1. *Direct Violation of Article 3: Administrative Detention of Children*

France has a history of using administrative detention for both migrants and their children. In 2012, the ECtHR condemned France for this practice, ruling that children are not fit for detention and cannot be subjected to it if no decision has been taken against them¹³³¹. In July 2012, the Home Office issued a decree, asking *Préfets* (representatives of the State at the local and regional level¹³³²) to use house arrest over detention when dealing with migrants' children. However, according to human rights NGOs, the number of child detention increased dramatically again in 2015¹³³³. In 2016, France's practice was condemned again by the Court in 5 combined decisions¹³³⁴ which focused on three factors: the children's young age, the time of detention, and the unsuitability of the premises. Parliament's reform in 2016¹³³⁵ states that house arrests should always be preferred when dealing with children. However, the law allows for a 48-hour detention before departure to facilitate expulsion. The law mentions that the interests of the child should be taken into account in the evaluation¹³³⁶. However, the French *Défenseur des Droits*, an independent constitutional authority in charge of protecting citizens' rights against administrative abuse, claimed in a report that the new law does not comply with ECHR regulations, as the mention of the child's interest appears paradoxical¹³³⁷.

5.2.1.2. *Virtual Violation of Article 3: Expulsion to the Migrant's Home Country*

5.2.1.2.1. General Application of Virtual Violation

Since the ECtHR's decision in *Soering v UK*¹³³⁸, it is understood that the right not to be subjected to torture or degrading treatment is "one of the fundamental values in a democratic society"¹³³⁹. A double obligation has consequently been imposed upon Member States: a negative obligation not to impose any degrading treatment and a positive obligation to protect any person under their

¹³³¹ *Popov v France*, (2012) EHRR

¹³³² Article 72, French Constitution of 4th octobre 1958

¹³³³ CIMADE, ASSFAM, France Terre d'Asile, Forum Réfugiés, Ordre de Malte, "Rapport 2015 sur les centres des locaux de rétention administrative", (28 June 2016), 23 [French]

¹³³⁴ *AB and others v France*, *R.M. and M.M. v. France*, *A.M. and others v France*, *R.K. v France* and *R.C. v France*, (2016) EHRR

¹³³⁵ Law n° 2016-274 of the 7 march 2016 [*Loi relative au droit des étrangers en France*] [French]

¹³³⁶ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.551-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹³³⁷ Jacques Toubon, "Interdiction de mettre des enfants en CRA : la CEDH conforte la position du Défenseur des Droits" (2016) <<https://www.defenseurdesdroits.fr/fr/communiqués-de-presse/2016/07/interdiction-de-mettre-des-enfants-en-cra-la-cedh-conforte-la-position>> accessed 21 July 2017

¹³³⁸ *Soering v United Kingdom* (1989) 11 EHRR 439

¹³³⁹ *ibid* 10, [88]

jurisdiction¹³⁴⁰. The ECtHR refers to the notion of virtual violation, according to which a Contracting State would violate Article 3 if it were 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”¹³⁴¹.

France was condemned by the ECHR in 2015 for expelling Sudanese asylum seekers¹³⁴², on the ground of a virtual violation of Article 3. The Court outlined the alarming context in Sudan and Darfur to characterise the substantial grounds for believing that the asylum seekers would be in danger of torture. The court restated that it is not possible to balance the obligation with the reasons that justify the expulsion (here, minor incoherencies in the asylum seekers' story).

However, despite the rulings, France continues to expulse asylum-seekers to Sudan. On September 24th 2015, two Sudanese asylum-seekers were expelled despite a judgment of the Administrative Tribunal of Lille cancelling the expulsion. The practice of the Administrative Court of Lille consists in cancelling the expulsions that are issued without a destination or with Sudan as a destination, based on article 3 of the ECHR. However, other administrative courts have not been following the same practice and have allowed expulsions, such as the Administrative Court of Rouen. Recently, the Appeal Court of Douai validated an expulsion to Sudan¹³⁴³. The Court held that the lack of detail in the asylum-seeker's story, as well as his lack of identity documents, and the fact that he had not filed a request for asylum justified that there were “no sufficient substantial grounds that he would be exposed to torture as stipulated by article 3 of the Convention”. It is questionable whether this case law is compatible with *AA and AF v France*.

5.2.1.2.2. Specific Application of Virtual Violation

5.2.1.2.2.1. Seriously Ill Migrants

The standard set by the ECtHR for preventing a Member State to expulse a migrant due to a health condition was originally a low threshold, as it only operated in “exceptional circumstances”¹³⁴⁴. It was therefore possible to expel someone who contracted HIV, for instance. For a long period of time, France offered a much more extensive protection with the ‘Debré’ Law, which protected seriously ill migrants from expulsion through a registry¹³⁴⁵, and the ‘Chevènement’ Law, which offered a right of residence to seriously ill migrants if default of treatment would be likely to result in extremely grave consequences, provided that the said person could not benefit from an effective treatment in the destination country¹³⁴⁶. However, the law related to immigration, integration and nationality enacted on the June 16th 2011 modified the conditions for obtaining a right to residence, and replaced “access to an effective treatment”

¹³⁴⁰ *Amuur v France* (1996) 22 EHRR 533

¹³⁴¹ *ibid* 10

¹³⁴² *A.A. v France and A.F. v France* (2015) EHRR

¹³⁴³ Administrative Appeal Court of Douai, 1st Chamber (5 April 2017) - 3 sitting judge formation [French]

¹³⁴⁴ *N v the United Kingdom* (2008) EHRR

¹³⁴⁵ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.551-4 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹³⁴⁶ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.313-11-11 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

by “access to any treatment”. This new wording was deemed fit with the French Constitution by the *Conseil Constitutionnel*¹³⁴⁷, although it could expose certain migrants to death or degradation of their health in case of an expulsion.

Since *Paposhivi v Belgium*¹³⁴⁸, the ECtHR held that a seriously ill migrant who was not at risk of death was protected by article 3 of the Convention. It is uncertain whether the new redaction of article L.313-11-11 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (Code on the entry and residence of aliens and on the right of asylum, hereby referred to as CESEDA) is compatible with the ECtHR's new higher threshold.

More recently, the French Parliament enacted a new law on the March 7th 2016, reforming the asylum procedure. The decrees of application of this law have modified the procedure for diagnosis of serious illness in the case of asylum seekers. The appreciation of the seriousness of the illness will no longer be supervised by the Ministry of Health, but instead by the Office for Immigration and Integration. NGOs specialised in migrants' rights have raised concerns over the impartiality of the Office to assess the seriousness of health conditions, calling the process “dangerous”¹³⁴⁹.

5.2.1.2.2.2. Female Genital Mutilation

According to the case law of the ECtHR, religious practices must go above a certain threshold of gravity to consist in torture as understood in article 3 of the Convention¹³⁵⁰. Furthermore, the ECtHR has reaffirmed that female genital mutilation (hereby referred to as FGM) is a degrading treatment contrary to article 3¹³⁵¹. However, there is no violation of article 3 if the family could protect the girl against FGM, and it is up to the plaintiff to demonstrate sufficiently detailed elements justifying one's fear to be subjected to FGM¹³⁵².

The *Conseil d'Etat* held that a young girl who was born in France, but who is a national of a State in which FGM is common practice, could obtain refugee status if she could justify of a personal fear to be subjected to FGM in case she returns to her home country. However, the *Conseil d'Etat* stated three limitations to that protection transposing the ECtHR's case law at national level. First, she must show sufficiently detailed elements such as geographic, sociologic, and family elements, demonstrating the personal risk of FGM. Second, it is possible to deny refugee status if the young girl can have protection of part of her home country's territory, which she can access and live a normal family life in. Third, it is impossible for the girl's parents to be given any form of international protection in France if the fears of FGM are not serious, personal and direct¹³⁵³. The French case law on FGM appears to be in line with the ECtHR's case law.

¹³⁴⁷ *Loi relative à l'immigration, à l'intégration et à la nationalité*, (2011), Cons. Const. n° 2011-631 DC, O.J. 17 June 2011, p10306 [French]

¹³⁴⁸ *Paposhivi v Belgique*, (2016) EHRR

¹³⁴⁹ Observatoire du droit à la santé des étrangers, ‘Les malades étranger-e-s abandonnés par le gouvernement ? ’ (15 novembre 2016) [French]

¹³⁵⁰ *Ireland v the United Kingdom*, (1978) EHRR

¹³⁵¹ *Collins and Akazijebe v Sweden*, (2007) EHRR

¹³⁵² *Izvebekhai v Ireland*, (2011) EHRR

¹³⁵³ *Mlle F*, (2012) *Conseil d'Etat*, No 360926 [French]

5.2.1.2.2.3. A Case Against the Death Penalty?

The combination of the two obligations identified by the ECtHR on the basis of article 3 led the ECtHR to rule that extraditing a foreigner to a country where he might be executed, even if the execution was the result of judicial proceedings, would be in breach of article 3¹³⁵⁴. In accordance with the evolutionary interpretation provided for in the preamble of the ECHR¹³⁵⁵, it was ruled that the adoption process of Protocol 13 demonstrated the willingness of the majority of Member States to abolish the death penalty. Following the 2009 *Daoudi v France* ruling¹³⁵⁶, the *Conseil d'Etat* made an application for a *Question prioritaire de Constitutionnalité* to the *Conseil constitutionnel* in order to constitutionally recognise the extraterritorial effect of article 66-1 of the French Constitution, which currently provides for the abolition of the death penalty in France¹³⁵⁷. However, the *Conseil Constitutionnel* issued a stay of proceedings, hence it opted not to adjudicate on the matter¹³⁵⁸. French courts, therefore, operate at two different speeds: while the *Conseil d'Etat* wishes to further the reasoning of the ECtHR, the *Conseil constitutionnel* appears to remain in withdrawal.

5.2.2. Indirect Violation of Article 3 Combined with a Violation of Article 13

5.2.2.1. General Provisions

Whenever there are serious reasons to think that the consequences of expulsion will be irreversible in regard to article 3 and article 13 of the Convention, the ECtHR ruled that the right to an effective remedy implies that appeals are suspensive. Since 1990, appeals against an order to escort have been made suspensive¹³⁵⁹, as well as appeals against orders to leave the territory, if filed in the 30-day period¹³⁶⁰. In 2007, the ECtHR condemned France on the grounds of an indirect violation of article 3 and a violation of article 13 because the appeal against a refusal of admission on French territory had not been made suspensive. The French Parliament subsequently modified the legislation to comply with said decision of the ECtHR¹³⁶¹.

5.2.2.2. Derogatory Regimes

5.2.2.2.1. Dublin Regulations

The ECtHR ruled in *MSS v Belgium and Greece* that a suspensive appeal was required in the case of procedures under the Dublin II regulation, if the asylum seeker were to be readmitted in a country, which was unable to respect the right to asylum. However, the *Conseil d'Etat* has

¹³⁵⁴ *Nivette v France*, (2000) EHRR

¹³⁵⁵ European Convention on Human Rights, Preamble, Paragraph 3

¹³⁵⁶ *Daoudi v France*, (2009) EHRR

¹³⁵⁷ *Kamel Daoudi* (2010), *Conseil d'Etat*, No 338505 [French]

¹³⁵⁸ *M. Kamel D. [Transposition d'une directive]* (2010) Constitutional Council, n° 2010-79 QPC, O.J. 19 December 2010, p22373 [French]

¹³⁵⁹ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.512-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹³⁶⁰ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.512-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile].

¹³⁶¹ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.213-9 [Code de l'entrée et du séjour des étrangers et du droit d'asile], resulting from the Law enacted on 20 November 2007

systematically refused to recognise a combined violation of articles 3 and 13 of the Convention, both in the case of priority procedures¹³⁶² and readmissions¹³⁶³. The *Conseil Constitutionnel* also eluded the question¹³⁶⁴. The Law Reforming Asylum, enacted on July 29th 2015, provides for a suspensive appeal against the placement under a Dublin procedure¹³⁶⁵.

The Court also ruled in *MSS v Belgium and Greece* that given the deficiencies in the Greek asylum procedure, the transfer of the asylum seeker to Greece was in violation of article 3 and article 13 of the Convention. France's administrative courts have not complied consistently with the decision. In September 2016, the Bordeaux Administrative Appeal Court held that the European Commission's findings¹³⁶⁶ as well as the Human Rights Commissioner of the Council of Europe observations¹³⁶⁷ were sufficient to establish a systemic deficiency in Hungary's asylum procedure. However, in December 2016, the Lyon Administrative Appeal Court held that transferring an asylum seeker to Hungary was not in violation of the Convention because the deficiencies in the Hungarian asylum procedure were not sufficiently established¹³⁶⁸. Such a decision seems to clash with the Court's findings in *MSS v Belgium and Greece*, in light of the obvious deficiencies in the Hungarian asylum procedure as highlighted by European institutions. Therefore, the case law of those French lower administrative courts is in conflict. It is now up to the *Conseil d'Etat* to confirm the findings of the Bordeaux Administrative Court, if the French administrative case law is to comply with the ECtHR case law.

5.2.2.2.2. "Priority Procedure" of Asylum Applications

France traditionally applied a 'priority procedure' to asylum seekers who were in administrative detention. The priority procedure involves quicker timelines for handling the asylum application; however, this procedure also entails that the appeal against a refusal of asylum is not suspensive. In *IM v France*¹³⁶⁹, the Court ruled that the absence of a suspensive appeal in the priority procedure was in violation of article 3 and article 13 combined. In 2015, the Law Reforming Asylum¹³⁷⁰ generalised suspensive appeals against a refusal of asylum, and replaced the 'priority' procedure by an 'accelerated' procedure. France has, therefore, complied effectively with the Court's ruling.

¹³⁶² *Mme Diakité* (2010), Conseil d'Etat, No 340250 [French]

¹³⁶³ *M Amoni* (2011), Conseil d'Etat, No 346164 [French]

¹³⁶⁴ *M Ismaël A.* (2011) Constitutional Council, n° 2011-120 QPC, O.J. 9 April 2011, p6364 [French]

¹³⁶⁵ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.743-4 [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹³⁶⁶ European Commission, 'infringement procedure against Hungary', press release n° IP/15/6228 (10 December 2015)

¹³⁶⁷ Council of Europe, 'Risk of human rights violations for asylum seekers returned to Hungary', press release (13 January 2016)

¹³⁶⁸ Administrative Appeal Court of Lyon, 2nd Chamber (13 December 2016), 15LY02193 - 3 judge formation [French]

¹³⁶⁹ *I.M. v France*, (2011), EHRR

¹³⁷⁰ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.743-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile]

5.3. Implementation of ECtHR Decisions Concerning Derogable Rights

5.3.1. ECtHR Decisions on Article 8 of the Convention

5.3.1.1. Negative Obligations

Before the *Conseil Constitutionnel* became a judicial authority and the guardian of individual constitutional rights, the French *Conseil d'Etat* played the role of guardian of one's civil liberties. As such, the *Conseil d'Etat* ruled, as early as 1974¹³⁷¹, that the right to a family life was a *Principe Général de Droit* (General Principle of Law, hereby referred to as PGD) based on paragraphs 10 and 11 of the Preamble of the 1946 French Constitution. The *Conseil d'Etat* was a pioneer in recognising as a positive obligation on Member States to effectively protect one's family life by the ECtHR in 1988¹³⁷².

The right to family life being no absolute right in regard to the paragraph 2 of article 8 of the ECHR, the ECtHR soon precised the proportionality test to be applied¹³⁷³ and the *Conseil d'Etat* ruled, a month later, that an administrative authority shall not amount to a disproportionate violation of the said right¹³⁷⁴, what was later enshrined in the *CESEDA*¹³⁷⁵. Benefitting from the status of a judicial entity, the *Conseil Constitutionnel* further hallowed the right to family life as a *Principe de valeur constitutionnelle* (Principle of Constitutional Value, hereby referred to as PVC)¹³⁷⁶. That right to family life, now of constitutional significance in the French legal system, is to be balanced with the similarly constitutionally relevant State's duty to ensure public order¹³⁷⁷, resulting from the principle of international law that one State is sovereign and may control the entry of non-nationals into its territory¹³⁷⁸.

There is thus a balance to strike, but it remains unclear what the criteria for the proportionality test are. The ECtHR sitting in its Grand Chamber formation refused to provide for a strict definition of family life; it rather promoted factual analysis to be conducted case by case¹³⁷⁹. This rather broad and variable assessment has led to a recent hardening of the standard to be applied, without, however, making it clearer. As such, the ECtHR ruled that adults would not necessarily benefit from article 8 if nothing more than normal affective bonds were relied upon to prove a situation of dependency¹³⁸⁰. In the same vein, the conditions for family reunion have constantly been imprecisely hardened in the last thirty years within the French legal system. As an example, two laws enacted on July 24th 2006 and on November 20th 2007 added the need to comply with the "core principles, which govern family life in France in accordance with the laws of the French Republic", as well as the obligation in some cases to pass a test aimed at evaluating one's

¹³⁷¹ *GISTI* (1978), Conseil d'Etat, (Receuil Lebon, 493) [French]

¹³⁷² *Berrehab v The Netherlands*, (1988) EHRR

¹³⁷³ *Beldjoudi v France*, (1992) EHRR

¹³⁷⁴ *Marzini* (1992) Conseil d'Etat No 120573 [French]

¹³⁷⁵ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.313-11 7° [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹³⁷⁶ *Loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France*, (1993) Constitutional Council, n° 93-325 DC, O.J. 18 August 1993, p11722 [French]

¹³⁷⁷ *ibid* 19

¹³⁷⁸ *Abdulaziz, Cabales and Balkandali v the United Kingdom* (1985) EHRR

¹³⁷⁹ *K. and T. v Finland* (2000) EHRR

¹³⁸⁰ *Bairouk v France* (2002) EHRR

knowledge of the French language and of the values of the French Republic in the country of origin¹³⁸¹. However, the ECtHR ruled that these conditions were too strict, and that family reunification procedures must be carried out with flexibility and effectiveness after having condemned France in 2014¹³⁸². As a result, the law enacted on March 7th 2016 put an end to the obligation to pass a test aimed at evaluating one's knowledge of the values of the French Republic¹³⁸³.

However, the definition of family life, the criteria of the proportionality test, and the boundaries of the balance to be struck remain unclear, variable, and subject to the European and French policies on migration, and family life.

5.3.1.2. Positive Obligations

The Court ruled in 1996 that a positive obligation for the State to offer a protection to the family of a non-national could arise under article 8 of the Convention¹³⁸⁴. In *Bousarra v France*,¹³⁸⁵ France had expelled a Moroccan national -who had lived in France since he was 4 months old - because he had committed a drug offence. The ECtHR examined the proportionality between the gravity of the infraction and the expulsion, as well as the social, cultural and family links the plaintiff had with France. However, it is interesting to note that the judgment, which reverses the validity of the order to escort, only awarded damages to the plaintiff who was already outside of the French territory. The effectiveness of the ruling was, therefore, limited.

5.3.2. Violation of Article 8 Combined with a Violation of Article 13

In *De Souza Ribeiro v France*, a Brazilian national was expelled despite a pending appeal and a demand of interim review against the order to escort. The order was issued only one day after the arrest, in application of a derogatory legal regime in force in the former French Colonies, such as Guiana and Mayotte. The Court ruled that when combined with article 8, the “extremely rapid, even perfunctory” conditions in which an order to escort was issued do not allow the plaintiff to obtain a sufficiently thorough examination of his application. Therefore, when combined with article 8, article 13 shall constrain the Member State to offer a suspensive appeal to the plaintiff. Commentators claimed that the Court's ruling was “shy” and could create difficulties of application, as the ruling does not directly condemn the former French colonies derogatory regimes. In 2015¹³⁸⁶, the *Conseil d'Etat* ruled that the absence of a suspensive appeal was balanced by the possibility to contest the decision via an interim review. However, the *Conseil d'Etat* specified that the interim review must itself be suspensive, in order to comply with the requirements developed in its case law by the ECtHR. In 2017, the French Parliament enacted a

¹³⁸¹ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.411-8 [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹³⁸² *Tanda-Muzinga v France* (2014) EHRR

¹³⁸³ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.211-2-1 [Code de l'entrée et du séjour des étrangers et du droit d'asile]

¹³⁸⁴ *C. v Belgium* (1996) EHRR

¹³⁸⁵ *Bousarra v France* (2010) EHRR

¹³⁸⁶ *Syndicat CGT de l'Union locale de Calais et environs* (2015) Conseil d'Etat, No 383481 [French]

new law¹³⁸⁷ that complies with the ECtHR ruling in *De Souza Ribeiro v France*: it establishes a suspensive interim appeal in the former French Colonies. Therefore, although the appeal against an order to escort or an order to leave the territory is not suspensive, the plaintiff may require a suspensive interim review of the decision.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

The European Commission against Racism and Intolerance (hereafter “ECRI”) describes itself as “a human rights monitoring body which specializes in questions relating to the fight against racism, discrimination on grounds of “race”, ethnic/national origin, colour, citizenship, religion or language, xenophobia, antisemitism and intolerance”¹³⁸⁸.

The creation of this body of the Council of Europe was decided during the first Summit of Heads of State and Government of the Council of Europe and its statute was adopted on June 13, 2002. Composed of 47 members, the ECRI’s activities consist on monitoring countries and issuing statements and recommendations. Although its work is non-binding, the European Commission against Racism and Intolerance has a growing influence and its recommendations are considered as soft law.

The ECRI published five reports on France, each of them focusing on a different angle. In each report, the ECRI issues recommendations to lower racism and intolerance in the studied country, and to improve the treatment of vulnerable people.

Following the ECRI’s reports, French governments changed and improved their legislation and created new institutions.

Consequently, the Joint Ministerial Delegation for Combating Racism and Antisemitism and Hatred against LGBT (hereafter “DILCRAH”) was set up in 2012. This delegation was placed under the direct supervision of the Prime Minister in 2014. It established a 2015-2017 plan to combat racism and antisemitism which showed, according to the ECRI, the French determination “to combat racism and intolerance”¹³⁸⁹. Moreover, the institution of the Defender of Rights was created in 2012, and was assigned the missions to defend people whose rights were not respected and to allow everyone’s equality in the access to rights¹³⁹⁰.

Over the years, French governments mainly axed the implementation of the ECRI’s recommendation on the social integration of migrants as well as the protection of their rights.

¹³⁸⁷ Code of the entry and the residence of foreigners and the right to asylum of 2017, article L.514-1 [Code de l’entrée et du séjour des étrangers et du droit d’asile]

¹³⁸⁸ ECRI, European Commission against Racism and Intolerance, <http://www.coe.int/t/dghl/monitoring/ecri/About/ENG_Leaflet_ECRI.pdf> accessed 25 september 2017

¹³⁸⁹ ECRI, “ECRI report on France (fifth monitoring cycle)”, (1 March 2016) 9

¹³⁹⁰ The Defender of Rights, an independent institution <<https://www.defenseurdesdroits.fr/en/an-independent-institution>> accessed 25 septembre 2017

6.1. The Social Integration of Migrants

To improve the social integration of migrants, French governments tackled the issue of school and work integration as well as the improvement of the public opinion.

6.1.1. The Integration at School

On April 9, 2015, the French Minister for the Public Service published a circular which aimed at establishing priorities in State employees' training; thus, emphasising on transmitting the “values of the Republic” in pedagogical content dispensed by public schools, especially the principles of laicity and neutrality of the State¹³⁹¹. Moreover, an action plan 2015-2017: “Mobilizing France against racism and antisemitism” was set up in 2015 by the DILCRAH. Measures 24 to 27 of this plan were aimed at “giving schools the means to preserve and pass on the values of the Republic”¹³⁹². Those measures were mentioned by the ECRI on its 5th report on France which noted that they “will contribute to implementing its recommendations”¹³⁹³.

6.1.2. The Work Integration

The ECRI noted in the 2010 report that different measures had been set up by France to tackle employment discrimination. The report highlighted the anonymization of CVs in job application as well as the diversity award set up in 2008 rewarding businesses that made the effort to hire more diversified people. This measure – intended to fight employment discrimination and to promote equal opportunities – was spotlighted by the French Ministry of Foreign Affairs as an implementation of the ECRI's recommendations¹³⁹⁴. The report recommended that “French authorities pursue their efforts to combat racial discrimination in all aspects of employment”. The “reception and integration contract” is aimed at facilitating the integration of non-European foreigners in France and is mandatory since January 1st 2007 for every newcomer wishing to settle in France. Even though the ECRI recommended France to review this system; the Commission deemed that it had been enhanced by other initiatives such as the establishment of a vocational skills system which enabled migrants to work in their areas of expertise¹³⁹⁵.

6.1.3. The Improvement of Public Opinion on Migrants

The first aim of the DILCRAH 2015-2017 action plan was to mobilize France against racism and antisemitism. To achieve it, the action plan made this goal a “Major National Cause for 2015”. Consequently, the first two measures of the action plan were the “launch of a proactive government communication campaign in mid-2015” as well as a “participative viral campaign in

¹³⁹¹ Circular of the Minister for Public Service regarding inter-ministerial priorities fixed on professional formation throughout the life of State officers (2015) □ [Circulaire du 09 avril 2015 relative aux priorités interministérielles fixées à la formation professionnelle tout au long de la vie des agents de l'État] [French]

¹³⁹² DILCRA, *Mobilizing France on Racism and Antisemitism - Action Plan*, (2015-2017) 6 <http://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2015/05/dilcra_mobilizing_france_against_racism_and_antisemitism.pdf> accessed 25 September 2017

¹³⁹³ ECRI, “ECRI report on France (fifth monitoring cycle)” (1 March 2016) 20

¹³⁹⁴ Rapport annuel de la Commission européenne contre le racisme et l'intolérance, 13^{ème} législature, JO Sénat (2010) 3356 [French]

¹³⁹⁵ ECRI, “ECRI report on France (fourth monitoring cycle)” (15 June 2010) 20

the second half of 2015”. Those measures were also mentioned by the ECRI on the fifth report on France as contributing to the implementation of its recommendations.

6.1.4. The Setup of Criminal Law on Racism and Discrimination

In its first report on France, the ECRI recommended French authorities to strengthen their legislation on racist acts and to improve their implementation¹³⁹⁶. The Commission also noted that most public discriminations were already penalized in France but were rarely applied¹³⁹⁷. The Commission welcomed in its 2010 report the effects of the new rules and tools set up a few years ago aimed at giving a judicial response to racist acts¹³⁹⁸. Moreover, measures 11 to 14 of the DILCRAH 2015-2017 action plan were aimed at “making sanctions more effective and educational” and were, thus, mentioned by the Commission as an implementation of its recommendations.

6.2. The Migrant’s Integration Guaranteed by Their Protection

The integration of migrants also involves their protection. In order to guarantee the latter, French governments created the institution of the Defender of Rights and tried to eradicate discrimination of migrants during identity checks.

6.2.1. The Institutional Protection by the Defender of Rights

The Defender of Rights resulted from the merge of the High Authority against Discrimination and for Equality (HALDE) with three other authorities. This institution was entrenched in the French Constitution in 2008 at the article 71-1. This constitutional status gave the Defender of Rights more stability, independence, and power. This institution can receive complaints and its investigational powers allow it to “cover various problems from the point of view of discrimination, and therefore give the complainants more comprehensive protection”¹³⁹⁹.

6.2.2. The Protection Against Discriminatory Identity Checks

A new Code of Ethics for the Police and Gendarmerie came into effect on January 1, 2014. It subordinates the exercise of the police’s missions to the respect of the Declaration of Human Rights and of the Citizen as well as the French constitution, international conventions and laws. This new Code – aimed at strengthening relationships with the population – established the wearing of identification numbers on uniforms for policemen in order to tackle the ethnic profiling issue. However, this badge number was deemed too long and too small by the ECRI that highlighted its removability. In this way, the Defender of Rights suggested that policemen give a receipt containing their identification number after every identity check¹⁴⁰⁰. Unfortunately, this idea has not been implemented yet.

¹³⁹⁶ ECRI, “ECRI’s country-by-country approach: Report on France” (15 June 1998) 7

¹³⁹⁷ ECRI, “Second report on France” (10 December 1999) 6

¹³⁹⁸ ECRI, “ECRI report on France (fourth monitoring cycle)”, (15 June 2010) 20

¹³⁹⁹ ECRI, “ECRI report on France (fifth monitoring cycle)”, (1 March 2016) 31

¹⁴⁰⁰ ECRI, “ECRI report on France (fifth monitoring cycle)” (1 March 2016) 34

7. How is migrants' right to access to healthcare regulated within the national legislation?

The concept of accessibility has four components: non-discrimination, physical accessibility, economic accessibility and information accessibility¹⁴⁰¹. According to the French Constitution and constitutional case law¹⁴⁰², three principles are fundamental regarding healthcare: individual freedom, protection of human dignity against enslavement and damaging¹⁴⁰³ as well as the right to health protection. In 2002, the *Kouchner Act*¹⁴⁰⁴ has introduced a preliminary chapter in the Public Health Code (CSP) called “Individual rights” (article L.1110-1 and seq). Ever since, respect of the human body, the right to personal dignity, the right to consent to healthcare and, above all, the right to a standard of care constitute essential patients’ rights. Furthermore, those rights are enshrined in international and European human rights instruments. Consequently, as a patient, a migrant is entitled to access to healthcare.

7.1. The Non-Discrimination Tenet: The Right to Access to Healthcare

7.1.1. Under the Constitution and the Public Health Code

The first article of the Declaration of the Rights of Man and of the Citizen of August 26th 1789, part of the block of constitutionality, provides that “men are born and remain free and equal in rights”. This is the constitutional ground of non-discrimination. The 11th paragraph of the Preamble to the Constitution of October 27th 1946 guarantees the health protection of citizens. The right to be treated has constitutional value.

In this regard, the CSP bans any discrimination concerning access to healthcare, including preventive, according to article L.1110-3. A health professional cannot refuse to treat on any discriminatory basis, like benefitting from state healthcare cover. Any victim of an unfounded denial of care can bring before local healthcare care insurance offices or the president of the professional board with material and regional jurisdiction (*ibid*, paragraph 3). By the same token, it is possible to call upon the *Défenseur des droits* in charge of the fight against discrimination and promotion of equality. He carries out a mediation, a transaction or legal proceedings. Consequently, the practitioner can also be punished before civil or penal courts. There is one exception that justifies a denial: the latter must be based on a personal or occupational requirement and determines the quality, security and effectiveness of treatment.

7.1.2. Under International and European Instruments

¹⁴⁰¹ International Organization for Migrants, *Migration and the Right to Health in Europe* [2009]

¹⁴⁰² Truchet Didier, *Public Health Law* (Eds Dalloz, 2016) 240 [French]

¹⁴⁰³ *Loi relative au respect du corps humain et loi relative au don et à l'utilisation des éléments et produits du corps humain, à l'assistance médicale à la procréation et au diagnostic prénatal* (1994) Constitutional Council, N°94-343/344 DC

¹⁴⁰⁴ Law No 2002-303 on patients’ rights and the quality of health care system (2002) [Loi relative aux droits des malades et à la qualité du système de santé dite Loi Kouchner] [French]

The right to access to healthcare is enshrined in several international human rights instruments whose France is a State Party. The International Covenant on Economic, Social and Cultural Rights of December 16th 1966 recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (article 12). Concerning the European ones, the European Social Charter of 1991 requires that nationals of one State Party lawfully present on the territory of another be afforded medical assistance on terms equal to those nationals of the second State Party. As interpreted by the European Court of Human Rights, provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the right to life, the right to be free from torture and degrading and inhuman treatment, the right to respect for private and family life and the principle of non-discrimination (articles 2, 3, 8 and 14) have been legal grounds for lawsuits related to the access to healthcare. Thus, any victim of an unfounded denial of care is entitled to go to ECHR, for instance, to assert its right to access to healthcare.

Nonetheless, the latter is often limited because of patients’ financial difficulties. Therefore, medical aids have been multiplied in the last few decades.

7.2. Economic Accessibility: the Different Types of Financial Medical Aids

The social security system has evolved as a result of major reforms. Since 1972¹⁴⁰⁵, a person who is not covered by social security as well as his assignees benefit from personal health insurance. The *Couverture Maladie Universelle* (the State health cover for people on low incomes – CMU), implemented in 2000¹⁴⁰⁶, has enabled all legal residents on the French territory to get all their health costs back.

In this sense, repayment of health costs is divided into two parts¹⁴⁰⁷. On the one hand, the mandatory share is the one covered by social protection. On the other hand, the additional share is refunded by an additional healthcare cover or dependent on the patient (article L.160-13 and seq. of the Code of the Social Security Code). Concerning foreigners, the type of financial aid depends on migrant status in France.

7.2.1. Financial Aids for Documented Migrants

7.2.1.1. State Healthcare Cover for Mandatory Share

Implemented in 2016¹⁴⁰⁸, the Protection Universelle Maladie (PUMA) has replaced the CMU. Under the PUMA, only the mandatory share is covered by social security. There are two required conditions to benefit from this aid. Firstly, staying in France on a legal basis is necessary. In other words, you must have the French nationality, a residence permit or having started

¹⁴⁰⁵ Law No 78-2 on social security generalisation (1978) [Loi relative à la généralisation de la sécurité sociale] [French]

¹⁴⁰⁶ Law No 99-641 on the creation of the CMU (1999) [Loi portant création d’une couverture médicale universelle] [French]

¹⁴⁰⁷ CMU, ‘General presentation of medical aid measures’ < http://www.cmu.fr/les_droits_a_la_couverture_maladie.php > accessed 25 September 2017 [French]

¹⁴⁰⁸ Law No 2015-1702 Social Security Law for 2016 (2015) [Loi de financement de la sécurité sociale pour 2016] [French]

following a procedure to obtain documents. It only concerns EU foreign nationals. Secondly, living in France on a continuous basis – i.e. for more than three months – is requested. Some people may be exempt from this requirement such as international students, social benefit claimants or refugees and asylum seekers. Besides, a few migrants can be covered thanks to bilateral agreements between France and their country of origin – around forty states¹⁴⁰⁹.

7.2.1.2. State Healthcare Cover for Additional Share

7.2.1.2.1. Free Additional Healthcare Cover under the State Health Cover for People on Low Incomes

The *Couverture Médicale Universelle Complémentaire* (CMU-C), a type of public additional healthcare cover, spares advance on health costs. In fact, the CMU-C enables to support for free patients' additional shares. One may meet three requirements in order to benefit from this social cover : living in France on a legal and continuous basis as well as receiving less than 726,92 per month. The CMU-C is granted for one year and must be extended every year¹⁴¹⁰.

7.2.1.2.2. Financial Aid for Additional Healthcare Cover

The *Aide au Paiement d'une Complémentaire Santé* (ACS) is granted to those with means upper than CMU-C limit. It provides a financial aid for one year to pay a complementary health insurance contract under three conditions : living in France on a legal and continuous basis as well as receiving more than 726,92 euros and less than 981,33 euros per month¹⁴¹¹.

7.2.2. Financial Aid for Irregular Migrants

Not only does the French social security system covers migrants with legal documents but also the undocumented ones. Indeed, the *Aide Médicale d'Etat* (State Medical Aid – AME) supports health costs in full on three conditions (article L.251-1 of the Social Action and Family Code). Firstly, the migrant must stay in France on an illegal basis; that is, with no residence permit, application receipt or any document demonstrating that the migrant has started following a procedure to obtain a residence permit. Secondly, it is requested that the AME recipient resides in France for more than three months. Thirdly, he has to earn less than 726,92 euros a month. The AME is granted for one year and must be extended every year¹⁴¹².

Moreover, a foreigner who does not live in France can ask for the AME on humanitarian grounds in case of accident or illness passing through France and if he cannot be treated in his country of origin. It totally or partially covers his health costs depending on each situation¹⁴¹³. Eventually, in case of emergency, a migrant who lives in France on an illegal basis, for less than three months or, more but without being an AME claimant, can be solely covered for hospital

¹⁴⁰⁹ Centre of European and International Social Security Connections (CLEISS) '*Social Security Agreements*' <http://www.cleiss.fr/faq/accords_de_securite_sociale.html> accessed 25 September 2017 [French]

¹⁴¹⁰ CMU, '*Complementary CMU*' <<http://www.cmu.fr/cmu-complementaire.php>> accessed 25 September 2017 [French]

¹⁴¹¹ *ibid* <<http://www.cmu.fr/acs.php>> accessed 25 September 2017 [French]

¹⁴¹² *ibid* <http://www.cmu.fr/vous_etes_etranger_en_situation_irreguliere.php> accessed 25 September 2017 [French]

¹⁴¹³ *ibid* <http://www.cmu.fr/ame_humanitaire.php> accessed 25 September 2017 [French]

treatment¹⁴¹⁴. In practice, access to healthcare is often limited because of physical and/or information accessibility.

7.3. Physical and Information Accessibility

Physical accessibility deals with health facilities, goods and services which must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups. The CSP recognises the right to a standard of care throughout the national territory under the article L.1110-5. In other words, given its health status, any person is entitled to be treated and to receive the most appropriate care all over France. Information accessibility means that everyone has the right to seek, receive and impart information concerning health issues. The article L.1111-2 of the CSP states that any person is entitled to be informed on its health status. Additionally, according to the article L.262-1 of the Code of Social Security, health care insurance funds are assigned with the mission of prevention, education and health information as a priority for vulnerable groups. In this respect, public policies in the field of precariousness, poverty and health prevention are carried out by the Ministry of Social Affairs and Health to make access to healthcare easier for migrants.

On this subject, NGOs point out difficulties for migrants to access to healthcare in France. According to a study of *Médecins du Monde France (MDM)*, 88% of migrants do not benefit from state healthcare cover. Consequently, in 2016, *MDM* launched into the program “Migrants Law Health”, funded by the majority of the European Union, to promote access to healthcare of vulnerable groups¹⁴¹⁵.

In this way, within the French legislation, migrants’ right to access to healthcare is a fundamental right guaranteed and protected by the Constitution, international and European instruments and national law.

Depending on each situation, the social security system offers different types of financial medical aid to enable an equal access to healthcare.

Notwithstanding, this right may be limited considering physical and information accessibility.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

This article looks at how France guarantees the right to education through the prism of its legal framework and policies, the accessibility of these guarantees for migrant children and points out areas which can be improved.

¹⁴¹⁴ Circular DSS/2A/DGAS/DHOS No 2008-04 (Modifying circular DHOS/DSS/DGAS n.2005-141 of 16 March 2005 on urgent healthcare support to foreigners living in France on an illegal basis without the AME) 2008 [Circulaire DSS/2A/DGAS n°2008-04 du 7 janvier 2008 modifiant la circulaire DHOS/DSS/DGAS n° 2005-141 du 16 mars 2005 relative à la prise en charge des soins urgents délivrés à des étrangers résidant en France de manière irrégulière et non bénéficiaires de l'aide médicale de l'Etat] [French]

¹⁴¹⁵ Médecins du Monde, *Les migrants et déplacés* <<http://www.medecinsdumonde.org/fr/populations/migrants-deplaces>> accessed 18 September 2017 [French]

8.1. The Legal Framework of the Right to Education in France

8.1.1. French Constitution and National Law

The right to education has constitutional value in France: the Preamble to the Constitution declares that “the Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State.” Article L. 131-1 of the Code of Education ensures this access by prohibiting any discrimination according to the nationality of the child: "Education is compulsory for children of both sexes, French and foreign, between 6 and 16 years".

8.1.2. Law Derived from the European Union

As a member of the European Union, France has been bound from the 1st of December 2009 by the Charter of Fundamental Rights of the European Union (the Charter), which includes under Article 14 the right to education. In addition, the Charter includes a comprehensive non-discrimination clause under Article 21. To ensure its respect, France must undertake policy decisions which are compatible with the Charter not only towards its own nationals, but to migrant children arriving from other member states.

8.2. Barriers to an Effective Access to Education

8.2.1 The Accessibility of the Educational System

Since the promulgation of the Circular of 3 March 2002 on the procedures for enrolling and schooling pupils of foreign nationality in the first and second grade, the national education system is intended to be accessible for migrants¹⁴¹⁶.

Firstly, 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 in France. 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 French¹⁴¹⁷. This type of specific support for migrant children is the main difference between their curriculum and the national children's school curriculum. Indeed, after passing a level test, the newly arrived children join a 'UPE2A': a Pedagogical Unit for newly Arrived Allophone Pupils¹⁴¹⁸. At primary school, this is designed to allow the child to access the mainstream curriculum; the time accorded to this unit varies for each child according to their needs¹⁴¹⁹. While in the second cycle, UPE2A are

¹⁴¹⁶ Circular No. 2002-063 of 3 March 2002 on the arrangements for enrolling and enrolling pupils of foreign nationality in the first and second grades [French]

¹⁴¹⁷ Ministère de l'Éducation Nationale, Ressources pour l'accueil et la scolarisation des élèves allophones nouvellement arrivés <<http://eduscol.education.fr/cid59114/ressources-pour-les-ana.html>>, accessed 4 September 2017 [French]

¹⁴¹⁸ LCI, Comment l'école française accueille les enfants migrants (Septembre 2015) <<http://www.lci.fr/societe/comment-lecole-francaise-accueille-les-enfants-migrants-1531960.html>> accessed 8 September 2017 [French]

¹⁴¹⁹ Service public, Fiche pratique Ecole primaire (maternelle ou élémentaire) pour un enfant venant de l'étranger (août 2017) <<https://www.service-public.fr/particuliers/vosdroits/F1866>> accessed 9 September 2017 [French]

organized as a class and the pupils only take part in a few subjects in the classroom before being able to join them in full and on a permanent basis¹⁴²⁰.

8.2.2. Socio-economic Status

According to the National Institute of Demographic Studies, the grades of pupils in college largely depend on their social class¹⁴²¹. Many French immigrants “come from countries with very low living standards”, and there is significant overlap between migrant educational attainment and low social status.¹⁴²² It seems to be this factor which strongly affects their children’s subsequent schooling rather than migrant status. Indeed, “when the impact of social background is kept constant...students’ immigrant origins are often associated with high aspirations”¹⁴²³. From this we can extrapolate that by redressing the wider socio-economic balance, access to education for migrant children would necessarily increase.

The French notion of equality means aid to schools cannot be allocated based on race or national origin¹⁴²⁴. Yet there exists the Priority Education Network which aims to allocate more resources for schooling in economically deprived areas, which count a disproportionate number of migrant children in their population. It remains unclear just how much of this aid goes to migrant children¹⁴²⁵.

8.2.3. Discrimination in Education and Avenues of Redress

French criminal law provides that discrimination according to (inter alia) ethnicity, nationality or race, such as a school’s refusal to register a migrant child, may be punished by up to five years of imprisonment and a fine of 75,000 Euros¹⁴²⁶. However, there persists a strong lack of confidence in judicial systems among young people¹⁴²⁷. The ‘Defender of Rights’ is an independent constitutional authority which may investigate a claim and fine the perpetrator. 5,206 (7.4%) of cases in 2016 concerned discrimination, a number which has risen by over 2000 since 2010, yet ‘indicators of tolerance’ have risen¹⁴²⁸. This suggests that greater visibility of this institution is leading to more referrals. However, research has criticised the low budget of the Defender of Rights which requires political and legislative action on the part of the State to remedy¹⁴²⁹.

A cause for concern is France’s law of 2004 which forbids “signs and dress that conspicuously show the religious affiliation of students”. This has been seen by many commentators to

¹⁴²⁰ Ibid,4

¹⁴²¹ Joanie Cayouette-Remblière, *L'école qui classe* (PUF, 2016) [French]

¹⁴²² An Edgy Inquiry, *The Economist* (London, 4 April 2015) <<https://www.economist.com/news/europe/21647638-taboo-studying-immigrant-families-performance-fraying-edgy-inquiry>> accessed 15 July 2017

¹⁴²³ Claire Schiff, ‘Experiencing Ethnicity in a Colour-Blind System: Minority Students in France’ in Julia Szalai and Claire Schiff (eds.) *Migrant, Roma and Post-Colonial Youth in Education across Europe* (Maximillian Palgrave 2014) 167

¹⁴²⁴ Leslie J. Limage ‘Children of Migrant Heritage and Equality of Opportunity in France’ in Marisa O. Ensor and Elzbieta M. Gozdziaik (eds.) *Children and Migration* (Maximillian Palgrave 2010) 254

¹⁴²⁵ Ministère de l’Education Nationale ‘Priorité, Égalité’ (June 2017) 10 [French]

¹⁴²⁶ Article 225-1, Code Pénal

¹⁴²⁷ Défenseur des Droits, Rapport annuel d’activité (2016) 24 [French]

¹⁴²⁸ Gérard Aschieri ‘Hausse confirmée de l’indice de tolérance’ [2017] *Hommes & Libertés* n.178, 21 [French]

¹⁴²⁹ L’institut Montaigne ‘Dix ans de politiques de diversité : quel bilan ?’ (September 2014) 45 [French]

discriminate unduly against Sikh, Muslim, and Jewish children, a sizable proportion of whom are migrants. It is recommended that France carry out an evaluation of the effects of this law, which it has previously refused to do¹⁴³⁰.

8.2.4. Roma Children

The Committee on the Rights of the Child has expressed concern over difficulties in registering for and attending school for Roma children, and indeed they are refused access on occasion by local government¹⁴³¹. The Collective for the Right of Roma Children to Education has collected data showing that 53 percent of children aged 12-18 were not attending school between November 2015 and July 2016¹⁴³². To combat this, France has adopted three ministerial circulars on the education of Roma and Travellers, and put in place a national working group on Roma and Travellers' education and network of CASNAV1 (Academic Centre for the Education of Newcomers and Traveller Children).

8.2.5. Child Asylum Seekers, Refugees and Unaccompanied Child Migrants

Some asylum seekers aged between 16 and 18 have difficulties accessing education because public schools do not have any obligation to accept them. For those who have never been to school before their entry in France, it is extremely difficult to integrate them into the education system¹⁴³³.

Insofar as concerns unaccompanied migrant children who are not EU citizens, Article 14(1) of the Reception Conditions Directive states that asylum seekers must be able to access education before an expulsion decision is made¹⁴³⁴. France has been found to broadly respect these requirements and migrant children can access France's school system even if they are irregularly residing in France¹⁴³⁵.

¹⁴³⁰ Concluding comments of the Committee on the Elimination of Discrimination against Women: France (Fortieth Session, Jan-Feb 2008) para. 20

¹⁴³¹ Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of France* (February 2016) para. 71

¹⁴³² US Department of State, Bureau of Democracy, Human Rights and Labor Country Reports on Human Rights Practices, France (2016) 26

¹⁴³³ Asylum Information Database, *2016 Country Report: France* (updated February 2017) 86

¹⁴³⁴ Directive 2008/115/EC of the European Parliament and of the Council, of 16 December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L 348

¹⁴³⁵ FRA *Current migration situation in the EU: Education* (May 2017) 13

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. The Framework of the Recognition Process in France

9.1.1. Qualification Frameworks

Recognition in France of foreign school and university diplomas is operated in accordance with the *Nomenclature des niveaux de formation* (National Qualification Framework - NQF), which evolves under the umbrella of the European Qualification Framework (EQF) levels¹⁴³⁶ promoting workers' and learners' mobility and enhancing free movement of people in Europe. Although the EQF refers to the 2011 International Standard Classification of Education (ISCED) set up by the UNESCO, French authorities rely solely on the French NQF to grant *attestations* (comparability certificates).

9.1.2. The Level Structure

The French NQF was referenced to the EQF in October 2010¹⁴³⁷ on the basis of the original five-level structure introduced in 1969. It has been fully operational ever since¹⁴³⁸. Under the French NQF, the higher the level, the less advanced the qualification¹⁴³⁹. Therefore, Level I corresponds to Doctorate and Master's degrees, while Level V corresponds to certificates of vocational studies or abilities. On the contrary, under the EQF, the higher the level, the more advanced the qualification. It is observed that the French NQF focuses solely on vocational and professional oriented qualifications. This means that it does not include general education qualifications such as primary, lower secondary, and general upper secondary education qualifications, under which notably falls the General *Baccalaureate*. Therefore, under the French five-level structure, EQF Levels 1 and 2 do not apply as the said five levels solely correspond to EQF Levels 3 to 8. The focus adopted by the French NQF thus stems from the fitting of qualifications within the European labour market. This five-level structure has been criticised on several occasions over the past decade. In 2012, a call was made for reform and hope was set that the change of Presidency from President Sarkozy to President Hollande would bring focus on the need for such a reform¹⁴⁴⁰. However, such a call has not been heard yet.

¹⁴³⁶ Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning [2008] OJ C 111/1

¹⁴³⁷ European Centre for the Development of Vocational Training (CEDEFOP), *Analysis and overview of NQF development in European countries* (Annual report, 2012), 'European Inventory on NQF 2012 FRANCE', 1 <<http://www.cedefop.europa.eu/node/11908>> accessed 15 August 2017

¹⁴³⁸ *ibid* 2

¹⁴³⁹ Level I – Doctorate (EQF 8) and/or Masters (EQF 7); Level II – Bachelor (EQF 6); Level III – Qualification delivered by an Institute of Technology (DUT) or Technology Certificate (BTS) (EQF 5); Level IV – Vocational (BP) and/or Technological (BT) Certificate and/or *Baccalaureate* (EQF 4); Level V – Vocational Studies (BEP) and/or Ability (CAP) Certificate (EQF 3)

¹⁴⁴⁰ *ibid* 2, 2

9.2. The Distinction Between Regulated and Non-regulated Professions

9.2.1. Drawing the Distinction

The recognition process of foreign school and university diplomas is carried out in the context of a job search in France. Two mechanisms are operated in parallel depending on the profession that one wishes to exercise: non-regulated professions and professions regulated by EU Directives as set in the Council of Europe's Directive of September 7, 2005¹⁴⁴¹. Establishing a list of regulated professions in France based on the definition provided in article (3)(1)(a) of the 2005 Directive has shown to be a rather prickly task. The *Centre international d'études pédagogiques (CIEP)* (International Centre for Educational Studies) has listed the "main" regulated professions in France¹⁴⁴², hence providing a non-exhaustive list of them. In the same vein, the European Commission has created an online regulated professions database¹⁴⁴³, evidencing the door that was left ajar to quite a few loopholes by the rather broad definition provided for in the 2005 Directive. Indeed, although the European Commission has provided a list of 258 professions that are to be considered regulated in France¹⁴⁴⁴, precision is made that the "Commission cannot be held responsible for the accuracy of the information" and that, in the case of France, the Centre ENIC-NARIC France and the *CIEP* are the only authorities able to determine whether a profession is regulated under article (3)(1)(a) of the 2005 Directive, the latter having only been able to provide for a non-exhaustive list of them so far. A fair amount of uncertainty, therefore, may affect the classification of some professions, depending on the interpretation given to the terms used in the Directive definition by the French national authorities.

9.2.2. The Recognition Procedure for Regulated Professions

Apart from those professions that are not or that are not yet or may be considered regulated, professions that are listed as regulated professions — such as nurses, dental surgeons, dieticians, bailiffs, legal experts, *Avocats à la Cour et Avocats aux Conseils* (barristers specialised in pleas made to the French Civil and Administrative Supreme Courts), etc. — require registration to be made within the appropriate State administrative authority, depending on the profession that is wished to be practised. To know what the appropriate authority is, the *CIEP* provides on its website for a directory listing of the main regulated professions and indicates for each of them the authority that is to be contacted and the administrative steps that are to be followed for registration¹⁴⁴⁵.

¹⁴⁴¹ Directive 2005/36/CE of European Parliament and of the Council on the recognition of professional qualifications [2005] OJ L255/22, para.14

¹⁴⁴² 'Directory of regulated professions' (*CIEP*) <<http://www.ciep.fr/en/directory-of-regulated-professions>> accessed 15 August 2017

¹⁴⁴³ 'Regulated professions database' (*European Commission*) <<http://ec.europa.eu/growth/tools-databases/regprof/>> accessed 15 August 2017

¹⁴⁴⁴ 'Regulated professions database – Regulated Professions by Country, with Competent Authorities' (*European Commission*) <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprofs&quid=2&mode=asc&maxRows=* - top> accessed 15 August 2017

¹⁴⁴⁵ *ibid* 7

9.2.3. The Recognition Procedure for Non-Regulated Professions

As to non-regulated professions, French authorities deliver *attestations de comparabilité* (comparability statements) and *attestations de reconnaissance de niveau d'études/ de formation* (recognition of academic level certificates) based on the French five-level NFQ. The *Centre ENIC-NARIC France* — which is part of the European Network of Information Centres (ENIC) on Academic Mobility and Recognition created under the UNESCO/Council of Europe Lisbon.

9.2.3.1. Bodies and Entities Involved

The Recognition Convention¹⁴⁴⁶, which expanded the National Academic Recognition Information Centre (NARIC) network established by the European Union in 1984¹⁴⁴⁷, is the only authority in the country able to deliver the said *attestations*. When equivalence can be established between the foreign diploma and a French diploma level, the ENIC-NARIC Centre will deliver an *attestation de comparabilité*. However, in the case the said equivalence cannot be established, the ENIC-NARIC Centre will deliver an *attestation de reconnaissance de niveau d'études/ de formation*. The work of the ENIC-NARIC Centre is overseen by the CIEP, which has been an antenna of the French Ministry of Education since 1945¹⁴⁴⁸.

9.2.3.2. The Assessment Criteria

According to the 1997 Lisbon Recognition Convention¹⁴⁴⁹, ENIC-NARIC experts conduct the assessment pertaining to the deliverance of either of the two *attestations* on the basis of 2 eligibility criteria and 8 appreciation criteria¹⁴⁵⁰. The 2 eligibility criteria provide for that (i) the qualification must be recognised by the competent authority of the country of origin where the diploma was issued, and that (ii.i) the diploma must not exclusively certify a linguistic proficiency and (ii.ii) it must have been delivered by an institution offering academic or professional training of not less than 6 months or of not less than one academic semester's training/study, i.e. 600 hours of training. The 8 appreciation criteria are as follows: (i) the existence of bilateral or multilateral agreements binding France and the country where the diploma was issued relating to the recognition of qualifications, (ii) the ranking of the course followed at the national and international law, (iii) the official duration of the studies, (iv) ECTS/credits collected, (v) prerequisites to being taken on the course, (vi) the learning outcomes of the formation, (vii) academic and professional outlets offered by the said formation, and (viii) the existence of an independent and external evaluation of the training and/or of the institution that delivered the diploma.

¹⁴⁴⁶ Convention on the Recognition of Qualifications concerning Higher Education in the European Region [1997] European Treaty Series – No. 165

¹⁴⁴⁷ OECD, *International Regulatory Co-operation : Adressing Global Challenges*, (OECD Publishing, 2013), 36

¹⁴⁴⁸ 'CIEP : rôle, statut, missions' <<http://www.ciep.fr/role-statut-missions>> accessed 15 August 2017 [French]

¹⁴⁴⁹ *ibid* 11

¹⁴⁵⁰ 'Centre ENIC-NARIC France – Reconnaissance diplôme étranger / documents délivrés' (CIEP) <<http://www.ciep.fr/enic-naric-page/reconnaissance-diplome-etranger-documents-delivres>> accessed 15 August 2017 [French]

9.2.3.3. *The Relevance and the Deliverance Process of Attestations*

These *attestations* are official documents; however, they are not legally binding, nor is working in France contingent on being granted such an *attestation*. Indeed, in the absence of a French legal principle of equivalence, employers are the sole ones in charge of determining whether the qualification(s) obtained by the job seeker is/are adequate to the position on offer. *Attestations* are, thus, mere skills indicators. Such a mechanism arguably fits within the very focus of the French NFQ on the labour market. Although not mandatory, employers will often seek to be provided with such an *attestation* in order to be able to assess the adequacy of qualifications for the job. In such a case, an application for recognition shall be made to the *CIEP* via post¹⁴⁵¹. It shall consist in the submission of several documents, as listed on the *CIEP* website¹⁴⁵². The recognition process generally takes three to four months to be completed, when the application has been successful, i.e. when the two eligibility criteria have been met. It should also be noted that *attestations* are only to be delivered upon the payment of a lump sum to be determined by the *CIEP*'s financial department once the application for the deliverance of an *attestation* has been said to be successful by the ENIC-NARIC Centre¹⁴⁵³.

9.2.3.4. *The Special Procedure for Refugees*

In accordance with article VII of the 1997 Lisbon Recognition Convention¹⁴⁵⁴, the ENIC-NARIC Centre has developed a specific procedure for the recognition of refugees' qualifications¹⁴⁵⁵. Applications made by refugees are dealt with in priority and free of charge; the procedure specific to 'refugees' is said to be "flexible and suitable", since solely a "minimum of documents" supporting the application is required and any other necessary information will directly be asked to the said refugee or relevant NGOs¹⁴⁵⁶. Although the introduction of this specific and somehow simplified procedure testifies of a first step taken by the French government, some doubt may be expressed as to the suitability of the said procedure with article VII of the Lisbon Convention. Although the Convention provides for recognition "even in cases in which the qualifications obtained [...] cannot be proven through documentary evidence", the ENIC-NARIC Centre requires a "minimum of documents" to be provided. It should also be noted that it has not been specified what this "minimum" is or may be. Finally, it is unclear whether this specific procedure is only open to refugees or also to "persons in a refugee-like position"¹⁴⁵⁷. The *CIEP* and the ENIC-NARIC France Centre indeed seem to restrict the procedure to refugees only when describing the specificities of the said procedure¹⁴⁵⁸. However, when detailing the steps to be followed for an application, the *CIEP* makes clear that if the

¹⁴⁵¹ *CIEP*, Département de reconnaissance des diplômes – Centre ENIC-NARIC France, 1 avenue Léon-Journault, 92318 Sèvres cedex, France

¹⁴⁵² 'Documents required for a certificate of recognition' (*CIEP*) <<http://www.ciep.fr/en/enic-naric-france/documents-required-for-a-certificate-of-recognition>> accessed 15 August 2017 [French]

¹⁴⁵³ *ibid* 17

¹⁴⁵⁴ *ibid* 11

¹⁴⁵⁵ *ibid* 15

¹⁴⁵⁶ 'Reconnaissance des diplômes des réfugiés' (*CIEP*) <<http://www.ciep.fr/actualites/2015/12/17/reconnaissance-diplomes-refugies>> accessed 15 August 2017 [French]

¹⁴⁵⁷ *ibid* 11, section VII, article VII

¹⁴⁵⁸ *ibid* 15, *ibid* 21

applicant is “a refugee, an asylum seeker, or has been granted subsidiary protection, she/he may “fill in the specific field in the application form and attach the documents confirming his/her status”¹⁴⁵⁹.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Thinking the participation of migrants in political decisions proceeds of an *a contrario* reasoning. Indeed, migrants are totally absent from this field of law as far as the right to participate in the political decision is reserved to French citizens. Two types of political participation shall be distinguished: elections and referendums.

10.1. The Elections

The article 3 of the Constitution of the fifth French Republic (hereafter “The Constitution”) states that “National sovereignty belongs to the people”. However, the same article also clarifies that “The right to vote, in conditions laid down by law, is enjoyed by all French nationals of either sex who are of age and in full possession of their civil and political rights.”¹⁴⁶⁰ There is an obvious distortion between the field recovering the term “people” and the permeability of the category “French nationals”.

The different types of elections taking place in France let no space for migrants to express their vote for the right to vote is conditioned either by the French citizenship or by the European citizenship.

The universal indirect suffrage is not interesting in that case as far as the universal direct suffrage is a premise for the universal indirect suffrage.

10.1.1. The Presidential and Legislative elections

The presidential election aims to elect the president of the Republic. The article 6 of the Constitution states that “The president of the Republic is elected for five years by direct universal suffrage”.

The legislative election aims to elect the deputies, representing the nation at the *Assemblée nationale* (Lower chamber of the Parliament). The article 24 of the Constitution states that “The deputies at the *Assemblée nationale*, which number cannot exceed five hundred seventy-seven, are elected by direct universal suffrage”. This provision is backed by the article 6 of the Declaration

¹⁴⁵⁹ ‘Mode d’emploi pour les demandes en ligne’ (CIEP) <<http://www.ciep.fr/sites/default/files/atoms/files/enic-naric-mode-emploi-demande-de-reconnaissance-en-ligne.pdf>> accessed 15 August 2017 [French]

¹⁴⁶⁰ « National sovereignty belongs to the people, who exercise it through their representatives and by way of referendum. No section of the people and no individual may claim to exercise it. The suffrage may be direct or indirect in conditions provided for by the Constitution. It is in all cases universal, equal and secret. The right to vote, in conditions laid down by law, is enjoyed by all French nationals of either sex who are of age and in full possession of their civil and political rights. » French Constitution of 4 October 1958, Article 3

of human and civil Rights of August 26th 1789 (which is a part of the *bloc de constitutionnalité*) explaining that “law is the expression of the general will” and that “all citizens have the right to take part personally or through their representatives, in its making”.

In both cases the right to vote is conditioned by the voting right entitled through the above-mentioned article 3 of the Constitution. Only French citizens with a full use their civil and political rights can legally vote. Thus, any other category of individual is excluded from this vote, including migrants, whatever their statutes might be.

10.1.2. The Municipal and the European Elections

The municipal election aims to elect the municipal counsellors, which will lead the policy of the city. The right to vote for the municipal elections is regulated as the above-mentioned cases for the presidential and legislative elections. However, a special provision of the electoral Code allows European citizens to vote for these elections. Indeed, article LO227-1 of the electoral Code states that “The citizens of the European Union having their residence in France, other than the French citizens, can participate to the election of the municipal counsellors” within the same conditions as French citizens and under special administrative provisions within that Code. These provisions are an application of the article 22 paragraph 1 of the Treaty on the Functioning of the European Union (TFEU)¹⁴⁶¹.

The European elections aims to elect the European parliament. As a nonexclusive French procedure ruled by the article 22 paragraph 2 of the TFEU, every citizen of the European Union having its residence in another country than the one of its origin is entitled to vote for the election of the European parliament in the same conditions as a national of that State¹⁴⁶².

Once again, migrants are totally absent of these processes. The right to vote for both these elections is conditioned by the European citizenship.

10.2. The Referendum

Under the authority of the Constitution, two types of referendum are possible. Are to be divided national and local referendums.

National referendums are constituted by article 11 and 89 of the Constitution. They both concern the approbation by the people of a *projet de loi* (draft bill) on some specific topics. The

¹⁴⁶¹ « Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State. » Treaty on the Functioning of the European Union, article 22, para. 1

¹⁴⁶² « Without prejudice to Article 223 paragraph 1 and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State. » Treaty on the Functioning of the European Union, Article 22, para. 2.

only voters allowed to participate are the French citizens, and any other category of individuals, including migrants are not entitled to vote.

Regarding local referendums, proceeding of article 72-1 of the Constitution, the *loi organique* (organic law) designated the voters as the corps *electoral* (electoral body). Neither there are legally allowed to vote any other category than French citizens.

The last possibility is the article 88-5 of the Constitution regarding a referendum for the adhesion of a new party to the European Union. Nevertheless, as in all the aforementioned hypotheses, the silent of positive provisions backs the electoral body as the French citizens only.

These observations lead to one simple conclusion. The French Law totally ignores that status of the migrant. A draft pyramidal hierarchy of the individuals able to take part into the political decision would be as such:

- French citizen
- European Union citizen
- Others

More than this is to be noticed that migrants are not only legally forbidden to take part in the political decisions in France: they are constitutionally moved aside from the political process.

Several attempts for draft bill according the right to vote to foreigners were aborted. On May 3rd 2000, a draft bill was positively accepted by the *Assemblée nationale* to grant foreigners a right to vote for municipal elections, but was not set to the agenda of the high chamber of the parliament, the Senate¹⁴⁶³. In any case, such right would concern owner of a *titre de séjour* (residence permit) and not illegal migrants who are not recognised any right to participate in the political decision in France so far.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

The acquisition of the French citizenship can be obtained through several procedures. Only a few of them directly concern migrants. But to fully understand those procedures, all of them are to be reviewed consecutively.

11.1. Acquisition of Citizenship

11.1.1. By Declaration

The acquisition of citizenship by declaration is the least concerning migrants as it logically supposes a long and stable establishment in the country. Indeed, marriage and a family link granting French citizenship are marginal cases when it comes to migrants.

¹⁴⁶³ “Small law” n. 505 (Proposition of constitutional reform) (3 May 2000) [Proposition de loi constitutionnelle, “petite loi”] [French]

11.1.1.1. Marriage

First is to be noticed that marriage produces no rightful effects¹⁴⁶⁴. However, a foreigner or a stateless person can, after four years of marriage with a French citizen acquire the French citizenship if the *communauté de toit* (community of roof i.e. home) and the *communauté de lit* (community of bed i.e. marital duties) did not cease during this period¹⁴⁶⁵. Moreover, the spouse or husband must justify a sufficient knowledge of the French language, relatively to its own conditions¹⁴⁶⁶.

This hypothesis might cover the case of migrants. Nevertheless, the reality and the sincerity of the marriage has to be; otherwise the nationality would be retroceded¹⁴⁶⁷.

11.1.1.2 For Cause of a French Sibling

Is also possible the acquisition of the French citizenship by transduction of the nationality of a member of the family. Here, one shall justify a residence in France since they are aged six, and whether they followed a full scholarship in the French territory, in case their sibling is a French citizen¹⁴⁶⁸.

Nonetheless, this case is purely marginal when it comes to migrants.

11.1.2. By Naturalisation

The acquisition of the French citizenship by naturalisation implies several criterions and is a slow system. The naturalisation is proceeded through a decree of naturalisation.

11.1.2.1. Conditions

The essential condition for the grant of the French citizenship is the residence in France. The enquirer must have his residence in France at the moment of the declaration¹⁴⁶⁹. Except the following exceptions, the enquirer must have without interruption resided in France for the past five years¹⁴⁷⁰.

This period might be reduced to two years of effective residence in case of two successful years of studies to obtain a college degree by a French university, or because of a special service provided to the country, or even because of a foreigner having an exceptional integration process by civic, scientific, economic, cultural or sportive activities¹⁴⁷¹.

The acquisition of the French citizenship does not need any justification of residence in case of a foreigner having accomplished military duty within the French army or one having executed exceptional services for the country¹⁴⁷².

¹⁴⁶⁴ Civil Code, article 21-1 [Code Civil]

¹⁴⁶⁵ Civil Code article 21-2 [Code Civil]

¹⁴⁶⁶ The modalities of the test are decided by the Conseil d'Etat through a decree. Cf Civil Code, article 21-2 para. 3.

¹⁴⁶⁷ Civil Code article 21-4 and 21-5 [Code Civil].

¹⁴⁶⁸ Civil Code article 21-13-2 [Code Civil].

¹⁴⁶⁹ Civil Code article 21-16 [Code Civil]

¹⁴⁷⁰ Civil Code article 21-17 [Code Civil]

¹⁴⁷¹ Civil Code article 21-18 [Code Civil]

¹⁴⁷² Civil Code article 21-19 [Code Civil].

The same article also excludes the condition of residence for a foreigner under the status of refugee and stateless person according to the law n.52-893 (Law creating a French office for the protection of refugees and stateless persons) of July 25 1952 [loi portant sur la création d'un Office français de protection des réfugiés et apatrides]. If such refugees are legally staying in France for more than fifteen years and aged more than seventy, no language level shall be required¹⁴⁷³.

That one last case is especially interesting relatively to the question of migrants. However, the status of refugee and stateless person is limited to legal migrants, i.e. persons who were recognised as such. Thus, this hypothesis is not fully satisfying.

Other major conditions are the age, which cannot be under eighteen (except cases of 1.3), a decent life and decent virtue¹⁴⁷⁴.

The French citizenship cannot be granted to anyone either convicted for crimes and offences constituting an attempt to the fundamental interests of the nation or for acts of terrorism, or sentenced to six years of jail with suspended sentence. The same regulation is applied to those subjects to an interdiction of territory or any expulsion decree, or even those staying irregularly in France regarding the conventions related to the stay of foreigners in France¹⁴⁷⁵.

To these conditions is added a special interview with an agent of the prefecture or an agent of the consulate¹⁴⁷⁶. This interview called *contrôle d'assimilation* (test of assimilation) aims to control the adhesion of the enquirer to the values of the Republic and to the French community. At the end of this test, the enquirer has to sign the *charte des droits et des devoirs du citoyen français* (chart of the rights and duties of the French citizen)¹⁴⁷⁷.

The French citizenship can also be acquired after a period of ten years of *possession d'état* (acquisition by the consenting behaviour) of the French citizenship for a period of ten years, according to article 21-13 of the Code civil, but this hypothesis is ontologically to exclude when it comes to migrants which are subjects to shortest deadlines.

11.1.2.2. Deadline for Response and Deadline for Appeal

The French administration must give an answer within eighteen months¹⁴⁷⁸. This deadline can be reduced to twelve months if the enquirer resides in France for at least ten years. This deadline can also be prorogued for three months when justified.

11.1.3. The Case of Children

The conditions of the acquisition of the French citizenship are almost the same for minors as for majors. According to rules of *jus soli*, a foreign minor born in France from non-French parents is a French citizen when he turns eighteen, i.e. when he becomes a major if he can justify a period

¹⁴⁷³ Civil Code article 21-23-1 [Code Civil]

¹⁴⁷⁴ Civil Code article 21-23 [Code Civil]

¹⁴⁷⁵ Civil Code article 21-27 [Code Civil]

¹⁴⁷⁶ Civil Code article 21-24 [Code Civil]

¹⁴⁷⁷ *ibid* 13

¹⁴⁷⁸ Civil Code article 21-25-1 [Code Civil]

of residence on the French territory of five years since the age of eleven¹⁴⁷⁹. The minor fulfilling these conditions can also claim a certificate of French citizenship when he is sixteen, or his parents when the minor is thirteen with his consent¹⁴⁸⁰.

For children adopted by a French citizen, they can claim a certificate of French citizenship until their majority, if they live in France at the moment of the declaration¹⁴⁸¹. More interesting is the absence of the obligation of residence for a child adopted by a French citizen having its residence somewhere else than in France. That case may be applied for migrant children adopted by French citizens outside of the French territory and is a real protection whether the criterion of the residence can be backed.

The same article applies to children protected by the social service for at least three years and consecutively to a judicial decision or to a child educated in such conditions he received a French formation in a public or private institution.

11.2. Double Nationality

There are no specific provisions in French law recognising the double nationality. However, this process is a result of a custom.

France has reneged on the first chapter of the Convention of the Council of Europe of May 6th 1963. Thus, there is no automatic loss of nationality when a foreigner acquires the French citizenship.

The only real legal provisions come from the article 21-27-1 of the Civil code¹⁴⁸². During the procedure for the acquisition of the French citizenship by decision of the public authority or by declaration, the enquirer indicates to the relevant authority the other nationalities he might already have¹⁴⁸³. In any case, French authorities make no difference between a citizen and a double national.

The double nationality can be acquired at any point of the life. Because of the articles 18 to 21-27-1 of the Civil code, a child can acquire the French citizenship because of the jus soli if he's born in France, but also having the nationality of his non-French parent. As soon as a foreigner acquires the French citizenship, he can have a double nationality. Such dispositions proceed of international law and principle of international legal sovereignty more than national law.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Migration, affecting most of the European countries, demands a financial assistance that should be granted to the countries that host many migrants and refugees. This is the reason why the

¹⁴⁷⁹ Civil Code article 21-7 [Code Civil]

¹⁴⁸⁰ Civil Code article 21-11 [Code Civil]

¹⁴⁸¹ Civil Code article 21-12 [Civil Code]

¹⁴⁸² Law No 21-27-1 of the 16 June 2011 relating to immigration, integration and nationality) [loi relative à l'immigration, à l'intégration et à la nationalité] [French]

¹⁴⁸³ Cf 1.1 et 1.2.

European Union has implemented several programmes adopted by Member States to encourage the integration of migrants in their societies as well as funding, to help the countries that do not have the financial means to support a great number of migrants¹⁴⁸⁴.

As a result, we will present, on one hand, the funding granted to France by the European Union and, on the other hand, the national programmes implemented by France, which are based on European funding.

12.1. The European Funding

There is a big number of EU programs that are financially assisting EU Member States and that are promoting the implementation of national programmes for the integration of migrants. More precisely, the EU assists financially many European countries that are supposed to use this financial support for the establishment of specific local programmes that have the same objective.

For example, the European Union will have allocated 3,1 billion euros by 2020 to the Asylum, Migration and Integration Fund (AMIF)¹⁴⁸⁵. The 88% of this Fund will be granted to Member States. The same approach is pursued for the Internal Security Fund (ISF). Furthermore, the European Union grants 86,4 billion euros to the European Social Fund from which at least the 20% will be allocated for the social integration of vulnerable groups and for the assistance of those who ask for asylum.

Moreover, the European programme “Horizon 2012”, the Fund for European Aid to the Most Deprived (FEAD), the European Regional Development Fund (ERDF) and the programme “Rights, Equality and Citizenship” play an important role to the integration of migrants and refugees by assisting the EU Member States¹⁴⁸⁶.

12.1.1. The European Integration Fund (2007-2013)

The countries mainly assisted from the European funding are those that receive the largest number of migrants. The European Union is trying to help the countries that are more in need, like it is the case for Greece and for Italy. However, that does not mean that the rest of the European countries do not receive a financial assistance.

First, the European Union created in 2007 the European Integration Fund¹⁴⁸⁷ to assist to the integration of the third world countries' citizens in the European Union. The Fund was composed of 825 million euros from which the 67 million belonged to France for the period of 2007 to 2013¹⁴⁸⁸. The European funding for France was used for the implementation of national

¹⁴⁸⁴ Corine Balleix, *La politique migratoire de l'Union européenne* (Documentation Française 2013, 31 [French]

¹⁴⁸⁵ “Asylum, Migration and Integration Fund – AMIF” (Toute l'Europe – 28 June 2016), <<http://www.touteleurope.eu/financez-votre-projet/les-instruments-financiers-au-sein-de-l-ue/synthese/fonds-asile-migrations-et-integration-fami.html>> accessed 23 July 2017 [French]

¹⁴⁸⁶ “The European financial assistance for migration” (European Association for the defence of Human Rights – 19 July 2017), <<http://www.aedh.eu/Le-financement-europeen-dans-le.html>> accessed 23 July 2017 [French]

¹⁴⁸⁷ Council Decision (EC) 2007/435 establishing the European Fund for the Integration third-country nationals for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows, [2007] OJ L168/18

¹⁴⁸⁸ Ministry of Interior, « Le fonds européen d'intégration (FEI) et le nouveau fonds asile, migration et intégration (FAMI) » (9 avril 2015), <<https://www.immigration.interieur.gouv.fr/fr/Archives/Les-archives-du-site/Archives->

programmes whose aim was to ameliorate the integration of third-world countries' citizens in the European Union, to evaluate the situation regarding to integration and, to enhance the exchange of the “good practises” between the EU Member States.

12.1.2. The Asylum, Migration and Integration Fund (2014-2020)

Secondly, the European Union decided to provide a financial assistance to all European countries and to France as well for a long duration, from 2014 to 2020¹⁴⁸⁹. During these six years, France will acquire 265.565.577 euros that will be allocated from the Asylum, Migration and Integration Fund (AMIF allocation) in order to implement a number of local programmes for the integration of migrants. Furthermore, 84.999.342 euros will be granted by the Internal Security Fund related to the Borders' sector (ISF-Borders allocation) and 70.114.640 euros from the Internal Security Fund of the Police sector (IFS-Police allocation)¹⁴⁹⁰.

Consequently, the total amount of the allocations that will be granted to France by the end of 2020 will reach 420.679.559 euros.

12.1.3. The European Social Fund (2014-2020)

Thirdly, the European Social Fund (ESF) has allocated to France 6,027 billion euros for the period 2014-2020 aiming to the promotion of employment and job quality as well as to the improvement of the access to labour market and to social inclusion¹⁴⁹¹.

12.1.4. The European Regional Development Fund

Furthermore, the European Regional Development Fund (ERDF) has also helped France by allocating 8,4 billion to the country to support the reduction of economic, social and territorial disparities¹⁴⁹².

12.1.5. Fund for European Aid to the Most Deprived

France acquired 443 million euros from the Fund for European Aid to the Most Deprived (FEAD) to contribute to the provision of food aid and of material for the promotion of social inclusion¹⁴⁹³.

[Integration/Le-fonds-europeen-d-integration-FEI-et-le-nouveau-fonds-asile-migration-et-integration-FAMI](#)> accessed 10 september 2017 [French].

¹⁴⁸⁹ European Commission “*Managing the refugee crisis : Immediate operational, budgetary and legal measures under the European Agenda on Migration*” (Press release – 23 September 2015), <http://europa.eu/rapid/press-release_IP-15-5700_en.htm> accessed 23 July 2017

¹⁴⁹⁰ *ibid*

¹⁴⁹¹ Centre for the Strategy and Evaluation Services LLP, “*Regulatory Framework on Employment and Funding for Migration and Integration Policies in the EU*” (Committee of the Regions – 2016), 201

¹⁴⁹² *ibid*, 208

¹⁴⁹³ *ibid*, 191

12.1.6. Allocations in 2015

In addition, we could take into consideration the amount of allocations given to France in 2015 to have an idea of the way and from which Fund the amounts of the European financial assistance are granted.

For example, the European Union allocated to France 20.061.340,39 euros from the AMIF and 12.401.478,74 euros from the FSI in 2015. Furthermore, an emergency aid was granted to the country from the AMIF for a total of 8.980.000 euros¹⁴⁹⁴.

12.2. The National Programmes

Every Member State should use the financial assistance allocated from the European Union to implement many national programmes for the integration of migrants. France is one of the countries that take many measures for their better integration¹⁴⁹⁵.

12.2.1. Examples of National Programmes Based on European Funding

For example, the Asylum, Migration and Integration Fund supports financially *Terre d'asile* which objective is the integration of migrants. As a result, *Terre d'asile* carries on two European projects for the professional integration of refugees in France in many different sectors. *Terre d'asile* also carries on programmes for their social integration as well as for the assistance of migrants and refugees looking for accommodation. Furthermore, it contributes to the geographical division of migrants and refugees in the whole country and it plays an important role to their jurisdictional assistance concerning the documents they need to stay in France¹⁴⁹⁶.

In addition, *La Vie Active*, another French organisation, received 5.100.000 euros as an emergency aid for the provision of essential sanitary and humanitarian material and the amelioration of the reception conditions of irregular immigrants in Calais.

To conclude, the OFII, the French office for Immigration and Integration, which constitutes the French authority in charge of legal immigration, uses the European funding for the implementation of a great number of national programmes.

12.2.2. The national Programmes Implemented Thanks to the European Integration Fund's Financial Assistance

To be more precise, we could take into consideration the funding of the European Integration Fund, which granted to France 67 million euros, and the programmes that took place for the integration of migrants from that time on and thanks to the EIF assistance.

Firstly, there were many actions for the access of migrants to work. The actions were implemented from the Agency for the development of the information and of the coordination

¹⁴⁹⁴ European Commission "Managing the refugee crisis : Immediate operational, budgetary and legal measures under the European Agenda on Migration" (Press release – 23 September 2015), <http://europa.eu/rapid/press-release_IP-15-5700_en.htm> accessed 23 July 2017

¹⁴⁹⁵ *ibid*

¹⁴⁹⁶ France Terre d'Asile "Refuges – Integration" <<http://www.france-terre-asile.org/dispositifs-integration/nos-actions/refugies/dispositifs-integration>> accessed 23 July 2017 [French]

to which 100.000 euros were given for the project and from the Association to facilitate the professional integration of migrants to which 102.000 euros were granted.

Many more projects were released for the promotion of the values of the French society. The Emmaus Solidarity, the ALIE, the Association to react against exclusion and many others contributed to the promotion of French customs by taking 100.000 euros each.

In addition, many projects were also implemented to achieve the cultural, social and professional integration of young immigrants. The National Library of France, AURORE, the solidarity productions, the association "Second chance" were some of the actors that played a very important role to the integration of young immigrants by using the European funding for the best reason.

However, these were some examples only from the 2007-2013 funding. The examples do not stop here as there are numerous projects that are in action aiming to the professional, cultural and social integration of immigrants.

To conclude, all these elements prove that the European Union helps France to ameliorate the function of its borders, to enhance their security and to contribute to the integration of immigrants by financing its proper national programmes.

Conclusions

Based on the answers provided herein above it clearly appears that the existence of migrants in French law is inherently ambivalent. The most evident trace of it is proved by the right to asylum constitutionally guaranteed, and at the same time the absolute absence of any related status at the same level of the hierarchy of norms.

Regarding the right to asylum, resulting simultaneously from constitutional, international and legal sources, the first sight seems relatively satisfying. However, the different bodies entitled to grant the asylum as well as the several administrative layers seriously balance the effectiveness of such a protection. The complexity of the procedure is, in fact, the main obstacle for the asylum seeker. Indeed, the number of successful applications for asylum represents less than five percent. But paradoxically, at the same time, the rights protecting refugees once they are under the French protection system is particularly wide.

In any case, the main distinction that must be made to understand the immigration procedure is between EU citizens and non-EU citizens. The French legal provisions are substantially more favourable regarding migrants who are EU citizens, as well as other European agreement zones (EFTA, Switzerland). The EU citizens benefits from the general European framework like the freedom of movement and the freedom of establishment. The case of non-EU citizens consists in an *a contrario* definition, although its regime is extensive in order to cover most of the possible occurrences. The normal procedure to enter the territory is similar for both EU citizens and non-EU citizens; the entire legal regime for the asylum seeker is derogatory to the usual procedures.

In addition, all the questions regarding migrants are under the authority of the Ministry of Internal Affairs. Within this ministry, two administrative bodies are in charged of completely different missions. While the OFPRA investigates and rules when it comes to asylum and statelessness as well as advising asylum seekers, the OFII rather takes care of the integration of migrants (during the first five years of their stay on the French territory).

In terms of figures, around a quarter of a million migrants entered the French territory in 2016. The trend tends to increase significantly and constantly through the years. Mostly coming from Europe (39,5%), yet a large part of migrants is coming from Northern Africa. This number counts both asylum seekers and economic migrants; however, the real figure is difficult to estimate due to the important mass of irregular transit migrants.

As of present, the influence of the ECHR is relatively uneven. First, French authorities are more likely to base their decisions on constitutional provisions rather than on the ECHR case law. Second, a change within the national regulation seems easier for some obligations than intangible rights. As an example, the ECHR case law relating to the right to family life was enshrined by both judicial and administrative bodies, whilst the latest conviction of France by the ECHR for a violation of the article 3 of the ECtHR remains without practical consequences. The only changes of the regulation proceed of a constitutional basis rather than an explicit resort to the ECHR case law, especially regarding the extraterritorial consequences of the prohibition of the death penalty.

The role of the ECRI created by the Council of Europe is also to be put into perspective. The actions taken after the recommendations of the Commission to the French authorities were followed by administrative measures such as circulars and administrative recommendations. Nonetheless, some criminal legal provisions incriminating racism and discrimination were set up, but rarely applied before 2010. The creation of the position of Defender of Rights in 2008 is yet the most important institution to investigate for all kinds of discrimination.

Furthermore, the content itself of the protection allowed to migrants is composed of different fields.

The access to healthcare is governed by the tenet of non-discrimination through constitutional provisions. Thus, a health professional cannot refuse to treat a patient based on the cover or not by the state health system. This notion is also completed by international agreements such as the ECtHR. The reimbursement of medical costs proceeds of a complex system which concerns the poorest, but only in a regular situation. For irregular migrants, another purse is possible under three conditions, but also possible on a humanitarian ground.

The access to education for migrant children is guaranteed by the constitution which prohibits discrimination regarding nationality. Furthermore, as the education is compulsory from 6 to 16 years, the French authorities also provide with information system and integration systems aiming to permit most migrants children to have an effective access to school.

Nonetheless, the recognition of foreign education is a real issue. Despite the European nomenclature, the French system of recognition of diplomas has its own architecture. Whereas the recognition of non-regulated professions is easily acquired by the comparability statement, the recognition of diplomas for regulated professions is at the charge of the administrative body

in charge of that special profession. Most of the legal system is, however, under the umbrella of the Lisbon Recognition Convention.

It is also worth mentioning that migrants do not exist when it comes to political participation. The constitution reserves the right to participate politically to French citizens, and for EU citizens to European elections. Thus, all non-citizens are totally absent from such legal fields.

Under the French law, the acquisition of the citizenship can result of several procedures. It can be a long and continuous residence in the country, as well as marriage after four years. The most credible hypothesis for migrants is naturalisation, granting citizenship after five years of continuous residence in France. Children may acquire the French nationality easier, whether they were born on the French territory. The possibility of double nationality also exists, and implies no difference of treatment for the authorities between a French citizen and a French citizen having the double nationality with another State.

France also benefits from the help of the European Union when it comes to the integration of migrants. The *European Integration Fund*, the *Asylum, Migration and Integration Fund*, the *European Social Fund*, the *European Regional Development Fund* and the *Fund for European Aid to the Most Deprived* are all granted to France. This aid is consequent and is often added an extraordinary amount in case of emergency like in 2015, when almost 9 million euros were given to address the preoccupying situation of migration in the Mediterranean Sea.

These sums are displayed through national programmes both for legal procedures and integration of migrants.

Finally, we conclude that the French legal framework enables migrants to be recognised a special status, despite a complex system. However, once the protection is obtained, the extent of the rights granted to migrants is wide and extensive, in many ways similar as a French citizen, with the substantial aid of EU programmes and funding.

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Introduction

The Organisation for Economic Co-operation and Development (OECD) established that in 2014 **Germany was the world's second most popular country for immigration** after the USA. Around 11 million of the people currently living in Germany were actually born elsewhere. In other words, over one eighth of the German population is made up of immigrants. All in all, one in five people in Germany, 16.3 million, has a migrant background. Nearly half of those people do not have the German citizenship.

Europe accounts for the biggest proportion of Germany's immigrant population. More than two thirds of Germany's immigrant population are nationals of another European countries and 36.6 % of Germany's immigrant population are from within the EU. However, due to on-going conflicts in the Middle East, many people from Syria, Iraq, Afghanistan and Africa are fleeing war and poverty, hoping to seek asylum in the European Union, more particularly in Germany. In 2015 and 2016 alone, Germany took in more than a million migrants. Most of them filled applications for political asylum with the Federal Office for Migration and Refugees (BAMF).

This **massive and rapid influx of immigrants led to short-term problems** regarding the accommodation, placement and handling the applications for asylum. Additionally, regarding the political aspect, **Chancellor Merkel's decision to 'open the borders'** initially affected her popularity and boosted the anti-immigrant Alternative for Germany (AfD) party. During the last national parliamentary election in September 2017 the AfD managed to gain 11,5 % and is now represented with 94 seats in the German Bundestag. For the long term it is to be expected that Germany will face **many challenges**, especially **regarding the general integration of immigrants**, their right to remain in Germany, their integration into society and the job market. A further key task of future migration and integration policy will also be the protection of refugees.

Within this report we will primarily focus on the different aspects of German asylum and migration law, immigration from within Europe as well as from third countries. We will begin by explaining the German legal basis' for the right to asylum and the different possibilities for immigration to Germany. During our report, we will also discuss migrants' right to access healthcare, the participation of migrants in political decisions, e.g. protection of political participation and their right to vote, as well as citizenship in general and the possibility of dual nationality. We will also draw focus on the recognition of foreign professional qualifications as an important factor for integration. Additionally, we will take European Law and European jurisprudence into account and its significance for Germany. With regard to the German Federal Supreme Court, the jurisdiction of the ECtHR is taken into account as an aid for the definitions of content and scope of the fundamental rights and the rule-of-law principles of the German Basic Law. In accordance with the established jurisprudence of the ECtHR since the Soering Case, the German Federal Administrative Court treats equally a deportation to a non-member state as illegal, not only if there is a risk of torture or inhuman treatment, but also if a

fundamental human rights guarantee, as recognised by all member states of the ECHR, is endangered.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. German National Regulations Governing Asylum

Asylum is a right that is protected and thus granted by the German Constitution for politically persecuted persons, acc. to article 16a Grundgesetz (German Constitution, GG), hereafter referred to as political asylum seekers. Furthermore, people who are displaced from other parts of the world, fleeing from violence, war and terror, are to find protection in Germany, acc. to § 3 Asylgesetz (the law governing asylum, AsylG) which is based on the Geneva Convention on Refugees (GCR) from the 28th of July 1951 (hereafter referred to as refugees). One can find the definition of “refugees” in § 3 AsylG, which is worded identically to the EU Qualification Directive.¹⁴⁹⁷ In contrast, civil-war refugees, who are fleeing from fear of the death penalty, inhumane treatment, indiscriminate violence or threat of life, are not protected by the refugee protection system. They are only entitled to subsidiary protection, which can be granted under § 4 of the AsylG¹⁴⁹⁸. Furthermore, subsidiary protection is provided for by articles 15 et seq. of the Qualifikationsrichtlinie¹⁴⁹⁹ (EU Regulation for the qualification of third-country nationals, QualRL), which reflects Germany's obligation as a EU member state to help those in need of protection entrenched in the Treaty on the Functioning of the European Union (TFEU)¹⁵⁰⁰ in Article 4.4 in combination with Articles 77 to 80 TFEU. This means that political asylum seekers and refugees have an equivalent legal status¹⁵⁰¹, whereas the rights of civil-war refugees are secondary to those of political asylum seekers and refugees.¹⁵⁰² The biggest difference is that political asylum seekers and refugees can apply for a permanent residence after three years,

¹⁴⁹⁷ 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, dated April 29 2005, Abl. 2004 L 304, 12, which was superseded by the Directive 2011/95/EU of the European Parliament and the Council on standards for the qualification and status 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, dated December 13 2011, Abl. 2011 L 337, 9.

¹⁴⁹⁸ This subsidiary protection was also introduced by the Council Directive 2004/83/EC of April 29 2004, which was later superseded by the Directive 2011/95/EU.

¹⁴⁹⁹ Directive 2011/95/EU of the European Parliament and of the Council 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.

¹⁵⁰⁰ Consolidated Version of the Treaty on the Functioning of the European Union (2012/C, 326/01), Official Journal of the European Communities, October 26 2012, C 326/47.

¹⁵⁰¹ German Federal Administrative Court [September 16 2015] 1 B 36/15 para 5.

¹⁵⁰² The biggest difference is that political asylum seekers and refugees can apply for a permanent residence after three years, whereas the civil-war refugee can only apply after five years, § 26 IV AufenthG (new version).

whereas the civil-war refugee can only apply after five years, § 26 IV *Aufenthaltsgesetz*, new version (the law on residence, *AufenthG*).

Additionally, any foreigner has the right to remain in Germany acc. to § 60 IV, VII *AufenthG* in case of a non-refoulement. The general principle of non-refoulement based on human rights is enshrined in **Article 33 GCR** and prohibits the expulsion or return of a refugee “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. The **European Convention of Human Rights** (ECHR) on the other hand, does not explicitly provide for the principle of non-refoulement. But as an EU member state, Germany’s obligation to help those in need of protection is entrenched in the **Charter of Fundamental Rights of the European Union**¹⁵⁰³. In addition, the **European Court of Human Rights** (ECtHR) has recognised the principle through its jurisprudence, by deriving from Article 1 ECHR an implicit obligation of states parties to protect migrants against refoulement. This obligation is to “secure to everyone within their jurisdiction the rights and freedoms”.¹⁵⁰⁴ Thus, § 60 IV, VII *AufenthG* is a legal prohibition for deportation. The specific reasons for non-refoulement regarding refugees are listed in § 60 VII *AufenthG*. According to § 60 VII *AufenthG* „a foreigner should not be deported to another state in which this foreigner faces a substantial concrete **danger to his or her life and limb or liberty**. A substantial concrete danger on **health reasons** shall only exist **in the case of life-threatening or serious illness** which would significantly worsen upon the deportation being carried out. It is not necessary for medical care in the destination state to be comparable to medical care in the Federal Republic of Germany. Sufficient medical care shall generally also exist where this is guaranteed only in parts of the state of destination.“

1.2. The Stages of the German Asylum Procedure

In Germany, the **Federal Office for Migration and Refugees** (BAMF) is responsible for the whole asylum procedure. As the authority responsible for implementing the law on asylum, the Federal Office distinguishes between the following groups of individuals: (1) **Asylum-seekers**: individuals who intend to file an asylum application but have not yet been registered by the Federal Office as asylum applicants. (2) **Asylum applicants**: individuals whose asylum proceedings are pending and whose case has not yet been decided upon and (3) **Persons entitled to protection and persons entitled to remain**: individuals who receive an entitlement to asylum, refugee protection or subsidiary protection, or who may remain in Germany on the basis of a ban on deportation.¹⁵⁰⁵

1.2.1. From Arrival to the Asylum Procedure

People entering Germany should contact the Federal Office as soon as possible after their arrival in Germany for their **registration**. As soon as they have registered at the primary registration

¹⁵⁰³ Charter of Fundamental Rights of the European Union (2000/C 364/01), Official Journal of the European Communities, 18.12.2000, C 364/1.

¹⁵⁰⁴ *Saadi v Italy* [2008] ECtHR 37201/06 para 127; *Chahal v the United Kingdom* [1996] ECtHR 22414/93 para 79.

¹⁵⁰⁵ Federal Office for Migration and Refugees (BAMF), *The Stages of the German Asylum Procedure*, 4.

office they will receive a notice providing them with asylum seeker status (*Bescheinigung über die Meldung als Asylsuchender*, BÜMA).¹⁵⁰⁶ They will then go on to file their **application for asylum** and become an asylum applicant. According to § 55 AsylG they will then be given a temporary residence permit (*Aufenthaltsgestattung*). According to Art. 47 I AsylG the maximum residence time for applicants in an initial reception centre ought to be six months.¹⁵⁰⁷

1.2.2. Processing of the Application by the Federal Office

The most important part of the asylum application is the **hearing of the application**, § 25 AsylG. Asylum applicants will be asked roughly 24 questions regarding themselves, their family, their travel route and their country of origin. Afterwards the applicant will be asked to recall their individual reasons for fleeing their country, and explain the dangers of returning to their home country. With regard to this interview the BAMF will as a general rule consider whether the applicant was able to give a chronological, coherent and complete presentation of the events of his flight and does not contradict himself in order to determine the credibility of the presented submissions. The Federal Office will then reach a **decision**, § 31 AsylG, whether the applicant will receive **recognition** for their application or whether it will be **rejected**.

1.2.2.1. Recognition of Application for Asylum

If the asylum seeker is successful in their application of asylum they will be granted a residence permit. However, the „refugee status” is at all times dependent on the situation in their country of origin and thus the potential persecution of them as an individual. While the Geneva Convention on Refugees stipulates that the „refugee status” automatically expires, acc. to Art. 1 C 5 GFC, the Union law in Art. 14 QualRL and Art. 45 *Asylverfahrensrichtlinie*¹⁵⁰⁸ (regulation regarding international protection, AsylVerfRL) and as well as the German law acc. to § 73 AsylG require an official and formal withdrawal decision in order to change the “refugee status”. However, three years after been granted the first residence permit, a settlement permit can be requested, i.e. a permanent residence permit.¹⁵⁰⁹ If this is approved, they are not dependent on their individual possibility of persecution in their country of origin anymore, acc. to § 26 III AufenthG.

1.2.2.2. Rejection of Application for Asylum

The application for asylum will be rejected if it is **unfounded** or if it is **inadmissible** for one of the following reasons: (1) The Dublin procedure, acc. to § 29 I no. 1 AsylG;¹⁵¹⁰ (2) Safe country

¹⁵⁰⁶ Kathleen Neundorff, *Neuerungen im Aufenthalts- und Asylrecht durch das Asylverfahrensbeschleunigungsgesetz*, 8.

¹⁵⁰⁷ However, the six months time restriction has only programmatic character. Therefore, in practice this time limit is not always respected. Jan Bergmann and Klaus Dienelt, *Ausländerrecht*, § 47 para 3.

¹⁵⁰⁸ Directive 2013/32/EU of the European Parliament and of the Council of June 26 2013 on common procedures for granting and withdrawing international protection, Official Journal of the European Union, L180/60.

¹⁵⁰⁹ Harald Dörig and Christine Langenfeld: *Vollharmonisierung des Flüchtlingsrechts in Europa*, 2.

¹⁵¹⁰ The Dublin procedure is based on the so called “Dublin Regulation” (hereafter referred to as Dublin III-Reg): Regulation (EU) No 604/2013 of the European Parliament and of the Council 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 stateless person, dated June 26 2013, Abl. 2013, L 180, 31.

of origin, acc. to § 29 I no. 3 and § 26a AsylG; (3) Another EU member state has granted the foreigner international protection, acc. to § 29 I no. 2 AsylG and (4) Follow-up or confirmatory application, acc. to § 29 I no. 5 AsylG.¹⁵¹¹

The Dublin procedure, namely the first above mentioned reason for rejection due to inadmissibility, is based on the so-called “Dublin III Regulation” (hereafter referred to as Dublin III-Reg),¹⁵¹² which establishes 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 stateless person. This is the so-called principle of “the Member State responsible” acc. to Articles 1 and 3 of the Dublin III-Reg. Thus, it is supposed to be ensured that each application is only examined once throughout all of the countries participating in the Dublin procedure.¹⁵¹³

The criteria for determining the Member State responsible for an application are laid out in Art. 7 et seq. Dublin III-Reg. In Art. 7 no. 1 of the Dublin III-Reg. itself only the hierarchy of the criteria is stipulated. Special regulations, such as those for unaccompanied minors in Art. 8 Dublin III-Reg., must be given priority. In practice, however, the criteria acc. to Art. 13 Dublin III-Reg. are mostly used to determine the Member State responsible for the application. Art. 13 Dublin III-Reg. stipulates that if it is established that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the entered Member State shall be responsible for examining the application for international protection. Taking this into account, Germany would not be responsible for the majority of the individuals originating from Syria, Iraq or the African region given that they have entered Europe via Greece or Italy. Therefore, Germany could have rejected most applications based on the Dublin procedure. However, this system collapsed in the Summer 2015, because the Mediterranean countries were overburdened so they could not and/or did not register the refugees who then made their way to northern Europe. As a result, in August 2015 Germany “opened its borders”. This meant that there were no border controls and Germany decided to not send asylum seekers back to the Member State that would have been responsible acc. to Art. 13 Dublin III-Reg. It is heavily disputed whether this was a „suspension” of the Dublin Procedure until November 2015 or whether Germany took charge of the applications in accordance with Art. 17(2) Dublin III-Reg and allow refugees to register in Germany.¹⁵¹⁴ Thus, the application of individuals registered during the time that Germany had “suspended” the Dublin Regulation cannot be rejected on the basis of Art. 13 Dublin III-Reg.

¹⁵¹¹ The first two reasons for the rejection of an application for asylum due to inadmissibility are currently the most relevant ones in practice. Thus, in the following only for those two reasons more detailed information will be given.

¹⁵¹² Regulation (EU) No 604/2013 of the European Parliament and of the Council 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 stateless person, dated June 26 2013, Abl. 2013, L 180, 31.

¹⁵¹³ The participating countries are: all EU-members, Norway, Switzerland, Iceland and Lichtenstein.

¹⁵¹⁴ Dörig and Langenfeld, Vollharmonisierung des Flüchtlingsrechts in Europa, 3. The first view is advocated by Alexander Peukert et al, *Nochmals: Die Politik offener Grenzen ist nicht rechtskonform*. The last view is favoured by Constantin Hruschka, *Klarheit im Gemischtwarenladen “Flüchtlingskrise”*.

The second reason for a rejection of an application of asylum is if the country of origin of the applicant is considered to be a “safe country of origin” acc. to Art. 16a III GG. Whether a country is to be considered a “safe country of origin” can be determined by law and should be determined on the basis of the current legal situation and application of law as well as the general political situation, also acc. to Art. 16a III 1 GG.¹⁵¹⁵ The countries selected will be placed on a list as addendum No. II to § 29a AsylG.¹⁵¹⁶

1.2.3. Regulations of Removal and Re-entry in Germany

If an asylum seeker is rejected, he or she will be requested to leave Germany voluntarily and will be told about the possibility of compulsory repatriation. However, there is the possibility for an appeal, by means of filing a suit in combination with a motion for interim measures to gain a suspensory effect regarding the rejection notice. The suit must be filed within two weeks after receipt of the rejection notice, acc. to Art. 74 I AsylG.¹⁵¹⁷ In the case that all available legal remedies are exhausted, rejected asylum seekers will be deported. In general, there is the possibility of a re-entry, which is normally after five years and under special circumstances, e.g. rejection due to criminal charges, after ten years.¹⁵¹⁸

1.3. Special Programmes that Grant Asylum or Humanitarian Protection to Vulnerable Persons

Under EU law there are special programmes for vulnerable persons regarding the asylum procedure. Vulnerable persons are listed in Art. 21 of the Reception Conditions Directive¹⁵¹⁹ and Art. 3 IX of the Return Directive¹⁵²⁰. Both provisions include “minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”, but the list in the Reception Conditions Directive is longer and non-exhaustive.

The term ‘unaccompanied minors’ is used to describe individuals under the age of 18 who enter European territory without an adult responsible for them in the receiving state, acc. to Art. 2 I QualRL. Specific provisions for unaccompanied minors are contained in the EU asylum instruments as well as in the Return Directive. Before considering the treatment of unaccompanied minors during the application process, the state responsible for processing their asylum application must be determined: According to the Art. 8 Dublin III-Reg. applications by

¹⁵¹⁵ This procedure has been criticized for a long time, see Karlheinz Schenk, *Zum Asylrecht unter Listenvorbehalt*, 102.

¹⁵¹⁶ E.g. the following countries are on the list: Bosnia and Herzegovina, Ghana, Kosovo, Senegal, Macedonia, Serbia and Montenegro as well as Albania.

¹⁵¹⁷ Only under special circumstances acc. to Art. 74 I HS 2 in combination with § 34a II 1, 3 and § 36 III 1, 10 AsylG suit and motion for interim measures have to be filed within one week.

¹⁵¹⁸ BAMF, *Einreise- und Aufenthaltsverbote*.

¹⁵¹⁹ Directive 2013/33/EU of the European Parliament and of the Council of June 26 2013 laying down standards for the reception of applicants for international protection (recast), Official Journal of the EU, L 180/96 from June 29 2013.

¹⁵²⁰ Directive 2008/115/EC of the European Parliament and of the Council of December 16 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal of the EU, L 348/98 from December 24 2008.

unaccompanied minors are to be examined by the Member State in which family members, siblings or relatives are legally present. In the absence of a family member, a sibling or a relative, the Member State responsible is the state where the child has lodged his or her application for asylum provided that it is in the best interests of the child. Unaccompanied minors seeking asylum have to be provided with a representative as soon as they have applied for asylum, acc. to Art. 6 Dublin III-Reg., Art. 24 of the Reception Conditions Directive and Art. 25 AsylVerfRL. Additionally, unaccompanied minors must be accommodated with either adult relatives, a foster family, in reception centres with special provisions for minors or in other suitable accommodation, acc. to Art. 24 of the Reception Conditions Directive and Art. 31 QualRL and. Article 24 of the Reception Conditions Directive further specifies that as far as possible, siblings must be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Residence changes of unaccompanied minors must be kept to a minimum. Furthermore, the directive stipulates that Member States must try to trace the family members of unaccompanied minors as soon as possible with due regard for their safety. Finally, it ensures that individuals working with unaccompanied minors must receive appropriate training.

2. How does your national law regulate immigration from EU member states and non-EU states?

Germany has 81.4 Million inhabitants, from which 17 Million have a migratory background, meaning either they themselves or one of their parents have an immigration history. In Germany, as well as in the whole of Europe, immigrants are split into two main categories: EU-nationals and foreigners from all other countries in the world, i.e. third-country nationals.

2.1. Immigration from EU Member States

It is very easy for EU-nationals to travel to or to emigrate to Germany, given the free movement and freedom of residence of persons within the European Union. It is considered to be the cornerstone of the Union citizenship, established by the Treaty of Maastricht in 1992. The legal basis for this right is now Art. 3 II of the Treaty on European Union, Article 21 as well as Titles IV and V TFEU and Art. 45 of the Charter of Fundamental Rights of the European Union.

However, the key milestone in establishing an internal market with free movement of persons was the conclusion of the two Schengen agreements.¹⁵²¹ Initially, the Schengen implementing Convention, which was signed only by Belgium, France, Germany, Luxembourg and the Netherlands, was based on intergovernmental cooperation in the field of justice and home affairs. Later on, Schengen was integrated into the legal framework of the European Union by finding entry into force of the Treaty of Amsterdam on May 1 1999. There are currently 26 full

¹⁵²¹ The Schengen Agreement signed on June 14 1985 and the Convention implementing the Schengen Agreement, which was signed on June 19 1990 and entered into force on March 26 1995.

Schengen members: 22 EU Member States plus Norway, Iceland, Switzerland and Liechtenstein, which have associate status.¹⁵²² The scope of the Schengen Agreement includes: (1) the abolition of internal border controls for all persons; (2) measures to strengthen and harmonise external border controls: all EU citizens need only show an identity card or passport to enter the Schengen area; (3) a common visa policy for short stays: nationals of third countries included in the common list of non-member countries whose nationals need an entry visa (see Annex II to Council Regulation (EC) No 539/2001) may obtain a single visa, valid for the entire Schengen area; (4) police and judicial cooperation: police forces assist each other in detecting and preventing crime and have the right to pursue fugitive criminals into the territory of a neighbouring Schengen state; there is also a faster extradition system and mutual recognition of criminal judgments and (5) the establishment and development of the Schengen Information System.

The gradual phasing-out of internal border control under the Schengen agreement was followed by the adoption of the Directive on the right of EU citizens and their family members to move and reside freely within the territory of the Member States.¹⁵²³ Only if EU-nationals are planning to stay in Germany for more than three months they have to prove that they are either employed or are in the process of looking for an employment but have enough financial means for their own welfare, acc. to Art. 7(1) of the Directive on the right of EU citizens and their family members to move and reside freely within the territory of the Member States and § 2(2), (5) of the Act on the General Freedom of Movement for EU Citizens.

2.2. Immigration from Non-EU States

In general, third-country nationals will need a visa in order to enter Germany, except for nationals from the very few countries¹⁵²⁴ Germany has an agreement on visa-free travel, acc. to §§ 4 ff AufenthG and § 41 I *Aufenthaltsverordnung* (Ordinance on Residence, AufenthVO). If one wishes to **work** in Germany, it is mandatory to apply for a visa as a matter of principle, acc. to § 4 III AufenthG. Only citizens from Iceland, Liechtenstein, Norway and Switzerland are exempt.

¹⁵²² Ireland and the United Kingdom are not parties to the Convention but can 'opt in' to selected parts of the Schengen body of law. Denmark, while part of Schengen, enjoys an opt-out for any new justice and home affairs measures, including on Schengen, although it is bound by certain measures under the common visa policy. Bulgaria, Romania and Cyprus are due to join, though there are delays for differing reasons. Croatia began the application process to accede to the Schengen area on July 1 2015.

¹⁵²³ Directive 2004/38/EC of the European Parliament and on the Council of April 29 2004 on the right of EU citizens 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. This Directive was implemented into German national law by the Act on the General Freedom of Movement for EU Citizens (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern - Freizügigkeitsgesetz/EU*) from January 1 2005, the most recent changes were adopted on July 29 2017 and the law implementing the EU Directives on asylum (*Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union - AsylREURLUMsG*) from August 19 2007, which has changed the German law on residence (*Aufenthaltsgesetz*).

¹⁵²⁴ Australia, Israel, Japan, Canada, New Zealand, Republic of Korea and the USA.

2.2.1. Application Procedure

The visa has to be applied for at the respective German diplomatic mission abroad before entering Germany, and usually the reason for the stay in Germany has to be proven. The **fee** for a visa is usually 60 Euro per person. The representations abroad need an average of between two and ten working days to decide on a visa application for a **short stay** of up to three months. This may sometimes take longer during the holiday period. If one wants to apply for a visa for a **longer stay**, one should expect the processing to take several months.

2.2.2. Right to Leave

Immigrants can always choose to voluntarily leave Germany again. They will only need valid entry papers for the country they are returning to. If an asylum seeker is rejected, they can voluntarily leave for up to thirty days after the notice of rejection. Only voluntary departures to countries Germany has no visa-agreement with are supported. Two programmes provide the support: the Reintegration and Emigration Program for Asylum Seekers in Germany (REAG) and the Government Assisted Repatriation Program (GARP), which give financial support regarding the travel costs and a start-up support.¹⁵²⁵

2.2.3. Regulation Regarding Deportation and or Expulsion

Under EU law, the Return Directive¹⁵²⁶ regulates forced returns in general. Additionally, the revised Frontex Regulation¹⁵²⁷ regulates Frontex-coordinated joint return operations. In addition to these legislative provisions, there are also soft law instruments: The Council of Europe Twenty Guidelines on Forced Return¹⁵²⁸ and the CPT¹⁵²⁹ standards regarding returns by air. Returns are often regulated through readmission agreements concluded at the political level. Within the EU, readmission agreements can be concluded by individual Member States or by the Union.

Under the Return Directive forced returns must be carried out with due respect for the dignity and the physical integrity of the person concerned and an effective monitoring system of forced returns has to be established, acc. to Art. 8 IV, VI. Additionally, the individual's state of health must be taken into account in the removal process and thus a person's physical or mental health condition can be the reason for a possible postponement of the removal, acc. to Art. 5, 9.

¹⁵²⁵ BAMF, *FAQ: Freiwillige Rückkehr*.

¹⁵²⁶ Directive 2008/115/EC of the European Parliament and of the Council of December 16 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal of the EU, L 348/98 from December 24 2008.

¹⁵²⁷ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of October 25 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Official Journal of the EU, L 304/1, November 22 2011.

¹⁵²⁸ Council of Europe, Committee of Ministers (2005).

¹⁵²⁹ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2002-2011), Chapter IV, 69 ff.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

In Germany, there are two kinds of authorities dealing with migrants. On national level, there is a federal office, which specifically deals with migrants called *Bundesamt für Migration und Flüchtlinge* (Federal Office for Migration and Refugees, BAMF).¹⁵³⁰ At federal level, each of the 16 Federal States has *Ausländerbehörden*¹⁵³¹ (local legal authorities for foreign citizens, immigration offices) dealing with issues connected to the right of residence.

The two authorities were appointed different legal tasks related to migration and are therefore independent from each other.

3.1. BAMF

The BAMF is a federal authority of the Federal Ministry of the Interior and is located in Nuremberg.¹⁵³² The BAMF follows a decentralised structure.¹⁵³³ The following different branches were established as part of the institution BAMF: arrival centres, branch offices or regional offices and decision-making centres.¹⁵³⁴ Each of Germany's 16 States has an office representing the BAMF.¹⁵³⁵

A president, two vice-presidents and a Head of Operations, controlling and statistics, lead the federal office. The basic structure consists of directorates-general, directorates and divisions.¹⁵³⁶

3.1.1. Directorates-General

Each of the eight Directorate-Generals deals with a different topic such as international tasks (directorates-general 2) or integration and social cohesion (directorates-general 3). A Head of Directorate-General leads each one. Three Directorates-General are responsible for the different regions of Germany. The regions are divided into the Northern Region (Directorate-General 8, located in Berlin), the Central Region (5, located in Nuremberg) and the Southern Region (6, also located in Nuremberg). They have many divisions in their Region of Germany, which are appointed different tasks: arrival offices, branch offices and regional asylum units.¹⁵³⁷ There is one directorate responsible for the Dublin process. It consists of six divisions. Most importantly, there are three processing centres in Dortmund, Berlin and Bayreuth¹⁵³⁸ in which decisions on Dublin cases are taken. The Federal Office had to establish this directorate following the Dublin

¹⁵³⁰ § 5 AsylG.

¹⁵³¹ § 71 AufenthG.

¹⁵³² Bergmann and Dienelt, *Ausländerrecht*, § 5 AsylG para 3.

¹⁵³³ see § 5 AsylG; Reinhard Marx, *Asylgesetz*, § 5 AsylG para 13.

¹⁵³⁴ BAMF, *The Federal Office and its Tasks*.

¹⁵³⁵ BAMF, *Branch Offices / Regional Offices*.

¹⁵³⁶ BAMF, *Structure*.

¹⁵³⁷ BAMF, *Organisational Chart of the Federal Office for Migration and Refugees*, 2.

¹⁵³⁸ *ibid*, 2.

III-Reg.¹⁵³⁹ Each Directorates-General is again divided into directorates, which are separated into divisions.¹⁵⁴⁰

3.1.2. Arrival Centres and Branch Offices

The entire asylum process takes place in the arrival centres. At these arrival centres, asylum-seekers receive their proof of arrival as a first official document.¹⁵⁴¹ All data is forwarded to the *Ausländerzentralregister* (Central Register of Foreigners, AZR), a database by the Federal Office of Administration, which can be accessed by the immigration authorities throughout Germany.¹⁵⁴² There are branch offices or regional offices in all Federal States marking the decentralised structure. Their task is to process the asylum procedure meaning that there the application is filed and decided on.¹⁵⁴³ The BAMF employs decision makers as well as 'specially-commissioned case-officers'¹⁵⁴⁴ for special cases for the asylum procedure.¹⁵⁴⁵ The BAMF works under functional supervision of the Federal Ministry of the Interior.¹⁵⁴⁶ To issue a lawful decision, the decision makers apply the procedure as described in the AsylG.¹⁵⁴⁷

3.1.3. Others

Moreover, the BAMF has established a Qualification Centre, which is an internal office where they regularly train decision-makers.¹⁵⁴⁸ There is also an information centre called IZAM, which, supported by a group of experts, analyses the situation in countries of origin, documents information regarding the asylum procedure and serves as an agency for internal and external inquiries.¹⁵⁴⁹

3.2. Tasks

As time has progressed, the BAMF has been appointed more and more tasks. First, it was only responsible for the asylum procedure. Today, it has to deal with a variety of tasks related to migration and has competencies in the fields of immigration, integration and return.¹⁵⁵⁰ However, its main task remains the asylum procedure with its monopoly to decide on asylum applications according to § 5 (I) 1 AsylG and the granting of refugee status.¹⁵⁵¹ The BAMF reviews every asylum application based on the AsylG.¹⁵⁵² It checks on four forms of protection.¹⁵⁵³ It is

¹⁵³⁹ see chapter 1.2.2.2.

¹⁵⁴⁰ BAMF, *Organisational Chart of the Federal Office for Migration and Refugees*, 2.

¹⁵⁴¹ BAMF, *The Stages of the German Asylum Procedure*, 9.

¹⁵⁴² Federal Office of Administration (FDA), *Ausländerzentralregister*.

¹⁵⁴³ BAMF, *Branch Offices / Regional Offices*.

¹⁵⁴⁴ BAMF, *The Implementation of the Asylum Procedure*.

¹⁵⁴⁵ Hofmann, *Ausländerrecht*, § 5 AsylG para 7.

¹⁵⁴⁶ *ibid* para 8.

¹⁵⁴⁷ For a graphic overview of the possible procedures of the BAMF, please compare Andreas Dietz, *Ausländer- und Asylrecht*, 132.

¹⁵⁴⁸ BAMF, *The Stages of the German Asylum Procedure*, 31.

¹⁵⁴⁹ BAMF, *The Federal Office and its Tasks*, 7.

¹⁵⁵⁰ Axel Kreienbrink, *60 Jahre Bundesamt für Migration und Flüchtlinge im Kontext der deutschen Migrationspolitik*, 397. The BAMF's current structure was established through the Aufenthaltsgesetz: *ibid* 408.

¹⁵⁵¹ Bergmann and Dienelt, § 5 AsylG para 4; Marx, *Asylgesetz*, § 5 AsylG para 2.

¹⁵⁵² BAMF, *The Stages of the German Asylum Procedure*, 16.

¹⁵⁵³ see chapter 1.2.

important that the BAMF can decide on an asylum application as inadmissible according to the Dublin procedure.¹⁵⁵⁴ According to § 5 I 2 AsylG the BAMF is also responsible for some migration related measures.

There is a distinction between the issuing authority (BAMF) and the executing migration offices.¹⁵⁵⁵ § 75 AufenthG includes the twelve minimum of tasks of the Federal Office. The different tasks can be roughly subsumed under the following categories: furthering integration, implementation of European law and others.¹⁵⁵⁶

3.2.1. Asylum Application

The BAMF is responsible for the division of migrants among the Federal States after they have been granted status in Germany.¹⁵⁵⁷ This division is made by the BAMF with the so-called EASY quota system¹⁵⁵⁸ based on the findings of a commission of the Federation and the Federal States.¹⁵⁵⁹ The so-called *Königsteiner Schlüssel* serves as the basis of the EASY quota system. Every year the commission calculates the share of asylum seekers every Federal Land will be receiving depending on their tax income and their population.¹⁵⁶⁰

The Federal Office coordinates the exchange of information between federal agencies/authorities, especially between the *Bundeskriminalamt* (Federal Criminal Police Office) and the *Verfassungsschutz* (Federal Office for the Protection of the Constitution) to filter migrants which might endanger public security, § 75 no. 11 AufenthG.

According to §§ 11 II, VII, 34, 34a, 35 AufenthG, the BAMF has the authority to terminate entry bans and exclusion orders in instances of threat of deportation orders or deportation orders and orders or imposition of a time limit on bans of entry and residence if the asylum application has been rejected. However, it is the immigration offices who implement those bans.¹⁵⁶¹

3.2.2. Integration

The BAMF coordinates a variety of integration related measures.¹⁵⁶² It is responsible for integration courses¹⁵⁶³ and for migration counselling for adults.¹⁵⁶⁴ It also offers advice with regard to migration. However, those tasks can be delegated to other public or private agencies, § 75 no. 9 AufenthG.

3.2.3. EU-Related Tasks

The BAMF is not only responsible for the implementation of national law. It works with the administrative authorities of other member states of the European Union. It serves as the

¹⁵⁵⁴ see chapter 1.2.2.2.

¹⁵⁵⁵ Marx, Asylgesetz, § 5 AsylG para 3.

¹⁵⁵⁶ Johannes Eichenhofer, *Beck Online Commentary*, § 75 AufenthG.

¹⁵⁵⁷ see chapter 1.2.

¹⁵⁵⁸ For the quota of 2016 see BAMF, *Initial Distribution of Asylum-Seekers (EASY)*.

¹⁵⁵⁹ BAMF, *The Stages of the German Asylum Procedure*, 9.

¹⁵⁶⁰ BAMF, *Königsteiner Schlüssel*.

¹⁵⁶¹ Marx, Asylgesetz, § 5 AsylG para 2.

¹⁵⁶² Ralph Göbel-Zimmermann and Bertold Huber, *Aufenthaltsgesetz*, § 75 para 1.

¹⁵⁶³ An integration course consists of a German language course and an orientation course, cf §§ 43 ff AufenthG.

¹⁵⁶⁴ BAMF, *The Federal Office and its Tasks*, 8f.

national contact point and competent authority for the cooperation with other European Union member states to carry out several directives according to § 75 no. 5 AufenthG.¹⁵⁶⁵ The BAMF is also responsible for the Dublin III Regulation.¹⁵⁶⁶

3.2.4. Other

The BAMF coordinates programs and projects to further voluntary return, acc. § 75 no. 7 AufenthG. According to § 75 no. 4, 4a AufenthG, it is another basic task to research on migration and integration, which is taken care of in the information centre.¹⁵⁶⁷

3.3. *Ausländerbehörden* (Foreigners' Registration Office)

In opposition to this, the *Ausländerbehörden* (Foreigners' Registration Office) in the Federal States take care of all other tasks related to migration law. According to § 71 AufenthG they decide on measures related to passports and right of residence as well as on all other measures related to migration law appointed to them by law.¹⁵⁶⁸ They base their decisions on the AufenthG and other related statutes. The Federal states appoint local immigration offices.¹⁵⁶⁹ The national law decides on the subject matter jurisdiction whereas the Federal States decide on the local and functional jurisdiction.¹⁵⁷⁰

The final decision on the right of residence or right to stay or on the obligation to leave marks the end of the asylum procedure as carried out by the BAMF.¹⁵⁷¹ Afterwards, the local immigration office takes over responsibility. Based on the decision of the BAMF they issue a residence permit depending on the status awarded. Following this, the *Ausländerbehörden* are responsible for the applicant. They can issue different permits depending on the status according to the AufenthG.¹⁵⁷²

3.4. Statutory Framework

The AsylG and the AufenthG as well as European directives¹⁵⁷³ and regulations¹⁵⁷⁴ regulate the procedure for the decision on asylum applications.¹⁵⁷⁵

3.5. Conclusion

German migration law has there is a two-way structure: the migration law is divided into law for asylum seekers and other migrants. As a result, there are different responsible authorities, who

¹⁵⁶⁵ The directives are the Council Directive 2001/55/EC of July 20 2001, Council Directive 2003/109/EC of November 25 2003 and Council Directive 2009/50/EC of May 25 2009, as well as Directive 2014/66/EU of May 15 2014 and Directive (EU) 2016/801 of May 11 2016.

¹⁵⁶⁶ see chapter 1.2.2.2.

¹⁵⁶⁷ see chapter 1.2.

¹⁵⁶⁸ Bergmann and Dienelt, *Ausländerrecht*, § 71 AufenthG para 11; Huber, *Aufenthaltsgesetz*, § 75 AufenthG para 1.

¹⁵⁶⁹ *ibid.*

¹⁵⁷⁰ Bergmann and Dienelt, *Ausländerrecht*, § 71 AufenthG para 2.

¹⁵⁷¹ BAMF, *The Stages of the German Asylum Procedure*, 23.

¹⁵⁷² see chapter 1.2.

¹⁵⁷³ see e.g. Directive 2013/32/EU.

¹⁵⁷⁴ see e.g. Directive (EU) 604/2013.

¹⁵⁷⁵ BAMF, *The Federal Office and its Tasks*, 3.

apply different law. The AufenthG appoints the immigration offices as the responsible authorities. However, the BAMF is responsible for every case connected to asylum as far as the requirements of the recognition of international protection are affected.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

This part of the report deals with the question what the recent statistics regarding migrants in our country are. To give a broad understanding of the statistics, it is important to differ the terms, like asylum-seekers, immigrants, transit-migrants, so that every text phase starts with an explanation of the terms in a correct approved official way, or rather with a juristically definition.

4.1. Asylum-Seekers

4.1.1. Term

Regarding the term of an “asylum-seeker” we refer to the explanation above.

4.1.2. Recent Trends and Statistics (2015-2017)

The chart below shows the development of first-request¹⁵⁷⁶ asylum-seekers during the years 2010 to 2017. From the year of 2010, the number of asylum-requests increased exponentially. In **2010** there were 41.332 asylum requests and in **2011** 45.751. This highlights a relatively small increase in requests. In the following year of **2012** the number of requests increased by roughly 41,1 % to 64.539. In **2013**, Germany received 109.580 requests, almost a 70 % increase. In **2014** Germany had received 173.072 asylum requests – roughly 57 % more than in 2013 – and in **2015** 441.899, a significant increase of 155 %. **2016** was marked by a conspicuous increase. During this year, the number of requests increased by 63,5% to 722.370. Asylum requests in Germany rose by an average of 61% per annum (CAGR) during the past seven years.

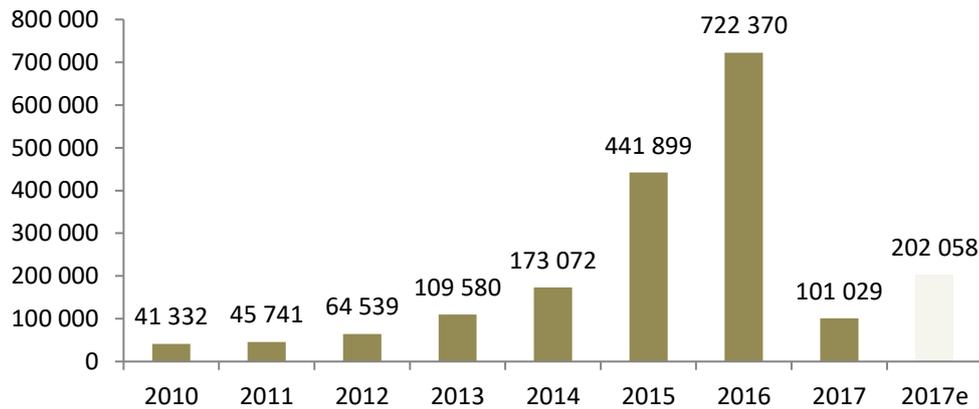
The significant increase of requests in 2014 could be as a result of the civil war, that erupted in Syria, giving many Syrians reason to leave their country. Additionally, Germany suspended the Dublin procedure for Syrians.¹⁵⁷⁷ During this period, the entire Dublin structure became ineffective at handling the unexpected range of asylum-seekers. This meant that a lot of procedures could not be fulfilled.

The considerable decrease in requests in 2017 can be explained by the measures Germany took as a reaction to the events of 2016. Political discussions and international agreements with Greece and Turkey (EU-Turkey Statement, 18th March 2016) and the closing of the so-called “Balkan-route” from south-eastern Europe to western and northern EU member states most probably had an influence on the development of the statistics in 2016 and 2017.

¹⁵⁷⁶ Only prime because continuing requests represent only a marginal percentage of > 10 %.

¹⁵⁷⁷ Asylum Information Database, *Germany: Halt on Dublin Procedures for Syrians*.

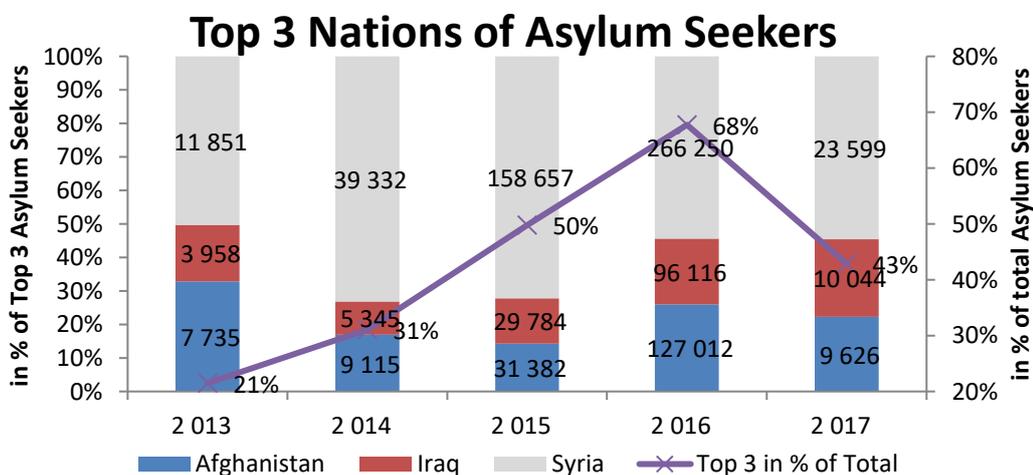
Asylum-Seekers' Prime Requests



Source: BAMF 2016

The following chart below shows the three main countries of origin of asylum-seekers in the years of 2013 to 2017. In the year **2013** there were 23.599 asylum-requests from the top 3 countries; Syria, Iraq and Afghanistan. Together, they represent 21% of the total number of requests of 2013. 11.851 requests were from Syria, 3.958 from Iraq and 7.735 from Afghanistan. In **2014** Germany received 39.332 requests from Syria, 5.345 from Iraq and 9.115 from Afghanistan. Collectively, they represent 31 % of the total number of requests in 2014. In **2015**, the number of requests from these countries rose further. Thus, there were 158.657 from Syria, 29.784 from Iraq and 31.382 from Afghanistan. The total number of requests from the top 3 countries was 219.823. In **2016**, there were 489.378 asylum-seeker requests in Germany from Afghanistan, Iraq and Syria. These requests represented 68 % of total asylum-seekers requests in Germany. 266.250 of these asylum-seekers were from Syria, 96.116 from Iraq and 127.012 from Afghanistan. In **2017**, there were 23.599 requests of asylum-seekers from the countries of Syria, 10.440 from Iraq and 9.626 from Afghanistan, and represent 43 % of the total asylum-seekers in Germany.

This chart below is supporting the statement in the first chart, that simultaneously with the war in Syria the asylum-seeker requests from this country increased immensely and exponentially, as



in the first chart.

Source: BAMF 2016

4.2. Immigrants

4.2.1. Term

In 2006, the BAMF described the term *migration* as the situation in which a person relocates its territorial centre of life. Furthermore, *international migration* is given if this relocation of territorial centre of life takes place across national borders.¹⁵⁷⁸

During the last few years, this term was modified to mean the collective term *people with migration background*. This definition comprises the heterogeneous group of all immigrants and their descendants. Subsequently, the 'new' term was established so that the BAMF as well as the Federal Statistical Office now use the following new definition for *immigrant*:

Immigrants are people with a migration background. A person has a migration background, if the person or at least one parent is not of German nationality by birth. For example:

- Non-native and not non-native foreigners
- Non-native and not non-native naturalised person;
- late repatriates;

descendants of one of these groups with a German nationality by birth.¹⁵⁷⁹

Therefore, following the definition of the Federal Statistical Office, an immigrant is a person, leaving his country because of proper incentives in search of better life prospects.¹⁵⁸⁰ If there is a relevant persecution of the refugee, it must be proven in the procedure for granting the right of asylum.¹⁵⁸¹ This definition is used as basis in the following statistics. It is not easy to capture the immigrants in the statistics so easily because this definition is not used consistently. While some German Federal Offices use the definition including descendants of "original migrants", others do not. The new definition of immigrants – including descendants – forms the basis of the following statistics.

The recent statistics also include asylum-seekers, no matter whether they have just a short stay in Germany or not. Short-term stays of seasonal workers up to four months are included, provided that the people register with an accommodation in Germany.¹⁵⁸²

Furthermore, it has to be mentioned, that the use of the words "migrant" and "immigrant" are perspective-dependent. This means that from the view of the country of origin, the person is called migrant and from the view of country of immigration the person is called immigrant.

4.2.2. Recent Statistics and Trends (Status 2016)

In 2016 there were 18,5 million immigrants living in Germany, making up roughly 20 % of the total population.

¹⁵⁷⁸ Federal Office for Migration and Refugees, *Migration Report 2006*, 12.

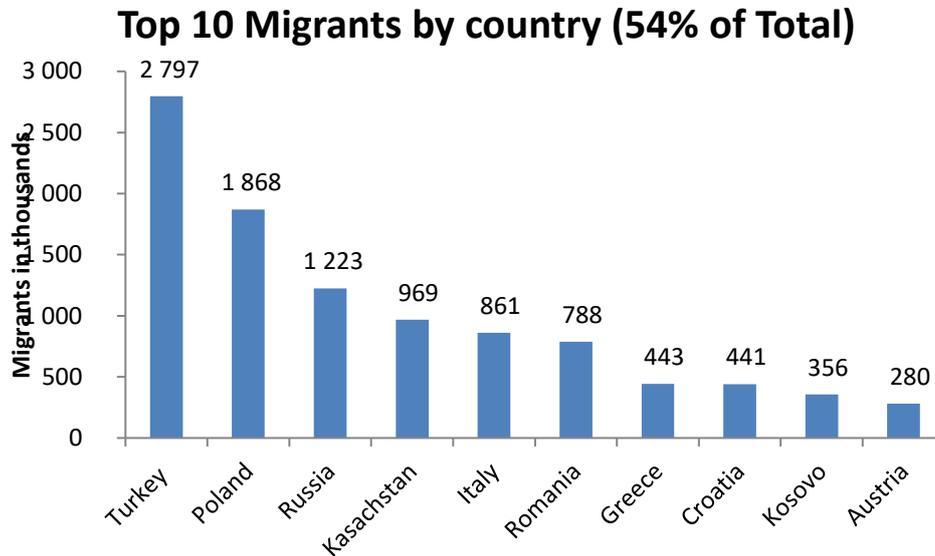
¹⁵⁷⁹ Federal Statistical Office, *Population and Employment*, 14.

¹⁵⁸⁰ *ibid*, 4.

¹⁵⁸¹ Federal Ministry for Economic Cooperation and Development, *Flüchtling, Asylsuchender, Binnenvertriebener, Klimamigrant, UNHCR*.

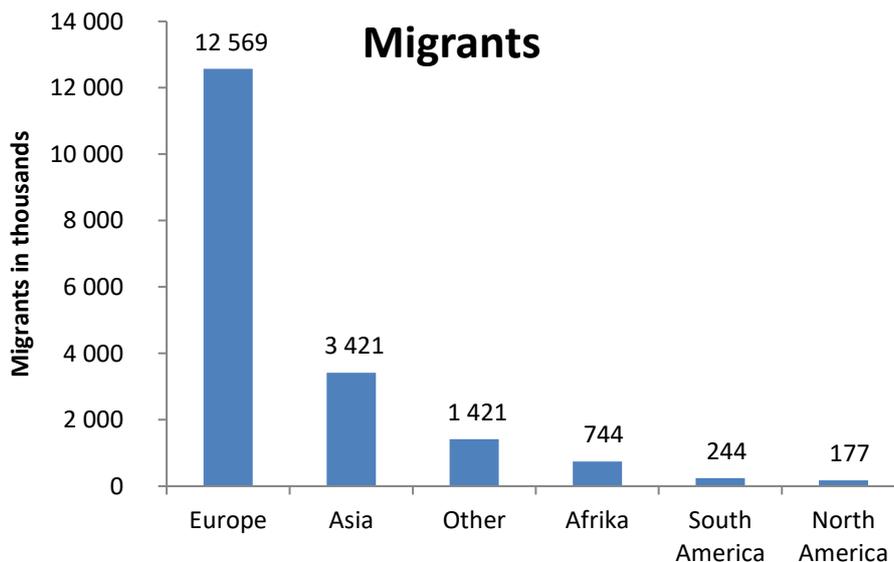
¹⁵⁸² Federal Office for Migration and Refugees, *Migrationsbericht 2006*, 12.

The majority – 2,8 million – comes from **Turkey**. This could be affected inter alia by the so-called “golden 50’s” in which the reconstruction of Germany which gave reason for Germany to actively employ people from Turkey. **Poland** has the second-largest immigrants with 1,9 million. People from **Russia** making up 1,2 million. The top 4 to 10 are Kazakhstan (969.000), Italy (861.000), Romania (788.000), Greece (443.000), Croatia (441.000), Kosovo (356.000), Austria (280.000).



source: BAMF 2016

Most of the immigrants – 12,6 million, or 67 % – come from Europe. The following main-regions of origin are Asia (3,42 million), Others (1,4 million), Afrika (0,74 million), South America (0,24 million), North America (0,18 million)



Source: BAMF 2016

4.3. Transit Migrants

Although there is no authoritative definition of transit-migrants, this term can be described (and is commonly used) as migrants, who are temporarily staying in one or more countries, with the objective of reaching a further and final destination.¹⁵⁸³

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. The Relevance of the Guarantees in the European Convention on Human Rights in Germany

5.1.1. The Correlation Between the European Convention on Human Rights and German National Law

Through ratification, the Federal Republic of Germany became a party to the European Convention on Human Rights (ECHR) in 1952. Formally, the ECHR has the status of an ordinary national law.¹⁵⁸⁴ Therefore the German Constitutional Rights are a higher authority. Additionally, the German Federal Supreme Court (*Bundesverfassungsgericht*, BVerfG) attached importance to the final say of the Constitution against the ECHR.¹⁵⁸⁵ However, Article 25 of the German Basic Law emphasises the commitment of national law to international law. Hence it is assumed that national law is to be interpreted in conformity with the international legal obligations of the Federal Republic of Germany.¹⁵⁸⁶ Since the ECHR has the status of an ordinary national law, constitutional complaints cannot be directly based on a violation of the ECHR.¹⁵⁸⁷ Nevertheless, the ECHR plays an important role when it comes to interpreting and substantiating constitutional issues. The German Federal Supreme Court ruled with respect to this regard:

For the interpretation of the Basic Law, the content and level of development of the European Convention on Human Rights are also to be considered provided that this does not lead to a restriction or reduction of the fundamental rights protection guaranteed by the Basic Law, an effect, which the Convention itself strives to preclude (Art. 60 ECHR).¹⁵⁸⁸

¹⁵⁸³ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report on Migrants Transit*, A/HRC/31/35, 5.

¹⁵⁸⁴ Michael Schweitzer, *Staatsrecht III*, 347.

¹⁵⁸⁵ German Federal Supreme Court, [October 14 2004] Supreme Court Report Vol. 111, 307, 319.

¹⁵⁸⁶ Matthias Herdegen, *Europarecht*, 40.

¹⁵⁸⁷ German Federal Supreme Court [May 17 1983] Supreme Court Report Vol. 64, 135.

¹⁵⁸⁸ German Federal Supreme Court [March 26 1987] Supreme Court Report Vol. 74, 358 (370).

5.1.2. Do Decisions of the European Court of Human Rights Have a Binding Effect for German National Courts?

According to Art. 46 ECHR, the member states are bound by the decisions of the European Court of Human Rights (ECtHR). If the ECtHR finds that Human Rights are violated by a German court decision, Germany is obligated to terminate this violation and ensure an appropriate compensation to the victim.¹⁵⁸⁹ Art. 46 ECHR together with the Ratifying Law and the constitutionally ensured rule of law (Art. 19 IV and 20 III of the Basic Law) form the legal foundation for the binding character of the ECtHR decisions under German law.¹⁵⁹⁰ In general, all authorities are bound by a decision, not only the executive power when acting externally.¹⁵⁹¹

With regard to the German Federal Supreme Court, the jurisdiction of the ECtHR is taken into account as an aid to the definition of the content and scope of the fundamental rights and the rule-of-law principles of the German Basic Law.¹⁵⁹²

Particularly questionable was the binding effect of a decision made by the ECtHR on national subsequent judicial proceedings concerning the same facts of a case. The German Federal Supreme Court denied a direct binding of German courts to the jurisprudence of the ECtHR even with regard to the same facts of a case.¹⁵⁹³ Notwithstanding this approach, the German Federal Supreme Court ruled that German courts are obligated to include the fundamental aspects of the decision rendered by the ECtHR.¹⁵⁹⁴ If the German court decides not to follow the opinion of the ECtHR it has to justify this differing judgement.¹⁵⁹⁵ However, if the ECtHR found that a decision of a German court violates the ECHR, pursuant to Art. 46 ECHR the subsequently deciding national court is only granted the above mentioned margin of consideration, if there are new facts relevant to the case.¹⁵⁹⁶

Recently, the German Federal Supreme Court has emphasised the significance of ECtHR judgements by equating the decision of the ECtHR determining a violation of the convention to a legally relevant modification.¹⁵⁹⁷ This gives such a decision the power to render a judgement of the German Federal Supreme Court invalid and give the Supreme Court the opportunity to rule a second time on the same case.

Furthermore, German national courts do not only have a duty to consider every decision of the ECtHR– not only the cases against Germany.¹⁵⁹⁸

¹⁵⁸⁹ Jens Meyer-Ladewig and Martin Nettesheim and Stefan von Raumer, *EMRK*, Art. 46 para 22.

¹⁵⁹⁰ German Federal Supreme Court [October 14 2004] Supreme Court Report Vol. 111, 307.

¹⁵⁹¹ Oliver *Dörr and Rainer Grote and Thilo Marauhn*, *EMRK/GG*, ch 32 para 82.

¹⁵⁹² German Federal Supreme Court [March 26 1987] Supreme Court Report Vol. 74, 358, 370.

¹⁵⁹³ German Federal Supreme Court [October 14 2004] Supreme Court Report Vol. 111, 307.

¹⁵⁹⁴ Meyer-Ladewig and Nettesheim and von Raumer, *EMRK*, Art. 46 para 27.

¹⁵⁹⁵ German Federal Supreme Court [October 14 2004] Supreme Court Report Vol. 111, 307.

¹⁵⁹⁶ Herdegen, *Europarecht*, 42.

¹⁵⁹⁷ German Federal Supreme Court [May 04 2011] Supreme Court Report Vol. 128, 326.

¹⁵⁹⁸ Schweitzer, *Staatsrecht III*, 266.

5.2. Protection of Migrants and Asylum Seekers under the European Convention on Human Rights

According to general Public International Law, territorial sovereignty is a part of state sovereignty and therefore states have the right to regulate the entry and right of residence of foreign nationals. However international conventions and public international customary law constitute exceptions of this sovereignty – especially with regard to asylum and refugee law.¹⁵⁹⁹ The principle of non-refoulement and its extraterritorial range constitutes a relevant example.¹⁶⁰⁰ The ECtHR defines the principle extensively and finds member states obligated to provide protection for refugees located outside their coastal waters against inhumane treatment in their country of origin.¹⁶⁰¹ In this context it is controversial if a duty to give access to an asylum procedure can be derived from Art. 3 ECHR.¹⁶⁰²

In general, the ECHR contains no provisions with regard to the entry and residence of foreigners. Irrespective of this, indirect influences on national law are the result of Art. 3 and Art. 8 ECHR, particularly regarding the termination of residence.¹⁶⁰³

The ECtHR applies a fair balance of interest test to the lawfulness of an expulsion taking the private interests of staying in the country of residence, on the one hand, as well as the public interest in expulsion, on the other hand, into account.¹⁶⁰⁴ In respect thereof, the ECtHR considers among other things the duration of the stay, the degree of integration, personal ties with the country of residence as well as the country of origin.¹⁶⁰⁵

Moreover, the influence of Art.8 ECHR can even lead to an entitlement to residence in certain cases of subsequent immigration of family members.

5.2.1. Prevention of Termination of Residence with regard to the ECHR

5.2.1.1. Prohibitions of Deportation according to the ECHR in § 60 V German Residence Law (*Aufenthaltsgesetz*)

§ 60 para 5 German Residence Law (*Aufenthaltsgesetz*) refers to prohibitions of deportation pursuant to the ECHR. This provision mainly concerns cases of impending deportations to non-member countries of the Convention or when a threatening inhumane treatment cannot be attributed directly to the country of origin. The risk of torture or inhumane treatment posed directly by the country of origin, that is to say, constitutes as per Art. 3 ECHR an obstacle for deportation which is adopted in § 4 *Asylgesetz* (German Asylum Law, AsylG).

¹⁵⁹⁹ Kay Hailbronner, *Asyl- und Ausländerrecht* (4th edn), 62.

¹⁶⁰⁰ Convention relating to the Status of Refugees (adopted July 28 1951, entered into force April 22 1954) 189 UNTS 137 (Refugee Convention) Art. 33 I: Principle of non-refoulement.

¹⁶⁰¹ *Hirsi v Italy* [2012], ECtHR Appeal No. 27 765/09.

¹⁶⁰² Andreas Fischer-Lescano and Tillmann Löhr and Timo Tohidipur, *Border controls at sea*, International Journal of Refugee Law (2009) 21 (2), 256.

¹⁶⁰³ Hailbronner, *Asyl- und Ausländerrecht* (4th edn), 66.

¹⁶⁰⁴ *Üner v Netherlands* [2006], ECtHR Appeal No. 46 410/99.

¹⁶⁰⁵ Regarding an expulsion due to criminal offences: *Kaya v Germany* [2007], ECtHR Appeal No. 31 753/02, para 62 to 71.

In accordance with the established jurisprudence of the ECtHR since the *Soering Case*, the German Federal Administrative Court (*Bundesverwaltungsgericht*) treats equally a deportation to a non-member state as illegal, not only if there is a risk of torture or inhuman treatment, but also if a fundamental human rights guarantee recognised by all member states of the ECHR is endangered.¹⁶⁰⁶

5.2.1.2. Subsidiary Protection as per § 4 Asylgesetz (German Asylum Law)

Unlike § 60 para 5 AufenthG, § 4 AsylG provides subsidiary international protection for any foreigner, who can put forward substantial grounds that he or she is threatened of suffering serious harm in case of return to the country of origin. Serious harm is defined by the provision as follows:

- death penalty or execution;
- torture or inhuman or degrading treatment or punishment; or
- serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

The formulation of No. 2 'torture or inhuman or degrading treatment or punishment' is closely linked to Art. 3 ECHR.¹⁶⁰⁷ Consistent with the *H.L.R. v France* decision of the ECtHR and as opposed to the former case law of the German Federal Administrative Court, this provision includes protection against threats by non-state actors.¹⁶⁰⁸

According to the ECtHR, the deportation, surrender or expulsion despite the abovementioned risk constitutes a violation of Art. 3 ECHR itself.¹⁶⁰⁹ Pursuant to Art. 3 ECHR, it is the responsibility of every member state of the Convention to refrain from such a deportation.¹⁶¹⁰

Contrary to this ruling of the ECtHR, the German Federal Administrative Court considers these principles only for limitedly applicable to deportations to a member state of the Convention because of the duty of the other member state to comply with the ECHR (Art. 1 ECHR).¹⁶¹¹

With regard to the definitions of the terms "torture" or "inhuman", § 4 AsylG is completely consistent with the conditions elaborated by the ECtHR.¹⁶¹²

5.1.2.3. Unenforceability of Departure in Fact and Law as per § 25 V AufenthG – de facto National with regard to Art. 8. ECHR

§ 25 para 5 AufenthG enables the issuing of a residence permit if an obstacle to the departure exists in fact or in law. The law applies, if an obligation for a foreigner to leave the country exists.

¹⁶⁰⁶ *Soering v United Kingdom* [1989], ECtHR Appeal No. 1/1989/161/217; German Federal Administrative Court [2004] Federal Administrative Court Report Vol. 122, 271.

¹⁶⁰⁷ Hailbronner, Asyl- und Ausländerrecht (4th edn), 441.

¹⁶⁰⁸ *H.L.R. v France* [1997], ECtHR Appeal No. 24573/94; former opinion of the German Federal Administrative Court [1995] Federal Administrative Court Report Vol. 99, 331.

¹⁶⁰⁹ *Soering v United Kingdom* [1989], ECtHR Appeal No. 1/1989/161/217; *Saadi v Italy* [2008], ECtHR Appeal No. 37201/06.

¹⁶¹⁰ Meyer-Ladewig and Nettessheim and von Raumer, EMRK, Art. 3 para 64.

¹⁶¹¹ German Federal Administrative Court [2004] Federal Administrative Court Report Vol. 122, 271.

¹⁶¹² Hailbronner, Asyl- und Ausländerrecht (4th edn), 443.

In addition, both the voluntary departure as well as the forced deportation must be impossible.¹⁶¹³

A legal obstacle to departure can derive from the Right to Respect for family and private life provided by Art. 8 ECHR.¹⁶¹⁴ The German government states pregnancy or a serious illness as examples in its justification to § 25 AufenthG.¹⁶¹⁵

It is controversial, if residence permission for long-time residing foreigners can derive from the right to private life acc. Art. 8 ECHR.

A German Court decided this matter of a so-called *de facto* national as follows: if a foreigner is integrated to everyday life in Germany and is alienated from his country of origin to such an extent that reintegration is impossible and that he in fact can only have a private life according to Art. 8 ECHR in Germany, then departure or deportation to his country of origin is legally impossible.¹⁶¹⁶

However, there are concerns given the statutory system of the German Residence Law. Sections 27 et seq. of the German Residence Law regulate the conditions for a residence permission for family reasons in a final way. Therefore, § 25 para 5 AufenthG can only apply, if the special regulations concerning family related residence permissions do not affect the facts of the case.¹⁶¹⁷

Relevant criteria to decide upon the status of a *de facto* national are knowledge of the German language, participation in social life, employment, enrolling education, social contacts outside the family and no significant criminal offences.¹⁶¹⁸ Conversely, criteria for a cultural uprooting from the state of origin can be a lack of knowledge of the language, no familiarity with the circumstances of living in the country of origin or no family members living in the country.¹⁶¹⁹ Even the illegality of the residence of a *de facto* national has no influence on the legal impossibility of departure or deportation.¹⁶²⁰

5.2.2. Influence of the ECHR on Residence for Family Reasons as per §§ 27 et seq. German Residence Law (Aufenthaltsgesetz)

§ 27 para 1 AufenthG regulates the subsequent immigration of family members. It explicitly refers to Art. 6 para 1 of the German Basic Law which grants protection to marriage and family. In this context, Art. 8 ECHR is to be taken into account. Its guarantee of family and private life is more comprehensive than that of Art. 6 GG.¹⁶²¹ The ECtHR considers Member States not

¹⁶¹³ Winfried Kluth and Andreas Heusch, *Ausländerrecht*, § 25 para 129.

¹⁶¹⁴ Hailbronner, *Asyl- und Ausländerrecht* (4th edn), 183.

¹⁶¹⁵ Bundestag printed matter 15/420 (2003), 80.

¹⁶¹⁶ Constitutional Court of the State of Hesse [2006] 7 UE 509/06 in accordance with the decisions of the ECtHR: *Sisojeva v Latvia* [2005] ECtHR Appeal No. 60654/00; *Mendişzıbal v France* [2006] ECtHR Appeal No. 51431/99; *Kaftailova v Lettland* [2006] ECtHR Appeal No. 59643/00.

¹⁶¹⁷ Hailbronner, *Asyl- und Ausländerrecht* (4th edn), 184.

¹⁶¹⁸ German Federal Supreme Court [February 21 2011] 2 BvR 1392/10.

¹⁶¹⁹ Rainer Hofmann, *Ausländerrecht*, § 25 para 77.

¹⁶²⁰ *Sisojeva v Latvia* [2005] ECtHR Appeal No. 60654/00.

¹⁶²¹ Hailbronner, *Asyl- und Ausländerrecht* (4th edn), 211.

only obliged to protect their subjects from infringements of the private and family life, but also to positively guarantee a family reunion under certain circumstances.¹⁶²²

Nevertheless, the ECtHR does not assume that a general right to subsequent immigration of family members can be derived from Art. 8 ECHR, because every Member State has the competency to regulate the entry of foreigners into its territory.¹⁶²³ The Member State is obliged to fully balance all interests and make fair adjustments.¹⁶²⁴ It is even possible to consider if a return to the state of origin or the migration to a third state would be reasonable for a family reunion (so called “elsewhere approach”).¹⁶²⁵ Concerning the subsequent immigration of a spouse acc. § 30 AufenthG, Member States are only bound by Art. 8 ECHR to examine the proportionality of the interests at stake.¹⁶²⁶ If the marriage was conducted after one partner already was legally permitted to reside in another country, it will be considered acceptable to deny subsequent immigration.¹⁶²⁷

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. What is the European Commission against Racism and Intolerance?

6.1.1. A Brief History

The European Commission against Racism and Intolerance (ECRI as it will be named henceforth) was established on the October 9 1993 by the first Summit of Heads of State and Government of the Council of Europe member states in the Vienna Declaration. The role of ECRI finally became autonomous on June 13 2002, when the Committee of Ministers adopted an autonomous Statute for ECRI. In doing so, the specialised body became completely independent in enquiring into the racism and intolerance of the European Council nations as one entity, as well as specialising in the specific needs of the individual countries, as based on their political, historical and social circumstances.

6.1.2. Aims and Objectives of ECRI

The body includes 3 main aspects in its approach to meet the objectives set out in Article 1 of the Resolution Res(2002)8 on the statute of the European Commission against Racism and

¹⁶²² *Abdulaziz v United Kingdom* [1985] ECtHR Appeal No. 15/1983/71/107; *Tuquabo-Tekle et al v Netherlands* [2005] ECtHR Appeal No. 60 665/00.

¹⁶²³ *Abdulaziz v United Kingdom* [1985] ECtHR Appeal No. 15/1983/71/107.

¹⁶²⁴ *Tuquabo-Tekle et al v Netherlands* [2005] ECtHR Appeal No. 60 665/00.

¹⁶²⁵ *XY v United Kingdom* [1982] ECtHR Appeal No. 9492/81.

¹⁶²⁶ Hailbronner, Asyl- und Ausländerrecht (4th edn), 214.

¹⁶²⁷ *Abdulaziz v United Kingdom* [1985] ECtHR Appeal No. 15/1983/71/107.

Intolerance¹⁶²⁸. The three approaches are a country-by-country approach to the work of ECRI, to work on general themes, and to do so in relation to civil society¹⁶²⁹. In addition, where there are beneficial grounds to do so, ECRI will incorporate a gender perspective into its work, thus highlighting its flexibility to societal changes.

As given above, the body takes a country-by-country approach to combatting the intolerances set out in its objectives. However, ECRI also makes proposals for action to be taken at a local, national and European level, with regular papers in which policy recommendations for each level are published. The final objective of ECRI is to study international legal instruments in relation to racism and intolerance, and in doing so, progressively fulfil the aims of the body.

The members of ECRI uphold the independence of the body through their impartial and autonomous decision-making¹⁶³⁰. This highlights the separation of powers that the role holds, allowing the appointed members to fulfil their mandate.

6.2. What are the Recommendations of ECRI?

6.2.1. Annual Report on ECRI's Activities 2016

The 2016 paper addressed numerous issues such as the increase of racism, terrorism and intolerance to minority groups and migrants. The report raises several causal factors for these increases, stemming from an array of backgrounds. Factors to consider include, but are not restricted to; the lax nature of the political discourse emanating from politicians to the masses, an increased interest in far-right political movements, and the desire of many to look to others to blame for the results of austerity measures taken by their countries' governments.

While ECRI acknowledges the freedom of speech,¹⁶³¹ it is careful to state that this must be restricted where it is of necessity to uphold and safeguard a tolerant and democratic society. The European Court of Human Rights has found in favour of such restrictions in the right to freedom of speech¹⁶³². Given the increased "anonymity of the keyboard", authorities have begun to monitor hate-speech more stringently. In conjunction with numerous social media companies, authorities have begun to promote a more professional and ethical platform online, such as deleting the most extreme forms of racist and homo-/transphobic hate speech. The report found that many authorities are in the process of developing a code of conduct online, in conjunction with regulatory bodies in an attempt to combat hate speech and intolerance in the 21st Century. In doing so, the stigma associated with migrants may become easier to contest.

¹⁶²⁸ The objectives of ECRI are to combat racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. In practical terms, ECRI reviews the legislation, policies and other measures of each member state to ensure that the objectives given above are upheld.

¹⁶²⁹ Article 10.1 Resolution Res (2002)8 on the statute of the European Commission against Racism and Intolerance.

¹⁶³⁰ Article 2.3 Resolution Res (2002)8 on the statute of the European Commission against Racism and Intolerance.

¹⁶³¹ Article 10 European Convention on Human Rights.

¹⁶³² see *German Communist Party v the Federal Republic of Germany*; *Féret v. Belgium*; *Le Pen v. France*; *Ebrakan v Turkey*.

6.2.2. ECRI's Country-by-Country Approach

6.2.2.1. *The Logistics*

The activities of each member state are closely examined by ECRI, amounting to a tailor-made report in which the issues discovered are systematically addressed. As given in the report, the aims of such recommendations are to “formulate helpful and well-founded recommendations, which may assist governments in taking concrete and practical steps to counter racism, racial discrimination, xenophobia, antisemitism and intolerance”¹⁶³³.

The body composes a first draft, partially based upon a contact visit to the respective country. The first draft is then considered in confidential dialogue with the member state, at which point it is published following review from the national authorities. It is worth noting, that the recent publications have amounted to glaring media coverage given the current climate as mentioned above.

6.2.2.2. *ECRI's Report for Germany*

Germany is in its fifth round of ECRI reports. The report's recommendations include both criminal and civil law, highlighting the need for development in numerous areas of the German legal system, in order to aid in accomplishing the aims of ECRI.

The resistance to ratification of Protocol 12 of the ECHR is of particular note in the report. The Protocol provides legislative protection to prohibit discriminatory activity, thus promoting equality. The German authorities wish to observe how the Protocol is met in other member states, and whether it is of substantial benefit to them. They also raise the argument that it would do nothing to their legal framework, and may even adversely affect certain social benefits which may not comply with the Protocol. ECRI raises the argument that General Policy Recommendation No.7 accommodates some flexibility based upon nationality¹⁶³⁴. These arguments are still dismissed by the German authorities, and have been met again with a call to ratify the Protocol to “set an example at international level”. Despite the call for Germany to ratify Protocol 12, one can assume that Germany's autonomous decision takes precedence over the recommendation, when the Organisation for Security and Co-operation in Europe's (OSCE) guidelines are taken into account¹⁶³⁵.

ECRI encourages the German authorities to “continue developing strategies and to include measures in favour of ethnic, religious and linguistic minorities historically present in Germany”¹⁶³⁶. While the media has focused on migrants seeking asylum in recent times, it is also worth noting that certain other minority groups, such as Roma and Sinti persons, also require integration into German society.¹⁶³⁷

¹⁶³³ Annual Report on ECRI's Activity 2016, pp 30, 1.30.

¹⁶³⁴ §§ 18, 19 GPR no. 7 on National Legislation to Combat Racism and Racial Discrimination.

¹⁶³⁵ “*The Ljubljana Guidelines on Integration of Diverse Societies*”, Organisation for Security and Co-operation in Europe. November 2012

¹⁶³⁶ European Commission against Racism and Intolerance (ECRI), *Report on Germany*, 26 para 67.

¹⁶³⁷ *ibid* 9, 21 para 40.

The ECRI recommendations for the integration of migrants has a bi-lateral focus, namely on both the prospective migrants and German citizens. The so-called “welcoming culture” (*Willkommenskultur*) in Germany has been highlighted by various institutions¹⁶³⁸ as lying at the heart of successful integration. The term was used for the increased commitment of the civil society in Germany in 2015. It is yet unknown whether this effort has had a material effect on the successful integration of migrants. For migrants to feel positively towards their new home, it is important that the country in question affords a welcoming and engaging response to them. One integration technique of interest is the engagement of religious organisations in municipalities and districts, as well as sports clubs to forge ties within the local communities, rather than a bureaucratic attempt that in reality would not reach the individual migrant¹⁶³⁹. The above-mentioned strategies, accompanied by language courses, allow for a more harmonious integration benefitting all parties involved. The language courses have seen 92.8% of the participants having passed the orientation test between 2009 and 2012 (therefore gaining at least an IELTS level A2)¹⁶⁴⁰. It is therefore unsurprising that such recommendations have been implemented by the German authorities.¹⁶⁴¹

6.3. What are the Recommendations from National Human Rights Bodies?

6.3.1. Who are the National Human Rights Bodies in Germany?

6.3.1.1. A Brief History and Aims

The appointed human rights body in Germany is the German Institute for Human Rights (*Deutsches Institut für Menschenrechte, DIMR*), and was founded in March 2001 as a result of recommendations from the German Federal Government. According to § 1 DIMRG (*Deutsches Institut für Menschenrechte Gesetz, Law on DIMR*), the DIMR works independently in order to promote and respect human rights domestically, as well as in international relations.

The DIMR carries out two main functions: to research and advise. More specifically, it researches on an interdisciplinary and application-oriented basis, in order to monitor and assess the state of human rights in Germany. In its advisory role, it provides support to political decision-makers at the federal and states (*Länder*) levels, as well as courts, the legal profession, the business sector, and civil society. This structure therefore complies with the recommendations of ECRI at a national and local level.

¹⁶³⁸ Including TNS Emnid “Willkommenskultur in Deutschland Ergebnisse einer repräsentativen Bevölkerungsumfrage in Deutschland“ 2012.

¹⁶³⁹ ECRI, Report on Germany, 28.

¹⁶⁴⁰ Commissioner for Migration, Refugees and Integration, *Zweiter Integrationsindikatorenbericht*; Federal Office for Migration and Refugees, *Bericht zur Integrationskursgeschäftsstatistik 2012*; Autorengruppe Bildungsberichterstattung, *Bildung in Deutschland*.

¹⁶⁴¹ This stance has not been held by all. Critics suggest that this effort has not been as successful as is suggested above.

6.3.1.2. *How are DIMR Recommendations Implemented?*

6.3.1.2.1. The Logistics

The DIMR collates and presents its findings to the German Federal Parliament, as well as domestic and international courts, and international human rights bodies. As given in its mandate, the institute sees itself as “a forum for exchange between government and civil society, research and practice, national and international actors”¹⁶⁴², again echoing the aims of ECRI at a local and national level.

6.3.1.2.2. The 2015-2016 DIMR Report for the Bundestag

The most recent report published by the DIMR considers the development of the human rights situation in Germany in accordance with § 2 V DIMRG, covering an array of topics surrounding human rights of migrants.¹⁶⁴³

As given above, integration is a bilateral system in which German citizens must be made aware of migrants and their human rights. DIMR found that the topic was tackled poorly in schools, with merely four of the sixteen federal states teaching students before their 7th school year.¹⁶⁴⁴ Where schools did provide insight into the lives of migrants, this was usually done in order to address the associated, negative connotations of a migrant, creating an “us versus them” mentality. Topics of this nature included “cultural differences”, “problems” and “conflict”. Despite the overall lack of effective teaching resources, the report did find in favour of the curricula taught in Berlin and Brandenburg. However, they too were criticised for their use of stereotypes in textbooks. In addition to the education of German children on the human rights of migrants, the report found that education of migrants lay at the heart of successful integration into the country, and more importantly, its communities, reiterating the arguments made by ECRI above.

Integration cannot merely be conducted by tackling the mentality of Germans and migrants alike, it also requires the physical integration of migrants and German-nationals. Sports clubs and voluntary aid for religious groups in the community are a good basis for forging a stronger community, however the report also addresses the largest physical barrier to integration: housing. Since the beginning of the so-called “refugee crisis” in Europe, there has been an increased influx of migrants to Germany. The sheer numbers of migrants arriving in Germany meant that the masses had to be accommodated for in temporary housing on the outskirts of cities. As time progressed, these areas became more permanent, forming a physical division between the cities and the migrants. Not only was there an issue of integration, but also human rights infringements. As the DIMR report states, migrants were packed in together leaving little privacy – an issue for most, but more so for vulnerable groups such as women travelling alone, children and those who had been left traumatised by things they had suffered. To combat this, the DIMR recommends each federal state to conceptualise and adhere to a minimum housing standard.

¹⁶⁴² German Institute for Human Rights (DIMR), *Mandate*.

¹⁶⁴³ DIMR, *Development of the Human Rights Situation in Germany January 2015 - June 2016*.

¹⁶⁴⁴ *ibid* 7.

Several states such as Berlin, Brandenburg, Hamburg, Hessen and North-Rhein Westphalia have already done so, with many others in the stages of formulating their own standards. Regular inspections are also highly recommended by DIMR, in order to not only uphold migrant human rights on paper, but also in practical terms.¹⁶⁴⁵

The new Integration statute law effected July 31 2016 (see below) was also included in the report, highlighting the importance of integration holds for the German political, judicial and social systems given the range of areas covered.

7. How is migrants' right to access to healthcare regulated within the national legislation?

The German Constitution secures human rights as fundamental rights.¹⁶⁴⁶ Nowadays this can be considered as a certain standard, as human rights are commonly understood as undisputable fundamental rights and regularly protected as legal rights in national and international law.¹⁶⁴⁷ Also considered as part of human right are the right of life, physical integrity and health, which are secured in the German legislation by the protection of human dignity acc. Art. 1 GG and the right of physical integrity acc. Art. 2 GG. The rights set out in the above, are rights enacted for everyone and therefore also migrants. The right to access to healthcare is therefore also a right of migrants. In addition, one of the fundamental rights in the German Constitution is the right to asylum acc. Art. 16a GG, which secures the right of political asylum for victims of political persecution in order to protect people from persecution, arbitrary violence and torture. This idea is also conveyed by concluding the Geneva Convention on Refugees¹⁶⁴⁸ as well as torture's prohibition regulations such as Art. 3 ECHR. This objective is regarded as underpinning German policy on asylum,¹⁶⁴⁹ which then determines further details, for example who in particular is considered as refugee, §§ 3, 4 AsylG.

7.1. Asylbewerberleistungsgesetz (Asylum Seekers Benefit Act)

The *Asylbewerberleistungsgesetz* (Asylum Seekers Benefit Act, AsylbLG) determines if an immigrant can access health care in form of receiving material benefits and if so, in what range,¹⁶⁵⁰ and is therefore also part of German policy on asylum. It follows the aim to secure migrants' living requirements, while drawing up different regulations than those of the general public welfare law.¹⁶⁵¹ Therefore, the underlying idea of the AsylbLG is the protection and recognition of Art.

¹⁶⁴⁵ DIMR, *Entwicklung der Menschenrechtssituation in Deutschland Januar 2015 - Juni 2016*, 66.

¹⁶⁴⁶ Uwe Andersen and Wichard Wolke, *Handwörterbuch des politischen Systems der Bundesrepublik Deutschland*, 289.

¹⁶⁴⁷ Michael Antoni, *Grundgesetz für die Bundesrepublik Deutschland*, Art. 1 para 19.

¹⁶⁴⁸ Federal Law Gazette 1953 II, 560.

¹⁶⁴⁹ Volker Warendorf, *AsylbLG*, 20.

¹⁶⁵⁰ Karla Korff and Christian Rolfs and others, *Beck Online Commentary Sozialrecht*, AsylbLG para 1.

¹⁶⁵¹ Warendorf, *AsylbLG*, 22.

16a GG.¹⁶⁵² Being one of the fundamental rights in the Constitution, it secures the right of political asylum for victims of political persecution.¹⁶⁵³

The AsylbLG is closely linked with different regulations regarding asylum and migrants, such as the *Asylgesetz*, *Ausländerrecht* (Law on Foreigners), *Staatsangehörigkeitsgesetz* (Nationality Act) and the *Aufenthaltsgesetz*. It is therefore dependent on other regulations, and changes to these regulations will have effects on the AsylbLG. Therefore, it comes up like an annex with benefit entitlement rules, more than an independent law.¹⁶⁵⁴

7.1.1. Persons entitled to receive benefits

The group of persons entitled to receive a benefit is laid down by § 1 I AsylbLG, which states different prerequisites. First, one has to be an immigrant, who dwells in German territory, meaning that physical presence is required. A brief or visiting stay, for example due to a journey through, or a stay of up to three months is insufficient.¹⁶⁵⁵ Whether one is considered as an immigrant or not, is determined in conjunction with § 2 I AufenthG: a foreigner is anyone who is not German within the meaning of Art. 116 I GG. Therefore, immigrants who do not have the right to stay are also included, although the Act's name might suggest that only asylums seekers are included as benefitting persons.¹⁶⁵⁶

Second, immigrants have to be able to be categorised under the different groups of residence status named in the legal norm. The fact that § 1 I no. 1-7 AsylbLG refer to different groups of residence status follows the aim not to include every single immigrant. Therefore, the residence titles named by other regulations regarding asylum seekers and other migrants, especially the *Aufenthaltsgesetz*, become a constituent element.¹⁶⁵⁷

The main demographic determined by § 1 I no. 1 AsylbLG are those having a temporary permission to stay in accordance with the asylum law. According to § 55 I AufenthG, this is given to all asylum seekers to make the asylum proceedings possible.¹⁶⁵⁸

Other groups acc. § 1 I no. 2-7 AsylbLG are those having a residence permit, a temporary suspension of deportation acc. § 60a II AufenthG, those obligated to depart acc. § 50 AufenthG as well as relatives and repeating applicants acc. §§ 71, 71a AsylG.

§ 1 I no. 5 AsylbLG includes migrants compelled to depart acc. § 50 AufenthG. Therefore, migrants whose request for political asylum has been rejected or whose temporary permission to stay has expired but who have not left the country or have not been deported yet can benefit from the AsylbLG in the same way as asylum seekers. The underlying idea is that the AsylbLG should not be used as a device to enforce a voluntary departure through the reduction of benefit. Regulations regarding deportation are rather stated by the AufenthG, on which the AsylbLG

¹⁶⁵² *ibid* 20.

¹⁶⁵³ Antoni, Grundgesetz für die Bundesrepublik Deutschland, Art. 16a para 3.

¹⁶⁵⁴ Wahrendorf, AsylbLG, 20.

¹⁶⁵⁵ Korff and Rolfs, Beck Online Commentary Sozialrecht, AsylbLG para 4.

¹⁶⁵⁶ Korff and Rolfs, Beck Online Commentary Sozialrecht, AsylbLG para 5.

¹⁶⁵⁷ Wahrendorf, AsylbLG, 35.

¹⁶⁵⁸ *ibid* 35.

may tie to but whose infringements are not sanctioned by the AsylbLG. Consequently, the AsylbLG entitles even migrants held on remand pending deportation to receive benefits.¹⁶⁵⁹

The demographic entitled by the AsylbLG is not strictly limited, which is the reason why § 1a AsylbLG reduces the claim in certain circumstances. In general, a reduced claim is more preferable than an exclusion of benefit.¹⁶⁶⁰ The first case acc. § 1a I AsylbLG for example excludes immigrants with a temporary suspension of deportation acc. § 1 I no. 4 AsylbLG, § 60a II AufenthG and immigrants compelled to depart acc. § 1 I no. 5 AsylbLG, § 50 AufenthG from benefits if they entered Germany with the intention to claim benefits. In such cases, the immigrant will only be granted benefits insofar as is necessary based on his individual circumstances. Another case acc. § 1a V AsylbLG prevents migrants from benefitting if they breach their duties to cooperate, such as non-attendance of official appointments.¹⁶⁶¹ Already in this construct of regulations regarding persons entitled to receive a benefit, one can recognise the strict connection to other regulations regarding the residence status as described above.

7.1.2. Range of health care benefits

The AsylbLG determines the range of benefits migrants will get. Besides standard benefits acc. § 3 AsylbLG such as a pocket money, payments in kind, housing and heating costs as well as household contents, migrants also have the right to claim for further health benefits.

Acc. § 2 I AsylbLG the law distinguishes between the first 15 months following entry into Germany and subsequent time. Its idea is to create a stronger adaption to German living conditions, which becomes necessary while staying in the country for a longer period.¹⁶⁶² Generally, during the first 15 months of their stay migrants only gain benefits regulated in accordance with the AsylbLG and therefore are excluded from the German legal health care. In this period, the scope of benefits is regulated in accordance to the AsylbLG.

§ 4 I AsylbLG settles the scope of benefits in terms of an acute illness or a painful condition. The wording of the law is ambiguous in terms of acute illness given the lack of definition. Case law describes an acute illness as being an unexpectedly appearing, fast and violent going, irregular body or mental condition, which requires medical attention for curative reasons.¹⁶⁶³ Knowing that, it requires an allocation of benefits' causing acute and non-acute, but chronic illnesses, which must be given in accordance with medical criteria and expertise.¹⁶⁶⁴ In contrast, a chronic illness is an irregular, slowly developing body or mental condition, persistent over a minimum of eight to ten weeks, which itself can follow from an acute illness.¹⁶⁶⁵ The difference between acute and chronic illnesses is conditionally variable, which makes the delineation very difficult. For example, acute disease states, which can occur as a side effect of chronic illnesses, are also considered as acute illnesses, but not the chronic illness itself.¹⁶⁶⁶

¹⁶⁵⁹ *ibid* 44.

¹⁶⁶⁰ *ibid* 53.

¹⁶⁶¹ *ibid* 71.

¹⁶⁶² *ibid* 75.

¹⁶⁶³ translated after Social Court of North Rhine-Westphalia [May 6 2013] L 20 AY 145/11.

¹⁶⁶⁴ Social Court of North Rhine-Westphalia [May 6 2013] L 20 AY 145/11.

¹⁶⁶⁵ Christina Langer and Karl-Heinz Hohm, *AsylbLG*, § 4 para 26.

¹⁶⁶⁶ Higher Regional Court for North Rhine-Westphalia [August 20 2003] 16 B 2140/02.

A painful condition is defined as an unpleasant state of sense or emotion connected with a current or potential tissue damage, which requires medical attention for curative reasons.¹⁶⁶⁷ In this case, the differentiation between acute and chronic painful state is not necessary.¹⁶⁶⁸ Acc. § 4 I 1 AsylbLG the scope of benefits includes the medical treatment as well as the provision of medication, dressing materials and other necessary performances. This corresponds to the general legal health care's general regulations. Therefore, acc. § 28 I 1 *Sozialgesetzbuch* (Social Code, SGB) V the treatment has to be sufficient and done according to the rules of the medical art and purpose. According to § 12 I SGB V it must also be economical and should not exceed the limits of necessity. Further benefits are acc. § 4 I 2 AsylbLG officially recommended vaccinations and necessary health screens. According to § 4 I 3 AsylbLG a provision with dentures is only included, insofar as it is urgent for medical reasons in the individual case.

A full and effective aid during pregnancy and birth, including all legal health care benefits, is assured by § 4 II AsylbLG.

§ 6 AsylbLG states that other benefits can be granted, especially if they are essential to health protection in the individual instance. This regulation appears as a discretionary decision ('can') and is not obligatory. The undefined term 'health' has to be understood in a biological-physiological way and includes the mental well-being.¹⁶⁶⁹

After the first 15 months and if the length of stay was not influenced by unlawful acts, acc. § 2 AsylbLG the benefits are regulated according to the SGB XII and migrants will get a fully adequate health insurance card acc. § 264 II SGB V.

7.1.3. Procedure

The AsylbLG also provides regulations regarding the procedure as well. § 6b AsylbLG states that benefits acc. §§ 3, 4 and 6 AsylbLG are to be exerted in accordance with § 18 SGB XII. This again rules that the performance of benefits is linked to the responsible body's notice.¹⁶⁷⁰ Therefore, the duty to perform is independent of a proper application, and an application is not required.¹⁶⁷¹ The responsible body has to acknowledge that the material preconditions are fulfilled. This means that the performance's necessity has to be explained or perceptible as such.¹⁶⁷² Otherwise a legal relationship based on the AsylbLG between the entitled person acc. § 1 I AsylbLG and the responsible body is not founded and the body will not have to raise the benefits.¹⁶⁷³

Acc. § 7 I 1 AsylbLG income and assets must be used up before gaining benefits, as the idea is the priority of self-help and the subordination of public assistance.¹⁶⁷⁴ Correspondingly, the AsylbLG contains compulsory registration acc. § 8a AsylbLG and in case of a breach of duty a fine regulation acc. § 13 AsylbLG.

¹⁶⁶⁷ Langer and Hohm, AsylbLG, § 4 para 32.

¹⁶⁶⁸ Higher Administrative Court of Baden-Wuerttemberg [May 4 1998] 7 S 920/98.

¹⁶⁶⁹ Social Court of Frankfurt am Main [January 16 2006] S 20 AY 1/06 ER.

¹⁶⁷⁰ Karl-Heinz Hohm, *AsylbLG*, § 6b para 3.

¹⁶⁷¹ *ibid* para 5.

¹⁶⁷² *ibid* para 16.

¹⁶⁷³ *ibid* para 10.

¹⁶⁷⁴ *ibid* § 7 para 7.

7.2. Further Measures

The German government is aware of the necessity to integrate migrants in the health care system. As a result, it continues to create new regulations to secure and simplify migrants' access to health care.¹⁶⁷⁵ For example a legal framework for an electronic health insurance card for migrants was created at federal level, which serves as an example at country level, as federal states have the relevant competences.¹⁶⁷⁶ In addition, there have been made efforts to integrate migrants with medical expertise by giving them the opportunity to work in initial reception camps, so that they are assisted especially with their language skills.¹⁶⁷⁷

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. German National Law

8.1.1. The Legal Requirements for Education in Germany

8.1.1.1. The Overview

According to Art. 7 I GG the entire school system shall be under the supervision of the state.¹⁶⁷⁸

Table 6 illustrates the varying laws in each state.

Table 6

State	Starting school age	Length (years)
Baden-Wuerttemberg ¹⁶⁷⁹	5-6	9
Bayern ¹⁶⁸⁰	5-6	9
Berlin ¹⁶⁸¹	5-6	10
Brandenburg ¹⁶⁸²	5-6	10
Bremen ¹⁶⁸³	6-7	12
Hamburg ¹⁶⁸⁴	6-7	9
Hessen ¹⁶⁸⁵	6-7	10

¹⁶⁷⁵ Federal Ministry of Health, 8. Integrationsgipfel.

¹⁶⁷⁶ Gisela Klinkhammer, *Medizinische Versorgung von Asylbewerbern in Deutschland*.

¹⁶⁷⁷ Federal Ministry of Health, *Verbesserung der medizinischen Versorgung von Flüchtlingen*.

¹⁶⁷⁸ The educational rights of children born outside of marriage is also protected in Art. 6 V GG: 'with the same opportunities for physical and mental development and for their position in society'.

¹⁶⁷⁹ Schools Act of Baden-Wuerttemberg, ch 7.

¹⁶⁸⁰ *Bayerisches Gesetz über das Erziehungs- und Unterrichtswesen* (Schools Act of Bavaria) § 35.

¹⁶⁸¹ Schools Act of Berlin § 41 - 45.

¹⁶⁸² *Gesetz- und Verordnungsblatt für das Land Brandenburg* (Schools Act of Brandenburg), pt 2.

¹⁶⁸³ Schools Act of Bremen, ch 2.

¹⁶⁸⁴ Schools Act of Hamburg, pt 2.

¹⁶⁸⁵ Schools Act of Hesse § 56.

Mecklenburg-Vorpommern ¹⁶⁸⁶	6-7	Up until the student has reached its 18 th year of life
Niedersachsen ¹⁶⁸⁷	5-6	12
Nordrhein-Westfalen ¹⁶⁸⁸	5-6	10
Rheinland-Pfalz ¹⁶⁸⁹	5-6	12
Saarland ¹⁶⁹⁰	6-7	9 (and 3 surplus years of further education or work)
Sachsen ¹⁶⁹¹	6-7	9 (and 3 years of compulsory work)
Sachsen-Anhalt ¹⁶⁹²	6-7	12
Schleswig-Holstein ¹⁶⁹³	6-7	9 (and then up until the student has reached its 18 th year of life)
Thüringen ¹⁶⁹⁴	5-6	9 (and then up until the 21 st year of life)

8.1.2. Rights of Migrants Children

Special integration programs have been set up throughout all 16 federal states in order to help improve migrant children reach their full educational potential. BAMF, as mentioned above, acknowledges the social problems that arise when migrant juveniles are not able to successfully integrate into the German school system, highlighting both personal and community troubles. Such difficulties include, but are not limited to a lack of self-esteem and despondency, and a pathway to violence and crime.

The programs aim to ‘enhance self-esteem and the potential for self-help; increase civil commitment; enhance equal opportunities in school and at work in Germany; and prevent crime and violence’.¹⁶⁹⁵ And are implemented to promote self-worth and awareness for their community, as well as their role within it. The BAMF states that the projects are to be supplemented ‘by involving local institutions and programmes; through skills training and conflict management; and in programmes for using free time profitably’.¹⁶⁹⁶ In addition to the recommendations from BAMF, other organisations have raised the importance of integration. In 2007, the Standing Conference of Ministers of Education and Cultural Affairs and organisations for people with a migration background issued ‘Integration as a chance – together for more

¹⁶⁸⁶ Schools Act of Mecklenburg-Vorpommern, pt 4.

¹⁶⁸⁷ Schools Act of Lower Saxony, §§ 63 - 71.

¹⁶⁸⁸ Schools Act of North Rhine-Westphalia, pt 4.

¹⁶⁸⁹ Schools Act of Rhineland-Palatinate, pt 3 para 2.

¹⁶⁹⁰ Act no. 826 on Compulsory Education in Saarland, pt 1.

¹⁶⁹¹ Schools Act of Saxony, pt 3.

¹⁶⁹² Schools Act of Saxony-Anhalt, pt 5.

¹⁶⁹³ Schools Act of Schleswig-Holstein, pt 2 para 2.

¹⁶⁹⁴ Schools Act of Thuringia.

¹⁶⁹⁵ BAMF, *Enhancing Skills*.

¹⁶⁹⁶ *ibid* 197.

equality'. This document stressed in particular the importance of linguistic diversity and of including the languages of origin of immigrant children in everyday school life. Work such as this has been backed up by evidence from other European countries, as provided in the European Commission's report "Integrating Immigrant Children into Schools in Europe".¹⁶⁹⁷

8.1.3. The Rights of Unaccompanied Minors

All 16 federal states grant unaccompanied minors the right to attend school as a matter of principle, however, as given above, there is no national procedure for education.

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),¹⁶⁹⁸ as there is no 'customary place of residence' the *Schulgesetze* of those three *Länder*.¹⁶⁹⁹ Such a lack of a general obligation for unaccompanied minors to attend school, it follows that this can result in negative consequences for them, not only in terms of educational development, but also in terms of health and welfare.¹⁷⁰⁰ Costs such as transportation and educational materials are only subsidised 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*. There is still a stark difference between the educational needs of young children and those of near adulthood. The Working Paper highlights that 'it is common for no education to take place in any of the 16 federal states' for 16- and 17-year-old unaccompanied minors. It also found that beyond the requirement of compulsory school attendance, there was 'no furtherance of language skills'¹⁷⁰¹ in the education-system of states. In many cases, this has meant that unaccompanied minors-specific residential and charitable programs have had to bridge the language barrier in order to integrate these minors into German society.

8.1.4. Rights of Irregular Immigrants

In 2014, a paper was published by the Office of the United Nations High Commissioner for Human Rights (hereafter referred to as the OHCHR) in which the rights of Irregular Migrants were provided.¹⁷⁰² Educational rights were included in its report.

In several UN member-states a school's administration holds the obligation to report irregular migrants to the State. This obligation, as well as disclosure of pupil's data to the police, as highlighted in the paper, may deter parents from sending their children as the risk of deportation is thusly increased.¹⁷⁰³ However, in 2011, the German Federal Parliament abolished schools'

¹⁶⁹⁷ Education, Audiovisual and Culture Executive Agency, *Integrating Immigrant Children into Schools in Europe*.

¹⁶⁹⁸ Federal Office for Migration and Refugees, *Unaccompanied Minors in Germany*, 62.

¹⁶⁹⁹ see 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.

¹⁷⁰⁰ Federal Office for Migration and Refugees, *Unaccompanied Minors in Germany*, 62.

¹⁷⁰¹ *ibid* 60.

¹⁷⁰² OHCHR, *The Economic, Social and Cultural Right of Migrants in an Irregular Situation*.

¹⁷⁰³ Federal Office for Migration and Refugees, *Unaccompanied Minors in Germany*, 62.

obligations to report on schools, nurseries and educational facilities. Interestingly, this has not been followed in other public services, and so they still have an obligation to report.¹⁷⁰⁴

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states in Art. 30 that 'each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned'. This right is extended to irregular migrant children in providing that:

Access to public preschool educational institutions or schools shall not be refused 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.

As given in the OHCHR paper, this right is for both primary and secondary education, and therefore provides protection to irregular child migrants of all ages in Germany.

8.2. Conclusion

Overall, there are a lot of sources with varying opinions on the rights of migrant children at a federal, national and international level. Internationally, there is a call for the educational rights of migrant children, be it legal or irregular, to be more unified and similar to the rights of national children. However, this is not implemented successfully in Germany, and may be the result of the federal states control over their individual states' education laws. In particular it is important to highlight that the integration and rights of children of an asylum or irregular migrant status is severely lacking in Germany. Despite efforts to entice these children into schools at a younger level, the requirement for improvement across all school-age children is grave.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

As a member state of the Council of Europe, Germany signed the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Convention) on April 11 1997. In Germany, it entered into force October 1 2007.¹⁷⁰⁵

9.1. Legislation

At national level there is a statute dealing with the recognition of qualifications called *Anerkennungsgesetz* (Federal Government's Recognition Act). It consists of several articles

¹⁷⁰⁴ European Union Agency for Fundamental Rights (FRA), *Fundamental Rights of Migrants in an Irregular Situation*, 91.

¹⁷⁰⁵ Christian Coelln and Josef F. Lindner, *Beck Online Commentary on Hochschulrecht Bayern BayHSchG*, Art. 63, 32 - 34; for the situation in all other Federal States cf ibid para 4.

concerned with the recognition of foreign qualifications.¹⁷⁰⁶ It deals with the recognition of jobs regulated through national law but does not encompass the recognition of jobs regulated at state level, of university diploma which do not lead to regulated jobs or school diploma. It consists of the *Berufsaufqualifikationsfeststellungsgesetz* (BQFG) and of changes to special laws concerned with certain jobs with regard to European directives¹⁷⁰⁷.

9.1.1. University Diploma

University diplomas from EU and non-EU countries are recognized under the *Hochschulgesetz* (university law) by every federal state. As stated above, the *Anerkennungsgesetz* does not regulate the recognition of higher education certificates that lead to non-regulated jobs. The holder of a higher education certificate can apply directly to the German labour market. It is always possible to hold a foreign university title in Germany. There is no possibility of converting the foreign diploma into a German one.¹⁷⁰⁸ However, the diploma can be assessed by the *Zentralstelle für ausländisches Bildungswesen – ZAB* (Central Office for Foreign Education). The basis of the assessment is the Lisbon Convention. The German federal states enabled the ZAB to carry out the assessment. The ZAB only deals with completed higher education degrees. It issues a statement of comparability for a fee.¹⁷⁰⁹ The authorities assess the foreign diploma by using a database called *anabin*.¹⁷¹⁰ The applicant can also research the possibilities of recognition online before requesting the assessment. Following this procedure, the authorities issue a statement, which is merely a comparative assessment with no formal recognition.¹⁷¹¹ Nevertheless, the recognition improves the applicant's possibilities on the labour market by giving potential employers a detailed description of the qualification.¹⁷¹²

9.1.2. School Diploma

In general, every university is responsible for the recognition of school diplomas.¹⁷¹³ The Lisbon Convention applies to diplomas from states that have ratified it. There are other treaties for diplomas from states that have not ratified the Convention: the Protocol to the European Convention on the Equivalence of Diplomas leading to Admission to Universities,¹⁷¹⁴ the European Convention on the Academic Recognition of University Qualifications,¹⁷¹⁵ the European Convention on the Equivalence of Diplomas leading to Admission to Universities¹⁷¹⁶ and the European Convention on the General Equivalence of Periods of University Study.¹⁷¹⁷ The Federal State governments can issue regulation on the recognition of foreign school

¹⁷⁰⁶ German Federal Law Gazette 2011 I no. 63.

¹⁷⁰⁷ Directive 2005/36/EC.

¹⁷⁰⁸ Federal Ministry for Education and Research, *Anerkennung im Hochschulbereich*.

¹⁷⁰⁹ Federal Ministry for Education and Research, *Assessment of Higher Education Certificates*.

¹⁷¹⁰ Accessible on anabin.kmk.org (accessed July 23 2017).

¹⁷¹¹ Kulturminister Konferenz, *Information in English*.

¹⁷¹² Federal Ministry for Education and Research, *Assessment of Higher Education Certificates*.

¹⁷¹³ cf e.g. § 49 V *Landeshochschulgesetz NRW* (university law of North Rhine Westphalia).

¹⁷¹⁴ Council of Europe, *European Treaty Series (ETS)* no. 15.

¹⁷¹⁵ Council of Europe, *European Treaty Series (ETS)* no. 32.

¹⁷¹⁶ Council of Europe, *European Treaty Series (ETS)* no. 15.

¹⁷¹⁷ Council of Europe, *European Treaty Series (ETS)* no. 138.

diplomas. It deals with the recognition of qualifications from other German states and from foreign countries. The criteria of the ZAB are binding for North Rhine Westphalia.

9.1.3. Other Qualifications

Moreover, the *Gesetz über die Feststellung der Gleichwertigkeit von Berufsqualifikationen – Berufsqualifikationsgleichstellungsgesetz* (Law concerning the assessment of equalisation of professional qualifications, BQFG) which, acc. § 1 BQFG, aims is to improve the use of foreign qualifications for the German labour market and thus enable employment closely linked to the qualification. The law applies to everyone who acquired a professional qualification outside of Germany acc. § 2 BQFG.

The residence permit always refers to a concrete reason for residence.¹⁷¹⁸ One reason is employment, §§ 18-21 AufenthG. The permit states whether and how migrants from non-EU countries are allowed to work in Germany.¹⁷¹⁹ However, §§ 18-21 AufenthG request completed studies. They do not deal with the recognition of foreign qualifications but with immigration for the purpose of working in Germany after having fully qualified in a foreign country.

§ 17a AufenthG opens up the possibility of giving a permit of residence to an applicant who has a foreign qualification if it is necessary for him or her so that his qualification would be recognized after certain measures or further qualifications. However, this rule is not supposed to enable initial training, only further qualifications needed to reach the national standards for a specific employment. Therefore, § 17a AufenthG aims to simplify the immigration of qualified workers.¹⁷²⁰ The ascertainment of a lack of equality between the qualification and its German equivalent, e.g. according to the BQFG, is mandatory for issuing a permit following Art. 17a AufenthG.¹⁷²¹

9.2. Procedure

The responsible authority depends on the kind of qualification, e.g. the chambers of commerce are responsible for the recognition of craftsman, § 8 I no. 1 BQFG. If there is no responsible chamber, the states can decide on the responsible authority acc. § 8 II BQFG. The law differentiates between two types of profession: regulated and non-regulated.¹⁷²² To start a career in a regulated profession one must fulfil requirements by law, which set standards of qualification, § 3 V BQFG. First, one has to submit a request for recognition, § 4 I BQFG. The requirements for recognition are the proof of similar qualification and no main differences between the qualifications, § 4 I no. 1, 2. Recognition is not granted if there are major differences such as the lack of special skills, § 4 II BQFG. § 9 BQFG sets certain criteria to decide on the equivalence of a qualification (§ 9 I BQFG) as well criteria which prove a major difference (§ 9 II BQFG).

¹⁷¹⁸ Hailbronner, *Asyl- und Ausländerrecht* (3rd edn), 327.

¹⁷¹⁹ Hailbronner, *Asyl- und Ausländerrecht* (3rd edn), 331.

¹⁷²⁰ Kluth and Heusch, *Ausländerrecht*, § 17a para 2.

¹⁷²¹ *ibid* para 6.

¹⁷²² Kluth and Heusch, *Ausländerrecht*, § 17a para 9.

The administration will decide on the request within three months, § 6 III BQFG. The decision will be sent out in written form attached with an explanatory statement including the main differences, § 7 BQFG. Most important, is the information about possible measures to even out the differences. According to § 11 III BQFG, the applicant can choose between courses of instruction or an aptitude test. After successful recognition, the permit can be prolonged for up to a year to allow sufficient time for job hunting according to §. 17a IV AufenthG.¹⁷²³ After this period, the permit expires.

9.3. Conclusion

There are several ways for the recognition of foreign job qualifications in Germany depending on the type of qualification and especially its comparability to regulated German qualifications. The law differs between EU and non-EU migrants.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

One of the most important conditions for migrants' integration into society is their participation in political, social, professional and cultural debates. Political Participation includes every activity and action served to achieve, change or preserve power and influence on designing state or social facilities and existence.¹⁷²⁴ A German national can influence political decisions through elections, referenda, party and election campaign related activities as well as through exertion of pressure through demonstrations.¹⁷²⁵ Any strong restrictions are not possible as all these actions are protected by fundamental rights, such as freedom of assembly, association and movement acc. Art. 8, 9 I, 11 GG. As Germany is a country which attracts a large number of immigrants, the German legislation might partly open these possibilities for political participation also for migrants. It is in question if and if so, on which scale migrants' political participation is guaranteed or limited in the German legislation.

10.1. Constitutional and Legal Protection of Political Participation

A right to political activities is generally granted by the constitution. Most of the fundamental rights which protect the political participation are, however, not applicable for migrants, as they only entitle German nationals. The freedom of speech acc. Art. 5 I GG, which does entitle everybody including migrants, does in turn not guarantee an absolute right for political participation.¹⁷²⁶

¹⁷²³ Kluth and Heusch, *Ausländerrecht*, § 17a para 22.

¹⁷²⁴ Bergmann and Dienelt, *Ausländerrecht*, § 47 AufenthG para 6.

¹⁷²⁵ Uwe Andersen and Wichard Wolke, *Handwörterbuch des politischen Systems der Bundesrepublik Deutschland*, 550.

¹⁷²⁶ Bergmann and Dienelt, *Ausländerrecht*, § 47 AufenthG para 4.

§ 47 I 1 AufenthG states declaratory for all immigrants despite their legal status,¹⁷²⁷ that ‘foreigners may pursue political activities within the bounds of the prevailing general statutory provisions.’ This stands alongside protection of international treaties, such as Art. 10, 11 ECHR and Art. 19, 21, 22 International Covenant on Civil and Political Rights (ICCPR), securing freedom of expression, assembly and association on a European and international level.

Nevertheless, § 47 I, II AufenthG also limits the right for political activities as far as certain prerequisites apply. For example, political participation must not impair or endanger the development of informed political opinion, peaceful co-existence, public safety, law and order, or any other substantial interests of the Federal Republic of Germany, § 47 I 2 no 1 AufenthG, or support organisations, political movements or groups which have initiated, advocated or threatened attacks, § 47 II no 3 AufenthG. If this is the case, political participation cannot be absolutely restricted or prohibited, but only physical activities can be refused, always considering the principle of proportionality.¹⁷²⁸

10.2. Right to Vote Regulated in the German Legislation

The right to vote is guaranteed for every citizen in Art. 38 GG. As it is recorded in the Constitution, it is one of the main fundamental rights in Germany to secure the democratic structure. More than to secure the democracy, the right to vote is essential to recognise democratic values, which are established throughout the Constitution. Art. 20 II GG for example says: ‘All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.’ Consequently, being the only possible act of direct legitimation, elections are of central importance for the democracy.¹⁷²⁹

Art. 38 I GG clearly defines the right to vote by setting up different principals concerning the elections: ‘The representatives of the *Bundestag* (German Parliament) shall be elected in general, direct, free, equal and confidential elections. They shall be representatives of the people as a whole, not bound by orders and instructions, only by their conscience.’ Although Art. 38 GG does not prescribe a specific election system, it determines strict conditions for elections. But the stated principals must be defined. Relevant for participation is the obligation that the suffrage must be universal. According to the German Federal Supreme Court this means, that all citizens have a right to vote, which is independent of confession, education, sex, language, profession, income or political beliefs.¹⁷³⁰

However, according to the German Federal Supreme Court the right to vote is reserved for Germans: Art. 20 II GG does not only contain the principle of the sovereignty of the people, but it also defines who the people are, which exercises the state’s authority through elections, votes and special organs of legislative, executive and judiciary. Being a democratic state, Germany

¹⁷²⁷ Bergmann and Dienelt, *Ausländerrecht*, § 47 AufenthG para 3.

¹⁷²⁸ Bergmann and Dienelt, *Ausländerrecht*, § 47 AufenthG para 8.

¹⁷²⁹ Christoph Gröpl, *Staatsrecht I*, para 337.

¹⁷³⁰ German Federal Supreme Court [October 7 1981] Supreme Court Report Vol. 58, 202, 205.

cannot exist without a totality of persons which forms the nation from whom all state's authority derives, the people of the Federal Republic of Germany.¹⁷³¹

The determination of who is belonging to the German nation is stated in Art. 116 GG, saying 'Unless otherwise provided by a law, a German national within the meaning of this Constitution is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of December 31, 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.' As a result, the German citizenship is condition and connecting factor for the affiliation to the nation and its task to exercise the state's authority.¹⁷³² Hence, resulting from the sovereignty of the people acc. Art. 20 II GG, it is constitutive for the right to vote, that the voter belongs to a national population and is part of a demographic considered as a people.¹⁷³³ The underlying idea is that all people of a nation are suspected to act as a unity. The German national for example is united through the people's German origin or any other connection one may have to the German nation. Hence, the requirement to be a German does not result directly from the wording of Art. 38 II GG, but from the systematic connection with the sovereignty of the people acc. Art. 20 II GG and the nationality acc. Art. 116 I GG.

Another idea to classify the group of persons entitled to vote would be the differentiation according to whether one is directly affected or not, instead of the distinction according to one's origin. This would include migrants not being holder of the German citizenship but nevertheless being affected by the election. The problem, however, is that the process of realisation might become difficult, as those affected persons have to be filtered out for every single subject, which would lead to an inability to act.¹⁷³⁴ Therefore, the Constitution decided to legitimate an abstract, identic group as a nation depending on their citizenship.¹⁷³⁵

Concerning the migrants' right to vote, it is important to define whether migrants can be considered as citizens acc. Art. 116 I GG or not. Further regulations can be found in the *Staatsangehörigkeitsgesetz* (Nationality Act, StAG). According to § 3 StAG it is possible to acquire the German citizenship through different procedures as for example through birth (§ 4 StAG), explanation (§ 5 StAG) or naturalisation (§ 8 ff. StAG). Most interesting for migrants is the citizenship's acquirement through naturalisation.¹⁷³⁶ Other than naturalisation, which is only possible within strict conditions, there is no other possibility to acquire the German citizenship. Not being a holder of the German citizenship, one is not part of the electorate and therefore excluded from the central democratic form of participation.

10.3. EU-citizens' suffrage on municipal level

Nevertheless, there is one exception to this regulation: the EU-citizens' suffrage on municipal level. Due to the Maastricht Treaty of 1992 persons with a European Union member country's citizenship automatically have an EU-citizenship as well. Since 1995 acc. Art. 28 I 3 GG every

¹⁷³¹ German Federal Supreme Court [October 31 1990] Supreme Court Report Vol. 83, 37, 53.

¹⁷³² German Federal Supreme Court [October 31 1990] Supreme Court Report Vol. 83, 37, 56.

¹⁷³³ German Federal Supreme Court [October 31 1990] Supreme Court Report Vol. 83, 37, 53.

¹⁷³⁴ Gröpl, Staatsrecht I, para 253.

¹⁷³⁵ German Federal Supreme Court [October 31 1990] Supreme Court Report Vol. 83, 60.

¹⁷³⁶ see below.

holder of this EU-citizenship is in the same way as German citizens, allowed to participate in elections on local government level, such as the elections for district and municipal councils, district assemblies and mayors.¹⁷³⁷ Hence an opening up to participation of migrants in elections is discernible, but limited to EU-citizens, who make up only a small part of all migrants. Corresponding modifications of Art. 28 GG have been proposed, but have not been put into practice.¹⁷³⁸

10.4. *Ausländerbeiräte* (Advisory Council on Non-nationals)

Even if there is a limitation for migrants regarding the political participation through elections, there is the possibility to influence politics on local government level through elections in a democratic legitimated way: advisory Councils on immigrants summarise all different kinds of committees and organs which represent migrants' interests.¹⁷³⁹ As they are regulated on a federal state level, their composition and tasks differ within Germany. In principle, Advisory Councils on Non-nationals pursue the goal to be involved in the decision-making process while not having any decision-making powers. This happens through debating on subjects regarding the migrants' living, such as multilingualism, discrimination and migrant laws.¹⁷⁴⁰

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

A German is generally a person who possesses German citizenship, acc. Art. 116 GG. If migrants want to become a German national, so that they can benefit from all rights reserved for Germans, they have to receive German citizenship.

11.1. Naturalisation

The German legislation provides the possibility of naturalisation (*Einbürgerung*) in the *Staatsangehörigkeitsgesetz*. Naturalisation is the act of investing a non-national with the status of a national in a given state.¹⁷⁴¹

11.1.1. Brief Historical Outline

As the preconditions and basic principles changed a lot in the last few hundred years, a brief historical summarise must be outlined.

Since 1870 the principle of qualification for citizenship through descent and heredity, the *ius sanguinis*, is anchored in the *Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit* (German Federation's Federation and Nationality Act) as well as in the

¹⁷³⁷ Henning Storz and Bernhard Wilmes, *Grundlagendossier Migration Politische Partizipation in der Kommune*, ch 1 pt 2.

¹⁷³⁸ *ibid* ch 1 pt 3.

¹⁷³⁹ *ibid* ch 2 pt 1.

¹⁷⁴⁰ *ibid* ch 2 pt 1.

¹⁷⁴¹ Encyclopaedia Britannica, *Naturalization*.

following laws on citizenship.¹⁷⁴² It was in everybody's opinion that one can be German, but one cannot become German.¹⁷⁴³ In 1999 the law on citizenship was reformed and from January 1 2000 on the *Staatsangehörigkeitsgesetz* came into force, as it still is until today. In addition to the descending principle, also the territorial principle (*ius soli*) was now determined in the legislation. Henceforth it was possible, that the citizenship was conferred also to children born in Germany to foreign parents.¹⁷⁴⁴

11.1.2. The Staatsangehörigkeitsgesetz (Nationality Act)

The possibilities of acquisition of the German citizenship are described in § 3 StAG. This includes the acquisition through birth in Germany, meaning that children to foreign parents get the German citizenship automatically, if one of the parents is resident in Germany for at least eight years and has a permanent residence permit. In addition to an automatic acquisition, the StAG provides the opportunity of naturalisation, which is mainly relevant for immigrants. Two different options of naturalisation are provided: the naturalisation at discretion acc. § 8 StAG and at demand acc. § 10 StAG.

11.1.2.1. Naturalisation at discretion acc. § 8 StAG

Acc. § 8 I StAG an immigrant lawfully and habitually resident in the country can be naturalised at his request, if the preconditions are fulfilled. First condition is that the non-national has to be capable of acting acc. § 80 I AufenthG, meaning that he has to be of age and must not be legally incompetent, or otherwise legally represented. In addition, no reason for deportation acc. §§ 53, 54, 55 II no 1-4 AufenthG must not be fulfilled. These could be the endangering of the peace, the basic free and democratic order or other considerable interests of the Federal Republic of Germany or the conviction for criminal acts. Furthermore, one has to have found one's own apartment or accommodation and the immigrant has to be capable of providing for himself and his relatives.

Legal consequence of the preconditions' fulfilment is not a claim to become a German citizenship, it rather just opens the possibility to confer the citizenship. In the responsible body's discretion, the naturalisation can take place if in the individual case a public interest in the applicant's naturalisation can be identified.¹⁷⁴⁵

Within these conditions an immigrant who is not resistant in the country can still apply for the German citizenship, if there are ties with Germany that justify a naturalisation, § 14 StAG.

11.1.2.2. Naturalisation at demand acc. § 10 StAG

The second and as it does not depend on one's discretion the more certain possibility for naturalisation is the naturalisation at demand acc. § 10 StAG. The norm's structure is similar to the one regulating the naturalisation at discretion, but in addition the immigrant has to be lawfully and habitually resident in the country for at least eight years and not only in the moment of

¹⁷⁴² Kay Hailbronner and Günter Renner, *Staatsangehörigkeitsrecht*, 8 para 7f.

¹⁷⁴³ Vera Hanewinkel and Jochen Oltmer, *Staatsbürgerschaft und Entwicklung der Einbürgerungszahlen in Deutschland*, ch 1.

¹⁷⁴⁴ Hailbronner and Renner, *Staatsangehörigkeitsrecht*, 28 para 47.

¹⁷⁴⁵ Hailbronner and Renner, *Staatsangehörigkeitsrecht*, 461.

application. This period can be reduced to seven years after a successful participation in an integration course or even down to six years in case of specific contributions towards integration, § 10 III StAG. Besides the length of stay within Germany, § 10 StAG states other preconditions than § 8 StAG: the immigrant has to actively confess himself to the basic free and democratic order of the Federal Republic of Germany and he also has to explain his loyalty to the German state and its roots. He also must be able to guarantee his own subsistence as well as the subsistence of relatives entitled to his maintenance without resource to public assistance or unemployment aids. Besides his duty to have a residence permit, he has to waive his former citizenship to avoid multiple citizenship. He also must not have been convicted for a criminal act. At last preconditions, the applicant must have satisfactory German language skills and legal and social order knowledge as well as knowledge on German living conditions have to be proven in an *Einbürgerungstest* (nationality test).

Provided that acc. § 11 StAG nothing affects the eligibility, the applicant will get the German citizenship. Reasons to be excluded from the entitlement acc. § 10 StAG are specific indications of a missing loyalty to the German state and its principles or the appeal for hate and the inciting arbitrary measures against parts of the population.

11.1.2.3. Procedure

After putting in an application for the citizenship, the responsible body proves the preconditions and, eventually, exercises its discretion. If a positive decision is reached, the responsible body will issue a certificate of naturalisation acc. § 16 S. 1 StAG. Before its surrendering the applicant has to commit solemnly as stated in § 16 S. 2 StAG: 'I solemnly declare that I will adhere to the constitution and laws of the Federal Republic of Germany, and will refrain from undertaking anything that may harm the Federal Republic of Germany.'

Acc. § 38 StAG costs will be charged. The naturalisation fee amounts to 255 Euro and is reduced for children included in the naturalisation to 51 Euro.

11.2. Dual Nationality

Germany pursues the principle of avoiding multiple citizenship, which means the holding of more than one nationality. In general, International Law does not forbid dual or plural citizenship.¹⁷⁴⁶ As the International Law however sets only very wide limits to the National Act's arrangements, the regulations regarding acquisition and loss of a citizenship can differ a lot and as a result, the coincidence of different reasons for acquiring a citizenship can lead to plural nationality.¹⁷⁴⁷ Also naturalisation can lead to plural citizenship: for example, citizens of another EU-country are excepted from the obligation to waive their former nationality. If it's not possible to give up the former citizenship or just possible in harsh conditions, an exception of this principle is also accepted, § 12 StAG.

Besides, while reforming the StAG in 1999 there has been discussion to accept dual citizenship in general and to give up the principle of avoiding plural citizenship. Relevant plans though failed

¹⁷⁴⁶ Hailbronner and Renner, *Staatsangehörigkeitsrecht*, 114 para 4.

¹⁷⁴⁷ Hailbronner and Renner, *Staatsangehörigkeitsrecht*, 113 para 1f.

because of resistance from the Opposition.¹⁷⁴⁸ Politics compromised on the *Optionsmodell* (option model) which applies to children whose parents are not both German citizens acc. §§ 4 III, 40b StAG.¹⁷⁴⁹ As mentioned before, children born in Germany to foreign parents will automatically get the German nationality by *ius soli*, if one parent has been living in Germany for at least eight years and has a permanent residence permit, § 4 III StAG.¹⁷⁵⁰ § 40b StAG is the corresponding transitional arrangement. In addition, acc. § 29 I no. 2 StAG the *Optionspflicht* (obligation to option) occurs only if the person concerned did not grow up in the country acc. § 29 Ia StAG. In there it is determined that multiple citizenship holders are considered to be grown up in the country, if he either is habitually resident in the country in the last eight years or attended school for six years in the country, or has a school-leaving qualification or a professional education acquired or completed in the country. Otherwise, if the person in his individual case has a comparable close relation with Germany and the *Optionspflicht* would mean a particular hardship after the case's circumstances, the comprehensive clause acc. § 29 Ia 2 StAG can find application and the person is considered to be grown up in Germany. Next to the condition that one must not be grown up in the country, one must not either be holder of the foreign citizenship of a EU-country or Switzerland (which is a similar exception as the one for EU-citizens regarding the waiver of the foreign citizenship). As soon as the person receives an advice regarding his obligation to plead acc. § 29 V 5 StAG after the end of his 21st birthday, all conditions are fulfilled and one is obliged to option. In this moment, the corresponding procedure is introduced and can be continued in three different possibilities: the obliged person can decide for the foreign nationality and will consequently lose his German citizenship, § 29 II StAG, or he can decide for the German nationality and provably waives the foreign citizenship, § 29 III StAG. Otherwise, he can apply for upholding the German citizenship next to the foreign one if the foreign citizenship's waiver is not possible or unreasonable, § 29 III 3 StAG. This is the case if the foreign state's institutions are not capable of acting while its continued existence or a communication with the foreign state is practically impossible.¹⁷⁵¹ If the obliged person will not do any action, he will lose the German nationality.¹⁷⁵²

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

In this part of the report the various EU-level migrant integration programmes will be highlighted in which Germany participates.

Apart from the numerous national programmes, such as foundations, integration courses and migration consultancy offices for adult migrants, Germany is assisted by a lot EU-programs.¹⁷⁵³

¹⁷⁴⁸ Hanewinkel and Oltmer, Staatsbürgerschaft und Entwicklung der Einbürgerungszahlen in Deutschland, ch 1.

¹⁷⁴⁹ Rainer Hoffmann and Stephan Hocks, *Ausländerrecht*, ch 7 § 29 para 1.

¹⁷⁵⁰ Hailbronner and Renner, Staatsangehörigkeitsrecht, 289 para 24.

¹⁷⁵¹ Hoffmann and Hocks, *Ausländerrecht*, ch 7 § 29 para 17.

¹⁷⁵² Hoffmann and Hocks, *Ausländerrecht*, ch 7 § 29 para 13.

¹⁷⁵³ Popular national foundations are i.e. "Aktion Mensch" and "Robert Bosch Stiftung".

12.1. Asylum, Migration and Integration Fund (AMIF)

The Asylum, Migration and Integration Fund (AMIF) ran between 2010 and 2014, covering the following the main themes:¹⁷⁵⁴

- Stabilisation and development of the common European asylum-system, including the extern dimensions,
- Integration of third-country citizens (non-EU) and legal migration – return to origin country

The statutory source for this fund are the „Regulation laying down general provisions on the Asylum, Migration and Integration Fund”¹⁷⁵⁵ and the “Regulation establishing the Asylum, Migration and Integration Fund”.¹⁷⁵⁶ With regard to contents, the program is split into three categories: asylum, integration and the return or reintegration in the origin country. To make sure that the subsidies are supplied in due form, there are a lot of liabilities that the participating countries must recognise. For example, the countries are obliged to prove and justify the expenses in written form.

Another way to control the correct distribution of subsidies are controls of the local executive organisations through a responsible department of the EU, and obligatory reports.¹⁷⁵⁷

The AMIF works in a way so that corporate bodies covered by private or public law or international organisations that want to start a project can apply for getting EU-subsidies from the AMIF. The AMIF budget comprises 2752 million EUR.

Germany was assigned 208 million EUR. The country plans to invest approximately 60 million EUR in order to establish the Common European Asylum System (CEAS), which will help to improve the asylum procedures in Germany, making them faster and more effective. 92 million EUR of the amount shall be invested in the scope of integration of third-country citizens and legal immigration with the target to ensure the immigrants equal opportunities and access to education, personal fulfilment and participation at the workplace and in society. Furthermore, Germany plans to invest 45 million EUR to the area of returnees especially for consultation, assistance in returning and reintegration.¹⁷⁵⁸

12.2. Rights, Equality and Citizenship Program (REC)

The Rights, Equality and Citizenship program is based on the “EU-regulation establishing a rights, equality and citizenship program”¹⁷⁵⁹ during the period 2014 to 2020. It supports arrangements for the creation of a European Community, in which the equalisation and the treaty on European Union a Treaty on the Function of the European Union, of the Charter of Fundamental Rights and of the ECHR should be saved and supported.¹⁷⁶⁰ Since 2014, the

¹⁷⁵⁴ EU Fördermittel Information Platform, *Asyl-, Migrations- und Integrationsfonds*.

¹⁷⁵⁵ Regulation EU No. 514/2014.

¹⁷⁵⁶ Regulation EU No. 516/2014.

¹⁷⁵⁷ BAMF, *Berichtspflichten*.

¹⁷⁵⁸ BAMF, *Nationales Programm*

¹⁷⁵⁹ Regulation EU No. 1381/2013.

¹⁷⁶⁰ Regulation EU No. 1381/2013 Art. 3.

following three programs are united for simplification under the REC: The program “Basic Rights and EU Citizenship”, “Daphne III” and “Employment and Social Solidarity”.

The program contains nine specific objectives:¹⁷⁶¹

- Promote non-discrimination
- Combat racism, xenophobia, homophobia and other forms of intolerance
- Promote equality between women and men and gender mainstreaming
- Prevent violence against children, young people, women and other groups at risk (Daphne)
- Promote the rights of child
- Ensure the highest level of data protection
- Promote the rights deriving from Union citizenship
- Enforce consumer rights

The budget of this program contains 439 million EUR¹⁷⁶² and the type of actions financed by the program to transact the purposes are:¹⁷⁶³

- training activities (staff exchanges, workshops, development of training modules)
- mutual learning, cooperation activities, exchange of good practices, peer reviews, development of ICT tools
- awareness-raising activities, dissemination, conferences
- support for main actors (key European NGOs and networks, Member States’ authorities implementing Union law)
- analytical activities (studies, data collection, development of common methodologies, indicators, surveys, preparation of guides)

Pursuant to Regulation EU No. 1381/2013 Preamble (35):

In the implementation of the Programme, the Commission should take into account the objective of fair geographic distribution of funds, and should provide assistance in those Member States where the number of funded actions is relatively low. When implementing the Programme, the Commission should also take into account whether, according to internationally recognised indices/monitoring bodies, action needs to be taken in some Member States in order to ensure the effective achievement of the objectives of the Programme, and should support action from the Member States or civil society in those areas.

Unfortunately, it was not possible to discover the accurate details to the amounts regarding this fund. The questions how much Germany received, or how Germany benefits from this fund, could not be investigated because of a lack of providing these information on the part of the EU.

12.3. Fund for European Aid to the Most Deprived (FEAD)

The European Aid Fund, based on Regulation EU No.223/2014, will run between 2014 and 2020 and has a budget of 3,8 billion EUR.¹⁷⁶⁴

¹⁷⁶¹ Regulation EU No. 1381/2013 Art. 4.

¹⁷⁶² Regulation EU No. 1381/2013 Art. 7 I.

¹⁷⁶³ Regulation EU No. 1381/2013 Art. 5.

¹⁷⁶⁴ Regulation EU No. 223/2014 Art. 6 I.

The target group of the fund are the most deprived non-natives, their children and homeless people or people being at risk of homelessness.¹⁷⁶⁵

The Fund supports the EU-states through the provision of material aid for the most deprived people. (food, clothes, other provisions for personal use). The fund also supports these people with arrangements relating to rehabilitation, to help the people overcoming poverty. National agencies are also contributing to the Fund with material assistance, helping to integrate the people.¹⁷⁶⁶

The FEAD is assisting in the creation of additional jobs in the area of advisers in local helpdesks. These helpdesks help the concerned people to participate in the existing arrangements, such as language courses and medical advice. In particular, children of the immigrating people should get the possibility to get education and social care. To transfer these targets, the Fund is cooperating with the Federal Ministry of Families, the Elderly, Women and the Youth and the Federal Ministry of Labour and Social Affairs.¹⁷⁶⁷

The fund is not providing mere material effort. An essential requirement for getting support is a cooperation agreement between councils and facilities of public welfare or other charitable facilities.¹⁷⁶⁸

Germany has three key activities and national agencies or associations that are addressed to implement these activities. The Key Activity 1 – addressing, consultancy and information for the most deprived immigrated EU-citizens which supports the access to the regular consulting services – has established 57 national agencies in Germany.

The Key Activity 2 contains addressing, consultancy and information for the most deprived migrated EU-citizens and their children which shall provide the access to early education offers and social support. It is implemented by 31 national agencies across Germany. 35 national agencies are responsible for Key Activity 3 which deals with addressing, consultancy and information for homeless person and person at the risk of homelessness providing regular offers of assistance.¹⁷⁶⁹

12.4. Europe for Citizens¹⁷⁷⁰

The Europe for Citizens program is based on the Regulation EU No.390/2014 and has a budget of 185.468.000 EUR¹⁷⁷¹. This is another program in which Germany participates.

One of the main purposes is to contribute to citizens' understanding of the Union, its history and diversity.

¹⁷⁶⁵ Federal Ministry of Labour and Social Affairs, *Europäischer Hilfsfonds für die am stärksten benachteiligten Personen in Deutschland (EHAP)*.

¹⁷⁶⁶ Regulation EU No. 223/2014 Art. 3 I.

¹⁷⁶⁷ Federal Ministry of Labour and Social Affairs, *Europäischer Hilfsfonds für die am stärksten benachteiligten Personen in Deutschland (EHAP)*.

¹⁷⁶⁸ Federal Ministry of Labour and Social Affairs, *FAQ*, 5. FAQ regarding the Regulation to the Implementation of the FEAD, p.5.

¹⁷⁶⁹ Federal Ministry of Labour and Social Affairs, *Europäischer Hilfsfonds für die am stärksten benachteiligten Personen in Deutschland (EHAP)*.

¹⁷⁷⁰ European Commission, *Europa für Bürgerinnen und Bürger*.

¹⁷⁷¹ Regulation EU No. 390/2014 Art. 12 I.

Another purpose is to foster European citizenship and to improve conditions for civic and democratic participation at Union level.¹⁷⁷²

The program finances mutual learning and cooperation activities, structural support for organisations, union level analytical activities and awareness raising and dissemination activities.¹⁷⁷³

12.5. European Social Fund

The European Social Fund (ESF) has a total sum of 120.461.019.673 EUR. It is based on the Regulation EU No. 1304/2013 and is one of the most important EU programmes.

The ESF promotes employment and supports people in gaining access to the labour market and fair career prospects. The four main aims are:¹⁷⁷⁴

- promoting sustainable and quality employment and supporting labour mobility
- promoting social inclusion, combating poverty and any discrimination
- investing in education, training and vocational training for skills and life-long learning
- enhancing institutional capacity of public authorities and stakeholders and efficient public administration

Recently, there have been tens of thousands of ESF-projects in Germany investing in the aims of the ESF.¹⁷⁷⁵ The ESF capital expenditures is provided by 17 operational programmes, one for each state and another on the federal level. At national level, the budget is split into three main priorities: employment, social inclusion and education.

Within Germany, there are different levels of priority between East and West Germany and also between the different regions to accommodate the varying circumstances and necessities.¹⁷⁷⁶

Migrants can be affected by the problems of integration in the labour market because of barrier of language, so they are one of the target groups of this EU programme.¹⁷⁷⁷ For implementing the targets Germany submitted a federal operational programme to the ES, which was approved by the European-Commission on the 21. October. Under the direction of the Federal Ministry of Labour and Social Affairs the ESF- Federal Operational Programme is implemented together with four other Federal Ministries: The Federal Ministry for Economics and Technology, for Education and Science, for Family, Senior Citizens and the Youth and the Federal Ministry for Environment, Nature Conservation, Nuclear Safety.¹⁷⁷⁸

During the ESF period from 2014 to 2020 an amount of 12.570.485.076 EUR has been allocated to Germany.¹⁷⁷⁹

¹⁷⁷² Regulation EU No. 390/2014 Art. 1 II.

¹⁷⁷³ Regulation EU No. 390/2014 Art. 3 I, II.

¹⁷⁷⁴ Regulation EU No. 1304/2013 Art. 3 I.

¹⁷⁷⁵ Europäischer Sozialfonds für Deutschland (ESF), *Europa für Bürgerinnen und Bürger*.

¹⁷⁷⁶ European Commission, *Der Europäische Sozialfonds in Deutschland*.

¹⁷⁷⁷ Regulation EU No. 1304/2013 Art. 2 III.

¹⁷⁷⁸ Europäischer Sozialfonds für Deutschland (ESF), *Operationelle Programme im Rahmen des Ziels „Investitionen in Wachstum und Beschäftigung“*.

¹⁷⁷⁹ European Social Fund (ESF), *ESF Budget by Country: 2014-2020*.

Conclusions

The report elaborates to which extent the German government supports migrants to ensure fundamental human rights and that it acknowledges the necessity integration.

Even often considered as obvious it is important to state that receiving asylum is a right granted by the German Constitution and that its guaranteeing therefore is one of the German government's most important tasks.

Most of German laws and regulations regarding migrants are set up in accordance to European law. This results from the German Constitution's openness regarding commitment of national law to international law and the subsequent obligation, to interpret national law in conformity with international legal obligations. In addition, Art. 46 ECHR binds member states and all its authorities to decisions and jurisdiction of the ECtHR. On this basis, the report underlines the importance of distinguishing between EU-migrants and non-EU-migrants, as European law often grants special rights for EU residents. Free movement and freedom of residence within the European Union for example are granted to every EU-citizen, while other foreigners need visa as a matter of principle.

The right of asylum is closely linked with other fundamental rights secured by the German Constitution, such as the right of life, physical integrity and health, right for education and, undeniably, the provision of human dignity. Therefore, the report also elaborates different regulations regarding access to health care and education. While examining these regulations, it was repeatedly found that fundamental rights are only granted to legal migrants. Illegal migrants often have to fear deportation so that they prefer to waive on their fundamental human rights, though it is important to clarify, that this waiving is more of forced nature than based on free will.

The report also aims to describe asylum proceedings as well as its administration. There are different sections within the administration, however the most important remains to be the BAMF, which is described in detail within the report.

Furthermore, the report refers to some statistical data and tries to explain considerable changings in migration to Germany. The significant increase of asylum request in 2014, the following reactionary measures in 2016 and the resulting decrease in asylum requests in 2017 are important developments have to be highlighted.

An issue which comes along integration is the question, how much political participation is granted to migrants. Even though fundamental rights securing the possibility to have a say in political matters are granted for everybody and therefore also to migrants, they do not guarantee an absolute right for political participation. Full participation can only be guaranteed through the right of vote. The report elaborates the reasons for why the right to vote is limited to Germans and not also granted to migrants. As it is a requirement for the right of vote, the report also discusses the possibility for migrants to become a German national through acquiring the German citizenship (naturalisation).

The report finishes in giving a brief description on different national and European programmes aiming to integrate migrants more deeply, so as to reach Germany's objective of full integration.

Table of Legislation

Grundgesetz (GG) – German Constitution (Basic Law for the Federal Republic of Germany)

<p>§ 16a GG</p>	<p>Asylrecht</p> <p>(1) Politisch Verfolgte genießen Asylrecht.</p> <p>(2) Auf Absatz 1 kann sich nicht berufen, wer aus einem Mitgliedstaat der Europäischen Gemeinschaften oder aus einem anderen Drittstaat einreist, in dem die Anwendung des Abkommens über die Rechtsstellung der Flüchtlinge und der Konvention zum Schutze der Menschenrechte und Grundfreiheiten sichergestellt ist. Die Staaten außerhalb der Europäischen Gemeinschaften, auf die die Voraussetzungen des Satzes 1 zutreffen, werden durch Gesetz, das der Zustimmung des Bundesrates bedarf, bestimmt. In den Fällen des Satzes 1 können aufenthaltsbeendende Maßnahmen unabhängig von einem hiergegen eingelegten Rechtsbehelf vollzogen werden.</p> <p>(3) Durch Gesetz, das der Zustimmung des Bundesrates bedarf, können Staaten bestimmt werden, bei denen auf Grund der Rechtslage, der Rechtsanwendung und der allgemeinen politischen Verhältnisse gewährleistet erscheint, dass dort weder politische Verfolgung noch unmenschliche oder erniedrigende Bestrafung oder Behandlung stattfindet. Es wird vermutet, dass ein Ausländer aus einem solchen Staat nicht verfolgt wird, solange er nicht Tatsachen vorträgt, die die Annahme begründen, dass er entgegen dieser Vermutung politisch verfolgt wird.</p> <p>(4) Die Vollziehung aufenthalts-</p>	<p>Right of Asylum</p> <p>(1) Persons persecuted on political grounds shall have the right of asylum.</p> <p>(2) Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph, measures to terminate an applicant's stay may be implemented without regard to any legal challenge that may have been instituted against them.</p> <p>(3) By a law requiring the consent of the Bundesrat, states may be specified in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists. It shall be presumed that a foreigner from such a state is not persecuted, unless he presents evidence justifying the conclusion that, contrary to this presumption, he is persecuted on political grounds.</p>
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	<p>beendender Maßnahmen wird in den Fällen des Absatzes 3 und in anderen Fällen, die offensichtlich unbegründet sind oder als offensichtlich unbegründet gelten, durch das Gericht nur ausgesetzt, wenn ernstliche Zweifel an der Rechtmäßigkeit der Maßnahme bestehen; der Prüfungsumfang kann eingeschränkt werden und verspätetes Vorbringen unberücksichtigt bleiben. Das Nähere ist durch Gesetz zu bestimmen.</p> <p>(5) Die Absätze 1 bis 4 stehen völkerrechtlichen Verträgen von Mitgliedstaaten der Europäischen Gemeinschaften untereinander und mit dritten Staaten nicht entgegen, die unter Beachtung der Verpflichtungen aus dem Abkommen über die Rechtsstellung der Flüchtlinge und der Konvention zum Schutze der Menschenrechte und Grundfreiheiten, deren Anwendung in den Vertragsstaaten sichergestellt sein muß, Zuständigkeitsregelungen für die Prüfung von Asylbegehren einschließlich der gegenseitigen Anerkennung von Asylentscheidungen treffen.</p>	<p>(4) In the cases specified by paragraph (3) of this Article and in other cases that are plainly unfounded or considered to be plainly unfounded, the implementation of measures to terminate an applicant's stay may be suspended by a court only if serious doubts exist as to their legality; the scope of review may be limited, and tardy objections may be disregarded. Details shall be determined by a law.</p> <p>(5) Paragraphs (1) to (4) of this Article shall not preclude the conclusion of international agreements of member states of the European Communities with each other or with those third states which, with due regard for the obligations arising from the Convention Relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms, whose enforcement must be assured in the contracting states, adopt rules conferring jurisdiction to decide on applications for asylum, including the reciprocal recognition of asylum decisions.</p>
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Asylgesetz (AsylG) – Asylum Act

<p>§ 3 AsylG</p>	<p>Zuerkennung der Flüchtlingseigenschaft</p> <p>(1) Ein Ausländer ist Flüchtling im Sinne des Abkommens vom 28. Juli 1951 über die Rechtsstellung der Flüchtlinge (BGBl. 1953 II S. 559, 560), wenn er sich</p> <ol style="list-style-type: none"> 1. aus begründeter Furcht vor Verfolgung wegen seiner Rasse, Religion, Nationalität, politischen Überzeugung oder Zugehörigkeit zu 	<p>Recognition of refugee status</p> <p>(1) A foreigner is a refugee as defined in the Convention of 28 July 1951 on the legal status of refugees (Federal Law Gazette II, 559, 560) if he,</p> <ol style="list-style-type: none"> 1. owing to well-founded fear of persecution in his country of origin on account of his race, religion, nationality, political opinion or membership of a particular social group, 2. resides outside the country (country
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<p>einer bestimmten sozialen Gruppe</p> <p>2. außerhalb des Landes (Herkunftsland) befindet,</p> <p>a) dessen Staatsangehörigkeit er besitzt und dessen Schutz er nicht in Anspruch nehmen kann oder wegen dieser Furcht nicht in Anspruch nehmen will oder</p> <p>b) in dem er als Staatenloser seinen vorherigen gewöhnlichen Aufenthalt hatte und in das er nicht zurückkehren kann oder wegen dieser Furcht nicht zurückkehren will.</p> <p>(2) Ein Ausländer ist nicht Flüchtling nach Absatz 1, wenn aus schwerwiegenden Gründen die Annahme gerechtfertigt ist, dass er</p> <p>1. ein Verbrechen gegen den Frieden, ein Kriegsverbrechen oder ein Verbrechen gegen die Menschlichkeit begangen hat im Sinne der internationalen Vertragswerke, die ausgearbeitet worden sind, um Bestimmungen bezüglich dieser Verbrechen zu treffen,</p> <p>2. vor seiner Aufnahme als Flüchtling eine schwere nichtpolitische Straftat außerhalb des Bundesgebiets begangen hat, insbesondere eine grausame Handlung, auch wenn mit ihr vorgeblich politische Ziele verfolgt wurden, oder</p> <p>3. den Zielen und Grundsätzen der Vereinten Nationen zuwidergehandelt hat.</p> <p>Satz 1 gilt auch für Ausländer, die andere zu den darin genannten Straftaten oder Handlungen angestiftet oder sich in sonstiger Weise daran beteiligt haben.</p> <p>(3) Ein Ausländer ist auch nicht Flüchtling nach Absatz 1, wenn er den Schutz oder Beistand einer Organisation</p>	<p>of origin)</p> <p>a) whose nationality he possesses and the protection of which he cannot, or, owing to such fear does not want to avail himself of, or</p> <p>b) where he used to have his habitual residence as a stateless person and where he cannot, or, owing to said fear, does not want to return.</p> <p>(2) A foreigner shall not qualify as a refugee under subsection 1 where there are serious reasons to believe that he</p> <p>1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments drawn up for the purpose of establishing provisions regarding such crimes,</p> <p>2. committed a serious non-political crime outside the federal territory before being admitted as a refugee, in particular a brutal act, even if it was supposedly intended to pursue political aims, or</p> <p>3. acted in violation of the aims and principles of the United Nations.</p> <p>Sentence 1 shall apply also to foreigners who have incited others to commit the crimes or acts listed there or otherwise been involved in such crimes or acts.</p> <p>(3) Nor shall a foreigner be a refugee under subsection 1 if he enjoys the protection or assistance of an organization or institution of the United Nations, with the exception of the United Nations High Commissioner for Refugees under Article 1, Section D of the Convention relating to the status of refugees. Subsections (1) and (2) shall apply if such protection or assistance is no longer provided, without having</p>
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	<p>oder einer Einrichtung der Vereinten Nationen mit Ausnahme des Hohen Kommissars der Vereinten Nationen für Flüchtlinge nach Artikel 1 Abschnitt D des Abkommens über die Rechtsstellung der Flüchtlinge genießt. Wird ein solcher Schutz oder Beistand nicht länger gewährt, ohne dass die Lage des Betroffenen gemäß den einschlägigen Resolutionen der Generalversammlung der Vereinten Nationen endgültig geklärt worden ist, sind die Absätze 1 und 2 anwendbar.</p> <p>(4) Einem Ausländer, der Flüchtling nach Absatz 1 ist, wird die Flüchtlingseigenschaft zuerkannt, es sei denn, er erfüllt die Voraussetzungen des § 60 Abs. 8 Satz 1 des Aufenthaltsgesetzes oder das Bundesamt hat nach § 60 Absatz 8 Satz 3 des Aufenthaltsgesetzes von der Anwendung des § 60 Absatz 1 des Aufenthaltsgesetzes abgesehen.</p>	<p>finally clarified the situation of those affected in accordance with the relevant resolutions of the General Assembly of the United Nations.</p> <p>(4) A foreigner who is a refugee under subsection 1 shall be granted refugee status unless he meets the requirements of Section 60 (8), first sentence, of the Residence Act or the Federal Office has decided not to apply Section 60 (1) of the Residence Act pursuant to Section 60 (8), third sentence, of the Residence Act.</p>
<p>§ 4 AsylG</p>	<p>Subsidiärer Schutz</p> <p>(1) Ein Ausländer ist subsidiär Schutzberechtigter, wenn er stichhaltige Gründe für die Annahme vorgebracht hat, dass ihm in seinem Herkunftsland ein ernsthafter Schaden droht. Als ernsthafter Schaden gilt:</p> <ol style="list-style-type: none"> 1. die Verhängung oder Vollstreckung der Todesstrafe, 2. Folter oder unmenschliche oder erniedrigende Behandlung oder Bestrafung oder 3. eine ernsthafte individuelle Bedrohung des Lebens oder der Unversehrtheit einer Zivilperson infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen bewaffneten Konflikts. 	<p>Subsidiary protection</p> <p>(1) A foreigner shall be eligible for subsidiary protection if he has shown substantial grounds for believing that he would face a real risk of suffering serious harm in his country of origin. Serious harm consists of:</p> <ol style="list-style-type: none"> 1. death penalty or execution, 2. torture or inhuman or degrading treatment or punishment, or 3. serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. <p>(2) A foreigner shall not be eligible for subsidiary protection pursuant to subsection 1, if there are serious grounds to believe that he</p>

<p>(2) Ein Ausländer ist von der Zuerkennung subsidiären Schutzes nach Absatz 1 ausgeschlossen, wenn schwerwiegende Gründe die Annahme rechtfertigen, dass er</p> <ol style="list-style-type: none"> 1. ein Verbrechen gegen den Frieden, ein Kriegsverbrechen oder ein Verbrechen gegen die Menschlichkeit im Sinne der internationalen Vertragswerke begangen hat, die ausgearbeitet worden sind, um Bestimmungen bezüglich dieser Verbrechen festzulegen, 2. eine schwere Straftat begangen hat, 3. sich Handlungen zuschulden kommen lassen hat, die den Zielen und Grundsätzen der Vereinten Nationen, wie sie in der Präambel und den Artikeln 1 und 2 der Charta der Vereinten Nationen (BGBl. 1973 II S. 430, 431) verankert sind, zuwiderlaufen oder 4. eine Gefahr für die Allgemeinheit oder für die Sicherheit der Bundesrepublik Deutschland darstellt. <p>Diese Ausschlussgründe gelten auch für Ausländer, die andere zu den genannten Straftaten oder Handlungen anstiften oder sich in sonstiger Weise daran beteiligen.</p> <p>(3) Die §§ 3c bis 3e gelten entsprechend. An die Stelle der Verfolgung, des Schutzes vor Verfolgung beziehungsweise der begründeten Furcht vor Verfolgung treten die Gefahr eines ernsthaften Schadens, der Schutz vor einem ernsthaften Schaden beziehungsweise die tatsächliche Gefahr eines ernsthaften Schadens; an die Stelle der Flüchtlingseigenschaft tritt der subsidiäre Schutz.</p>	<ol style="list-style-type: none"> 1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes, 2. has committed a serious crime, 3. is guilty of acts contrary to the objectives and principles of the United Nations, as enshrined in the Preamble and Articles 1 and 2 of the Charter of the United Nations (Federal Law Gazette 1973 II, pp. 430, 431), or 4. represents a risk to the general public or to the security of the Federal Republic of Germany. <p>These grounds for exclusion shall apply also to foreigners who incite others to commit the crimes or acts listed above or are otherwise involved in such crimes or acts.</p> <p>(3) Sections 3c to 3e shall apply accordingly. Persecution, fear of persecution or the well-founded fear of persecution shall be replaced by the fear of serious harm, the protection against serious harm or the real risk of serious harm; the refugee status shall be replaced by subsidiary protection.</p>
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<p>§ 5 AsylG</p>	<p>§ 5 Bundesamt</p> <p>(1) Über Asylanträge entscheidet das Bundesamt für Migration und Flüchtlinge (Bundesamt). Es ist nach Maßgabe dieses Gesetzes auch für ausländerrechtliche Maßnahmen und Entscheidungen zuständig.</p> <p>(2) Das Bundesministerium des Innern bestellt den Leiter des Bundesamtes. Dieser sorgt für die ordnungsgemäße Organisation der Asylverfahren.</p> <p>(3) Der Leiter des Bundesamtes soll bei jeder Zentralen Aufnahmeeinrichtung für Asylbewerber (Aufnahmeeinrichtung) mit mindestens 1 000 dauerhaften Unterbringungsplätzen in Abstimmung mit dem Land eine Außenstelle einrichten. Er kann in Abstimmung mit den Ländern weitere Außenstellen einrichten.</p> <p>(4) Der Leiter des Bundesamtes kann mit den Ländern vereinbaren, ihm sachliche und personelle Mittel zur notwendigen Erfüllung seiner Aufgaben in den Außenstellen zur Verfügung zu stellen. Die ihm zur Verfügung gestellten Bediensteten unterliegen im gleichen Umfang seinen fachlichen Weisungen wie die Bediensteten des Bundesamtes. Die näheren Einzelheiten sind in einer Verwaltungsvereinbarung zwischen dem Bund und dem Land zu regeln.</p> <p>(5) Der Leiter des Bundesamtes kann mit den Ländern vereinbaren, dass in einer Aufnahmeeinrichtung Ausländer untergebracht werden, deren Verfahren beschleunigt nach § 30a bearbeitet werden sollen (besondere Aufnahmeeinrichtungen). Das</p>	<p>Section 5 Federal Office</p> <p>(1) The Federal Office for Migration and Refugees (Federal Office) shall decide on asylum applications. In accordance with this Act, the Federal Office shall also be responsible for measures and decisions taken under foreigners law.</p> <p>(2) The Federal Ministry of the Interior shall appoint the head of the Federal Office. He shall ensure the proper organization of asylum proceedings.</p> <p>(3) In consultation with the respective Land, the head of the Federal Office should set up a branch office at each Central Reception Facility for Asylum Applicants (reception centre) with a capacity to accommodate 1000 persons or more on a long-term basis. He may set up additional branch offices in consultation with the Länder.</p> <p>(4) The head of the Federal Office may arrange with the Länder to supply the necessary material and personnel resources in order to fulfil his duties in the branch offices. The staff supplied shall be bound to the same extent as the staff of the Federal Office by his technical instructions. The details shall be governed by means of an administrative agreement between the Federation and the Land.</p> <p>(5) The head of the Federal Office may arrange with the Länder for reception centres to host foreigners coming under fast track procedures pursuant to Section 30a (special reception centres). The Federal Office shall set up branch offices at these special reception offices pursuant to the first sentence or assign</p>
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	<p>Bundesamt richtet Außenstellen bei den besonderen Aufnahmeeinrichtungen nach Satz 1 ein oder ordnet sie diesen zu. Auf besondere Aufnahmeeinrichtungen finden die für Aufnahmeeinrichtungen geltenden Regelungen Anwendung, soweit nicht in diesem Gesetz oder einer anderen Rechtsvorschrift etwas anderes bestimmt wird.</p>	<p>branch offices to them. Special reception centres shall be governed by the same rules as reception centres, unless this Act or other legal provisions stipulate otherwise.</p>
<p>§ 25 AsylG</p>	<p>Anhörung</p> <p>(1) Der Ausländer muss selbst die Tatsachen vortragen, die seine Furcht vor Verfolgung oder die Gefahr eines ihm drohenden ernsthaften Schadens begründen, und die erforderlichen Angaben machen. Zu den erforderlichen Angaben gehören auch solche über Wohnsitze, Reisewege, Aufenthalte in anderen Staaten und darüber, ob bereits in anderen Staaten oder im Bundesgebiet ein Verfahren mit dem Ziel der Anerkennung als ausländischer Flüchtling, auf Zuerkennung internationalen Schutzes im Sinne des § 1 Absatz 1 Nummer 2 oder ein Asylverfahren eingeleitet oder durchgeführt ist.</p> <p>(2) Der Ausländer hat alle sonstigen Tatsachen und Umstände anzugeben, die einer Abschiebung oder einer Abschiebung in einen bestimmten Staat entgegenstehen.</p> <p>(3) Ein späteres Vorbringen des Ausländers kann unberücksichtigt bleiben, wenn andernfalls die Entscheidung des Bundesamtes verzögert würde. Der Ausländer ist hierauf und auf § 36 Abs. 4 Satz 3 hinzuweisen.</p> <p>(4) Bei einem Ausländer, der</p>	<p>Hearing</p> <p>(1) The foreigner himself shall present the facts justifying his fear of political persecution or the risk of serious harm he faces and provide the necessary details. The necessary details shall include information concerning residences, travel routes, time spent in other countries and whether a procedure aimed at obtaining recognition as a foreign refugee or as a beneficiary of international protection as defined in Section 1 (1), no. 2, or an asylum application has already been initiated or completed in other countries or on the federal territory.</p> <p>(2) The foreigner shall relate all other facts or circumstances which preclude deportation or deportation to a specific country.</p> <p>(3) If the foreigner produces such facts only at a later stage, they may be ignored if the decision of the Federal Office would otherwise be delayed. The foreigner shall be informed of this provision and of Section 36 (4), third sentence.</p> <p>(4) For a foreigner required to reside in a reception centre, the hearing should be arranged to coincide with the filing of the asylum application. It shall not be</p>

<p>verpflichtet ist, in einer Aufnahmeeinrichtung zu wohnen, soll die Anhörung in zeitlichem Zusammenhang mit der Asylantragstellung erfolgen. Einer besonderen Ladung des Ausländers und seines Bevollmächtigten bedarf es nicht. Entsprechendes gilt, wenn dem Ausländer bei oder innerhalb einer Woche nach der Antragstellung der Termin für die Anhörung mitgeteilt wird. Kann die Anhörung nicht an demselben Tag stattfinden, sind der Ausländer und sein Bevollmächtigter von dem Anhörungstermin unverzüglich zu verständigen. Erscheint der Ausländer ohne genügende Entschuldigung nicht zur Anhörung, entscheidet das Bundesamt nach Aktenlage, wobei auch die Nichtmitwirkung des Ausländers zu berücksichtigen ist.</p> <p>(5) Bei einem Ausländer, der nicht verpflichtet ist, in einer Aufnahmeeinrichtung zu wohnen, kann von der persönlichen Anhörung abgesehen werden, wenn der Ausländer einer Ladung zur Anhörung ohne genügende Entschuldigung nicht folgt. In diesem Falle ist dem Ausländer Gelegenheit zur schriftlichen Stellungnahme innerhalb eines Monats zu geben. Äußert sich der Ausländer innerhalb dieser Frist nicht, entscheidet das Bundesamt nach Aktenlage, wobei auch die Nichtmitwirkung des Ausländers zu würdigen ist. § 33 bleibt unberührt.</p> <p>(6) Die Anhörung ist nicht öffentlich. An ihr können Personen, die sich als Vertreter des Bundes, eines Landes oder</p>	<p>necessary to issue special summons requiring the foreigner and his authorized representative to appear. This provision shall apply accordingly if the foreigner is informed of the interview date at the time he files his application or within one week thereafter. If the hearing cannot take place on the same day, the foreigner and his authorized representative shall be informed without delay of the date of the interview. If the foreigner fails to appear at the hearing without an adequate excuse, the Federal Office shall decide, on the basis of the record as it stands, taking into account the foreigner's failure to cooperate.</p> <p>(5) In the case of foreigners who are not required to reside in a reception centre, a personal hearing may be dispensed with if the foreigner fails to comply with a summons for a personal hearing without an adequate excuse. In this case, the foreigner shall be given opportunity to state his case in writing within a period of one month. If the foreigner fails to state his case within this period, the Federal Office shall decide on the basis of the record as it stands, taking into account the foreigner's failure to cooperate. Section 33 shall remain unaffected.</p> <p>(6) The interview shall not be open to the public. It may be attended by persons who show proof of their identity as representatives of the Federation, of a Land or of the United Nations High Commissioner for Refugees. The head of the Federal Office or his deputy may allow other persons to attend.</p>
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	<p>des Hohen Flüchtlingskommissars der Vereinten Nationen ausweisen, teilnehmen. Anderen Personen kann der Leiter des Bundesamtes oder die von ihm beauftragte Person die Anwesenheit gestatten.</p> <p>(7) Über die Anhörung ist eine Niederschrift aufzunehmen, die die wesentlichen Angaben des Ausländers enthält. Dem Ausländer ist eine Kopie der Niederschrift auszuhändigen oder mit der Entscheidung des Bundesamtes zuzustellen.</p>	<p>(7) A record of the hearing containing the essential information produced by the foreigner shall be kept. A copy of this record shall be given to the foreigner or sent to him with the Federal Office's decision.</p>
<p>§ 26 a AsylG</p>	<p>Sichere Drittstaaten</p> <p>(1) Ein Ausländer, der aus einem Drittstaat im Sinne des Artikels 16a Abs. 2 Satz 1 des Grundgesetzes (sicherer Drittstaat) eingereist ist, kann sich nicht auf Artikel 16a Abs. 1 des Grundgesetzes berufen. Er wird nicht als Asylberechtigter anerkannt. Satz 1 gilt nicht, wenn</p> <ol style="list-style-type: none"> 1. der Ausländer im Zeitpunkt seiner Einreise in den sicheren Drittstaat im Besitz eines Aufenthaltstitels für die Bundesrepublik Deutschland war, 2. die Bundesrepublik Deutschland auf Grund von Rechtsvorschriften der Europäischen Gemeinschaft oder eines völkerrechtlichen Vertrages mit dem sicheren Drittstaat für die Durchführung des Asylverfahrens zuständig ist oder 3. der Ausländer auf Grund einer Anordnung nach § 18 Abs. 4 Nr. 2 nicht zurückgewiesen oder zurückgeschoben worden ist. <p>(2) Sichere Drittstaaten sind außer den Mitgliedstaaten der Europäischen Union die in Anlage I bezeichneten Staaten.</p>	<p>Safe third countries</p> <p>(1) Any foreigner who has entered the federal territory from a third country within the meaning of Article 16a (2), first sentence of the Basic Law (safe third country) cannot invoke Article 16a (1) of the Basic Law. He shall not be granted asylum. The first sentence above shall not apply if</p> <ol style="list-style-type: none"> 1. the foreigner held a residence title for the Federal Republic of Germany at the time he entered the safe third country, 2. the Federal Republic of Germany is responsible for processing an asylum application based on European Community law or an international treaty with the safe third country, or if 3. the foreigner has not been refused entry or removed on account of an order pursuant to Section 18 (4) no. 2. <p>(2) In addition to the Member States of the European Union, safe third countries are those listed in Annex I.</p> <p>(3) The Federal Government shall resolve by statutory instrument without the consent of the Bundesrat that a country listed in Annex I is no longer deemed a safe third country if changes</p>

	<p>(3) Die Bundesregierung bestimmt durch Rechtsverordnung ohne Zustimmung des Bundesrates, dass ein in Anlage I bezeichneter Staat nicht mehr als sicherer Drittstaat gilt, wenn Veränderungen in den rechtlichen oder politischen Verhältnissen dieses Staates die Annahme begründen, dass die in Artikel 16a Abs. 2 Satz 1 des Grundgesetzes bezeichneten Voraussetzungen entfallen sind. Die Verordnung tritt spätestens sechs Monate nach ihrem Inkrafttreten außer Kraft.</p>	<p>in its legal or political situation give reason to believe that the requirements mentioned in Article 16a (2), first sentence of the Basic Law have ceased to exist. The instrument shall expire no later than six months after it entered into force.</p>
<p>§ 29 I Nr. 1-5 AsylG</p>	<p>Unzulässige Anträge (1) Ein Asylantrag ist unzulässig, wenn 1. ein anderer Staat a) nach Maßgabe der Verordnung (EU) Nr.604/2013 des Europäischen Parlaments und des Rates vom 26. Juni 2013 zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen oder Staatenlosen in einem Mitgliedstaat gestellten Antrags auf internationalen Schutz zuständig ist (ABl. L 180 vom 29.6.2013, S. 31) oder b) auf Grund von anderen Rechtsvorschriften der Europäischen Union oder eines völkerrechtlichen Vertrages für die Durchführung des Asylverfahrens zuständig ist, 2. ein anderer Mitgliedstaat der Europäischen Union dem Ausländer bereits internationalen Schutz im Sinne des § 1 Absatz 1 Nummer 2 gewährt hat, 3. ein Staat, der bereit ist, den Ausländer wieder aufzunehmen, als für den Ausländer sicherer Drittstaat gemäß §</p>	<p>Inadmissible applications (1) An application for asylum shall be inadmissible if 1. another country is responsible for conducting the asylum procedure a) according to 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 (OJ L 180 of 29 June 2013, p. 31); or b) based on other European Union law or another international treaty; 2. another EU member state has already granted the foreigner international protection within the meaning of Section 1 (1) no. 2; 3. if a country that is willing to readmit the foreigner is regarded as a safe third country for that foreigner according to Section 26a; 4. if a country that is not an EU member state and is willing to readmit</p>

	<p>26a betrachtet wird, 4. ein Staat, der kein Mitgliedstaat der Europäischen Union und bereit ist, den Ausländer wieder aufzunehmen, als sonstiger Drittstaat gemäß § 27 betrachtet wird oder 5. im Falle eines Folgeantrags nach § 71 oder eines Zweitantrags nach § 71a ein weiteres Asylverfahren nicht durchzuführen ist.</p>	<p>the foreigner is regarded as another third country within the meaning of Section 27; or 5. if, in the case of follow-up applications pursuant to Section 71 or secondary applications pursuant to Section 71a, another asylum application is not to be conducted.</p>
<p>§ 29AsylG</p>	<p>Sicherer Herkunftsstaat; Bericht; Verordnungsermächtigung (1) Der Asylantrag eines Ausländers aus einem Staat im Sinne des Artikels 16a Abs. 3 Satz 1 des Grundgesetzes (sicherer Herkunftsstaat) ist als offensichtlich unbegründet abzulehnen, es sei denn, die von dem Ausländer angegebenen Tatsachen oder Beweismittel begründen die Annahme, dass ihm abweichend von der allgemeinen Lage im Herkunftsstaat Verfolgung im Sinne des § 3 Absatz 1 oder ein ernsthafter Schaden im Sinne des § 4 Absatz 1 droht. (2) Sichere Herkunftsstaaten sind die Mitgliedstaaten der Europäischen Union und die in Anlage II bezeichneten Staaten. (2a) Die Bundesregierung legt dem Deutschen Bundestag alle zwei Jahre, erstmals zum 23. Oktober 2017 einen Bericht darüber vor, ob die Voraussetzungen für die Einstufung der in Anlage II bezeichneten Staaten als sichere Herkunftsstaaten weiterhin vorliegen. (3) Die Bundesregierung bestimmt durch Rechtsverordnung ohne Zustimmung des Bundesrates, dass ein in Anlage II bezeichneter Staat nicht</p>	<p>Safe country of origin; report; authority to issue statutory instruments (1) The asylum application of any foreigner from a country within the meaning of Article 16a (3), first sentence of the Basic Law (safe country of origin) shall be rejected as manifestly unfounded, unless the facts or evidence produced by the foreigner give reason to believe that he faces political persecution within the meaning of Section 3 (1) or serious harm as defined in Section 4 (1) in his country of origin in spite of the general situation there. (2) In addition to the Member States of the European Union, safe countries of origin are those listed in Annex II. (2a) Every two years, and by 23 October 2017 for the first time, the Federal Government shall submit to the German Bundestag a report explaining whether or not the requirements for the classification of the states listed in Annex II as safe countries of origin continue to be met. (3) The Federal Government shall resolve by statutory instrument without the consent of the Bundesrat that a country listed in Annex II is no longer deemed a safe country of origin if</p>

	<p>mehr als sicherer Herkunftsstaat gilt, wenn Veränderungen in den rechtlichen oder politischen Verhältnissen dieses Staates die Annahme begründen, dass die in Artikel 16a Abs. 3 Satz 1 des Grundgesetzes bezeichneten Voraussetzungen entfallen sind. Die Verordnung tritt spätestens sechs Monate nach ihrem Inkrafttreten außer Kraft.</p>	<p>changes in its legal or political situation give reason to believe that the requirements mentioned in Article 16a (3), first sentence of the Basic Law have ceased to exist. The instrument shall expire no later than six months after it entered into force.</p>
<p>§ 31 AsylG</p>	<p>Entscheidung des Bundesamtes über Asylanträge (1) Die Entscheidung des Bundesamtes ergeht schriftlich. Sie ist schriftlich zu begründen. Entscheidungen, die der Anfechtung unterliegen, sind den Beteiligten unverzüglich zuzustellen. Wurde kein Bevollmächtigter für das Verfahren bestellt, ist eine Übersetzung der Entscheidungsformel und der Rechtsbehelfsbelehrung in einer Sprache beizufügen, deren Kenntnis vernünftigerweise vorausgesetzt werden kann; Asylberechtigte und Ausländer, denen internationaler Schutz im Sinne des § 1 Absatz 1 Nummer 2 zuerkannt wird oder bei denen das Bundesamt ein Abschiebungsverbot nach § 60 Absatz 5 oder 7 des Aufenthaltsgesetzes festgestellt hat, werden zusätzlich über die Rechte und Pflichten unterrichtet, die sich daraus ergeben. Wird der Asylantrag nur nach § 26a oder § 29 Absatz 1 Nummer 1 abgelehnt, ist die Entscheidung zusammen mit der Abschiebungsanordnung nach § 34a dem Ausländer selbst zuzustellen. Sie kann ihm auch von der für die Abschiebung oder für die Durchführung der Abschiebung zuständigen Behörde zugestellt werden.</p>	<p>Decisions by the Federal Office on asylum applications (1) Decisions by the Federal Office shall be issued in writing. They shall contain a justification in writing. Contestable decisions shall be delivered to the persons involved without delay. If no authorized representative has been appointed for the procedure, a translation of the decision and the information on legal remedy in a language the foreigner can reasonably be assumed to understand shall be enclosed; persons granted asylum status and foreigners granted international protection as defined in Section 1 (1) no. 2 or in whose case the Federal Office has issued a deportation ban pursuant to Section 60 (5) or (7) of the Residence Act shall also be informed of the resulting rights and duties. If the asylum application is rejected only pursuant to Section 26a or Section 29 (1) no. 1, the decision together with the deportation order under Section 34a shall be delivered to the foreigner himself. It may also be delivered to him by the authority responsible for the deportation or for carrying out the deportation. If the foreigner has an authorized representative or if he has</p>

<p>Wird der Ausländer durch einen Bevollmächtigten vertreten oder hat er einen Empfangsberechtigten benannt, soll diesem ein Abdruck der Entscheidung zugeleitet werden.</p> <p>(2) In Entscheidungen über zulässige Asylanträge und nach § 30 Abs. 5 ist ausdrücklich festzustellen, ob dem Ausländer die Flüchtlingseigenschaft oder der subsidiäre Schutz zuerkannt wird und ob er als Asylberechtigter anerkannt wird. In den Fällen des § 13 Absatz 2 Satz 2 ist nur über den beschränkten Antrag zu entscheiden.</p> <p>(3) In den Fällen des Absatzes 2 und in Entscheidungen über unzulässige Asylanträge ist festzustellen, ob die Voraussetzungen des § 60 Absatz 5 oder 7 des Aufenthaltsgesetzes vorliegen. Davon kann abgesehen werden, wenn der Ausländer als Asylberechtigter anerkannt wird oder ihm internationaler Schutz im Sinne des § 1 Absatz 1 Nummer 2 zuerkannt wird.</p> <p>(4) Wird der Asylantrag nur nach § 26a als unzulässig abgelehnt, bleibt § 26 Absatz 5 in den Fällen des § 26 Absatz 1 bis 4 unberührt.</p> <p>(5) Wird ein Ausländer nach § 26 Absatz 1 bis 3 als Asylberechtigter anerkannt oder wird ihm nach § 26 Absatz 5 internationaler Schutz im Sinne des § 1 Absatz 1 Nummer 2 zuerkannt, soll von der Feststellung der Voraussetzungen des § 60 Absatz 5 und 7 des Aufenthaltsgesetzes abgesehen werden.</p> <p>(6) Wird der Asylantrag nach § 29 Absatz 1 Nummer 1 als unzulässig abgelehnt, wird dem Ausländer in der Entscheidung mitgeteilt, welcher andere</p>	<p>named an authorized receiving agent, a copy of the decision shall be forwarded to the representative or agent.</p> <p>(2) In decisions on admissible asylum applications and in decisions pursuant to Section 30 (5) it shall be expressly determined whether the foreigner is granted refugee status or subsidiary protection and whether he is granted asylum. In cases within the meaning of Section 13 (2), second sentence, the limited application shall be decided upon.</p> <p>(3) In cases pursuant to paragraph 2 and in decisions on inadmissible asylum applications it shall be determined whether the conditions of Section 60 (5) or (7) of the Residence Act are met. This may be dispensed with if the foreigner is granted asylum or international protection within the meaning of Section 1 (1) no. 2.</p> <p>(4) If the asylum application is rejected as inadmissible only pursuant to Section 26a, Section 26 (5) shall not be affected in the cases governed by Section 26 (1) to (4).</p> <p>(5) If a foreigner is granted asylum status pursuant to Section 26 (1) to (3), or if he is granted international protection within the meaning of Section 1 (1) no. 2 pursuant to Section 26 (5), the determination of the conditions referred to in Section 60 (5) and (7) of the Residence Act should be dispensed with.</p> <p>(6) If the asylum application is rejected as inadmissible pursuant to Section 29 (1) no. 1, the foreigner shall be informed in the decision as to which other country is responsible for processing the</p>
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	Staat für die Durchführung des Asylverfahrens zuständig ist.	asylum application.
§ 47 AsylG	<p>Aufenthalt in Aufnahmeeinrichtungen</p> <p>(1) Ausländer, die den Asylantrag bei einer Außenstelle des Bundesamtes zu stellen haben (§ 14 Abs. 1), sind verpflichtet, bis zu sechs Wochen, längstens jedoch bis zu sechs Monaten, in der für ihre Aufnahme zuständigen Aufnahmeeinrichtung zu wohnen. Das Gleiche gilt in den Fällen des § 14 Absatz 2 Satz 1 Nummer 2, wenn die Voraussetzungen dieser Vorschrift vor der Entscheidung des Bundesamtes entfallen.</p> <p>(1a) Abweichend von Absatz 1 sind Ausländer aus einem sicheren Herkunftsstaat (§ 29a) verpflichtet, bis zur Entscheidung des Bundesamtes über den Asylantrag und im Falle der Ablehnung des Asylantrags nach § 29a als offensichtlich unbegründet oder nach § 29 Absatz 1 Nummer 1 als unzulässig bis zur Ausreise oder bis zum Vollzug der Abschiebungsandrohung oder -anordnung in der für ihre Aufnahme zuständigen Aufnahmeeinrichtung zu wohnen. Die §§ 48 bis 50 bleiben unberührt.</p> <p>(1b) Die Länder können regeln, dass Ausländer abweichend von Absatz 1 verpflichtet sind, bis zur Entscheidung des Bundesamtes über den Asylantrag und im Falle der Ablehnung des Asylantrags als offensichtlich unbegründet oder als unzulässig bis zur Ausreise oder bis zum Vollzug der Abschiebungsandrohung oder -anordnung in der für ihre Aufnahme</p>	<p>Residence in reception centres</p> <p>(1) Foreigners required to file their asylum application with a branch office of the Federal Office (Section 14 (1)), shall be required to live for a period of up to six weeks, but no longer than six months, in the reception centre responsible for receiving them. The same shall apply in cases pursuant to Section 14 (2), first sentence, no. 2 if the conditions under this provision cease to exist before the Federal Office has taken a decision.</p> <p>(1a) In derogation from subsection 1, foreigners from a safe country of origin (Section 29a) shall be required to live in the reception centre responsible for receiving them until the Federal Office has decided on their asylum application or, should the application be rejected as manifestly unfounded under Section 29a or as inadmissible under Section 29 (1) no. 1, until they have left the federal territory or until the deportation warning or deportation order is enforced. Sections 48 to 50 shall remain unaffected.</p> <p>(2) If the parents of a minor, unmarried child are required to live in a reception centre, the child may also live in the reception centre, even if he has not filed an asylum application.</p> <p>(3) During the period of obligatory residence in a reception centre, the foreigner shall be required to ensure that the competent authorities and courts can contact him.</p> <p>(4) Within 15 days of the filing of an asylum application, the reception centre</p>

	<p>zuständigen Aufnahmeeinrichtung, längstens jedoch für 24 Monate, zu wohnen. Die §§ 48 bis 50 bleiben unberührt. Insbesondere ist § 50 Absatz 1 Satz 1 Nummer 1 zu beachten, wonach der Ausländer unverzüglich aus der Aufnahmeeinrichtung zu entlassen ist, wenn das Bundesamt nicht oder nicht kurzfristig entscheiden kann, dass der Asylantrag unzulässig oder offensichtlich unbegründet ist.</p> <p>(2) Sind Eltern eines minderjährigen ledigen Kindes verpflichtet, in einer Aufnahmeeinrichtung zu wohnen, so kann auch das Kind in der Aufnahmeeinrichtung wohnen, auch wenn es keinen Asylantrag gestellt hat.</p> <p>(3) Für die Dauer der Pflicht, in einer Aufnahmeeinrichtung zu wohnen, ist der Ausländer verpflichtet, für die zuständigen Behörden und Gerichte erreichbar zu sein.</p> <p>(4) Die Aufnahmeeinrichtung weist den Ausländer innerhalb von 15 Tagen nach der Asylantragstellung möglichst schriftlich und in einer Sprache, deren Kenntnis vernünftigerweise vorausgesetzt werden kann, auf seine Rechte und Pflichten nach dem Asylbewerberleistungsgesetz hin. Die Aufnahmeeinrichtung benennt in dem Hinweis nach Satz 1 auch, wer dem Ausländer Rechtsbeistand gewähren kann und welche Vereinigungen den Ausländer über seine Unterbringung und medizinische Versorgung beraten können.</p>	<p>shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and obligations under the Act on Benefits for Asylum Applicants. With the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodations and medical care.</p>
<p>§ 55 AsylG</p>	<p>Aufenthaltsgestattung</p> <p>(1) Einem Ausländer, der um Asyl nachsucht, ist zur Durchführung des Asylverfahrens der Aufenthalt im</p>	<p>Permission to remain pending the asylum decision</p> <p>(1) Foreigners seeking asylum shall be permitted to remain in the federal</p>

	<p>Bundesgebiet ab Ausstellung des Ankunftsnachweises gemäß § 63a Absatz 1 gestattet (Aufenthaltsgestattung). Er hat keinen Anspruch darauf, sich in einem bestimmten Land oder an einem bestimmten Ort aufzuhalten. In den Fällen, in denen kein Ankunftsnachweis ausgestellt wird, entsteht die Aufenthaltsgestattung mit der Stellung des Asylantrags.</p> <p>(2) Mit der Stellung eines Asylantrags erlöschen eine Befreiung vom Erfordernis eines Aufenthaltstitels und ein Aufenthaltstitel mit einer Gesamtgeltungsdauer bis zu sechs Monaten sowie die in § 81 Abs. 3 und 4 des Aufenthaltsgesetzes bezeichneten Wirkungen eines Antrags auf Erteilung eines Aufenthaltstitels. § 81 Abs. 4 des Aufenthaltsgesetzes bleibt unberührt, wenn der Ausländer einen Aufenthaltstitel mit einer Gesamtgeltungsdauer von mehr als sechs Monaten besessen und dessen Verlängerung beantragt hat.</p> <p>(3) Soweit der Erwerb oder die Ausübung eines Rechts oder einer Vergünstigung von der Dauer des Aufenthalts im Bundesgebiet abhängig ist, wird die Zeit eines Aufenthalts nach Absatz 1 nur angerechnet, wenn der Ausländer als Asylberechtigter anerkannt ist oder ihm internationaler Schutz im Sinne des § 1 Absatz 1 Nummer 2 zuerkannt wurde.</p>	<p>territory while the asylum procedure is pending, once they have been issued an arrival certificate. They shall not be entitled to reside in a specific Land or a specific place. In cases where an arrival certificate has not been issued, permission to remain pending the asylum decision results from filing an asylum application.</p> <p>(2) Filing an asylum application shall automatically cancel any exemption from the obligation to hold a residence title, cancel any residence title with an overall validity of up to six months and cancel the effects of an application for a residence title listed in Section 81 (3) and (4) of the Residence Act. Section 81 (4) of the Residence Act shall remain unaffected if the foreigner has held a residence title with an overall validity of more than six months and has applied for its extension.</p> <p>(3) To the extent that acquiring or exercising a right or a privilege depends on the length of the stay in the federal territory, the length of stay pursuant to subsection 1 shall be counted only if the foreigner has been granted asylum or international protection within the meaning of Section 1 (1) no. 2.</p>
<p>§ 73 AsylG</p>	<p>Widerruf und Rücknahme der Asylberechtigung und der Flüchtlingseigenschaft</p> <p>(1) Die Anerkennung als Asylberechtigter und die Zuerkennung</p>	<p>Revocation and withdrawal of asylum and refugee status</p> <p>(1) Recognition of asylum and refugee status shall be revoked without delay if the conditions on which such</p>

<p>der Flüchtlingseigenschaft sind unverzüglich zu widerrufen, wenn die Voraussetzungen für sie nicht mehr vorliegen. Dies ist insbesondere der Fall, wenn der Ausländer nach Wegfall der Umstände, die zur Anerkennung als Asylberechtigter oder zur Zuerkennung der Flüchtlingseigenschaft geführt haben, es nicht mehr ablehnen kann, den Schutz des Staates in Anspruch zu nehmen, dessen Staatsangehörigkeit er besitzt, oder wenn er als Staatenloser in der Lage ist, in das Land zurückzukehren, in dem er seinen gewöhnlichen Aufenthalt hatte. Satz 2 gilt nicht, wenn sich der Ausländer auf zwingende, auf früheren Verfolgungen beruhende Gründe berufen kann, um die Rückkehr in den Staat abzulehnen, dessen Staatsangehörigkeit er besitzt oder in dem er als Staatenloser seinen gewöhnlichen Aufenthalt hatte.</p> <p>(2) Die Anerkennung als Asylberechtigter ist zurückzunehmen, wenn sie auf Grund unrichtiger Angaben oder infolge Verschweigens wesentlicher Tatsachen erteilt worden ist und der Ausländer auch aus anderen Gründen nicht anerkannt werden könnte. Satz 1 ist auf die Zuerkennung der Flüchtlingseigenschaft entsprechend anzuwenden.</p> <p>(2a) Die Prüfung, ob die Voraussetzungen für einen Widerruf nach Absatz 1 oder eine Rücknahme nach Absatz 2 vorliegen, hat spätestens nach Ablauf von drei Jahren nach Unanfechtbarkeit der Entscheidung zu erfolgen. Liegen die Voraussetzungen für einen Widerruf oder eine Rücknahme vor, teilt das Bundesamt</p>	<p>recognition is based have ceased to exist. In particular, this shall be the case if, after the conditions on which his recognition as being entitled to asylum or refugee status is based have ceased to exist, the foreigner can no longer refuse to claim the protection of the country of which he is a citizen, or if he, as a stateless person, is able to return to the country where he had his usual residence. The second sentence shall not apply if the foreigner has compelling reasons, based on earlier persecution, for refusing to return to the country of which he is a citizen, or, if he is a stateless person, in which he had his usual residence.</p> <p>(2) Recognition of asylum status shall be withdrawn if it was granted on the basis of incorrect information or withholding of essential facts and if such recognition could not be based on any other grounds. The first sentence shall be applied to refugee status accordingly.</p> <p>(2a) No more than three years after the decision becomes incontestable, it shall be examined whether the conditions for revocation pursuant to subsection 1 or withdrawal pursuant to subsection 2 exist. If the requirements for revocation or withdrawal are met, the Federal Office shall inform the foreigners authority of this fact no later than one month after the favourable decision has become incontestable for three years. Otherwise, the foreigners authority need not be informed. The foreigners authority shall also be informed which persons pursuant to Section 26 derive their asylum or refugee status from the foreigner and whether the conditions</p>
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<p>dieses Ergebnis der Ausländerbehörde spätestens innerhalb eines Monats nach dreijähriger Unanfechtbarkeit der begünstigenden Entscheidung mit. Anderenfalls kann eine Mitteilung an die Ausländerbehörde entfallen. Der Ausländerbehörde ist auch mitzuteilen, welche Personen nach § 26 ihre Asylberechtigung oder Flüchtlingseigenschaft von dem Ausländer ableiten und ob bei ihnen die Voraussetzungen für einen Widerruf nach Absatz 2b vorliegen. Ist nach der Prüfung ein Widerruf oder eine Rücknahme nicht erfolgt, steht eine spätere Entscheidung nach Absatz 1 oder Absatz 2 im Ermessen, es sei denn, der Widerruf oder die Rücknahme erfolgt, weil die Voraussetzungen des § 60 Abs. 8 Satz 1 des Aufenthaltsgesetzes oder des § 3 Abs. 2 vorliegen oder weil das Bundesamt nach § 60 Absatz 8 Satz 3 des Aufenthaltsgesetzes von der Anwendung des § 60 Absatz 1 des Aufenthaltsgesetzes abgesehen hat.</p> <p>(2b) In den Fällen des § 26 Absatz 1 bis 3 und 5 ist die Anerkennung als Asylberechtigter und die Zuerkennung der Flüchtlingseigenschaft zu widerrufen, wenn die Voraussetzungen des § 26 Absatz 4 Satz 1 vorliegen. Die Anerkennung als Asylberechtigter ist ferner zu widerrufen, wenn die Anerkennung des Asylberechtigten, von dem die Anerkennung abgeleitet worden ist, erlischt, widerrufen oder zurückgenommen wird und der Ausländer nicht aus anderen Gründen als Asylberechtigter anerkannt werden könnte. In den Fällen des § 26 Absatz 5</p>	<p>for revocation pursuant to subsection 2b exist in their case. If no revocation or withdrawal follows the examination, a later decision pursuant to subsections 1 or 2 is possible unless the asylum or refugee status is revoked or withdrawn because the conditions pursuant to Section 60 (8), first sentence of the Residence Act or Section 3 (2) exist or because the Federal Office has decided not to apply Section 60 (1) of the Residence Act pursuant to Section 60 (8), third sentence, of the Residence Act.</p> <p>(2b) In the cases referred to in Section 26 (1) to (3) and (5), recognition of asylum and refugee status shall be revoked if the conditions of Section 26 (4), first sentence are met. The asylum status shall furthermore be revoked if the asylum status of the person from whom the status recognition was derived has expired, been revoked or withdrawn and if the foreigner could not be granted asylum for other reasons. In cases pursuant to Section 26 (5), refugee status shall be revoked if the refugee status of the person from whom the recognition was derived, has expired, been revoked or withdrawn and if the foreigner could not be granted refugee status for other reasons.</p> <p>(2c) For the purpose of naturalisation procedures, the decision on the asylum application shall no longer be binding until the revocation or withdrawal becomes legally valid.</p> <p>(3) If the asylum status or the refugee status is revoked or withdrawn, a decision shall be taken as to whether the requirements for subsidiary protection</p>
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<p>ist die Zuerkennung der Flüchtlingseigenschaft zu widerrufen, wenn die Flüchtlingseigenschaft des Ausländers, von dem die Zuerkennung abgeleitet worden ist, erlischt, widerrufen oder zurückgenommen wird und dem Ausländer nicht aus anderen Gründen die Flüchtlingseigenschaft zuerkannt werden könnte. § 26 Absatz 1 Satz 2 gilt entsprechend.</p> <p>(2c) Bis zur Bestandskraft des Widerrufs oder der Rücknahme entfällt für Einbürgerungsverfahren die Verbindlichkeit der Entscheidung über den Asylantrag.</p> <p>(3) Bei Widerruf oder Rücknahme der Anerkennung als Asylberechtigter oder der Zuerkennung der Flüchtlingseigenschaft ist zu entscheiden, ob die Voraussetzungen für den subsidiären Schutz oder die Voraussetzungen des § 60 Absatz 5 oder 7 des Aufenthaltsgesetzes vorliegen.</p> <p>(4) Die beabsichtigte Entscheidung über einen Widerruf oder eine Rücknahme nach dieser Vorschrift oder nach § 48 des Verwaltungsverfahrensgesetzes ist dem Ausländer schriftlich mitzuteilen und ihm ist Gelegenheit zur Äußerung zu geben. Ihm kann aufgegeben werden, sich innerhalb eines Monats schriftlich zu äußern. Hat sich der Ausländer innerhalb dieser Frist nicht geäußert, ist nach Aktenlage zu entscheiden; der Ausländer ist auf diese Rechtsfolge hinzuweisen.</p> <p>(5) Mitteilungen oder Entscheidungen des Bundesamtes, die eine Frist in Lauf setzen, sind dem Ausländer zuzustellen.</p> <p>(6) Ist die Anerkennung als</p>	<p>or the conditions referred to in Section 60 (5) or (7) of the Residence Act are fulfilled.</p> <p>(4) The foreigner shall be informed in writing of a planned decision to revoke or withdraw pursuant to this provision or to Section 48 of the Administrative Procedure Act, and shall be given the opportunity to respond. He may be requested to respond in writing within a period of one month. If the foreigner fails to respond within this period, the decision shall be taken on the basis of the record as it stands; the foreigner shall be informed of the legal consequences.</p> <p>(5) Communications or decisions of the Federal Office which require action by a certain deadline shall be delivered to the foreigner.</p> <p>(6) If the recognition of entitlement to asylum or refugee status is incontestably revoked or withdrawn or no longer in effect for other reasons, Section 72 (2) shall apply accordingly.</p> <p>(7) (repealed)</p>
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	Asylberechtigter oder die Zuerkennung der Flüchtlingseigenschaft unanfechtbar widerrufen oder zurückgenommen oder aus einem anderen Grund nicht mehr wirksam, gilt § 72 Abs. 2 entsprechend. (7) (weggefallen)	
§ 74 AsylG	<p>Klagefrist, Zurückweisung verspäteten Vorbringens</p> <p>(1) Die Klage gegen Entscheidungen nach diesem Gesetz muss innerhalb von zwei Wochen nach Zustellung der Entscheidung erhoben werden; ist der Antrag nach § 80 Abs. 5 der Verwaltungsgerichtsordnung innerhalb einer Woche zu stellen (§ 34a Absatz 2 Satz 1 und 3, § 36 Absatz 3 Satz 1 und 10), ist auch die Klage innerhalb einer Woche zu erheben.</p> <p>(2) Der Kläger hat die zur Begründung dienenden Tatsachen und Beweismittel binnen einer Frist von einem Monat nach Zustellung der Entscheidung anzugeben. § 87b Abs. 3 der Verwaltungsgerichtsordnung gilt entsprechend. Der Kläger ist über die Verpflichtung nach Satz 1 und die Folgen der Fristversäumung zu belehren. Das Vorbringen neuer Tatsachen und Beweismittel bleibt unberührt.</p>	<p>Period within which action must be brought; rejection of late submission</p> <p>(1) Action against decisions pursuant to this Act must be brought no later than two weeks after the decision has been delivered; in cases where an application pursuant to Section 80 (5) of the Code of Administrative Court Procedure must be filed within one week (Section 34a (2), first and third sentences, Section 36 (3), first and tenth sentences), the action must also be brought within one week.</p> <p>(2) The plaintiff shall submit the facts and evidence on which the action is based within a period of one month after the decision was delivered to him. Section 87b (3) of the Code of Administrative Court Procedure shall apply accordingly. The plaintiff shall be informed of the obligation pursuant to sentence 1 and the consequences resulting from failing to observe the time limit. The submission of new facts and evidence shall remain unaffected.</p>

Aufenthaltsgesetz (AufenthG) – Residence Act

§ 2 I Aufenth G	<p>Begriffsbestimmungen</p> <p>(1) Ausländer ist jeder, der nicht Deutscher im Sinne des Artikels 116 Abs. 1 des Grundgesetzes ist.</p>	<p>Definitions</p> <p>(1) A foreigner is anyone who is not German within the meaning of Article 116 (1) of the Basic Law.</p>
§ 4 Aufenth G	<p>Erfordernis eines Aufenthaltstitels</p> <p>(1) Ausländer bedürfen für die Einreise und den Aufenthalt im Bundesgebiet eines Aufenthaltstitels, sofern nicht durch Recht der Europäischen Union oder</p>	<p>Residence title requirement</p> <p>(1) In order to enter and stay in the federal territory, foreigners shall require a residence title, in the absence of any provisions to the contrary in the law of</p>

<p>durch Rechtsverordnung etwas anderes bestimmt ist oder auf Grund des Abkommens vom 12. September 1963 zur Gründung einer Assoziation zwischen der Europäischen Wirtschaftsgemeinschaft und der Türkei (BGBl. 1964 II S. 509) (Assoziationsabkommen EWG/Türkei) ein Aufenthaltsrecht besteht. Die Aufenthaltstitel werden erteilt als</p> <ol style="list-style-type: none"> 1. Visum im Sinne des § 6 Absatz 1 Nummer 1 und Absatz 3, 2. Aufenthaltserlaubnis (§ 7), <ol style="list-style-type: none"> 2a. Blaue Karte EU (§ 19a), 2b. ICT-Karte (§ 19b), 2c. Mobiler-ICT-Karte (§ 19d), 3. Niederlassungserlaubnis (§ 9) oder 4. Erlaubnis zum Daueraufenthalt – EU (§ 9a). <p>Die für die Aufenthaltserlaubnis geltenden Rechtsvorschriften werden auch auf die Blaue Karte EU, die ICT-Karte und die Mobiler-ICT-Karte angewandt, sofern durch Gesetz oder Rechtsverordnung nichts anderes bestimmt ist.</p> <p>(2) Ein Aufenthaltstitel berechtigt zur Ausübung einer Erwerbstätigkeit, sofern es nach diesem Gesetz bestimmt ist oder der Aufenthaltstitel die Ausübung der Erwerbstätigkeit ausdrücklich erlaubt. Jeder Aufenthaltstitel muss erkennen lassen, ob die Ausübung einer Erwerbstätigkeit erlaubt ist. Einem Ausländer, der keine Aufenthaltserlaubnis zum Zweck der Beschäftigung besitzt, kann die Ausübung einer Beschäftigung nur erlaubt werden, wenn die Bundesagentur für Arbeit zugestimmt hat oder durch Rechtsverordnung bestimmt ist, dass die Ausübung der Beschäftigung</p>	<p>the European Union or a statutory instrument and except where a right of residence exists as a result of the agreement of 12 September 1963 establishing an association between the European Economic Community and Turkey (Federal Law Gazette 1964 II p. 509) (EEC/Turkey Association Agreement). The residence titles shall be granted in the form of</p> <ol style="list-style-type: none"> 1. a visa pursuant to Section 6 (1), no. 1 and (3), 2. a temporary residence permit (Section 7), <ol style="list-style-type: none"> 2a. an EU Blue Card (Section 19a), 3. a permanent settlement permit (Section 9) or 4. an EU long-term residence permit (Section 9a). <p>The legal provisions governing temporary residence permits shall also apply to the EU Blue Card in the absence of any law or statutory instrument to the contrary.</p> <p>(2) A residence title shall entitle the holder to pursue an economic activity insofar as this is laid down in this Act or the residence title expressly permits pursuit of an economic activity. Every residence title must indicate whether the pursuit of an economic activity is permitted. A foreigner who is not in possession of a temporary residence permit for the purpose of employment can only be permitted to take up employment if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up the employment concerned is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal</p>
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<p>ohne Zustimmung der Bundesagentur für Arbeit zulässig ist. Beschränkungen bei der Erteilung der Zustimmung durch die Bundesagentur für Arbeit sind in den Aufenthaltstitel zu übernehmen.</p> <p>(3) Ausländer dürfen eine Erwerbstätigkeit nur ausüben, wenn der Aufenthaltstitel sie dazu berechtigt. Ausländer dürfen nur beschäftigt oder mit anderen entgeltlichen Dienst- oder Werkleistungen beauftragt werden, wenn sie einen solchen Aufenthaltstitel besitzen. Dies gilt nicht für Saisonbeschäftigungen, wenn der Ausländer eine Arbeitserlaubnis zum Zweck der Saisonbeschäftigung besitzt, oder für andere Erwerbstätigkeiten, wenn dem Ausländer auf Grund einer zwischenstaatlichen Vereinbarung, eines Gesetzes oder einer Rechtsverordnung die Erwerbstätigkeit gestattet ist, ohne dass er hierzu durch einen Aufenthaltstitel berechtigt sein muss. Wer im Bundesgebiet einen Ausländer beschäftigt oder mit nachhaltigen entgeltlichen Dienst- oder Werkleistungen beauftragt, die der Ausländer auf Gewinnerzielung gerichtet ausübt, muss prüfen, ob die Voraussetzungen nach Satz 2 oder Satz 3 vorliegen. Wer im Bundesgebiet einen Ausländer beschäftigt, muss für die Dauer der Beschäftigung eine Kopie des Aufenthaltstitels, der Arbeitserlaubnis zum Zweck der Saisonbeschäftigung oder der Bescheinigung über die Aufenthaltsgestattung oder über die Aussetzung der Abschiebung des Ausländers in elektronischer Form oder in Papierform aufbewahren.</p> <p>(4) (weggefallen)</p>	<p>Employment Agency in granting approval are to be specified in the residence title.</p> <p>(3) Foreigners may only pursue an economic activity if the residence title so allows. Foreigners may only be employed or commissioned to perform other paid work or services if they possess such a residence title. This restriction shall not apply if the foreigner is permitted by virtue of an intergovernmental agreement, a law or a statutory instrument to pursue an economic activity without requiring due authorisation via a residence title. Anyone employing a foreigner or commissioning a foreigner on a sustained basis to perform paid work or services for gain in the federal territory must ascertain whether the conditions pursuant to sentence 2 or sentence 3 apply. Anyone employing a foreigner in the federal territory must keep a copy of the residence title or of the certificate confirming permission to remain pending the asylum decision (Aufenthaltsgestattung) or confirming suspension of deportation, in electronic or paper form for the duration of the employment.</p> <p>(4) (repealed)</p> <p>(5) A foreigner who possesses a right of residence in accordance with the EEC/Turkey Association Agreement is obliged to furnish evidence of the existence of said right of residence through the possession of a temporary residence permit, unless he or she is in possession of a permanent settlement permit or an EU long-term residence permit. Said residence permit shall be</p>
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	<p>(5) Ein Ausländer, dem nach dem Assoziationsabkommen EWG/Türkei ein Aufenthaltsrecht zusteht, ist verpflichtet, das Bestehen des Aufenthaltsrechts durch den Besitz einer Aufenthaltserlaubnis nachzuweisen, sofern er weder eine Niederlassungserlaubnis noch eine Erlaubnis zum Daueraufenthalt – EU besitzt. Die Aufenthaltserlaubnis wird auf Antrag ausgestellt.</p>	<p>issued on application.</p>
<p>§ 11 Aufenth G</p>	<p>Einreise- und Aufenthaltsverbot</p> <p>(1) Ein Ausländer, der ausgewiesen, zurückgeschoben oder abgeschoben worden ist, darf weder erneut in das Bundesgebiet einreisen, noch sich darin aufhalten, noch darf ihm, selbst im Falle eines Anspruchs nach diesem Gesetz, ein Aufenthaltstitel erteilt werden (Einreise- und Aufenthaltsverbot).</p> <p>(2) Das Einreise- und Aufenthaltsverbot ist von Amts wegen zu befristen. Die Frist beginnt mit der Ausreise. Im Falle der Ausweisung ist die Frist gemeinsam mit der Ausweisungsverfügung festzusetzen. Ansonsten soll die Frist mit der Abschiebungsandrohung, spätestens aber bei der Ab- oder Zurückschiebung festgesetzt werden. Die Befristung kann zur Abwehr einer Gefahr für die öffentliche Sicherheit und Ordnung mit einer Bedingung versehen werden, insbesondere einer nachweislichen Straf- oder Drogenfreiheit. Tritt die Bedingung bis zum Ablauf der Frist nicht ein, gilt eine von Amts wegen zusammen mit der Befristung nach Satz 5 angeordnete längere Befristung.</p> <p>(3) Über die Länge der Frist wird nach Ermessen entschieden. Sie darf fünf Jahre nur überschreiten, wenn der Ausländer</p>	<p>Ban on entry and residence</p> <p>(1) A foreigner who has been expelled, removed or deported shall be permitted neither to re-enter nor to stay in the federal territory, nor may he or she be granted a residence title, even if he or she is entitled thereto under this Act (ban on entry and residence).</p> <p>(2) The ban on entry and residence shall be subject to a time limit imposed ex officio. The period shall begin to run upon the foreigner leaving the country. In the event of expulsion, the period shall be set upon issuance of the expulsion order. In other cases, the period should be set upon issuance of the deportation warning, at the latest, however, upon the foreigner's deportation or removal. In addition to imposing a time limit, a condition may also be imposed in order to prevent a threat to public safety and law and order, in particular the provision of proof of impunity or of not using narcotic substances. If the condition is not met before the expiry of the time limit, a longer time limit issued ex officio when the time limit is imposed pursuant to sentence 5 shall apply.</p> <p>(3) A discretionary decision shall be taken regarding the length of the time limit. It</p>

<p>auf Grund einer strafrechtlichen Verurteilung ausgewiesen worden ist oder wenn von ihm eine schwerwiegende Gefahr für die öffentliche Sicherheit und Ordnung ausgeht. Diese Frist soll zehn Jahre nicht überschreiten.</p> <p>(4) Das Einreise- und Aufenthaltsverbot kann zur Wahrung schutzwürdiger Belange des Ausländers oder, soweit es der Zweck des Einreise- und Aufenthaltsverbots nicht mehr erfordert, aufgehoben oder die Frist nach Absatz 2 verkürzt werden. Das Einreise- und Aufenthaltsverbot soll aufgehoben werden, wenn die Voraussetzungen für die Erteilung eines Aufenthaltstitels nach Kapitel 2 Abschnitt 5 vorliegen. Die Frist nach Absatz 2 kann aus Gründen der öffentlichen Sicherheit und Ordnung verlängert werden. Absatz 3 gilt entsprechend.</p> <p>(5) Eine Befristung oder eine Aufhebung des Einreise- und Aufenthaltsverbots erfolgt nicht, wenn der Ausländer wegen eines Verbrechens gegen den Frieden, eines Kriegsverbrechens oder eines Verbrechens gegen die Menschlichkeit ausgewiesen oder auf Grund einer Abschiebungsanordnung nach § 58a aus dem Bundesgebiet abgeschoben wurde. Die oberste Landesbehörde kann im Einzelfall Ausnahmen von Satz 1 zulassen.</p> <p>(6) Gegen einen Ausländer, der seiner Ausreisepflicht nicht innerhalb einer ihm gesetzten Ausreisefrist nachgekommen ist, kann ein Einreise- und Aufenthaltsverbot angeordnet werden, es sei denn, der Ausländer ist unverschuldet an der Ausreise gehindert oder die Überschreitung der Ausreisefrist ist nicht</p>	<p>may exceed five years only if the foreigner was expelled on the ground of a criminal conviction or if he or she presents a serious threat to public safety and law and order. This period should not exceed ten years.</p> <p>(4) The ban on entry and residence may be revoked in order to uphold the interests of the foreigner meriting protection or insofar as it is no longer required for the purpose of the ban on entry and residence, or else the period referred to in subsection 2 may be shortened. The ban on entry and residence should be revoked if the conditions for the issuance of a residence title under Chapter 2 Part 5 are met. The period referred to in subsection 2 may be extended on the grounds of public safety and law and order. Subsection 3 shall apply mutatis mutandis.</p> <p>(5) No time limit shall be applied and the ban on entry and residence shall not be revoked if a foreigner has been deported from the federal territory on account of a crime against peace, a war crime or a crime against humanity, or on the basis of a deportation order pursuant to Section 58a. The supreme Land authority may permit exemptions from sentence 1 in individual cases.</p> <p>(6) A ban on entry and residence may be imposed against a foreigner who has not fulfilled his or her obligation to leave the country within the period allowed for departure, unless the foreigner was prevented from leaving through no fault of his or her own or has exceeded the period allowed for departure by an insignificant amount of time. Subsections 1 to 5 shall apply mutatis mutandis. The</p>
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<p>erheblich. Die Absätze 1 bis 5 gelten entsprechend. Das Einreise- und Aufenthaltsverbot ist mit seiner Anordnung nach Satz 1 zu befristen. Bei der ersten Anordnung des Einreise- und Aufenthaltsverbots nach Satz 1 soll die Frist ein Jahr nicht überschreiten. Im Übrigen soll die Frist drei Jahre nicht überschreiten. Ein Einreise- und Aufenthaltsverbot wird nicht angeordnet, wenn Gründe für eine vorübergehende Aussetzung der Abschiebung nach § 60a vorliegen, die der Ausländer nicht verschuldet hat.</p> <p>(7) Gegen einen Ausländer,</p> <ol style="list-style-type: none"> 1. dessen Asylantrag nach § 29a Absatz 1 des Asylgesetzes als offensichtlich unbegründet abgelehnt wurde, dem kein subsidiärer Schutz zuerkannt wurde, das Vorliegen der Voraussetzungen für ein Abschiebungsverbot nach § 60 Absatz 5 oder 7 nicht festgestellt wurde und der keinen Aufenthaltstitel besitzt oder 2. dessen Antrag nach § 71 oder § 71a des Asylgesetzes wiederholt nicht zur Durchführung eines weiteren Asylverfahrens geführt hat, <p>kann das Bundesamt für Migration und Flüchtlinge ein Einreise- und Aufenthaltsverbot anordnen. Das Einreise- und Aufenthaltsverbot wird mit Bestandskraft der Entscheidung über den Asylantrag wirksam. Die Absätze 1 bis 5 gelten entsprechend. Das Einreise- und Aufenthaltsverbot ist mit seiner Anordnung nach Satz 1 zu befristen. Bei der ersten Anordnung des Einreise- und Aufenthaltsverbots nach Satz 1 soll die Frist ein Jahr nicht überschreiten. Im Übrigen soll die Frist drei Jahre nicht überschreiten.</p>	<p>ban on entry and residence is to be subject to a time limit upon its being ordered pursuant to sentence 1. Upon the first ordering of the ban on entry and residence pursuant to sentence 1, the period should not exceed one year. Otherwise, the period should not exceed three years. A ban on entry and residence shall not be ordered where there are grounds for temporarily suspending deportation pursuant to Section 60a for which the foreigner was not responsible.</p> <p>(7) The Federal Office for Migration and Refugees may impose a ban on entry and residence against a foreigner</p> <ol style="list-style-type: none"> 1. whose asylum application was rejected as manifestly unfounded pursuant to Section 29a (1) of the Asylum Act, who was not granted subsidiary protection, for whom the existence of the conditions for imposition of a ban on deportation pursuant to Section 60 (5) or (7) was not established and who is in possession of no residence title or 2. whose application, pursuant to Section 71 or Section 71a of the Asylum Act, repeatedly did not lead to a follow-up asylum procedure. <p>The ban on entry and residence becomes effective upon the decision on the application for asylum having legal validity. Subsections 1 to 5 shall apply mutatis mutandis. The ban on entry and residence is to be subject to a time limit upon its being ordered pursuant to sentence 1. Upon the first ordering of the ban on entry and residence pursuant to sentence 1, the period should not exceed one year. Otherwise, the period should not exceed three years.</p> <p>(8) Except in the cases referred to in</p>
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	<p>(8) Vor Ablauf des Einreise- und Aufenthaltsverbots kann, außer in den Fällen des Absatzes 5 Satz 1, dem Ausländer ausnahmsweise erlaubt werden, das Bundesgebiet kurzfristig zu betreten, wenn zwingende Gründe seine Anwesenheit erfordern oder die Versagung der Erlaubnis eine unbillige Härte bedeuten würde. Im Falle des Absatzes 5 Satz 1 gilt Absatz 5 Satz 2 entsprechend.</p> <p>(9) Reist ein Ausländer entgegen einem Einreise- und Aufenthaltsverbot in das Bundesgebiet ein, wird der Ablauf einer festgesetzten Frist für die Dauer des Aufenthalts im Bundesgebiet gehemmt. Die Frist kann in diesem Fall verlängert werden, längstens jedoch um die Dauer der ursprünglichen Befristung. Der Ausländer ist auf diese Möglichkeit bei der erstmaligen Befristung hinzuweisen. Für eine nach Satz 2 verlängerte Frist gelten die Absätze 3 und 4 Satz 1 entsprechend.</p>	<p>subsection 5, sentence 1, the foreigner may, before the ban on entry and residence expires, by way of exception be granted temporary entrance into the federal territory for a short period if his or her presence is required for compelling reasons or if the refusal of permission would constitute undue hardship. Subsection 5, sentence 2, shall apply mutatis mutandis in cases pursuant to subsection 5, sentence 1.</p> <p>(9) Where a foreigner enters the federal territory in contravention of a ban on entry and residence, the course of a period set for the duration of his or her residence in the federal territory shall be suspended. The period may be extended in such cases, at the most, however, by the length of the original time limit imposed. The foreigner is to be informed about this possibility upon a time limit being imposed for the first time. Subsections 3 and 4, sentence 1, shall apply mutatis mutandis to a time limit extended pursuant to sentence 2.</p>
<p>§ 17a Aufenth G</p>	<p>Anerkennung ausländischer Berufsqualifikationen</p> <p>(1) Einem Ausländer kann zum Zweck der Anerkennung seiner im Ausland erworbenen Berufsqualifikation eine Aufenthaltserlaubnis für die Durchführung einer Bildungsmaßnahme und einer sich daran anschließenden Prüfung für die Dauer von bis zu 18 Monaten erteilt werden, wenn von einer nach den Regelungen des Bundes oder der Länder für die berufliche Anerkennung zuständigen Stelle festgestellt wurde, dass Anpassungsmaßnahmen oder weitere</p>	<p>Recognition of foreign professional qualifications</p> <p>(1) For the purposes of the recognition of professional qualifications which a foreigner has acquired abroad, he or she may be granted a temporary residence permit for up to 18 months in order to be able to undertake a training measure and a subsequent examination if a body responsible according to regulations issued by the federal government or by the Länder as regards recognition of professional qualifications has established that adaptation measures or further qualifications are necessary</p>

<p>Qualifikationen</p> <p>1. für die Feststellung der Gleichwertigkeit der Berufsqualifikation mit einer inländischen Berufsqualifikation oder</p> <p>2. in einem im Inland reglementierten Beruf für die Erteilung der Befugnis zur Berufsausübung oder für die Erteilung der Erlaubnis zum Führen der Berufsbezeichnung erforderlich sind. Die Bildungsmaßnahme muss geeignet sein, dem Ausländer die Anerkennung der Berufsqualifikation oder den Berufszugang zu ermöglichen. Wird die Bildungsmaßnahme überwiegend betrieblich durchgeführt, setzt die Erteilung voraus, dass die Bundesagentur für Arbeit nach § 39 zugestimmt hat oder durch Rechtsverordnung nach § 42 oder zwischenstaatliche Vereinbarung bestimmt ist, dass die Teilnahme an der Bildungsmaßnahme ohne Zustimmung der Bundesagentur für Arbeit zulässig ist. Beschränkungen bei der Erteilung der Zustimmung durch die Bundesagentur für Arbeit sind in die Aufenthaltserlaubnis zu übernehmen.</p> <p>(2) Die Aufenthaltserlaubnis berechtigt zur Ausübung einer von der Bildungsmaßnahme unabhängigen Beschäftigung bis zu zehn Stunden je Woche.</p> <p>(3) Die Aufenthaltserlaubnis berechtigt zur Ausübung einer zeitlich nicht eingeschränkten Beschäftigung, deren Anforderungen in einem engen Zusammenhang mit den in der späteren Beschäftigung verlangten berufsfachlichen Kenntnissen stehen, wenn ein konkretes Arbeitsplatzangebot</p>	<p>1. to establish the equivalence of the professional qualification with a German professional qualification or</p> <p>2. to grant authorisation to practise the profession or to issue permission to use the professional title in a regulated profession in Germany.</p> <p>The training measure must be suited to enabling recognition of the foreigner's professional qualification or access to the profession. If the majority of the training measure is carried out in a business enterprise, issuance of the temporary residence permit presupposes that the Federal Employment Agency has consented thereto pursuant to Section 39 or it has been determined by statutory instrument pursuant to Section 42 or intergovernmental agreement that participation in the training measure is permissible without the consent of the Federal Employment Agency. Restrictions imposed when the Federal Employment Agency gives its consent shall be endorsed in the temporary residence permit.</p> <p>(2) The temporary residence permit shall authorise the holder to pursue an economic activity which is independent of the training measure for up to ten hours per week.</p> <p>(3) The temporary residence permit shall entitle the holder to pursue an economic activity which is not restricted in terms of time whose requirements are closely connected to the specialist skills needed in the later employment if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession</p>
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<p>für eine spätere Beschäftigung in dem anzuerkennenden oder von der beantragten Befugnis zur Berufsausübung oder von der beantragten Erlaubnis zum Führen der Berufsbezeichnung erfassten Beruf vorliegt, dieser Arbeitsplatz nach den Bestimmungen der §§ 18 bis 20 von Ausländern besetzt werden darf und die Bundesagentur für Arbeit nach § 39 zugestimmt hat oder durch Rechtsverordnung nach § 42 oder zwischenstaatliche Vereinbarung bestimmt ist, dass die Beschäftigung ohne Zustimmung der Bundesagentur für Arbeit zulässig ist. Beschränkungen bei der Erteilung der Zustimmung durch die Bundesagentur für Arbeit sind in die Aufenthaltserlaubnis zu übernehmen.</p> <p>(4) Nach der Feststellung der Gleichwertigkeit der Berufsqualifikation, der Erteilung der Befugnis zur Berufsausübung oder der Erteilung der Erlaubnis zum Führen der Berufsbezeichnung kann die Aufenthaltserlaubnis bis zu einem Jahr zur Suche eines der anerkannten Berufsqualifikation entsprechenden Arbeitsplatzes, sofern er nach den Bestimmungen der §§ 18 bis 20 von Ausländern besetzt werden darf, verlängert werden. Die Aufenthaltserlaubnis berechtigt während dieser Zeit zur Ausübung einer Erwerbstätigkeit. § 9 findet keine Anwendung.</p> <p>(5) Einem Ausländer kann zum Ablegen einer Prüfung zur Anerkennung seiner ausländischen Berufsqualifikation eine Aufenthaltserlaubnis erteilt werden, wenn ein konkretes Arbeitsplatzangebot für eine spätere Beschäftigung in dem</p>	<p>applied for or permission to use the professional title applied for, this job may be taken by foreigners in accordance with the provisions of Sections 18 to 20 and the Federal Employment Agency has consented thereto pursuant to Section 39 or it has been determined by statutory instrument pursuant to Section 42 or intergovernmental agreement that the employment is permissible without the consent of the Federal Employment Agency. Restrictions imposed when the Federal Employment Agency gives its consent shall be endorsed in the temporary residence permit.</p> <p>(4) Once equivalence of the professional qualification has been established, the authorisation to practise the profession has been granted or permission to use the professional title has been granted, the temporary residence permit may be extended for up to one year to allow the foreigner to seek employment which corresponds to the recognised professional qualification, insofar as it may be taken by foreigners pursuant to the provisions of Sections 18 to 20. During this period the temporary residence permit shall authorise the holder to pursue an economic activity. Section 9 shall not apply.</p> <p>(5) A foreigner may be granted a temporary residence permit in order to take an examination for the recognition of his or her foreign professional qualification if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession applied for or permission to use the professional title</p>
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	<p>anzuerkennenden oder von der beantragten Befugnis zur Berufsausübung oder zum Führen der Berufsbezeichnung erfassten Beruf vorliegt, dieser Arbeitsplatz nach den Bestimmungen der §§ 18 bis 20 von Ausländern besetzt werden darf und die Bundesagentur für Arbeit nach § 39 zugestimmt hat oder durch Rechtsverordnung nach § 42 oder zwischenstaatliche Vereinbarung bestimmt ist, dass die Beschäftigung ohne Zustimmung der Bundesagentur für Arbeit zulässig ist. Beschränkungen bei der Erteilung der Zustimmung durch die Bundesagentur für Arbeit sind in die Aufenthaltserlaubnis zu übernehmen. Die Absätze 2 bis 4 finden keine Anwendung.</p>	<p>applied for, this job may be taken by foreigners in accordance with the provisions of Sections 18 to 20 and the Federal Employment Agency has consented thereto pursuant to Section 39 or it has been determined by statutory instrument pursuant to Section 42 or intergovernmental agreement that the employment is permissible without the consent of the Federal Employment Agency. Restrictions imposed when the Federal Employment Agency gives its consent shall be endorsed in the temporary residence permit. Subsections 2 to 4 shall not apply.</p>
<p>§ 18 Aufenth G</p>	<p>Beschäftigung</p> <p>(1) Die Zulassung ausländischer Beschäftigter orientiert sich an den Erfordernissen des Wirtschaftsstandortes Deutschland unter Berücksichtigung der Verhältnisse auf dem Arbeitsmarkt und dem Erfordernis, die Arbeitslosigkeit wirksam zu bekämpfen. Internationale Verträge bleiben unberührt.</p> <p>(2) Einem Ausländer kann ein Aufenthaltstitel zur Ausübung einer Beschäftigung erteilt werden, wenn die Bundesagentur für Arbeit nach § 39 zugestimmt hat oder durch Rechtsverordnung nach § 42 oder zwischenstaatliche Vereinbarung bestimmt ist, dass die Ausübung der Beschäftigung ohne Zustimmung der Bundesagentur für Arbeit zulässig ist. Beschränkungen bei der Erteilung der Zustimmung durch die Bundesagentur für Arbeit sind in den Aufenthaltstitel zu übernehmen.</p> <p>(3) Eine Aufenthaltserlaubnis zur</p>	<p>Employment</p> <p>(1) The admission of foreign employees shall be geared to the requirements of the German economy, according due consideration to the labour market situation and the need to combat unemployment effectively. International treaties shall remain unaffected.</p> <p>(2) A foreigner may be granted a residence title for the purpose of taking up employment if the Federal Employment Agency has granted approval in accordance with Section 39 or if a statutory provision in accordance with Section 42 or an inter-governmental agreement stipulates that such employment may be taken up without approval from the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence title.</p> <p>(3) A temporary residence permit for the purpose of taking up employment</p>

<p>Ausübung einer Beschäftigung nach Absatz 2, die keine qualifizierte Berufsausbildung voraussetzt, darf nur erteilt werden, wenn dies durch zwischenstaatliche Vereinbarung bestimmt ist oder wenn auf Grund einer Rechtsverordnung nach § 42 die Erteilung der Zustimmung zu einer Aufenthaltserlaubnis für diese Beschäftigung zulässig ist.</p> <p>(4) Ein Aufenthaltstitel zur Ausübung einer Beschäftigung nach Absatz 2, die eine qualifizierte Berufsausbildung voraussetzt, darf nur für eine Beschäftigung in einer Berufsgruppe erteilt werden, die durch Rechtsverordnung nach § 42 zugelassen worden ist. Im begründeten Einzelfall kann eine Aufenthaltserlaubnis für eine Beschäftigung erteilt werden, wenn an der Beschäftigung ein öffentliches, insbesondere ein regionales, wirtschaftliches oder arbeitsmarktpolitisches Interesse besteht.</p> <p>(4a) Einem Ausländer, der in einem Beamtenverhältnis zu einem deutschen Dienstherrn steht, wird eine Aufenthaltserlaubnis zur Erfüllung seiner Dienstpflichten im Bundesgebiet erteilt. Die Aufenthaltserlaubnis wird für die Dauer von drei Jahren erteilt, wenn das Dienstverhältnis nicht auf einen kürzeren Zeitraum befristet ist. Nach drei Jahren wird eine Niederlassungserlaubnis abweichend von § 9 Absatz 2 Satz 1 Nummer 1 und 3 erteilt.</p> <p>(5) Ein Aufenthaltstitel nach Absatz 2, § 19, § 19a, § 19b oder § 19d darf nur erteilt werden, wenn ein konkretes Arbeitsplatzangebot vorliegt und eine Berufsausübungserlaubnis, soweit diese</p>	<p>pursuant to subsection 2 which does not require a vocational qualification may only be issued if regulated by an inter-governmental agreement or if issuance of approval for a temporary residence permit for the said employment is permissible by virtue of a statutory instrument in accordance with Section 42.</p> <p>(4) A residence title for the purpose of taking up employment pursuant to subsection 2 which requires a vocational qualification may only be issued for employment in an occupational group which has been approved by virtue of a statutory instrument in accordance with Section 42. In justified individual cases, a temporary residence permit may be issued for the purpose of taking up employment when there is a public interest, and in particular a regional interest or an interest relating to the economy or the labour market.</p> <p>(5) A residence title pursuant to subsection 2, Section 19 or Section 19a may only be granted if a concrete job offer exists and if any legally prescribed professional licence has been granted or promised.</p> <p>(6) The granting or extension of a residence title pursuant to subsection 2, Section 19 or Section 19a, which does not require approval by the Federal Employment Agency owing to provisions in this Act, in a statutory instrument or an inter-governmental agreement, may be denied if there are grounds that would allow the authorities to deny the necessary approval pursuant to Section 40 (2) no. 3.</p>
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	<p>vorgeschrieben ist, erteilt wurde oder ihre Erteilung zugesagt ist.</p> <p>(6) Die Erteilung oder Verlängerung eines Aufenthaltstitels nach Absatz 2, den §§ 17b, 18d, 19, 19a, 19b, 19d, 20 oder 20b, der auf Grund dieses Gesetzes, einer Rechtsverordnung oder einer zwischenstaatlichen Vereinbarung nicht der Zustimmung der Bundesagentur für Arbeit bedarf, kann versagt werden, wenn ein Sachverhalt vorliegt, der bei zustimmungspflichtigen Beschäftigungen zur Versagung der Zustimmung nach § 40 Absatz 2 Nummer 3 oder Absatz 3 berechtigen würde.</p>	
<p>§ 18a Aufenth G</p>	<p>Aufenthaltsvisa für qualifizierte Geduldete zum Zweck der Beschäftigung</p> <p>(1) Einem geduldeten Ausländer kann ein Aufenthaltsvisa zur Ausübung einer der beruflichen Qualifikation entsprechenden Beschäftigung erteilt werden, wenn die Bundesagentur für Arbeit nach § 39 zugestimmt hat und der Ausländer</p> <p>1. im Bundesgebiet</p> <p>a) eine qualifizierte Berufsausbildung in einem staatlich anerkannten oder vergleichbar geregelten Ausbildungsberuf oder ein Hochschulstudium abgeschlossen hat oder</p> <p>b) mit einem anerkannten oder einem deutschen Hochschulabschluss vergleichbaren ausländischen Hochschulabschluss seit zwei Jahren ununterbrochen eine dem Abschluss angemessene Beschäftigung ausgeübt hat, oder</p> <p>c) als Fachkraft seit drei Jahren ununterbrochen eine Beschäftigung ausgeübt hat, die eine qualifizierte</p>	<p>Temporary residence permit for the purpose of employment for qualified foreigners whose deportation has been suspended</p> <p>(1) A foreigner whose deportation has been suspended may be granted a temporary residence permit for the purpose of taking up employment commensurate with his or her vocational qualification if the Federal Employment Agency has granted approval in accordance with Section 39, and the foreigner</p> <p>1. has, in the federal territory,</p> <p>a) completed a vocational qualification in a state-recognised or similarly regulated occupation which requires formal training or a course of study at a higher education establishment, or</p> <p>b) held a position of employment continuously for two years with a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification and which is appropriate to that employment, or</p>

<p>Berufsausbildung voraussetzt, und innerhalb des letzten Jahres vor Beantragung der Aufenthaltserlaubnis für seinen Lebensunterhalt und den seiner Familienangehörigen oder anderen Haushaltsangehörigen nicht auf öffentliche Mittel mit Ausnahme von Leistungen zur Deckung der notwendigen Kosten für Unterkunft und Heizung angewiesen war, und</p> <ol style="list-style-type: none"> 2. über ausreichenden Wohnraum verfügt, 3. über ausreichende Kenntnisse der deutschen Sprache verfügt, 4. die Ausländerbehörde nicht vorsätzlich über aufenthaltsrechtlich relevante Umstände getäuscht hat, 5. behördliche Maßnahmen zur Aufenthaltsbeendigung nicht vorsätzlich hinausgezögert oder behindert hat, 6. keine Bezüge zu extremistischen oder terroristischen Organisationen hat und diese auch nicht unterstützt und 7. nicht wegen einer im Bundesgebiet begangenen vorsätzlichen Straftat verurteilt wurde, wobei Geldstrafen von insgesamt bis zu 50 Tagessätzen oder bis zu 90 Tagessätzen wegen Straftaten, die nach dem Aufenthaltsgesetz oder dem Asylgesetz nur von Ausländern begangen werden können, grundsätzlich außer Betracht bleiben. <p>(1a) Wurde die Duldung nach § 60a Absatz 2 Satz 4 erteilt, ist nach erfolgreichem Abschluss dieser Berufsausbildung für eine der erworbenen beruflichen Qualifikation entsprechenden Beschäftigung eine Aufenthaltserlaubnis für die Dauer von zwei Jahren zu erteilen, wenn die Voraussetzungen des Absatzes 1</p>	<p>c) held a position of employment as a skilled worker continuously for three years which requires a vocational qualification and has not been reliant on public funds for his or her livelihood and that of his or her dependants or other members of his or her household within the year preceding the application for the temporary residence permit except for payments to cover the necessary costs for accommodation and heating, and</p> <ol style="list-style-type: none"> 2. has sufficient living space at his or her disposal, 3. has sufficient command of the German language, 4. has not wilfully deceived the foreigners authority as to circumstances of relevance to his or her situation under residence law, 5. has not wilfully delayed or obstructed official measures to end his or her residence, 6. does not have any links to extremist or terrorist organisations and does not support such organisations and 7. has not been convicted of an offence wilfully committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, in accordance with the Residence Act or the Asylum Act, can only be committed by foreigners shall be ignored as a general principle. <p>(1a) Where deportation has been suspended pursuant to Section 60a (2), sentence 4, a temporary residence permit is to be granted for a period of two years after the foreigner has successfully concluded this vocational training for employment which corresponds to the professional qualifications acquired if the</p>
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	<p>Nummer 2 bis 7 vorliegen und die Bundesagentur für Arbeit nach § 39 zugestimmt hat.</p> <p>(1b) Eine Aufenthaltserlaubnis nach Absatz 1a wird widerrufen, wenn das der Erteilung dieser Aufenthaltserlaubnis zugrunde liegende Arbeitsverhältnis aus Gründen, die in der Person des Ausländers liegen, aufgelöst wird oder der Ausländer wegen einer im Bundesgebiet begangenen vorsätzlichen Straftat verurteilt wurde, wobei Geldstrafen von insgesamt bis zu 50 Tagessätzen oder bis zu 90 Tagessätzen wegen Straftaten, die nach dem Aufenthaltsgesetz oder dem Asylgesetz nur von Ausländern begangen werden können, grundsätzlich außer Betracht bleiben.</p> <p>(2) Über die Zustimmung der Bundesagentur für Arbeit nach den Absätzen 1 und 1a wird ohne Vorrangprüfung nach § 39 Abs. 2 Satz 1 Nr. 1 entschieden. § 18 Abs. 2 Satz 2 und Abs. 5 gilt entsprechend. Die Aufenthaltserlaubnis berechtigt nach Ausübung einer zweijährigen der beruflichen Qualifikation entsprechenden Beschäftigung zu jeder Beschäftigung.</p> <p>(3) Die Aufenthaltserlaubnis kann abweichend von § 5 Abs. 2 und § 10 Abs. 3 Satz 1 erteilt werden.</p>	<p>conditions referred to in subsection 1 nos. 2 to 7 are met and the Federal Employment Agency has consented thereto pursuant to Section 39.</p> <p>(1b) A temporary residence permit issued pursuant to subsection 1a shall be revoked if the employment relationship on which the issuance of the temporary residence permit was based is terminated for reasons relating to the person of the foreigner or the foreigner has been convicted of an offence committed intentionally in the federal territory, whereby no account shall generally be taken of fines of a total of up to 50 daily rates or of up to 90 daily rates in the case of offences which, under the Residence Act or the Asylum Act, can only be committed by foreigners.</p> <p>(2) The approval of the Federal Employment Agency pursuant to subsections 1 and 1a shall be decided upon without an examination of priority pursuant to Section 39 (2), sentence 1, no. 1. Section 18 (2), sentence 2 and (5) shall apply mutatis mutandis. The temporary residence permit shall entitle the holder to take up any employment after he or she has been in an employed position commensurate with his or her vocational qualification for a period of two years.</p> <p>(3) The temporary residence permit may be granted by way of derogation from Section 5 (2) and Section 10 (3), sentence 1.</p>
<p>§ 18b Aufenth G</p>	<p>Niederlassungserlaubnis für Absolventen deutscher Hochschulen Einem Ausländer, der sein Studium an einer staatlichen oder staatlich</p>	<p>Permanent settlement permit for graduates of German universities A foreigner who has successfully completed his or her studies at a state or</p>

	<p>anerkannten Hochschule oder vergleichbaren Ausbildungseinrichtung im Bundesgebiet erfolgreich abgeschlossen hat, wird eine Niederlassungserlaubnis erteilt, wenn</p> <ol style="list-style-type: none"> 1. er seit zwei Jahren einen Aufenthaltstitel nach den §§ 18, 18a, 19a oder § 21 besitzt, 2. er einen seinem Abschluss angemessenen Arbeitsplatz innehat, 3. er mindestens 24 Monate Pflichtbeiträge oder freiwillige Beiträge zur gesetzlichen Rentenversicherung geleistet hat oder Aufwendungen für einen Anspruch auf vergleichbare Leistungen einer Versicherungs- oder Versorgungseinrichtung oder eines Versicherungsunternehmens nachweist und 4. die Voraussetzungen des § 9 Absatz 2 Satz 1 Nummer 2 und 4 bis 9 vorliegen; § 9 Absatz 2 Satz 2 bis 6 gilt entsprechend. 	<p>state-recognised university or a comparable educational establishment in the federal territory shall be granted a permanent settlement permit, if</p> <ol style="list-style-type: none"> 1. he or she has held a residence title pursuant to Sections 18, 18a, 19a or 21 for two years, 2. he or she has a job commensurate with his or her degree, 3. he or she has paid compulsory or voluntary contributions into the statutory pension scheme for at least 24 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company, and 4. the requirements of Section 9 (2), sentence 1, nos. 2, and 4 to 9 are met; Section 9 (2), sentences 2 to 6 shall apply mutatis mutandis.
<p>§ 18c Aufenth G</p>	<p>Aufenthaltsurlaubnis zur Arbeitsplatzsuche für qualifizierte Fachkräfte</p> <p>(1) Einem Ausländer, der über einen deutschen oder anerkannten oder einem deutschen Hochschulabschluss vergleichbaren ausländischen Hochschulabschluss verfügt und dessen Lebensunterhalt gesichert ist, kann eine Aufenthaltserlaubnis zur Suche nach einem der Qualifikation angemessenen Arbeitsplatz für bis zu sechs Monate erteilt werden. Die Aufenthaltserlaubnis berechtigt nicht zur Erwerbstätigkeit.</p> <p>(2) Eine Verlängerung der Aufenthaltserlaubnis über den in Absatz 1 genannten Höchstzeitraum hinaus ist ausgeschlossen. Eine Aufenthaltserlaubnis nach Absatz 1 kann</p>	<p>Temporary residence permit for qualified skilled workers seeking employment</p> <p>(1) A foreigner with a German or a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification and whose subsistence is secure may be granted a temporary residence permit for the purpose of seeking a job commensurate with this qualification for a period of up to six months. The residence permit shall not entitle the holder to pursue an economic activity.</p> <p>(2) The temporary residence permit may not be extended beyond the maximum period mentioned in subsection 1. A temporary residence permit pursuant to</p>

	<p>erneut nur erteilt werden, wenn sich der Ausländer nach seiner Ausreise mindestens so lange im Ausland aufgehalten hat, wie er sich zuvor auf der Grundlage einer Aufenthaltserlaubnis nach Absatz 1 im Bundesgebiet aufgehalten hat.</p> <p>(3) Auf Ausländer, die sich bereits im Bundesgebiet aufhalten, findet Absatz 1 nur Anwendung, wenn diese unmittelbar vor der Erteilung der Aufenthaltserlaubnis nach Absatz 1 im Besitz eines Aufenthaltstitels zum Zweck der Erwerbstätigkeit waren.</p>	<p>subsection 1 can only be issued anew if the foreigner, after leaving Germany, stayed abroad for at least as long as he or she stayed in the federal territory on the basis of a residence title pursuant to subsection 1. Subsection 1 shall only apply to foreigners already residing in the federal territory if they possessed a residence title for the purpose of employment immediately before they were granted a temporary residence permit pursuant to subsection 1.</p>
<p>§ 19 Aufenth G</p>	<p>Niederlassungserlaubnis für Hochqualifizierte</p> <p>(1) Einem hoch qualifizierten Ausländer kann in besonderen Fällen eine Niederlassungserlaubnis erteilt werden, wenn die Bundesagentur für Arbeit nach § 39 zugestimmt hat oder durch Rechtsverordnung nach § 42 oder zwischenstaatliche Vereinbarung bestimmt ist, dass die Niederlassungserlaubnis ohne Zustimmung der Bundesagentur für Arbeit nach § 39 erteilt werden kann und die Annahme gerechtfertigt ist, dass die Integration in die Lebensverhältnisse der Bundesrepublik Deutschland und die Sicherung des Lebensunterhalts ohne staatliche Hilfe gewährleistet sind. Die Landesregierung kann bestimmen, dass die Erteilung der Niederlassungserlaubnis nach Satz 1 der Zustimmung der obersten Landesbehörde oder einer von ihr bestimmten Stelle bedarf.</p> <p>(2) Hoch qualifiziert nach Absatz 1 sind insbesondere</p> <p>1. Wissenschaftler mit besonderen fachlichen Kenntnissen oder</p>	<p>Permanent settlement permit for highly qualified foreigners</p> <p>(1) A highly qualified foreigner may be granted a permanent settlement permit in special cases if the Federal Employment Agency has granted approval in accordance with Section 39 or if a statutory provision in accordance with Section 42 or an inter-governmental agreement stipulates that the permanent settlement permit may be granted without approval from the Federal Employment Agency in line with Section 39 and there are justifiable grounds to assume that integration into the way of life which prevails in the Federal Republic of Germany and the foreigner's subsistence without state assistance are assured. The Land government may stipulate that issuance of the permanent settlement permit pursuant to sentence 1 requires the approval of the supreme Land authority or a body to be designated by the latter.</p> <p>(2) Highly qualified persons in accordance with subsection 1 are, in particular,</p>

	<p>2. Lehrpersonen in herausgehobener Funktion oder wissenschaftliche Mitarbeiter in herausgehobener Funktion.</p>	<p>1. researchers with special technical knowledge or 2. teaching personnel in prominent positions or scientific personnel in prominent positions.</p>
<p>§ 19a Aufenth G</p>	<p>Blaue Karte EU (1) Einem Ausländer wird eine Blaue Karte EU nach der Richtlinie 2009/50/EG des Rates vom 25. Mai 2009 über die Bedingungen für die Einreise und den Aufenthalt von Drittstaatsangehörigen zur Ausübung einer hochqualifizierten Beschäftigung (ABl. L 155 vom 18.6.2009, S. 17) zum Zweck einer seiner Qualifikation angemessenen Beschäftigung erteilt, wenn 1. er a) einen deutschen, einen anerkannten ausländischen oder einen einem deutschen Hochschulabschluss vergleichbaren ausländischen Hochschulabschluss besitzt oder b) soweit durch Rechtsverordnung nach Absatz 2 bestimmt, eine durch eine mindestens fünfjährige Berufserfahrung nachgewiesene vergleichbare Qualifikation besitzt, 2. die Bundesagentur für Arbeit nach § 39 zugestimmt hat oder durch Rechtsverordnung nach § 42 oder zwischenstaatliche Vereinbarung bestimmt ist, dass die Blaue Karte EU ohne Zustimmung der Bundesagentur für Arbeit nach § 39 erteilt werden kann, und 3. er ein Gehalt erhält, das mindestens dem Betrag entspricht, der durch Rechtsverordnung nach Absatz 2 bestimmt ist. (2) Das Bundesministerium für Arbeit</p>	<p>EU Blue Card (1) A foreigner shall be issued with an EU Blue Card pursuant to Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (Official Journal no. L 155 of 18 June 2009, p. 17) to work in line with his or her qualification, if 1. he or she a) holds a German or a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification or b) - to the extent that this is stipulated by a statutory instrument pursuant to subsection 2 below - if he or she has a comparable qualification demonstrated by at least five years of professional experience, 2. the Federal Employment Agency has given its approval in line with Section 39 below or if a statutory instrument pursuant to Section 42 below or an intergovernmental agreement stipulate that the EU Blue Card may be issued without the approval of the Federal Employment Agency, and 3. if he or she receives a salary equal to or exceeding that stipulated by the statutory instrument under subsection 2 below. (2) The Federal Ministry of Labour and Social Affairs may determine the following by means of statutory</p>

<p>und Soziales kann durch Rechtsverordnung Folgendes bestimmen:</p> <ol style="list-style-type: none"> 1. die Höhe des Gehalts nach Absatz 1 Nummer 3, 2. Berufe, in denen die einem Hochschulabschluss vergleichbare Qualifikation durch mindestens fünfjährige Berufserfahrung nachgewiesen werden kann, und 3. Berufe, in denen für Angehörige bestimmter Staaten die Erteilung einer Blauen Karte EU zu versagen ist, weil im Herkunftsland ein Mangel an qualifizierten Arbeitnehmern in diesen Berufsgruppen besteht. <p>Rechtsverordnungen nach den Nummern 1 und 2 bedürfen der Zustimmung des Bundesrates.</p> <p>(3) Die Blaue Karte EU wird bei erstmaliger Erteilung auf höchstens vier Jahre befristet. Beträgt die Dauer des Arbeitsvertrags weniger als vier Jahre, wird die Blaue Karte EU für die Dauer des Arbeitsvertrags zuzüglich dreier Monate ausgestellt oder verlängert.</p> <p>(4) Für jeden Arbeitsplatzwechsel eines Inhabers einer Blauen Karte EU ist in den ersten zwei Jahren der Beschäftigung die Erlaubnis durch die Ausländerbehörde erforderlich; die Erlaubnis wird erteilt, wenn die Voraussetzungen nach Absatz 1 vorliegen.</p> <p>(5) Eine Blaue Karte EU wird nicht erteilt an Ausländer,</p> <ol style="list-style-type: none"> 1. die die Voraussetzungen nach § 9a Absatz 3 Nummer 1 oder 2 erfüllen, 2. die einen Antrag auf Feststellung der Voraussetzungen nach § 60 Absatz 5 oder 7 Satz 1 oder nach § 60a Absatz 2 Satz 1 gestellt haben, 	<p>instruments:</p> <ol style="list-style-type: none"> 1. the level of pay pursuant to subsection 1 no. 3, 2. professions where five years of professional experience demonstrate a qualification comparable to a higher education degree 3. professions where nationals of specific states are to be denied an EU Blue Card, because there is a lack of such qualified workers in the country of origin. <p>Statutory instruments under nos. 1 and 2 shall require the approval of the Bundesrat.</p> <p>The EU Blue Card shall be issued for a maximum period of four years from the date of initial issue. Where the duration of the employment contract is less than four years, the EU Blue Card shall be issued or extended for the period covering the employment contract plus three months.</p> <p>Holders of the EU Blue Card wishing to move to another position within the first two years of employment shall require permission by the foreigners authority; such permission shall be granted if the conditions in subsection 1 are met.</p> <p>(5) Foreigners</p> <ol style="list-style-type: none"> 1. who meet the conditions in Section 9a (3) nos. 1 or 2, 2. who have applied for the determination of whether the conditions in Section 60 (5) or (7), sentence 1, or in Section 60a (2), sentence 1 are met, 3. whose entry into a member state of the European Union is subject to obligations arising from international treaties to facilitate the entry and temporary residence of specific categories of natural persons exercising trade- or investment-
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<p>3. deren Einreise in einen Mitgliedstaat der Europäischen Union Verpflichtungen unterliegt, die sich aus internationalen Abkommen zur Erleichterung der Einreise und des vorübergehenden Aufenthalts bestimmter Kategorien von natürlichen Personen, die handels- und investitionsbezogene Tätigkeiten ausüben, herleiten,</p> <p>4. die in einem Mitgliedstaat der Europäischen Union als Saisonarbeitnehmer zugelassen wurden,</p> <p>5. die im Besitz einer Duldung nach § 60a sind,</p> <p>6. die unter die Richtlinie 96/71/EG des Europäischen Parlaments und des Rates vom 16. Dezember 1996 über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von Dienstleistungen (ABl. L 18 vom 21.1.1997, S. 1) fallen, für die Dauer ihrer Entsendung nach Deutschland, oder</p> <p>7. die auf Grund von Übereinkommen zwischen der Europäischen Union und ihren Mitgliedstaaten einerseits und Drittstaaten andererseits ein Recht auf freien Personenverkehr genießen, das dem der Unionsbürger gleichwertig ist.</p> <p>(6) Dem Inhaber einer Blauen Karte EU ist eine Niederlassungserlaubnis zu erteilen, wenn er mindestens 33 Monate eine Beschäftigung nach Absatz 1 ausgeübt hat und für diesen Zeitraum Pflichtbeiträge oder freiwillige Beiträge zur gesetzlichen Rentenversicherung geleistet hat oder Aufwendungen für einen Anspruch auf vergleichbare Leistungen einer Versicherungs- oder Versorgungseinrichtung oder eines Versicherungsunternehmens nachweist und die Voraussetzungen des § 9 Absatz</p>	<p>related activities,</p> <p>4. who have been approved as seasonal workers in a member state of the European Union,</p> <p>5. whose deportation has been temporarily suspended pursuant to Section 60a,</p> <p>6. who come under Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Official Journal no. L 18 of 21 January 1997, p.1), for the duration of posting to Germany, or</p> <p>7. who, owing to treaties between the European Union and its member states on the one hand and third countries on the other, enjoy rights of free movement equivalent to those of Union citizens.</p> <p>shall not be issued with an EU Blue Card.</p> <p>(6) Holders of an EU Blue Card are to be issued with a permanent settlement permit, if they have held a position of employment in line with subsection 1 for at least 33 months and have made mandatory or voluntary contributions to the statutory pension insurance scheme for that period, or if they furnish evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company and if the requirements of Section 9 (2), sentence 1, nos. 2, 4 to 6, 8 to 9 are met and if they have basic German language skills. Section 9 (2) sentences 2 to 6 shall apply mutatis mutandis. The period referred to in sentence 1 shall be reduced to 21 months if the foreigner has a sufficient command of the German language.</p>
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	<p>2 Satz 1 Nummer 2, 4 bis 6, 8 und 9 vorliegen und er über einfache Kenntnisse der deutschen Sprache verfügt vorliegen. § 9 Absatz 2 Satz 2 bis 6 gilt entsprechend. Die Frist nach Satz 1 verkürzt sich auf 21 Monate, wenn der Ausländer über ausreichende Kenntnisse der deutschen Sprache verfügt.</p>	
<p>§ 20 Aufenth G</p>	<p>Forschung (1) Einem Ausländer wird eine Aufenthaltserlaubnis nach der Richtlinie (EU) 2016/801 zum Zweck der Forschung erteilt, wenn</p> <p>1. er</p> <p>a) eine wirksame Aufnahmevereinbarung oder einen entsprechenden Vertrag zur Durchführung eines Forschungsvorhabens mit einer Forschungseinrichtung abgeschlossen hat, die für die Durchführung des besonderen Zulassungsverfahrens für Forscher im Bundesgebiet anerkannt ist, oder</p> <p>b) eine wirksame Aufnahmevereinbarung oder einen entsprechenden Vertrag mit einer Forschungseinrichtung abgeschlossen hat, die Forschung betreibt, und</p> <p>2. die Forschungseinrichtung sich schriftlich zur Übernahme der Kosten verpflichtet hat, die öffentlichen Stellen bis zu sechs Monate nach der Beendigung der Aufnahmevereinbarung entstehen für</p> <p>a) den Lebensunterhalt des Ausländers während eines unerlaubten Aufenthalts in einem Mitgliedstaat der Europäischen Union und</p> <p>b) eine Abschiebung des Ausländers.</p> <p>In den Fällen des Satzes 1 Nummer 1 Buchstabe a ist die Aufenthaltserlaubnis</p>	<p>Research (1) A foreigner shall be granted a temporary residence permit for research purposes where</p> <p>1. he or she has concluded an effective admission agreement for the purpose of carrying out a research project with a research establishment which is recognised for implementation of the special admission procedure for researchers in the federal territory pursuant to Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (Official EU Journal no. L 289, p. 15) and</p> <p>2. the recognised research establishment has undertaken in writing to bear the costs accruing to public bodies up to six months after termination of the admission agreement for</p> <p>a) the foreigner's subsistence during an unlawful stay in a member state of the European Union and</p> <p>b) a deportation of the foreigner.</p> <p>(2) The requirement pursuant to subsection 1, no. 2 should be waived where the activities of the research establishment are financed primarily from public funds. The requirement may be waived where there is a special public interest in the research project. Section 66</p>

<p>innerhalb von 60 Tagen nach Antragstellung zu erteilen.</p> <p>(2) Von dem Erfordernis des Absatzes 1 Nr. 2 soll abgesehen werden, wenn die Tätigkeit der Forschungseinrichtung überwiegend aus öffentlichen Mitteln finanziert wird. Es kann davon abgesehen werden, wenn an dem Forschungsvorhaben ein besonderes öffentliches Interesse besteht. Auf die nach Absatz 1 Nr. 2 abgegebenen Erklärungen sind § 66 Abs. 5, § 67 Abs. 3 sowie § 68 Abs. 2 Satz 2 und 3 und Abs. 4 entsprechend anzuwenden.</p> <p>(3) Die Forschungseinrichtung kann die Erklärung nach Absatz 1 Nr. 2 auch gegenüber der für ihre Anerkennung zuständigen Stelle allgemein für sämtliche Ausländer abgeben, denen auf Grund einer mit ihr geschlossenen Aufnahmevereinbarung eine Aufenthaltserlaubnis erteilt wird.</p> <p>(4) Die Aufenthaltserlaubnis wird für mindestens ein Jahr erteilt. Nimmt der Ausländer an einem Unions- oder multilateralen Programm mit Mobilitätsmaßnahmen teil, so wird die Aufenthaltserlaubnis für mindestens zwei Jahre erteilt. Wenn das Forschungsvorhaben in einem kürzeren Zeitraum durchgeführt wird, wird die Aufenthaltserlaubnis abweichend von den Sätzen 1 und 2 auf die Dauer des Forschungsvorhabens befristet; die Frist beträgt in den Fällen des Satzes 2 mindestens ein Jahr.</p> <p>(5) Eine Aufenthaltserlaubnis nach Absatz 1 berechtigt zur Aufnahme der Forschungstätigkeit bei der in der Aufnahmevereinbarung bezeichneten Forschungseinrichtung und zur</p>	<p>(5), Section 67 (3) and Section 68 (2), sentences 2 and 3 and (4) shall be applicable mutatis mutandis to the declarations furnished pursuant to subsection 1, no. 2.</p> <p>(3) The research establishment may also submit the declaration pursuant to subsection 1, no. 2 to the body responsible for its recognition as a general declaration for all foreigners to whom a temporary residence permit is issued on the basis of an admission agreement concluded with the establishment concerned.</p> <p>(4) The temporary residence permit shall be issued for a period of at least one year. By way of derogation from sentence 1, where the research project is completed in a shorter period the term of the temporary residence permit shall be limited to the duration of the research project.</p> <p>(5) Foreigners who hold a residence title from another member state of the European Union for research purposes pursuant to Directive 2005/71/EC shall be granted a temporary residence permit or a visa for the purpose of carrying out parts of the research project in the federal territory. The temporary residence permit shall be issued for a stay of more than 90 days only if the conditions pursuant to subsection 1 are met. Section 9 is not applicable.</p> <p>(6) A temporary residence permit pursuant to subsections 1 and 5, sentence 2 shall entitle the holder to take up research at the research establishment specified in the admission agreement and to take up teaching activities. Changes to the research project during the stay shall</p>
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<p>Aufnahme von Tätigkeiten in der Lehre. Änderungen des Forschungsvorhabens während des Aufenthalts führen nicht zum Wegfall dieser Berechtigung.</p> <p>(6) Absatz 1 gilt nicht für Ausländer,</p> <ol style="list-style-type: none"> 1. die sich in einem Mitgliedstaat der Europäischen Union aufhalten, weil sie einen Antrag auf Zuerkennung der Flüchtlingseigenschaft oder auf Gewährung subsidiären Schutzes im Sinne der Richtlinie 2004/83/EG oder auf Zuerkennung internationalen Schutzes im Sinne der Richtlinie 2011/95/EU gestellt haben, oder die in einem Mitgliedstaat internationalen Schutz im Sinne der Richtlinie 2011/95/EU genießen, 2. die sich im Rahmen einer Regelung zum vorübergehenden Schutz in einem Mitgliedstaat der Europäischen Union aufhalten, 3. deren Abschiebung in einem Mitgliedstaat der Europäischen Union aus tatsächlichen oder rechtlichen Gründen ausgesetzt wurde, 4. deren Forschungstätigkeit Bestandteil eines Promotionsstudiums ist, 5. die von einer Forschungseinrichtung in einem anderen Mitgliedstaat der Europäischen Union an eine deutsche Forschungseinrichtung als Arbeitnehmer entsandt werden, 6. die eine Erlaubnis zum Daueraufenthalt – EU oder einen Aufenthaltstitel, der durch einen anderen Mitgliedstaat der Europäischen Union auf der Grundlage der Richtlinie 2003/109/EG erteilt wurde, besitzen, 7. die auf Grund von Übereinkommen zwischen der Europäischen Union und ihren Mitgliedstaaten einerseits und 	<p>not cause this entitlement to expire. A foreigner who meets the conditions pursuant to subsection 5, sentence 1 may also pursue an economic activity pursuant to sentence 1 without a residence title for a period of three months within a twelve-month period.</p> <p>(7) Subsections 1 and 5 shall not apply to foreigners</p> <ol style="list-style-type: none"> 1. who are resident in a member state of the European Union because they have filed an application for refugee status or subsidiary protection within the meaning of Directive 2004/83/EC or for recognition of international protection status within the meaning of Directive 2011/95/EU. 2. who are resident in a member state of the European Union under the terms of an arrangement to provide temporary protection, 3. whose deportation has been suspended in a member state of the European Union on grounds of fact or law, 4. whose research activities form part of doctoral studies or 5. who are transferred by a research establishment in another member state of the European Union to a German research establishment as an employee.
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	<p>Drittstaaten andererseits ein Recht auf freien Personenverkehr genießen, das dem der Unionsbürger gleichwertig ist, oder</p> <p>8. die eine Blaue Karte EU nach § 19a oder einen Aufenthaltstitel, der durch einen anderen Mitgliedstaat der Europäischen Union auf Grundlage der Richtlinie 2009/50/EG erteilt wurde, besitzen.</p> <p>(7) Nach Abschluss der Forschungstätigkeit wird die Aufenthaltserlaubnis um bis zu neun Monate zur Suche einer der Qualifikation des Forschers entsprechenden Erwerbstätigkeit verlängert, sofern der Abschluss von der aufnehmenden Einrichtung bestätigt wurde und diese Erwerbstätigkeit nach den Bestimmungen der §§ 18, 19, 19a, 20 und 21 von einem Ausländer aufgenommen werden darf. Die Aufenthaltserlaubnis berechtigt während dieses Zeitraums zur Ausübung einer Erwerbstätigkeit.</p> <p>(8) Einem Ausländer, der in einem Mitgliedstaat der Europäischen Union internationalen Schutz im Sinne der Richtlinie 2011/95/EU genießt, kann eine Aufenthaltserlaubnis zum Zweck der Forschung erteilt werden, wenn die Voraussetzungen des Absatzes 1 erfüllt sind und er sich mindestens zwei Jahre nach Erteilung der Schutzberechtigung in diesem Mitgliedstaat aufgehalten hat. Absatz 5 gilt entsprechend.</p>	
<p>§ 21 Aufenth G</p>	<p>Selbständige Tätigkeit</p> <p>(1) Einem Ausländer kann eine Aufenthaltserlaubnis zur Ausübung einer selbständigen Tätigkeit erteilt werden, wenn</p> <p>1. ein wirtschaftliches Interesse oder ein</p>	<p>Self-employment</p> <p>(1) A foreigner may be granted a temporary residence permit for the purpose of self-employment if</p> <p>1. an economic interest or a regional need applies,</p>

<p>regionales Bedürfnis besteht,</p> <p>2. die Tätigkeit positive Auswirkungen auf die Wirtschaft erwarten lässt und</p> <p>3. die Finanzierung der Umsetzung durch Eigenkapital oder durch eine Kreditzusage gesichert ist.</p> <p>Die Beurteilung der Voraussetzungen nach Satz 1 richtet sich insbesondere nach der Tragfähigkeit der zu Grunde liegenden Geschäftsidee, den unternehmerischen Erfahrungen des Ausländers, der Höhe des Kapitaleinsatzes, den Auswirkungen auf die Beschäftigungs- und Ausbildungssituation und dem Beitrag für Innovation und Forschung. Bei der Prüfung sind die für den Ort der geplanten Tätigkeit fachkundigen Körperschaften, die zuständigen Gewerbebehörden, die öffentlich-rechtlichen Berufsvertretungen und die für die Berufszulassung zuständigen Behörden zu beteiligen.</p> <p>(2) Eine Aufenthaltserlaubnis zur Ausübung einer selbständigen Tätigkeit kann auch erteilt werden, wenn völkerrechtliche Vergünstigungen auf der Grundlage der Gegenseitigkeit bestehen.</p> <p>(2a) Einem Ausländer, der sein Studium an einer staatlichen oder staatlich anerkannten Hochschule oder vergleichbaren Ausbildungseinrichtung im Bundesgebiet erfolgreich abgeschlossen hat oder der als Forscher oder Wissenschaftler eine Aufenthaltserlaubnis nach § 18 oder § 20 besitzt, kann eine Aufenthaltserlaubnis zur Ausübung einer selbständigen Tätigkeit abweichend von Absatz 1 erteilt werden. Die beabsichtigte selbständige Tätigkeit muss einen Zusammenhang mit</p>	<p>2. the activity is expected to have positive effects on the economy and</p> <p>3. personal capital on the part of the foreigner or a loan undertaking is available to realise the business idea.</p> <p>Assessment of the prerequisites in accordance with sentence 1 shall focus in particular on the viability of the business idea forming the basis of the application, the foreigner's entrepreneurial experience, the level of capital investment, the effects on the employment and training situation and the contribution towards innovation and research. The competent bodies for the planned business location, the competent trade and industry authorities, the representative bodies for public-sector professional groups and the competent authorities regulating admission to the profession concerned shall be involved in examining the application.</p> <p>(2) A temporary residence permit for the purpose of self-employment may also be granted if special privileges apply according to agreements under international law on the basis of reciprocity.</p> <p>(2a) A foreigner who has successfully completed his studies at a state or state-recognised university or a comparable educational establishment in the federal territory or who holds a temporary residence permit as a researcher or scientist in line with Sections 18 or 20 may be issued with a temporary residence permit for self-employment purposes by way of derogation from subsection 1. The envisaged self-employment must demonstrate a connection to the knowledge acquired during the higher</p>
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	<p>den in der Hochschulausbildung erworbenen Kenntnissen oder der Tätigkeit als Forscher oder Wissenschaftler erkennen lassen.</p> <p>(3) Ausländern, die älter sind als 45 Jahre, soll die Aufenthaltserlaubnis nur erteilt werden, wenn sie über eine angemessene Altersversorgung verfügen.</p> <p>(4) Die Aufenthaltserlaubnis wird auf längstens drei Jahre befristet. Nach drei Jahren kann abweichend von § 9 Abs. 2 eine Niederlassungserlaubnis erteilt werden, wenn der Ausländer die geplante Tätigkeit erfolgreich verwirklicht hat und der Lebensunterhalt des Ausländers und seiner mit ihm in familiärer Gemeinschaft lebenden Angehörigen, denen er Unterhalt zu leisten hat, durch ausreichende Einkünfte gesichert ist.</p> <p>(5) Einem Ausländer kann eine Aufenthaltserlaubnis zur Ausübung einer freiberuflichen Tätigkeit abweichend von Absatz 1 erteilt werden. Eine erforderliche Erlaubnis zur Ausübung des freien Berufes muss erteilt worden oder ihre Erteilung zugesagt sein. Absatz 1 Satz 3 ist entsprechend anzuwenden. Absatz 4 ist nicht anzuwenden.</p> <p>(6) Einem Ausländer, dem eine Aufenthaltserlaubnis zu einem anderen Zweck erteilt wird oder erteilt worden ist, kann unter Beibehaltung dieses Aufenthaltszwecks die Ausübung einer selbständigen Tätigkeit erlaubt werden, wenn die nach sonstigen Vorschriften erforderlichen Erlaubnisse erteilt wurden oder ihre Erteilung zugesagt ist.</p>	<p>education studies or the research or scientific activities.</p> <p>(3) Foreigners aged over 45 should be issued with a temporary residence permit only if they possess adequate provision for old age.</p> <p>(4) The period of validity of the temporary residence permit shall be limited to a maximum of three years. By way of derogation from Section 9 (2), a permanent settlement permit may be issued after a period of three years, provided the foreigner has successfully carried out the planned activity and adequate income ensures the subsistence of the foreigner and the dependants living with him or her as a family unit and whom he is required to support.</p> <p>(5) By way of derogation from subsection 1, a foreigner may be granted a temporary residence permit for the purpose of self-employment. A required permit to practice the profession must have been issued or confirmation must have been provided that such permit will be issued. Subsection 1, sentence 3, shall apply mutatis mutandis. Subsection 4 shall not apply.</p> <p>(6) A foreigner who is to be or has been granted a temporary residence permit for another purpose may be permitted to pursue self-employment while retaining the aforesaid purpose of residence where the permits required under other provisions have been issued or an undertaking has been provided that such permits will be issued.</p>
<p>§ 25 Aufenth G</p>	<p>Aufenthalt aus humanitären Gründen</p> <p>(1) Einem Ausländer ist eine Aufenthaltserlaubnis zu erteilen, wenn er</p>	<p>Residence on humanitarian grounds</p> <p>(1) A foreigner shall be granted a temporary residence permit if he or she is</p>

<p>als Asylberechtigter anerkannt ist. 2Dies gilt nicht, wenn der Ausländer aus schwerwiegenden Gründen der öffentlichen Sicherheit und Ordnung ausgewiesen worden ist. 3Bis zur Erteilung der Aufenthaltserlaubnis gilt der Aufenthalt als erlaubt. 4Die Aufenthaltserlaubnis berechtigt zur Ausübung einer Erwerbstätigkeit.</p> <p>(2) 1Einem Ausländer ist eine Aufenthaltserlaubnis zu erteilen, wenn das Bundesamt für Migration und Flüchtlinge die Flüchtlingseigenschaft im Sinne des § 3 Absatz 1 des Asylgesetzes oder subsidiären Schutz im Sinne des § 4 Absatz 1 des Asylgesetzes zuerkannt hat. 2Absatz 1 Satz 2 bis 4 gilt entsprechend.</p> <p>(3) 1Einem Ausländer soll eine Aufenthaltserlaubnis erteilt werden, wenn ein Abschiebungsverbot nach § 60 Absatz 5 oder 7 vorliegt. 2Die Aufenthaltserlaubnis wird nicht erteilt, wenn die Ausreise in einen anderen Staat möglich und zumutbar ist oder der Ausländer wiederholt oder gröblich gegen entsprechende Mitwirkungspflichten verstößt. 3Sie wird ferner nicht erteilt, wenn schwerwiegende Gründe die Annahme rechtfertigen, dass der Ausländer</p> <ol style="list-style-type: none"> 1. ein Verbrechen gegen den Frieden, ein Kriegsverbrechen oder ein Verbrechen gegen die Menschlichkeit im Sinne der internationalen Vertragswerke begangen hat, die ausgearbeitet worden sind, um Bestimmungen bezüglich dieser Verbrechen festzulegen, 2. eine Straftat von erheblicher Bedeutung begangen hat, 	<p>recognised as being entitled to asylum. This provision shall not apply if the foreigner has been expelled on serious grounds relating to public safety and law and order. Residence shall be deemed to be permitted up to the time the temporary residence permit is issued. The temporary residence permit shall entitle the holder to pursue an economic activity.</p> <p>(2) A foreigner is to be granted a temporary residence permit if the Federal Office for Migration and Refugees has granted him or her refugee status within the meaning of Section 3 (1) of the Asylum Act or subsidiary protection status within the meaning of Section 4 (1) of the Asylum Act. Subsection 1, sentences 2 to 4 shall apply mutatis mutandis.</p> <p>(3) A foreigner should be granted a temporary residence permit if a deportation ban applies pursuant to Section 60 (5) or (7). The temporary residence permit shall not be granted if departure for subsequent admission to another state is possible and reasonable or the foreigner has repeatedly or grossly breached duties to cooperate. It shall, further, not be granted where serious grounds warrant the assumption that the foreigner</p> <ol style="list-style-type: none"> 1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes, 2. has committed an offence of considerable severity, 3. is guilty of acts contrary to the
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<p>3. sich Handlungen zuschulden kommen ließ, die den Zielen und Grundsätzen der Vereinten Nationen, wie sie in der Präambel und den Artikeln 1 und 2 der Charta der Vereinten Nationen verankert sind, zuwiderlaufen, oder</p> <p>4. eine Gefahr für die Allgemeinheit oder eine Gefahr für die Sicherheit der Bundesrepublik Deutschland darstellt.</p> <p>(4) 1 Einem nicht vollziehbar ausreisepflichtigen Ausländer kann für einen vorübergehenden Aufenthalt eine Aufenthaltserlaubnis erteilt werden, solange dringende humanitäre oder persönliche Gründe oder erhebliche öffentliche Interessen seine vorübergehende weitere Anwesenheit im Bundesgebiet erfordern. 2 Eine Aufenthaltserlaubnis kann abweichend von § 8 Abs. 1 und 2 verlängert werden, wenn auf Grund besonderer Umstände des Einzelfalls das Verlassen des Bundesgebiets für den Ausländer eine außergewöhnliche Härte bedeuten würde.</p> <p>(4a) 1 Einem Ausländer, der Opfer einer Straftat nach den §§ 232 bis 233a des Strafgesetzbuches wurde, soll, auch wenn er vollziehbar ausreisepflichtig ist, für einen Aufenthalt eine Aufenthaltserlaubnis erteilt werden. 2 Die Aufenthaltserlaubnis darf nur erteilt werden, wenn</p> <ol style="list-style-type: none"> 1. seine Anwesenheit im Bundesgebiet für ein Strafverfahren wegen dieser Straftat von der Staatsanwaltschaft oder dem Strafgericht für sachgerecht erachtet wird, weil ohne seine Angaben die Erforschung des Sachverhalts erschwert wäre, 2. er jede Verbindung zu den Personen, 	<p>objectives and principles of the United Nations, as enshrined in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or</p> <p>4. represents a risk to the general public or a risk to the security of the Federal Republic of Germany.</p> <p>(4) A foreigner who is non-enforceably required to leave the federal territory may be granted a temporary residence permit for a temporary stay if his or her continued presence in the federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. By way of derogation from Section 8 (1) and (2), a temporary residence permit may be extended if departure from the federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case concerned.</p> <p>(4a) A foreigner who has been the victim of a criminal offence pursuant to Sections 232, 233 or 233a of the Criminal Code should also be granted a temporary residence permit for a temporary stay, even if he or she is enforceably required to leave the federal territory. The temporary residence permit may only be issued if</p> <ol style="list-style-type: none"> 1. the public prosecutor's office or the criminal court considers his or her presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his or her information, 2. he or she has broken off contact to the persons accused of having committed the
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<p>die beschuldigt werden, die Straftat begangen zu haben, abgebrochen hat und</p> <p>3. er seine Bereitschaft erklärt hat, in dem Strafverfahren wegen der Straftat als Zeuge auszusagen.</p> <p>3Nach Beendigung des Strafverfahrens soll die Aufenthaltserlaubnis verlängert werden, wenn humanitäre oder persönliche Gründe oder öffentliche Interessen die weitere Anwesenheit des Ausländers im Bundesgebiet erfordern.</p> <p>(4b) 1Einem Ausländer, der Opfer einer Straftat nach § 10 Absatz 1 oder § 11 Absatz 1 Nummer 3 des Schwarzarbeitsbekämpfungsgesetzes oder nach § 15a des Arbeitnehmerüberlassungsgesetzes wurde, kann, auch wenn er vollziehbar ausreisepflichtig ist, für einen vorübergehenden Aufenthalt eine Aufenthaltserlaubnis erteilt werden. 2Die Aufenthaltserlaubnis darf nur erteilt werden, wenn</p> <ol style="list-style-type: none"> 1. die vorübergehende Anwesenheit des Ausländers im Bundesgebiet für ein Strafverfahren wegen dieser Straftat von der Staatsanwaltschaft oder dem Strafgericht für sachgerecht erachtet wird, weil ohne seine Angaben die Erforschung des Sachverhalts erschwert wäre, und 2. der Ausländer seine Bereitschaft erklärt hat, in dem Strafverfahren wegen der Straftat als Zeuge auszusagen. <p>3Die Aufenthaltserlaubnis kann verlängert werden, wenn dem Ausländer von Seiten des Arbeitgebers die zustehende Vergütung noch nicht vollständig geleistet wurde und es für den Ausländer eine besondere Härte darstellen würde, seinen Vergütungsanspruch aus dem Ausland zu</p>	<p>criminal offence and</p> <p>3. he or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence.</p> <p>After conclusion of the criminal proceedings, the temporary residence permit should be extended if humanitarian or personal reasons or public interests require the foreigner's further presence in the federal territory.</p> <p>(4b) A foreigner who has been the victim of a criminal offence pursuant to Sections 10 (1) or 11 (1), no. 3 of the Act to Combat Clandestine Employment or pursuant to Section 15a of the Act on Temporary Employment Businesses may also be granted a temporary residence permit for a temporary stay, even if he or she is enforceably required to leave the federal territory. The temporary residence permit may only be issued if</p> <ol style="list-style-type: none"> 1. the public prosecutor's office or the criminal court considers the temporary presence of the foreigner in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his or her information and 2. the foreigner has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence. <p>The temporary residence permit may be extended if the remuneration owed to the foreigner by the employer has not yet been paid in full, and it would represent particular hardship for the foreigner to pursue his or her entitlement from</p>
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	<p>verfolgen.</p> <p>(5) Einem Ausländer, der vollziehbar ausreisepflichtig ist, kann eine Aufenthaltserlaubnis erteilt werden, wenn seine Ausreise aus rechtlichen oder tatsächlichen Gründen unmöglich ist und mit dem Wegfall der Ausreisehindernisse in absehbarer Zeit nicht zu rechnen ist. 2Die Aufenthaltserlaubnis soll erteilt werden, wenn die Abschiebung seit 18 Monaten ausgesetzt ist. 3Eine Aufenthaltserlaubnis darf nur erteilt werden, wenn der Ausländer unverschuldet an der Ausreise gehindert ist. 4Ein Verschulden des Ausländers liegt insbesondere vor, wenn er falsche Angaben macht oder über seine Identität oder Staatsangehörigkeit täuscht oder zumutbare Anforderungen zur Beseitigung der Ausreisehindernisse nicht erfüllt.</p>	<p>abroad.</p> <p>(5) A foreigner who is enforceably required to leave the federal territory may be granted a temporary residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The temporary residence permit should be issued if deportation has been suspended for 18 months. A temporary residence permit may only be granted if the foreigner is prevented from leaving the federal territory through no fault of his or her own. Fault on the part of the foreigner shall apply in particular if he or she furnishes false information, deceives the authorities with regard to his or her identity or nationality or fails to meet reasonable demands to eliminate the obstacles to departure.</p>
<p>§ 26 Aufenth G</p>	<p>Dauer des Aufenthalts</p> <p>(1) Die Aufenthaltserlaubnis nach diesem Abschnitt kann für jeweils längstens drei Jahre erteilt und verlängert werden, in den Fällen des § 25 Abs. 4 Satz 1 und Abs. 5 jedoch für längstens sechs Monate, solange sich der Ausländer noch nicht mindestens 18 Monate rechtmäßig im Bundesgebiet aufgehalten hat. Asylberechtigten und Ausländern, denen die Flüchtlingseigenschaft im Sinne des § 3 Absatz 1 des Asylgesetzes zuerkannt worden ist, wird die Aufenthaltserlaubnis für drei Jahre erteilt. Subsidiär Schutzberechtigten im Sinne des § 4 Absatz 1 des Asylgesetzes wird die Aufenthaltserlaubnis für ein Jahr erteilt, bei Verlängerung für zwei weitere Jahre. Ausländern, die die Voraussetzungen des</p>	<p>Duration of residence</p> <p>(1) The temporary residence permit in accordance with this Part may be issued and extended in each instance for a maximum period of three years, but for no longer than six months in cases covered by Section 25 (4), sentence 1 and (5) when the foreigner has not been legally resident in the federal territory for at least 18 months. The temporary residence permit shall be issued for three years in the cases of person granted asylum status and foreigners granted refugee status within the meaning of Section 3 (1) of the Asylum Act. The temporary residence permit shall be issued for one year in the case of persons granted subsidiary protection status within the meaning of Section 4 (1) of the</p>

<p>§ 25 Absatz 3 erfüllen, wird die Aufenthaltserlaubnis für mindestens ein Jahr erteilt. Die Aufenthaltserlaubnisse nach § 25 Absatz 4a Satz 1 und Absatz 4b werden jeweils für ein Jahr, Aufenthaltserlaubnisse nach § 25 Absatz 4a Satz 3 jeweils für zwei Jahre erteilt und verlängert; in begründeten Einzelfällen ist eine längere Geltungsdauer zulässig.</p> <p>(2) Die Aufenthaltserlaubnis darf nicht verlängert werden, wenn das Ausreisehindernis oder die sonstigen einer Aufenthaltsbeendigung entgegenstehenden Gründe entfallen sind.</p> <p>(3) Einem Ausländer, der eine Aufenthaltserlaubnis nach § 25 Absatz 1 oder 2 Satz 1 erste Alternative besitzt, ist eine Niederlassungserlaubnis zu erteilen, wenn</p> <ol style="list-style-type: none"> 1. er die Aufenthaltserlaubnis seit fünf Jahren besitzt, wobei die Aufenthaltszeit des der Erteilung der Aufenthaltserlaubnis vorangegangenen Asylverfahrens abweichend von § 55 Absatz 3 des Asylgesetzes auf die für die Erteilung der Niederlassungserlaubnis erforderliche Zeit des Besitzes einer Aufenthaltserlaubnis angerechnet wird, 2. das Bundesamt für Migration und Flüchtlinge nicht nach § 73 Absatz 2a des Asylgesetzes mitgeteilt hat, dass die Voraussetzungen für den Widerruf oder die Rücknahme vorliegen, 3. sein Lebensunterhalt überwiegend gesichert ist, 4. er über hinreichende Kenntnisse der deutschen Sprache verfügt und 5. die Voraussetzungen des § 9 Absatz 2 Satz 1 Nummer 4 bis 6, 8 und 9 vorliegen. 	<p>Asylum Act; it may be extended for an additional two years. Foreigners who meet the requirements in Section 25 (3) shall be issued a temporary residence permit for at least one year. The temporary residence permits pursuant to Section 25 (4a), sentence 1, and (4b) shall be issued and extended for one year in each instance, temporary residence permits pursuant to Section 25 (4a), sentence 3, for two years in each instance; a longer period of validity is permissible in substantiated individual cases.</p> <p>(2) The temporary residence permit must not be extended if the obstacle to departure or the other grounds precluding a termination of residence have ceased to apply.</p> <p>(3) A foreigner who is in possession of a temporary residence permit in accordance with Section 25 (1) or (2), sentence 1, first alternative, shall be granted a permanent settlement permit if</p> <ol style="list-style-type: none"> 1. he or she has been in possession of a temporary residence permit for five years, whereby, by way of derogation of Section 55 (3) of the Asylum Act, the period of residence while undergoing the asylum procedure which preceded the issuance of the temporary residence permit shall be credited to the period in which the foreigner is required to be in possession of a temporary residence permit in order to be issued with a permanent settlement permit, 2. the Federal Office for Migration and Refugees has not given notification in accordance with Section 73 (2a) of the Asylum Act that the conditions for revocation or withdrawal apply, 3. his or her subsistence is for the most
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	<p>§ 9 Absatz 2 Satz 2 bis 6, § 9 Absatz 3 Satz 1 und § 9 Absatz 4 finden entsprechend Anwendung; von der Voraussetzung in Satz 1 Nummer 3 wird auch abgesehen, wenn der Ausländer die Regelaltersgrenze nach § 35 Satz 2 oder § 235 Absatz 2 des Sechsten Buches Sozialgesetzbuch erreicht hat. Abweichend von Satz 1 und 2 ist einem Ausländer, der eine Aufenthaltserlaubnis nach § 25 Absatz 1 oder 2 Satz 1 erste Alternative besitzt, eine Niederlassungserlaubnis zu erteilen, wenn</p> <ol style="list-style-type: none"> 1. er die Aufenthaltserlaubnis seit drei Jahren besitzt, wobei die Aufenthaltszeit des der Erteilung der Aufenthaltserlaubnis vorangegangenen Asylverfahrens abweichend von § 55 Absatz 3 des Asylgesetzes auf die für die Erteilung der Niederlassungserlaubnis erforderliche Zeit des Besitzes einer Aufenthaltserlaubnis angerechnet wird, 2. das Bundesamt für Migration und Flüchtlinge nicht nach § 73 Absatz 2a des Asylgesetzes mitgeteilt hat, dass die Voraussetzungen für den Widerruf oder die Rücknahme vorliegen, 3. er die deutsche Sprache beherrscht, 4. sein Lebensunterhalt weit überwiegend gesichert ist und 5. die Voraussetzungen des § 9 Absatz 2 Satz 1 Nummer 4 bis 6, 8 und 9 vorliegen. <p>In den Fällen des Satzes 3 finden § 9 Absatz 3 Satz 1 und § 9 Absatz 4 entsprechend Anwendung. Für Kinder, die vor Vollendung des 18. Lebensjahres nach Deutschland eingereist sind, kann § 35 entsprechend angewandt werden. Die Sätze 1 bis 5 gelten auch für einen</p>	<p>part ensured,</p> <ol style="list-style-type: none"> 4. he or she possesses sufficient command of the German language and 5. the conditions of Section 9 (2), sentence 1, nos. 4 to 6, 8 and 9 are met. <p>Section 9 (2), sentence 2 to 6, Section 9 (3), sentence 1, and Section 9 (4) shall apply mutatis mutandis; the condition set out in sentence 1, no. 3 shall also be waived if the foreigner has reached statutory retirement age under Section 35 (2) or Section 235 (2) of Book Six of the Social Code. By way of derogation from sentence 1 and 2, a foreigner in possession of a temporary residence permit pursuant to Section 25 (1) or (2), sentence 1, first alternative, is to be granted a permanent settlement permit if</p> <ol style="list-style-type: none"> 1. he or she has been in possession of the temporary residence permit for three years, whereby, by way of derogation from Section 55 (3) of the Asylum Act, the period of residence while undergoing the asylum procedure which preceded the issuance of the temporary residence permit shall be credited to the period in which the foreigner is required to be in of possession of a temporary residence permit in order to be issued with a permanent settlement permit, 2. the Federal Office for Migration and Refugees has not given notification in accordance with Section 73 (2a) of the Asylum Act that the conditions for revocation or withdrawal apply, 3. he or she possesses a good command of the German language, 4. his or her subsistence is for the most part ensured and 5. the conditions of Section 9 (2), sentence 1, nos. 4 to 6, 8 and 9 are met.
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	<p>Ausländer, der eine Aufenthaltserlaubnis nach § 23 Absatz 4 besitzt, es sei denn, es liegen die Voraussetzungen für eine Rücknahme vor.</p> <p>(4) Im Übrigen kann einem Ausländer, der eine Aufenthaltserlaubnis nach diesem Abschnitt besitzt, eine Niederlassungserlaubnis erteilt werden, wenn die in § 9 Abs. 2 Satz 1 bezeichneten Voraussetzungen vorliegen. § 9 Abs. 2 Satz 2 bis 6 gilt entsprechend. Die Aufenthaltszeit des der Erteilung der Aufenthaltserlaubnis vorangegangenen Asylverfahrens wird abweichend von § 55 Abs. 3 des Asylgesetzes auf die Frist angerechnet. Für Kinder, die vor Vollendung des 18. Lebensjahres nach Deutschland eingereist sind, kann § 35 entsprechend angewandt werden.</p>	<p>Section 9 (3), sentence 1, and Section 9 (4) shall apply mutatis mutandis in the cases referred to in sentence 3. Section 35 may be applied mutatis mutandis to children who entered Germany before reaching the age of 18. Sentences 1 to 5 shall also apply to foreigners who are in possession of a temporary residence permit issued pursuant to Section 23 (4), unless the conditions for its withdrawal are met.</p> <p>(4) A foreigner who is in possession of a temporary residence permit in accordance with this Part may otherwise be granted a permanent settlement permit if the conditions stipulated in Section 9 (2), sentence 1, are fulfilled. Section 9 (2), sentences 2 to 6 shall apply mutatis mutandis. By way of derogation from Section 55 (3) of the Asylum Act, the duration of residence pertaining to the asylum procedure preceding granting of the temporary residence permit shall count towards this qualifying period. Section 35 may be applied mutatis mutandis for children who have entered Germany prior to reaching the age of 18.</p>
<p>§ 27 Aufenth G</p>	<p>Grundsatz des Familiennachzugs</p> <p>(1) Die Aufenthaltserlaubnis zur Herstellung und Wahrung der familiären Lebensgemeinschaft im Bundesgebiet für ausländische Familienangehörige (Familiennachzug) wird zum Schutz von Ehe und Familie gemäß Artikel 6 des Grundgesetzes erteilt und verlängert.</p> <p>(1a) Ein Familiennachzug wird nicht zugelassen, wenn</p> <p>1. feststeht, dass die Ehe oder das Verwandtschaftsverhältnis ausschließlich zu dem Zweck geschlossen oder begründet wurde, dem Nachziehenden</p>	<p>Principles pertaining to the subsequent immigration of dependants</p> <p>(1) The temporary residence permit to enable foreigners to be joined by foreign dependants so that they can live together as a family (subsequent immigration of dependants) shall be granted and extended to protect marriage and the family in accordance with Article 6 of the Basic Law.</p> <p>(1a) The subsequent immigration of dependants shall not be permitted</p> <p>1. if it is established that the marriage has</p>

<p>die Einreise in das und den Aufenthalt im Bundesgebiet zu ermöglichen, oder</p> <p>2. tatsächliche Anhaltspunkte die Annahme begründen, dass einer der Ehegatten zur Eingehung der Ehe genötigt wurde.</p> <p>(2) Für die Herstellung und Wahrung einer lebenspartnerschaftlichen Gemeinschaft im Bundesgebiet finden die Absätze 1a und 3, § 9 Abs. 3, § 9c Satz 2, die §§ 28 bis 31, 51 Absatz 2 und 10 Satz 2 entsprechende Anwendung.</p> <p>(3) Die Erteilung der Aufenthaltserlaubnis zum Zweck des Familiennachzugs kann versagt werden, wenn derjenige, zu dem der Familiennachzug stattfindet, für den Unterhalt von anderen Familienangehörigen oder anderen Haushaltsangehörigen auf Leistungen nach dem Zweiten oder Zwölften Buch Sozialgesetzbuch angewiesen ist. Von § 5 Abs. 1 Nr. 2 kann abgesehen werden.</p> <p>(4) Eine Aufenthaltserlaubnis zum Zweck des Familiennachzugs darf längstens für den Gültigkeitszeitraum der Aufenthaltserlaubnis des Ausländers erteilt werden, zu dem der Familiennachzug stattfindet. Sie ist für diesen Zeitraum zu erteilen, wenn der Ausländer, zu dem der Familiennachzug stattfindet, eine Aufenthaltserlaubnis nach § 20, § 20b oder § 38a besitzt, eine Blaue Karte EU, eine ICT-Karte oder eine Mobiler-ICT-Karte besitzt oder sich gemäß § 20a berechtigt im Bundesgebiet aufhält. Die Aufenthaltserlaubnis darf jedoch nicht länger gelten als der Pass oder Passersatz des Familienangehörigen. Im Übrigen ist die Aufenthaltserlaubnis erstmals für mindestens ein Jahr zu</p>	<p>been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the federal territory or</p> <p>2. if there are concrete indications that one of the spouses has been forced into marriage.</p> <p>(2) Subsections 1a and 3, Section 9 (3), Section 9c, sentence 2, Sections 28 to 31, Section 51 (2) and (10), sentence 2, shall apply mutatis mutandis to enable the establishment and maintenance of a registered partnership in the federal territory.</p> <p>(3) Granting of the temporary residence permit for the subsequent immigration of dependants may be refused if the person to be joined by his or her dependants is reliant on benefits in accordance with Book Two or Book Twelve of the Social Code for the maintenance of other dependants or other members of his or her household. Section 5 (1), no. 2 may be waived.</p> <p>(4) The period of validity of a temporary residence permit for the purpose of the subsequent immigration of dependants must not exceed the period of validity of the temporary residence permit held by the foreigner whom the dependants concerned are joining in the federal territory. It shall be issued for this period if the foreigner who is to be joined in the federal territory by the subsequently immigrating dependants holds a temporary residence permit pursuant to Section 20, Section 38a or an EU Blue Card. The period of validity of the temporary residence permit must not exceed that of the dependant's passport or passport substitute, however. The</p>
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	erteilen. (5) Der Aufenthaltstitel nach diesem Abschnitt berechtigt zur Ausübung einer Erwerbstätigkeit.	temporary residence permit is otherwise to be issued for an initial period of at least one year. (5) Residence titles issued pursuant to this Part shall entitle their holders to pursue an economic activity.
§ 28 Aufenth G	<p>Familiennachzug zu Deutschen</p> <p>(1) Die Aufenthaltserlaubnis ist dem ausländischen</p> <ol style="list-style-type: none"> 1. Ehegatten eines Deutschen, 2. minderjährigen ledigen Kind eines Deutschen, 3. Elternteil eines minderjährigen ledigen Deutschen zur Ausübung der Personensorge <p>zu erteilen, wenn der Deutsche seinen gewöhnlichen Aufenthalt im Bundesgebiet hat. Sie ist abweichend von § 5 Abs. 1 Nr. 1 in den Fällen des Satzes 1 Nr. 2 und 3 zu erteilen. Sie soll in der Regel abweichend von § 5 Abs. 1 Nr. 1 in den Fällen des Satzes 1 Nr. 1 erteilt werden. Sie kann abweichend von § 5 Abs. 1 Nr. 1 dem nicht personensorgeberechtigten Elternteil eines minderjährigen ledigen Deutschen erteilt werden, wenn die familiäre Gemeinschaft schon im Bundesgebiet gelebt wird. § 30 Abs. 1 Satz 1 Nr. 1 und 2, Satz 3 und Abs. 2 Satz 1 ist in den Fällen des Satzes 1 Nr. 1 entsprechend anzuwenden.</p> <p>(2) Dem Ausländer ist in der Regel eine Niederlassungserlaubnis zu erteilen, wenn er drei Jahre im Besitz einer Aufenthaltserlaubnis ist, die familiäre Lebensgemeinschaft mit dem Deutschen im Bundesgebiet fortbesteht, kein Ausweisungsinteresse besteht und er über ausreichende Kenntnisse der deutschen</p>	<p>Subsequent immigration of dependants to join a German national</p> <p>(1) The temporary residence permit shall be granted to the foreign</p> <ol style="list-style-type: none"> 1. spouse of a German, 2. minor, unmarried child of a German, 3. parent of a minor, unmarried German for the purpose of care and custody <p>if the German's ordinary residence is in the federal territory. By way of derogation from Section 5 (1), no. 1, it shall be granted in the cases covered by sentence 1, nos. 2 and 3. By way of derogation from Section 5 (1), no. 1, it should be granted as a general rule in the cases covered by sentence 1, no. 1. By way of derogation from Section 5 (1), no. 1, the temporary residence permit may be granted to the parent of a minor, unmarried German who does not possess the right of care and custody of said child, if the family unit already exists in the federal territory. Section 30 (1), sentence 1, nos. 1 and 2, sentence 3 and (2), sentence 1 shall apply mutatis mutandis in the cases covered by sentence 1, no. 1.</p> <p>(2) As a rule, the foreigner shall be granted a permanent settlement permit if he or she has been in possession of a temporary residence permit for three years, the family unit with the German continues to exist in the federal territory, there is no public interest in expelling the</p>

	<p>Sprache verfügt. § 9 Absatz 2 Satz 2 bis 5 gilt entsprechend. Im Übrigen wird die Aufenthaltserlaubnis verlängert, solange die familiäre Lebensgemeinschaft fortbesteht.</p> <p>(3) Die §§ 31 und 34 finden mit der Maßgabe Anwendung, dass an die Stelle des Aufenthaltstitels des Ausländers der gewöhnliche Aufenthalt des Deutschen im Bundesgebiet tritt. Die einem Elternteil eines minderjährigen ledigen Deutschen zur Ausübung der Personensorge erteilte Aufenthaltserlaubnis ist auch nach Eintritt der Volljährigkeit des Kindes zu verlängern, solange das Kind mit ihm in familiärer Lebensgemeinschaft lebt und das Kind sich in einer Ausbildung befindet, die zu einem anerkannten schulischen oder beruflichen Bildungsabschluss oder Hochschulabschluss führt.</p> <p>(4) Auf sonstige Familienangehörige findet § 36 entsprechende Anwendung.</p> <p>(5) (weggefallen)</p>	<p>foreigner and the foreigner has a sufficient command of the German language. Section 9 (2) sentences 2 to 5 shall apply mutatis mutandis. The temporary residence permit shall otherwise be extended as long as the family unit continues to exist.</p> <p>(3) Sections 31 and 34 shall apply subject to the proviso that the foreigner's residence title shall be replaced by the ordinary residence of the German in the federal territory. The temporary residence permit granted to a parent of a minor and unmarried German national for the purpose of care and custody is to be extended after the child has come of age as long as the child lives with him or her in a family household and the child is undergoing education or training which leads to a recognised school, vocational or higher education qualification.</p> <p>(4) Section 36 shall apply mutatis mutandis to other dependants.</p> <p>(5) (repealed)</p>
<p>§ 29 Aufenth G</p>	<p>Familiennachzug zu Ausländern</p> <p>(1) Für den Familiennachzug zu einem Ausländer muss</p> <ol style="list-style-type: none"> 1. der Ausländer eine Niederlassungserlaubnis, Erlaubnis zum Daueraufenthalt – EU, Aufenthaltserlaubnis, eine Blaue Karte EU, eine ICT-Karte oder eine Mobiler-ICT-Karte besitzen oder sich gemäß § 20a berechtigt im Bundesgebiet aufhalten und 2. ausreichender Wohnraum zur Verfügung stehen. <p>(2) Bei dem Ehegatten und dem minderjährigen ledigen Kind eines Ausländers, der eine Aufenthaltserlaubnis</p>	<p>Subsequent immigration of dependants to join a foreigner</p> <p>(1) For the purposes of subsequent immigration to join a foreigner,</p> <ol style="list-style-type: none"> 1. the foreigner must possess a permanent settlement permit, an EU long-term residence permit, a temporary residence permit or an EU Blue Card, and 2. sufficient living space must be available. <p>(2) The requirements of Section 5 (1), no. 1 and subsection 1, no. 2 may be waived in the case of the spouse and the minor, unmarried child of a foreigner who is in possession of a temporary residence</p>

<p>nach § 23 Absatz 4, § 25 Absatz 1 oder 2, eine Niederlassungserlaubnis nach § 26 Absatz 3 oder nach Erteilung einer Aufenthaltserlaubnis nach § 25 Absatz 2 Satz 1 zweite Alternative eine Niederlassungserlaubnis nach § 26 Absatz 4 besitzt, kann von den Voraussetzungen des § 5 Absatz 1 Nummer 1 und des Absatzes 1 Nummer 2 abgesehen werden. In den Fällen des Satzes 1 ist von diesen Voraussetzungen abzusehen, wenn</p> <ol style="list-style-type: none"> 1. der im Zuge des Familiennachzugs erforderliche Antrag auf Erteilung eines Aufenthaltstitels innerhalb von drei Monaten nach unanfechtbarer Anerkennung als Asylberechtigter oder unanfechtbarer Zuerkennung der Flüchtlingseigenschaft oder subsidiären Schutzes oder nach Erteilung einer Aufenthaltserlaubnis nach § 23 Absatz 4 gestellt wird und 2. die Herstellung der familiären Lebensgemeinschaft in einem Staat, der nicht Mitgliedstaat der Europäischen Union ist und zu dem der Ausländer oder seine Familienangehörigen eine besondere Bindung haben, nicht möglich ist. <p>Die in Satz 2 Nr. 1 genannte Frist wird auch durch die rechtzeitige Antragstellung des Ausländers gewahrt.</p> <p>(3) Die Aufenthaltserlaubnis darf dem Ehegatten und dem minderjährigen Kind eines Ausländers, der eine Aufenthaltserlaubnis nach den §§ 22, 23 Absatz 1 oder Absatz 2 oder § 25 Absatz 3 oder Absatz 4a Satz 1, § 25a Absatz 1 oder § 25b Absatz 1 besitzt, nur aus völkerrechtlichen oder humanitären Gründen oder zur Wahrung politischer Interessen der Bundesrepublik</p>	<p>permit in accordance with Section 23 (4), Section 25 (1) or (2), a permanent settlement permit in accordance with Section 26 (3) or a permanent settlement permit in accordance with Section 26 (4) after being granted a temporary residence permit in accordance with Section 25 (2) sentence 1, second alternative. In the cases covered by sentence 1, these conditions are to be waived where</p> <ol style="list-style-type: none"> 1. the application for issuance of a residence title which is required in connection with the subsequent immigration of dependants is filed within three months of final recognition as a person entitled to asylum or final granting of refugee status or subsidiary protection or after the issuance of a temporary residence permit in accordance with Section 23 (4) and 2. it is not possible for a foreigner and his or her dependants to live together as a family unit in a state which is not a member state of the European Union and to which the foreigner or his or her dependants have special ties. <p>The deadline stated in sentence 2, no. 1 shall also be deemed to be met on the foreigner filing the application on time.</p> <p>(3) The temporary residence permit may only be granted to the spouse and the minor child of a foreigner who is in possession of a temporary residence permit in accordance with Sections 22, 23 (1) or (2) or Section 25 (3) or (4a), sentence 1, Section 25a (1) or Section 25b (1) for reasons of international law, on humanitarian grounds or in order to safeguard political interests of the Federal Republic of Germany. Section 26 (4) shall apply mutatis mutandis. The subsequent</p>
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	<p>Deutschland erteilt werden. § 26 Abs. 4 gilt entsprechend. Ein Familiennachzug wird in den Fällen des § 25 Absatz 4, 4b und 5, § 25a Absatz 2, § 25b Absatz 4, § 104a Abs. 1 Satz 1 und § 104b nicht gewährt.</p> <p>(4) Die Aufenthaltserlaubnis wird dem Ehegatten und dem minderjährigen ledigen Kind eines Ausländers oder dem minderjährigen ledigen Kind seines Ehegatten abweichend von § 5 Abs. 1 und § 27 Abs. 3 erteilt, wenn dem Ausländer vorübergehender Schutz nach § 24 Abs. 1 gewährt wurde und</p> <ol style="list-style-type: none"> 1. die familiäre Lebensgemeinschaft im Herkunftsland durch die Fluchtsituation aufgehoben wurde und 2. der Familienangehörige aus einem anderen Mitgliedstaat der Europäischen Union übernommen wird oder sich außerhalb der Europäischen Union befindet und schutzbedürftig ist. <p>Die Erteilung einer Aufenthaltserlaubnis an sonstige Familienangehörige eines Ausländers, dem vorübergehender Schutz nach § 24 Abs. 1 gewährt wurde, richtet sich nach § 36. Auf die nach diesem Absatz aufgenommenen Familienangehörigen findet § 24 Anwendung.</p> <p>(5) (weggefallen)</p>	<p>immigration of dependants shall not be granted in the cases covered by Section 25 (4), (4b) and (5), Section 25a (2), Section 25b (4), Section 104a (1), sentence 1, and Section 104b.</p> <p>(4) By way of derogation from Section 5 (1) and Section 27 (3), the temporary residence permit shall be granted to the spouse and the minor child of a foreigner or the minor child of the foreigner's spouse if the foreigner has been granted temporary protection in accordance with Section 24 (1) and</p> <ol style="list-style-type: none"> 1. the family unit in the country of origin has been broken up as a result of the foreigner having fled said country and 2. the dependant is admitted from another member state of the European Union or is located outside of the European Union and is in need of protection. <p>The granting of a temporary residence permit to other dependants of a foreigner who has been granted temporary protection pursuant to Section 24 (1) shall be subject to Section 36. Section 24 shall apply to dependants who are admitted pursuant to this subsection.</p> <p>(5) (repealed)</p>
<p>§ 30 Aufenth G</p>	<p>Ehegattennachzug</p> <p>(1) Dem Ehegatten eines Ausländers ist eine Aufenthaltserlaubnis zu erteilen, wenn</p> <ol style="list-style-type: none"> 1. beide Ehegatten das 18. Lebensjahr vollendet haben, 2. der Ehegatte sich zumindest auf einfache Art in deutscher Sprache verständigen kann und 3. der Ausländer 	<p>Subsequent immigration of spouses</p> <p>(1) A foreigner's spouse shall be granted a temporary residence permit if</p> <ol style="list-style-type: none"> 1. both spouses are at least 18 years of age, 2. the spouse is able to communicate in the German language at least on a basic level and 3. the foreigner <ol style="list-style-type: none"> a) possesses a permanent settlement

<p>a) eine Niederlassungserlaubnis besitzt, b) eine Erlaubnis zum Daueraufenthalt – EU besitzt, c) eine Aufenthaltserlaubnis nach § 20, § 20b oder § 25 Abs. 1 oder Abs. 2 besitzt, d) seit zwei Jahren eine Aufenthaltserlaubnis besitzt und die Aufenthaltserlaubnis nicht mit einer Nebenbestimmung nach § 8 Abs. 2 versehen oder die spätere Erteilung einer Niederlassungserlaubnis nicht auf Grund einer Rechtsnorm ausgeschlossen ist, e) eine Aufenthaltserlaubnis besitzt, die Ehe bei deren Erteilung bereits bestand und die Dauer seines Aufenthalts im Bundesgebiet voraussichtlich über ein Jahr betragen wird, f) eine Aufenthaltserlaubnis nach § 38a besitzt und die eheliche Lebensgemeinschaft bereits in dem Mitgliedstaat der Europäischen Union bestand, in dem der Ausländer die Rechtsstellung eines langfristig Aufenthaltsberechtigten innehat, oder g) eine Blaue Karte EU, eine ICT-Karte oder eine Mobiler-ICT-Karte besitzt.</p> <p>Satz 1 Nummer 1 und 2 ist für die Erteilung der Aufenthaltserlaubnis unbeachtlich, wenn die Voraussetzungen des Satzes 1 Nummer 3 Buchstabe f vorliegen. Satz 1 Nummer 2 ist für die Erteilung der Aufenthaltserlaubnis unbeachtlich, wenn</p> <p>1. der Ausländer, der einen Aufenthaltstitel nach § 23 Absatz 4, § 25 Absatz 1 oder 2, § 26 Absatz 3 oder nach Erteilung einer Aufenthaltserlaubnis nach § 25 Absatz 2 Satz 1 zweite Alternative eine Niederlassungserlaubnis nach § 26 Absatz 4 besitzt und die Ehe bereits bestand, als der Ausländer seinen</p>	<p>permit, b) possesses an EU long-term residence permit, c) possesses a temporary residence permit pursuant to Section 20 or Section 25 (1) or (2), d) has held a temporary residence permit for two years and the temporary residence permit is not subject to a subsidiary provision pursuant to Section 8 (2) or the subsequent issuance of a permanent settlement permit has not been ruled out by virtue of a rule of law, e) is in possession of a temporary residence permit, if the marriage existed at the time of said permit being granted and the duration of the foreigner's stay in the federal territory is expected to exceed one year, f) possesses a temporary residence permit pursuant to Section 38a and the marriage already existed in the member state of the European Union in which the foreigner has the status of a long-term resident, or g) holds an EU Blue Card.</p> <p>Sentence 1, nos. 1 and 2 shall have no bearing on issuance of the temporary residence permit where</p> <p>1. the foreigner is in possession of a residence title pursuant to Sections 19 to 21 and the marriage already existed at the time when he or she established his or her main ordinary residence in the federal territory, 2. the foreigner held a temporary residence permit pursuant to Section 20 immediately before a permanent settlement permit or an EU long-term residence permit was issued, or 3. the conditions specified in sentence 1, no. 3, letter f apply.</p>
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<p>Lebensmittelpunkt in das Bundesgebiet verlegt hat,</p> <p>2. der Ehegatte wegen einer körperlichen, geistigen oder seelischen Krankheit oder Behinderung nicht in der Lage ist, einfache Kenntnisse der deutschen Sprache nachzuweisen,</p> <p>3. bei dem Ehegatten ein erkennbar geringer Integrationsbedarf im Sinne einer nach § 43 Absatz 4 erlassenen Rechtsverordnung besteht oder dieser aus anderen Gründen nach der Einreise keinen Anspruch nach § 44 auf Teilnahme am Integrationskurs hätte,</p> <p>4. der Ausländer wegen seiner Staatsangehörigkeit auch für einen Aufenthalt, der kein Kurzaufenthalt ist, visumfrei in das Bundesgebiet einreisen und sich darin aufhalten darf,</p> <p>5. der Ausländer im Besitz einer Blauen Karte EU, einer ICT-Karte oder einer Mobiler-ICT-Karte oder einer Aufenthaltserlaubnis nach § 20 oder § 20b ist,</p> <p>6. es dem Ehegatten auf Grund besonderer Umstände des Einzelfalles nicht möglich oder nicht zumutbar ist, vor der Einreise Bemühungen zum Erwerb einfacher Kenntnisse der deutschen Sprache zu unternehmen,</p> <p>7. der Ausländer einen Aufenthaltstitel nach den §§ 19 bis 21 besitzt und die Ehe bereits bestand, als er seinen Lebensmittelpunkt in das Bundesgebiet verlegt hat, oder</p> <p>8. der Ausländer unmittelbar vor der Erteilung einer Niederlassungserlaubnis oder einer Erlaubnis zum Daueraufenthalt – EU Inhaber einer Aufenthaltserlaubnis nach § 20 war.</p> <p>(2) Die Aufenthaltserlaubnis kann zur</p>	<p>Sentence 1, no. 2 shall have no bearing on issuance of the temporary residence permit where</p> <p>1. the foreigner holds a residence title pursuant to Section 23 (4), Section 25 (1) or (2), Section 26 (3) or possesses a permanent settlement permit in accordance with Section 26 (4) after being granted a temporary residence permit in accordance with Section 25 (2), sentence 1, second alternative, and the marriage already existed at the time when the foreigner established his or her main ordinary residence in the federal territory,</p> <p>2. the spouse is unable to provide evidence of a basic knowledge of German on account of a physical, mental or psychological illness,</p> <p>3. the spouse's need for integration is discernibly minimal within the meaning of a statutory instrument issued pursuant to Section 43 (4) or the spouse would, for other reasons, not be eligible for an integration course pursuant to Section 44 after entering the federal territory,</p> <p>4. by virtue of his or her nationality, the foreigner may enter and stay in the federal territory without requiring a visa for a period of residence which does not constitute a short stay,</p> <p>5. the foreigner holds an EU Blue Card or</p> <p>6. the particular circumstances of the case mean that the spouse is unable to or it is unreasonable to expect the spouse to undertake efforts before entering the country to acquire a basic command of the German language.</p> <p>(2) By way of derogation from subsection 1, sentence 1, no. 1, the temporary residence permit may be issued to avoid</p>
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	<p>Vermeidung einer besonderen Härte abweichend von Absatz 1 Satz 1 Nr. 1 erteilt werden. Besitzt der Ausländer eine Aufenthaltserlaubnis, kann von den anderen Voraussetzungen des Absatzes 1 Satz 1 Nr. 3 Buchstabe e abgesehen werden.</p> <p>(3) Die Aufenthaltserlaubnis kann abweichend von § 5 Abs. 1 Nr. 1 und § 29 Abs. 1 Nr. 2 verlängert werden, solange die eheliche Lebensgemeinschaft fortbesteht.</p> <p>(4) Ist ein Ausländer gleichzeitig mit mehreren Ehegatten verheiratet und lebt er gemeinsam mit einem Ehegatten im Bundesgebiet, wird keinem weiteren Ehegatten eine Aufenthaltserlaubnis nach Absatz 1 oder Absatz 3 erteilt.</p> <p>(5) Hält sich der Ausländer gemäß § 20a berechtigt im Bundesgebiet auf, so bedarf der Ehegatte keines Aufenthaltstitels, wenn nachgewiesen wird, dass sich der Ehegatte in dem anderen Mitgliedstaat der Europäischen Union rechtmäßig als Angehöriger des Ausländers aufgehalten hat. Die Voraussetzungen nach § 20a Absatz 1 Satz 1 Nummer 1, 3 und 4 und die Ablehnungsgründe nach § 20c gelten für den Ehegatten entsprechend.</p>	<p>particular hardship. Where the foreigner holds a temporary residence permit, the other conditions stipulated in subsection 1, sentence 1, no. 3, letter e may be waived.</p> <p>(3) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the temporary residence permit may be extended for as long as the marital cohabitation continues.</p> <p>(4) Where a foreigner is simultaneously married to several spouses and lives together with one spouse in the federal territory, no other spouse shall be granted a temporary residence permit pursuant to subsection 1 or subsection 3.</p>
<p>§ 31 Aufenth G</p>	<p>Eigenständiges Aufenthaltsrecht der Ehegatten</p> <p>(1) Die Aufenthaltserlaubnis des Ehegatten wird im Falle der Aufhebung der ehelichen Lebensgemeinschaft als eigenständiges, vom Zweck des Familiennachzugs unabhängiges Aufenthaltsrecht für ein Jahr verlängert, wenn</p> <p>1. die eheliche Lebensgemeinschaft seit mindestens drei Jahren rechtmäßig im Bundesgebiet bestanden hat oder</p>	<p>Independent right of residence of spouses</p> <p>(1) In the event of termination of marital cohabitation, the spouse's temporary residence permit shall be extended by one year as an independent right of residence unrelated to the purpose of the subsequent immigration of dependants if</p> <p>1. marital cohabitation has lawfully existed in the federal territory for at least three years or</p> <p>2. the foreigner has died while marital</p>

<p>2. der Ausländer gestorben ist, während die eheliche Lebensgemeinschaft im Bundesgebiet bestand und der Ausländer bis dahin im Besitz einer Aufenthaltserlaubnis, Niederlassungserlaubnis oder Erlaubnis zum Daueraufenthalt – EU war, es sei denn, er konnte die Verlängerung aus von ihm nicht zu vertretenden Gründen nicht rechtzeitig beantragen. Satz 1 ist nicht anzuwenden, wenn die Aufenthaltserlaubnis des Ausländers nicht verlängert oder dem Ausländer keine Niederlassungserlaubnis oder Erlaubnis zum Daueraufenthalt – EU erteilt werden darf, weil dies durch eine Rechtsnorm wegen des Zwecks des Aufenthalts oder durch eine Nebenbestimmung zur Aufenthaltserlaubnis nach § 8 Abs. 2 ausgeschlossen ist.</p> <p>(2) Von der Voraussetzung des dreijährigen rechtmäßigen Bestandes der ehelichen Lebensgemeinschaft im Bundesgebiet nach Absatz 1 Satz 1 Nr. 1 ist abzusehen, soweit es zur Vermeidung einer besonderen Härte erforderlich ist, dem Ehegatten den weiteren Aufenthalt zu ermöglichen, es sei denn, für den Ausländer ist die Verlängerung der Aufenthaltserlaubnis ausgeschlossen. Eine besondere Härte liegt insbesondere vor, wenn die Ehe nach deutschem Recht wegen Minderjährigkeit des Ehegatten im Zeitpunkt der Eheschließung unwirksam ist oder aufgehoben worden ist, wenn dem Ehegatten wegen der aus der Auflösung der ehelichen Lebensgemeinschaft erwachsenden Rückkehrverpflichtung eine erhebliche Beeinträchtigung seiner schutzwürdigen</p>	<p>cohabitation existed in the federal territory and the foreigner was in possession of a temporary residence permit, permanent settlement permit or EU long-term residence permit up to this point in time, unless he or she was unable to apply for an extension in time for reasons beyond his or her control. Sentence 1 shall not apply if no extension of the foreigner's temporary residence permit is permissible or if it is not permissible to issue the foreigner with a temporary residence permit or EU long-term residence permit because this is precluded by a rule of law on account of the purpose of residence or by a subsidiary provision attaching to the temporary residence permit pursuant to Section 8 (2).</p> <p>(2) The requirement stipulated in subsection 1, sentence 1, no. 1 for marital cohabitation to have existed lawfully for three years in the federal territory shall be waived if necessary to enable the spouse to continue his or her residence in order to avoid particular hardship, unless an extension of the foreigner's temporary residence permit is not permitted. Particular hardship shall be deemed to apply if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially harm the foreigner's legitimate interests, or if the continuation of marital cohabitation is unreasonable due to the harm to the foreigner's legitimate interests; in particular this is to be assumed where the spouse is the victim of domestic violence. Such legitimate interests shall also include the well-being of a child living with the</p>
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	<p>Belange droht oder wenn dem Ehegatten wegen der Beeinträchtigung seiner schutzwürdigen Belange das weitere Festhalten an der ehelichen Lebensgemeinschaft unzumutbar ist; dies ist insbesondere anzunehmen, wenn der Ehegatte Opfer häuslicher Gewalt ist. Zu den schutzwürdigen Belangen zählt auch das Wohl eines mit dem Ehegatten in familiärer Lebensgemeinschaft lebenden Kindes. Zur Vermeidung von Missbrauch kann die Verlängerung der Aufenthaltserlaubnis versagt werden, wenn der Ehegatte aus einem von ihm zu vertretenden Grund auf Leistungen nach dem Zweiten oder Zwölften Buch Sozialgesetzbuch angewiesen ist.</p> <p>(3) Wenn der Lebensunterhalt des Ehegatten nach Aufhebung der ehelichen Lebensgemeinschaft durch Unterhaltsleistungen aus eigenen Mitteln des Ausländers gesichert ist und dieser eine Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt – EU besitzt, ist dem Ehegatten abweichend von § 9 Abs. 2 Satz 1 Nr. 3, 5 und 6 ebenfalls eine Niederlassungserlaubnis zu erteilen.</p> <p>(4) Die Inanspruchnahme von Leistungen nach dem Zweiten oder Zwölften Buch Sozialgesetzbuch steht der Verlängerung der Aufenthaltserlaubnis unbeschadet des Absatzes 2 Satz 4 nicht entgegen. Danach kann die Aufenthaltserlaubnis verlängert werden, solange die Voraussetzungen für die Erteilung der Niederlassungserlaubnis oder Erlaubnis zum Daueraufenthalt – EU nicht vorliegen.</p>	<p>spouse as part of a family unit. In order to avoid abuse, extension of the temporary residence permit may be refused if the spouse is reliant on benefits in accordance with Book Two or Book Twelve of the Social Code for reasons for which he or she is responsible.</p> <p>(3) By way of derogation from Section 9 (2), sentence 1, nos. 3, 5 and 6, the spouse shall also be granted a permanent settlement permit if the spouse's subsistence is ensured after the termination of marital cohabitation by maintenance payments from the foreigner's own funds and the foreigner possesses a permanent settlement permit or an EU long-term residence permit.</p> <p>(4) Without prejudice to subsection 2, sentence 4, claiming benefits in accordance with Book Two or Book Twelve of the Social Code shall not preclude extension of the temporary residence permit. The temporary residence permit may thus be extended for a limited period for as long as the conditions for granting the permanent settlement permit or EU long-term residence permit have yet to be met.</p>
<p>§ 32 Aufenth G</p>	<p>Kindernachzug</p> <p>(1) Dem minderjährigen ledigen Kind eines Ausländers ist eine</p>	<p>Subsequent immigration of children</p> <p>(1) The minor, unmarried child of a foreigner shall be granted a temporary</p>

<p>Aufenthaltserlaubnis zu erteilen, wenn beide Eltern oder der allein personensorgeberechtigte Elternteil eine Aufenthaltserlaubnis, eine Blaue Karte EU, eine ICT-Karte, eine Mobiler-ICT-Karte, eine Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt – EU besitzen.</p> <p>(2) Hat das minderjährige ledige Kind bereits das 16. Lebensjahr vollendet und verlegt es seinen Lebensmittelpunkt nicht zusammen mit seinen Eltern oder dem allein personensorgeberechtigten Elternteil in das Bundesgebiet, gilt Absatz 1 nur, wenn es die deutsche Sprache beherrscht oder gewährleistet erscheint, dass es sich auf Grund seiner bisherigen Ausbildung und Lebensverhältnisse in die Lebensverhältnisse in der Bundesrepublik Deutschland einfügen kann. Satz 1 gilt nicht, wenn</p> <ol style="list-style-type: none"> 1. der Ausländer eine Aufenthaltserlaubnis nach § 23 Absatz 4, § 25 Absatz 1 oder 2, eine Niederlassungserlaubnis nach § 26 Absatz 3 oder nach Erteilung einer Aufenthaltserlaubnis nach § 25 Absatz 2 Satz 1 zweite Alternative eine Niederlassungserlaubnis nach § 26 Absatz 4 besitzt oder 2. der Ausländer oder sein mit ihm in familiärer Lebensgemeinschaft lebender Ehegatte eine Niederlassungserlaubnis nach § 19, eine Blaue Karte EU, eine ICT-Karte oder eine Mobiler-ICT-Karte oder eine Aufenthaltserlaubnis nach § 20 oder § 20b besitzt. <p>(3) Bei gemeinsamem Sorgerecht soll eine Aufenthaltserlaubnis nach den Absätzen 1 und 2 auch zum Nachzug zu nur einem sorgeberechtigten Elternteil erteilt</p>	<p>residence permit if the parents or the parent possessing the sole right of care and custody hold a temporary residence permit, an EU Blue Card, a permanent settlement permit or an EU long-term residence permit.</p> <p>(2) If the minor, unmarried child is aged 16 or over and if it does not relocate the central focus of its life to Germany together with its parents or the parent possessing the sole right of care and custody, subsection 1 shall only apply if the child speaks German and appears, on the basis of his or her education and way of life to date, that he or she will be able to integrate into the way of life prevailing in the Federal Republic of Germany. The first sentence above shall not apply if</p> <ol style="list-style-type: none"> 1. the foreigner possesses a temporary residence permit in accordance with Section 23 (4), Section 25 (1) or (2), a permanent settlement permit in accordance with Section 26 (3) or possesses a permanent settlement permit in accordance with Section 26 (4) after being granted a temporary residence permit in accordance with Section 25 (2), sentence 1, second alternative, or 2. the foreigner or his or her spouse living together as a family possess a permanent settlement permit in accordance with Section 19 or an EU Blue Card. <p>(3) Where parents share the right of care and custody, a temporary residence permit pursuant to subsections 1 or 2 should also be granted for the purpose of joining just one parent, if the other parent has given his or her consent to the child's stay in Germany or if the relevant binding decision has been supplied by a</p>
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	<p>werden, wenn der andere Elternteil sein Einverständnis mit dem Aufenthalt des Kindes im Bundesgebiet erklärt hat oder eine entsprechende rechtsverbindliche Entscheidung einer zuständigen Stelle vorliegt.</p> <p>(4) Im Übrigen kann dem minderjährigen ledigen Kind eines Ausländers eine Aufenthaltserlaubnis erteilt werden, wenn es auf Grund der Umstände des Einzelfalls zur Vermeidung einer besonderen Härte erforderlich ist. Hierbei sind das Kindeswohl und die familiäre Situation zu berücksichtigen.</p> <p>(5) Hält sich der Ausländer gemäß § 20a berechtigt im Bundesgebiet auf, so bedarf das minderjährige ledige Kind keines Aufenthaltstitels, wenn nachgewiesen wird, dass sich das Kind in dem anderen Mitgliedstaat der Europäischen Union rechtmäßig als Angehöriger des Ausländers aufgehalten hat. Die Voraussetzungen nach § 20a Absatz 1 Satz 1 Nummer 1, 3 und 4 und die Ablehnungsgründe nach § 20c gelten für das minderjährige Kind entsprechend.</p>	<p>competent authority.</p> <p>(4) A minor, unmarried child of a foreigner may otherwise be granted a temporary residence permit if necessary in order to prevent special hardship on account of the circumstances pertaining to the individual case concerned. The child's well-being and the family situation are to be taken into consideration in this connection.</p>
<p>§ 33 Aufenth G</p>	<p>Geburt eines Kindes im Bundesgebiet</p> <p>Einem Kind, das im Bundesgebiet geboren wird, kann abweichend von den §§ 5 und 29 Abs. 1 Nr. 2 von Amts wegen eine Aufenthaltserlaubnis erteilt werden, wenn ein Elternteil eine Aufenthaltserlaubnis, eine Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt – EU besitzt. Wenn zum Zeitpunkt der Geburt beide Elternteile oder der allein personensorgeberechtigte Elternteil eine Aufenthaltserlaubnis, eine Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt – EU</p>	<p>Birth of a child in the federal territory</p> <p>By way of derogation from Sections 5 and 29 (1), no. 2, a child who is born in the federal territory may be granted a temporary residence permit ex officio if one parent possesses a temporary residence permit, permanent settlement permit or EU long-term residence permit. Where both parents or the parent possessing sole right of care and custody hold a temporary residence permit, a permanent settlement permit or an EU long-term residence permit at the time of birth, the child born in the federal territory shall be granted a temporary</p>

	besitzen, wird dem im Bundesgebiet geborenen Kind die Aufenthaltserlaubnis von Amts wegen erteilt. Der Aufenthalt eines im Bundesgebiet geborenen Kindes, dessen Mutter oder Vater zum Zeitpunkt der Geburt im Besitz eines Visums ist oder sich visumfrei aufhalten darf, gilt bis zum Ablauf des Visums oder des rechtmäßigen visumfreien Aufenthalts als erlaubt.	residence permit ex officio. A child born in the federal territory whose mother or father possesses a visa or is permitted to stay in the federal territory without a visa at the time of the birth shall be permitted to stay in the federal territory until such time as the visa or the lawful period of stay without a visa expires.
§ 34 Aufenth G	<p>Aufenthaltsrecht der Kinder</p> <p>(1) Die einem Kind erteilte Aufenthaltserlaubnis ist abweichend von § 5 Abs. 1 Nr. 1 und § 29 Abs. 1 Nr. 2 zu verlängern, solange ein personensorgeberechtigter Elternteil eine Aufenthaltserlaubnis, Niederlassungserlaubnis oder eine Erlaubnis zum Daueraufenthalt – EU besitzt und das Kind mit ihm in familiärer Lebensgemeinschaft lebt oder das Kind im Falle seiner Ausreise ein Wiederkehrrecht gemäß § 37 hätte.</p> <p>(2) Mit Eintritt der Volljährigkeit wird die einem Kind erteilte Aufenthaltserlaubnis zu einem eigenständigen, vom Familiennachzug unabhängigen Aufenthaltsrecht. Das Gleiche gilt bei Erteilung einer Niederlassungserlaubnis und der Erlaubnis zum Daueraufenthalt – EU oder wenn die Aufenthaltserlaubnis in entsprechender Anwendung des § 37 verlängert wird.</p> <p>(3) Die Aufenthaltserlaubnis kann verlängert werden, solange die Voraussetzungen für die Erteilung der Niederlassungserlaubnis und der Erlaubnis zum Daueraufenthalt – EU noch nicht vorliegen.</p>	<p>Children's right of residence</p> <p>(1) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the temporary residence permit granted to a child shall be extended as long as a parent possessing the right of care and custody holds a temporary residence permit, permanent settlement permit or EU long-term residence permit and the child lives together with the said parent as part of a family unit, or if the child would have a right of return pursuant to Section 37 if he or she left the federal territory.</p> <p>(2) Upon a child coming of age, the temporary residence permit granted to the child shall become an independent right of residence which is unrelated to the purposes of the subsequent immigration of dependants. The same shall apply in the case of the granting of a permanent settlement permit and an EU long-term residence permit or if the temporary residence permit is extended accordingly pursuant to Section 37.</p> <p>(3) The temporary residence permit may be extended for as long as the conditions for granting the permanent settlement permit and the EU long-term residence permit have yet to be met.</p>
§ 35	Eigenständiges, unbefristetes	Children's independent, permanent

<p>Aufenth G</p>	<p>Aufenthaltsrecht der Kinder</p> <p>(1) Einem minderjährigen Ausländer, der eine Aufenthaltserlaubnis nach diesem Abschnitt besitzt, ist abweichend von § 9 Abs. 2 eine Niederlassungserlaubnis zu erteilen, wenn er im Zeitpunkt der Vollendung seines 16. Lebensjahres seit fünf Jahren im Besitz der Aufenthaltserlaubnis ist. Das Gleiche gilt, wenn</p> <ol style="list-style-type: none"> 1. der Ausländer volljährig und seit fünf Jahren im Besitz der Aufenthaltserlaubnis ist, 2. er über ausreichende Kenntnisse der deutschen Sprache verfügt und 3. sein Lebensunterhalt gesichert ist oder er sich in einer Ausbildung befindet, die zu einem anerkannten schulischen oder beruflichen Bildungsabschluss oder einem Hochschulabschluss führt. <p>(2) Auf die nach Absatz 1 erforderliche Dauer des Besitzes der Aufenthaltserlaubnis werden in der Regel nicht die Zeiten angerechnet, in denen der Ausländer außerhalb des Bundesgebiets die Schule besucht hat.</p> <p>(3) Ein Anspruch auf Erteilung einer Niederlassungserlaubnis nach Absatz 1 besteht nicht, wenn</p> <ol style="list-style-type: none"> 1. ein auf dem persönlichen Verhalten des Ausländers beruhendes Ausweisungsinteresse besteht, 2. der Ausländer in den letzten drei Jahren wegen einer vorsätzlichen Straftat zu einer Jugendstrafe von mindestens sechs oder einer Freiheitsstrafe von mindestens drei Monaten oder einer Geldstrafe von mindestens 90 Tagessätzen verurteilt worden oder wenn die Verhängung einer Jugendstrafe ausgesetzt ist oder 	<p>right of residence</p> <p>(1) By way of derogation from Section 9 (2), a minor foreigner who possesses a temporary residence permit in accordance with this Part shall be granted a permanent settlement permit if he or she has been in possession of the temporary residence permit for five years on reaching the age of 16. The same shall apply if</p> <ol style="list-style-type: none"> 1. the foreigner is of age and has been in possession of the temporary residence permit for five years, 2. he or she has a sufficient command of the German language, and 3. his or her subsistence is ensured or he or she is undergoing education or training which leads to a recognised school, vocational or higher education qualification. <p>(2) Periods in which the foreigner has attended school outside of the federal territory shall not normally be taken into consideration with regard to the required duration of possession of a temporary residence permit as stipulated in subsection 1.</p> <p>(3) No entitlement to the granting of a permanent settlement permit pursuant to subsection 1 shall apply if</p> <ol style="list-style-type: none"> 1. there is a public interest in expelling the foreigner which is based on the foreigner's personal conduct, 2. the foreigner has been sentenced to a term of youth custody of at least six months or a prison term of at least three months or a fine of at least 90 daily rates in the past three years due to an intentionally committed offence, or if a youth prison sentence has been suspended or
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	<p>3. der Lebensunterhalt nicht ohne Inanspruchnahme von Leistungen nach dem Zweiten oder Zwölften Buch Sozialgesetzbuch oder Jugendhilfe nach dem Achten Buch Sozialgesetzbuch gesichert ist, es sei denn, der Ausländer befindet sich in einer Ausbildung, die zu einem anerkannten schulischen oder beruflichen Bildungsabschluss führt.</p> <p>In den Fällen des Satzes 1 kann die Niederlassungserlaubnis erteilt oder die Aufenthaltserlaubnis verlängert werden. Ist im Falle des Satzes 1 Nr. 2 die Jugend- oder Freiheitsstrafe zur Bewährung oder die Verhängung einer Jugendstrafe ausgesetzt, wird die Aufenthaltserlaubnis in der Regel bis zum Ablauf der Bewährungszeit verlängert.</p> <p>(4) Von den in Absatz 1 Satz 2 Nr. 2 und 3 und Absatz 3 Satz 1 Nr. 3 bezeichneten Voraussetzungen ist abzusehen, wenn sie von dem Ausländer wegen einer körperlichen, geistigen oder seelischen Krankheit oder Behinderung nicht erfüllt werden können.</p>	<p>3. the foreigner's subsistence cannot be assured without claiming benefits in accordance with Book Two or Book Twelve of the Social Code or juvenile welfare pursuant to Book Eight of the Social Code, unless the foreigner is undergoing education or training which leads to a recognised school or vocational qualification.</p> <p>The permanent settlement permit may be granted or the temporary residence permit extended in the cases covered by sentence 1. If, in cases covered by sentence 1, no. 2, the foreigner is placed on probation or the youth prison sentence is suspended, the temporary residence permit will generally be extended until the end of the probationary period.</p> <p>(4) The requirements stipulated in subsection 1, sentence 2, nos. 2 and 3 and subsection 3, sentence 1, no. 3 shall be waived if the foreigner is unable to fulfil them on account of a physical, mental or psychological illness or handicap.</p>
<p>§ 36 Aufenth G</p>	<p>Nachzug der Eltern und sonstiger Familienangehöriger</p> <p>(1) Den Eltern eines minderjährigen Ausländers, der eine Aufenthaltserlaubnis nach § 23 Absatz 4, § 25 Absatz 1 oder 2, eine Niederlassungserlaubnis nach § 26 Absatz 3 oder nach Erteilung einer Aufenthaltserlaubnis nach § 25 Absatz 2 Satz 1 zweite Alternative eine Niederlassungserlaubnis nach § 26 Absatz 4 besitzt, ist abweichend von § 5 Absatz 1 Nummer 1 und § 29 Absatz 1 Nummer 2 eine Aufenthaltserlaubnis zu erteilen, wenn sich kein personensorgeberechtigter Elternteil im Bundesgebiet aufhält.</p>	<p>Subsequent immigration of parents and other dependants</p> <p>(1) By way of derogation from Section 5 (1), no. 1 and Section 29 (1) no. 2, a temporary residence permit shall be issued to the parents of a minor foreigner who possesses a temporary residence permit pursuant to Section 23 (4), Section 25 (1) or (2), a permanent settlement permit pursuant to Section 26 (3) or who possesses a permanent settlement permit after being granted a temporary residence permit in accordance with Section 25 (2), sentence 1, second alternative, if no parent possessing the right of care and custody is resident in the federal territory.</p>

	<p>(2) Sonstigen Familienangehörigen eines Ausländers kann zum Familiennachzug eine Aufenthaltserlaubnis erteilt werden, wenn es zur Vermeidung einer außergewöhnlichen Härte erforderlich ist. Auf volljährige Familienangehörige sind § 30 Abs. 3 und § 31, auf minderjährige Familienangehörige ist § 34 entsprechend anzuwenden.</p>	<p>(2) Other dependants of a foreigner may be granted a temporary residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship. Section 30 (3) and Section 31 shall apply mutatis mutandis to adult dependants and Section 34 shall apply mutatis mutandis to minor dependants.</p>
<p>§ 47 Aufenth G</p>	<p>Verbot und Beschränkung der politischen Betätigung</p> <p>(1) Ausländer dürfen sich im Rahmen der allgemeinen Rechtsvorschriften politisch betätigen. Die politische Betätigung eines Ausländers kann beschränkt oder untersagt werden, soweit sie</p> <ol style="list-style-type: none"> 1. die politische Willensbildung in der Bundesrepublik Deutschland oder das friedliche Zusammenleben von Deutschen und Ausländern oder von verschiedenen Ausländergruppen im Bundesgebiet, die öffentliche Sicherheit und Ordnung oder sonstige erhebliche Interessen der Bundesrepublik Deutschland beeinträchtigt oder gefährdet, 2. den außenpolitischen Interessen oder den völkerrechtlichen Verpflichtungen der Bundesrepublik Deutschland zuwiderlaufen kann, 3. gegen die Rechtsordnung der Bundesrepublik Deutschland, insbesondere unter Anwendung von Gewalt, verstößt oder 4. bestimmt ist, Parteien, andere Vereinigungen, Einrichtungen oder Bestrebungen außerhalb des Bundesgebiets zu fördern, deren Ziele oder Mittel mit den Grundwerten einer die Würde des Menschen achtenden 	<p>Prohibition and restriction of political activities</p> <p>(1) Foreigners may pursue political activities within the bounds of the prevailing general statutory provisions. A foreigner's political activities may be restricted or prohibited if they</p> <ol style="list-style-type: none"> 1. impair or endanger the development of informed political opinion in the Federal Republic of Germany, the peaceful co-existence of Germans and foreigners or of different groups of foreigners in the federal territory, public safety and law and order or any other substantial interests of the Federal Republic of Germany, 2. may be counter to the interests of the Federal Republic of Germany in the field of foreign policy or to the obligations of the Federal Republic of Germany under international law, 3. contravene the laws of the Federal Republic of Germany, particularly in connection with the use of violence, 4. are intended to promote parties, other organisations, establishments or activities outside of the federal territory whose aims or means are incompatible with the fundamental values of a system of government which respects human dignity.

	<p>staatlichen Ordnung unvereinbar sind.</p> <p>(2) Die politische Betätigung eines Ausländers wird untersagt, soweit sie</p> <ol style="list-style-type: none"> 1. die freiheitliche demokratische Grundordnung oder die Sicherheit der Bundesrepublik Deutschland gefährdet oder den kodifizierten Normen des Völkerrechts widerspricht, 2. Gewaltanwendung als Mittel zur Durchsetzung politischer, religiöser oder sonstiger Belange öffentlich unterstützt, befürwortet oder hervorzurufen bezweckt oder geeignet ist oder 3. Vereinigungen, politische Bewegungen oder Gruppen innerhalb oder außerhalb des Bundesgebiets unterstützt, die im Bundesgebiet Anschläge gegen Personen oder Sachen oder außerhalb des Bundesgebiets Anschläge gegen Deutsche oder deutsche Einrichtungen veranlasst, befürwortet oder angedroht haben. 	<p>(2) A foreigner's political activities shall be prohibited if they</p> <ol style="list-style-type: none"> 1. endanger the free and democratic constitutional system or the security of the Federal Republic of Germany or contravene the codified standards of international law, 2. publicly support, advocate or incite the use of violence as a means of enforcing political, religious or other interests or are capable of inciting such violence or 3. support organisations, political movements or groups within or outside of the federal territory which have initiated, advocated or threatened attacks on persons or objects in the federal territory or attacks on Germans or German establishments outside of the federal territory.
<p>§ 50 Aufenth G</p>	<p>Ausreisepflicht</p> <p>(1) Ein Ausländer ist zur Ausreise verpflichtet, wenn er einen erforderlichen Aufenthaltstitel nicht oder nicht mehr besitzt und ein Aufenthaltsrecht nach dem Assoziationsabkommen EWG/Türkei nicht oder nicht mehr besteht.</p> <p>(2) Der Ausländer hat das Bundesgebiet unverzüglich oder, wenn ihm eine Ausreisefrist gesetzt ist, bis zum Ablauf der Frist zu verlassen.</p> <p>(2a) (weggefallen)</p> <p>(3) Durch die Einreise in einen anderen Mitgliedstaat der Europäischen Union oder in einen anderen Schengen-Staat genügt der Ausländer seiner Ausreisepflicht nur, wenn ihm Einreise und Aufenthalt dort erlaubt sind. Liegen diese Voraussetzungen vor, ist der</p>	<p>Requirement to leave the federal territory</p> <p>(1) A foreigner shall be obliged to leave the federal territory if he or she does not possess or no longer possesses the necessary residence title and a right of residence does not exist or no longer exists under the EEC/Turkey Association Agreement.</p> <p>(2) The foreigner shall be required to leave the federal territory without delay or, if a period has been allowed for departure, by the end of this period.</p> <p>(2a) (repealed)</p> <p>(3) The foreigner may meet his or her obligation to leave the federal territory by entering another member state of the European Union or another Schengen state only if his or her entry into and residence in such state is permitted. If</p>

	<p>ausreisepflichtige Ausländer aufzufordern, sich unverzüglich in das Hoheitsgebiet dieses Staates zu begeben.</p> <p>(4) Ein ausreisepflichtiger Ausländer, der seine Wohnung wechseln oder den Bezirk der Ausländerbehörde für mehr als drei Tage verlassen will, hat dies der Ausländerbehörde vorher anzuzeigen.</p> <p>(5) Der Pass oder Passersatz eines ausreisepflichtigen Ausländers soll bis zu dessen Ausreise in Verwahrung genommen werden.</p> <p>(6) Ein Ausländer kann zum Zweck der Aufenthaltsbeendigung in den Fahndungshilfsmitteln der Polizei zur Aufenthaltsermittlung und Festnahme ausgeschrieben werden, wenn sein Aufenthalt unbekannt ist. Ein Ausländer, gegen den ein Einreise- und Aufenthaltsverbot nach § 11 besteht, kann zum Zweck der Einreiseverweigerung zur Zurückweisung und für den Fall des Antreffens im Bundesgebiet zur Festnahme ausgeschrieben werden. Für Ausländer, die gemäß § 15a verteilt worden sind, gilt § 66 des Asylgesetzes entsprechend.</p>	<p>this is the case, the foreigner who is obliged to leave the federal territory is to be required to proceed to the territory of such state without delay.</p> <p>(4) A foreigner who is required to leave the federal territory and who intends to change his or her address or to leave the district covered by the foreigners authority for more than three days shall be required to notify the foreigners authority accordingly beforehand.</p> <p>(5) The passport or passport substitute of a foreigner who is required to leave the federal territory should be taken into custody until the time of his or her departure.</p> <p>(6) For the purpose of terminating residence of a foreigner, the police may use their search tools for wanted persons in order to determine the foreigner's whereabouts and to apprehend him or her, if his or her whereabouts are not known. A foreigner against whom a ban on entry and residence has been imposed in accordance with Section 11 may be reported for the purposes of refusal of entry and, in the event of his or her being found in the federal territory, for the purposes of his or her apprehension. Section 66 of the Asylum Act shall apply mutatis mutandis to foreigners who have been allocated in accordance with Section 15a.</p>
<p>§ 53 Aufenth G</p>	<p>Ausweisung</p> <p>(1) Ein Ausländer, dessen Aufenthalt die öffentliche Sicherheit und Ordnung, die freiheitliche demokratische Grundordnung oder sonstige erhebliche Interessen der Bundesrepublik Deutschland gefährdet, wird ausgewiesen, wenn die unter Berücksichtigung aller</p>	<p>Expulsion</p> <p>(1) A foreigner whose stay endangers public safety and law and order, the free democratic basic order or other significant interests of the Federal Republic of Germany shall be expelled if the balancing of the interests in the foreigner's departure with the foreigner's</p>

<p>Umstände des Einzelfalles vorzunehmende Abwägung der Interessen an der Ausreise mit den Interessen an einem weiteren Verbleib des Ausländers im Bundesgebiet ergibt, dass das öffentliche Interesse an der Ausreise überwiegt.</p> <p>(2) Bei der Abwägung nach Absatz 1 sind nach den Umständen des Einzelfalles insbesondere die Dauer seines Aufenthalts, seine persönlichen, wirtschaftlichen und sonstigen Bindungen im Bundesgebiet und im Herkunftsstaat oder in einem anderen zur Aufnahme bereiten Staat, die Folgen der Ausweisung für Familienangehörige und Lebenspartner sowie die Tatsache, ob sich der Ausländer rechtstreu verhalten hat, zu berücksichtigen.</p> <p>(3) Ein Ausländer, der als Asylberechtigter anerkannt ist, der im Bundesgebiet die Rechtsstellung eines ausländischen Flüchtlings genießt, der einen von einer Behörde der Bundesrepublik Deutschland ausgestellten Reiseausweis nach dem Abkommen vom 28. Juli 1951 über die Rechtsstellung der Flüchtlinge (BGBl. 1953 II S. 559) besitzt, dem nach dem Assoziationsabkommen EWG/Türkei ein Aufenthaltsrecht zusteht oder der eine Erlaubnis zum Daueraufenthalt – EU besitzt, darf nur ausgewiesen werden, wenn das persönliche Verhalten des Betroffenen gegenwärtig eine schwerwiegende Gefahr für die öffentliche Sicherheit und Ordnung darstellt, die ein Grundinteresse der Gesellschaft berührt und die Ausweisung für die Wahrung dieses Interesses unerlässlich ist.</p>	<p>individual interests in remaining in the federal territory which is to be conducted taking account of all the circumstances of the particular case results in the public interest in the foreigner leaving overriding.</p> <p>(2) When balancing the interests pursuant to subsection 1 in accordance with the circumstances of particular case, consideration shall in particular be given to the length of the foreigner's stay, his or her personal, economic and other ties in the federal territory and in the country of origin or in another state prepared to receive him or her, the consequences of expulsion for his or her dependants and domestic partner, as well as whether the foreigner has abided with the law.</p> <p>(3) A foreigner who has been recognised as entitled to asylum, who enjoys the legal status of a foreign refugee, who possesses a travel document issued by an authority in the Federal Republic of Germany in accordance with the Agreement of 28 July 1951 on the Legal Status of Refugees (Federal Law Gazette 1953 II p. 559), who is entitled to a right of residence in accordance with the EEC/Turkey Association Agreement or who possesses an EU long-term residence permit may be expelled only if the personal conduct of the person concerned currently represents a serious threat to public safety and law and order which affects a fundamental interest of society and the expulsion is essential to protect that interest.</p> <p>(4) A foreigner who has filed an application for asylum may be expelled only under the condition that the asylum procedure has been concluded by</p>
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	<p>(4) Ein Ausländer, der einen Asylantrag gestellt hat, kann nur unter der Bedingung ausgewiesen werden, dass das Asylverfahren unanfechtbar ohne Anerkennung als Asylberechtigter oder ohne die Zuerkennung internationalen Schutzes (§ 1 Absatz 1 Nummer 2 des Asylgesetzes) abgeschlossen wird. Von der Bedingung wird abgesehen, wenn</p> <ol style="list-style-type: none"> 1. ein Sachverhalt vorliegt, der nach Absatz 3 eine Ausweisung rechtfertigt oder 2. eine nach den Vorschriften des Asylgesetzes erlassene Abschiebungsandrohung vollziehbar geworden ist. 	<p>incontestable decision without the foreigner being given recognition as a person entitled to asylum or without recognition of entitlement to international protection (Section 1 (1) no. 2 of the Asylum Act). The condition shall be waived if</p> <ol style="list-style-type: none"> 1. there are facts justifying an expulsion pursuant to subsection 3 or 2. a deportation warning issued in accordance with the provisions of the Asylum Act has become enforceable.
<p>§ 54 Aufenth G</p>	<p>Ausweisungsinteresse</p> <p>(1) Das Ausweisungsinteresse im Sinne von § 53 Absatz 1 wiegt besonders schwer, wenn der Ausländer</p> <ol style="list-style-type: none"> 1. wegen einer oder mehrerer vorsätzlicher Straftaten rechtskräftig zu einer Freiheits- oder Jugendstrafe von mindestens zwei Jahren verurteilt worden ist oder bei der letzten rechtskräftigen Verurteilung Sicherungsverwahrung angeordnet worden ist, <ol style="list-style-type: none"> 1a. wegen einer oder mehrerer vorsätzlicher Straftaten gegen das Leben, die körperliche Unversehrtheit, die sexuelle Selbstbestimmung, das Eigentum oder wegen Widerstands gegen Vollstreckungsbeamte rechtskräftig zu einer Freiheits- oder Jugendstrafe von mindestens einem Jahr verurteilt worden ist, sofern die Straftat mit Gewalt, unter Anwendung von Drohung mit Gefahr für Leib oder Leben oder mit List begangen worden ist oder eine Straftat nach § 177 des Strafgesetzbuches ist; bei serienmäßiger Begehung von Straftaten 	<p>Interest in expulsion</p> <p>(1) There shall be a particularly serious public interest in expelling the foreigner (Ausweisungsinteresse) within the meaning of Section 53 (1) where the foreigner</p> <ol style="list-style-type: none"> 1. has been incontestably sentenced to a prison term or a term of youth custody of at least two years for one or more intentionally committed offences or preventive detention has been ordered in connection with the most recent incontestable conviction, <ol style="list-style-type: none"> 1a has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of danger to life or limb, or with guile; there shall be a particularly serious interest in expulsion in the case of the commission of serial offences against

<p>gegen das Eigentum wiegt das Ausweisungsinteresse auch dann besonders schwer, wenn der Täter keine Gewalt, Drohung oder List angewendet hat,</p> <p>2. die freiheitliche demokratische Grundordnung oder die Sicherheit der Bundesrepublik Deutschland gefährdet; hiervon ist auszugehen, wenn Tatsachen die Schlussfolgerung rechtfertigen, dass er einer Vereinigung angehört oder angehört hat, die den Terrorismus unterstützt oder er eine derartige Vereinigung unterstützt oder unterstützt hat oder er eine in § 89a Absatz 1 des Strafgesetzbuchs bezeichnete schwere staatsgefährdende Gewalttat nach § 89a Absatz 2 des Strafgesetzbuchs vorbereitet oder vorbereitet hat, es sei denn, der Ausländer nimmt erkennbar und glaubhaft von seinem sicherheitsgefährdenden Handeln Abstand,</p> <p>3. zu den Leitern eines Vereins gehörte, der unanfechtbar verboten wurde, weil seine Zwecke oder seine Tätigkeit den Strafgesetzen zuwiderlaufen oder er sich gegen die verfassungsmäßige Ordnung oder den Gedanken der Völkerverständigung richtet,</p> <p>4. sich zur Verfolgung politischer oder religiöser Ziele an Gewalttätigkeiten beteiligt oder öffentlich zur Gewaltanwendung aufruft oder mit Gewaltanwendung droht oder</p> <p>5. zu Hass gegen Teile der Bevölkerung aufruft; hiervon ist auszugehen, wenn er auf eine andere Person gezielt und andauernd einwirkt, um Hass auf Angehörige bestimmter ethnischer Gruppen oder Religionen zu erzeugen</p>	<p>property even if the perpetrator did not use violence, threats or guile,</p> <p>2. threatens the free democratic basic order or the security of the Federal Republic of Germany; this shall be assumed to be the case where facts justify the conclusion that the foreigner is or has been a member of an organisation which supports terrorism or he or she supports or has supported such an organisation or he or she is, in accordance with Section 89a (2) of the Criminal Code, preparing or has prepared a serious violent offence endangering the state described in Section 89a (1) of the Criminal Code, unless the foreigner recognisably and credibly distances himself or herself from the activity which endangers the state,</p> <p>3. was one of the leaders of an organisation which was incontestably banned because its purposes or its activity contravenes criminal law or it is directed against the constitutional order or the concept of international understanding,</p> <p>4. is involved in violent activities in the pursuit of political or religious objectives or calls publicly for the use of violence or threatens the use of violence or</p> <p>5. incites others to hatred against sections of the population; this shall be assumed to be the case where he or she exerts a targeted and permanent influence on other persons in order to incite or increase hatred against members of certain ethnic groups or religions, or he or she publicly, in a meeting or by disseminating writings in a manner which is suited to disturbing public safety and law and order,</p> <p>a) incites others to undertake arbitrary</p>
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<p>oder zu verstärken oder öffentlich, in einer Versammlung oder durch Verbreiten von Schriften in einer Weise, die geeignet ist, die öffentliche Sicherheit und Ordnung zu stören,</p> <p>a) gegen Teile der Bevölkerung zu Willkürmaßnahmen aufstachelt,</p> <p>b) Teile der Bevölkerung böswillig verächtlich macht und dadurch die Menschenwürde anderer angreift oder</p> <p>c) Verbrechen gegen den Frieden, gegen die Menschlichkeit, ein Kriegsverbrechen oder terroristische Taten von vergleichbarem Gewicht billigt oder dafür wirbt,</p> <p>es sei denn, der Ausländer nimmt erkennbar und glaubhaft von seinem Handeln Abstand.</p> <p>(2) Das Ausweisungsinteresse im Sinne von § 53 Absatz 1 wiegt schwer, wenn der Ausländer</p> <p>1. wegen einer oder mehrerer vorsätzlicher Straftaten rechtskräftig zu einer Freiheitsstrafe von mindestens einem Jahr verurteilt worden ist,</p> <p>1a. wegen einer oder mehrerer vorsätzlicher Straftaten gegen das Leben, die körperliche Unversehrtheit, die sexuelle Selbstbestimmung, das Eigentum oder wegen Widerstands gegen Vollstreckungsbeamte rechtskräftig zu einer Freiheits- oder Jugendstrafe verurteilt worden ist, sofern die Straftat mit Gewalt, unter Anwendung von Drohung mit Gefahr für Leib oder Leben oder mit List begangen worden ist oder eine Straftat nach § 177 des Strafgesetzbuches ist; bei serienmäßiger Begehung von Straftaten gegen das Eigentum wiegt das Ausweisungsinteresse auch dann schwer,</p>	<p>measures against sections of the population,</p> <p>b) maliciously disparages sections of the population and thus attacks the human dignity of others or</p> <p>c) endorses or promotes crimes against peace, against humanity, war crimes or acts of terrorism of comparable severity, unless the foreigner recognisably and credibly distances himself or herself from his or her actions.</p> <p>(2) There shall be a serious interest in expelling the foreigner within the meaning of Section 53 (1) where the foreigner</p> <p>1. has been incontestably sentenced to a prison term of at least one year for one or more intentionally committed offences,</p> <p>1a. has been incontestably sentenced to a prison term or a term of youth custody for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of danger to life or limb, or with guile; the interest in expulsion shall be serious in the case of the commission of serial offences against property even if the perpetrator did not use violence, threats or guile,</p> <p>2. has been incontestably sentenced to youth custody for at least one year for one or more intentionally committed offences and enforcement of the penalty has not been suspended on probation,</p> <p>3. has committed or attempted to commit, as a perpetrator or participant, the offence under Section 29 (1), sentence 1, no. 1 of the Narcotics Act,</p> <p>4. uses heroin, cocaine or a comparably</p>
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<p>wenn der Täter keine Gewalt, Drohung oder List angewendet hat,</p> <p>2. wegen einer oder mehrerer vorsätzlicher Straftaten rechtskräftig zu einer Jugendstrafe von mindestens einem Jahr verurteilt und die Vollstreckung der Strafe nicht zur Bewährung ausgesetzt worden ist,</p> <p>3. als Täter oder Teilnehmer den Tatbestand des § 29 Absatz 1 Satz 1 Nummer 1 des Betäubungsmittelgesetzes verwirklicht oder dies versucht,</p> <p>4. Heroin, Kokain oder ein vergleichbar gefährliches Betäubungsmittel verbraucht und nicht zu einer erforderlichen seiner Rehabilitation dienenden Behandlung bereit ist oder sich ihr entzieht,</p> <p>5. eine andere Person in verwerflicher Weise, insbesondere unter Anwendung oder Androhung von Gewalt, davon abhält, am wirtschaftlichen, kulturellen oder gesellschaftlichen Leben in der Bundesrepublik Deutschland teilzuhaben,</p> <p>6. eine andere Person zur Eingehung der Ehe nötigt oder dies versucht oder wiederholt eine Handlung entgegen § 11 Absatz 2 Satz 1 und 2 des Personenstandsgesetzes vornimmt, die einen schwerwiegenden Verstoß gegen diese Vorschrift darstellt; ein schwerwiegender Verstoß liegt vor, wenn eine Person, die das 16. Lebensjahr noch nicht vollendet hat, beteiligt ist,</p> <p>7. in einer Befragung, die der Klärung von Bedenken gegen die Einreise oder den weiteren Aufenthalt dient, der deutschen Auslandsvertretung oder der Ausländerbehörde gegenüber frühere Aufenthalte in Deutschland oder anderen Staaten verheimlicht oder in wesentlichen Punkten vorsätzlich keine, falsche oder</p>	<p>dangerous narcotic and is not prepared to undergo the necessary treatment which serves his or her rehabilitation or he or she evades such treatment,</p> <p>5. prevents another person from participating in life in the Federal Republic of Germany on an economic, cultural or social level by reprehensible means, in particular through the use or threat of violence,</p> <p>6. forces or attempts to force another person into entering into marriage,</p> <p>7. he or she, in the course of an interview which serves to clarify reservations against entry or continued residence, fails to reveal to the German diplomatic mission abroad or to the foreigners authority previous stays in Germany or other states, or intentionally furnishes no, false or incomplete information on key points regarding links with persons or organisations suspected of supporting terrorism or threatening the free, democratic order or security of the Federal Republic of Germany; expulsion on this basis shall be permissible only if the foreigner is expressly informed prior to the interview of the security-related purpose of the interview and the legal consequences of refusing to furnish information or of furnishing false or incomplete information,</p> <p>8. in the course of an administrative procedure which was conducted by the authorities of a Schengen state in Germany or abroad</p> <p>a) has furnished false or incomplete information in order to obtain a German residence title, a Schengen visa, an airport transit visa, a passport substitute, eligibility for exemption from the</p>
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<p>unvollständige Angaben über Verbindungen zu Personen oder Organisationen macht, die der Unterstützung des Terrorismus oder der Gefährdung der freiheitlichen demokratischen Grundordnung oder der Sicherheit der Bundesrepublik Deutschland verdächtig sind; die Ausweisung auf dieser Grundlage ist nur zulässig, wenn der Ausländer vor der Befragung ausdrücklich auf den sicherheitsrechtlichen Zweck der Befragung und die Rechtsfolgen verweigerter, falscher oder unvollständiger Angaben hingewiesen wurde,</p> <p>8. in einem Verwaltungsverfahren, das von Behörden eines Schengen-Staates durchgeführt wurde, im In- oder Ausland</p> <p>a) falsche oder unvollständige Angaben zur Erlangung eines deutschen Aufenthaltstitels, eines Schengen-Visums, eines Flughafentransitvisums, eines Passersatzes, der Zulassung einer Ausnahme von der Passpflicht oder der Aussetzung der Abschiebung gemacht hat oder</p> <p>b) trotz bestehender Rechtspflicht nicht an Maßnahmen der für die Durchführung dieses Gesetzes oder des Schengener Durchführungsübereinkommens zuständigen Behörden mitgewirkt hat, soweit der Ausländer zuvor auf die Rechtsfolgen solcher Handlungen hingewiesen wurde oder</p> <p>9. einen nicht nur vereinzelt oder geringfügigen Verstoß gegen Rechtsvorschriften oder gerichtliche oder behördliche Entscheidungen oder Verfügungen begangen oder außerhalb des Bundesgebiets eine Handlung</p>	<p>passport obligation or the suspension of deportation or</p> <p>b) notwithstanding a legal obligation, has failed to cooperate in measures undertaken by the authorities responsible for implementing this Act or the Convention Implementing the Schengen Agreement, provided that the foreigner was informed beforehand of the legal consequences of such action or</p> <p>9. has committed a not only isolated or minor breach of legal provisions, court rulings or orders, excepting isolated or minor breaches, or has committed an offence outside of the federal territory which is to be regarded as an intentionally committed serious offence in the federal territory.</p>
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	begangen hat, die im Bundesgebiet als vorsätzliche schwere Straftat anzusehen ist.	
§ 55 Aufenth G	<p>Bleibeinteresse</p> <p>(1) Das Bleibeinteresse im Sinne von § 53 Absatz 1 wiegt besonders schwer, wenn der Ausländer</p> <ol style="list-style-type: none"> 1. eine Niederlassungserlaubnis besitzt und sich seit mindestens fünf Jahren rechtmäßig im Bundesgebiet aufgehalten hat, 2. eine Aufenthaltserlaubnis besitzt und im Bundesgebiet geboren oder als Minderjähriger in das Bundesgebiet eingereist ist und sich seit mindestens fünf Jahren rechtmäßig im Bundesgebiet aufgehalten hat, 3. eine Aufenthaltserlaubnis besitzt, sich seit mindestens fünf Jahren rechtmäßig im Bundesgebiet aufgehalten hat und mit einem der in den Nummern 1 und 2 bezeichneten Ausländer in ehelicher oder lebenspartnerschaftlicher Lebensgemeinschaft lebt, 4. mit einem deutschen Familienangehörigen oder Lebenspartner in familiärer oder lebenspartnerschaftlicher Lebensgemeinschaft lebt, sein Personensorgerecht für einen minderjährigen ledigen Deutschen oder mit diesem sein Umgangsrecht ausübt, 5. die Rechtsstellung eines subsidiär Schutzberechtigten im Sinne des § 4 Absatz 1 des Asylgesetzes genießt oder 6. eine Aufenthaltserlaubnis nach § 23 Absatz 4, den §§ 24, 25 Absatz 4a Satz 3 oder nach § 29 Absatz 2 oder 4 besitzt. <p>(2) Das Bleibeinteresse im Sinne von § 53 Absatz 1 wiegt insbesondere schwer, wenn</p>	<p>Interest in remaining</p> <p>(1) There shall be a particularly serious individual interest in remaining in the federal territory (Bleibeinteresse) within the meaning of Section 53 (1) where the foreigner</p> <ol style="list-style-type: none"> 1. possesses a permanent settlement permit and has lawfully resided in the federal territory for at least five years, 2. possesses a temporary residence permit and was born in the federal territory or entered the federal territory as a minor and has lawfully resided in the federal territory for at least five years, 3. possesses a temporary residence permit, has lawfully resided in the federal territory for at least five years and cohabits with a foreigner as designated in nos. 1 and 2 as a spouse or in a registered partnership, 4. cohabits with a German dependant or domestic partner in a family unit or a registered partnership, exercises his or her rights of care and custody for a minor, unmarried German or exercises his or her right of access to that minor, 5. enjoys the legal status of foreigner entitled to subsidiary protection within the meaning of Section 4 (1) of the Asylum Act or 6. possesses a temporary residence permit pursuant to Section 23 (4), Sections 24, 25 (4a), sentence 3, or pursuant to Section 29 (2) or (4). <p>(2) There shall, in particular, be a serious individual interest in remaining within the meaning of Section 53 (1) where</p> <ol style="list-style-type: none"> 1. the foreigner is a minor and possesses

	<p>1. der Ausländer minderjährig ist und eine Aufenthaltserlaubnis besitzt, 2. der Ausländer eine Aufenthaltserlaubnis besitzt und sich seit mindestens fünf Jahren im Bundesgebiet aufhält, 3. der Ausländer sein Personensorgerecht für einen im Bundesgebiet rechtmäßig sich aufhaltenden ledigen Minderjährigen oder mit diesem sein Umgangsrecht ausübt, 4. der Ausländer minderjährig ist und sich die Eltern oder ein personensorgeberechtigter Elternteil rechtmäßig im Bundesgebiet aufhalten beziehungsweise aufhält, 5. die Belange oder das Wohl eines Kindes zu berücksichtigen sind beziehungsweise ist oder 6. der Ausländer eine Aufenthaltserlaubnis nach § 25 Absatz 4a Satz 1 besitzt. (3) Aufenthalte auf der Grundlage von § 81 Absatz 3 Satz 1 und Absatz 4 Satz 1 werden als rechtmäßiger Aufenthalt im Sinne der Absätze 1 und 2 nur berücksichtigt, wenn dem Antrag auf Erteilung oder Verlängerung des Aufenthaltstitels entsprochen wurde.</p>	<p>a temporary residence permit, 2. the foreigner possesses a temporary residence permit and has resided in the federal territory for at least five years, 3. the foreigner exercises his or her rights of care and custody for an unmarried minor staying lawfully in the federal territory or exercises his or her right of access to that minor, 4. the foreigner is a minor and his or her parents or parent holding rights of care and custody are or is residing lawfully in the federal territory, 5. consideration is to be given to the interests or the well-being of a child or 6. the foreigner possesses a temporary residence permit pursuant to Section 25 (4a), sentence 1. (3) Stays on the basis of Section 81 (3), sentence 1, and (4), sentence 1, shall be considered as lawful stays within the meaning of subsections 1 and 2 only if the application for issuance or extension of the residence title was granted.</p>
<p>§ 60 Aufenth G</p>	<p>Verbot der Abschiebung (1) In Anwendung des Abkommens vom 28. Juli 1951 über die Rechtsstellung der Flüchtlinge (BGBl. 1953 II S. 559) darf ein Ausländer nicht in einen Staat abgeschoben werden, in dem sein Leben oder seine Freiheit wegen seiner Rasse, Religion, Nationalität, seiner Zugehörigkeit zu einer bestimmten sozialen Gruppe oder wegen seiner politischen Überzeugung bedroht ist. Dies gilt auch für Asylberechtigte und</p>	<p>Prohibition of deportation (1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II p. 559), a foreigner may not be deported to a state in which his or her life or liberty is under threat on account of his or her race, religion, nationality, membership of a certain social group or political convictions. This shall also apply to persons who are entitled to asylum and to foreigners who have been incontestably</p>

<p>Ausländer, denen die Flüchtlingseigenschaft unanfechtbar zuerkannt wurde oder die aus einem anderen Grund im Bundesgebiet die Rechtsstellung ausländischer Flüchtlinge genießen oder die außerhalb des Bundesgebiets als ausländische Flüchtlinge nach dem Abkommen über die Rechtsstellung der Flüchtlinge anerkannt sind. Wenn der Ausländer sich auf das Abschiebungsverbot nach diesem Absatz beruft, stellt das Bundesamt für Migration und Flüchtlinge außer in den Fällen des Satzes 2 in einem Asylverfahren fest, ob die Voraussetzungen des Satzes 1 vorliegen und dem Ausländer die Flüchtlingseigenschaft zuzuerkennen ist. Die Entscheidung des Bundesamtes kann nur nach den Vorschriften des Asylgesetzes angefochten werden.</p> <p>(2) Ein Ausländer darf nicht in einen Staat abgeschoben werden, in dem ihm der in § 4 Absatz 1 des Asylgesetzes bezeichnete ernsthafte Schaden droht. Absatz 1 Satz 3 und 4 gilt entsprechend.</p> <p>(3) Darf ein Ausländer nicht in einen Staat abgeschoben werden, weil dieser Staat den Ausländer wegen einer Straftat sucht und die Gefahr der Verhängung oder der Vollstreckung der Todesstrafe besteht, finden die Vorschriften über die Auslieferung entsprechende Anwendung.</p> <p>(4) Liegt ein förmliches Auslieferungsersuchen oder ein mit der Ankündigung eines Auslieferungsersuchens verbundenes Festnahmeersuchen eines anderen Staates vor, darf der Ausländer bis zur Entscheidung über die Auslieferung nur mit Zustimmung der Behörde, die nach §</p>	<p>granted refugee status or who enjoy the legal status of foreign refugees on other grounds in the federal territory or who have been granted foreign refugee status outside of the federal territory in accordance with the Convention relating to the Status of Refugees. Where the foreigner cites the ban on deportation pursuant to this subsection, the Federal Office for Migration and Refugees shall establish in an asylum procedure whether the conditions stated in sentence 1 apply and the foreigner is to be granted refugee status, except in cases covered by sentence 2. The decision by the Federal Office shall only be contestable subject to the provisions of the Asylum Act.</p> <p>(2) Foreigners may not be deported to a state where they face serious harm as referred to in Section 4 (1) of the Asylum Act. Subsection (1), sentences 3 and 4 shall apply mutatis mutandis.</p> <p>(3) If a foreigner may not be deported to a state in which he or she is wanted for a criminal offence and a danger of imposition or enforcement of the death penalty exists, the provisions on extradition shall apply mutatis mutandis.</p> <p>(4) If a formal request for extradition or a request for arrest combined with a notification of intent to file a request for extradition has been received from another state, deportation of the foreigner to this state prior to the decision on extradition shall be permissible only with the approval of the authority which is responsible for approving extradition pursuant to Section 74 of the Act on International Mutual Assistance in Criminal Matters.</p> <p>(5) A foreigner may not be deported if</p>
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<p>74 des Gesetzes über die internationale Rechtshilfe in Strafsachen für die Bewilligung der Auslieferung zuständig ist, in diesen Staat abgeschoben werden.</p> <p>(5) Ein Ausländer darf nicht abgeschoben werden, soweit sich aus der Anwendung der Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten (BGBl. 1952 II S. 685) ergibt, dass die Abschiebung unzulässig ist.</p> <p>(6) Die allgemeine Gefahr, dass einem Ausländer in einem anderen Staat Strafverfolgung und Bestrafung drohen können und, soweit sich aus den Absätzen 2 bis 5 nicht etwas anderes ergibt, die konkrete Gefahr einer nach der Rechtsordnung eines anderen Staates gesetzmäßigen Bestrafung stehen der Abschiebung nicht entgegen.</p> <p>(7) Von der Abschiebung eines Ausländers in einen anderen Staat soll abgesehen werden, wenn dort für diesen Ausländer eine erhebliche konkrete Gefahr für Leib, Leben oder Freiheit besteht. Eine erhebliche konkrete Gefahr aus gesundheitlichen Gründen liegt nur vor bei lebensbedrohlichen oder schwerwiegenden Erkrankungen, die sich durch die Abschiebung wesentlich verschlechtern würden. Es ist nicht erforderlich, dass die medizinische Versorgung im Zielstaat mit der Versorgung in der Bundesrepublik Deutschland gleichwertig ist. Eine ausreichende medizinische Versorgung liegt in der Regel auch vor, wenn diese nur in einem Teil des Zielstaats gewährleistet ist. Gefahren nach Satz 1, denen die Bevölkerung oder die Bevölkerungsgruppe, der der Ausländer</p>	<p>deportation is inadmissible under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 II p. 685).</p> <p>(6) The general danger that a foreigner may face prosecution and punishment in another state and, in the absence of any provisions to the contrary in subsection 2 to 5, the concrete danger of lawful punishment under the legal system of another state shall not preclude deportation.</p> <p>(7) A foreigner should not be deported to another state in which this foreigner faces a substantial concrete danger to his or her life and limb or liberty. A substantial concrete danger on health reasons shall only exist in the case of life-threatening or serious illness which would significantly worsen upon the deportation being carried out. It is not necessary for medical care in the destination state to be comparable to medical care in the Federal Republic of Germany. Sufficient medical care shall generally also exist where this is guaranteed only in parts of the state of destination. Dangers pursuant to sentence 1 to which the population or the segment of the population to which the foreigner belongs are generally exposed shall receive due consideration in decisions pursuant to Section 60a (1), sentence 1.</p> <p>(8) Subsection 1 shall not apply if, for serious reasons, the foreigner is to be regarded as a threat to the security of the Federal Republic of Germany or constitutes a threat to the general public because he or she has been finally sentenced to a prison term of at least</p>
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<p>angehört, allgemein ausgesetzt ist, sind bei Anordnungen nach § 60a Abs. 1 Satz 1 zu berücksichtigen.</p> <p>(8) Absatz 1 findet keine Anwendung, wenn der Ausländer aus schwerwiegenden Gründen als eine Gefahr für die Sicherheit der Bundesrepublik Deutschland anzusehen ist oder eine Gefahr für die Allgemeinheit bedeutet, weil er wegen eines Verbrechens oder besonders schweren Vergehens rechtskräftig zu einer Freiheitsstrafe von mindestens drei Jahren verurteilt worden ist. Das Gleiche gilt, wenn der Ausländer die Voraussetzungen des § 3 Abs. 2 des Asylgesetzes erfüllt. Von der Anwendung des Absatzes 1 kann abgesehen werden, wenn der Ausländer eine Gefahr für die Allgemeinheit bedeutet, weil er wegen einer oder mehrerer vorsätzlicher Straftaten gegen das Leben, die körperliche Unversehrtheit, die sexuelle Selbstbestimmung, das Eigentum oder wegen Widerstands gegen Vollstreckungsbeamte rechtskräftig zu einer Freiheits- oder Jugendstrafe von mindestens einem Jahr verurteilt worden ist, sofern die Straftat mit Gewalt, unter Anwendung von Drohung mit Gefahr für Leib oder Leben oder mit List begangen worden ist oder eine Straftat nach § 177 des Strafgesetzbuches ist.</p> <p>(9) In den Fällen des Absatzes 8 kann einem Ausländer, der einen Asylantrag gestellt hat, abweichend von den Vorschriften des Asylgesetzes die Abschiebung angedroht und diese durchgeführt werden. Die Absätze 2 bis 7 bleiben unberührt.</p> <p>(10) Soll ein Ausländer abgeschoben</p>	<p>three years for a crime or a particularly serious offence. The same shall apply if the foreigner meets the conditions stipulated in Section 3 (2) of the Asylum Act. Application of subsection 1 may be waived if the foreigner represents a danger to the general public because he or she has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of danger to life or limb, or with guile.</p> <p>(9) In the cases covered by subsection 8, a foreigner who has filed an application for asylum may, by way of derogation from the provisions of the Asylum Act, be served notice of intention to deport and duly deported. Subsections 2 through 7 shall remain unaffected.</p> <p>(10) If a foreigner to whom the conditions stipulated in subsection 1 apply is to be deported, notice of intention to deport must be served and a reasonable period must be allowed for departure. Those states to which the foreigner must not be deported shall be specified in the notice of intention to deport.</p> <p>(11) (repealed)</p>
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	<p>werden, bei dem die Voraussetzungen des Absatzes 1 vorliegen, kann nicht davon abgesehen werden, die Abschiebung anzudrohen und eine angemessene Ausreisefrist zu setzen. In der Androhung sind die Staaten zu bezeichnen, in die der Ausländer nicht abgeschoben werden darf.</p> <p>(11) (weggefallen)</p>	
<p>§ 60a Aufenth G</p>	<p>Vorübergehende Aussetzung der Abschiebung (Duldung)</p> <p>(1) Die oberste Landesbehörde kann aus völkerrechtlichen oder humanitären Gründen oder zur Wahrung politischer Interessen der Bundesrepublik Deutschland anordnen, dass die Abschiebung von Ausländern aus bestimmten Staaten oder von in sonstiger Weise bestimmten Ausländergruppen allgemein oder in bestimmte Staaten für längstens drei Monate ausgesetzt wird. Für einen Zeitraum von länger als sechs Monaten gilt § 23 Abs. 1.</p> <p>(2) Die Abschiebung eines Ausländers ist auszusetzen, solange die Abschiebung aus tatsächlichen oder rechtlichen Gründen unmöglich ist und keine Aufenthaltserlaubnis erteilt wird. Die Abschiebung eines Ausländers ist auch auszusetzen, wenn seine vorübergehende Anwesenheit im Bundesgebiet für ein Strafverfahren wegen eines Verbrechens von der Staatsanwaltschaft oder dem Strafgericht für sachgerecht erachtet wird, weil ohne seine Angaben die Erforschung des Sachverhalts erschwert wäre. Einem Ausländer kann eine Duldung erteilt werden, wenn dringende humanitäre oder persönliche Gründe oder erhebliche öffentliche Interessen seine vorübergehende weitere Anwesenheit im</p>	<p>Temporary suspension of deportation (Duldung)</p> <p>(1) For reasons of international law or on humanitarian grounds or to safeguard the political interests of the Federal Republic of Germany, the supreme Land authority may order the deportation of foreigners from specific states or of categories of foreigners defined by any other means to be suspended in general or with regard to deportation to specific states for a maximum of three months. Section 23 (1) shall apply to a period in excess of six months.</p> <p>(2) The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no temporary residence permit is granted. The deportation of a foreigner shall also be suspended if the public prosecutor's office or the criminal court considers his or her temporary presence in the federal territory to be appropriate in connection with criminal proceedings relating to a criminal offence, because it would be more difficult to investigate the facts of the case without his or her information. A foreigner may be granted a temporary suspension of deportation if his or her continued presence in the federal territory is necessary on urgent humanitarian or personal grounds or due</p>

<p>Bundesgebiet erfordern. Eine Duldung wegen dringender persönlicher Gründe im Sinne von Satz 3 ist zu erteilen, wenn der Ausländer eine qualifizierte Berufsausbildung in einem staatlich anerkannten oder vergleichbar geregelten Ausbildungsberuf in Deutschland aufnimmt oder aufgenommen hat, die Voraussetzungen nach Absatz 6 nicht vorliegen und konkrete Maßnahmen zur Aufenthaltsbeendigung nicht bevorstehen. In den Fällen nach Satz 4 wird die Duldung für die im Ausbildungsvertrag bestimmte Dauer der Berufsausbildung erteilt. Eine Duldung nach Satz 4 wird nicht erteilt und eine nach Satz 4 erteilte Duldung erlischt, wenn der Ausländer wegen einer im Bundesgebiet begangenen vorsätzlichen Straftat verurteilt wurde, wobei Geldstrafen von insgesamt bis zu 50 Tagessätzen oder bis zu 90 Tagessätzen wegen Straftaten, die nach dem Aufenthaltsgesetz oder dem Asylgesetz nur von Ausländern begangen werden können, grundsätzlich außer Betracht bleiben. Wird die Ausbildung nicht betrieben oder abgebrochen, ist der Ausbildungsbetrieb verpflichtet, dies unverzüglich, in der Regel innerhalb einer Woche, der zuständigen Ausländerbehörde schriftlich mitzuteilen. In der Mitteilung sind neben den mitzuteilenden Tatsachen und dem Zeitpunkt ihres Eintritts die Namen, Vornamen und die Staatsangehörigkeit des Ausländers anzugeben. Die nach Satz 4 erteilte Duldung erlischt, wenn die Ausbildung nicht mehr betrieben oder abgebrochen wird. Wird das Ausbildungsverhältnis vorzeitig beendet</p>	<p>to substantial public interests. Suspension of deportation on urgent personal grounds within the meaning of sentence 3 is to be granted if the foreigner begins or has begun a vocational qualification in a state-recognised or similarly regulated occupation which requires formal training in Germany, the conditions of subsection 6 are not met and no concrete measures to terminate the foreigner's residence are imminent. In the cases referred to in sentence 4, the suspension of deportation shall be granted for the duration of the vocational training specified in the training contract. Suspension of deportation pursuant to sentence 4 shall not be granted and suspension of deportation granted in accordance with sentence 4 shall expire if the foreigner has been convicted of an intentional offence committed in the federal territory, whereby no account shall generally be taken of fines of a total of up to 50 daily rates or of up to 90 daily rates in the case of criminal offences which can, under the Residence Act or the Asylum Act, only be committed by foreigners. If the foreigner does not undertake or discontinues the training, the training enterprise shall be obliged to notify this immediately in writing to the competent foreigners authority, generally within one week. The notification shall include the facts to the notified and the time point at which they arose, as well as the names, first names and the nationality of the foreigner. The suspension of deportation granted pursuant to sentence 4 shall expire if the foreigner no longer undertakes or discontinues the training. If the training relationship is terminated at</p>
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<p>oder abgebrochen, wird dem Ausländer einmalig eine Duldung für sechs Monate zum Zweck der Suche nach einer weiteren Ausbildungsstelle zur Aufnahme einer Berufsausbildung nach Satz 4 erteilt. Eine nach Satz 4 erteilte Duldung wird für sechs Monate zum Zweck der Suche nach einer der erworbenen beruflichen Qualifikation entsprechenden Beschäftigung verlängert, wenn nach erfolgreichem Abschluss der Berufsausbildung, für die die Duldung erteilt wurde, eine Weiterbeschäftigung im Ausbildungsbetrieb nicht erfolgt; die zur Arbeitsplatzsuche erteilte Duldung darf für diesen Zweck nicht verlängert werden. § 60a bleibt im Übrigen unberührt. Soweit die Beurkundung der Anerkennung einer Vaterschaft oder der Zustimmung der Mutter für die Durchführung eines Verfahrens nach § 85a ausgesetzt wird, wird die Abschiebung des ausländischen Anerkennenden, der ausländischen Mutter oder des ausländischen Kindes ausgesetzt, solange das Verfahren nach § 85a nicht durch vollziehbare Entscheidung abgeschlossen ist.</p> <p>(2a) Die Abschiebung eines Ausländers wird für eine Woche ausgesetzt, wenn seine Zurückschiebung oder Abschiebung gescheitert ist, Abschiebungshaft nicht angeordnet wird und die Bundesrepublik Deutschland auf Grund einer Rechtsvorschrift, insbesondere des Artikels 6 Abs. 1 der Richtlinie 2003/110/EG des Rates vom 25. November 2003 über die Unterstützung bei der Durchbeförderung im Rahmen von Rückführungsmaßnahmen auf dem</p>	<p>an an earlier date or it is discontinued, the foreigner shall be granted suspension of deportation for six months on one occasion for the purposes of seeking another training place in order to begin vocational training in accordance with sentence 4. Suspension of deportation granted in accordance with sentence 4 shall be extended by six months for the purposes of seeking employment which is commensurate with the acquired professional qualification if, after successfully completing the vocational training for which the suspension of deportation was granted, the foreigner is not kept on in the training enterprise; the suspension of deportation granted to enable the foreigner to look for employment may not be extended for this purpose. Section 60a shall otherwise remain unaffected.</p> <p>(2a) The deportation of a foreigner shall be suspended for one week where his or her removal or deportation has failed, custody pending deportation is not ordered and the Federal Republic of Germany is obliged to readmit the foreigner by virtue of a legal provision, in particular Article 6 (1) of Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (Official EU Journal no. L 321, p. 26). Suspension pursuant to sentence 1 shall not be extendible. Entry of the foreigner into the federal territory shall be permitted.</p> <p>(2b) For as long as a foreigner who holds a temporary residence permit pursuant to Section 25a (1) is a minor, the deportation of his or her parents or of one parent possessing the sole right of</p>
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<p>Luftweg (ABL. EU Nr. L 321 S. 26), zu seiner Rückübernahme verpflichtet ist. Die Aussetzung darf nicht nach Satz 1 verlängert werden. Die Einreise des Ausländers ist zuzulassen.</p> <p>(2b) Solange ein Ausländer, der eine Aufenthaltserlaubnis nach § 25a Absatz 1 besitzt, minderjährig ist, soll die Abschiebung seiner Eltern oder eines allein personensorgeberechtigten Elternteils sowie der minderjährigen Kinder, die mit den Eltern oder dem allein personensorgeberechtigten Elternteil in familiärer Lebensgemeinschaft leben, ausgesetzt werden.</p> <p>(2c) Es wird vermutet, dass der Abschiebung gesundheitliche Gründe nicht entgegenstehen. Der Ausländer muss eine Erkrankung, die die Abschiebung beeinträchtigen kann, durch eine qualifizierte ärztliche Bescheinigung glaubhaft machen. Diese ärztliche Bescheinigung soll insbesondere die tatsächlichen Umstände, auf deren Grundlage eine fachliche Beurteilung erfolgt ist, die Methode der Tatsachenerhebung, die fachlich-medizinische Beurteilung des Krankheitsbildes (Diagnose), den Schweregrad der Erkrankung sowie die Folgen, die sich nach ärztlicher Beurteilung aus der krankheitsbedingten Situation voraussichtlich ergeben, enthalten.</p> <p>(2d) Der Ausländer ist verpflichtet, der zuständigen Behörde die ärztliche Bescheinigung nach Absatz 2c unverzüglich vorzulegen. Verletzt der Ausländer die Pflicht zur unverzüglichen Vorlage einer solchen ärztlichen</p>	<p>care and custody as well as of those minor children who live as a family unit with the parents or the parent possessing sole right of care and custody shall be suspended.</p> <p>(2c) It shall be assumed that the deportation is not precluded on health grounds. The foreigner must substantiate an illness which might impede the deportation by submitting a qualified medical certificate. This medical certificate should in particular document the factual circumstances on the basis of which the professional assessment was made, the method of establishing the facts, the specialist medical assessment of the disease pattern (diagnosis), the severity of the illness and the consequences which will, based on the medical assessment, presumably result from the situation which arose on account of the illness.</p> <p>(2d) The foreigner shall be obliged to immediately submit the medical certificate referred to in subsection 2c to the competent authority. If the foreigner breaches this obligation to immediately submit such a medical certificate, the competent authority shall be permitted not to take account of the foreigner's submissions regarding his or her illness, unless the foreigner was prevented, through no fault of his or her own, from obtaining such a certificate or there is other factual evidence for the existence of a life-threatening or serious illness which would significantly worsen on account of the deportation. If the foreigner submits a certificate and the authority thereupon orders a medical examination, the authority shall be</p>
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<p>Bescheinigung, darf die zuständige Behörde das Vorbringen des Ausländers zu seiner Erkrankung nicht berücksichtigen, es sei denn, der Ausländer war unverschuldet an der Einholung einer solchen Bescheinigung gehindert oder es liegen anderweitig tatsächliche Anhaltspunkte für das Vorliegen einer lebensbedrohlichen oder schwerwiegenden Erkrankung, die sich durch die Abschiebung wesentlich verschlechtern würde, vor. Legt der Ausländer eine Bescheinigung vor und ordnet die Behörde daraufhin eine ärztliche Untersuchung an, ist die Behörde berechtigt, die vorgetragene Erkrankung nicht zu berücksichtigen, wenn der Ausländer der Anordnung ohne zureichenden Grund nicht Folge leistet. Der Ausländer ist auf die Verpflichtungen und auf die Rechtsfolgen einer Verletzung dieser Verpflichtungen nach diesem Absatz hinzuweisen.</p> <p>(3) Die Ausreisepflicht eines Ausländers, dessen Abschiebung ausgesetzt ist, bleibt unberührt.</p> <p>(4) Über die Aussetzung der Abschiebung ist dem Ausländer eine Bescheinigung auszustellen.</p> <p>(5) Die Aussetzung der Abschiebung erlischt mit der Ausreise des Ausländers. Sie wird widerrufen, wenn die der Abschiebung entgegenstehenden Gründe entfallen. Der Ausländer wird unverzüglich nach dem Erlöschen ohne erneute Androhung und Fristsetzung abgeschoben, es sei denn, die Aussetzung wird erneuert. Ist die Abschiebung länger als ein Jahr ausgesetzt, ist die durch Widerruf vorgesehene Abschiebung</p>	<p>entitled not to give consideration to the illness as submitted if the foreigner does not comply with the order without sufficient reason. The foreigner shall be informed of the obligations and of the legal consequences of any breach of these obligations pursuant to this subsection.</p> <p>(3) Suspension of deportation shall not affect the foreigner's obligation to leave the federal territory.</p> <p>(4) The foreigner is to be issued with a certificate confirming the suspension of deportation.</p> <p>(5) The suspension of deportation shall lapse when the foreigner leaves the federal territory. The suspension shall be revoked when the circumstances preventing deportation cease to apply. The foreigner shall be deported without delay when the suspension lapses, without any renewed notice of intention to deport specifying a deadline, unless the suspension is renewed. If deportation has been suspended for more than one year, prior notice of at least one month shall be served in case of intended deportation by way of revocation; such notice shall be repeated, if the suspension has been renewed for more than one year.</p> <p>(6) A foreigner whose deportation has been suspended may not be permitted to pursue an economic activity if</p> <ol style="list-style-type: none"> 1. he or she has entered the country to obtain benefits under the Act on Benefits for Asylum Applicants, 2. measures to terminate his or her stay cannot be carried out for reasons which are attributable to him or her or 3. he or she is a national of a safe country of origin pursuant to Section 29a of the Asylum Act and an asylum application
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	<p>mindestens einen Monat vorher anzukündigen; die Ankündigung ist zu wiederholen, wenn die Aussetzung für mehr als ein Jahr erneuert wurde. Satz 4 findet keine Anwendung, wenn der Ausländer die der Abschiebung entgegenstehenden Gründe durch vorsätzlich falsche Angaben oder durch eigene Täuschung über seine Identität oder Staatsangehörigkeit selbst herbeiführt oder zumutbare Anforderungen an die Mitwirkung bei der Beseitigung von Ausreisehindernissen nicht erfüllt.</p> <p>(6) Einem Ausländer, der eine Duldung besitzt, darf die Ausübung einer Erwerbstätigkeit nicht erlaubt werden, wenn</p> <ol style="list-style-type: none"> 1. er sich in das Inland begeben hat, um Leistungen nach dem Asylbewerberleistungsgesetz zu erlangen, 2. aufenthaltsbeendende Maßnahmen bei ihm aus Gründen, die er selbst zu vertreten hat, nicht vollzogen werden können oder 3. er Staatsangehöriger eines sicheren Herkunftsstaates nach § 29a des Asylgesetzes ist und sein nach dem 31. August 2015 gestellter Asylantrag abgelehnt wurde. <p>Zu vertreten hat ein Ausländer die Gründe nach Satz 1 Nummer 2 insbesondere, wenn er das Abschiebungshindernis durch eigene Täuschung über seine Identität oder Staatsangehörigkeit oder durch eigene falsche Angaben selbst herbeiführt.</p>	<p>which he or she filed after 31 August 2015 has been rejected.</p> <p>Foreigners shall in particular be responsible for reasons in accordance with sentence 1 no. 2 if they themselves brought about the obstacle to deportation by their own deceit concerning their identity or nationality or by furnishing false particulars.</p>
<p>§ 71 Aufenth G</p>	<p>Zuständigkeit</p> <p>(1) Für aufenthalts- und passrechtliche Maßnahmen und Entscheidungen nach diesem Gesetz und nach</p>	<p>Competence</p> <p>(1) The foreigners authorities shall be competent for residence- and passport-related measures and rulings in</p>

<p>ausländerrechtlichen Bestimmungen in anderen Gesetzen sind die Ausländerbehörden zuständig. Die Landesregierung oder die von ihr bestimmte Stelle kann bestimmen, dass für einzelne Aufgaben nur eine oder mehrere bestimmte Ausländerbehörden zuständig sind.</p> <p>(2) Im Ausland sind für Pass- und Visaangelegenheiten die vom Auswärtigen Amt ermächtigten Auslandsvertretungen zuständig.</p> <p>(3) Die mit der polizeilichen Kontrolle des grenzüberschreitenden Verkehrs beauftragten Behörden sind zuständig für</p> <p>1. die Zurückweisung und die Zurückschiebung an der Grenze, einschließlich der Überstellung von Drittstaatsangehörigen auf Grundlage der Verordnung (EU) Nr. 604/2013, wenn der Ausländer von der Grenzbehörde im grenznahen Raum in unmittelbarem zeitlichen Zusammenhang mit einer unerlaubten Einreise angetroffen wird,</p> <p>1a. Abschiebungen an der Grenze, sofern der Ausländer bei oder nach der unerlaubten Einreise über eine Grenze im Sinne des Artikels 2 Nummer 1 der Verordnung (EG) Nr. 562/2006 (Binnengrenze) aufgegriffen wird,</p> <p>1b. Abschiebungen an der Grenze, sofern der Ausländer bereits unerlaubt eingereist ist, sich danach weiter fortbewegt hat und in einem anderen Grenzraum oder auf einem als Grenzübergangsstelle zugelassenen oder nicht zugelassenen Flughafen, Flug- oder Landeplatz oder See- oder Binnenhafen aufgegriffen wird,</p> <p>1c. die Befristung der Wirkungen auf Grund der von ihnen vorgenommenen Ab- und Zurückschiebungen nach § 11</p>	<p>accordance with this Act and in accordance with provisions relating to foreigners which are contained in other acts. The Land government or the body appointed by the Land government may determine that only one or several specific foreigners authorities are competent.</p> <p>(2) Outside of Germany, the diplomatic missions authorised by the Federal Foreign Office shall be responsible for matters relating to passports and visas.</p> <p>(3) The authorities charged with policing cross-border traffic shall be responsible for</p> <p>1. removal and refusal of entry at the border, including the transfer of third-country nationals on the basis of Regulation (EU) no. 604/2013 if the foreigner is intercepted by the border authority in the vicinity of the border and in close chronological proximity to an unlawful entry into the federal territory,</p> <p>1a. deportations at the border, insofar as the foreigner has been intercepted during or following unlawful entry into the federal territory across a border within the meaning of Article 2 no. 1 of Regulation (EC) no. 562/2006 (internal border),</p> <p>1b. deportations at the border, insofar as the foreigner has already entered the federal territory unlawfully, has subsequently proceeded to another border area or to an airport, airfield, landing site or maritime or inland port, whether approved or not as a border crossing point, where he or she has then been intercepted,</p> <p>1c. imposition of time limits on the effects of deportations and removals</p>
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<p>Absatz 2, 4 und 8, 1d. die Rückführungen von Ausländern aus anderen und in andere Staaten und 1e. die Beantragung von Haft und die Festnahme, soweit es zur Vornahme der in den Nummern 1 bis 1d bezeichneten Maßnahmen erforderlich ist, 2. die Erteilung eines Visums und die Ausstellung eines Passersatzes nach § 14 Abs. 2 sowie die Aussetzung der Abschiebung nach § 60a Abs. 2a, 3. die Rücknahme und den Widerruf eines nationalen Visums sowie die Entscheidungen nach Artikel 34 der Verordnung (EG) Nr. 810/2009 a) im Fall der Zurückweisung, Zurückschiebung oder Abschiebung, soweit die Voraussetzungen der Nummer 1a oder 1b erfüllt sind, b) auf Ersuchen der Auslandsvertretung, die das Visum erteilt hat, oder c) auf Ersuchen der Ausländerbehörde, die der Erteilung des Visums zugestimmt hat, sofern diese ihrer Zustimmung bedurfte, 4. das Ausreiseverbot und die Maßnahmen nach § 66 Abs. 5 an der Grenze, 5. die Prüfung an der Grenze, ob Beförderungsunternehmer und sonstige Dritte die Vorschriften dieses Gesetzes und die auf Grund dieses Gesetzes erlassenen Verordnungen und Anordnungen beachtet haben, 6. sonstige ausländerrechtliche Maßnahmen und Entscheidungen, soweit sich deren Notwendigkeit an der Grenze ergibt und sie vom Bundesministerium des Innern hierzu allgemein oder im Einzelfall ermächtigt sind, 7. die Beschaffung von</p>	<p>which they carry out pursuant to Section 11 (2), (4) and (8), 1d. the return of foreigners from and to other states and 1e. applying for custody and effecting arrest where necessary for the purposes of preparation and safeguarding of the measures listed in nos. 1 to 1d, 2. granting a visa and issuing a passport substitute pursuant to Section 14 (2), and suspending deportation pursuant to Section 60a (2a), 3. withdrawal and revocation of a national visa, as well as decisions pursuant to Article 34 of Regulation (EC) no. 810/2009 a) in case of refusal of entry, removal or deportation, provided that the requirements of nos. 1a or 1b are met, b) on request from the diplomatic mission abroad which has issued the visa or c) on request from the foreigners authority which has approved issuance of the visa, insofar as this approval was required for said issuance, 4. prohibiting departure and implementing the measures pursuant to Section 66 (5) at the border, 5. verifying at the border whether transport carriers and other third parties have observed the provisions of this Act and the ordinances and orders enacted on the basis of this Act, 6. other measures and rulings under the law relating to foreigners which prove necessary at the border and for which the authorities possess authorisation from the Federal Ministry of the Interior or for which they are authorised by the said Ministry in the individual case concerned,</p>
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<p>Heimreisedokumenten für Ausländer im Wege der Amtshilfe,</p> <p>8. die Erteilung von in Rechtsvorschriften der Europäischen Union vorgesehenen Vermerken und Bescheinigungen vom Datum und Ort der Einreise über die Außengrenze eines Mitgliedstaates, der den Schengen-Besitzstand vollständig anwendet; die Zuständigkeit der Ausländerbehörden oder anderer durch die Länder bestimmter Stellen wird hierdurch nicht ausgeschlossen.</p> <p>(4) Für die erforderlichen Maßnahmen nach den §§ 48, 48a und 49 Absatz 2 bis 9 sind die Ausländerbehörden, die mit der polizeilichen Kontrolle des grenzüberschreitenden Verkehrs beauftragten Behörden und die Polizeien der Länder zuständig. In den Fällen des § 49 Abs. 4 sind auch die Behörden zuständig, die die Verteilung nach § 15a veranlassen. In den Fällen des § 49 Abs. 5 Nr. 5 sind die vom Auswärtigen Amt ermächtigten Auslandsvertretungen zuständig.</p> <p>(5) Für die Zurückschiebung sowie die Durchsetzung der Verlässenspflicht des § 12 Abs. 3 und die Durchführung der Abschiebung und, soweit es zur Vorbereitung und Sicherung dieser Maßnahmen erforderlich ist, die Festnahme und Beantragung der Haft sind auch die Polizeien der Länder zuständig.</p> <p>(6) Das Bundesministerium des Innern oder die von ihm bestimmte Stelle entscheidet im Benehmen mit dem Auswärtigen Amt über die Anerkennung von Pässen und Passersatzpapieren (§ 3 Abs. 1); die Entscheidungen ergehen als</p>	<p>7. procuring return travel documents for foreigners by way of official assistance,</p> <p>8. issuing notes and certificates for which provision is made in legislation of the European Union confirming the date and place of entry via the external border of a member state which applies the Schengen acquis in full; this shall not preclude the competence of the foreigners authorities of other bodies designated by the Länder.</p> <p>(4) The foreigners authorities, the authorities charged with policing cross-border traffic and the police forces of the Länder shall be responsible for the necessary measures pursuant to Sections 48, 48a and 49 (2) to (9). In cases covered by Section 49 (4), the authorities initiating allocation pursuant to Section 15a shall also be responsible. The diplomatic missions abroad authorised by the Federal Foreign Office shall be competent in the cases covered by Section 49 (5) no. 5.</p> <p>(5) The police forces of the Länder shall also be responsible for carrying out removal, for enforcing the obligation to leave the federal territory pursuant to Section 12 (3), for implementing deportation and, where necessary for the purposes of preparing and safeguarding these measures, for effecting arrest and applying for custody.</p> <p>(6) The Federal Ministry of the Interior or the body appointed by the said Ministry shall decide in consultation with the Federal Foreign Office on the recognition of passports and substitute passport papers (Section 3 (1)); the decisions shall take the form of general orders and may be announced in the Federal Gazette.</p>
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	Allgemeinverfügung und können im Bundesanzeiger bekannt gegeben werden.	
§ 75 Aufenth G	<p>Aufgaben</p> <p>Das Bundesamt für Migration und Flüchtlinge hat unbeschadet der Aufgaben nach anderen Gesetzen folgende Aufgaben:</p> <ol style="list-style-type: none"> 1. Koordinierung der Informationen über den Aufenthalt zum Zweck der Erwerbstätigkeit zwischen den Ausländerbehörden, der Bundesagentur für Arbeit und der für Pass- und Visaangelegenheiten vom Auswärtigen Amt ermächtigten deutschen Auslandsvertretungen; 2. <ol style="list-style-type: none"> a) Entwicklung von Grundstruktur und Lerninhalten des Integrationskurses nach § 43 Abs. 3 und der berufsbezogenen Deutschsprachförderung nach § 45a, b) deren Durchführung und c) Maßnahmen nach § 9 Abs. 5 des Bundesvertriebenengesetzes; 3. fachliche Zuarbeit für die Bundesregierung auf dem Gebiet der Integrationsförderung und der Erstellung von Informationsmaterial über Integrationsangebote von Bund, Ländern und Kommunen für Ausländer und Spätaussiedler; 4. Betreiben wissenschaftlicher Forschungen über Migrationsfragen (Begleitforschung) zur Gewinnung analytischer Aussagen für die Steuerung der Zuwanderung; <ol style="list-style-type: none"> 4a. Betreiben wissenschaftlicher Forschungen über Integrationsfragen; 5. Zusammenarbeit mit den Verwaltungsbehörden der Mitgliedstaaten der Europäischen Union als Nationale Kontaktstelle und zuständige Behörde 	<p>Duties</p> <p>Notwithstanding its duties in accordance with other acts, the Federal Office for Migration and Refugees shall have the following duties:</p> <ol style="list-style-type: none"> 1. coordinating the information on the residence for the purpose of pursuing an economic activity between the foreigners authorities, the Federal Employment Agency and the German diplomatic missions abroad authorised for matters pertaining to passports and visas by the Federal Foreign Office; 2. <ol style="list-style-type: none"> a) developing the basic structure and contents of the integration course pursuant to Section 43 (3) and job-related language training pursuant to Section 45a, b) implementing the same and c) measures pursuant to Section 9 (5) of the Federal Expellees Act; 3. providing expert support for the Federal Government in the field of promoting integration and producing informational materials on integration measures offered by the Federal Government, Land governments and local government authorities for foreigners and ethnic German resettlers; 4. conducting scientific research on migration issues (accompanying research) with the aim of obtaining analytical conclusions for use in controlling immigration; 4a. conducting scientific research on integration issues; 5. cooperating with the administrative authorities of the member states of the European Union as the National Contact

<p>nach Artikel 27 der Richtlinie 2001/55/EG, Artikel 25 der Richtlinie 2003/109/EG, Artikel 22 Absatz 1 der Richtlinie 2009/50/EG, Artikel 26 der Richtlinie 2014/66/EU und Artikel 37 der Richtlinie (EU) 2016/801 sowie für Mitteilungen nach § 51 Absatz 8a;</p> <p>6. Führung des Registers nach § 91a;</p> <p>7. Koordinierung der Programme und Mitwirkung an Projekten zur Förderung der freiwilligen Rückkehr sowie Auszahlung hierfür bewilligter Mittel;</p> <p>8. die Durchführung des Aufnahmeverfahrens nach § 23 Abs. 2 und 4 und die Verteilung der nach § 23 sowie der nach § 22 Satz 2 aufgenommenen Ausländer auf die Länder;</p> <p>9. Durchführung einer migrationsspezifischen Beratung nach § 45 Satz 1, soweit sie nicht durch andere Stellen wahrgenommen wird; hierzu kann es sich privater oder öffentlicher Träger bedienen;</p> <p>10. Anerkennung von Forschungseinrichtungen zum Abschluss von Aufnahmevereinbarungen nach § 20; hierbei wird das Bundesamt für Migration und Flüchtlinge durch einen Beirat für Forschungsmigration unterstützt;</p> <p>11. Koordinierung der Informationsübermittlung und Auswertung von Erkenntnissen der Bundesbehörden, insbesondere des Bundeskriminalamtes und des Bundesamtes für Verfassungsschutz, zu Ausländern, bei denen wegen Gefährdung der öffentlichen Sicherheit ausländer-, asyl- oder staatsangehörigkeitsrechtliche Maßnahmen in Betracht kommen;</p>	<p>Point and competent authority pursuant to Article 27 of Directive 2001/55/EC, Article 25 of Directive 2003/109/EC, Article 8 (3) of Directive 2004/114/EC and Article 22 (1) of Directive 2009/50/EC, and for communications pursuant to Section 51 (8a);</p> <p>6. keeping the register pursuant to Section 91a;</p> <p>7. coordinating the programmes and taking part in projects to promote voluntary returns, and paying out funds approved under those schemes;</p> <p>8. carrying out the admission process pursuant to Section 23 (2) and (4) and the allocation of foreigners admitted pursuant to Section 23 and Section 22, sentence 2 to the Länder;</p> <p>9. providing migration advisory services pursuant to Section 45, sentence 1, unless such services are provided by other bodies; it may enlist the services of private or public institutions to this end;</p> <p>10. recognising research establishments for the purpose of concluding admission agreements pursuant to Section 20; in this connection, the Federal Office for Migration and Refugees shall be supported by a consultative council on research migration;</p> <p>11. coordinating the transfer of information and evaluating findings of the federal authorities, in particular of the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution, on foreigners for whom measures under the law on foreigners, asylum or nationality are to be considered owing to a risk to public security;</p> <p>12. imposing a time limit on a ban on entry and residence pursuant to Section</p>
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	<p>12. Befristung eines Einreise- und Aufenthaltsverbots nach § 11 Absatz 2 im Fall einer Abschiebungsandrohung nach den §§ 34, 35 des Asylgesetzes oder einer Abschiebungsanordnung nach § 34a des Asylgesetzes sowie die Anordnung und Befristung eines Einreise- und Aufenthaltsverbots nach § 11 Absatz 7.</p>	<p>11 (2) in the case of a deportation warning issued pursuant to Sections 34, 35 of the Asylum Act, a deportation order issued pursuant to Section 34a of the Asylum Act or the order and imposition of a time limit on a ban on entry and residence pursuant to Section 11 (7).</p>
<p>§ 80 Aufenth G</p>	<p>Handlungsfähigkeit</p> <p>(1) Fähig zur Vornahme von Verfahrenshandlungen nach diesem Gesetz ist ein Ausländer, der volljährig ist, sofern er nicht nach Maßgabe des Bürgerlichen Gesetzbuchs geschäftsunfähig oder in dieser Angelegenheit zu betreuen und einem Einwilligungsvorbehalt zu unterstellen wäre.</p> <p>(2) Die mangelnde Handlungsfähigkeit eines Minderjährigen steht seiner Zurückweisung und Zurückschiebung nicht entgegen. Das Gleiche gilt für die Androhung und Durchführung der Abschiebung in den Herkunftsstaat, wenn sich sein gesetzlicher Vertreter nicht im Bundesgebiet aufhält oder dessen Aufenthaltsort im Bundesgebiet unbekannt ist.</p> <p>(3) Bei der Anwendung dieses Gesetzes sind die Vorschriften des Bürgerlichen Gesetzbuchs dafür maßgebend, ob ein Ausländer als minderjährig oder volljährig anzusehen ist. Die Geschäftsfähigkeit und die sonstige rechtliche Handlungsfähigkeit eines nach dem Recht seines Heimatstaates volljährigen Ausländers bleiben davon unberührt.</p> <p>(4) Die gesetzlichen Vertreter eines Ausländers, der minderjährig ist, und sonstige Personen, die an Stelle der</p>	<p>Legal capacity</p> <p>(1) A foreigner who is of full age shall be capable of performing procedural actions pursuant to this Act, provided that he or she would not be legally incapacitated in accordance with the Civil Code or would not require supervision and prior approval in this matter.</p> <p>(2) A minor's lack of legal capacity shall not preclude him or her being refused entry or removed. The same shall apply to the notice of intention to deport and subsequent deportation to the country of origin, if his or her legal representative is not resident in the federal territory or the latter's whereabouts in the federal territory are unknown.</p> <p>(3) In application of this Act, the provisions of the Civil Code shall determine whether a foreigner is to be regarded as a minor or an adult. If a foreigner is of age under the law of his home country, his legal capacity and capacity to contract shall remain unaffected.</p> <p>(4) The legal representatives of a minor foreigner and any other persons attending to the foreigner in the federal territory in place of the legal representatives shall be obliged to file the necessary applications on behalf of the foreigner for issuance and extension of the residence title and</p>

	<p>gesetzlichen Vertreter den Ausländer im Bundesgebiet betreuen, sind verpflichtet, für den Ausländer die erforderlichen Anträge auf Erteilung und Verlängerung des Aufenthaltstitels und auf Erteilung und Verlängerung des Passes, des Passersatzes und des Ausweisersatzes zu stellen.</p>	<p>issuance and extension of the passport, passport substitute and substitute identity document.</p>
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Aufenthaltsverordnung (AufenthV) – the law governing residence

<p>§ 41 I Aufenth V</p>	<p>Vergünstigung für Angehörige bestimmter Staaten</p> <p>(1) Staatsangehörige von Australien, Israel, Japan, Kanada, der Republik Korea, von Neuseeland und der Vereinigten Staaten von Amerika können auch für einen Aufenthalt, der kein Kurzaufenthalt ist, visumfrei in das Bundesgebiet einreisen und sich darin aufhalten. Ein erforderlicher Aufenthaltstitel kann im Bundesgebiet eingeholt werden.</p> <p>(2) Dasselbe gilt für Staatsangehörige von Andorra, Brasilien, El Salvador, Honduras, Monaco und San Marino, die keine Erwerbstätigkeit mit Ausnahme der in § 17 Abs. 2 genannten Tätigkeiten ausüben wollen.</p> <p>(3) Ein erforderlicher Aufenthaltstitel ist innerhalb von 90 Tagen nach der Einreise zu beantragen. Die Antragsfrist endet vorzeitig, wenn der Ausländer ausgewiesen wird oder sein Aufenthalt nach § 12 Abs. 4 des Aufenthaltsgesetzes zeitlich beschränkt wird.</p> <p>(4) Die Absätze 1 bis 3 gelten nicht, wenn eine ICT-Karte nach § 19b des Aufenthaltsgesetzes beantragt wird.</p>	<p>Benefit for nationals of certain states</p> <p>(1) Citizens of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand and the United States of America may also enter and stay in the Federal territory visa-free for a stay that is not a short stay. A required residence permit can be obtained in the Federal territory.</p> <p>(2) The same applies to nationals of Andorra, Brazil, El Salvador, Honduras, Monaco and San Marino, who do not wish to engage in gainful employment other than those referred to in § 17 (2).</p> <p>(3) A required residence permit must be requested within 90 days of entry. The application period ends prematurely if the alien is expelled or his / her stay is limited in time according to § 12 Abs. 4 of the Residence Act.</p> <p>(4) Paragraphs 1 to 3 shall not apply if an ICT card pursuant to Section 19b of the Residence Act is applied for.</p>
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Asylbewerberleistungsgesetz (AsylbLG) - Asylum Seekers Benefit Act

<p>§ 1 AsylbLG</p>	<p>Leistungsberechtigte</p> <p>(1) Leistungsberechtigt nach diesem Gesetz sind Ausländer, die sich tatsächlich im Bundesgebiet aufhalten und die</p> <ol style="list-style-type: none"> 1. eine Aufenthaltsgestattung nach dem Asylgesetz besitzen, 2. über einen Flughafen einreisen wollen und denen die Einreise nicht oder noch nicht gestattet ist, 3. eine Aufenthaltserlaubnis besitzen <ol style="list-style-type: none"> a) wegen des Krieges in ihrem Heimatland nach § 23 Absatz 1 oder § 24 des Aufenthaltsgesetzes, b) nach § 25 Absatz 4 Satz 1 des Aufenthaltsgesetzes oder c) nach § 25 Absatz 5 des Aufenthaltsgesetzes, sofern die Entscheidung über die Aussetzung ihrer Abschiebung noch nicht 18 Monate zurückliegt, 4. eine Duldung nach § 60a des Aufenthaltsgesetzes besitzen, 5. vollziehbar ausreisepflichtig sind, auch wenn eine Abschiebungsandrohung noch nicht oder nicht mehr vollziehbar ist, 6. Ehegatten, Lebenspartner oder minderjährige Kinder der in den Nummern 1 bis 5 genannten Personen sind, ohne dass sie selbst die dort genannten Voraussetzungen erfüllen, oder 7. einen Folgeantrag nach § 71 des Asylgesetzes oder einen Zweitantrag nach § 71a des Asylgesetzes stellen. <p>(2) Die in Absatz 1 bezeichneten Ausländer sind für die Zeit, für die ihnen ein anderer Aufenthaltstitel als die in Absatz 1 Nr. 3 bezeichnete Aufenthaltserlaubnis mit einer Gesamtgeltungsdauer von mehr als sechs</p>	<p>Beneficiaries</p> <p>(1) Eligible for benefits under this Act are foreigners who actually reside in the Federal territory and who</p> <ol style="list-style-type: none"> 1. have a residence permit under the Asylum Act, 2. want to enter via an airport and to whom entry is not or not yet permitted, 3. have a residence permit <ol style="list-style-type: none"> a) because of the war in their home country pursuant to § 23 (1) or § 24 of the Residence Act, b) pursuant to § 25 (4) sentence 1 of the Residence Act or c) pursuant to § 25 (5) of the Residence Act, provided that the decision to suspend their removal has not yet been made 18 months ago, 4. have a tolerance according to § 60a of the Residence Act, 5. are executable, even if a threat of deportation is not or no longer enforceable, 6. Spouses, life partners or minor children of the persons referred to in points 1 to 5 without themselves fulfilling the conditions specified therein, or 7. submit a subsequent application under § 71 of the Asylum Act or a confirmatory application under § 71a of the Asylum Act. <p>(2) The foreigners referred to in paragraph 1 shall not be entitled to benefits under this Act for the time they have been granted a residence permit other than the residence permit referred to in paragraph 1 (3) with a total duration of more than six months.</p> <p>(3) The entitlement to benefits ends with the departure or expiry of the month in which</p>
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	<p>Monaten erteilt worden ist, nicht nach diesem Gesetz leistungsberechtigt.</p> <p>(3) Die Leistungsberechtigung endet mit der Ausreise oder mit Ablauf des Monats, in dem</p> <ol style="list-style-type: none"> 1. die Leistungsvoraussetzung entfällt oder 2. das Bundesamt für Migration und Flüchtlinge den Ausländer als Asylberechtigten anerkannt oder ein Gericht das Bundesamt zur Anerkennung verpflichtet hat, auch wenn die Entscheidung noch nicht unanfechtbar ist. <p>Für minderjährige Kinder, die eine Aufenthaltserlaubnis nach § 25 Absatz 5 des Aufenthaltsgesetzes besitzen und die mit ihren Eltern in einer Haushaltsgemeinschaft leben, endet die Leistungsberechtigung auch dann, wenn die Leistungsberechtigung eines Elternteils, der eine Aufenthaltserlaubnis nach § 25 Absatz 5 des Aufenthaltsgesetzes besitzt, entfallen ist.</p>	<ol style="list-style-type: none"> 1. the performance requirement is waived or 2. the Federal Office for Migration and Refugees recognizes the alien as entitled to asylum or a court has obliged the Federal Office to recognize it, even if the decision is not yet final. <p>For underage children who have a residence permit under § 25 (5) of the Residence Act and who live with their parents in a household community, entitlement to benefits also ceases if the entitlement to benefits of a parent who holds a residence permit pursuant to § 25 (5) of the Residence Act ceases is.</p>
<p>§ 1a AsylbLG</p>	<p>Anspruchseinschränkung</p> <p>(1) Leistungsberechtigte nach § 1 Absatz 1 Nummer 4 und 5 und Leistungsberechtigte nach § 1 Absatz 1 Nummer 6, soweit es sich um Familienangehörige der in § 1 Absatz 1 Nummer 4 und 5 genannten Personen handelt, die sich in den Geltungsbereich dieses Gesetzes begeben haben, um Leistungen nach diesem Gesetz zu erlangen, erhalten Leistungen nach diesem Gesetz nur, soweit dies im Einzelfall nach den Umständen unabweisbar geboten ist.</p> <p>(2) Leistungsberechtigte nach § 1 Absatz 1 Nummer 5, für die ein Ausreisetermin und eine Ausreisemöglichkeit feststehen,</p>	<p>claim limitation</p> <p>(1) entitled persons according to § 1 paragraph 1 number 4 and 5 and entitled persons according to § 1 paragraph 1 number 6, as far as they are family members of the persons referred to in § 1 paragraph 1 number 4 and 5, which are within the scope of this law to obtain benefits under this Act, benefits under this Act shall be paid only to the extent that this is unconditionally required in the individual case under the circumstances.</p> <p>(2) Beneficiaries according to § 1 paragraph 1 number 5, for which an exit date and a departure option have been established, have no claim to benefits under §§ 2, 3 and 6 from the date of</p>

<p>haben ab dem auf den Ausreisetermin folgenden Tag keinen Anspruch auf Leistungen nach den §§ 2, 3 und 6, es sei denn, die Ausreise konnte aus Gründen, die sie nicht zu vertreten haben, nicht durchgeführt werden. Ihnen werden bis zu ihrer Ausreise oder der Durchführung ihrer Abschiebung nur noch Leistungen zur Deckung ihres Bedarfs an Ernährung und Unterkunft einschließlich Heizung sowie Körper- und Gesundheitspflege gewährt. Nur soweit im Einzelfall besondere Umstände vorliegen, können ihnen auch andere Leistungen im Sinne von § 3 Absatz 1 Satz 1 gewährt werden. Die Leistungen sollen als Sachleistungen erbracht werden.</p> <p>(3) Absatz 2 gilt entsprechend für Leistungsberechtigte nach § 1 Absatz 1 Nummer 4 und 5, bei denen aus von ihnen selbst zu vertretenden Gründen aufenthaltsbeendende Maßnahmen nicht vollzogen werden können. Für sie endet der Anspruch auf Leistungen nach den §§ 2, 3 und 6 mit dem auf die Vollziehbarkeit einer Abschiebungsandrohung oder Vollziehbarkeit einer Abschiebungsanordnung folgenden Tag. Für Leistungsberechtigte nach § 1 Absatz 1 Nummer 6, soweit es sich um Familienangehörige der in Satz 1 genannten Personen handelt, gilt Absatz 1 entsprechend.</p> <p>(4) Leistungsberechtigte nach § 1 Absatz 1 Nummer 1 oder 5, für die in Abweichung von der Regelzuständigkeit nach der Verordnung (EU) Nr. 604/2013 des Europäischen Parlaments und des Rates vom 26. Juni 2013 zur Festlegung der Kriterien und Verfahren zur</p>	<p>departure on the following day, unless the departure could for reasons that they are not responsible for, are not performed. Until their departure or deportation, they will only be provided benefits to meet their needs for food and shelter, including heating, and body and health care. Only insofar as there are special circumstances in an individual case can they be granted other benefits within the meaning of § 3 (1) sentence 1. The benefits are to be provided in kind.</p> <p>(3) Subsection (2) shall apply mutatis mutandis to persons entitled to benefits pursuant to Section 1 (1) (4) and (5) in which termination of stay measures can not be carried out for reasons for which they are responsible. For them, the right to benefits according to §§ 2, 3 and 6 ends with the day following the execution of a threat of deportation or enforceability of a deportation order. For persons entitled to benefits pursuant to § 1 (1) (6), insofar as they are family members of the persons named in sentence 1, paragraph 1 shall apply mutatis mutandis.</p> <p>(4) Beneficiaries according to § 1 (1) (1) or (5) for which, by derogation from the rule of jurisdiction laid down in Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 laying down the criteria and procedures for Determination of the Member State responsible for examining a request for international protection lodged by a third-country national or a stateless person in a Member State (OJ L 180, 29.6.2013, p.31), after being distributed by the European Union or another Member State Third country</p>
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<p>Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen oder Staatenlosen in einem Mitgliedstaat gestellten Antrags auf internationalen Schutz zuständig ist (ABl. L 180 vom 29.6.2013, S. 31) nach einer Verteilung durch die Europäische Union ein anderer Mitgliedstaat oder ein am Verteilmechanismus teilnehmender Drittstaat, der die Verordnung (EU) Nr. 604/2013 anwendet, zuständig ist, erhalten ebenfalls nur Leistungen nach Absatz 2. Satz 1 gilt entsprechend für Leistungsberechtigte nach § 1 Absatz 1 Nummer 1 oder 5, denen bereits von einem anderen Mitgliedstaat der Europäischen Union oder einem am Verteilmechanismus teilnehmenden Drittstaat im Sinne von Satz 1 internationaler Schutz oder aus anderen Gründen ein Aufenthaltsrecht gewährt worden ist, wenn der internationale Schutz oder das aus anderen Gründen gewährte Aufenthaltsrecht fortbesteht.</p> <p>(5) Leistungsberechtigte nach § 1 Absatz 1 Nummer 1 oder 7 erhalten nur Leistungen entsprechend Absatz 2 Satz 2 bis 4, wenn sie</p> <ol style="list-style-type: none"> 1. ihrer Mitwirkungspflicht nach § 15 Absatz 2 Nummer 4 des Asylgesetzes nicht nachkommen, 2. ihre Mitwirkungspflicht nach § 15 Absatz 2 Nummer 5 des Asylgesetzes verletzen, indem sie erforderliche Unterlagen zu ihrer Identitätsklärung, die in ihrem Besitz sind, nicht vorlegen, aushändigen oder überlassen, 3. den gewährten Termin zur förmlichen Antragstellung bei der zuständigen Außenstelle des Bundesamtes für Migration und Flüchtlinge oder dem 	<p>participating in the distribution mechanism, which applies Regulation (EU) No 604/2013, will also receive only benefits under paragraph 2. Sentence 1 shall apply mutatis mutandis to persons entitled to benefits under § 1 (1) (1) or (5) already granted by another Member State of the European Union or a third country participating in the distribution mechanism within the meaning of the first sentence of international protection or rights of residence have been granted on other grounds if international protection or the right of residence granted for other</p> <p>(5) Beneficiaries according to § 1 (1) (1) or (7) shall only receive benefits in accordance with paragraph 2 sentences 2 to 4 if they:</p> <ol style="list-style-type: none"> 1. their obligation to cooperate according to § 15 (2) (4) of the Asylum Act, 2. violate their obligation to cooperate pursuant to § 15 (2) (5) of the Asylum Act by failing to provide, hand over or transfer any documents required for their identity clearance; 3. the deadline granted for the formal application to the responsible branch of the Federal Office for Migration and Refugees or the Federal Office for Migration and Refugees have not taken effect, or 4. establish the facts pursuant to § 30 (3) (2) second alternative of the Asylum Act by refusing to provide information on their identity or nationality, unless they are not responsible for the breach of duty to cooperate or the non-observance of the appointment, or they were unable to comply with the obligation to cooperate or the
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	<p>Bundesamt für Migration und Flüchtlinge nicht wahrgenommen haben oder</p> <p>4. den Tatbestand nach § 30 Absatz 3 Nummer 2 zweite Alternative des Asylgesetzes verwirklichen, indem sie Angaben über ihre Identität oder Staatsangehörigkeit verweigern, es sei denn, sie haben die Verletzung der Mitwirkungspflichten oder die Nichtwahrnehmung des Termins nicht zu vertreten oder ihnen war die Einhaltung der Mitwirkungspflichten oder die Wahrnehmung des Termins aus wichtigen Gründen nicht möglich. Die Anspruchseinschränkung nach Satz 1 endet, sobald sie die fehlende Mitwirkungshandlung erbracht oder den Termin zur förmlichen Antragstellung wahrgenommen haben.</p>	<p>appointment for important reasons. The limitation of entitlement according to sentence 1 ends as soon as they have provided the missing cooperation or the deadline for the formal application.</p>
<p>§ 3 AsylbLG</p>	<p>Grundleistungen</p> <p>(1) Bei einer Unterbringung in Aufnahmeeinrichtungen im Sinne von § 44 Absatz 1 des Asylgesetzes erhalten Leistungsberechtigte nach § 1 Leistungen zur Deckung des Bedarfs an Ernährung, Unterkunft, Heizung, Kleidung, Gesundheitspflege und Gebrauchs- und Verbrauchsgütern des Haushalts (notwendiger Bedarf). Der notwendige Bedarf wird durch Sachleistungen gedeckt. Kann Kleidung nicht geleistet werden, so kann sie in Form von Wertgutscheinen oder anderen vergleichbaren unbaren Abrechnungen gewährt werden. Gebrauchsgüter des Haushalts können leihweise zur Verfügung gestellt werden. Zusätzlich werden ihnen Leistungen zur Deckung persönlicher Bedürfnisse des täglichen Lebens gewährt (notwendiger persönlicher Bedarf). Soweit mit</p>	<p>basic benefits</p> <p>(1) In the case of accommodation in reception facilities within the meaning of § 44 (1) of the Asylum Act, persons entitled to benefits pursuant to § 1 shall receive benefits to meet the need for nutrition, housing, heating, clothing, health care and consumer goods of the household (necessary requirement). The necessary need is covered by benefits in kind. If clothing can not be provided, it may be provided in the form of vouchers or other comparable non-cash settlements. Consumer durables can be provided on loan. In addition, they are provided with benefits to meet the personal needs of everyday life (necessary personal needs). To the extent possible with reasonable administrative effort, these should be covered by contributions in kind. Insofar as contributions in kind can not be made with reasonable</p>

	<p>vertretbarem Verwaltungsaufwand möglich, sollen diese durch Sachleistungen gedeckt werden. Soweit Sachleistungen nicht mit vertretbarem Verwaltungsaufwand möglich sind, können auch Leistungen in Form von Wertgutscheinen, von anderen vergleichbaren unbaren Abrechnungen oder von Geldleistungen gewährt werden. Werden alle notwendigen persönlichen Bedarfe durch Geldleistungen gedeckt, so beträgt der Geldbetrag zur Deckung aller notwendigen persönlichen Bedarfe monatlich für</p> <ol style="list-style-type: none"> 1. alleinstehende Leistungsberechtigte 135 Euro, 2. zwei erwachsene Leistungsberechtigte, die als Partner einen gemeinsamen Haushalt führen, je 122 Euro, 3. weitere erwachsene Leistungsberechtigte ohne eigenen Haushalt 108 Euro, 4. sonstige jugendliche Leistungsberechtigte vom Beginn des 15. und bis zur Vollendung des 18. Lebensjahres 76 Euro, 5. leistungsberechtigte Kinder vom Beginn des siebten bis zur Vollendung des 14. Lebensjahres 83 Euro, 6. leistungsberechtigte Kinder bis zur Vollendung des sechsten Lebensjahres 79 Euro. <p>Der individuelle Geldbetrag zur Deckung des notwendigen persönlichen Bedarfs für in Abschiebungs- oder Untersuchungshaft genommene Leistungsberechtigte wird durch die zuständige Behörde festgelegt, wenn der Bedarf ganz oder teilweise anderweitig gedeckt ist.</p> <p>(2) Bei einer Unterbringung außerhalb</p>	<p>administrative expenses, services in the form of vouchers, other comparable non-cash settlements or cash benefits may also be granted. If all necessary personal requirements are covered by cash benefits, the amount of money to cover all necessary personal needs is monthly for</p> <ol style="list-style-type: none"> 1. single beneficiaries 135 Euro, 2. two adult beneficiaries who run a joint household as partners, each 122 euros, 3. other adult beneficiaries without own household 108 Euro, 4. other young persons entitled to benefits from the beginning of the 15th and to the age of 18, 76 euros, 5. eligible children from the seventh to the age of 14 years 83 Euro, 6. Children entitled to benefits until the age of 6 years 79 Euro. <p>The individual amount of money to meet the personal needs of persons entitled to removal or remand shall be determined by the competent authority when the need is fully or partially covered.</p> <p>(2) Subject to sentence 4, in the case of accommodation outside reception facilities within the meaning of Section 44 (1) of the Asylum Act, cash benefits shall be granted primarily to cover the necessary requirements pursuant to paragraph 1 sentence 1. The necessary need is monthly for</p> <ol style="list-style-type: none"> 1. single beneficiaries 216 euros, 2. two adult beneficiaries who run a joint household as partners, each 194 euros, 3. other adult beneficiaries without own household 174 Euro, 4. other young persons entitled to benefits from the beginning of the 15th and until the age of 18, 198 euros,
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<p>von Aufnahmeeinrichtungen im Sinne des § 44 Absatz 1 des Asylgesetzes sind vorbehaltlich des Satzes 4 vorrangig Geldleistungen zur Deckung des notwendigen Bedarfs nach Absatz 1 Satz 1 zu gewähren. Der notwendige Bedarf beträgt monatlich für</p> <ol style="list-style-type: none"> 1. alleinstehende Leistungsberechtigte 216 Euro, 2. zwei erwachsene Leistungsberechtigte, die als Partner einen gemeinsamen Haushalt führen, je 194 Euro, 3. weitere erwachsene Leistungsberechtigte ohne eigenen Haushalt 174 Euro, 4. sonstige jugendliche Leistungsberechtigte vom Beginn des 15. und bis zur Vollendung des 18. Lebensjahres 198 Euro, 5. leistungsberechtigte Kinder vom Beginn des siebten bis zur Vollendung des 14. Lebensjahres 157 Euro, 6. leistungsberechtigte Kinder bis zur Vollendung des sechsten Lebensjahres 133 Euro. <p>Anstelle der Geldleistungen können, soweit es nach den Umständen erforderlich ist, zur Deckung des notwendigen Bedarfs Leistungen in Form von unbaren Abrechnungen, von Wertgutscheinen oder von Sachleistungen gewährt werden. Der Bedarf für Unterkunft, Heizung und Hausrat wird gesondert als Geld- oder Sachleistung erbracht. Absatz 1 Satz 4, 5, 8 und 9 ist mit der Maßgabe entsprechend anzuwenden, dass der notwendige persönliche Bedarf als Geldleistung zu erbringen ist. In Gemeinschaftsunterkünften im Sinne von § 53 des Asylgesetzes kann der</p>	<ol style="list-style-type: none"> 5. eligible children from the beginning of the seventh to the age of 14 157 Euro, 6. eligible children until the age of sixteen 133 Euro. <p>In lieu of cash benefits, benefits may be provided in the form of non-cash, value-in-kind or in kind to cover the necessary needs, as may be required by the circumstances. The need for accommodation, heating and household goods is provided separately as cash or in kind. Paragraph 1 sentences 4, 5, 8 and 9 shall apply mutatis mutandis with the proviso that the necessary personal needs as a cash benefit is to be provided. In collective accommodation within the meaning of § 53 of the Asylum Act, the necessary personal needs can, as far as possible, also be covered by benefits in kind.</p> <p>(3) Requirements for education and participation in social and cultural life in the community shall be considered separately in children, adolescents and young adults in addition to the benefits referred to in paragraph 1 or paragraph 2 in accordance with sections 34, 34a and 34b of the Twelfth Book of the Social Code.</p> <p>(4) The amount of money for all necessary personal needs according to paragraph 1 sentence 8 as well as the necessary need according to paragraph 2 sentence 2 shall become effective January 1 of each year according to the rate of change according to § 28a of the Twelfth Book of Social Law in connection with the regulation according to § 40 Sentence 1 Number 1 of the Twelfth Book Social Code. The resulting amounts are rounded up to less than 0.50 euros and rounded</p>
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<p>notwendige persönliche Bedarf soweit wie möglich auch durch Sachleistungen gedeckt werden.</p> <p>(3) Bedarfe für Bildung und Teilhabe am sozialen und kulturellen Leben in der Gemeinschaft werden bei Kindern, Jugendlichen und jungen Erwachsenen neben den Leistungen nach Absatz 1 oder Absatz 2 entsprechend den §§ 34, 34a und 34b des Zwölften Buches Sozialgesetzbuch gesondert berücksichtigt.</p> <p>(4) Der Geldbetrag für alle notwendigen persönlichen Bedarfe nach Absatz 1 Satz 8 sowie der notwendige Bedarf nach Absatz 2 Satz 2 werden jeweils zum 1. Januar eines Jahres entsprechend der Veränderungsrate nach § 28a des Zwölften Buches Sozialgesetzbuch in Verbindung mit der Verordnung nach § 40 Satz 1 Nummer 1 des Zwölften Buches Sozialgesetzbuch fortgeschrieben. Die sich dabei ergebenden Beträge sind jeweils bis unter 0,50 Euro abzurunden sowie von 0,50 Euro an aufzurunden. Das Bundesministerium für Arbeit und Soziales gibt jeweils spätestens bis zum 1. November eines Kalenderjahres die Höhe der Bedarfe, die für das folgende Kalenderjahr maßgebend sind, im Bundesgesetzblatt bekannt.</p> <p>(5) Liegen die Ergebnisse einer bundesweiten neuen Einkommens- und Verbrauchsstichprobe vor, werden die Höhe des Geldbetrags für alle notwendigen persönlichen Bedarfe und die Höhe des notwendigen Bedarfs neu festgesetzt.</p> <p>(6) Leistungen in Geld oder Geldeswert sollen dem Leistungsberechtigten oder einem volljährigen berechtigten Mitglied</p>	<p>up from 0.50 euros. The Federal Ministry of Labor and Social Affairs announces the amount of the demands that are relevant for the following calendar year in the Federal Law Gazette no later than 1 November of each calendar year.</p> <p>(5) If the results of a nationwide new income and consumption sample are available, the amount of the amount of money for all necessary personal needs and the amount of necessary needs will be reset.</p> <p>(6) Benefits in money or monetary value shall be handed over in person to the person entitled to benefits or to a legal member of the household who is of legal age. If the services are not available for a full month, the service will be provided pro rata; while the month is calculated with 30 days. Cash benefits may be provided no later than one month in advance. From sentence 3 can not be deviated from by state law.</p>
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	<p>des Haushalts persönlich ausgehändigt werden. Stehen die Leistungen nicht für einen vollen Monat zu, wird die Leistung anteilig erbracht; dabei wird der Monat mit 30 Tagen berechnet. Geldleistungen dürfen längstens einen Monat im Voraus erbracht werden. Von Satz 3 kann nicht durch Landesrecht abgewichen werden.</p>	
<p>§ 4 AsylbLG</p>	<p>Leistungen bei Krankheit, Schwangerschaft und Geburt</p> <p>(1) Zur Behandlung akuter Erkrankungen und Schmerzzustände sind die erforderliche ärztliche und zahnärztliche Behandlung einschließlich der Versorgung mit Arznei- und Verbandmitteln sowie sonstiger zur Genesung, zur Besserung oder zur Linderung von Krankheiten oder Krankheitsfolgen erforderlichen Leistungen zu gewähren. Zur Verhütung und Früherkennung von Krankheiten werden Schutzimpfungen entsprechend den §§ 47, 52 Absatz 1 Satz 1 des Zwölften Buches Sozialgesetzbuch und die medizinisch gebotenen Vorsorgeuntersuchungen erbracht. Eine Versorgung mit Zahnersatz erfolgt nur, soweit dies im Einzelfall aus medizinischen Gründen unaufschiebbar ist.</p> <p>(2) Werdenden Müttern und Wöchnerinnen sind ärztliche und pflegerische Hilfe und Betreuung, Hebammenhilfe, Arznei-, Verband- und Heilmittel zu gewähren.</p> <p>(3) Die zuständige Behörde stellt die Versorgung mit den Leistungen nach den Absätzen 1 und 2 sicher. Sie stellt auch sicher, dass den Leistungsberechtigten frühzeitig eine Vervollständigung ihres Impfschutzes angeboten wird. Soweit die</p>	<p>Benefits in case of illness, pregnancy and childbirth</p> <p>(1) For the treatment of acute diseases and conditions of pain, the necessary medical and dental treatment, including the supply of medicines and dressings and other services necessary for the recovery, improvement or alleviation of illnesses or disease outcomes shall be granted. For the prevention and early detection of diseases vaccinations are provided in accordance with §§ 47, 52 paragraph 1 sentence 1 of the Twelfth Book of the Social Code and the medically required preventive medical check-ups. A supply of dentures is only possible, as far as in individual cases for medical reasons is not postponed.</p> <p>(2) Maternal and maternity wives shall be provided with medical and nursing assistance and support, midwife assistance, medicines, dressings and remedies.</p> <p>3. The competent authority shall ensure the supply of the services referred to in paragraphs 1 and 2. It also ensures that beneficiaries are offered early completion of their vaccine protection. Insofar as the services are provided by practicing physicians or dentists, the remuneration is based on the contracts in force at the place of establishment of the doctor or dentist pursuant to § 72 (2) and § 132e (1)</p>

	Leistungen durch niedergelassene Ärzte oder Zahnärzte erfolgen, richtet sich die Vergütung nach den am Ort der Niederlassung des Arztes oder Zahnarztes geltenden Verträgen nach § 72 Absatz 2 und § 132e Absatz 1 des Fünften Buches Sozialgesetzbuch. Die zuständige Behörde bestimmt, welcher Vertrag Anwendung findet.	of the Fifth Book of the Social Code. The competent authority determines which contract applies.
§ 6 AsylbLG	<p>Sonstige Leistungen</p> <p>(1) Sonstige Leistungen können insbesondere gewährt werden, wenn sie im Einzelfall zur Sicherung des Lebensunterhalts oder der Gesundheit unerlässlich, zur Deckung besonderer Bedürfnisse von Kindern geboten oder zur Erfüllung einer verwaltungsrechtlichen Mitwirkungspflicht erforderlich sind. Die Leistungen sind als Sachleistungen, bei Vorliegen besonderer Umstände als Geldleistung zu gewähren.</p> <p>(2) Personen, die eine Aufenthaltserlaubnis gemäß § 24 Abs. 1 des Aufenthaltsgesetzes besitzen und die besondere Bedürfnisse haben, wie beispielsweise unbegleitete Minderjährige oder Personen, die Folter, Vergewaltigung oder sonstige schwere Formen psychischer, physischer oder sexueller Gewalt erlitten haben, wird die erforderliche medizinische oder sonstige Hilfe gewährt.</p>	<p>Other benefits</p> <p>(1) Other benefits may be granted in particular if, in individual cases, they are indispensable for the purpose of securing a livelihood or for health, to meet the special needs of children or are necessary for the fulfillment of an administrative duty to cooperate. The benefits are to be granted as benefits in kind, in the case of special circumstances as a cash benefit.</p> <p>(2) Persons who hold a residence permit pursuant to Section 24 (1) of the Residence Act and who have special needs, such as unaccompanied minors or persons who have suffered torture, rape or other serious forms of mental, physical or sexual violence will become the required medical or other assistance.</p>
§ 6b AsylbLG	<p>Einsetzen der Leistungen</p> <p>Zur Bestimmung des Zeitpunkts des Einsetzens der Leistungen nach den §§ 3, 4 und 6 ist § 18 des Zwölften Buches Sozialgesetzbuch entsprechend anzuwenden.</p>	<p>Implementation of the services</p> <p>In order to determine the time of the commencement of the benefits pursuant to Sections 3, 4 and 6, Section 18 of the Twelfth Book of the Social Code shall be applied accordingly.</p>
§ 8a AsylbLG	<p>Meldepflicht</p> <p>Leistungsberechtigte, die eine</p>	<p>compulsory registration</p> <p>Beneficiaries taking up employment or</p>

	<p>unselbständige oder selbständige Erwerbstätigkeit aufnehmen, haben dies spätestens am dritten Tag nach Aufnahme der Erwerbstätigkeit der zuständigen Behörde zu melden.</p>	<p>self-employment must notify the competent authority no later than the third day after taking up gainful employment.</p>
<p>§ 13 AsylbLG</p>	<p>Bußgeldvorschrift</p> <p>(1) Ordnungswidrig handelt, wer vorsätzlich oder fahrlässig entgegen § 8a eine Meldung nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erstattet.</p> <p>(2) Die Ordnungswidrigkeit kann mit einer Geldbuße bis zu fünftausend Euro geahndet werden.</p>	<p>fine regulation</p> <p>(1) It acts contrary to the regulations, who deliberately or negligently fails to report a report contrary to § 8a, incorrect, incomplete or not timely.</p> <p>(2) The administrative offense may be punished by a fine of up to five thousand euros.</p>

Berufsqualifikationsfeststellungsgesetz

<p>§ 1 BQFG</p>	<p>Zweck des Gesetzes</p> <p>Dieses Gesetz dient der besseren Nutzung von im Ausland erworbenen Berufsqualifikationen für den deutschen Arbeitsmarkt, um eine qualifikationsnahe Beschäftigung zu ermöglichen.</p>	<p>Purpose of the law</p> <p>This law serves the better use of professional qualifications acquired abroad for the German labor market, in order to enable a qualification-related employment.</p>
<p>§ 2 BQFG</p>	<p>Anwendungsbereich</p> <p>(1) Dieses Gesetz gilt für die Feststellung der Gleichwertigkeit im Ausland erworbener Ausbildungsnachweise, unter Berücksichtigung sonstiger nachgewiesener Berufsqualifikationen, und inländischer Ausbildungsnachweise für bundesrechtlich geregelte Berufe, sofern die entsprechenden berufsrechtlichen Regelungen nicht etwas anderes bestimmen. § 10 des Bundesvertriebenengesetzes bleibt unberührt.</p> <p>(2) Dieses Gesetz ist auf alle Personen anwendbar, die im Ausland einen Ausbildungsnachweis erworben haben und darlegen, im Inland eine ihren</p>	<p>scope of application</p> <p>(1) This Act shall apply to the determination of equivalence of educational qualifications acquired abroad, taking into account other proven professional qualifications, and domestic training certificates for federally regulated professions, unless the relevant professional regulations stipulate otherwise. Section 10 of the Federal Expellees Act remains unaffected.</p> <p>(2) This Act applies to all persons who have obtained a proof of education abroad and who claim to want to work in Germany in accordance with their professional qualifications.</p>

	Berufsqualifikationen entsprechende Erwerbstätigkeit ausüben zu wollen.	
§ 4 BQFG	<p>Feststellung der Gleichwertigkeit</p> <p>(1) Die zuständige Stelle stellt auf Antrag die Gleichwertigkeit fest, sofern</p> <ol style="list-style-type: none"> 1. der im Ausland erworbene Ausbildungsnachweis die Befähigung zu vergleichbaren beruflichen Tätigkeiten wie der entsprechende inländische Ausbildungsnachweis belegt und 2. zwischen den nachgewiesenen Berufsqualifikationen und der entsprechenden inländischen Berufsbildung keine wesentlichen Unterschiede bestehen. <p>(2) Wesentliche Unterschiede zwischen den nachgewiesenen Berufsqualifikationen und der entsprechenden inländischen Berufsbildung liegen vor, sofern</p> <ol style="list-style-type: none"> 1. sich der im Ausland erworbene Ausbildungsnachweis auf Fertigkeiten, Kenntnisse und Fähigkeiten bezieht, die sich hinsichtlich der vermittelten Inhalte oder auf Grund der Ausbildungsdauer wesentlich von den Fertigkeiten, Kenntnissen und Fähigkeiten unterscheiden, auf die sich der entsprechende inländische Ausbildungsnachweis bezieht, 2. die nach Nummer 1 abweichenden Fertigkeiten, Kenntnisse und Fähigkeiten für die Ausübung des jeweiligen Berufs wesentlich sind und 3. die Antragstellerin oder der Antragsteller diese Unterschiede nicht durch sonstige Befähigungsnachweise, nachgewiesene einschlägige Berufserfahrung oder sonstige nachgewiesene einschlägige Qualifikationen ausgeglichen hat. 	<p>Determination of equivalence</p> <p>(1) The competent authority shall determine equivalence upon request, provided that:</p> <ol style="list-style-type: none"> 1. the evidence of formal qualifications acquired abroad attests the qualification for comparable professional activities such as the corresponding proof of domestic qualification and 2. There are no significant differences between the proven professional qualifications and the corresponding domestic VET. <p>(2) There are significant differences between the proven professional qualifications and the corresponding domestic vocational training, provided that</p> <ol style="list-style-type: none"> 1. the evidence of formal qualifications acquired abroad refers to skills, knowledge and abilities that differ materially or in terms of length of training from the skills, knowledge and abilities to which the relevant national training certificate relates; 2. the skills, knowledge and abilities deviating from point 1 are essential for the exercise of the respective profession; and 3. the applicant has not compensated for these differences by other qualifications, proven relevant professional experience or other relevant relevant qualifications.

<p>§ 6 BQFG</p>	<p>Verfahren</p> <p>(1) Antragsberechtigt ist jede Person, die im Ausland einen Ausbildungsnachweis im Sinne des § 3 Absatz 2 erworben hat. Der Antrag ist bei der zuständigen Stelle zu stellen.</p> <p>(2) Die zuständige Stelle bestätigt der Antragstellerin oder dem Antragsteller innerhalb eines Monats den Eingang des Antrags einschließlich der nach § 5 Absatz 1 vorzulegenden Unterlagen. In der Empfangsbestätigung ist das Datum des Eingangs bei der zuständigen Stelle mitzuteilen und auf die Frist nach Absatz 3 und die Voraussetzungen für den Beginn des Fristlaufs hinzuweisen. Sind die nach § 5 Absatz 1 vorzulegenden Unterlagen unvollständig, teilt die zuständige Stelle innerhalb der Frist des Satzes 1 mit, welche Unterlagen nachzureichen sind. Die Mitteilung enthält den Hinweis, dass der Lauf der Frist nach Absatz 3 erst mit Eingang der vollständigen Unterlagen beginnt.</p> <p>(3) Die zuständige Stelle muss innerhalb von drei Monaten über die Gleichwertigkeit entscheiden. Die Frist beginnt mit Eingang der vollständigen Unterlagen. Sie kann einmal angemessen verlängert werden, wenn dies wegen der Besonderheiten der Angelegenheit gerechtfertigt ist. Die Fristverlängerung ist zu begründen und rechtzeitig mitzuteilen.</p> <p>(4) Im Fall des § 5 Absatz 4 und 5 ist der Lauf der Frist nach Absatz 3 bis zum Ablauf der von der zuständigen Stelle festgelegten Frist gehemmt. Im Fall des § 14 ist der Lauf der Frist nach Absatz 3 bis zur Beendigung des</p>	<p>process</p> <p>(1) Any person who has obtained a proof of training abroad within the meaning of § 3 (2) is entitled to apply. The application must be filed with the competent authority.</p> <p>(2) The competent authority shall confirm within one month of receipt of the application, including the documents to be submitted pursuant to § 5 (1), to the applicant. The date of receipt must be communicated to the competent authority in the acknowledgment of receipt, indicating the period referred to in paragraph 3 and the conditions for commencement of the period. If the documents to be provided in accordance with § 5 (1) are incomplete, the competent authority shall notify within the period of sentence 1 which documents must be submitted. The notice states that the period under paragraph 3 will not commence until full documentation has been received.</p> <p>(3) The competent authority must decide on equivalency within three months. The period begins with the receipt of the complete documents. It may be reasonably extended once, if justified by the specific nature of the matter. The extension must be justified and communicated in good time.</p> <p>(4) In the case of § 5 (4) and (5), the expiry of the period referred to in paragraph 3 shall be suspended until the expiry of the period set by the competent authority. In the case of § 14, the period of the period referred to in paragraph 3 is suspended until the termination of the other appropriate</p>
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	<p>sonstigen geeigneten Verfahrens gehemmt. (5) Der Antrag soll abgelehnt werden, wenn die Gleichwertigkeit im Rahmen anderer Verfahren oder durch Rechtsvorschrift bereits festgestellt ist.</p>	<p>procedure. (5) The application should be rejected if equivalence has already been established under other procedures or by legislation.</p>
<p>§ 8 BQFG</p>	<p>Zuständige Stelle (1) Zuständige Stelle im Sinne dieses Kapitels bei einer Berufsbildung, 1. die nach dem Berufsbildungsgesetz für den Bereich der nichthandwerklichen Gewerbeberufe geregelt ist, ist die Industrie- und Handelskammer; 2. die nach der Handwerksordnung geregelt ist, ist die Handwerkskammer; 3. die nach dem Berufsbildungsgesetz für den Bereich der Landwirtschaft geregelt ist, ist die Landwirtschaftskammer; 4. die nach dem Berufsbildungsgesetz für den Bereich der Rechtspflege geregelt ist, sind jeweils für ihren Bereich die Rechtsanwalts-, Patentanwalts- und die Notarkammern; 5. die nach dem Berufsbildungsgesetz für den Bereich der Wirtschaftsprüfung und Steuerberatung geregelt ist, sind jeweils für ihren Bereich die Wirtschaftsprüfer- und die Steuerberaterkammern; 6. die nach dem Berufsbildungsgesetz für den Bereich der Gesundheitsdienstberufe geregelt ist, sind jeweils für ihren Bereich die Ärzte-, Zahnärzte-, Tierärzte- und die Apothekerkammern. (2) Soweit keine Kammern für einzelne Berufsbereiche des Absatzes 1 bestehen, bestimmt das Land die zuständige Stelle. (3) Für Berufe des öffentlichen Dienstes</p>	<p>Competent authority (1) Competent body within the meaning of this chapter in vocational training, 1. regulated by the Vocational Training Act for non-trades professions, is the Chamber of Commerce and Industry; 2. which is governed by the craft code, is the Chamber of Crafts; 3. which is regulated by the Vocational Training Act for agriculture is the Chamber of Agriculture; 4. governed by the Law on Vocational Training in the field of the administration of justice, are the lawyers, patent attorneys and the notarial chambers in each case; 5. which is regulated by the Vocational Training Act for the field of auditing and tax consultancy, is in each case for its area the Wirtschaftsprüfer- and the Steuerberaterkammern; 6. regulated by the Vocational Training Act for the health care professions, are the medical, dental, veterinary and pharmacist chambers respectively for their area. (2) Insofar as there are no chambers for individual occupational areas of paragraph 1, the country shall designate the competent authority. (3) For federal civil service professions, the highest federal authority shall designate the competent authority. (4) For the occupational areas not mentioned in paragraphs 1 to 3, the</p>

	<p>des Bundes bestimmt die oberste Bundesbehörde die zuständige Stelle.</p> <p>(4) Für die in den Absätzen 1 bis 3 nicht genannten Berufsbereiche bestimmt das Land die zuständige Stelle. Die Landesregierungen werden insoweit ermächtigt, die nach diesem Kapitel vorgesehenen Aufgaben durch Rechtsverordnung auf Behörden oder Kammern zu übertragen.</p> <p>(5) Zuständige Stellen nach Absatz 1 Nummer 2 bis 6 und Absatz 2 können vereinbaren, dass die ihnen durch dieses Gesetz übertragenen Aufgaben von einer anderen zuständigen Stelle nach den Absätzen 1 und 2 wahrgenommen werden. Die Vereinbarung bedarf der Genehmigung der jeweils zuständigen Aufsichtsbehörden.</p>	<p>country shall designate the competent authority. The provincial governments are hereby authorized to delegate the tasks provided for in this Chapter by ordinance to authorities or chambers.</p> <p>5. Competent authorities referred to in paragraph 1, points 2 to 6 and paragraph 2 may agree that the tasks assigned to them by this Law shall be performed by another competent authority in accordance with paragraphs 1 and 2. The agreement requires the approval of the relevant supervisory authorities.</p>
<p>§ 9 BQFG</p>	<p>Voraussetzungen der Gleichwertigkeit</p> <p>(1) Bei der Entscheidung über die Befugnis zur Aufnahme oder Ausübung eines im Inland reglementierten Berufs gilt der im Ausland erworbene Ausbildungsnachweis, unter Berücksichtigung sonstiger nachgewiesener Berufsqualifikationen, als gleichwertig mit dem entsprechenden inländischen Ausbildungsnachweis, sofern</p> <ol style="list-style-type: none"> 1. der im Ausland erworbene Ausbildungsnachweis die Befähigung zu vergleichbaren beruflichen Tätigkeiten wie der entsprechende inländische Ausbildungsnachweis belegt, 2. die Antragstellerin oder der Antragsteller bei einem sowohl im Inland als auch im Ausbildungsstaat reglementierten Beruf zur Ausübung des jeweiligen Berufs im 	<p>Prerequisites for equivalence</p> <p>(1) When deciding on the right to take up or pursue a profession regulated in the home country, the evidence of formal qualifications obtained abroad, taking into account other proven professional qualifications, shall be deemed equivalent to the corresponding domestic qualification provided that:</p> <ol style="list-style-type: none"> 1. the evidence of formal qualifications acquired abroad attests the qualification for comparable professional activities such as the corresponding proof of domestic qualification, 2. the applicant is entitled, in a profession regulated both in the home country and the State of training, to practice the profession in the State of training or has been denied the power to take up or pursue the profession for reasons other than admission to or practice in the country to oppose, and

	<p>Ausbildungsstaat berechtigt ist oder die Befugnis zur Aufnahme oder Ausübung des jeweiligen Berufs aus Gründen verwehrt wurde, die der Aufnahme oder Ausübung im Inland nicht entgegenstehen, und</p> <p>3. zwischen den nachgewiesenen Berufsqualifikationen und der entsprechenden inländischen Berufsbildung keine wesentlichen Unterschiede bestehen.</p> <p>(2) Wesentliche Unterschiede zwischen den nachgewiesenen Berufsqualifikationen und der entsprechenden inländischen Berufsbildung liegen vor, sofern</p> <p>1. sich der im Ausland erworbene Ausbildungsnachweis auf Fähigkeiten und Kenntnisse bezieht, die sich hinsichtlich des Inhalts oder auf Grund der Ausbildungsdauer wesentlich von den Fähigkeiten und Kenntnissen unterscheiden, auf die sich der entsprechende inländische Ausbildungsnachweis bezieht,</p> <p>2. die entsprechenden Fähigkeiten und Kenntnisse eine maßgebliche Voraussetzung für die Ausübung des jeweiligen Berufs darstellen und</p> <p>3. die Antragstellerin oder der Antragsteller diese Unterschiede nicht durch sonstige Befähigungsnachweise, nachgewiesene einschlägige Berufserfahrung oder sonstige nachgewiesene einschlägige Qualifikationen ausgeglichen hat.</p>	<p>3. There are no significant differences between the proven professional qualifications and the corresponding domestic VET.</p> <p>(2) There are significant differences between the proven professional qualifications and the corresponding domestic vocational training, provided that</p> <p>1. the evidence of formal qualifications acquired abroad is based on skills and knowledge that differ materially or in terms of length of training from the skills and knowledge to which the relevant national training certificate relates,</p> <p>2. the relevant abilities and knowledge constitute a relevant condition for the exercise of the respective profession and</p> <p>3. the applicant has not compensated for these differences by other qualifications, proven relevant professional experience or other relevant relevant qualifications.</p>
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Sozialgesetzbuch (SGB) V – Social Code V

<p>§ 12 SGB V</p>	<p>Wirtschaftlichkeitsgebot</p> <p>(1) Die Leistungen müssen ausreichend, zweckmäßig und wirtschaftlich sein; sie</p>	<p>efficiency principle</p> <p>(1) The benefits must be sufficient, appropriate and economic; they must not</p>
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	<p>dürfen das Maß des Notwendigen nicht überschreiten. Leistungen, die nicht notwendig oder unwirtschaftlich sind, können Versicherte nicht beanspruchen, dürfen die Leistungserbringer nicht bewirken und die Krankenkassen nicht bewilligen.</p> <p>(2) Ist für eine Leistung ein Festbetrag festgesetzt, erfüllt die Krankenkasse ihre Leistungspflicht mit dem Festbetrag.</p> <p>(3) Hat die Krankenkasse Leistungen ohne Rechtsgrundlage oder entgegen geltendem Recht erbracht und hat ein Vorstandsmitglied hiervon gewußt oder hätte es hiervon wissen müssen, hat die zuständige Aufsichtsbehörde nach Anhörung des Vorstandsmitglieds den Verwaltungsrat zu veranlassen, das Vorstandsmitglied auf Ersatz des aus der Pflichtverletzung entstandenen Schadens in Anspruch zu nehmen, falls der Verwaltungsrat das Regreßverfahren nicht bereits von sich aus eingeleitet hat.</p>	<p>exceed the measure of what is necessary. Benefits that are not necessary or uneconomic can not be claimed by the insured, may not be provided by the service providers and may not be approved by the health insurance companies.</p> <p>(2) If a fixed amount has been fixed for a service, the health insurance fund fulfills its obligation to pay the fixed amount.</p> <p>(3) If the health insurance company provided services without legal basis or contrary to applicable law and if a member of the management board knew or ought to have known about it, the competent supervisory authority shall, after consulting the member of the management board, cause the board of directors to reimburse the management board member for the damage resulting from the breach of duty if the Board of Directors has not already initiated the recourse procedure on its own initiative.</p>
<p>§ 28 SGB V</p>	<p>Ärztliche und zahnärztliche Behandlung</p> <p>(1) Die ärztliche Behandlung umfaßt die Tätigkeit des Arztes, die zur Verhütung, Früherkennung und Behandlung von Krankheiten nach den Regeln der ärztlichen Kunst ausreichend und zweckmäßig ist. Zur ärztlichen Behandlung gehört auch die Hilfeleistung anderer Personen, die von dem Arzt angeordnet und von ihm zu verantworten ist. Die Partner der Bundesmantelverträge legen bis zum 30. Juni 2012 für die ambulante Versorgung beispielhaft fest, bei welchen Tätigkeiten Personen nach Satz 2 ärztliche Leistungen erbringen können und welche Anforderungen an die Erbringung zu</p>	<p>Medical and dental treatment</p> <p>(1) The medical treatment includes the activities of the doctor sufficient and appropriate for the prevention, early detection and treatment of diseases according to the rules of medical art. The medical treatment includes the assistance of other persons, which is arranged by the doctor and is to be held responsible by him. By June 30, 2012, the partners of the Federal Coatings Agreements specify for ambulatory care in which activities persons under sentence 2 can provide medical services and what requirements are to be met for the provision of services. The German Medical Association is given the opportunity to comment.</p>

<p>stellen sind. Der Bundesärztekammer ist Gelegenheit zur Stellungnahme zu geben.</p> <p>(2) Die zahnärztliche Behandlung umfaßt die Tätigkeit des Zahnarztes, die zur Verhütung, Früherkennung und Behandlung von Zahn-, Mund- und Kieferkrankheiten nach den Regeln der zahnärztlichen Kunst ausreichend und zweckmäßig ist; sie umfaßt auch konservierend-chirurgische Leistungen und Röntgenleistungen, die im Zusammenhang mit Zahnersatz einschließlich Zahnkronen und Suprakonstruktionen erbracht werden. Wählen Versicherte bei Zahnfüllungen eine darüber hinausgehende Versorgung, haben sie die Mehrkosten selbst zu tragen. In diesen Fällen ist von den Kassen die vergleichbare preisgünstigste plastische Füllung als Sachleistung abzurechnen. In Fällen des Satzes 2 ist vor Beginn der Behandlung eine schriftliche Vereinbarung zwischen dem Zahnarzt und dem Versicherten zu treffen. Die Mehrkostenregelung gilt nicht für Fälle, in denen intakte plastische Füllungen ausgetauscht werden. Nicht zur zahnärztlichen Behandlung gehört die kieferorthopädische Behandlung von Versicherten, die zu Beginn der Behandlung das 18. Lebensjahr vollendet haben. Dies gilt nicht für Versicherte mit schweren Kieferanomalien, die ein Ausmaß haben, das kombinierte kieferchirurgische und kieferorthopädische Behandlungsmaßnahmen erfordert. Ebenso gehören funktionsanalytische und funktionstherapeutische Maßnahmen nicht zur zahnärztlichen Behandlung; sie dürfen von den Krankenkassen auch</p>	<p>(2) The dental treatment includes the activity of the dentist, which is sufficient and appropriate for the prevention, early detection and treatment of dental, oral and jaw diseases according to the rules of dental art; it also includes conservative surgical services and X-ray services provided in the context of dental prostheses including dental crowns and superstructures. If insured persons choose additional care for fillings, they have to bear the additional costs themselves. In these cases, the cash equivalent is the comparable lowest-priced plastic filling as a contribution in kind. In the case of sentence 2, a written agreement must be reached between the dentist and the insured person before starting the treatment. The additional cost regulation does not apply to cases in which intact plastic fillings are exchanged. The orthodontic treatment of insured persons who have reached the age of 18 at the beginning of the treatment does not belong to the dental treatment. This does not apply to insured persons with severe anomalies of an extent requiring combined orthodontic and orthodontic treatment. Likewise, functional analytical and functional therapeutic measures are not part of the dental treatment; they may not be subsidized by the health insurance companies either. The same applies to implantological services, unless there are rare exceptional indications to be specified by the Federal Joint Committee in guidelines under § 92 (1) for particularly serious cases in which the health insurance company provides this service including the superstructure as a non-cash benefit in the context of a</p>
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	<p>nicht bezuschußt werden. Das Gleiche gilt für implantologische Leistungen, es sei denn, es liegen seltene vom Gemeinsamen Bundesausschuss in Richtlinien nach § 92 Abs. 1 festzulegende Ausnahmeindikationen für besonders schwere Fälle vor, in denen die Krankenkasse diese Leistung einschließlich der Suprakonstruktion als Sachleistung im Rahmen einer medizinischen Gesamtbehandlung erbringt. Absatz 1 Satz 2 gilt entsprechend.</p> <p>(3) Die psychotherapeutische Behandlung einer Krankheit wird durch Psychologische Psychotherapeuten und Kinder- und Jugendlichenpsychotherapeuten (Psychotherapeuten), soweit sie zur psychotherapeutischen Behandlung zugelassen sind, sowie durch Vertragsärzte entsprechend den Richtlinien nach § 92 durchgeführt. Absatz 1 Satz 2 gilt entsprechend. Spätestens nach den probatorischen Sitzungen gemäß § 92 Abs. 6a hat der Psychotherapeut vor Beginn der Behandlung den Konsiliarbericht eines Vertragsarztes zur Abklärung einer somatischen Erkrankung sowie, falls der somatisch abklärende Vertragsarzt dies für erforderlich hält, eines psychiatrisch tätigen Vertragsarztes einzuholen.</p> <p>(4) (weggefallen)</p>	<p>comprehensive medical treatment , Paragraph 1 sentence 2 applies accordingly.</p> <p>(3) The psychotherapeutic treatment of a disease is carried out by psychotherapists and psychotherapists (psychotherapists), as far as they are approved for psychotherapeutic treatment, as well as contracted doctors according to the guidelines according to § 92. Paragraph 1 sentence 2 applies accordingly. At the latest after the probationary sessions in accordance with § 92 (6a), the psychotherapist must seek the advice of a contract doctor for the investigation of a somatic illness and, if the somatic consultant deems it necessary, the appointment of a psychiatric contract doctor.</p> <p>(4) (repealed)</p>
<p>§ 264 SGB V</p>	<p>Übernahme der Krankenbehandlung für nicht Versicherungspflichtige gegen Kostenerstattung</p> <p>(1) Die Krankenkasse kann für Arbeits- und Erwerbslose, die nicht gesetzlich gegen Krankheit versichert sind, für andere Hilfeempfänger sowie für die vom</p>	<p>Takeover of the treatment for non-insurants against reimbursement</p> <p>(1) The health insurance may take over for sick and unemployed people who are not insured against illness, for other aid recipients and for the designated by the Federal Ministry of Health groups,</p>

<p>Bundesministerium für Gesundheit bezeichneten Personenkreise die Krankenbehandlung übernehmen, sofern der Krankenkasse Ersatz der vollen Aufwendungen für den Einzelfall sowie eines angemessenen Teils ihrer Verwaltungskosten gewährleistet wird. Die Krankenkasse ist zur Übernahme der Krankenbehandlung nach Satz 1 für Empfänger von Gesundheitsleistungen nach den §§ 4 und 6 des Asylbewerberleistungsgesetzes verpflichtet, wenn sie durch die Landesregierung oder die von der Landesregierung beauftragte oberste Landesbehörde dazu aufgefordert wird und mit ihr eine entsprechende Vereinbarung mindestens auf Ebene der Landkreise oder kreisfreien Städte geschlossen wird. Die Vereinbarung über die Übernahme der Krankenbehandlung nach Satz 1 für den in Satz 2 genannten Personenkreis hat insbesondere Regelungen zur Erbringung der Leistungen sowie zum Ersatz der Aufwendungen und Verwaltungskosten nach Satz 1 zu enthalten; die Ausgabe einer elektronischen Gesundheitskarte kann vereinbart werden. Wird von der Landesregierung oder der von ihr beauftragten obersten Landesbehörde eine Rahmenvereinbarung auf Landesebene zur Übernahme der Krankenbehandlung für den in Satz 2 genannten Personenkreis gefordert, sind die Landesverbände der Krankenkassen und die Ersatzkassen gemeinsam zum Abschluss einer Rahmenvereinbarung verpflichtet. Zudem vereinbart der Spitzenverband Bund der Krankenkassen mit den auf Bundesebene bestehenden</p>	<p>provided that the health insurance, the full expenses for the individual case and an appropriate part their administrative costs. The health insurance is obligated to take over the treatment according to sentence 1 for recipients of health services according to §§ 4 and 6 of the Asylum Seekers Benefits Act if it is requested by the state government or by the state government commissioned supreme Land authority to do so and with it a corresponding agreement at least at the level the counties or independent cities is closed. The agreement on the assumption of medical treatment pursuant to sentence 1 for the group of persons referred to in sentence 2 above shall in particular contain provisions for the provision of benefits and for the reimbursement of expenses and administration costs pursuant to sentence 1; the issue of an electronic health card can be arranged. If the provincial government or its supreme Land authority requires a framework agreement to take over the treatment of sick persons for the group of persons referred to in sentence 2, the national associations of health insurance funds and the alternative health insurance funds are jointly obliged to conclude a framework agreement. In addition, the Central Association of Health Insurance Funds agrees with the leading organizations of the competent authorities under the Asylum Seekers Benefits Act to make general recommendations for taking over the treatment of sick persons for the group of persons named in the second sentence. The framework recommendations pursuant to sentence 5, which are to be</p>
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<p>Spitzenorganisationen der nach dem Asylbewerberleistungsgesetz zuständigen Behörden Rahmenempfehlungen zur Übernahme der Krankenbehandlung für den in Satz 2 genannten Personenkreis. Die Rahmenempfehlungen nach Satz 5, die von den zuständigen Behörden nach dem Asylbewerberleistungsgesetz und den Krankenkassen nach den Sätzen 1 bis 3 sowie von den Vertragspartnern auf Landesebene nach Satz 4 übernommen werden sollen, regeln insbesondere die Umsetzung der leistungsrechtlichen Regelungen nach den §§ 4 und 6 des Asylbewerberleistungsgesetzes, die Abrechnung und die Abrechnungsprüfung der Leistungen sowie den Ersatz der Aufwendungen und der Verwaltungskosten der Krankenkassen nach Satz 1. Bis zum Inkrafttreten einer Regelung, wonach die elektronische Gesundheitskarte bei Vereinbarungen nach Satz 3 zweiter Halbsatz die Angabe zu enthalten hat, dass es sich um einen Empfänger von Gesundheitsleistungen nach den §§ 4 und 6 des Asylbewerberleistungsgesetzes handelt, stellen die Vereinbarungspartner die Erkennbarkeit dieses Status in anderer geeigneter Weise sicher.</p> <p>(2) Die Krankenbehandlung von Empfängern von Leistungen nach dem Dritten bis Neunten Kapitel des Zwölften Buches, von Empfängern laufender Leistungen nach § 2 des Asylbewerberleistungsgesetzes und von Empfängern von Krankenhilfeleistungen nach dem Achten Buch, die nicht versichert sind, wird von der Krankenkasse übernommen. Satz 1 gilt nicht für Empfänger, die voraussichtlich</p>	<p>adopted by the competent authorities in accordance with the Asylum Seekers Benefits Act and the health insurances in accordance with sentences 1 to 3 and by the contracting parties at the state level in accordance with sentence 4, regulate in particular the implementation of the benefits under sections 4 and 6 of the Asylbewerberleistungsgesetz, the billing and the billing examination of the services as well as the replacement of the expenditures and the administration costs of the health insurance companies according to sentence 1. Until the entry into force of a regulation according to which the electronic health card for agreements according to sentence 3, second half-sentence must contain the indication that it is the beneficiary of health services under §§ 4 and 6 of the Asylum Seekers Benefits Act, the parties to the agreement shall ensure the identifiability of this status in other appropriate ways.</p> <p>(2) The medical treatment of recipients of benefits under the Third to Ninth Chapter of the Twelfth Book, of beneficiaries of current benefits under § 2 of the Asylum Seekers Benefits Act and recipients of benefits under the Eighth Book, which are not insured, will be covered by the health insurance. Sentence 1 does not apply to recipients who are not expected to receive uninterrupted income support for at least one month, for persons who only receive benefits under § 11 (5) sentence 3 and § 33 of the Twelfth Book and for those mentioned in § 24 of the Twelfth Book People.</p> <p>(3) The beneficiaries referred to in the first sentence of paragraph 2 shall,</p>
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<p>nicht mindestens einen Monat ununterbrochen Hilfe zum Lebensunterhalt beziehen, für Personen, die ausschließlich Leistungen nach § 11 Abs. 5 Satz 3 und § 33 des Zwölften Buches beziehen sowie für die in § 24 des Zwölften Buches genannten Personen.</p> <p>(3) Die in Absatz 2 Satz 1 genannten Empfänger haben unverzüglich eine Krankenkasse im Bereich des für die Hilfe zuständigen Trägers der Sozialhilfe oder der öffentlichen Jugendhilfe zu wählen, die ihre Krankenbehandlung übernimmt. Leben mehrere Empfänger in häuslicher Gemeinschaft, wird das Wahlrecht vom Haushaltsvorstand für sich und für die Familienangehörigen ausgeübt, die bei Versicherungspflicht des Haushaltsvorstands nach § 10 versichert wären. Wird das Wahlrecht nach den Sätzen 1 und 2 nicht ausgeübt, gelten § 28i des Vierten Buches und § 175 Abs. 3 Satz 2 entsprechend.</p> <p>(4) Für die in Absatz 2 Satz 1 genannten Empfänger gelten § 11 Abs. 1 sowie die §§ 61 und 62 entsprechend. Sie erhalten eine elektronische Gesundheitskarte nach § 291. Als Versichertenstatus nach § 291 Abs. 2 Nr. 7 gilt für Empfänger bis zur Vollendung des 65. Lebensjahres die Statusbezeichnung "Mitglied", für Empfänger nach Vollendung des 65. Lebensjahres die Statusbezeichnung "Rentner". Empfänger, die das 65. Lebensjahr noch nicht vollendet haben, in häuslicher Gemeinschaft leben und nicht Haushaltsvorstand sind, erhalten die Statusbezeichnung "Familierversicherte".</p> <p>(5) Wenn Empfänger nicht mehr bedürftig im Sinne des Zwölften Buches</p>	<p>without delay, select a health insurance scheme in the area of the social assistance or public youth welfare institution responsible for the aid, which will undertake their medical treatment. If several recipients reside in a domestic community, the right to vote is exercised by the head of the household for themselves and for the family members, who would be insured if the head of household was insured under § 10. If the option under Sentences 1 and 2 is not exercised, Section 28i of the Fourth Book and Section 175 (3) Sentence 2 shall apply mutatis mutandis.</p> <p>(4) § 11 (1) as well as §§ 61 and 62 shall apply mutatis mutandis to the recipients named in subsection (2) sentence 1. You will receive an electronic health card according to § 291. As insured status according to § 291 Abs. 2 Nr. 7, the status "member" applies for recipients up to the age of 65, and the status "pensioner" for recipients after the age of 65. Recipients who are under 65 years of age and who live in a domestic community and are not householders receive the status "family members".</p> <p>(5) If recipients are no longer needy in the sense of the Twelfth Book or the Eighth Book, the institution of the social welfare or the public youth welfare reports this from the respective health insurance. In the case of deregistration, the institution of social assistance or the public youth welfare service must collect the electronic health card from the recipient and forward it to the health insurance fund. Expenses incurred by the health insurance after cancellation due to misuse of the card must be reimbursed by</p>
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<p>oder des Achten Buches sind, meldet der Träger der Sozialhilfe oder der öffentlichen Jugendhilfe diese bei der jeweiligen Krankenkasse ab. Bei der Abmeldung hat der Träger der Sozialhilfe oder der öffentlichen Jugendhilfe die elektronische Gesundheitskarte vom Empfänger einzuziehen und an die Krankenkasse zu übermitteln. Aufwendungen, die der Krankenkasse nach Abmeldung durch eine missbräuchliche Verwendung der Karte entstehen, hat der Träger der Sozialhilfe oder der öffentlichen Jugendhilfe zu erstatten. Satz 3 gilt nicht in den Fällen, in denen die Krankenkasse auf Grund gesetzlicher Vorschriften oder vertraglicher Vereinbarungen verpflichtet ist, ihre Leistungspflicht vor der Inanspruchnahme der Leistung zu prüfen.</p> <p>(6) Bei der Bemessung der Vergütungen nach § 85 oder § 87a ist die vertragsärztliche Versorgung der Empfänger zu berücksichtigen. Werden die Gesamtvergütungen nach § 85 nach Kopfpauschalen berechnet, gelten die Empfänger als Mitglieder. Leben mehrere Empfänger in häuslicher Gemeinschaft, gilt abweichend von Satz 2 nur der Haushaltsvorstand nach Absatz 3 als Mitglied; die vertragsärztliche Versorgung der Familienangehörigen, die nach § 10 versichert wären, wird durch die für den Haushaltsvorstand zu zahlende Kopfpauschale vergütet.</p> <p>(7) Die Aufwendungen, die den Krankenkassen durch die Übernahme der Krankenbehandlung nach den Absätzen 2 bis 6 entstehen, werden ihnen von den für die Hilfe zuständigen Trägern der</p>	<p>the social assistance or public youth welfare institution. Sentence 3 does not apply in cases in which the health insurance company is obliged by statutory provisions or contractual agreements to check its obligation to pay before using the service.</p> <p>(6) When assessing the remuneration pursuant to § 85 or § 87a, the contractual medical care of the recipient must be taken into account. If the total remuneration according to § 85 is calculated according to capitation, the recipients are considered members. By way of derogation from the second sentence, if several recipients reside in a domestic community, only the head of household referred to in paragraph 3 shall be considered as a member; the contract medical care of family members, who would be insured under § 10, will be remunerated by the head lump sum payable to the head of the household.</p> <p>(7) The expenses incurred by the health insurances by taking over the treatment referred to in paragraphs 2 to 6 shall be reimbursed on a quarterly basis by the social assistance or public youth welfare authorities. The reasonable administrative costs, including personnel expenses for the group of persons referred to in paragraph 2, shall be up to 5 per cent of the invoiced benefits paid. If there is evidence of uneconomic provision or granting of benefits, the competent social assistance or youth welfare authority may require the respective health insurance fund to verify and prove the appropriateness of the expenses.</p>
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	<p>Sozialhilfe oder der öffentlichen Jugendhilfe vierteljährlich erstattet. Als angemessene Verwaltungskosten einschließlich Personalaufwand für den Personenkreis nach Absatz 2 werden bis zu 5 vom Hundert der abgerechneten Leistungsaufwendungen festgelegt. Wenn Anhaltspunkte für eine unwirtschaftliche Leistungserbringung oder -gewährung vorliegen, kann der zuständige Träger der Sozialhilfe oder der öffentlichen Jugendhilfe von der jeweiligen Krankenkasse verlangen, die Angemessenheit der Aufwendungen zu prüfen und nachzuweisen.</p>	
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Sozialgesetzbuch (SGB) XII – Social Code XII

<p>§ 18 SGB XII</p>	<p>Einsetzen der Sozialhilfe</p> <p>(1) Die Sozialhilfe, mit Ausnahme der Leistungen der Grundsicherung im Alter und bei Erwerbsminderung, setzt ein, sobald dem Träger der Sozialhilfe oder den von ihm beauftragten Stellen bekannt wird, dass die Voraussetzungen für die Leistung vorliegen.</p> <p>(2) Wird einem nicht zuständigen Träger der Sozialhilfe oder einer nicht zuständigen Gemeinde im Einzelfall bekannt, dass Sozialhilfe beansprucht wird, so sind die darüber bekannten Umstände dem zuständigen Träger der Sozialhilfe oder der von ihm beauftragten Stelle unverzüglich mitzuteilen und vorhandene Unterlagen zu übersenden. Ergeben sich daraus die Voraussetzungen für die Leistung, setzt die Sozialhilfe zu dem nach Satz 1 maßgebenden Zeitpunkt ein.</p>	<p>Implementation of social assistance</p> <p>(1) Social assistance, with the exception of basic old-age benefits and reduced earning capacity, shall commence as soon as it becomes known to the social assistance institution or to the bodies it has mandated that the conditions for the benefit are met.</p> <p>(2) If a non-competent institution of social assistance or a non-competent municipality becomes aware in individual cases that social assistance is claimed, the circumstances known to it shall be reported to the competent institution of social assistance or the body appointed by it without delay and any existing documents must be forwarded. If the conditions for the benefit are derived from this, social assistance will commence at the time specified in the first sentence.</p>
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Staatsangehörigkeitsgesetz (StAG) – Nationality Act

<p>§ 3 StAG</p>	<p>Erwerb der Staatsbürgerschaft</p> <p>(1) Die Staatsangehörigkeit wird erworben</p> <ol style="list-style-type: none"> 1. durch Geburt (§ 4), 2. durch Erklärung nach § 5, 3. durch Annahme als Kind (§ 6), 4. durch Ausstellung der Bescheinigung gemäß § 15 Abs. 1 oder 2 des Bundesvertriebenengesetzes (§ 7), 4a. durch Überleitung als Deutscher ohne deutsche Staatsangehörigkeit im Sinne des Artikels 116 Abs. 1 des Grundgesetzes (§ 40a), 5. für einen Ausländer durch Einbürgerung (§§ 8 bis 16, 40b und 40c). <p>(2) Die Staatsangehörigkeit erwirbt auch, wer seit zwölf Jahren von deutschen Stellen als deutscher Staatsangehöriger behandelt worden ist und dies nicht zu vertreten hat. Als deutscher Staatsangehöriger wird insbesondere behandelt, wem ein Staatsangehörigkeitsausweis, Reisepass oder Personalausweis ausgestellt wurde. Der Erwerb der Staatsangehörigkeit wirkt auf den Zeitpunkt zurück, zu dem bei Behandlung als Staatsangehöriger der Erwerb der Staatsangehörigkeit angenommen wurde. Er erstreckt sich auf Abkömmlinge, die seither ihre Staatsangehörigkeit von dem nach Satz 1 Begünstigten ableiten.</p>	<p>Acquisition of citizenship</p> <p>(1) Citizenship is acquired by birth (Section 4), by a declaration pursuant to Section 5, by adoption as a child (Section 6), by issuance of the certificate pursuant to Section 15, sub-section 1 or 2 of the Federal Expellees Act (Section 7),</p> <p>4a. for Germans without German citizenship within the meaning of Article 116, paragraph 1 of the Basic Law, under the procedure laid down in Section 40a below (Section 40a),</p> <p>for a foreigner by naturalisation (Sections 8 to 16, 40b and 40c).</p> <p>(2) German citizenship shall also be acquired by any person who has been treated by German public authorities as a German national for 12 years and this has been due to circumstances beyond his or her control. In particular, any person who has been issued a certificate of nationality, a passport or a national identity card shall be treated as a German national. Acquisition of citizenship shall apply as of the date when the person was deemed to have acquired German citizenship by treating him or her as a German national. The acquisition of German citizenship shall extend to those descendants who derive their status as Germans from the beneficiary pursuant to sentence 1.</p>
<p>§ 4 StAG</p>	<p>Erwerb durch Geburt</p> <p>(1) Durch die Geburt erwirbt ein Kind die deutsche Staatsangehörigkeit, wenn ein Elternteil die deutsche</p>	<p>Acquisition by birth</p> <p>(1) A child shall acquire German citizenship by birth if one parent possesses German citizenship. Where at</p>

<p>Staatsangehörigkeit besitzt. Ist bei der Geburt des Kindes nur der Vater deutscher Staatsangehöriger und ist zur Begründung der Abstammung nach den deutschen Gesetzen die Anerkennung oder Feststellung der Vaterschaft erforderlich, so bedarf es zur Geltendmachung des Erwerbs einer nach den deutschen Gesetzen wirksamen Anerkennung oder Feststellung der Vaterschaft; die Anerkennungserklärung muß abgegeben oder das Feststellungsverfahren muß eingeleitet sein, bevor das Kind das 23. Lebensjahr vollendet hat.</p> <p>(2) Ein Kind, das im Inland aufgefunden wird (Findelkind), gilt bis zum Beweis des Gegenteils als Kind eines Deutschen. Satz 1 ist auf ein vertraulich geborenes Kind nach § 25 Absatz 1 des Schwangerschaftskonfliktgesetzes entsprechend anzuwenden.</p> <p>(3) Durch die Geburt im Inland erwirbt ein Kind ausländischer Eltern die deutsche Staatsangehörigkeit, wenn ein Elternteil</p> <ol style="list-style-type: none"> 1. seit acht Jahren rechtmäßig seinen gewöhnlichen Aufenthalt im Inland hat und 2. ein unbefristetes Aufenthaltsrecht oder als Staatsangehöriger der Schweiz oder dessen Familienangehöriger eine Aufenthaltserlaubnis auf Grund des Abkommens vom 21. Juni 1999 zwischen der Europäischen Gemeinschaft und ihren Mitgliedstaaten einerseits und der Schweizerischen Eidgenossenschaft andererseits über die Freizügigkeit (BGBl. 2001 II S. 810) besitzt. <p>Der Erwerb der deutschen Staatsangehörigkeit wird in dem</p>	<p>the time of the birth only the father is a German national, and where for proof of descent under German law recognition or determination of paternity is necessary, acquisition shall be dependent on recognition or determination of paternity with legal effect under German law; the declaration of recognition must be submitted or the procedure for determination must have commenced before the child reaches the age of 23.</p> <p>(2) A child which is found on German territory (foundling) shall be deemed to be the child of a German until otherwise proven. The first sentence shall apply mutatis mutandis to a child born to a mother under condition of anonymity in accordance with Section 25 (1) of the Act to Prevent and Resolve Conflicts in Pregnancy (SchKG).</p> <p>(3) A child of foreign parents shall acquire German citizenship by birth in Germany if one parent has been legally ordinarily resident in Germany for eight years and has been granted a permanent right of residence or as a national of Switzerland or as a family member of a national of Switzerland possesses a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member States on the one hand and the Swiss Confederation on the other hand on the free movement of persons (Federal Law Gazette 2001 II p. 810). The acquisition of German citizenship shall be recorded by the registrar responsible for certifying the child's birth. The Federal Ministry of the Interior shall, with the consent of the Bundesrat, be authorized to issue regulations</p>
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	<p>Geburtenregister, in dem die Geburt des Kindes beurkundet ist, eingetragen. Das Bundesministerium des Innern wird ermächtigt, mit Zustimmung des Bundesrates durch Rechtsverordnung Vorschriften über das Verfahren zur Eintragung des Erwerbs der Staatsangehörigkeit nach Satz 1 zu erlassen.</p> <p>(4) Die deutsche Staatsangehörigkeit wird nicht nach Absatz 1 erworben bei Geburt im Ausland, wenn der deutsche Elternteil nach dem 31. Dezember 1999 im Ausland geboren wurde und dort seinen gewöhnlichen Aufenthalt hat, es sei denn, das Kind würde sonst staatenlos. Die Rechtsfolge nach Satz 1 tritt nicht ein, wenn innerhalb eines Jahres nach der Geburt des Kindes ein Antrag nach § 36 des Personenstandsgesetzes auf Beurkundung der Geburt im Geburtenregister gestellt wird; zur Fristwahrung genügt es auch, wenn der Antrag in dieser Frist bei der zuständigen Auslandsvertretung eingeht. Sind beide Elternteile deutsche Staatsangehörige, so tritt die Rechtsfolge des Satzes 1 nur ein, wenn beide die dort genannten Voraussetzungen erfüllen.</p>	<p>concerning the procedure for recording the acquisition of citizenship pursuant to sentence 1 by way of ordinance.</p> <p>(4) German citizenship shall not be acquired pursuant to sub-section 1 in case of birth abroad if the German parent was born abroad after 31 December 1999 and is ordinarily resident abroad, unless the child would otherwise become stateless. The legal consequence pursuant to sentence 1 shall not ensue if within a year after the child's birth an application for certification of the birth pursuant to Section 36 of the Civil Status Act is filed; to observe this deadline it shall be sufficient if the application is received within the above deadline by the competent diplomatic mission. Where both parents are German nationals, the legal consequences pursuant to sentence 1 shall ensue only if they both fulfill the conditions stipulated therein.</p>
<p>§ 5 StAG</p>	<p>Auskunftsrecht für vor dem 1. Juli 1993 geborene Kinder</p> <p>Durch die Erklärung, deutscher Staatsangehöriger werden zu wollen, erwirbt das vor dem 1. Juli 1993 geborene Kind eines deutschen Vaters und einer ausländischen Mutter die deutsche Staatsangehörigkeit, wenn</p> <ol style="list-style-type: none"> 1. eine nach den deutschen Gesetzen wirksame Anerkennung oder Feststellung der Vaterschaft erfolgt ist, 2. das Kind seit drei Jahren rechtmäßig 	<p>Right of declaration for children born before 1 July 1993</p> <p>By declaring a wish to become a German national, a child born before 1 July 1993 of a German father and a foreign mother shall acquire German citizenship if paternity has been recognised or determined with legal effect under German law, the child has been legally ordinarily resident in the federal territory for three years and</p>

	<p>seinen gewöhnlichen Aufenthalt im Bundesgebiet hat und</p> <p>3. die Erklärung vor der Vollendung des 23. Lebensjahres abgegeben wird.</p>	<p>the declaration is submitted prior to the child's 23rd birthday.</p>
§ 8 StAG	<p>Diskretionäre Einbürgerung</p> <p>(1) Ein Ausländer, der rechtmäßig seinen gewöhnlichen Aufenthalt im Inland hat, kann auf seinen Antrag eingebürgert werden, wenn er</p> <ol style="list-style-type: none"> 1. handlungsfähig nach § 37 Absatz 1 Satz 1 oder gesetzlich vertreten ist, 2. weder wegen einer rechtswidrigen Tat zu einer Strafe verurteilt noch gegen ihn auf Grund seiner Schuldunfähigkeit eine Maßregel der Besserung und Sicherung angeordnet worden ist, 3. eine eigene Wohnung oder ein Unterkommen gefunden hat und 4. sich und seine Angehörigen zu ernähren imstande ist. <p>(2) Von den Voraussetzungen des Absatzes 1 Satz 1 Nr. 2 und 4 kann aus Gründen des öffentlichen Interesses oder zur Vermeidung einer besonderen Härte abgesehen werden.</p>	<p>Discretionary naturalisation</p> <p>(1) A foreigner who is legally ordinarily resident in Germany may be naturalized upon application provided that he or she possesses legal capacity pursuant to Section 80, sub-section 1 of the Residence Act or has a legal representative, has not been sentenced for an unlawful act and is not subject to any court order imposing a measure of reform and prevention due to a lack of criminal capacity, has found a dwelling of his or her own or accommodation and is able to support himself or herself and his or her dependents.</p> <p>(2) The requirements stipulated in sub-section 1, sentence 1, nos. 2 and 4 may be waived on grounds of public interest or in order to avoid special hardship.</p>
§ 9 StAG	<p>Einbürgerung von Ehepartnern oder Lebenspartnern von Deutschen</p> <p>(1) Ehegatten oder Lebenspartner Deutscher sollen unter den Voraussetzungen des § 8 eingebürgert werden, wenn</p> <ol style="list-style-type: none"> 1. sie ihre bisherige Staatsangehörigkeit verlieren oder aufgeben oder ein Grund für die Hinnahme von Mehrstaatigkeit nach Maßgabe von § 12 vorliegt und 2. gewährleistet ist, dass sie sich in die deutschen Lebensverhältnisse einordnen, es sei denn, dass sie nicht über ausreichende Kenntnisse der deutschen Sprache verfügen (§ 10 Abs. 1 Satz 1 Nr. 	<p>Naturalisation of spouses or life partners of Germans</p> <p>(1) Spouses or life partners of Germans should be naturalized in keeping with the requirements set out in Section 8, if they lose or give up their previous citizenship or a ground exists for accepting multiple nationality pursuant to Section 12 and it is ensured that they will conform to the German way of life, unless they do not have sufficient command of the German language (Section 10 sub-section 1, sentence 1, no. 6 and sub-section 4) and do not fulfill any</p>

	<p>6 und Abs. 4) und keinen Ausnahmegrund nach § 10 Abs. 6 erfüllen.</p> <p>(2) Die Regelung des Absatzes 1 gilt auch, wenn die Einbürgerung bis zum Ablauf eines Jahres nach dem Tod des deutschen Ehegatten oder nach Rechtskraft des die Ehe auflösenden Urteils beantragt wird und dem Antragsteller die Sorge für die Person eines Kindes aus der Ehe zusteht, das bereits die deutsche Staatsangehörigkeit besitzt.</p> <p>(3) (weggefallen)</p>	<p>condition that would justify an exception under Section 10, sub-section 6.</p> <p>(2) The provision pursuant to sub-section 1 shall also apply if naturalisation is applied for within one year of the German spouse's death or of a ruling dissolving the marriage becoming final and the applicant is entitled to custody of a child issuing from the marriage who already possesses German citizenship.</p> <p>(3) (repealed)</p>
<p>§ 10 StAG</p>	<p>Anspruch auf Einbürgerung; Derivative Einbürgerung von Ehegatten und minderjährigen Kindern</p> <p>(1) Ein Ausländer, der seit acht Jahren rechtmäßig seinen gewöhnlichen Aufenthalt im Inland hat und handlungsfähig nach § 37 Absatz 1 Satz 1 oder gesetzlich vertreten ist, ist auf Antrag einzubürgern, wenn er</p> <p>1. sich zur freiheitlichen demokratischen Grundordnung des Grundgesetzes für die Bundesrepublik Deutschland bekennt und erklärt, dass er keine Bestrebungen verfolgt oder unterstützt oder verfolgt oder unterstützt hat, die</p> <p>a) gegen die freiheitliche demokratische Grundordnung, den Bestand oder die Sicherheit des Bundes oder eines Landes gerichtet sind oder</p> <p>b) eine ungesetzliche Beeinträchtigung der Amtsführung der Verfassungsorgane des Bundes oder eines Landes oder ihrer Mitglieder zum Ziele haben oder</p> <p>c) durch Anwendung von Gewalt oder darauf gerichtete Vorbereitungshandlungen auswärtige Belange der Bundesrepublik Deutschland</p>	<p>Entitlement to naturalisation; derivative naturalisation of spouses and minor children</p> <p>(1) A foreigner who has been legally ordinarily resident in Germany for eight years and possesses legal capacity pursuant to Section 80 of the Residence Act or has a legal representative shall be naturalized upon application if he or she confirms his or her commitment to the free democratic constitutional system enshrined in the Basic Law of the Federal Republic of Germany and declares that he or she does not pursue or support and has never pursued or supported any activities</p> <p>a) aimed at subverting the free democratic constitutional system, the existence or security of the Federation or a Land or</p> <p>b) aimed at illegally impeding the constitutional bodies of the Federation or a Land or the members of said bodies in discharging their duties or</p> <p>c) any activities which jeopardize foreign interests of the Federal Republic of Germany through the use of violence or</p>

<p>gefährden, oder glaubhaft macht, dass er sich von der früheren Verfolgung oder Unterstützung derartiger Bestrebungen abgewandt hat, 2. ein unbefristetes Aufenthaltsrecht oder als Staatsangehöriger der Schweiz oder dessen Familienangehöriger eine Aufenthaltserlaubnis auf Grund des Abkommens vom 21. Juni 1999 zwischen der Europäischen Gemeinschaft und ihren Mitgliedstaaten einerseits und der Schweizerischen Eidgenossenschaft andererseits über die Freizügigkeit, eine Blaue Karte EU oder eine Aufenthaltserlaubnis für andere als die in den §§ 16, 17, 17a, 20, 22, 23 Absatz 1, §§ 23a, 24 und 25 Abs. 3 bis 5 des Aufenthaltsgesetzes aufgeführten Aufenthaltzwecke besitzt, 3. den Lebensunterhalt für sich und seine unterhaltsberechtigten Familienangehörigen ohne Inanspruchnahme von Leistungen nach dem Zweiten oder Zwölften Buch Sozialgesetzbuch bestreiten kann oder deren Inanspruchnahme nicht zu vertreten hat, 4. seine bisherige Staatsangehörigkeit aufgibt oder verliert, 5. weder wegen einer rechtswidrigen Tat zu einer Strafe verurteilt noch gegen ihn auf Grund seiner Schuldunfähigkeit eine Maßregel der Besserung und Sicherung angeordnet worden ist, 6. über ausreichende Kenntnisse der deutschen Sprache verfügt und 7. über Kenntnisse der Rechts- und Gesellschaftsordnung und der Lebensverhältnisse in Deutschland verfügt.</p>	<p>preparatory actions for the use of violence, or credibly asserts that he or she has distanced himself or herself from the former pursuit or support of such activities, has been granted a permanent right of residence or as a national of Switzerland or as a family member of a national of Switzerland possesses a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member States on the one hand and the Swiss Confederation on the other hand on the free movement of persons or possesses an EU Blue Card or a residence permit for purposes other than those specified in Sections 16, 17, 20, 22, 23, sub-section 1, Section 23a, 24 and Section 25, sub-sections 3 to 5 of the Residence Act. is able to ensure his or her own subsistence and the subsistence of his or her dependents without recourse to benefits in accordance with Book Two or Book Twelve of the Social Code or recourse to such benefits is due to conditions beyond his or her control, gives up or loses his or her previous citizenship, has not been sentenced for an unlawful act and is not subject to any court order imposing a measure of reform and prevention due to a lack of criminal capacity, possesses an adequate knowledge of German and possesses knowledge of the legal system, society and living conditions in Germany. The conditions under sentence 1, numbers 1 and 7 do not apply to</p>
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<p>Die Voraussetzungen nach Satz 1 Nr. 1 und 7 müssen Ausländer nicht erfüllen, die nicht handlungsfähig nach § 37 Absatz 1 Satz 1 sind.</p> <p>(2) Der Ehegatte und die minderjährigen Kinder des Ausländers können nach Maßgabe des Absatzes 1 mit eingebürgert werden, auch wenn sie sich noch nicht seit acht Jahren rechtmäßig im Inland aufhalten.</p> <p>(3) Weist ein Ausländer durch die Bescheinigung des Bundesamtes für Migration und Flüchtlinge die erfolgreiche Teilnahme an einem Integrationskurs nach, wird die Frist nach Absatz 1 auf sieben Jahre verkürzt. Bei Vorliegen besonderer Integrationsleistungen, insbesondere beim Nachweis von Sprachkenntnissen, die die Voraussetzungen des Absatzes 1 Satz 1 Nr. 6 übersteigen, kann sie auf sechs Jahre verkürzt werden.</p> <p>(4) Die Voraussetzungen des Absatzes 1 Satz 1 Nr. 6 liegen vor, wenn der Ausländer die Anforderungen der Sprachprüfung zum Zertifikat Deutsch (B1 des Gemeinsamen Europäischen Referenzrahmens für Sprachen) in mündlicher und schriftlicher Form erfüllt. Bei einem minderjährigen Kind, das im Zeitpunkt der Einbürgerung das 16. Lebensjahr noch nicht vollendet hat, sind die Voraussetzungen des Absatzes 1 Satz 1 Nr. 6 bei einer altersgemäßen Sprachentwicklung erfüllt.</p> <p>(5) Die Voraussetzungen des Absatzes 1 Satz 1 Nr. 7 sind in der Regel durch einen erfolgreichen Einbürgerungstest nachgewiesen. Zur Vorbereitung darauf werden Einbürgerungskurse angeboten; die Teilnahme daran ist nicht</p>	<p>foreigners who do not have legal capacity pursuant to Section 80, sub-section 1 of the Residence Act.</p> <p>(2) The foreigner's spouse and minor children may be naturalized together with the foreigner in accordance with sub-section (1), irrespective of whether they have been lawfully resident in Germany for eight years.</p> <p>(3) Upon a foreigner confirming successful attendance of an integration course by presenting a certificate issued by the Federal Office for Migration and Refugees (BMAF), the qualifying period stipulated in sub-section 1 shall be reduced to seven years. This qualifying period may be reduced to six years if the foreigner has made outstanding efforts at integration exceeding the requirements under sub-section 1, sentence 1, no. 6, especially if he or she can demonstrate his or her command of the German language.</p> <p>(4) The conditions specified in sub-section 1, sentence 1, no. 6 are fulfilled if the foreigner passes the oral and written language examinations leading to the Zertifikat Deutsch (equivalent of level B 1 in the Common European Framework of Reference for Languages). Where a minor child is under 16 years of age at the time of naturalisation the conditions of sub-section 1, sentence 1, no. 6 shall be fulfilled if the child demonstrates age-appropriate language skills.</p> <p>(5) As a rule, the conditions specified in sub-section 1, sentence 1, no. 7 shall be fulfilled if the foreigner has passed the naturalisation test. To prepare for the test, foreigners may participate in</p>
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	<p>verpflichtend.</p> <p>(6) Von den Voraussetzungen des Absatzes 1 Satz 1 Nr. 6 und 7 wird abgesehen, wenn der Ausländer sie wegen einer körperlichen, geistigen oder seelischen Krankheit oder Behinderung oder altersbedingt nicht erfüllen kann.</p> <p>(7) Das Bundesministerium des Innern wird ermächtigt, die Prüfungs- und Nachweismodalitäten des Einbürgerungstests sowie die Grundstruktur und die Lerninhalte des Einbürgerungskurses nach Absatz 5 auf der Basis der Themen des Orientierungskurses nach § 43 Abs. 3 Satz 1 des Aufenthaltsgesetzes durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, zu regeln.</p>	<p>voluntary integration courses.</p> <p>(6) The requirements of sub-section 1, sentence 1, nos. 6 and 7 shall be waived if the foreigner is unable to fulfill them on account of a physical, mental or psychological illness or disability or on account of his or her age.</p> <p>(7) The Federal Ministry of the Interior shall be authorized, without the need for approval by the Bundesrat, to issue ordinances defining the test and certification requirements as well as the basic structure and contents of the naturalisation courses under sub-section 5, based on the contents of the orientation course under Section 43, sub-section 3, sentence 1 of the Residence Act.</p>
§ 11 StAG	<p>Ausschlussgründe</p> <p>Die Einbürgerung ist ausgeschlossen, wenn</p> <p>1. tatsächliche Anhaltspunkte die Annahme rechtfertigen, dass der Ausländer Bestrebungen verfolgt oder unterstützt oder verfolgt oder unterstützt hat, die gegen die freiheitliche demokratische Grundordnung, den Bestand oder die Sicherheit des Bundes oder eines Landes gerichtet sind oder eine ungesetzliche Beeinträchtigung der Amtsführung der Verfassungsorgane des Bundes oder eines Landes oder ihrer Mitglieder zum Ziele haben oder die durch die Anwendung von Gewalt oder darauf gerichtete Vorbereitungshandlungen auswärtige Belange der Bundesrepublik Deutschland gefährden, es sei denn, der Ausländer macht glaubhaft, dass er sich von der früheren Verfolgung oder Unterstützung</p>	<p>Grounds for exclusion</p> <p>Naturalisation shall not be allowed if there are concrete, justifiable grounds to assume that the foreigner is pursuing or supporting or has pursued or supported activities aimed at subverting the free democratic constitutional system, the existence or security of the Federation or a Land or at illegally impeding the constitutional bodies of the Federation or a Land or the members of said bodies in discharging their duties or any activities which jeopardize foreign interests of the Federal Republic of Germany through the use of violence or preparatory actions for the use of violence, unless he or she credibly asserts that he or she has distanced himself or herself from the former pursuit or support of such activities, or if a ground for expulsion applies pursuant to Section 54, nos. 5 and 5a of the</p>

	<p>derartiger Bestrebungen abgewandt hat, oder</p> <p>2. nach § 54 Absatz 1 Nummer 2 oder 4 des Aufenthaltsgesetzes ein besonders schwerwiegendes Ausweisungsinteresse vorliegt.</p> <p>Satz 1 Nr. 2 gilt entsprechend für Ausländer im Sinne des § 1 Abs. 2 des Aufenthaltsgesetzes und auch für Staatsangehörige der Schweiz und deren Familienangehörige, die eine Aufenthaltserlaubnis auf Grund des Abkommens vom 21. Juni 1999 zwischen der Europäischen Gemeinschaft und ihren Mitgliedstaaten einerseits und der Schweizerischen Eidgenossenschaft andererseits über die Freizügigkeit besitzen</p>	<p>Residence Act.</p> <p>Sentence 1, no. 2 shall apply mutatis mutandis for foreigners within the meaning of Section 1, sub-section 2 of the Residence Act and also for nationals of Switzerland and their family members possessing a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member States on the one hand and the Swiss Confederation on the other hand on the free movement of persons.</p>
<p>§ 12 StAG</p>	<p>Einbürgerung mit Mehrfachstaatsangehörigkeit</p> <p>(1) Von der Voraussetzung des § 10 Abs. 1 Satz 1 Nr. 4 wird abgesehen, wenn der Ausländer seine bisherige Staatsangehörigkeit nicht oder nur unter besonders schwierigen Bedingungen aufgeben kann. Das ist anzunehmen, wenn</p> <ol style="list-style-type: none"> 1. das Recht des ausländischen Staates das Ausscheiden aus dessen Staatsangehörigkeit nicht vorsieht, 2. der ausländische Staat die Entlassung regelmäßig verweigert, 3. der ausländische Staat die Entlassung aus der Staatsangehörigkeit aus Gründen versagt hat, die der Ausländer nicht zu vertreten hat, oder von unzumutbaren Bedingungen abhängig macht oder über den vollständigen und formgerechten Entlassungsantrag nicht in angemessener Zeit entschieden hat, 4. der Einbürgerung älterer Personen 	<p>Naturalisation accepting multiple nationality</p> <p>(1) The condition stipulated in Section 10, sub-section 1, sentence 1, no. 4 shall be waived if the foreigner is unable to give up his or her previous citizenship, or if doing so would entail particularly difficult conditions. This is to be assumed if</p> <p>the law of the foreign state makes no provision for giving up its citizenship, the foreign state regularly refuses to grant release from citizenship, the foreign state has refused to grant release from citizenship for reasons for which the foreigner is not responsible, or attaches unreasonable conditions to release from citizenship or has failed to reach a decision within a reasonable time on the application for release from citizenship which has been submitted in due and complete form, the subsequent multiple nationality</p>

	<p>ausschließlich das Hindernis eintretender Mehrstaatigkeit entgegensteht, die Entlassung auf unverhältnismäßige Schwierigkeiten stößt und die Versagung der Einbürgerung eine besondere Härte darstellen würde,</p> <p>5. dem Ausländer bei Aufgabe der ausländischen Staatsangehörigkeit erhebliche Nachteile insbesondere wirtschaftlicher oder vermögensrechtlicher Art entstehen würden, die über den Verlust der staatsbürgerlichen Rechte hinausgehen, oder</p> <p>6. der Ausländer einen Reiseausweis nach Artikel 28 des Abkommens vom 28. Juli 1951 über die Rechtsstellung der Flüchtlinge (BGBl. 1953 II S. 559) besitzt.</p> <p>(2) Von der Voraussetzung des § 10 Abs. 1 Satz 1 Nr. 4 wird ferner abgesehen, wenn der Ausländer die Staatsangehörigkeit eines anderen Mitgliedstaates der Europäischen Union oder der Schweiz besitzt.</p> <p>(3) Weitere Ausnahmen von der Voraussetzung des § 10 Abs. 1 Satz 1 Nr. 4 können nach Maßgabe völkerrechtlicher Verträge vorgesehen werden.</p>	<p>represents the sole obstacle to the naturalisation of older persons, the process for release from citizenship entails unreasonable difficulties and failure to grant naturalisation would constitute special hardship,</p> <p>in giving up his or her foreign citizenship the foreigner would incur substantial disadvantages beyond the loss of his or her civic rights, in particular such disadvantages of an economic or property-related nature, or</p> <p>the foreigner holds a travel document in accordance with Article 28 of the Convention relating to the Status of Refugees of 28 July 1951 (Federal Law Gazette 1953 II, p. 559).</p> <p>(2) The condition stipulated in Section 10, sub-section 1, sentence 1, no. 4 shall further be waived if the foreigner holds the citizenship of another member state of the European Union or Switzerland.</p> <p>(3) Further exemptions from the condition stipulated in Section 10, sub-section 1, sentence 1, no. 4 may be granted pursuant to the provisions of agreements under international law.</p>
§ 14 StAG	<p>Allgemeine Einbürgerung im Ausland</p> <p>Ein Ausländer, der seinen gewöhnlichen Aufenthalt im Ausland hat, kann unter den sonstigen Voraussetzungen der §§ 8 und 9 eingebürgert werden, wenn Bindungen an Deutschland bestehen, die eine Einbürgerung rechtfertigen.</p>	<p>General discretionary naturalisation abroad</p> <p>A foreigner who is ordinarily resident abroad may be naturalized subject to the other conditions of Sections 8 and 9 if ties with Germany exist which justify naturalisation.</p>
§ 16 StAG	<p>Einbürgerungsurkunde</p> <p>Die Einbürgerung wird wirksam mit der Aushändigung der von der zuständigen Verwaltungsbehörde ausgefertigten</p>	<p>Certificate of naturalisation</p> <p>Naturalisation shall become effective upon delivery of the certificate of naturalisation issued by the competent</p>

	<p>Einbürgerungsurkunde. Vor der Aushändigung ist folgendes feierliches Bekenntnis abzugeben: "Ich erkläre feierlich, dass ich das Grundgesetz und die Gesetze der Bundesrepublik Deutschland achten und alles unterlassen werde, was ihr schaden könnte."; § 10 Abs. 1 Satz 2 gilt entsprechend.</p>	<p>administrative authority. Before the certificate is handed over to the foreigner he or she shall make the following solemn statement: "I solemnly declare that I will respect and observe the Basic Law and the laws of the Federal Republic of Germany, and that I will refrain from any activity which might cause it harm." Section 10, sub-section 1, sentence 2 shall apply mutatis mutandis.</p>
<p>§ 29 StAG</p>	<p>Erklärung (1) Optionspflichtig ist, wer 1. die deutsche Staatsangehörigkeit nach § 4 Absatz 3 oder § 40b erworben hat, 2. nicht nach Absatz 1a im Inland aufgewachsen ist, 3. eine andere ausländische Staatsangehörigkeit als die eines anderen Mitgliedstaates der Europäischen Union oder der Schweiz besitzt und 4. innerhalb eines Jahres nach Vollendung seines 21. Lebensjahres einen Hinweis nach Absatz 5 Satz 5 über seine Erklärungspflicht erhalten hat. Der Optionspflichtige hat nach Vollendung des 21. Lebensjahres zu erklären, ob er die deutsche oder die ausländische Staatsangehörigkeit behalten will. Die Erklärung bedarf der Schriftform. (1a) Ein Deutscher nach Absatz 1 ist im Inland aufgewachsen, wenn er bis zur Vollendung seines 21. Lebensjahres 1. sich acht Jahre gewöhnlich im Inland aufgehalten hat, 2. sechs Jahre im Inland eine Schule besucht hat oder 3. über einen im Inland erworbenen Schulabschluss oder eine im Inland abgeschlossene Berufsausbildung verfügt. Als im Inland aufgewachsen nach Satz 1</p>	<p>Declaration (1) The following persons are required to declare whether they wish to retain their German or foreign citizenship: persons who have acquired German citizenship pursuant to Section 4 (3) or Section 40b, persons who did not grow up in Germany in accordance with subsection 1 a, persons having a foreign citizenship other than citizenship of a European Union Member State or Switzerland, and persons who within a year of their 21st birthday have been notified of the requirement to declare pursuant to subsection 5, fifth sentence. Persons required to declare must declare after their 21st birthday whether they wish to retain their German or their foreign citizenship. The declaration shall be submitted in writing. (1 a) A German as defined in subsection 1 shall be regarded as having grown up in Germany if, by his or her 21st birthday, he or she has normally resided in Germany for eight years, has attended school in Germany for six years, or has completed school or occupational</p>

<p>gilt auch, wer im Einzelfall einen vergleichbar engen Bezug zu Deutschland hat und für den die Optionspflicht nach den Umständen des Falles eine besondere Härte bedeuten würde.</p> <p>(2) Erklärt der Deutsche nach Absatz 1, dass er die ausländische Staatsangehörigkeit behalten will, so geht die deutsche Staatsangehörigkeit mit dem Zugang der Erklärung bei der zuständigen Behörde verloren.</p> <p>(3) Will der Deutsche nach Absatz 1 die deutsche Staatsangehörigkeit behalten, so ist er verpflichtet, die Aufgabe oder den Verlust der ausländischen Staatsangehörigkeit nachzuweisen. Tritt dieser Verlust nicht bis zwei Jahre nach Zustellung des Hinweises auf die Erklärungspflicht nach Absatz 5 ein, so geht die deutsche Staatsangehörigkeit verloren, es sei denn, dass dem Deutschen nach Absatz 1 vorher die schriftliche Genehmigung der zuständigen Behörde zur Beibehaltung der deutschen Staatsangehörigkeit (Beibehaltungsgenehmigung) erteilt wurde. Ein Antrag auf Erteilung der Beibehaltungsgenehmigung kann, auch vorsorglich, nur bis ein Jahr nach Zustellung des Hinweises auf die Erklärungspflicht nach Absatz 5 gestellt werden (Ausschlussfrist). Der Verlust der deutschen Staatsangehörigkeit tritt erst ein, wenn der Antrag bestandskräftig abgelehnt wird. Einstweiliger Rechtsschutz nach § 123 der Verwaltungsgerichtsordnung bleibt unberührt.</p> <p>(4) Die Beibehaltungsgenehmigung nach Absatz 3 ist zu erteilen, wenn die</p>	<p>training in Germany.</p> <p>Persons having a similarly close relation to Germany in the individual case and for whom having to declare would represent a special hardship under the circumstances of the case shall also be regarded as having grown up in Germany as defined in the first sentence.</p> <p>(2) If the German required to declare pursuant to subsection 1 declares a wish to retain the foreign citizenship, German citizenship shall be lost when the competent authority receives the declaration.</p> <p>(3) If the German pursuant to subsection 1 declares a wish to retain German citizenship, he or she shall be obliged to furnish proof that he or she has given up or lost the foreign citizenship. If the loss of the foreign citizenship does not go into effect within two years of notification of the requirement to declare pursuant to subsection 5, German citizenship shall be lost, unless pursuant to subsection 1 the German received prior written approval from the competent authority to retain German citizenship (retention approval). The application for retention approval, including as a precautionary measure, may only be filed within one year of notification of the requirement to declare pursuant to subsection 5. The loss of German citizenship shall not take effect until the rejection of the application becomes legally valid. The possibility of provisional legal redress pursuant to Section 123 of the Code of Administrative Procedure shall remain unaffected.</p> <p>(4) The retention approval pursuant to</p>
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<p>Aufgabe oder der Verlust der ausländischen Staatsangehörigkeit nicht möglich oder nicht zumutbar ist oder bei einer Einbürgerung nach Maßgabe von § 12 Mehrstaatigkeit hinzunehmen wäre.</p> <p>(5) Auf Antrag eines Deutschen, der die Staatsangehörigkeit nach § 4 Absatz 3 oder § 40b erworben hat, stellt die zuständige Behörde bei Vorliegen der Voraussetzungen den Fortbestand der deutschen Staatsangehörigkeit nach Absatz 6 fest. Ist eine solche Feststellung nicht bis zur Vollendung seines 21. Lebensjahres erfolgt, prüft die zuständige Behörde anhand der Meldedaten, ob die Voraussetzungen nach Absatz 1a Satz 1 Nummer 1 vorliegen. Ist dies danach nicht feststellbar, weist sie den Betroffenen auf die Möglichkeit hin, die Erfüllung der Voraussetzungen des Absatzes 1a nachzuweisen. Wird ein solcher Nachweis erbracht, stellt die zuständige Behörde den Fortbestand der deutschen Staatsangehörigkeit nach Absatz 6 fest. Liegt kein Nachweis vor, hat sie den Betroffenen auf seine Verpflichtungen und die nach den Absätzen 2 bis 4 möglichen Rechtsfolgen hinzuweisen. Der Hinweis ist zuzustellen. Die Vorschriften des Verwaltungszustellungsgesetzes finden Anwendung.</p> <p>(6) Der Fortbestand oder Verlust der deutschen Staatsangehörigkeit nach dieser Vorschrift wird von Amts wegen festgestellt. Das Bundesministerium des Innern kann durch Rechtsverordnung mit Zustimmung des Bundesrates Vorschriften über das Verfahren zur Feststellung des Fortbestands oder Verlusts der deutschen</p>	<p>subsection 3 shall be granted where renunciation or loss of the foreign citizenship is not possible or cannot reasonably be expected or where acceptance of multiple citizenship would be required in case of naturalisation in accordance with Section 12.</p> <p>(5) At the request of a German who acquired German citizenship pursuant to Section 4 (3) or Section 40b, the competent authority shall establish the continuation of German citizenship in accordance with subsection 6 if the necessary conditions are met. If the continuation of German citizenship has not been established by the German's 21st birthday, the competent authority shall use the registration data to determine whether the conditions of subsection 1 a, first sentence, no. 1 are met. If this is not possible to determine, the authority shall inform the person in question of the possibility to provide evidence that the conditions of subsection 1 a have been met. If such evidence is provided, the competent authority shall establish the continuation of German citizenship in accordance with subsection 6. If no evidence is provided, the competent authority shall notify the person in question of his or her obligations and the possible legal consequences as set out in subsections 2 to 4. This notification shall be formally served. The provisions of the Act on Service in Administrative Procedure shall apply.</p> <p>(6) The continuation or loss of German citizenship in accordance with this provision shall be determined ex officio. The Federal Ministry of the Interior may,</p>
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	Staatsangehörigkeit erlassen.	by ordinance with the consent of the Bundesrat, issue provisions regulating the procedure to determine the continuation or loss of German citizenship.
§ 38 StAG	<p>Gebühren</p> <p>(1) Für Amtshandlungen in Staatsangehörigkeitsangelegenheiten werden, soweit gesetzlich nichts anderes bestimmt ist, Kosten (Gebühren und Auslagen) erhoben.</p> <p>(2) Die Gebühr für die Einbürgerung nach diesem Gesetz beträgt 255 Euro. Sie ermäßigt sich für ein minderjähriges Kind, das miteingebürgert wird und keine eigenen Einkünfte im Sinne des Einkommensteuergesetzes hat, auf 51 Euro. Der Erwerb der deutschen Staatsangehörigkeit nach § 5 und die Einbürgerung von ehemaligen Deutschen, die durch Eheschließung mit einem Ausländer die deutsche Staatsangehörigkeit verloren haben, ist gebührenfrei. Die Feststellung des Bestehens oder Nichtbestehens der deutschen Staatsangehörigkeit nach § 29 Abs. 6 und nach § 30 Abs. 1 Satz 3 sowie die Erteilung der Beibehaltungsgenehmigung nach § 29 Abs. 4 sind gebührenfrei. Von der Gebühr nach Satz 1 kann aus Gründen der Billigkeit oder des öffentlichen Interesses Gebührenermäßigung oder -befreiung gewährt werden.</p> <p>(3) Das Bundesministerium des Innern wird ermächtigt, durch Rechtsverordnung mit Zustimmung des Bundesrates die weiteren gebührenpflichtigen Tatbestände zu bestimmen und die Gebührensätze sowie die Auslagenerstattung zu regeln. Die Gebühr darf für die Entlassung 51 Euro,</p>	<p>Fees</p> <p>(1) In the absence of any statutory provision to the contrary, official acts in citizenship matters shall be subject to costs (fees and expenses).</p> <p>(2) The fee for naturalisation under this Act shall be 255 Euros. This fee shall be reduced to 51 Euros for a minor child which is naturalized at the same time and which has no independent income within the meaning of the Income Tax Act. No fee shall be payable for the acquisition of German citizenship pursuant to Section 5 and the naturalisation of former Germans who have lost their German citizenship as a result of marrying a foreigner. Establishment of the possession or non-possession of the German citizenship under Section 29, sub-section 6 and Section 30, sub-section 1, sentence 3, as well as issuance of a retention approval under Section 29, sub-section 4 are free of charge. The fee stipulated in sentence 1 may be reduced or renounced on grounds of equity or public interest.</p> <p>(3) The Federal Minister of the Interior shall be empowered to determine the additional circumstances in which fees shall be payable and to make provision in respect of the levels of fees and the reimbursement of expenses via statutory order with the approval of the Bundesrat. The fee shall not exceed 51 Euros for release from citizenship, 255 Euros for retention approval and 51 Euros for the certificate of citizenship and other forms of certification.</p>

	für die Beibehaltungsgenehmigung 255 Euro, für die Staatsangehörigkeitsurkunde und für sonstige Bescheinigungen 51 Euro nicht übersteigen.	
§ 40b StAG	Übergangsregelung für Kinder bis zehn Jahre Ein Ausländer, der am 1. Januar 2000 rechtmäßig seinen gewöhnlichen Aufenthalt im Inland und das zehnte Lebensjahr noch nicht vollendet hat, ist auf Antrag einzubürgern, wenn bei seiner Geburt die Voraussetzungen des § 4 Abs. 3 Satz 1 vorgelegen haben und weiter vorliegen. Der Antrag kann bis zum 31. Dezember 2000 gestellt werden.	Transitional provision for children up to the age of ten A foreigner who is legally ordinarily resident in Germany on 1 January 2000 and is under ten years of age shall be naturalized upon application if the conditions pursuant to Section 4, subsection 3, sentence 1 were met at the time of his or her birth and continue to be met. The application can be filed up to 31 December 2000.

Bibliography

Case Law

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- Chahal v the United Kingdom [1996], ECtHR Application No. 22414/93
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Introduction

Due to its geographical position Greece has always been witnessing the movement of populations through its territory. However, the last couple of decades there has been noticed an increase in the populations that do not only cross through Greece but also chose or are forced to reside in Greece. The phenomenon has become even more intense during recent years due to the escalating crisis in the neighboring area of Middle East that triggered an increase of the refugee flows towards Europe.

As a member of the Council of Europe, Greece has the obligation to protect the fundamental rights enshrined in the European Convention of Human Rights (ECHR) while as a member of the European Union (hereinafter EU) the State constantly adapts its legislation in order to comply with provisions adopted at EU level. A great amount of EU provisions focus on the movement of people and create different possibilities for EU nationals (who hold the citizenship of the Union as well) and non EU nationals who enjoy fewer privileges.

While an important part of the reform of the Greek legal order concerning refugees and migrants can be attributed to the legislative process taking place at an EU level it is important to observe the pace of change in Greece and the level of the progress made. Besides, the great population influx that the country is facing and the special characteristics of its legal system and its society are the elements that created a unique environment for dealing with the rights of refugees and migrants.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

Greece is a party to the Geneva Convention of 1951, The Geneva Convention constitutes the cornerstone and the most fundamental tool not only for giving a concrete definition of the term “refugee”, but also for stipulating some basic principles which guide national legislations in respect of the status of international protection. However, it refrained from setting out or describing a concrete procedure¹⁷⁸⁰ related to the grant of asylum, leaving the national legislators free to formulate their national policies in this matter.¹⁷⁸¹

¹⁷⁸⁰ Although the ECHR does not recognize directly the right to asylum, Art. 3 can constitute a legitimate basis for the protection of individuals who claim that they may face the danger stipulated in this Art. (*Saadi v. Italy* 37201/06 [2008] European Court of Human Right (ECtHR) Reports of Judgments and Decisions [2008]).

¹⁷⁸¹ Z. Papasiopi-Pasia, *Βασικοί Νόμοι Διχαλόν Καταστάσεως Αλλοδαπών*, Sakkoulas Publications, 2002, 165[Greek]; A. Bredimas, *Η Αρχή του Non-refoulement: Θεωρητικές όψεις και ελληνική πρακτική*, 1990, Νομικό Βήμα, 563 [Greek].

The national regulations governing asylum in the Greek territory had presented various deficits¹⁷⁸² in the past and multiple changes were observed over the recent years. In 2010, the presidential Decree 114/2010¹⁷⁸³ was adopted, aiming to adapt the national legislation to the requirements set by the European Directive EC/2005/85. In 2011, the Law n. 3907/2011¹⁷⁸⁴ established the Asylum Service as a separate unity in the system of the Greek Public Administration for the first time, taking the place of the Greek Police Authorities, which had the presumption of responsibility regarding the asylum application until then. In 2016, after the massive immigration flows, the Greek Government decided to respond decisively to the arrival of a great number of persons seeking international protection. Law n. 4375/2016,¹⁷⁸⁵ which currently governs the asylum procedure in Greece, is the product of this effort for the renewal of the legal framework.¹⁷⁸⁶

1.1. Submission of the application

The right to apply for international protection is recognized to every person not having Greek citizenship. The application for asylum is submitted to the Asylum Service, a special semi-autonomous¹⁷⁸⁷ Directorate, which consists of the Central Service, and the Regional Services, whereas the new legislation establishes some mobile units also responsible for asylum applications. The application should include some basic elements for the identification of the applicant, and the reasons why (s)he seeks protection, according to the criteria of the Geneva Convention of 1951. In addition, applicants have to submit all the evidence¹⁷⁸⁸ that is useful for proof of their claims.¹⁷⁸⁹ In cases of emergency, persons seeking international protection can submit the application to police officers, who have the obligation to promote it as soon as possible to the competent authorities. Once submitted the application, the applicant has the right

¹⁷⁸² Especially in the fields of the authorities responsible for the examination of asylum applications, the existence of unities for hosting the applicants and – the most important- the lack of adaptation to possible massive immigrations flows.

¹⁷⁸³ Presidential decree 114/2010 (Establishment of a uniform recognition procedure of refugee or subsidiary protection status for aliens and stateless persons (in compliance with Directive 2005/85 / EC) 2010 [Καθιέρωση ενιαίας διαδικασίας αναγνώρισης σε αλλοδαπούς και ανιθαγενείς του καθεστώτος του πρόσφυγα ή δικαιούχου επικουρικής προστασίας (σε συμμόρφωση προς την Οδηγία 2005/85/EK)]

¹⁷⁸⁴ Law n. 3907/2011 (Establishment of an Asylum Service and a First Reception Service) 2011 [Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής].

¹⁷⁸⁵ 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].

¹⁷⁸⁶ The effort of reconsideration of the asylum system put emphasis in the need to adapt to the Dublin III regulation, and respect the guarantees set by the ECHR and the Charter of Fundamental Freedoms, interpreted by the ECtHR, the ECJ and the Greek Courts.

¹⁷⁸⁷ According to the system of the Organization of the Greek Public Administration, there can be units that although they operate under the auspices of a Ministry, they have a relative administrative and fiscal autonomy.

¹⁷⁸⁸ Applicants have to submit concrete evidence founding the fear of prosecution. otherwise, rejection of their application does not have to be specifically reasoned; this view is supported in case 158/2010 [2010] Συμβούλιο της Επικρατείας (Council of State - CoS)[Greek].

¹⁷⁸⁹ R.C. v. Sweden (41827/07) [2007] ECtHR: Refugees and asylum seekers are recognized the benefit of the doubt; The Council of State has ruled that applicants should not be asked to make available to the authorities only typical evidence and that is enough to meet the standard of probability (459/2010 [2010] CoS [Greek], 2192/2008 [2008] CoS [Greek], 1628/2007 [2007] CoS [Greek]).

to stay temporarily in the territory of Greece, by receiving a card/identification of asylum seeker, which is equivalent to a temporary residency permit and valid until the end of the administrative procedure for the consideration of the application.

According to Art. 46 of Law n. 4375/2016, in principle, no alien is set under detention only on the grounds of having applied for asylum recognition (para 1). The same article includes some exceptions to this principle, according to which an applicant can be restricted to a specific unit of detention only for three particular and narrowly interpreted reasons (para 2).¹⁷⁹⁰ Persons in detention are given the right to object to this decision of detention at the President of the competent Administrative Court of First Instance (Διοικητικό Πρωτοδικείο) (para 6).

1.2. Examination of the Application

There are two basic procedures for the examination of the application by the Asylum Services: the normal and the fast-paced one. The fast-paced¹⁷⁹¹ procedure is chosen when a) the applicant comes from a safe country of origin; b) the application is obviously unacceptable; c) there are reasons to believe that the applicant has destroyed documents of his identity in order to mislead the authorities; or d) (s)he does not consent to taking fingerprints by the authorities. The authorities can give priority to applicants regarding the examination of their application when their application is obviously admissible, when these persons constitute a danger for public order¹⁷⁹², and when they are under detention in Centers of Detention and Identification (CDI).

Before the issue of any decision upon the application, a personal interview must be conducted with the applicant and the employees of the Asylum Service. The applicant has the right to be accompanied by a lawyer and take some extension in order to be fully prepared and informed further regarding the procedure. Furthermore, during the interview an interpreter is present, whose expenses are covered by the Greek State.

For accompanied minors, a special Commissioner is appointed by the Public Prosecutor of Minors. The Commissioner represents the minor, ensures that his rights are safeguarded in the context of the asylum procedure and ensures proper legal assistance and representation before the competent authorities. The unaccompanied minor is informed promptly of the significance and possible consequences of the personal interview.

When the applicant has already been granted international protection in another Member State of the EU, or when another Member State has the responsibility to consider his/her application, then the Asylum Service grants a rejection-decision, considering the application as inadmissible. On the contrary, an application is considered unfounded, when the applicant does not fulfill the requirements to be granted the status of refugee or the status of subsidiary¹⁷⁹³ international protection. Asylum seekers reserve the right to submit a subsequent application, after the

¹⁷⁹⁰ a) For the identification of the person, b) when there are grounds to believe that the application has been submitted abusively and in order to delay the deportation and c) when there is an objective risk for escape.

¹⁷⁹¹ Fast-paced procedure does not entail adverse effects regarding the consideration of the application.

¹⁷⁹² Public order cannot be defined unilaterally in each Member-State of the EU; the use of any presumption of public order without taking into consideration the personal profile of the applicant and the specific danger for each applicant violates the obligation for a personalized consideration of each application.

¹⁷⁹³ The authorities have the obligation, after deciding not to recognize an asylum seeker as refugee, to see if they can grant them the status of subsidiary international protection.

rejection of the previous one, provided that they invoke new elements that ground their application. In such a case, there is no interview,¹⁷⁹⁴ except if the authorities need some clarification on the new application. Any measures of deportation are suspended until the issue of a new decision upon request.

The presidential Decree 114/2010 has also included the possibility for Greek Authorities to authorize an asylum seeker, whose application was not considered acceptable, to remain in the Greek territory for humanitarian reasons for up to two years. From 2016, under the regulation 4375/2016 and with the aim to provide a wider protection to the asylum seekers, the Secretary General of Public Order of the Ministry of Interior is permitted to grant the status of humanitarian protection even to those whose application for asylum is still pending at second instance unless there is a risk to national security or to the country's society due to the final conviction of the applicant for serious crime inaction.¹⁷⁹⁵

1.3. Right to appeal

The applicant has the right to appeal the decision of the Asylum Service following a specific procedure that guarantees the full examination of their claims. This procedure is divided in two parts: the administrative¹⁷⁹⁶ part and the judicial part. After the delivery of the decision to the applicants, they can apply for reconsideration to the local Appeal Committee¹⁷⁹⁷ within a deadline of 15-30 days, by sending a written memorandum explaining the reasons why they believe they should be granted international protection. In principle, the procedure is written¹⁷⁹⁸ and the applicants are not entitled to stand before the Committee and present their claims. After the submission of the appeal, any measures of enforced execution can be suspended, if the applicant claims that the execution of execution of the first- instance decision is likely to cause irreparable harm.¹⁷⁹⁹

If the Committee does not accept the claims, it ratifies the decision in first instance and delivers it to the applicant. At this time, the latter can ask for the annulment of the decision of the Appeal Committee at the Administrative Court of First Instance that serves as a Court of Appeal] sitting with three judges, according to Law n. 3900/2010¹⁸⁰⁰. The applicant cannot add

¹⁷⁹⁴ See also the relevant finding of the ECJ (*C-239/14* [2015]), where it was mentioned that when the applicant submits a subsequent application without adding new claims, it would be disproportionate for the Member States to entertain a new full public procurement.

¹⁷⁹⁵ All those enjoying the status of humanitarian protection have access to labor and the same applies to the members of their family.

¹⁷⁹⁶ As interpreted by the Council of State, Member States have the discretion and not the obligation to grant the right to administrative action. The right to efficient remedy recognized by Art. 20 of the Greek Constitution, is not violated when there is only the possibility to appeal a decision before the court (CoS c. 212/2013).

¹⁷⁹⁷ The local Appeal Committees together with the Central Administrative Agency constitute the Appeal Body, a separate structure under the auspices of the Ministry of Interior.

¹⁷⁹⁸ However, there are some exceptions and the oral procedure is permitted when the case is considered extremely complicated, when there are doubts regarding the legitimacy of the interview, or when the applicants add new claims, based on facts taken place after the decision at First Instance.

¹⁷⁹⁹ However, the claim that the execution is likely to bring about reversal of the social and living relations that the asylum seeker has developed in Greece does not constitute a legitimate reason (17/2014 [2014] Administrative Court of Appeal of Piraeus [Greek]).

¹⁸⁰⁰ Law n. 3900/2010 (Rationalizing procedures and speeding up administrative proceedings and other provisions) 2010 [Εξορθολογισμός διαδικασιών και επιτάχυνση της διοικητικής δίκης και άλλες διατάξεις].

new claims to the ones submitted before the Committee. The Court has the right to exercise only judicial control to the decision and it is not competent to reconsider the facts.

1.4. Revocation of the asylum status

The revocation of the asylum status is regulated by the combined implementation of both the presidential decree 141/2013 and Law n. 4375/2016. The most basic grounds for this revocation are the cases when the refugee sought protection at the country of his/her nationality, acquired new nationality and enjoyed protection under this nationality, has voluntarily re-established in the country which he had left, or the conditions under which he had been granted the asylum status have changed.¹⁸⁰¹ The revocation decision is taken by the Head of the competent Authority of Receipt and must be specifically reasoned. The person is entitled to a personal interview and has the right to submit a written memo to the receiving authority explaining the reasons why (s)he considers that the status granted should not be withdrawn. The person is also entitled to lodge an application for annulment before the Administrative Court of First Instance.

1.5. Conclusion

Since 2013, the Greek State has proceeded to a complete and thorough reform of the asylum system. The adaptation to the European legislation and the international treaties, the respect of the fundamental rights of the asylum seekers and the guarantees of a multilateral examination of the applications constitute the basic elements of this upgrade. The creation of autonomous units and offices for the consideration of the applications ensured not only the rapidness but also the respect to the international protection standards.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Introduction

Generally, the term “immigrant” means any natural person who does not have the Greek citizenship and, thus, the right to enter, and reside in, Greece which right is regulated by specific bodies of legislation. However, the Immigration Code of Greece does not define the term immigrant and uses the term “foreign national” instead. According to Art. 1 para 1 of Law no 4251/2014¹⁸⁰² foreign national means “any natural person who does not have Greek nationality or is stateless”. The same article provides separate definitions for third-country nationals (non-EU Member States nationals) and EU-citizens and regulates the rights of third-country nationals

¹⁸⁰¹Other grounds for revocation can also be the case when there are serious reasons for the refugee to be considered as perpetrator of a crime against peace, war crime or crime against humanity, or a serious non-political crime before the entry into the Greek territory or when is guilty of acts contrary to the Objectives and principles of the United Nations as defined in Art. 1 and 2 of the Charter of the UN.

¹⁸⁰² Law n. 4251/2014 (Immigration and Social Integration Code and other provisions) 2014 [Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις].

while Presidential Decree No 106/2007¹⁸⁰³ transposes into the Greek law Directive 2004/38, widely known as “The EU Citizenship Directive” and harmonizes the right of entrance and residence for both EU Member States nationals and third – country nationals, who are members of family of EU citizens.

2.2. The right of entrance and residence of non – EU member States nationals

2.2.1. The right to entrance

According to Public International Law every State has the right to carry out the entry checks and regulate the presence of immigrants, as configured by ECHR and EU legislation.

More precisely, legal crossing of borders of Greece, in geographic terms, means the use of the locations provided for border crossing. The respective ports, airports and land borders are determined by a Ministerial decision. Moreover, when crossing the borders, a compulsory entry and exit check is performed by police authorities. The possibility to overcome the above prerequisites is only available by virtue of a decision of the competent Ministry. In the meantime, any evasion of the crossing points or attempt of illegal entry is punished under the provisions of Law n. 3385/2005¹⁸⁰⁴ both with a pecuniary penalty and imprisonment¹⁸⁰⁵.

In order to lawfully enter Greece a Visa must be obtained by either the Greek Consular Authorities or the embassy of the country of origin. The competent authority shall grant the Visa, after taking into consideration matters of national security, order and health. Nowadays, and in accordance with the primary and secondary EU law, there are two basic types of Visa which are referred to as “National Visa” and “Schengen Visa Types”¹⁸⁰⁶.

A Schengen Visa is obtained by any person coming from a country-member of the Schengen Area and allows its holder to reside legally in any other country within the zone and the European Free Trade Association (EFTA) member States. The National Visa (most commonly referred to as Visa D) is granted for a long period that overcomes the 90 days and can rise up to 365 days, if need be, allowing the holder to reside in Greece for the respective period. Third Country Nationals obtaining Visa D are eligible to reside in Greece solely for the purpose, for which they have been granted the Visa, after the fulfillment of which they must return to their country of origin.

Any refusal of the Greek embassy or the consular authorities to grant the applicants a Visa must be justified, while in the case of a third-country national, member of an EU citizen’s family, a specific and separate reason is further required. When the formal requirements, as provided for in the respective law, are not fulfilled or in cases of commission of a criminal offence or in case of a person subject of an alert in the SIS, this person is denied a legal document permitting

¹⁸⁰³ Presidential Decree No 106/2007 (Free movement and residence in the Greek territory for EU citizens and members of their families) 2007 [Ελευθέρη κυκλοφορία και διαμονή στην ελληνική επικράτεια των πολιτών της Ευρωπαϊκής Ένωσης και των μελών των οικογενειών τους].

¹⁸⁰⁴ Law n. 3385/2005 (Regulations on employment promotion, strengthening of social cohesion and other provisions) 2015 [Ρυθμίσεις για την προώθηση της απασχόλησης, την ενίσχυση της κοινωνικής συνοχής και άλλες διατάξεις].

¹⁸⁰⁵ Z. Papasiopi-Pasia, *Δίκαιο Αλλοδαπών*, Sakkoulas Publications, 2015, 76 -77 [Greek].

¹⁸⁰⁶ *ibid.* 78 – 80.

him/her the entrance or residence, and is also registered on the SIS, so that any Schengen State can benefit from the central database.

2.2.2. The right to residence

In order to be granted a residence permit, the third country national who has lawfully entered Greece must submit the relevant application to the competent authority prior to the expiration of the Visa he already holds, along with the relevant documentation. Generally, the residence permit is granted to the third-country national that a) produces all the required documents (i.e. passport or any other travel document), b) holds a valid Visa, and c) is not considered a threat to the national public order, security and health. The last restriction is examined only in cases of initial provision or renewal of a long-term residence permit. Lastly, the applicant should have a full health insurance. In case of a renewal, two months prior to the expiration of the existing permit, the interested person should submit the respective application. In case of late submission, a fine is imposed.

When submitting the application, a blue certificate (certificate of registration) with a validation period of one year is provided to the applicant, ensuring his/her legal residence for the aforementioned period. Any initial residence permit lasts for two years and every renewal for three.

After the initial entry and the provision of a valid Visa, the third-country national should ask, in a timely manner, for a residence permit under the conditions set out by Law n. 4332/2015. The main categories of residence permit are associated with certain reasons, such as permission to reside and work, temporary permission issued for humanitarian reasons, permission to study and volunteer and lastly, permission for family reunification. There is also the category of long – term permissions concerning mainly second generation immigrants. All these types of residence permit are issued in the light of the regulation EC 380/2008 as entered in the Greek legislation by the Law n. 4332/2015, as a uniform format for residence permit for third country nationals and as stand – alone document in ID 1 OR ID 2 format.

Special reference shall be made to third-country nationals who are members of EU citizens' families or the partner of an EU citizen. Such persons are enjoying the right of free movement as a reflex of the right of the EU citizen they are related to and can, therefore, join them for family reunification reasons. The regulation of their entrance and residence is determined by the Presidential Decree No. 106/2007, as last amended by Law 4332/2015.

2.3. The right of entrance and residence of EU –Member States nationals

2.3.1. The right to entrance

The right of free movement conferred by EU law on EU citizens and their families, as transposed into Greek legislation by the Presidential Decree No.106/2007, ensures not merely the rights to enter and reside, but also to leave Greece and travel to another Member State.

Every EU-citizen with a valid passport or identity card, and/or his/her family members, have the right to leave the territory of Greece in order to travel to another Member State, without the formalities required for third-country nationals (Visa or any equivalent formality).¹⁸⁰⁷

EU citizens are entitled to be admitted in Greece as far as they hold a valid Identity Card or passport, and their third-country national family members should be admitted, if they are holders of a passport or, in several cases, a Visa. If the non-EU national family member does not hold one of the aforementioned documents, before being expelled from Greek territory, he/she must be given a reasonable chance and period to obtain them, or otherwise to prove by any means that he/she falls within the scope of the right of free movement derived from their EU family member.

2.3.2. The right to residence

Pursuant to the right of residence up to three months, EU citizens and their family members may reside in Greece for a period of up to three months, provided that they hold a valid Identity Card or a passport. Same right is guaranteed also to third-country national family members under two conditions: a) they should hold a valid passport or a valid Visa, and b) they should travel in order to meet the EU citizens they are related to. The right of residence for both is retained only as long as the EU citizens and their family members do not become an unreasonable burden on the “shoulders” of the Greek social system.

With regard to the residence for a period of more than three months, its affirmation is divided into four categories of residents, namely: a) workers and self-employed persons, b) citizens that can support themselves and their families and that also possess the requisite health insurance cover for all the members of the family, c) persons wishing to reside in Greece for study reasons, and d) persons that are members of EU –citizens’ family and satisfy the conditions applicable to them, as mentioned above. In case of doubt, further checks may be carried out by police authorities or the relevant authority for Migration policy.

The regulation of residence for up to three month and residence after that point for EU citizens and their family members can be found in Art. 6 and 7 of Presidential Decree No. 106/2007 respectively. The same Decree, following the example of the respective EU Directive, includes provisions ensuring the right of residence of third-country national family members in cases of death or departure of the EU citizen (Art. 11) or the event of divorce, annulment of marriage or termination of registered partnership (Art. 12).

EU citizens who have legally resided for more than five continuous years in Greece, as well as their family members that fulfill the same obligations, have the right to apply for, and obtain, the permanent residence permit in Greece. The term ‘continuous residence’ does not include temporary absence for less than six months per year in any case or more under special circumstances.¹⁸⁰⁸ Once acquired the right to reside permanently cannot be lost, with the exception of two continuous years of absence from the Greek territory¹⁸⁰⁹.

¹⁸⁰⁷ Elspeth Guild, Steve Peers, and Jonathan Tomkin, *The EU Citizenship Directive A commentary* (Oxford), 96-97.

¹⁸⁰⁸ Elspeth Guild, Steve Peers, and Jonathan Tomkin, *The EU Citizenship Directive A commentary* (Oxford), 187-188.

¹⁸⁰⁹ Art. 13 of Presidential Decree 106/2007.

Last but not least, Chapter 6 of the Presidential Decree according to the EU Citizenship Directive provides for a number of reasons pertaining to the restriction of the freedom of movement, namely public policy, public security and public health. The degree of the threat and proportionality shall be taken into account at the phase of decision making. In general terms, the right of free movement is deemed as a cornerstone for the achievement of European integration. It shall not be excessively restricted and it should be reconciled with the right to non-discrimination.¹⁸¹⁰

2.3. The right to leave

The right to leave a country constitutes an important aspect of the cross-border movement of persons.

Since Greece is a member of the EU, every EU-citizen with a valid passport or identity card and his/her family members have the right to leave the territory of Greece to travel to another Member State, without the formalities required for third country national's (Visa or merely any equivalent formality).¹⁸¹¹

The return of an illegal immigrant can only occur based on the provisions of Law n. 3907/2011, which transposes into Greek legislation the 'Return Directive', i.e. Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. There are three determined ways for the return: the immediate return, the readmission in another country and the expulsion as an administrative act. Such a decision is issued in cases of denial of residence or of a revocation of the granted residence permit. Under exceptional circumstances, as defined in the Penal Code, the extradition and the expulsion as a judicial act is possible.

Generally, the repatriation policy which requires the cooperation of the illegal immigrant and his/her voluntary departure, is preferred. However, in any of the above cases the return should be executed in accordance with the obligations in regard to international policy and the non-refoulement principle. The person in question should not be expelled to a country where his or her freedom would be in danger, as provided for in Art. 33 of the 1951 Convention relating to the Status of Refugees (Geneva Convention).¹⁸¹² The protection against return to a country where a person has reasons to fear persecution consists a fundamental principle which is binding for the international community.¹⁸¹³

¹⁸¹⁰ Catherine Barnard, *The substantive Law of the EU the Four Freedoms* (Oxford).

¹⁸¹¹ Elspeth Guild, Steve Peers, and Jonathan Tomkin, *The EU Citizenship Directive A commentary*, Oxford, p. 96-97.

¹⁸¹² The UN Refugee agency, note on non-refoulement (submitted by the high commissioner), ec/scp/2, 23/8/1977.

¹⁸¹³ Eman Hamdan, *The Principle of Non-refoulement Under the ECHR and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Brill Nijhoff, 2016.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Description of the Body/Entity Specifically Dealing with Migrants, Including the Law that created it.

The Ministry for Immigration Policy is responsible for the migrants in Greece. Its aim is the implementation of asylum and other forms of international protection of migrants, as well as the contribution to the design and formulation of the national asylum policy. (Art. 1 of Law 4375/2016) More specifically, the Ministry was established on November 4, 2016¹⁸¹⁴ and is staffed by the following Secretariats of the former Ministry of Interior and Administrative Reconstruction:

- General Secretariat for Migration Policy (Art. 25, Law n. 4375/2016)
- General Secretariat for Refugee Affairs (Art. 26, Law n. 4375/2016.
- General Secretariat for Asylum (Art. 7, Law n. 3907/2011)
- General Secretariat for Financial Services for Migration Policy (Art. 28 para 1-3, Law n. 4375/2016)

3.2. Description of the Body/Entity's power and the form of assistance they provide

The functions of the **General Secretariat for Migration Policy**¹⁸¹⁵ include: a) Suggesting upon designing government policy in the field of migration, social integration of migrants into the Greek society, and citizenship, b) supervising and coordinating the implementation of government policy by the competent service on immigration, social integration and citizenship, c) exercising of the competences of the services under it, and d) supervising and ensuring the smooth operation of the Institute of Immigration Policy.

The **General Secretariat for Refugee Affairs**¹⁸¹⁶ includes an autonomous service called "Reception and Identification Service" which operates at the level of a Directorate and whose main task is to effectively carry out the procedures for the reception and identification of third-country nationals or stateless persons entering a country without complying with legal formalities, according to Art. 8 of Law 4375/2016. Moreover, there is the Reception Directorate recommended by the same law (Art. 27), which aims to design and to implement the reception policy of applicants for international protection and unaccompanied minors.

¹⁸¹⁴With Art.3 of the 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) 2016 [Ανασύσταση και μετονομασία του Υπουργείου Διοικητικής Μεταρρύθμισης και Ηλεκτρονικής Διακυβέρνησης, ανασύσταση του Υπουργείου Τουρισμού, σύσταση Υπουργείου Μεταναστευτικής Πολιτικής και Υπουργείου Ψηφιακής Πολιτικής, Τηλεπικοινωνιών και Ενημέρωσης].

¹⁸¹⁵ General Secretariat for Migration Policy, Art. 25 of Law 4375/2016, A' 51.

¹⁸¹⁶Short description of the General Secretariat of Reception/Refugee Affairs <<http://www.ypes.gr/el/GenGramYpodoxis/>> accessed 13 July 2017 [Greek].

The **General Secretariat for Asylum**¹⁸¹⁷ includes the Central Service which plans, directs, monitors and controls the activities of the Regional Asylum Bodies and Asylum Separate Scales and ensures the preservation of the necessary conditions for the exercise of their responsibilities. These bodies have the mission to implement the law on international protection. In particular, they are responsible for taking fingerprints of applicants for reason of international protection, receiving and examining applications for reasons of international protection at first instance, for providing applicants with the necessary travel documents for reasons of international protection and for facilitating applicants in terms of reception conditions in cooperation with other relevant factors. The Central Service has several departments, such as the Legal Department, the International and European Co-operation Department, the Coordination Department. Its purpose is to facilitate the procedures in the field of asylum and to represent the country at European and International level in relation to matters of competence of the Service.

Lastly, the functions of the **General Secretariat for Financial Services for Migration Policy**¹⁸¹⁸ include a) creating and executing the budget, b) implementing the supplies, c) monitoring and supervising financial figures and d) observing the departments responsible for the implementation of immigration policy.

3.3. Sources of funding

The Asylum Service¹⁸¹⁹ is funded by European Union and other resources by virtue of the following funding key programs. First of all, the Asylum Service of the Ministry of the Interior and Administrative Reconstruction, in accordance with Art. 77 (e) of Law n. 4375/2016, is funded by the Asylum, Migration & Integration Fund for the period 2014-2020¹⁸²⁰. Furthermore, a Non-Profit Society called “Solidarity Now” has undertaken the task to support the Agency in order to continually improve the quality of the asylum process at all stages. This support includes, inter alia, the provision of real estate property, the coverage of expenses related to renovations and repairs of buildings and the provision of logistical equipment for housing the services of the Asylum Service and supporting its operation, respectively. Finally, as a follow-up to the cooperation developed by the two agencies, UNHCR has undertaken the logistical support of the Asylum Service¹⁸²¹. In particular, within the framework of the extension of the Asylum Regional Offices network throughout Greece, UNHCR has undertaken the procurement and donation of part of the logistics equipment and the facilities that will host part of the asylum services in Samos.

¹⁸¹⁷ Structure of the Asylum Service < http://asylo.gov.gr/?page_id=83 > accessed 13 July 2017 [Greek].

¹⁸¹⁸ General Secretariat for Financial Services for Migration Policy, Art. 28 of Law 4375/2016, A' 51.

¹⁸¹⁹ Asylum Service Funding Programs < http://asylo.gov.gr/?page_id=3023 > accessed 13 July 2017 [Greek].

¹⁸²⁰ Migration and Inclusion Asylum Fund 2014-2010 < http://asylo.gov.gr/?page_id=3097 > accessed 13 July 2017 [Greek].

¹⁸²¹ Other resources < http://asylo.gov.gr/?page_id=3069 > accessed 13 July 2017 [Greek].

3.4. Monitoring and evaluation system in place to assure the quality of the service it delivers¹⁸²²

Any migrant has the right to apply for international protection. The application shall be submitted to the Receiving Authorities, who shall immediately complete its registration. Full identification shall include at least the identity, country of origin of the applicant, the name of the father, mother, spouse and children, biometric identifiers, and a brief indication of the reasons why the applicant seeks international protection. The Receiving Authority examines applications for international protection, in accordance with the basic principles and guarantees in the normal or accelerated procedure. Applicants are allowed to remain in the country until the administrative procedure for examining the application for international protection has been completed and their removal is prohibited in any way.

3.5. Venues to obtain redress for cases involving maltreatment caused by that body/entity

3.5.1. Board of Appeal

The right to file an appeal against asylum decisions rejecting an application for international protection or revoking that status is available to all applicants, according to Art. 5 para. 5 of Law 3907/2011. The Ministry for Immigration Policy includes the Board of Appeal¹⁸²³, which examines applications for international protection against decisions of the Asylum Service, according to Art. 3 of Law 3907/2011. Notably, the Board of Appeal was established by law 3907/2011 as a second-grade body for internal appeals against the decisions of the Asylum Service (first grade). Now, with Law 4375/2016, as amended by Law 4399/2016, the new Appeal Authority is established as an independent Service that is directly subordinated to the Minister of the Interior and to the Minister of Immigration Policy.

3.5.2. Withdrawal of the International Protection Regime¹⁸²⁴

When new elements of reason for reconsideration of the regime of international protection arise, the competent Receiving Authorities shall examine whether this status is withdrawn or not. The decision is taken by the Head of the competent Authority of Receipt, upon the recommendation of an officer (operator) specified and specifically motivated.

3.5.3. Application for Cancellation¹⁸²⁵

If their appeal is refused or they are granted subsidiary protection status while they feel they are entitled to a refugee status, applicants for international protection have the right to file an application for annulment before the competent Court. This possibility, the deadline and the

¹⁸²² Articles 36, 37, 51 of Law 4375/2016.

¹⁸²³ Board of Appeal < http://asylo.gov.gr/?page_id=87 > accessed 13 July 2017 [Greek].

¹⁸²⁴ *Withdrawal of the International Protection Regime*, Article 63 of Law 4375/2016, A' 51

¹⁸²⁵ *Application for Cancellation*, Article 64 of Law 4375/2016, A' 51

competent court are referred to the body of the decision. The cancellation request is not automatic, so they can leave the country if their appeal is denied.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

Since the beginning of 2017, 12.340 migrants have arrived in Greece according to the statistics of the International Organization for Migration (IOM). In particular, the total amount of migrants that arrived in Greece between the 1st of July 2015 and the 26th of July 2017 is 1.046.609¹⁸²⁶. The aforementioned are the recent trends in migratory flows in Greece under the published data of the IOM.

Moreover, since January 2017, 115.392 people have been travelling to Europe through various transit routes across Africa, Asia or the Middle East. The number of asylum-seekers is 27.853 in 2017, according to the Asylum Service of the Hellenic Republic¹⁸²⁷. The majority of the submitted asylum applications is observed in Athens and the minimum number (only 65 applications) in the Heraklion of Crete. Concerning the nationality of the asylum seekers, most of them come from Syria and more specifically they are 38.918. On the other hand, the smallest percentage of asylum seekers is those coming from Palestine and in particular they are 1.786¹⁸²⁸.

According to the IOM, more than 3.770 migrants were reported to have died trying to cross the Mediterranean in 2015. Most died on the crossing from north Africa to Italy, and more than 800 died in the Aegean crossing from Turkey to Greece. The deadliest month for migrants was April, which saw a boat carrying about 800 people capsize in the sea off Libya. Overcrowding is thought to have been one of the reasons for the disaster¹⁸²⁹.

¹⁸²⁶ International Organization for Migration, IOM Office in Greece, Available at: <http://www.greece.iom.int/>

¹⁸²⁷ Asylum Service, Ministry of Migration Policy of the Hellenic Republic, Available at: http://asylo.gov.gr/en/?page_id=39

¹⁸²⁸ *Ibid*

¹⁸²⁹ Migrant crisis: Migration to Europe explained in seven charts, BBC, 2016, Available at: <http://www.bbc.com/news/world-europe-34131911>

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Introduction

Greece is a member of the Council of Europe since 1949 and 1154 cases were transmitted for supervision since the European Convention of Human Rights entered into force. On the 9th of December 2016 the Greek State established the “National Mechanism for the Supervision of the Implementation of the Decisions of the European Court of Human Rights” (hereinafter ECtHR) by Law 4443/2016, Art. 62, within the Ministry of Justice in order more successful implementation of judgements to be achieved. Additionally, in aiming comply with the obligation under Art. 46, paragraph 1 of the Convention to be bound by final judgments of the ECtHR in cases involved, Greece has adopted the legislative and individual measures presented hereto per type of violation.

5.2. Ill-treatment by Police Forces and Treatment by Coastguards Amounting to an Act of Torture

In cases *Alsayed Allaham*¹⁸³⁰, *Zelilof*¹⁸³¹, *Galotskin*¹⁸³², *Zontul*¹⁸³³ there was no provision of domestic law of reopening criminal proceedings against police officers. Disciplinary proceedings following a judgment of the ECHR could be reopened if requested by the Executive Committee of “the Office for addressing arbitrary incidents to control abuse” first established by law 3938/2011, in compliance with judgments delivered after the 31st of March 2011. Thus, the reopening of disciplinary proceedings was possible only in the *Zontul* case.

In view of the above two departments were also established within the Greek Police tasked with the investigation of racial incidents. Within all Security Divisions there are 68 branches examining this type of incidents. Circular letter No. 7100/25/14 instructs police officers to refrain from degrading acts and also an electronic archive collects all complaints for racial incidents. Furthermore, the Department of Internal Affairs of the Greek Police is also responsible for addressing degrading issues. Moreover, the Prosecutor of the Court of Cassation required by circular the immediate transmission to the competent prosecutor of all accusations of ill-treatment.

5.3. Unlawfulness of Detention of Asylum Seekers and Irregular Migrants and Lack of Effective Remedy to Challenge the Lawfulness of Detention

Following the ECHR judgments on the cases *S.D.*¹⁸³⁴, *A.A.*¹⁸³⁵, *Efremidze*¹⁸³⁶, *Tabesh*¹⁸³⁷, *Ahmade*¹⁸³⁸, *Mahmundi and others*¹⁸³⁹, *R.U.*¹⁸⁴⁰, *C.D. and others*¹⁸⁴¹, *Khurosh*¹⁸⁴², *Vili*¹⁸⁴³, *Lin*¹⁸⁴⁴,

¹⁸³⁰ *Alsayed Allaham v. Greece* (Application no. [25771/03](#)) [2007] ECtHR.

¹⁸³¹ *Zelilof v. Greece* (Application no. 17060/03) [2007] ECtHR.

¹⁸³² *Galotskin v. Greece* (Application no. 295/07) [2010] ECtHR.

¹⁸³³ *Zontul v.* (Application no. [12294/07](#)) [2012] ECtHR

¹⁸³⁴ *S.D. v. Greece* (Application no. 53541/07) [2009] ECtHR.

¹⁸³⁵ *A.A v. Greece* (Application no. 12186/08) [2010] ECtHR.

Lica¹⁸⁴⁵, Herman and Sherazadish¹⁸⁴⁶, A.E.¹⁸⁴⁷, MD¹⁸⁴⁸, Mohamad¹⁸⁴⁹, Mahammad and others¹⁸⁵⁰ and E.A.¹⁸⁵¹, EU Directives 2013/32 and 2013/33 were transposed by Art. 46 of Law 4375/2016. According to the provisions third country nationals shall only be detained due to reasons exclusively provided in the applicable legislation.

According to Law 3907/2011, Art. 30 transposing the EU “Return” Directive third country nationals subject to deportation shall be detained, unless no other measure can be implemented. Detention shall be solely ordered if risk of absconding, rejection of preparation to return or be removed or risk for national security exist. Furthermore, third country nationals shall be detained for the shortest period possible. A second instance procedure before administrative courts is also provided by Law 3907/2011, Art. 30 (2), which also demands reviews to be done every three months by the competent for the issue of decision of detention police director or, if detention is extended, by an administrative court. Moreover, Preventive judicial examination of the lawfulness of detention is provided by of Law 4375/2016, Art. 46.

Beyond legislative amendments, following the judgments of the ECHR, all applicants are released.

5.4. Degrading treatment regarding conditions of detention and lack of effective remedy against deficient examination of application, exposition to deportation to country of origin due to inadequate examination of application (M.S.S. case) and conditions of detention (B.M. case)

Following the cases M.S.S.¹⁸⁵², A.F.¹⁸⁵³, B.M.¹⁸⁵⁴, Bygylashvili¹⁸⁵⁵, Chkhartishvili¹⁸⁵⁶, de los Santos and de la Cruz¹⁸⁵⁷, Horshill¹⁸⁵⁸, Kaja¹⁸⁵⁹, Tatishvili¹⁸⁶⁰, AL.K.¹⁸⁶¹, H.H.¹⁸⁶², F.H.¹⁸⁶³, Chazaryan and

¹⁸³⁶ Efremidze v. Greece (Application no. 33225/08) [2011] ECtHR.

¹⁸³⁷ Tabsh v. Greece (Application no. 8256/07) [2009] ECtHR.

¹⁸³⁸ Ahmade v. Greece (Application no.50520/09) [2015] ECtHR.

¹⁸³⁹ Mahmudi and others v. Greece (Application no. 14902/10) [2012] ECtHR.

¹⁸⁴⁰ R.U. v. Greece (Application no.2237/08) [2011] ECtHR.

¹⁸⁴¹ C.D. and others v. Greece (Application no.33441/10, 33468/10 and 33476/10) [2014] ECtHR.

¹⁸⁴² Khurosh v. Greece (Application no.58165/10) [2013] ECtHR.

¹⁸⁴³ Vili v. Greece (Application no.58165/10) [2015] ECtHR.

¹⁸⁴⁴ Lin v. Greece (Application no.58158/10) [2013] ECtHR.

¹⁸⁴⁵ Lica v. Greece (Application no.74279/10) [2012] ECtHR.

¹⁸⁴⁶ Herman and Sherazadish v. Greece (Application no.26418/11) [2014] ECtHR.

¹⁸⁴⁷ A.E. v. Greece (Application no.46673/10) [2015] ECtHR.

¹⁸⁴⁸ MD v. Greece (Application no. 60622/11) [2014] ECtHR.

¹⁸⁴⁹ Mohamad v. Greece (Application no.70586/11) [2014] ECtHR.

¹⁸⁵⁰ Mohammad and others v. Greece (Application no.48352/12) [2015] ECtHR.

¹⁸⁵¹ E.A. v. Greece (Application no. 74308/10) [2015] ECtHR.

¹⁸⁵² M.S.S. v. Greece (Application no. 30696/09) [2011] ECtHR.

¹⁸⁵³ A.F. v. Greece (Application no. 53709/11) [2013] ECtHR.

¹⁸⁵⁴ B.M. v. Greece (Application no. 53608/11) [2015] ECtHR.

¹⁸⁵⁵ Bygylashvili v. Greece (Application no. 58164/10) [2012] ECtHR.

¹⁸⁵⁶ Chkhartishvili v. Greece (Application no.22910/10) [2013] ECtHR.

¹⁸⁵⁷ De los Santos and de la Cruz v. Greece (Application no.2134/12) [2014] ECtHR.

¹⁸⁵⁸ Horshill v. Greece (Application no. 70427/11) [2013] ECtHR.

¹⁸⁵⁹ Kaja v. Greece (Application no.32927/03) [2006] ECtHR.

¹⁸⁶⁰ Tatishvili v. Greece (Application no. 26452/11) [2014] ECtHR.

¹⁸⁶¹ AL.K. v. Greece (Application no. 63542/11) [2015] ECtHR.

others¹⁸⁶⁴, Law 4375/2016 works in the direction of improving conditions of detention of irregular migrants and asylum seekers. Therefore, seven regional asylum offices and twelve autonomous asylum units operate today, as well as 654 employees instead of 218 in 2014 provide assistance. From 8 June to 31 July 2016 pre-registration of 27,592 persons took place on the mainland as asylum seekers whose application has not been submitted. Additionally, free legal assistance and interpretation is provided to asylum applicants and there is an obligation of information regarding the procedure and their rights. Services are provided by properly trained personnel in cooperation with EASO personnel.

Regarding conditions of detention, the third country nationals subject to expulsion pursuant to the applicable legislation, they are detained in six pre-return centres in which food, clothing and health-care supplies and, if requested, assistance by lawyers and NGOs are offered. Detention in police stations is abolished and especially unaccompanied minors are kept in separate facilities from adults and relocated as they cannot be deported. Examination, organization and implementation of the asylum seekers' and minors' reception is the task of the Reception Directorate.

Regarding asylum procedure third country nationals after being received in the five reception centres, they are kept in the centre for up to 25 days in order to be identified, registered and medically treated. After their arrival they are informed about the followed procedure, their rights and obligations. Three days upon the arrival deportation or readmission shall be decided.

Moreover, in *Rahimi*¹⁸⁶⁵, *Housein*¹⁸⁶⁶ and *Barjamaj*¹⁸⁶⁷ cases the Greek State in order to comply with the decisions of the ECHR received the following legislative measures. According to the Greek law a permanent guardian of unaccompanied minors is assigned by court decision and the prosecutor is the temporary guardian. Given the large number of unaccompanied minors in practice prosecutors appoint ad hoc persons responsible for protection of minors (e.g. school enrolment). In order those violations to be prevented a special commission is founded within the Ministry of Justice to review the existing legislation concerning the appointment of guardians.

5.5. Absence of a maximum period of detention for persons subject to expulsion ordered by national court as violation of the right to liberty and security

For the execution of judgement on *Mathloom*¹⁸⁶⁸ case Art. 74 of the Penal Code which provides for expulsion, was amended by Law 4055/2012, Art. 23 and entered into force on 2 April 2012. By this provision a maximum period of delay in the detention of persons, for whom expulsion was ordered, is set as well as the examination of lawfulness of detention by the judicial authorities.

¹⁸⁶² H.H. v. Greece (Application no.63493/11) [2014] ECtHR.

¹⁸⁶³ F.H. v. Greece (Application no. 78456/11) [2014] ECtHR.

¹⁸⁶⁴ Chazaryan and others v. Greece (Application no. 76951/12) [2015] ECtHR.

¹⁸⁶⁵ Rahim v. Greece (Application no.8687/08) [2011] ECtHR.

¹⁸⁶⁶ Housein v. Greece (Application no. 71825/11) [2013] ECtHR.

¹⁸⁶⁷ Barjamaj v. Greece (Application no.36657/11) [2013] ECtHR.

¹⁸⁶⁸ Mathloom v. Greece (Application no. 48883/07) [2012] ECtHR.

These delays comply with Directive 2008/115/ EC of the European Parliament and the Council dated 16.12.2008 on Guidelines and joint procedures for the return of illegally staying third-country nationals which apply to the Member States.

As regards individual measures adopted, the Greek Government has compensated the claimant for just satisfaction ordered by the ECHR. On the 27th of April 2007, the applicant was released under conditions (paragraph 18 of the decision).

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Introduction

Since the very beginning of its operation, ECRI has managed to organise and monitor the EU member states in order for them to optimise their initiatives and actions towards individuals in need and comply, thus, with the relevant existing framework. Specifically, for Greece, it has recommended many times in the past various ways to deal with the need for a stronger integration policy.

6.2. The latest ECRI Report

As it can be concluded by the last report of ECRI adopted in 2014¹⁸⁶⁹, the Greek Government implemented many of the previous recommendations. More specifically, in 2013 a National Strategy for The Integration of third country nationals was planned¹⁸⁷⁰ in order to provide a better approach towards a more efficient migration management and integration on the basis of EU principles and directives. This strategy suggests specific measures and actions and interventions to be implemented in diverse areas such as services, education and Greek language courses, employment and vocational training, health, housing and quality of life, political participation and anti-discrimination. Yet, according to the report there are no concrete results of this strategy.

ECRI also proceeded to a meticulous assessment of the legal developments concerning the status of migrants and their integration. More particularly, it refers to the new Migration and Integration Code (Law n. 4251/2014) and Law n. 4332/2015 that amended it in an effort to implement in the Greek legislation the EU directive 2011/98/EU.¹⁸⁷¹ Lastly, it assessed the

¹⁸⁶⁹ ECRI Report on Greece (fifth monitoring cycle) CRI (2015)1 | 2015.

¹⁸⁷⁰ National Strategy for The Integration of third country nationals [Εθνική Στρατηγική για την ένταξη των πολιτών τρίτων χωρών], Ministry of Internal Affairs 2013, 2. <http://www.ypes.gr/UserFiles/f0ff9297-f516-40ff-a70e-eca84e2ec9b9/ethnikisratig_30042013.pdf> accessed on 20 July 2017 [Greek].

¹⁸⁷¹ concerning the creation of a common procedure of a single application for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a member state.

implementation of Art.78 of Law n. 3852/2010¹⁸⁷² which provides for the framework of the establishment and operation of local integration councils.

6.3. National Human Right Bodies

6.3. 1. Greek National Commission for Human Rights

The Greek National Commission for Human Rights (hereinafter GNCHR), is the independent advisory body in the Greek State specialised in human rights issues. In accordance with the powers conferred to it by its founding Law n. 2667/1998, it has the mandate to monitor the protection of human rights in the Greek legal order, to raise public awareness and to take initiatives towards the fulfilment of the above purposes.

Since 2015 the GNCHR uses public statements or advisory opinions to highlight the nature of the right of access to asylum and the prohibition of refoulement as fundamental pillars of Refugee Law, promote the adoption of integration programs and make strong recommendations to the Greek government and the institutions in order to ensure respect to: the protection of human life, health and safety of all people living in Greece and the effective management, in conditions of dignity, of the migratory flows towards the EU, the observance of the principle of non-refoulement and the unhindered, timely and effective access of undocumented aliens to the international protection processes.¹⁸⁷³ In the light of recent events and of the ongoing refugee crisis, GNCHR has raised its objections towards the agreement between the EU and Turkey.¹⁸⁷⁴

6.3.2. Solidarity Now (NGO)

Solidarity Now has published and proposed to the Greek government in the form of public intervention, a whole plan about the refugee integration that has not been fulfilled by the Greek government. This plan focuses on the languages and communications as keys facilitator of integration, since education and job opportunities available to migrants are very often limited due to language barriers. Furthermore, the creation of a strong state – citizen relationship through the provision of efficient public services can generate trust in government and other institutions, while activity and/or job opportunities can promote peace and security within the destination country, minimising, thus, the tensions.¹⁸⁷⁵

¹⁸⁷² Law n. 3852/2010 (New Architecture of Local Government and Decentralized Administration - Kallikratis Programme) 2010 [Νέα Αρχιτεκτονική της Αυτοδιοίκησης και της Αποκεντρωμένης Διοίκησης - Πρόγραμμα Καλλικράτης].

¹⁸⁷³ 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].

¹⁸⁷⁴ 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].

¹⁸⁷⁵ SolidarityNow, ‘Refugee Crisis and Integration: the next steps’ [Προσφυγική Κρίση και Ενσωμάτωση: Τα επόμενα βήματα]. (Solidarity Now NGO, 9 May 2017) <https://www.solidaritynow.org/integration_article/> access 20 July 2017 [Greek].

6.3.3. Hellenic Foundation for European and Foreign Policy (HFEFP)

HFEFP has funded a group research which provides an in-depth assessment of integration policies and outcomes in the case of Greece by specifically bringing into focus the needs of migrant groups and the absence of efficient integration strategies on the part of the Greek government. Putting focus in women, the data suggests that formal rights of access to social welfare services and labour rights or the ability to independently secure the acquisition and renewal of a residence permit, are in practice significantly restricted for migrant women due to the predominantly informal nature of their work. Even though female migrants constitute a sizeable section of the total immigrant population, they are largely absent from the formal integration policies.¹⁸⁷⁶ However, as it can be concluded by the present legal framework on migration, the greek government has not took into actual consideration the recommendations of the above mentioned report.¹⁸⁷⁷

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Introduction

As a country hosting large migrant populations, Greece has been part of various programs in order to address their needs for healthcare. E.g. the “Re Health” program, which officially started in February 2016, aims to support member states of the EU in issues related with the health of immigrants, the constant monitoring of the provision of healthcare, the reassurance of the provision of medical exams and of prevention as a principle and last but not least the collection of data so as to create data bases available in each transfer and relocation of these people within the EU. Moreover, “SOAM” program, which supports organizations that assist asylum seeking population in Greece, supervises the work done by three specific consortia: “Medicins du Monde”, “PRAKSIS” (Greek Red Cross) and NOSTOS. These three consortia are examples of specialized health services created for immigrants and refugees in Greece and operate as NGOs in Greece. Despite the help provided by these programs, access to healthcare provided at a state level shall be thoroughly examined.

7.2. Legal Framework

In the Greek Constitution there are two provisions related to health. Art. 5 para 5 provides that “Everyone has the right to the protection of its health and its genetic identity” securing, thus, the personal privilege to health while prohibiting any harm to a person’s health during medical surgery or treatment without their consent.

¹⁸⁷⁶ Dia Anagnostou, Eda Gemi *Monitoring and Assessing the Integration of Vulnerable Migrants in Greece* (Hellenic Foundation for European and Foreign Policy, February 2017) <[file:///C:/Users/irene/Desktop/ASSESSNatl.Report.Phase2_FINAL .pdf](file:///C:/Users/irene/Desktop/ASSESSNatl.Report.Phase2_FINAL.pdf)> accessed 20 July 2017. [Greek]

¹⁸⁷⁷ *ibid*

Art. 21 para 3 provides that “The State takes care of the citizens’ health” establishing, thus, the social privilege to health. The reference of the article 21 par. 3 to the citizens does not restrict the legislature's power to extend these rights to immigrants, too. Actually, it is supported by a group of academicians that the new provision of para 5 of Art. 5 extends the scope of Art. 21 para 3 because it enshrines the right of every person to the protection of their health. At the same time, immigrants’ right to health can be grounded on Art. 2 para 1 of the Greek Constitution, which declares that respecting and protecting persons’ dignity consists a primary obligation of the State. However, according to theory, immigrants’ right to health based on Art. 2 para 1 of the Greek Constitutions includes only the cases of treatment in emergency situations. It is supported that treatment in cases of emergency is an integral part of the right to health provided to citizens under Art 21. para 3 of the Greek Constitution and depriving non greek nationals from such treatment would violate the obligation to respect the dignity of any human being in the Greek territory regardless of their nationality as enshrined in Art.2 para 1¹⁸⁷⁸.

7.3. Access to the National Healthcare System

The immigrants’ access to the National Healthcare System (hereinafter NHS) is a basic parameter of their integration into the Greek society. Immigrants are separated into two categories: migrants with the necessary documents, who live and work in Greece having a residence permit and migrants without the necessary documents who illegally stay and work in Greece.

Each citizen of a foreign country who has a residence permit enjoys full access to the NHS with the same rights as a Greek citizen. Furthermore, the legally residing migrants who have social insurance and possess a medical booklet, edited by their insurance operator can enjoy the services of the NHS for free or just paying a small amount of the cost. Nevertheless, they cannot obtain a booklet of poverty, which is provided to Greeks who have no insurance and prove to have a small income.

In particular, according to the newsletter 2/2002 of the Ministry of Health the medical and hospital care involves: i) medical examinations in the outpatient clinics of public hospitals, health centers and public regional medical centers, along with paraclinical and laboratory examinations, and ii) administration of medicines with the presence of a doctor who serves in one of the aforementioned institutions, after the director of the clinic provides his approval.

As far as migrants lacking the necessary documents to reside legally in Greece are concerned, their access to the NHS is regulated by art. 84 para 1 of Law n. 3386/2005¹⁸⁷⁹. This provision complies with the interpretation of Art. 23 para 3 in conjunction with Art. 2 para 1 of the Greek Constitution mentioned above and calls upon hospitals, therapist centers and clinics to provide treatment services to third-country nationals who do not have a passport or any other internationally recognized travel documents only when these people are imported in an emergency situation or in the case of underaged children who must be treated in any case.

¹⁸⁷⁸ K. Chrysogonos. *Ατομικά και Κοινωνικά Δικαιώματα*, Nomiki Bibliothiki, 2006, 553 [Greek]

¹⁸⁷⁹ Law n. 3386/2005 (Entry, residence and social integration of third-country nationals in the Greek Territory) 2005 [Είσοδος, διαμονή και κοινωνική ένταξη υπηκόων τρίτων χωρών στην Ελληνική Επιχώρατεια].

7.4. Conclusion

Taking the aforementioned into consideration it is more than obvious that Greece recognizes a very restricted right to access to healthcare and an even more restricted right to health to immigrants without the necessary documents.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. Introduction

The right to education is a fundamental human right and essential for the exercise of all other human rights, and as a matter of fact, it cannot be considered as a privilege of some societies¹⁸⁸⁰. Responding to the high rate of influx of immigrants during the last decades, the Greek Ministry of Education, Research and Religious Affairs tried to focus even more on the integration of migrant children into society through education. National priorities of Greece were the insurance of high quality educational services, which are accessible for all, while respecting children's cultural diversity.

8.2. Legal Framework

Art. 16 of the Greek Constitution and Art. 28 of International Convention on the Rights of the Child (UN, 1989, ratified by Law 2101/1992) guarantee the right to education, which is also essentially an extension and implementation of the right of personal development enshrined by Art. 5 of the Greek Constitution. The right to education is enshrined in Art. 16 of the Greek Constitution which provides the right of equal access to public education by mentioning that “All Greeks are entitled to free education on all levels at State educational institutions. The State shall provide financial assistance to those who distinguish themselves, as well as to students in need of assistance or special protection, in accordance with their abilities.”

Although, the Art. 16 refers to “Greek citizens”, its scope is the protection of the “social citizen”¹⁸⁸¹, in other words, the 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**. This has been clarified by the Law 2910/2001, which provides that every child living in Greece is entitled to education regardless of the parents'/guardians' legal status in the country¹⁸⁸² making thus the State's school system accessible to migrant children irregularly residing in Greece.

¹⁸⁸⁰ K. Chrysogonos, *Συνταγματικό Δίκαιο*, Sakkoulas Publications, 2014, 219 [Greek]

¹⁸⁸¹ K. Chrysogonos. *Ατομικά και Κοινωνικά Δικαιώματα*, Nomiki Bibliothiki, 2006, 51 [Greek]

¹⁸⁸² Papassiopi-Passia, *Δίκαιο Αλλοδαπών*, Sakkoulas Publications, 164 [Greek]

8.2.1. Intercultural schools

Since 10% of students in primary and secondary Greek schools are immigrants, Greek government, seeking to meet the challenge of multicultural classes enacted laws and other legal acts for the implementation of intercultural education dealing mainly with the teaching of Greek language as a foreign language¹⁸⁸³. For this reason, the Law 4415/2016 has improved the already existing legal status of the intercultural schools in Greece focusing on child's best interest.

According to Art. 20 of the new law, "Intercultural Education concerns in structuring relationships between different cultural groups with the aim of the elimination of inequalities and social exclusion". The purpose of intercultural school is the promotion of democratic values, while addressing the discrimination based on cultural differences, xenophobia and racism. For the children living in temporary campuses, the Refugee Education Coordinator (REC) of each campus is responsible to inform the parents and ask for a written consent for the enrollment of each student to school.

8.2.2. Specific Status for refugee children

Due to the increase of refugee flow, the Minister of Education with its decision 131024/D1 has established "Areas of Educational Priority" in school units.¹⁸⁸⁴ The purpose of this educational framework is the integration of refugee children to Greek education, since not only the refugee children do not speak Greek, but also their parents. For this reason, the Greek government has decided to provide extra courses to these children. What is more, it is worth mentioning that there are also a lot of unaccompanied refugee children, who currently live in shelters provided by non-governmental organizations. Since, the state is obliged by Art. 16 of the Greek Constitution to provide for free to all children living in its territory access to education, the Greek legislator has taken some measures.

8.3. Conclusion

Taking all into consideration, the right to education is enshrined by the Greek Constitution and there are many regulations that guarantee this right to immigrant children. Despite the economic crisis in Greece, the government has struggled to focus more on the education of all children. The establishment of thirteen Intercultural Schools, which are located to the places where the majority of the immigrant children live, is its most important achievement by providing language training for migrants, while integrating them to the society through education.

¹⁸⁸³ Euanthia Tsaliki, *Intercultural education in Greece: the case of thirteen primary schools*, University of London, 2012

¹⁸⁸⁴ Greek Ministry of Education, Research and Religious Affairs, Πρόγραμμα Εκπαίδευσης των Δομών Υποδοχής και Εκπαίδευσης Προσφύγων (Δ.Υ.Ε.Π.) <http://iep.edu.gr:8080/index.php/el/prokirixeis/menu-anakoynoseis/2-general/512-ekpaidefsi-prosfygon>

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. Introduction

The Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Recognition Convention), is an international convention of the Council of Europe elaborated together with the UNESCO. Despite the fact that it has been ratified by almost all Member States of the Council of Europe and by non-member states, Greece has yet to ratify the Convention.¹⁸⁸⁵ Greece, as well as many countries in the EU has a designated National Academic Recognition Information Centre (NARIC) for recognizing academic degrees.

9.2. The Procedure According to the Greek legal order

The Greek NARIC is an administrative body currently known by the acronym ΔΟΑΤΑΠ (Διεπιστημονικός Οργανισμός Αναγνώρισης Τίτλων Ακαδημαϊκών και Πληροφόρησης -Hellenic National Academic Recognition and Information Center and other provisions) (hereinafter DOATAP) which operates according to its funding Law n. 3328/2005¹⁸⁸⁶. The recognition procedure is initiated by the interested parties, by completing the needed documents (Art.11 para 1 of Law n. 3328/2005) and paying the relative fees (Art. 11 para 5 and Art. 18). Degrees obtained abroad are compared to degrees given by Greek institutions on the basis of unclear formal criteria rather than on the basis of an essential, in-depth comparison of an applicant's actual studies and level of knowledge of his field of study. These criteria are based on the duration, the procedure, the ratings and the examinations' success of each university diploma and are described in detail in Art.4 of Law n. 3328/2005. According to Art. 11 para 4 the decisions shall be issued within the period of 60 days¹⁸⁸⁷ from the point when all the needed information are collected but DOATAP can surpass this deadline in case of lack of information and shall issue a justified decision. However, dealing with DOATAP is time-consuming and expensive. It normally takes DOATAP six to ten months to reach a decision about what is required for a degree to be recognized once all the required paperwork is submitted.

In case of rejection of the recognition, the person can request the reassessment of their application by the competent department of DOATAP's Board of Directors within a year after being notified about the rejection (Art 13 para 1). If there is a again a negative result the request

¹⁸⁸⁵Chart of signatures and ratifications of Treaty 165, available at:<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165/signatures>

¹⁸⁸⁶ Law n. 3328/2005 (Hellenic National Academic Recognition and Information Center and other provisions) 2005 [Διεπιστημονικός Οργανισμός Αναγνώρισης Τίτλων Ακαδημαϊκών και Πληροφόρησης και άλλες διατάξεις].

¹⁸⁸⁷ or 90 days when applicants request not only for the equivalence but also for the correspondence of their courses to be recognized.

is reexamined by a Special Review Committee that is responsible to propose a solution to the competent department of the Board of Directors.

9.3. Special issues concerning refugees

Concerning refugees, problems occur especially when they lack the authentic and sufficient documentation to prove their qualification and it cannot be verified because of emergency. This may be for different reasons, e.g. that the responsible authority no longer exists or archives have been destroyed. In this case the NARIC national information center will be responsible for the recognition of the academic qualification of refugees. If refugees are unable to provide documentation, their qualifications are to be recognized by using alternative methods.

9.4. The European Qualifications Passport for Refugees

A great solution in case of lack of supporting evidence is the European Qualifications Passport for Refugees. This document provides an assessment of the higher education qualifications based on available documentation and a structured interview. It also presents information on the applicant's work experience and language proficiency. The document provides reliable information for integration and progression towards employment and admission to further studies. It is a specially developed assessment scheme for refugees, even for those who cannot fully document their qualifications. The questionnaire is normally sent to candidates three weeks prior to the evaluation, with two weeks to fill it in, allowing the evaluators one week to review it. If the decision is positive, the European Qualifications Passport for Refugees is issued and valid for five years from the date of issue.

The project brings together credentials evaluators from Greece, Italy, Norway and the United Kingdom to facilitate and accelerate the recognition of refugees' qualifications in Greece, their first hosting country. This initiative is a pilot project run by the Council of Europe's Education Department in the framework of the Action Plan Building Inclusive Societies. Partners include the Greek Ministry of Education, Research and Religious Affairs and qualification recognition centers in Greece, Italy, Norway and the UK. The UNHCR Office in Greece also supports the project. The first group of candidates was interviewed from 7 to 9 March 2017 in Athens.¹⁸⁸⁸

9.5. Conclusion

Despite the efforts, the procedure prescribed by the Greek legislation does not facilitate the efficient and fast recognition of qualifications. It is making it very difficult, and sometimes impossible, for graduates (refugees or not) of foreign universities to have their degrees recognized by the Greek state.

¹⁸⁸⁸ First European Qualifications Passports for Refugees issued in Greece: <https://www.coe.int/en/web/education/-/first-european-qualifications-passports-for-refugees-issued-in-greece>

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Introduction

Political participation, consisted of rights of voting and representation, constitutes one of the basic principles of democracy giving the opportunity to all members of a political community to have a fair share in the decision-making processes. When it comes to migrants, political participation can be considered as one of the most important aspects of their integration process. Political participation in Greece is regulated mainly by the State's Constitution (Art. 51 para 3 and Art. 102 para 2)

10.2. Legal Framework

Except the rules of public international law as well as the European law, the legal status of migrants is defined by the Greek Constitution. The protection mechanism that is provided by the latter towards migrants refers to the individual rights, also known as public ones. A great number of individual rights are guaranteed only to the nationals. In this case, the constitutional legislator uses the term 'Greeks'. However, when the Constitution does not intend to discriminate between nationals and migrants, it uses the term 'anyone' or 'no one'. Also when there is no definition regarding the subject of an individual right and given that there is no opposite provision in the text, it is considered as applicable for migrants.¹⁸⁸⁹

10.2.1. National Elections

With regard to formal participation in the country's political life, voting and standing in national elections is restricted to Greek citizens only as Article 51 para 3 of the Constitution explicitly indicates (with an exception that provides special rights to Cypriots). That means that migrants residing in the country without having acquired the official Greek citizenship are not allowed to participate in the decision-making process. Therefore the legal requirement in order for migrants to be able to participate in political decisions in Greece is to acquire its official citizenship. There is no other requirement that facilitates or excludes migrants in the matter.

10.2.2. Local Elections

When it comes to the local government agencies' elections, Article 102 para 2 of the Constitution does not provide any prohibition regarding migrants' political rights. Also, Article 4 para 4 of the Constitution indicates that 'only Greek citizens shall be eligible for public service, except as otherwise provided by special laws'. This implies that although the rights to vote and to stand in national elections are exclusive for Greek citizens, there is a possibility for a migrant not possessing official citizenship to have access and participate in local public life only if it is recognised by a specific and concrete provision.

¹⁸⁸⁹ Papassiopi-Passia, *Δίκαιο Αλλοδαπών*, Sakkoulas Publications, 59 [Greek].

10.2.2.1. European Citizens

In the 1992 Maastricht Treaty the member States of the EU decided that their citizens who reside in another member State will have active and passive voting rights in the country of residence at the municipal elections as well as for the European Parliament elections. This was introduced with the EC Council Directive 94/80 and therefore all EU member States including Greece, were obliged to transpose it to their national legislation.¹⁸⁹⁰

10.2.2.2. Third-country Nationals

The above does not apply to third-country nationals for whom participation in the political realm requires citizenship acquisition. Although their right to participate in local elections was recognised with Law n. 3838/2010¹⁸⁹¹ as a result of the societal changes, different approaches have given birth to a heated political debate which ended up in its abolition. In particular, Art. 14-21 of the Law were first characterised as unconstitutional and got suspended with the judgment 350/2011 of the Hellenic Council of State (Section IV) and the judgment 460/2013 of the same Court's Assembly. They were finally abolished with Art. 4 of the Law 4244/2014. Court majority's basic argument was that the election body of Locals and Regional Authorities (LRAs) is exclusively consisted of the Greek citizens since they are the only ones who constitute the term 'people', represent their sovereignty and therefore possess the Greek citizenship which is the main criterion in order for someone to exercise public authority either in national or in local level.¹⁸⁹² That argument was confronted by a strong minority which implied that the Greek Constitution does not require the same election body in national and local elections since in the former there is a direct expression of the will of the people whereas in the latter there is only an expression of the State's administrative operation (see Art. 51 para 3 and 102 para 2 of the Constitution).¹⁸⁹³ Furthermore, it was intensely supported that since Art. 5 para 1 of the Constitution guarantees for 'everyone', therefore for legal third-country nationals as well, the right to participate in the country's political life, their participation in the local elections is of utmost importance due to its direct relation to their interests through their daily lives.¹⁸⁹⁴

10.3. Participation in political decisions of the country of origin

¹⁸⁹⁰ Presidential Decree n. 320/1999 (Exercise of the right to vote and stand for election at the municipal and community elections by non-Greek EU citizens residing in Greece in compliance with Directive 94/80/EC) 1999 [Άσκηση του δικαιώματος του εκλέγειν και εκλέγεσθαι κατά τις δημοτικές και κοινοτικές εκλογές από πολίτες της Ευρωπαϊκής Ένωσης που κατοικούν στην Ελλάδα και δεν είναι Έλληνες πολίτες, σε συμμόρφωση προς την 94/80/ΕΚ Οδηγία του Συμβουλίου της Ευρωπαϊκής Ένωσης]; Law n. 3463/2006 (Code for Municipalities and Communities) 2006 [Κύρωση του κώδικα Δήμων και Κοινοτήτων], Art. 25 and 28.

¹⁸⁹¹ Law n. 3838/2010 (Current provisions for Greek citizenship and political participation of repatriated Greeks and lawfully resident immigrants and other provisions) 2010 [Σύγχρονες διατάξεις για την Ελληνική Ιθαγένεια και την πολιτική Συμμετοχή ομογενών και νομίμως διαμενόντων μεταναστών και άλλες ρυθμίσεις].

¹⁸⁹² Dimitris Hristopoulos, *Οι μετανάστες μεταξύ "λαού" και "έθνους"*, www.constitutionalism.gr, February 15 2011 [Greek].

¹⁸⁹³ Papassiopi-Passia, *Δίκαιο Αλλοδαπών*, 62.

¹⁸⁹⁴ Akritas Kaidatzis, *Παρατηρήσεις σχετικά με την απόφαση 460/2013 ολομέλειας Συμβουλίου της Επικρατείας*, Armenopoulos, 2013, 800 [Greek]; Chrysogonos, *Συνταγματικό Δίκαιο*, Sakkoulas Publications, 2014, 413 [Greek].

Greek legislation does not include any specific provisions for the participation of migrants in political proceedings in their country of origin. Migrants' political rights in their country of origin are regulated by the laws of the respective country and they can be exercised by contacting the competent embassy.

10.4. Conclusion

At this point, it is worth mentioning that the political participation of third-country nationals in local elections is recognised by a great number of EU member States and at the same time the Council of Europe is strongly promoting through its Group of Specialists on Nationality the implementation of third-country nationals' political participation in 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.¹⁸⁹⁵ Concerning the Council of Europe's efforts, Greece constitutes one of its State parties that continue not to follow its lead on the subject.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Introduction

Nationality Law of Greece is based on the principle of "jus sanguinis" (law relating to blood), by which the nationality of children is the same that of their parents, irrespective of their place of birth. Conversely, "jus soli" (law of the soil) or more commonly known as "birthright citizenship" is the principle that nationality is dependent on the place of birth. Moreover, since Greece is a member of the EU, a Greek is also a citizen of the EU, and therefore entitled to the same rights as other EU citizens.

According to the "Greek Nationality Code" (Law n. 3284/2004¹⁸⁹⁶ as amended by Law n. 3838/2010, Law n. 4251/2014 and Law n. 4335/2015) there are ten ways to acquire Greek nationality, which is the first step in order to apply for a Greek passport and a Greek national ID. A Greek passport can be issued only for a Greek citizen who is registered in a Greek Municipality and allows the holder to reside and work in all the countries of the E.U.

11.2. Ways to acquire Greek citizenship

11.2.1. By Birth

Birth within the territory of Greece does not automatically confer citizenship. An individual born in Greece obtains the Greek nationality at birth, only in the case that at his birth he does not

¹⁸⁹⁵ Council of Europe, Community Relations Project, *Political and Social Participation of Immigrants through Consultative Bodies*, ISBN 92-871-3891-5, April 1999, 11.

¹⁸⁹⁶ Law n. 3284/2004 (Ratification of the Greek Nationality Code) 2004 [Περί κυρώσεως του Κώδικα Ελληνικής Ιθαγένειας].

obtain a foreign nationality or his nationality is uncertain (abandoned children or children of stateless parents).

11.2.2. By Origin, Descent, Ancestry or Raise in Greece

11.2.2.1 Child of a Greek citizen born in Greece (Art. 1 para 1 of Law 3284/2004)

A child of a Greek citizen born in Greece acquires Greek citizenship by birth.

11.2.2.2. Child of a foreign national (Art. 1 para 2 of Law 3284/2004)

A child of a foreign national is automatically Greek if the mother is Greek or the father is Greek and a chain of Greek nationality can be established (for example through properly recorded birth and marriage certificates). Furthermore, if the father is Greek and paternity can be proven, the child will acquire Greek citizenship when an application is submitted for the child to become a Greek citizen, providing the child has not yet reached the age of 18. Grandmothers and grandfathers are also considered, but the process in order to acquire citizenship is longer. It can take up to 2-3 years.

The same applies to children born in Greece by foreign national parents who have lived legally and permanently in Greece for five years. The latest modification of the “Greek Nationality Code” (Law n. 4332/2015) provides for two new nationality acquisition modes via declaration and a transitional provision, and grants citizenship to the children of foreign national parents who were born and raised in Greece: μετανάστες δεύτερης γενιάς (second generation migrants) . According to Art. 1A of Law n. 3284/2004 as amended by Law 4332/2015, a child of parents of non Greek nationality who are longterm residents, may acquire the Greek nationality if he/she lives legally with the proper residence permit and has attended primary/secondary school in Greece for at least six (6) years before age 18, approximately. Deadline to apply is within three (3) years of a child finishing his/her six (6) years of schooling. Additionally, a citizen of foreign nationality who permanently and lawfully resides in Greece, may acquire Greek nationality if s/he has successfully attended nine years of primary and secondary education or six years of secondary or has graduated from a Greek university or technological college (Art. 1B of Law n. 3284/2004 as amended by Law 4332/2015).¹⁸⁹⁷

11.2.3. By Recognition or Adoption (Art. 2 and 3 of Law 3284/2004)

A foreign national born out of wedlock who has been legally recognised by a Greek citizen (either voluntarily or by full judicial recognition) at the time that he /she is a minor, becomes a Greek citizen. Similarly, a foreign national who has been adopted as a minor by a Greek citizen, acquires Greek citizenship upon the day of his/her adoption.

¹⁸⁹⁷ According to an Extract from the Explanatory Report of the L. 4335/2015: “The reason for this proposed legislative reform is the necessity to guarantee the development and smooth integration into the Greek society of alien children who were born or raised in Greece”.

11.2.4. By Enlistment in the Armed Forces or monasticism in Mount Athos (Art. 4 of Law 3284/2004)

Foreign nationals of Greek origin admitted to military academies as officers or non-commissioned officers of the armed services or enlisted in the armed forces as volunteers, in accordance with current regulations, acquire Greek Citizenship upon their admittance to the academies or upon their enlistment. In addition, the children of the above mentioned foreign nationals, who acquire Greek Citizenship, become Greek citizens at the same time their parents acquire Greek citizenship provided that at the time of their parents' application to the Secretary General of the Prefecture they are minors and unmarried. Moreover, according to the Greek constitution, foreign nationals admitted as monks in one of the monasteries of Mount Athos, lawfully become Greek Citizens automatically.

11.2.5. By Naturalization (Art. 5 of Law 3284/2004)

11.2.5.1. Naturalization process and general requirements

There are two naturalization processes. The first is a shorter one for people of Greek origin, descent or ancestry. The second procedure to get Greek citizenship through naturalization is a bit different from the one that should be followed in the case of a minor, because the adult will have to submit documents from the judicial authorities not only of his home country but also of Greece.

First of all, the migrant should be over 18 at the time that he chooses to submit his/her naturalization application. In addition, he/she should not have been convicted during the last ten years until the time of its application (no criminal record or outstanding deportation orders, including the case of pending judgments of deportation) or have been imprisoned for more than a year. Moreover, a foreign national who wants to get Greek citizenship through naturalization, should not have been convicted for dangerous crimes such as crimes against democracy, treason, homicide by intention, dangerous physical offense, drug dealing and trafficking, money laundering, international fiscal crimes, child abduction etc. What is more, in order to apply for Greek citizenship through naturalization a migrant needs to have sufficient knowledge of the Greek language, history, and civilization (Art 5 para 2 point b. of Law 3284/2004). All in all, the migrant should have been legally living in Greece with a long-term residence permit for seven (7) consecutive years prior to the date of application.

11.2.5.2. Marriage as a way to obtain Greek citizenship

Since 1984, marriage does not entail the acquisition of Greek nationality automatically. However, a migrant who is married for three (3) full years from the wedding date and has a child or children with a Greek citizen, and he/she has been legally living in Greece for 3 years with a long term residence permit can apply for Greek citizenship (Art. 5 para 1d of Law 3284/2004) . It is important to point out that the marriage must be legal, registered and still valid. The type of the wedding ceremony (civil or religious) does not have an impact on the naturalization process. In addition, if the foreign national have custody of a child or children who are Greek citizens, and

has been legally living in Greece for three (3) years or is single/divorced, married to a foreign national, or married to a Greek citizen with no children and have seven (7) consecutive years prior to the date of application.

11.2.5.2. Refugees

Refugees are recognized under the 1951 Geneva Convention and must have a total of five (5) years residency in Greece (Art. 5 para 1d of Law 3284/2004).

11.3. The procedure for acquisition of Greek citizenship.

11.3.1. Required supporting documents

11.3.1.1. General required supporting documents (Art. 6 of Law 3284/2004)

The alien who is interested in obtaining Greek Citizenship will have to fill out an application for the acquisition of Greek citizenship. The competent public entity during the above mentioned process is the Ministry of Interior (Art. 5 para 2 of Law 3284/2004). However, the Ministry of Public Order, the Internal Revenue Services and Municipal Rolls (Municipalities and Communities) are also involved.

The applicant needs to present a birth certificate. If they fail to present a birth certificate, they can present the decision of political asylum granted to them. Moreover, they need to present a copy of passport or other travel document. Greek passports are issued by the National Passport Centre. Applicants have to apply in person – and in case of a child under 14, accompanied by a parent – at the local police department or at a Greek Consulate Authority.

In addition, they have to present a Naturalization Statement, which is made before the Mayor or the President of the Community in presence of two Greek citizens as witnesses. What is more, residence permit or other documentation of legal residence in the country, and revenue stamp, are also required for the support of the application. Last but not least, the applicant has to present tax clearance note or copy of income taxation statement (Form E1) of the last financial year. The applications usually process within twelve (12) months. Nevertheless, there is no guarantee that any individual application will be successful.

11.3.1.2. Required supporting documents for the determination of nationality and the translation of names / surnames when the parties are married

According to the Portal "ERMIS", the Central Portal of the public administration, which provides citizens and businesses electronic information services, the aliens who are married apply for the determination of citizenship and translation of names and surnames to the respective services within the Municipalities and Communities. The applicants have to present birth certificates for the members of family, marriage certificates of the parents, marriage certificates of the same and copies of their passports. All the required supporting documents have to be officially translated in Greek. The process for the determination of nationality and the translation of names and surnames when the aliens are married is zero-cost, while the processing time is about ten (10) days.

11.3.1.3. Required supporting documents for the registration in the foreigner municipal roll acquiring Greek citizenship by naturalization

Foreign nationals who acquire Greek citizenship by naturalization have to register in the foreigner municipal roll. The competent entity in this process is the Municipal Roll of Athens (*Διεύθυνση Μητρώου-Δημοτολογίου*). The application has to be accompanied by birth certificate, the decision on the acquisition of Greek citizenship, marriage certificate, solemn declaration of Law n. 1599/1986¹⁸⁹⁸, and a validated copy of applicant's passport. It is very important to point out that the applicant has to present not only the certificates officially translated in Greek, but also the original (in a foreign language) documents with authenticity stamp.

11.4. Dual citizenship

Greece is included in the list of the countries that have no restrictions on holding dual nationality. In addition, a Greek national is a citizen of the EU, and therefore entitled to the same rights as other EU citizens.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. Introduction

The total funding for the refugee crisis from the EU budget to meet these challenges in 2015, 2016 and 2017 amounts to €17.7 billion.¹⁸⁹⁹ The EU was the main source of funding.

12.2. Funding Instruments

First of all, the EU Commission is the main finance provider. It first launched a long-term funding program for six years, between 2014-2020. It transformed the previous funding, the Integration Fund and it replaced it with the AMIF (Asylum, Migration and Integration Fund), which is the main instrument that provided funding to Greece. The first one was implemented from 2007 to 2013 and it supported the integration of migrants in Greece, with a focus on newly arrived third-country nationals. On the other hand, its successor the AMIF, which was first launched as a long-term funding program for six years, between 2014-2020 provides support to Greek national efforts to improve reception capacities, ensure that asylum procedures are in line with EU standards, integrate migrants at local and regional levels and increase the effectiveness

¹⁸⁹⁸ Law n. 1599/1986 (Relationship between citizen and state, introduction of a new type of identity card and other provisions) 1986 [Σχέσεις Κράτους- πολίτη, καθιέρωση νέου τύπου δελτίου ταυτότητας και άλλες διατάξεις].

¹⁸⁹⁹EU Commission, *EU budget for the refugee crisis and improving migration management*, (2017) available at: <http://ec.europa.eu/budget/library/biblio/documents/2017/budget-refugee-crisis-improving-migration-management_en.pdf> accessed 1 July 2017.

of return programmes.¹⁹⁰⁰ This fund promotes the efficient management of migration flows and the strengthening of the European system.¹⁹⁰¹ The second important instrument that provided funding to Greece is the International Security Fund (hereinafter ISF) which supports Greek national efforts to achieve a uniform and high level of control of the external borders and to fight cross-border organised crime. This fund is also used to provide shelter and accommodation, catering, health care, transportation at hotspots, and to ensure this way healthy and safe living conditions for migrants. This is provided to Greece in order to support the Greek authorities as well as international organisations and NGOs operating in Greece in managing the refugee and humanitarian crisis. The Commission has awarded over €352 million in emergency assistance since the beginning of 2015.¹⁹⁰² Finally, the Commission provides to Greece part of the funding of the Humanitarian Aid and Civil Protection (DG ECHO) which is normally used to provide aid to third developing countries. It launched an Emergency Support Instrument (ESI) which had a crucial role for the integration of refugees, as it provided many services such as water, sanitation, hygiene, and shelter with a special emphasis on unaccompanied minors, child-friendly spaces, social support, and education.¹⁹⁰³ The European Social Fund facilitates the integration of migrants and refugees into the labour market.

12.3. Specific Programmes

The Welcommon is a project largely financed by the EU via the UNHCR, which is described as a prototype on finding new ways to house refugees unlike the overcrowded and often dangerous facilities on the Greek islands.¹⁹⁰⁴ Moreover, the EC Commission and UNHCR launched a scheme to provide 20,000 reception places for asylum seekers in Greece. Under this declaration, the Commission is providing funding from the EU budget for the UNHCR to support Greece in developing its asylum reception capacity.¹⁹⁰⁵ Another program implemented by the NGO PRAKSIS regards unaccompanied minors and is supported by the European Refugee Fund (ERF), It is part of STEGI programme and refers to actions for unaccompanied minors who are found in Greece, usually under poor and precarious conditions.¹⁹⁰⁶ Finally, specific reference shall be given to the projects implemented by the IOM which contributed to a high extent to the integration of asylum-seekers such as the Project on protecting children in the context of the

¹⁹⁰⁰ EU Commission, *Draft Amending Budget No 1 to the General Budget 2016: New instrument to provide emergency support within the Union*, COM (2016) 152 available at: <<https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-152-EN-F1-1.PDF>> accessed 1 July 2017.

¹⁹⁰¹ *ibid*.

¹⁹⁰² EU Commission, *Managing the Refugee Crisis: EU financial support to Greece*, (March 2015) available at: <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agendamigration/background-information/20170321_factsheet_managing_refugee_crisis_eu_financial_support_greece_-_update_en.pdf> accessed 3 July 2017.

¹⁹⁰³ *ibid*.

¹⁹⁰⁴ See more information for this program at: <https://welcommon.gr/>.

¹⁹⁰⁵ EU Commission, *EU Commission and UNHCR launch scheme to provide 20000 reception places for asylum seekers in Greece*, December 2015 available at: <<http://www.unhcr.org/news/press/2015/12/566eac399/european-commission-unhcr-launch-scheme-provide-20000-reception-places.html>> accessed 4 July 2017.

¹⁹⁰⁶ See more information about this program at: <<https://www.praksis.gr/en/our-programs/integrated-interventions/item/>>.

Refugee and Migrant Crisis in Europe which is partnered by UNICEF, Save the Children and UNHCR and is funded by the Commission (DG Justice). This programme develops a joint proposal to prevent violence against children and promote respect for their rights, including unaccompanied minors¹⁹⁰⁷

Conclusions

Dealing with refugees and migrants and ensuring they enjoy their rights within a country, requires a multi sided approach. In order to address the increasing influx of populations, Greece has made important steps aiming to solve the various issues.

While in some areas Greece mostly follows the developments at the EU level (e.g. the asylum procedure, the multiple modifications of the Greek Nationality Code, the regulation of the right to residence) there are others that the Greek State is taking its own steps (e.g. enhancing multicultural education by law n. 4415/2016). Moreover, Greece has invested in changing its administrative structure in order to deal effectively with refugees and migrants (e.g. with Law n. 4375/2016) but there are many steps to be taken for achieving this goal. An example of a procedure that needs to be ameliorated can be considered the procedure of recognition of university diplomas and qualifications obtained abroad.

It must be noted that the Greek Constitution has been serving as a basis for further progress during these years of reform mostly due to the fact that it creates a net of protection for a series of basic human rights not only for Greek citizens but for persons in the Greek territory (e.g. healthcare, education, or even the lack of strict conditions for the persons participating in municipal election contrary to the strict regulation of the right to participate in national elections).

Additionally, we shall not oversee the contribution of various NGOs operating in Greece and the assistance provided by CoE and EU programs. From the findings of the European Commission against Racism and Intolerance and the extensive work of actors such as the Greek National Commission for Human Rights, the NGO Solidarity Now and the Hellenic Foundation for European and Foreign Policy that try to interact with the government to the funding provided by a series of EU programs, Greece has been receiving important assistance that has contributed to the progress that was made.

To sum up, there is no doubt that despite the efforts, many of the provisions adopted in the recent years need to be specified further or become more progressive in order to come up with more solid results. However, taking into consideration the increasing population flows and the overall situation that the country has to deal with, Greece has managed to provide important assistance to refugees and migrants and is focused in complying with the European and International Conventions it has signed and ratified. The protection and integration of incoming populations remains a high priority for the Greek state.

¹⁹⁰⁷For more information see also: <<https://greece.iom.int/en/protecting-children-context-refugee-and-migrant-crisis-europe>>.

Table of legislation

Provisions in native language	Corresponding translation
Σύνταγμα της Ελλάδος	Greek Constitution
Άρθρο 2 παράγραφος 1 Ο σεβασμός και η προστασία της αξίας του ανθρώπου αποτελούν την πρωταρχική υποχρέωση της Πολιτείας.	Art. 2 para 1 Respect and protection of the value of the human being constitute the primary obligations of the State.
Άρθρο 4 παράγραφος 4 Μόνο Έλληνες πολίτες είναι δεκτοί σε όλες τις δημόσιες λειτουργίες, εκτός από τις εξαιρέσεις που εισάγονται με ειδικούς νόμους.	Art. 4 para 4 Only Greek citizens shall be eligible for public service, except as otherwise provided by special laws.
Άρθρο 5 παράγραφος 1 Καθένας έχει δικαίωμα να αναπτύσσει ελεύθερα την προσωπικότητά του και να συμμετέχει στην κοινωνική, οικονομική και πολιτική ζωή της Χώρας, εφόσον δεν προσβάλλει τα δικαιώματα των άλλων και δεν παραβιάζει το Σύνταγμα ή τα χρηστά ήθη παράγραφος 5 Καθένας έχει δικαίωμα στην προστασία της υγείας και της γενετικής του ταυτότητας. Νόμος ορίζει τα σχετικά με την προστασία κάθε προσώπου έναντι των βιοϊατρικών παρεμβάσεων.	Art. 5 para 1 All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages. para 5 All persons have the right to the protection of their health and of their genetic identity. Matters relating to the protection of every person against biomedical interventions shall be specified by law.
Άρθρο 16 παράγραφος 2 Η παιδεία αποτελεί βασική αποστολή του	Art. 16 para 2 Education constitutes a basic mission for the

<p>Κράτους και έχει σκοπό την ηθική, πνευματική, επαγγελματική και φυσική αγωγή των Ελλήνων, την ανάπτυξη της εθνικής και θρησκευτικής συνείδησης και τη διάπλασή τους σε ελεύθερους και υπεύθυνους πολίτες.</p> <p>παράγραφος 4</p> <p>Όλοι οι Έλληνες έχουν δικαίωμα δωρεάν παιδείας, σε όλες τις βαθμίδες της, στα κρατικά εκπαιδευτήρια. Το Κράτος ενισχύει τους σπουδαστές που διακρίνονται, καθώς και αυτούς που έχουν ανάγκη από βοήθεια ή ειδική προστασία, ανάλογα με τις ικανότητές τους.</p>	<p>State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.</p> <p>para 4</p> <p>All Greeks are entitled to free education on all levels at State educational institutions. The State shall provide financial assistance to those who distinguish themselves, as well as to students in need of assistance or special protection, in accordance with their abilities.</p>
<p>Άρθρο 21 παράγραφος 3</p> <p>Το Κράτος μεριμνά για την υγεία των πολιτών και παίρνει ειδικά μέτρα για την προστασία της νεότητας, του γήρατος, της αναπηρίας και για την περίθαλψη των απόρων</p>	<p>Art. 21 para 3</p> <p>The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy</p>
<p>Άρθρο 51 παράγραφος 3</p> <p>Οι βουλευτές εκλέγονται με άμεση, καθολική και μυστική ψηφοφορία από τους πολίτες που έχουν εκλογικό δικαίωμα, όπως νόμος ορίζει. Ο νόμος δεν μπορεί να περιορίσει το εκλογικό δικαίωμα παρά μόνο αν δεν έχει συμπληρωθεί κατώτατο όριο ηλικίας ή για ανικανότητα δικαιοπραξίας ή ως συνέπεια αμετάκλητης ποινικής καταδίκης για ορισμένα εγκλήματα.</p>	<p>Art. 51 para 3</p> <p>The Members of Parliament shall be elected through direct, universal and secret ballot by the citizens who have the right to vote, as specified by law. The law cannot abridge the right to vote except in cases where a minimum age has not been attained or in cases of legal incapacity or as a result of irrevocable criminal conviction for certain felonies.</p>
<p>Άρθρο 102 παράγραφος 2</p> <p>Οι οργανισμοί τοπικής αυτοδιοίκησης έχουν διοικητική και οικονομική αυτοτέλεια. Οι αρχές τους εκλέγονται με καθολική και μυστική ψηφοφορία, όπως νόμος ορίζει</p>	<p>Article 102 para 2</p> <p>Local government agencies shall enjoy administrative and financial independence. Their authorities shall be elected by universal and secret ballot, as specified by law.</p>

<p align="center">Greek Nationality Code (Νόμος 3284/2004 όπως τροποποιήθηκε από τους Ν. 3838/2010, Ν. 4251/2014, Ν. 4335/2015)</p>	<p align="center">Greek Nationality Code (Law n. 3284/2004 as amended by Law n. 3838/2010, Law n. 4251/2014 and Law n. 4335/2015)</p>
<p>Κεφάλαιο I - Κτήση της Ελληνικής Ιθαγένειας</p>	<p>Chapter I - Acquisition of Greek Nationality</p>
<p>Άρθρο 1 Με τη γέννηση 1. Το τέκνο Έλληνα ή Ελληνίδας αποκτά από τη γέννηση του την Ελληνική Ιθαγένεια. 2. Την Ελληνική Ιθαγένεια αποκτά από τη γέννηση του και όποιος γεννιέται σε ελληνικό έδαφος, εφόσον δεν αποκτά με τη γέννηση του αλλοδαπή ιθαγένεια ή είναι άγνωστης ιθαγένειας.</p>	<p>Article 1 By birth 1. The child of a Greek father or mother shall acquire the Greek nationality by birth. 2. A person born on Greek territory shall acquire the Greek nationality by birth, provided that such person does not acquire any foreign nationality by birth or is of unknown nationality</p>
<p>Άρθρο 1Α (Όπως τροποποιήθηκε με τον Ν.4335/2015) Με δήλωση και αίτηση, λόγω γέννησης και φοίτησης σε σχολείο στην Ελλάδα 1. Τέκνο αλλοδαπών που γεννιέται στην Ελλάδα θεμελιώνει δικαίωμα κτήσης της ελληνικής ιθαγένειας υπό τις εξής προϋποθέσεις: α) Της εγγραφής του στην Α' τάξη ελληνικού σχολείου της πρωτοβάθμιας εκπαίδευσης και της συνέχισης παρακολούθησης ελληνικού σχολείου κατά το χρόνο υποβολής της δήλωσης – αίτησης της παραγράφου 2. β) Της προηγούμενης συνεχούς νόμιμης διαμονής του ενός εκ των γονέων του επί πέντε τουλάχιστον έτη πριν από τη γέννησή του. Αν το τέκνο γεννήθηκε πριν τη συμπλήρωση της ως άνω πενταετούς διαμονής, το δικαίωμα κτήσης της ελληνικής ιθαγένειας θεμελιώνεται με τη συμπλήρωση δεκαετούς συνεχούς νόμιμης διαμονής του γονέα. γ) Της νόμιμης διαμονής των γονέων του και της κατοχής από έναν τουλάχιστον εξ αυτών</p>	<p>Article 1A (As amended by Law n. 4335/2015) By declaration and application, by birth and school attendance in Greece 1. A child of foreigner parents born in Greece acquires the right to Greek nationality under the following preconditions: a) He/she has enrolled in the first grade of elementary school and is still attending Greek school at the time the application-declaration of paragraph 2 is being lodged. b) One of their parents has been living legally and continuously for at least five (5) years in the country before the child was born. In case the child was born before this five year period had been completed, then the necessary period of legal and continuous residence of the parents is extended to ten (10) years. c) His/her parents are legal residents and at least one of them holds one of the following residence permits at the time of the application-declaration of paragraph 4:</p>

ενός εκ των κατωτέρω τίτλων διαμονής κατά το χρόνο υποβολής της δήλωσης – αίτησης της παραγράφου 4:

“γα) άδειας επί μακρόν διαμένοντος, κατ’ εφαρμογή των διατάξεων του Π.δ. 150/2006 (Α’ 160) ή άδεια διαμονής επί μακρόν διαμένοντος σύμφωνα με τις διατάξεις της παρ. 7 του άρθρου 40 του Ν. 3731/2008 (Α’ 26) ή άδεια διαμονής που προβλέπεται στο άρθρο 89 του Ν. 4251/2014 (Α’ 80), όπως ισχύει,

γβ) άδειας διαμονής αόριστης διάρκειας ή δεκαετούς διάρκειας σύμφωνα με τις διατάξεις του Ν. 2910/2001 (Α’ 91), της παρ. 2 του άρθρου 91 του Ν. 3386/2005 (Α’ 212), της παρ. 1 του άρθρου 39 του Ν. 3731/2008 (Α’ 263) και του άρθρου 138 του Ν. 4251/2014 (Α’ 80), όπως ισχύουν,

γγ) εγγράφου πιστοποίησης μόνιμης διαμονής πολίτη της Ε.Ε. με βάση τις διατάξεις του Π.δ. 106/2007 (Α’ 135),

γδ) τίτλου διαμονής αναγνωρισμένου πολιτικού πρόσφυγα ή καθεστώτος επικουρικής προστασίας, σύμφωνα με τις διατάξεις των προεδρικών διαταγμάτων 61/1999 (Α’ 63), 96/2008 (Α’ 152), 114/2010 (Α’ 195) και 113/2013 (Α’ 146), όπως ισχύουν, ή τίτλο διαμονής ανιθαγενούς,

γε) ειδικού δελτίου ταυτότητας ομογενούς (Ε.Δ.Τ.Ο.) συνοδευόμενου από ισχύουσα άδεια διαμονής ενιαίου τύπου (Α.Δ.Ε.Τ.) ή άλλον τίτλο νόμιμης διαμονής ομογενούς,

γστ) άδειας διαμονής δεύτερης γενιάς σύμφωνα με τις διατάξεις του άρθρου 108 του Ν. 4251/2014 (Α’ 80),

γζ) δελτίου μόνιμης διαμονής μέλους

“i) Residence permit of indefinite duration or ten (10) year permit in accordance with the provisions of the Presidential Decree 150/2006 (GG A160) or long term resident permit in accordance with Article 40, paragraph 7 of Law 3731/2008 (GG A 26) or residence permit provided for in Article 89 of Law 4251/2014 (GG A80) as this is in force;

ii) Residence permit of indefinite or of ten (10) year duration in accordance with the provisions of Law 2910/2001 (GG A 91), paragraph 2, Article 91 of Law 3386/2005 (GG A 212), paragraph 1, Article 39 of Law 3731/2008 (GG A 263) and Article 138 of Law 4251/2014 (GG A 80) as these are in force;

iii) A document certifying the permanent residence of an EU citizen in accordance with the provisions of 2 Presidential Decree 106/2007 (GG A 135);

iv) A residence authorization for refugees and persons under subsidiary protection in accordance with the provisions of Presidential Decrees 61/1999 (GG A 63), 96/2008 (GG A 152), 114/2010 (GG A 195) and 113/2013 (GG A 146) as these are in force, or a residence authorization for stateless persons;

v) Special identity card for foreign nationals of Greek descent (EDTO) accompanied by a valid uniform residence permit (ADET), or other residence permit for aliens of Greek descent;

vi) A second generation residence permit in accordance with Article 108, Law 4251/2014 (GG A80);

vii) A permanent residence permit for a family member or for an EU citizen. The residence permits mentioned above may be amended, replaced or removed with a Decision by the Minister of Interior and Administrative

οικογένειας Έλληνα ή πολίτη της Ε.Ε. Με απόφαση του Υπουργού Εσωτερικών και Διοικητικής Ανασυγκρότησης μπορεί να τροποποιούνται, αντικαθίστανται ή καταργούνται οι τίτλοι οριστικής διαμονής που αναφέρονται ανωτέρω και να προστίθενται νέοι τίτλοι νόμιμης διαμονής.”

2.

α. Για την κτήση της ελληνικής ιθαγένειας κατ' εφαρμογή της παραγράφου 1 του παρόντος άρθρου υποβάλλεται κοινή δήλωση-αίτηση από τους γονείς του τέκνου. Η δήλωση-αίτηση κτήσης της ελληνικής ιθαγένειας, καθώς και τα σχετικά δικαιολογητικά υποβάλλονται στην αρμόδια υπηρεσία της Αποκεντρωμένης Διοίκησης στη χωρική αρμοδιότητα της οποίας υπάγεται ο δήμος της διαμονής των αιτούντων.

β. Τη δήλωση-αίτηση της προηγούμενης παραγράφου του παρόντος άρθρου υποβάλλει στην περίπτωση τέκνου μονογονεϊκής οικογένειας ή τέκνου δικαιούχου διεθνούς προστασίας (αναγνωρισμένου πρόσφυγα, προσώπου που έχει υπαχθεί σε καθεστώς επικουρικής προστασίας ή ανιθαγενούς), ο εναπομείνας γονέας ή αυτός στον οποίο έχει ανατεθεί η επιμέλεια του ανηλίκου, εφόσον συντρέχουν στο πρόσωπό του οι λοιπές σχετικές προϋποθέσεις. Σε περιπτώσεις ασυνόδευτων ανηλίκων τη δήλωση-αίτηση υποβάλλει ο επίτροπος ή ο εκπρόσωπος του ανηλίκου που έχει νόμιμα ορισθεί.

3. Ο Συντονιστής της Αποκεντρωμένης Διοίκησης, εντός έξι (6) μηνών από την υποβολή της δήλωσης- αίτησης της παραγράφου 2 του παρόντος άρθρου, με απόφασή του, περίληψη της οποίας δημοσιεύεται στην Εφημερίδα της

Reconstruction, and new ones may be added.”

2.

a. In order to acquire the Greek citizenship by virtue of paragraph 1 of this Article, the parents of the child submit a joint declaration-application. This declaration- application to acquire Greek citizenship as well as all relevant supporting documents are submitted to the competent authority of the Decentralized Administration under the territorial jurisdiction of which lies the municipality where the applicants reside.

b. In case of a child either of a single parent family or of a parent who is entitled to international protection (recognized refugee, person with the status of subsidiary protection or statelessness) this declarationapplication of the previous paragraph of this Article, is submitted by the other parent or the person who has been entrusted with the custody of the minor, provided he/she meets all other relevant prerequisites. In the case of unaccompanied minors, this declaration-application is lodged by the guardian or the legal representative of the minor.

3. Within six (6) months after this declaration-application of paragraph 2 of this Article has been lodged, the Coordinator of the Decentralized Administration issues a decision, the summary of which is published in the Government Gazette, to mandate the local municipality to enroll the minor in its municipality rolls. Greek citizenship is acquired upon the publication of this summary.

<p>Κυβερνήσεως, εντέλλεται τον οικείο δήμο να εγγράψει τον ανήλικο αλλοδαπό, στο δημοτολόγιό του. Η ελληνική ιθαγένεια αποκτάται από τη δημοσίευση της σχετικής περίληψης.</p> <p>4. Δεν συνιστούν κατά την έννοια του παρόντος άρθρου τίτλο νόμιμης διαμονής δελτία, βεβαιώσεις υποβολής δικαιολογητικών ή άλλα έγγραφα που επιτρέπουν την προσωρινή διαμονή του κατόχου τους μέχρι την κρίση του αιτήματός του από την αρμόδια διοικητική ή δικαστική αρχή ή την ολοκλήρωση της εκκρεμούς διοικητικής διαδικασίας.</p> <p>5. Τα στοιχεία ταυτότητας του ανήλικου αλλοδαπού, καθώς και η ύπαρξη της συγγενικής σχέσης του ανήλικου για τον οποίο υποβάλλεται δήλωση – αίτηση κτήσης ιθαγένειας από τους γονείς του, αποδεικνύονται από ληξιαρχική πράξη γέννησης της ημεδαπής και από τα σχετικά δικαιολογητικά που πιστοποιούν τη συγγενική σχέση. Με απόφαση του Υπουργού Εσωτερικών και Διοικητικής Ανασυγκρότησης μπορεί να προστίθενται, καταργούνται ή τροποποιούνται τα αναγκαία έγγραφα για την υποβολή των δηλώσεων – αιτήσεων κτήσης της ελληνικής ιθαγένειας του παρόντος άρθρου.</p> <p>6. Για την υποβολή των προβλεπόμενων στο παρόν άρθρο δηλώσεων–αιτήσεων κτήσης της ελληνικής ιθαγένειας καταβάλλεται παράβολο ύψους εκατό (100) ευρώ.</p>	<p>4. Forms, supporting documents receipts or other documents allowing for the temporary stay of their bearer until his/her application is examined by the competent administrative or judicial authority or the completion of administrative procedure, do not constitute legal residence authorizations.</p> <p>5. The identity information of the minor non-national, as well as the existence of a family relation with the minor for whom a declaration-application for the acquisition of Greek citizenship is being lodged by his/her parents, are verified by the domestic birth certificate and the relative supporting documents verifying this family relation. The list of necessary supporting documents for the declaration-application for Greek citizenship may be amended, other documents may be added or removed by a decision of the Minister of Interior and Administrative Reconstruction.</p> <p>6. In order to lodge a declaration-application for the acquisition of Greek citizenship as provided herein, a fee of one hundred euro (100€) shall be deposited.</p>
<p>Άρθρο 1B (Όπως προστέθηκε με τον Ν.4335/2015) Με δήλωση και αίτηση, λόγω φοίτησης σε σχολείο στην Ελλάδα</p>	<p>Article 1B (As added by Law n. 4335/2015) By declaration and application, due to school attendance in Greece</p> <p>1. A non-national minor legally residing in</p>

1. Ανήλικος αλλοδαπός που κατοικεί μόνιμα και νόμιμα στην Ελλάδα θεμελιώνει δικαίωμα κτήσης της ελληνικής ιθαγένειας λόγω φοίτησης σε ελληνικό σχολείο, εφόσον έχει ολοκληρώσει επιτυχώς την παρακολούθηση είτε εννέα τάξεων πρωτοβάθμιας και δευτεροβάθμιας εκπαίδευσης είτε έξι τάξεων δευτεροβάθμιας εκπαίδευσης. Η φοίτηση στο νηπιαγωγείο δεν προσμετράται. Η επιτυχής ολοκλήρωση της απαιτούμενης φοίτησης αποδεικνύεται με σχετική βεβαίωση της αρμόδιας αρχής.

2. Αλλοδαπός που κατοικεί μόνιμα και νόμιμα στην Ελλάδα και είναι απόφοιτος Τμήματος ή Σχολής ελληνικού ΑΕΙ ή ΤΕΙ θεμελιώνει δικαίωμα κτήσης της ελληνικής ιθαγένειας εφόσον διαθέτει απολυτήριο δευτεροβάθμιας εκπαίδευσης ελληνικού σχολείου στην Ελλάδα. Η δήλωση-αίτηση της παραγράφου 3 υποβάλλεται εντός αποκλειστικής προθεσμίας τριών (3) ετών από την ημερομηνία αποφοίτησης από Τμήμα ή Σχολή ελληνικού ΑΕΙ ή ΤΕΙ.

3. Για την κτήση της ελληνικής ιθαγένειας κατ' εφαρμογή των παραγράφων 1 και 2 του παρόντος άρθρου υποβάλλεται σχετική δήλωση-αίτηση από τον ίδιο τον αλλοδαπό. Η δήλωση-αίτηση κτήσης της ελληνικής ιθαγένειας, καθώς και τα σχετικά δικαιολογητικά υποβάλλονται στην αρμόδια υπηρεσία της Αποκεντρωμένης Διοίκησης στη χωρική αρμοδιότητα της οποίας υπάγεται ο δήμος της διαμονής του αιτούντα.

4.
α. Ο Συντονιστής της Αποκεντρωμένης Διοίκησης, εντός έξι (6) μηνών από την υποβολή της δήλωσης-αίτησης κατ' εφαρμογή

Greece establishes the right to acquire the Greek citizenship due to school attendance in Greece, provided he/she has successfully completed attendance of either nine (9) grades of elementary and secondary education or six (6) grades of secondary education. Attendance of nursery schools does not count against this period. The successful completion of the required attendance is proven by the relevant certification of the competent authority.

2. A non-national legally residing in Greece and graduate of a Greek higher education or technical higher education institution establishes the right to acquire the Greek citizenship provided he/she holds a school-leaving certificate of a Greek high school in Greece. The declaration-application of paragraph 3 is lodged within a time limit of three (3) years following graduation from the higher education institution.

3. In order to acquire the Greek citizenship by virtue of paragraph 1 and 2 of this Article, a relative declaration-application is lodged by the non national himself/herself. The declaration-application and the necessary supporting documents are lodged at the competent authority of the Decentralized Administration under the territorial jurisdiction of which lies the municipality where the applicants reside.

4.
(a) The Coordinator of the Decentralized Administration, within six (6) months after the declaration-application has been lodged by virtue of paragraph 1 of this Article, issues a decision, a summary of which is being

της διατάξεως της παραγράφου 1 του παρόντος άρθρου, με απόφασή του, περίληψη της οποίας δημοσιεύεται στην Εφημερίδα της Κυβερνήσεως, εντέλλεται τον οικείο δήμο να εγγράψει τον ανήλικο αλλοδαπό, στο δημοτολόγιό του. Η ελληνική ιθαγένεια αποκτάται από τη δημοσίευση της σχετικής περίληψης.

β. Ο Συντονιστής της Αποκεντρωμένης Διοίκησης, εντός ενός (1) έτους από την υποβολή της δήλωσης-αίτησης κατ' εφαρμογή της διατάξεως της παραγράφου 2 του παρόντος άρθρου, με απόφασή του, περίληψη της οποίας δημοσιεύεται στην Εφημερίδα της Κυβερνήσεως, εντέλλεται τον οικείο δήμο να εγγράψει τον ενήλικο αλλοδαπό, στο δημοτολόγιό του. Η ελληνική ιθαγένεια αποκτάται από τη δημοσίευση της σχετικής περίληψης. Η αίτηση απορρίπτεται αν συντρέχει ποινικό κώλυμα, κατά την περίπτωση β' της παραγράφου 1 του άρθρου 5 ή λόγοι δημόσιας ή εθνικής ασφάλειας κατά το άρθρο 5B. Η διερεύνηση της συνδρομής των αρνητικών προϋποθέσεων του προηγούμενου εδαφίου διενεργείται με ανάλογη εφαρμογή της προβλεπόμενης στην παράγραφο 2 του άρθρου 7 διαδικασίας και εντός προθεσμίας έξι (6) μηνών. Η σχετική διαδικασία και προθεσμίες αναστέλλονται σύμφωνα με τη διάταξη της παραγράφου 4 του άρθρου 31.

5.

α. Στην περίπτωση που η δήλωση-αίτηση κτήσης της ελληνικής ιθαγένειας, που προβλέπεται κατ' εφαρμογή της διατάξεως της παραγράφου 1 του παρόντος άρθρου, δεν υποβλήθηκε από τον ανήλικο αλλοδαπό, ο αλλοδαπός που εξακολουθεί να διαμένει νόμιμα και μόνιμα στην Ελλάδα υποβάλλει τη σχετική δήλωση-αίτηση στην αρμόδια

published in the Government Gazette, to mandate the local municipality to enroll the minor non national in its municipal roll. Greek citizenship is acquired upon the publication of this summary.

(b). The Coordinator of the Decentralized Administration, within one (1) year after the declaration-application has been lodged by virtue of the provision of paragraph 2 of this Article, issues a decision, a summary of which is published in the Government Gazette, to mandate the local municipality to enroll the adult non national in its municipal roll. Greek citizenship is acquired upon the publication of this summary. The application is rejected on penal impediment in accordance with indent (b), paragraph 1 of Article 5 or on grounds of public or national security in accordance with Article 5B. Investigating the existence of negative preconditions mentioned in the previous subparagraph is carried out with the relative application of the procedure provided for in paragraph 2, Article 7 and within a time limit of six (6) months. This procedure and time limits are suspended in accordance with the provision of paragraph 4, Article 31.

5.

(a) In case the declaration-application to acquire the Greek citizenship, provided for by virtue of the provision of paragraph 1 of this Article, has not been lodged by the minor non national, the non-national who is still a legal resident in Greece lodges the declaration-application to the competent service of the Decentralized Administration under the territorial jurisdiction of which lies the municipality where the applicants resides,

υπηρεσία της Αποκεντρωμένης Διοίκησης στην οποία υπάγεται διοικητικά ο δήμος της διαμονής του, μέχρι τη συμπλήρωση του 21ου έτους της ηλικίας του.

β. Στην περίπτωση που η κτήση ιθαγένειας λόγω φοίτησης, κατ' εφαρμογή της διατάξεως της παραγράφου 2 του παρόντος άρθρου, θεμελιώνεται χρονικά μετά την ενηλικίωση του τέκνου και μέχρι την ηλικία των 23 ετών, ο ενήλικος αλλοδαπός που εξακολουθεί να διαμένει νόμιμα και μόνιμα στην Ελλάδα υποβάλλει τη σχετική δήλωση-αίτηση στην αρμόδια υπηρεσία της Αποκεντρωμένης Διοίκησης στην οποία υπάγεται διοικητικά ο δήμος της διαμονής του, εντός αποκλειστικής προθεσμίας τριών ετών από την ημερομηνία συμπλήρωσης εννέα τάξεων ελληνικού σχολείου ή των έξι τάξεων της δευτεροβάθμιας εκπαίδευσης.

γ. Στις ανωτέρω περιπτώσεις ακολουθείται αναλόγως η διαδικασία της διάταξης της παραγράφου 4β του παρόντος άρθρου. Η ελληνική ιθαγένεια αποκτάται και στις περιπτώσεις αυτές από την ημερομηνία δημοσίευσης της περίληψης της απόφασης του Συντονιστή της Αποκεντρωμένης Διοίκησης στην Εφημερίδα της Κυβερνήσεως.

6. Τέκνο αλλοδαπού, ο οποίος αποκτά την ελληνική ιθαγένεια κατά τις διατάξεις του παρόντος άρθρου καθίσταται Έλληνας χωρίς άλλη διατύπωση, αν κατά την ημερομηνία κτήσης της ελληνικής ιθαγένειας από τον γονέα του είναι ανήλικο και άγαμο.

7. Δεν συνιστούν κατά την έννοια του παρόντος άρθρου τίτλο νόμιμης διαμονής δελτία, βεβαιώσεις υποβολής δικαιολογητικών ή άλλα

until they reach the age of 21.

(b) In case the entitlement to citizenship acquisition due to school attendance, by virtue of the provision of paragraph 2 of this Article, is accumulated after the child has 4 reached the age of majority and until the age of 23, the adult non-national who is still a legal resident in Greece, lodges their declaration-application to the competent service of the Decentralized Administration under the territorial jurisdiction of which lies the municipality where the applicants reside, within the time-limit of three (3) years following completion of nine (9) grades of the Greek educational system or six (6) grades of the secondary education.

(c) In the cases above, the procedure of the provision of paragraph 4(b) of this Article applies accordingly. In these cases also Greek citizenship is acquired upon the publication of the summary of the decision of the Decentralized Administration Coordinator in the Government Gazette.

6. The child of a non-national who has acquired the Greek citizenship by virtue of the provisions of this Article is considered a Greek citizen without any further administrative formality, if at the time his/her parent acquired his/her Greek citizenship, he/she was a minor and unmarried.

7. For the purposes of this Article, forms, receipts for supporting documents or other documents allowing the temporary residence of their holder until their application is considered by the competent administrative

<p>έγγραφα που επιτρέπουν την προσωρινή διαμονή του κατόχου τους μέχρι την κρίση του αιτήματός του από την αρμόδια διοικητική ή δικαστική αρχή ή την ολοκλήρωση της εκκρεμούς διοικητικής διαδικασίας.</p> <p>8. Τα στοιχεία ταυτότητας του αιτούντος ενήλικου ή του ανήλικου αλλοδαπού αποδεικνύονται από ληξιαρχική πράξη γέννησης της ημεδαπής είτε από πιστοποιητικό γέννησης ή άλλο ισοδύναμο έγγραφο πιστοποίησης του ληξιαρχικού συμβάντος της γέννησής του, που εκδίδουν οι αρμόδιες αρχές του κράτους προέλευσής του. Αν ο αλλοδαπός είναι δικαιούχος διεθνούς προστασίας ως πολιτικός πρόσφυγας ή έχει υπαχθεί σε καθεστώς επικουρικής προστασίας ή είναι ανιθαγενής και αδυνατεί να προσκομίσει πιστοποιητικό γέννησής του, αρκεί η πράξη αναγνώρισής του ως πολιτικού πρόσφυγα, υπαγωγής του στο καθεστώς επικουρικής προστασίας ή το οικείο δελτίο ανιθαγενούς αντίστοιχα. Με απόφαση του Υπουργού Εσωτερικών και Διοικητικής Ανασυγκρότησης μπορεί να προστίθενται, καταργούνται ή τροποποιούνται τα αναγκαία έγγραφα για την υποβολή των δηλώσεων-αιτήσεων κτήσης της ελληνικής ιθαγένειας του παρόντος άρθρου.</p> <p>9. Ο αιτών δύναται με υπεύθυνη δήλωση που συνοδεύει τη σχετική αίτηση-δήλωση να προβεί σε εξελληνισμό των ονοματεπωνυμικών του στοιχείων. 10. Για την υποβολή των προβλεπόμενων στο παρόν άρθρο δηλώσεων-αιτήσεων κτήσης της ελληνικής ιθαγένειας καταβάλλεται παράβολο ύψους εκατό (100) ευρώ.</p>	<p>or judicial authority or the completion of the pending administrative procedure, do not constitute authorizations for legal residence.</p> <p>8. Identity information of the adult or minor non-national applicant is established by a domestic birth certificate or any other equivalent document issued by the competent authorities of their country of origin. In case the non-national is under international protection as a refugee or under the subsidiary protection status or of statelessness, and cannot produce a birth certificate, the recognition of the refugee status, the international protection status or the domestic certificate of stateless person respectively, suffice for this purpose. The list of necessary supporting documents for the declaration-application for Greek citizenship of this Article may be amended, other documents may be added or removed by a decision of the Minister of Interior and Administrative Reconstruction.</p> <p>9. The applicant may accompany their declaration-declaration with a statutory declaration so as to localize in Greek their name and surname details. 10. In order to lodge the application-declaration provided for in this Article, for the acquisition of the Greek citizenship, a fee of one hundred euro (100€) should be paid.</p>
<p>Άρθρο 2</p>	<p>Article 2</p>

<p>Με αναγνώριση</p> <p>Αλλοδαπός που γεννήθηκε χωρίς γάμο των γονέων του και αναγνωρίσθηκε νόμιμα ως τέκνο Έλληνα, έτσι ώστε να εξομοιώνεται πλήρως με γνήσιο τέκνο του πατέρα του, γίνεται Έλληνας από την αναγνώριση, αν κατά το χρόνο αυτόν είναι ανήλικος.</p>	<p>By acknowledgement</p> <p>An alien born out of wedlock and lawfully acknowledged as the child of a Greek father, so that such person is fully made equal to a genuine child of his/her father, shall become a Greek national at the time of acknowledgement, if he/she is a minor at that time.</p>
<p>Άρθρο 3</p> <p>Με υιοθεσία</p> <p>Αλλοδαπός, που υιοθετήθηκε πριν την ενηλικίωση του ως τέκνο Έλληνα ή Ελληνίδας, γίνεται Έλληνας από το χρόνο της υιοθεσίας.</p>	<p>Article 3</p> <p>By adoption</p> <p>An alien adopted before his/her coming of age as the child of a Greek father or mother shall become Greek national at the time of adoption.</p>
<p>Άρθρο 4</p> <p>Με κατάταξη στις ένοπλες δυνάμεις</p> <p>1. Ομογενείς αλλοδαποί εισαγόμενοι στις στρατιωτικές σχολές αξιωματικών ή υπαξιωματικών των ενόπλων δυνάμεων ή κατατασσόμενοι στις ένοπλες δυνάμεις ως εθελοντές, σύμφωνα με την ισχύουσα νομοθεσία, αποκτούν αυτοδίκαια την Ελληνική Ιθαγένεια από την εισαγωγή τους στις σχολές ή από την κατάταξη τους.</p> <p>2. Ομογενείς αλλοδαποί κατατασσόμενοι ως εθελοντές σε καιρό επιστράτευσης ή πολέμου σύμφωνα με την ισχύουσα νομοθεσία μπορούν να αποκτήσουν την Ελληνική Ιθαγένεια με αίτηση τους στον Γενικό Γραμματέα της Περιφέρειας χωρίς άλλη διατύπωση.</p> <p>3. Όσοι από τους αναφερόμενους στην προηγούμενη παράγραφο αποκτούν βαθμό αξιωματικού, μονίμου ή εφέδρου, αποκτούν αυτοδίκαια την Ελληνική Ιθαγένεια.</p> <p>4. Ο στρατιωτικός όρκος που δίδεται από τους</p>	<p>Article 4</p> <p>By enlistment in the Armed Forces</p> <p>1. Aliens of Greek ethnic origin who are admitted to military schools for officers and non-commissioned officers of the Armed Forces or enlist in the Armed Forces as volunteers, in accordance with the applicable legislation, shall ipso facto acquire the Greek nationality as from their admittance to such schools or as from their enlistment.</p> <p>2. Aliens of Greek ethnic origin who enlist as volunteers at the time of mobilization or war in accordance with the applicable legislation may acquire the Greek nationality by applying to the General Secretary of the Region and without any further formalities.</p> <p>3. Any of the persons mentioned in the preceding paragraph who are promoted to officer rank in the standing Armed Forces or in the Reserve shall ipso facto acquire the Greek nationality.</p>

<p>ομογενείς των παραγράφων 1, 2 και 3 αναπληρώνει τον όριο του Έλληνα πολίτη.</p> <p>5. Τα τέκνα των ομογενών που αποκτούν την Ελληνική Ιθαγένεια σύμφωνα με τις προηγούμενες παραγράφους γίνονται Έλληνες από το ίδιο χρονικό σημείο, ύστερα από αίτηση του γονέα τους προς τον Γενικό Γραμματέα της Περιφέρειας, αν κατά το χρόνο υποβολής της εν λόγω αίτησης είναι ανήλικα και άγαμα.</p>	<p>4. The military oath taken by the persons considered in paragraphs 1, 2 and 3 hereof shall substitute for the oath of Greek citizen.</p> <p>5. The children of aliens of Greek ethnic origin who acquire the Greek nationality in accordance with the preceding paragraphs shall become Greek citizens as from the same point in time, by application of their parent to the General Secretariat of the Region, if at the time of application they are underage and unmarried.</p>
<p>Άρθρο 5 Με πολιτογράφηση Προϋποθέσεις πολιτογράφησης</p> <p>1. Για τον αλλοδαπό, που επιθυμεί να αποκτήσει την Ελληνική Ιθαγένεια με πολιτογράφηση, απαιτείται να:</p> <p>α. Είναι ενήλικος κατά το χρόνο υποβολής της αίτησης πολιτογράφησης.</p> <p>β. Μην έχει καταδικασθεί τελεσίδικα, κατά την τελευταία δεκαετία πριν από την υποβολή της αίτησης πολιτογράφησης, σε ποινή στερητική της ελευθερίας τουλάχιστον ενός έτους ή, ανεξαρτήτως ποινής και χρόνου έκδοσης της καταδικαστικής απόφασης, για εγκλήματα προσβολών του πολιτεύματος, προδοσίας της χώρας, ανθρωποκτονίας από πρόθεση και επικίνδυνης σωματικής βλάβης, εγκλήματα σχετικά με την εμπορία και διακίνηση ναρκωτικών, τη νομιμοποίηση εσόδων από παράνομες δραστηριότητες, διεθνή οικονομικά εγκλήματα, εγκλήματα με χρήση μέσων υψηλής τεχνολογίας, εγκλήματα περί το νόμισμα, αντίστασης κατά της αρχής, αρπαγής ανηλίκων, κατά της γενετήσιας ελευθερίας και οικονομικής εκμετάλλευσης της γενετήσιας ζωής, κλοπής, απάτης, υπεξαίρεσης, εκβίασης,</p>	<p>Article 5 By naturalization Conditions for naturalization</p> <p>1. Aliens who wish to acquire the Greek nationality by naturalization must:</p> <p>a. be adults at the time of the application for naturalization;</p> <p>b. not have been irrevocably sentenced in the last ten years before the application for naturalization to a freedom-depriving sentence of at least one year or, irrespective of sentence and time of delivery of the sentencing judgment, for crimes against the regime, treason against the country, intentional homicide and dangerous physical injuries, crimes relating to drug dealing and trading, money-laundering, international financial crimes, crimes using high-technology devices, crimes against the currency, resistance to authority, child abduction, crimes against sexual freedom and financial exploitation of sexual life, theft, fraud, defalcation, extortion, usury, violations of the law on intermediaries, forgery, false statement, slandering, smuggling, crimes</p>

τοκογλυφίας, του νόμου περί μεσαζόντων, πλαστογραφίας, ψευδούς βεβαίωσης, συκοφαντικής δυσφήμισης, λαθρεμπορίας, εγκλήματα που αφορούν τα όπλα, αρχαιότητες, την προώθηση λαθρομεταναστών στο εσωτερικό της χώρας ή τη διευκόλυνση μεταφοράς ή προώθησης τους ή της εξασφάλισης καταλύματος σε αυτούς για απόκριψη ή για παραβάσεις της νομοθεσίας για την εγκατάσταση και κίνηση αλλοδαπών στην Ελλάδα,

γ. Μην εκιριεμεί σε βάρους του απόφαση απέλασης.

2. Για τον αλλοδαπό που είναι αλλογενής απαιτείται επιπλέον να:

α. Διαμένει νόμιμα στην Ελλάδα δέκα συνολικά έτη την τελευταία δωδεκαετία πριν από την υποβολή της αίτησης πολιτογράφησης. Για τον ανιθαγενή αλλοδαπό ή για τον αλλοδαπό που έχει αναγνωρισθεί ως πρόσφυγας αρκεί διαμονή στην Ελλάδα πέντε ετών μέσα στην τελευταία δωδεκαετία πριν από την υποβολή της αίτησης. Στον ανωτέρω κατά περίπτωση απαιτούμενο χρόνο δεν προσμετράται ο χρόνος που διάνυσε ο αλλοδαπός στην Ελλάδα ως διπλωματικός ή διοικητικός υπάλληλος ξένης χώρας. Η χρονική προϋπόθεση της δεκαετούς διαμονής δεν απαιτείται γι' αυτόν που είναι σύζυγος Έλληνα ή Ελληνίδας, διαμένει τουλάχιστον επί μία τριετία στην Ελλάδα και έχει αποκτήσει τέκνο, καθώς και για εκείνον που έχει γεννηθεί και κατοικεί συνεχώς στην Ελλάδα. Για τους συζύγους Ελλήνων διπλωματικών υπαλλήλων που έχουν συμπληρώσει, οποτεδήποτε, ένα έτος διαμονής στην Ελλάδα και υπηρετούν στο εξωτερικό, προσμετράται για τη συμπλήρωση του παραπάνω χρόνου και ο χρόνος παραμονής τους στο εξωτερικό λόγω της

relating to weapons, antiquities, entry of illegal immigrants into the country or facilitating their transport or entry or finding accommodation for them, misprision or violations of the legislation on the establishment and movement of aliens in Greece;

c. not have any pending judgments for deportation against them.

2. Aliens who are not of Greek ethnic origin must also:

a. have lawfully resided in Greece for a total of ten years in the last twelve-year period before the application for naturalization. Aliens without nationality or aliens recognised as refugees must have lawfully resided in Greece for five years in the last twelve-year period before the application. The above required time does not include any period in which the alien has served in Greece as diplomatic or administrative officer of a foreign country. The condition of ten-year residence is not required for persons being spouses of Greek nationals, reside in Greece for at least three years and have children and for persons born and continuously residing in Greece. For the spouses of Greek diplomatic officers having completed, at any time, one year of residence in Greece and serve abroad, the period of residence abroad due to the service of their Greek spouses shall be taken into account for the completion of the above period.

<p>υπηρεσίας των Ελλήνων συζύγων τους. β. Έχει επαρκή γνώση της ελληνικής γλώσσας, της ελληνικής ιστορίας και γενικά του ελληνικού πολιτισμού.</p> <p>3. Αθλητές Ολυμπιακών αθλημάτων που έχουν συμπληρώσει πενταετή νόμιμη παραμονή στην Ελλάδα κατά την τελευταία δωδεκαετία, μπορούν να αποκτήσουν την Ελληνική Ιθαγένεια, σύμφωνα με τις διατάξεις των άρθρων 5 έως 9 του παρόντος Κώδικα, εφόσον έχουν δικαίωμα να αγωνιστούν στην αντίστοιχη ελληνική εθνική ομάδα, σύμφωνα με τους διεθνείς κανονισμούς του οικείου αθλήματος, μετά από εισήγηση της οικείας εθνικής ομοσπονδίας και σύμφωνη γνώμη της Ελληνικής Ολυμπιακής Επιτροπής.</p>	<p>b. have adequate knowledge of the Greek language, the Greek history and the Greek culture in general.</p> <p>3. Olympic athletes who have completed five years of lawful residence in Greece during the last twelve-year period may acquire the Greek nationality, in accordance with the provisions of articles 5 to 9 hereof, if they are entitled to participate in the respective Greek national team, pursuant to the international regulations of the said sport, on recommendation of the relevant national federation and with the consent of the Greek Olympic Committee.</p>
<p>Νόμος 3328/2005 Διεπιστημονικός Οργανισμός Αναγνώρισης Τίτλων Ακαδημαϊκών και Πληροφόρησης και άλλες διατάξεις</p>	<p>Law n. 3328/2005 Hellenic National Academic Recognition and Information Center and other provisions</p>
<p>Άρθρο 4 Προϋποθέσεις αναγνώρισης τίτλων</p> <p>Οι τίτλοι σπουδών των αναγνωρισμένων εκπαιδευτικών ιδρυμάτων της αλλοδαπής αναγνωρίζονται από τον Οργανισμό ως «σότιμοι» ή ως «σότιμοι και αντίστοιχοι».</p> <p>1. Η «σοτιμία» αναγνωρίζεται εφόσον: α) Η διάρκεια των σπουδών, η διαδικασία διδασκαλίας και μάθησης και οι όροι αξιολόγησης, προαγωγής και αποφοίτησης των σπουδαστών πληρούν τις απαιτήσεις των πανεπιστημίων και των τεχνολογικών ιδρυμάτων ανώτατης εκπαίδευσης της ημεδαπής. Εξαιρούνται από την προϋπόθεση της διαδικασίας της διδασκαλίας και μάθησης</p>	<p>Article 4 Conditions for the recognition of qualifications</p> <p>The qualifications from foreign recognized educational institutes are recognized by the Center as "equivalent" or as "equivalent and corresponding".</p> <p>1. The "equivalence" is recognized under the condition that: a) The duration of studies, the teaching and learning process and the terms of evaluation, advancement and graduation of students fulfill the requirements of universities and technological institutes of higher education in our country. Exempted from the condition of the teaching and learning process are</p>

τα ιδρύματα τύπου «ανοικτού πανεπιστημίου» (open university), «σπουδών εξ αποστάσεως» (distance learning) και «εξωτερικών πτυχίων» (external degrees), υπό τον όρο ότι τα συγκεκριμένα ιδρύματα έχουν ειδικό πρόγραμμα σπουδών για το σκοπό αυτόν, ότι ολόκληρη η διαδικασία παροχής τέτοιου τύπου προγράμματος γίνεται αποκλειστικά από το ίδρυμα που απονέμει τον τίτλο και όχι από άλλο με οποιονδήποτε τρόπο συνεργαζόμενο με αυτό ίδρυμα και ότι η αξιολόγηση, προαγωγή και αποφοίτηση γίνονται με βάση διαφανείς και αδιάβλητες διαδικασίες, ανάλογες με αυτές που ισχύουν στα άλλα προγράμματα σπουδών με παρακολούθηση.

β) Όλο το πρόγραμμα σπουδών έχει διανυθεί σε ομοταγή εκπαιδευτικά ιδρύματα και τουλάχιστον το 1/2 του προγράμματος έχει πραγματοποιηθεί στο ίδρυμα που απονέμει τον τίτλο. Εξαιρέση ως προς το εν λόγω ελάχιστο ποσοστό σπουδών μπορεί να αποτελέσουν τα διαπανεπιστημιακά προγράμματα συνεργασίας αναγνωρισμένων εκπαιδευτικών ιδρυμάτων. Η διάρκεια των σπουδών υπολογίζεται σε ακαδημαϊκά έτη, εξάμηνα ή διδακτικές μονάδες ή σε συνδυασμό αυτών.

2. Ειδικότερα για την αναγνώριση τίτλων σπουδών της αλλοδαπής που αποκτώνται μετά από τριετή φοίτηση, όταν για τα αντίστοιχα προγράμματα της ημεδαπής προβλέπεται τετραετής ή πενταετής φοίτηση, «ισοτιμία» ή «ισοτιμία και αντιστοιχία» του πτυχίου αναγνωρίζεται μόνον εφόσον ο κάτοχος του πτυχίου είναι και κάτοχος μεταπτυχιακού διπλώματος. Στην περίπτωση αυτή δεν αναγνωρίζεται «ισοτιμία» του μεταπτυχιακού διπλώματος. Η κατοχή μεταπτυχιακού τίτλου δεν κρίνεται απαραίτητη προκειμένου για ισοτιμία με πτυχίο τεχνολογικού εκπαιδευτικού

institutions characterized as "open university", "distance learning" and "external degrees", provided that these specific institutions have a special studies programme to this end, that the whole process for the provision of such a programme is exclusively executed by the institute granting the qualification and not by another in any manner collaborating institute, and that the evaluation, advancement and graduation of students is executed through transparent and legitimate procedures, similar to those of other studies programmes that require attendance.

b) The whole studies programme has been attended in equal educational institutes and that at least 1/2 of the programme has been attended in the institute granting the qualification. The only exception to the said minimum percentage of studies can be inter-university programmes for the cooperation of recognized educational institutes. The duration of the studies is calculated in academic years, semesters or credits, or a combination of those.

2. Especially for the recognition of qualifications from abroad, acquired after a three-year period of studying, when the respective programmes domestically provide for four or five-year periods of studies, "equivalence" or "equivalence and correspondence" of the degree is recognized only if the holder of the degree also holds a postgraduate diploma. In this case there is no "equivalence" recognized for the postgraduate diploma. The acquisition of a postgraduate qualification is not deemed necessary in the

ιδρύματος. Σε ειδικές περιπτώσεις εντατικών προγραμμάτων της αλλοδαπής τριετούς διάρκειας, όταν τα αντίστοιχα πανεπιστημιακά προγράμματα της ημεδαπής είναι τετραετούς διάρκειας, είναι δυνατόν με ειδικά αιτιολογημένη απόφαση του οικείου Τμήματος του Διοικητικού Συμβουλίου (Δ.Σ.) του Οργανισμού, να χορηγηθεί «ισοτιμία» ή «ισοτιμία και αντιστοιχία» στο πτυχίο χωρίς παράλληλη συνεκτίμηση μεταπτυχιακού διπλώματος. Στη σχετική απόφαση λαμβάνονται υπόψη συγκεκριμένα ποιοτικά και ποσοτικά κριτήρια και ιδίως οι διδακτικές μονάδες (credits) του προγράμματος σπουδών του αλλοδαπού ιδρύματος και η τυχόν αξιολόγηση ή πιστοποίηση του από αναγνωρισμένους φορείς ανώτατης εκπαίδευσης. Η απόφαση αυτή δημοσιοποιείται.

3. «Ισοτιμία και αντιστοιχία» αναγνωρίζεται εφόσον συντρέχουν οι προϋποθέσεις για την αναγνώριση της «ισοτιμίας» του τίτλου σπουδών και επιπλέον ο ενδιαφερόμενος έχει διδαχθεί και εξετασθεί επιτυχώς στα βασικά μαθήματα του ομοειδούς προγράμματος σπουδών της ημεδαπής. Ο Οργανισμός μπορεί να απαιτήσει επιπλέον επιτυχή εξέταση σε συμπληρωματικό αριθμό μαθημάτων σε ανώτατα εκπαιδευτικά ιδρύματα της ημεδαπής. Τα συμπληρωματικά μαθήματα δεν μπορούν να υπερβαίνουν τα έξι. Ο αριθμός αυτός μπορεί να αυξηθεί έως δέκα, όταν πρόκειται για την αναγνώριση τίτλων της αλλοδαπής αντίστοιχων με τίτλους, που αποκτώνται στην ημεδαπή μετά από σπουδές τουλάχιστον πενταετούς διάρκειας. Αν η διαφορά του προγράμματος σπουδών της ημεδαπής από το πρόγραμμα της αλλοδαπής είναι τόσο σημαντική ώστε να μη μπορεί να χορηγηθεί

case of equivalence with a degree from a technological educational institute. In special cases of intensive programmes abroad, of a three-year duration, when the respective university programmes domestically are of a four-year duration, it is possible, by a specially justified decision of the competent Department of the Center's Board of Directors, to provide "equivalence" or "equivalence and correspondence" for a degree, without simultaneously taking into account a postgraduate diploma. In order to make this decision, they take into account specific qualitative and quantitative criteria, and especially the credits of the studies programme in the foreign institution and any evaluation or certification of the institution by recognized higher education bodies. This decision is published.

3. "Equivalence and correspondence" is recognized if the conditions for the recognition of the qualification's "equivalence" apply and additionally of the interested party has been taught and successfully examined in the principal subjects of the equivalent domestic studies programme. The Center can demand additional successful examination in a number of subjects in higher education institutions domestically. The additional subjects cannot exceed 6 in number. This number can be increased up to ten, when regarding the recognition of foreign qualifications as equivalent to qualifications acquired domestically after studies of a duration of at least five years. If the difference of the domestic studies programme from the foreign

«ισοτιμία και αντιστοιχία» του τίτλου ούτε με τη συμπληρωματική εξέταση σε έξι ή, αναλόγως, δέκα μαθήματα, τότε αναγνωρίζεται «ισοτιμία» εφόσον συντρέχουν οι προϋποθέσεις του άρθρου 4 παρ. 1. Τα συμπληρωματικά μαθήματα ορίζονται από το οικείο Τμήμα του Δ.Σ. του Οργανισμού μετά από εισήγηση της αρμόδιας Εκτελεστικής Επιτροπής (Ε.Ε.).

4. Τα ανώτατα εκπαιδευτικά ιδρύματα υποχρεούνται να δέχονται, μέσα στις δύο επόμενες από την υποβολή στο ίδρυμα της σχετικής αίτησης του ενδιαφερομένου εξεταστικές περιόδους, υποψηφίους που παραπέμπονται από τον Οργανισμό για εξέταση σε συμπληρωματικά μαθήματα σε αριθμό τουλάχιστον ίσο με το 10% των εισακτέων στα αντίστοιχα Τμήματα κατά το συγκεκριμένο ακαδημαϊκό έτος. Παράλειψη της υποχρέωσης τους αυτής συνιστά παράβαση καθήκοντος.

5. Ο Οργανισμός σε συνεργασία με πανεπιστημιακά και τεχνολογικά τμήματα ανώτατης εκπαίδευσης διενεργεί ειδικές γραπτές εξετάσεις για την αξιολόγηση των απαιτούμενων συμπληρωματικών μαθημάτων και για τον έλεγχο των αποκτηθεισών γνώσεων, όταν το κρίνει σκόπιμο. Οι εξετάσεις μπορεί να γίνονται και με τη μέθοδο των ερωτήσεων πολλαπλών επιλογών, η δε βαθμολογία των δοκιμιών των εξεταζομένων μπορεί να γίνεται και με ηλεκτρονικό τρόπο. Η εξεταστέα ύλη προσδιορίζεται εκ των προτέρων, ισχύει για ένα έτος, ανακοινώνεται δημοσίως και έχει το αντίστοιχο επιστημονικό επίπεδο των εξετάσεων που διοργανώνουν τα ημεδαπά ανώτατα εκπαιδευτικά ιδρύματα για την απόκτηση του αντίστοιχου πτυχίου. Μετά την ανακοίνωση των αποτελεσμάτων οι

programme is so significant as to not be able to provide "equivalence and correspondence" of the qualification even with the additional examination in six or, accordingly ten subjects, then "equivalence" is recognized if there are the conditions of article 4 par. 1. The additional subjects are defined by the respective Department of the Center's BoD, following a proposal by the competent Executive Committee.

4. The higher education institutions are under the obligation to accept, within the two following exam periods from the submission to the institution of the relevant application by the interested party, candidates referred by the Center for examination in additional subjects in numbers equal to at least 10% of enrolled students in the respective Departments on the current academic year. Any omission to carry out this obligation constitutes a violation of duty.

5. The Center, in cooperation with universities and technological institutes of higher education, executes special written examinations for the evaluation of the required additional subjects and the examination of the knowledge acquired, when it deems it necessary. The exams may be executed by multiple choice questions and the grading of candidates' essays may be executed electronically. The subject-matter under examination is defined a priori, is valid for one year, is publicly announced and is of a similar scientific level as the exams organized by the domestic higher education institutions for the acquisition of the respective degree. After the announcement of the results, the

<p>εξετασθέντες έχουν δικαίωμα να ζητήσουν την επίδειξη του γραπτού τους από τα αρμόδια όργανα του Οργανισμού και την επαναβαθμολόγησή του, εάν προκύψει σφάλμα ή παράλειψη στην αρχική βαθμολόγηση. Ειδικότερα θέματα ως προς τον τρόπο διεξαγωγής των εξετάσεων και τη διαδικασία επαναβαθμολόγησης ορίζονται με απόφαση του Υπουργού Εθνικής Παιδείας και Θρησκευμάτων μετά από πρόταση του Δ.Σ. του Οργανισμού κατά το άρθρο 15 παρ. 2. Για τη συμμετοχή στις εξετάσεις καταβάλλεται παράβολο στον Οργανισμό.</p> <p>6. Η «ισοτιμία και αντιστοιχία» του τίτλου για την οποία απαιτούνται συμπληρωματικά μαθήματα αναγνωρίζεται μετά την υποβολή στοιχείων που αποδεικνύουν επιτυχή εξέταση στα εν λόγω μαθήματα.</p> <p>7. Οι μεταπτυχιακοί και διδακτορικοί τίτλοι αναγνωρίζονται μόνο ως ισότιμοι.</p>	<p>candidates examined have the right to request that their paper be shown to them by the Center's competent bodies and its review, if there is an error or omission in the initial grading. More specific issues concerning the manner in which the examinations are executed and the review procedure, are defined by a decision of the Minister of National Education and Religious Affairs, following a proposal by the Center's BoD, according to article 15 par. 2. For participation in the examinations, a payment voucher is deposited to the Center.</p> <p>6. The "equivalence and correspondence" of the qualification for which additional subjects are required, is provided after the submission of evidence that prove a successful examination in the said subjects.</p> <p>7. The postgraduate and phd qualifications are only recognized as equivalent.</p>
<p>Άρθρο 11 Διαδικασία για αναγνώριση τίτλων σπουδών</p> <p>1. Οι ενδιαφερόμενοι υποβάλλουν αίτηση για αναγνώριση τίτλου σπουδών είτε μόνο για «ισοτιμία» είτε για «ισοτιμία και αντιστοιχία». Η αίτηση υποβάλλεται σε ειδικό έντυπο και συνοδεύεται από τα στοιχεία που καθορίζονται από τον Οργανισμό. Το έντυπο της αιτήσεως, ο τύπος του οποίου καθορίζεται από τον Οργανισμό, αποτελεί υπεύθυνη δήλωση για την ακρίβεια των πραγματικών γεγονότων που αναφέρονται σε αυτήν. Τα αρμόδια όργανα του Οργανισμού μπορούν να ζητούν πρόσθετα</p>	<p>Article 11 Procedure for the recognition of qualifications.</p> <p>1. The interested parties submit an application for the recognition of a qualification as "equivalent" or as "equivalent and corresponding" only. The application is submitted on a special document and is accompanied by the data specified by the Center. The application's document, whose type is defined by the Center, constitutes a solemn statement on the accuracy of the real events mentioned in it. The Center's competent bodies may request additional</p>

στοιχεία και να καλούν τον ενδιαφερόμενο για συμπληρωματικές επεξηγήσεις.

2.

α) Ο Πρόεδρος αναθέτει το φάκελο του ενδιαφερομένου σε ειδικό εισηγητή, ο οποίος, μετά τη συγκέντρωση όλων των απαραίτητων στοιχείων, συντάσσει εισήγηση. Στη συνέχεια, εφόσον υπάρχει προηγούμενο αναγνωρίσεως ή μη όμοιων τίτλων, ο φάκελος εισάγεται στον Πρόεδρο, αρμόδιο να εκδώσει τη σχετική απόφαση. Αν ο Πρόεδρος διαφωνεί με την εισήγηση του ειδικού εισηγητή, το θέμα εισάγεται για απόφαση στην αρμόδια Ε.Ε. Όταν δεν υπάρχει προηγούμενο αναγνωρίσεως ή μη ισοτιμίας όμοιων τίτλων, αρμόδια να αποφασίσει, θετικά ή αρνητικά, είναι η Ε.Ε. Εάν στην Ε.Ε. δεν υπάρξει ομοφωνία, το θέμα παραπέμπεται στο αρμόδιο Τμήμα.

β) Όταν ζητείται αναγνώριση «ισοτιμίας και αντιστοιχίας» και αν ακόμη υπάρχει προηγούμενη αναγνώριση απλής ισοτιμίας του συγκεκριμένου τίτλου, απαιτείται επιπλέον και εισήγηση ακαδημαϊκού συμβούλου σχετικά με την ανάγκη συμπληρωματικής εξέτασης σε συγκεκριμένα μαθήματα. «Ισοτιμία και αντιστοιχία» μπορεί να αναγνωρισθεί με ή χωρίς πρόσθετα μαθήματα.

γ) Οι αποφάσεις επί περιπτώσεων ομοίων τίτλων που εκδίδονται από τις Ε.Ε., τα Τμήματα ή τον Πρόεδρο αποστέλλονται στο Δ.Σ. για ενημέρωση και στη συνέχεια για δημοσιοποίηση κατά το τμήμα μόνον που αφορά τις προϋποθέσεις «ισοτιμίας» και «ισοτιμίας και αντιστοιχίας» των συγκεκριμένων προγραμμάτων σπουδών.

3. Ο τύπος των χορηγούμενων πιστοποιητικών καθορίζεται από το Δ.Σ. Το πιστοποιητικό αναγνώρισης αναγράφει σαφώς και σε εμφανή

information and call the interested party for additional clarifications.

2.

a) The President assigns the interested party's file to a special mover, who after the collection of all the necessary data, drafts a proposal. Then, provided there is a prior case of recognition or not of identical qualifications, the file is forwarded to the President who is competent to issue a relevant decision. If the President disagrees with the proposal by the special mover, the issue is forwarded to the competent E.C. When there is no prior recognition or not of equivalence for identical qualifications, the competent body to decide positively or negatively is the E.C. If the E.C. cannot make a unanimous decision, the issue is referred to the competent Department.

b) When recognition of "equivalence and correspondence" is requested, and even if there is a prior recognition of a simple equivalence of the specific qualification, the additional proposal by an academic consultant is needed, on the need to take an additional examination on specific subjects. "Equivalence and correspondence" may be recognized with or without additional subjects.

c) The decisions on cases of identical qualifications issued by the E.C., the Departments or the President, are sent to the BoD for notification and the to be published, only in what concerns the section referring to the conditions of "equivalence" and "equivalence and correspondence" of the specific studies programmes.

<p>θέση το χαρακτηρισμό του τίτλου ως «ισοτίμου» ή «ισοτίμου και αντιστοιχού» και το είδος του τίτλου. Επιπλέον μπορεί να περιλαμβάνει πληροφορίες για το περιεχόμενο, τη διάρκεια σπουδών και άλλα στοιχεία του τίτλου. Στον Οργανισμό τηρείται μητρώο όλων των χορηγούμενων πιστοποιητικών αναγνώρισεως και των σχετικών απορριπτικών αποφάσεων.</p> <p>4. Οι αποφάσεις και τα σχετικά πιστοποιητικά πρέπει να εκδίδονται για τις περιπτώσεις αναγνώρισης «ισοτιμίας» μέσα σε εξήντα ημέρες και για τις περιπτώσεις «ισοτιμίας και αντιστοιχίας» μέσα σε ενενήντα ημέρες από τη συγκέντρωση των απαραίτητων στοιχείων. Σε κάθε περίπτωση απόκλισης από τις ως άνω προθεσμίες λόγω έλλειψης στοιχείων εκδίδεται αιτιολογημένη απόφαση του Οργανισμού.</p> <p>5. Με την υποβολή της αίτησης καταβάλλεται παράβολο στον Οργανισμό που καθορίζεται κατά το άρθρο 18.</p>	<p>3. The type of issued certificates is defined by the BoD. The recognition certificate clearly states in a visible spot the characterization of the qualification as "equivalent" or "equivalent and corresponding", as well as the type of the qualification. Furthermore, it may include information on the content, the duration of the studies and other elements of the qualification. The Center maintains a register of all issued certificates of recognition and the relevant overruling decisions.</p> <p>4. The decisions and the respective certificates must be issued within sixty days for the cases of "equivalence" recognition and within ninety days for the cases of "equivalence and correspondence" recognition, from the collection of the necessary information. In any case of deviation from the aforementioned deadlines due to the lack of information, a justified decision is issued by the Center.</p> <p>5. Upon submission of the application a payment voucher is deposited to the Center, as specified in article 18.</p>
<p>Άρθρο 13 Επανεξέταση αιτημάτων αναγνώρισης</p> <p>1. Ο ενδιαφερόμενος, του οποίου απορρίπτεται αίτημα αναγνώρισεως τίτλου σπουδών, δικαιούται να υποβάλει στο οικείο Τμήμα του Δ.Σ. εντός ενός έτους από την κοινοποίηση της απόρριψης του αιτήματος του, αίτηση για επανεξέταση του θέματος, παραθέτοντας τους λόγους της επανεξέτασης και προσκομίζοντας νέα στοιχεία.</p>	<p>Article 13 Review of applications for recognition</p> <p>1. The interested party, whose application for the recognition of a qualification is rejected, has the right to submit to the competent BoD Department, within one year from the notification of rejection concerning his request, an application for the review of the issue, stating the reasons for the review and submitting new information.</p>

<p>Αν ο Πρόεδρος ή η Ε.Ε. που είχαν αρχικά εξετάσει το θέμα εξακολουθούν να είναι αρνητικοί, το αίτημα εισάγεται σε Ειδική Επιτροπή Επανεξέτασης, η οποία συγκροτείται από το αρμόδιο τμήμα και απαρτίζεται από το μέλος του Δ.Σ. που ανήκει στον αντίστοιχο ή συγγενή κλάδο προς αυτόν στον οποίο ανήκει ο κρινόμενος τίτλος σπουδών, έναν ακαδημαϊκό σύμβουλο της αυτής ή συγγενούς ειδικότητας σε σχέση με το συγκεκριμένο θέμα και έναν ειδικό εισηγητή. Η Ειδική Επιτροπή επανεξετάζει το θέμα και εισηγείται στο Τμήμα. Στις ειδικές επιτροπές επανεξέτασης δεν συμμετέχουν πρόσωπα που εξέτασαν αρχικά το συγκεκριμένο θέμα. Το οικείο Τμήμα αποφαινεται το ταχύτερο και πληροφορεί σχετικά τον ενδιαφερόμενο Η Ολομέλεια του Δ.Σ. είναι αρμόδια να επιλαμβάνεται και να αποφαινεται το ταχύτερο δυνατό και για αιτήσεις επανεξέτασης κατά των αποφάσεων των Τμημάτων του.</p> <p>2. Με την υποβολή κάθε αίτησης επανεξέτασης πρέπει να καταβάλλεται στον Οργανισμό παράβολο που καθορίζεται κατά το άρθρο 18</p>	<p>If the President or the E.C. that had originally examined the issue continue to be negative, the request is referred to a Special Review Committee, which is formed by the competent department and composed by the BoD member that belongs in the respective or similar field to the one of the qualification under examination, an academic consultant of the exact specialty or a similar one in relation to the issue and a special mover. The Special Committee reviews the issue and makes a proposal to the Department. The special review committees do not include persons that had originally examined the specific issue. The competent Department decides upon the issue as soon as possible and relevantly informs the interested party. The BoD Plenary Session is competent to undertake and decide upon the review applications as soon as possible against decisions of its Departments.</p> <p>2. Upon submission of every review application a payment voucher is deposited to the Center, as specified in article 18.</p>
<p>Άρθρο 18 Πόροι του Οργανισμού</p> <p>Πόροι του Οργανισμού είναι: [...] γ) Έσοδα από παράβολο, το ύψος του οποίου καθορίζεται με κοινή απόφαση του Υπουργού Οικονομίας και Οικονομικών και του Υπουργού Εθνικής Παιδείας και Θρησκευμάτων. Το παράβολο καταβάλλεται από κάθε ενδιαφερόμενο για αναγνώριση «ισοτιμίας» ή «ισοτιμίας και αντιστοιχίας»</p>	<p>Article 18 Center Resources</p> <p>The Center's resources are: [...] c) Income from the payment voucher, the amount of which is defined by a joint decision of the Minister of Economy and Finance and the Minister of National Education and Religious Affairs. The payment voucher is deposited by every interested party for the recognition of "equivalence" and "equivalence</p>

<p>τίτλου σπουδών ή για συμμετοχή στις εξετάσεις του Οργανισμού στη Γραμματεία, μαζί με τα δικαιολογητικά του. Τα έσοδα από τις πηγές αυτές κατατίθενται σε ειδικό λογαριασμό και μπορούν να διατίθενται με απόφαση του Δ.Σ., για τις λειτουργικές και στεγαστικές ανάγκες του Οργανισμού. Μέχρι την έκδοση της ως άνω κοινής υπουργικής απόφασης το παράβολο παραμένει στο ποσό που μέχρι τώρα κατεβάλλετο για αναγνώριση τίτλων σπουδών από το ΔΙ.Κ.Α.Τ.Σ.Α.</p>	<p>and correspondence" of a qualification or for participation in the Center's exams, to the Secretariat, along with his supporting documents. The income from the aforementioned sources are deposited in a special account and can be used, by a decision of the BoD, for the operational and housing needs of the Center. Until the issuance of the aforementioned joint decision, the payment voucher remains at the amount that was paid until this day for the recognition of qualifications by DIKATSA.</p>
<p>Νόμος 3852/2010 Νέα αρχιτεκτονική της αυτοδιοίκησης και της Αποκεντρωμένης Διοίκησης</p>	<p>Law n. 3852/2010 New architecture of Local Government and Decentralized Administration</p>
<p>Άρθρο 78</p> <p>1. Σε κάθε δήμο συγκροτείται και λειτουργεί με απόφαση του δημοτικού συμβουλίου, συμβούλιο ένταξης μεταναστών ως συμβουλευτικό όργανο του δήμου για την ενίσχυση της ένταξης των μεταναστών στην τοπική κοινωνία. Τα συμβούλια ένταξης μεταναστών αποτελούνται από πέντε (5) έως έντεκα (11) μέλη, τα οποία ορίζονται από το οικείο δημοτικό συμβούλιο. Ως μέλη ορίζονται δημοτικοί σύμβουλοι, εκπρόσωποι φορέων μεταναστών, εφόσον η έδρα αυτών ή παραρτήματος βρίσκεται εντός των διοικητικών ορίων του οικείου δήμου, ή εκπρόσωποι που επιλέγονται από την κοινότητα των μεταναστών που κατοικούν μόνιμα στον οικείο δήμο, σύμφωνα με τους όρους που προβλέπει σχετικός κανονισμός, που εκδίδει με απόφασή του το οικείο δημοτικό συμβούλιο, καθώς και εκπρόσωποι κοινωνικών φορέων οι οποίοι αναπτύσσουν εντός της διοικητικής περιφέρειας του οικείου δήμου δράση σχετική με τα προβλήματα των</p>	<p>Article 78</p> <p>1. In each municipality it is established and operates under the decision of the municipal council a immigrant integration council as an advisory body for enhancing the integration of immigrants into the local community. Immigrant integration councils are composed by five (5) to eleven (11) members, defined by the relevant municipal council. Members of the council can be municipal councilors, representatives of immigrant organizations, under the condition that they are or their branches are domiciled within the administrative boundaries of the municipality concerned, or representatives are selected by the immigrant community residing in the municipality in question, according to the conditions laid down in the relevant regulation, which is issued with a decision of the relevant city council, as well as representatives of social actors who take action concerning immigrants' problems within the administrative district of the</p>

<p>μεταναστών. Με την ίδια απόφαση ορίζεται πρόεδρος στο συμβούλιο ένταξης μεταναστών ένας εκ των δημοτικών συμβούλων μελών του. Στα παραπάνω συμβούλια ορίζονται υποχρεωτικά ως μέλη αλλοδαποί δημοτικοί σύμβουλοι που έχουν τυχόν εκλεγεί. Η συμμετοχή στα ανωτέρω συμβούλια είναι τιμητική και άμισθη.</p> <p>2. Έργο των συμβουλίων ένταξης μεταναστών είναι η καταγραφή και η διερεύνηση προβλημάτων που αντιμετωπίζουν οι μετανάστες, που κατοικούν μόνιμα στην περιφέρεια του οικείου δήμου, ως προς την ένταξή τους στην τοπική κοινωνία, την επαφή τους με δημόσιες αρχές ή τη δημοτική αρχή, η υποβολή εισηγήσεων προς το δημοτικό συμβούλιο για την ανάπτυξη τοπικών δράσεων προώθησης της ομαλής κοινωνικής ένταξης των μεταναστών και, εν γένει, την επίλυση των προβλημάτων που αυτοί αντιμετωπίζουν, ιδίως μέσω της οργάνωσης συμβουλευτικών υπηρεσιών από τις δημοτικές υπηρεσίες, καθώς και τη διοργάνωση σε συνεργασία με τον οικείο δήμο εκδηλώσεων ευαισθητοποίησης και ενίσχυσης της κοινωνικής συνοχής του τοπικού πληθυσμού.</p>	<p>municipality concerned. By the same decision, the of one of the municipal councilors is appointed as the chairman of the council It is compulsory that elected foreign councilors are appointed in the aforementioned councils. Participation in these councils is honorable and unpaid.</p> <p>2. Immigrant integration councils have to record and investigate problems of immigrants residing permanently in the periphery of the municipality concerned in terms of their integration in the local community, their contact with public authorities or the municipal authority, to make suggestions to the municipal council to develop local actions in order to promote the smooth integration of migrants and, in general, to solve the problems immigrants encounter, in particular through the organization of consular services from the municipal services, as well as the organization of events to raise awareness and enhance cohesion of the local population in cooperation with their municipality.</p>
<p>Νόμος 3907/2011 "Ίδρυση υπηρεσίας Ασύλου και Υπηρεσίας πρώτης υποδοχής</p>	<p>Law n. 3907/2011 Establishment of an asylum Service and a Service of First Reception</p>
<p>Άρθρο 3</p> <p>1. Στο Υπουργείο Προστασίας του Πολίτη συνιστάται Αρχή Προσφυγών, η οποία εξετάζει τις προσφυγές αιτούντων διεθνή προστασία κατά αποφάσεων της Υπηρεσίας Ασύλου, κατά την παράγραφο 5 του άρθρου 5.</p>	<p>Article 3</p> <p>1. It is hereby established an Appeals' Authority within the Ministry of Citizen Protection; its mission shall be to adjudicate, in accordance with article 5 paragraph 5, below, on appeals lodged by applicants for international protection against decisions issued by the Asylum Service.</p>

2. Η Αρχή Προσφυγών υπάγεται απευθείας στον Υπουργό Προστασίας του Πολίτη. Στην Αρχή λειτουργούν μία ή περισσότερες τριμελείς Επιτροπές Προσφυγών, που συγκροτούνται, ανάλογα με τον αριθμό των προσφυγών που υποβάλλονται με απόφαση του Υπουργού Προστασίας του Πολίτη με θητεία δύο ετών που μπορεί να ανανεώνεται. Με την ίδια απόφαση καθορίζεται η τοπική τους αρμοδιότητα.

3. Οι Επιτροπές Προσφυγών απαρτίζονται από ένα πρόσωπο εγνωσμένου κύρους, με εξειδίκευση ή εμπειρία στο προσφυγικό δίκαιο ή στο δίκαιο των ανθρωπίνων δικαιωμάτων ή στο διεθνές δίκαιο, ως πρόεδρος, έναν Έλληνα υπήκοο που υποδεικνύεται από την Ύπατη Αρμοστεία του Ο.Η.Ε. για τους Πρόσφυγες και έναν πτυχιούχο Α.Ε.Ι. με τίτλο σπουδών νομικών, πολιτικών ή κοινωνικών επιστημών με εξειδικευμένες γνώσεις στα ζητήματα διεθνούς προστασίας και ανθρωπίνων δικαιωμάτων, ως μέλη, με τους αναπληρωτές τους. Ο πρόεδρος και το τρίτο μέλος της Επιτροπής, καθώς και οι αναπληρωτές τους, επιλέγονται από τον Υπουργό Προστασίας του Πολίτη από σχετικό κατάλογο που καταρτίζεται από την Εθνική Επιτροπή Δικαιωμάτων του Ανθρώπου, σύμφωνα με τον κανονισμό λειτουργίας της.

4. Τα μέλη των Επιτροπών κατά την άσκηση των καθηκόντων τους απολαμβάνουν προσωπικής ανεξαρτησίας. Ο πρόεδρος και τα μέλη των Επιτροπών αυτών αμείβονται σύμφωνα με τα οριζόμενα σε σχετική σύμβαση παροχής υπηρεσιών ή μίσθωσης έργου που συνάπτεται, είτε με τους ίδιους είτε με τον φορέα στον οποίο ανήκουν. Δικηγόροι που τυχόν ορίζονται ως μέλη των ως άνω Επιτροπών δεν αναλαμβάνουν υποθέσεις

2. The Appeals' Authority shall be directly under the authority of the Minister of Citizen Protection. Within this Authority, shall operate one or more threemember Appeals' Committees, set up, in accordance with the number of appeals lodged, by decision of the Minister of Citizen Protection for a two-year mandate which can be renewed. The same decision shall determine their territorial competence.

3. The Appeals' Committees shall be composed by a chairman, who shall be a renowned personality with specialization or experience in refugee, human rights or international law, a person, of Greek nationality, indicated by the United Nations High Commissioner for Refugees and a person holding a university degree in Law, Political or Social Sciences with specialization in international protection or human rights issues, as members, as well as their alternates. The chairman and the third member of the Committee, as well as their alternates, shall be appointed by the Minister of Citizen Protection from among a list drawn up by the National Commission for Human Rights according to its Rules of Procedure.

4. The Members of the Committees shall enjoy, during the exercise of their tasks, personal independence. The chairman and the members of these Committees shall be remunerated according to the provisions of the relevant contract for services or for tasks agreed either with them or with the institution to which they belong. Lawyers appointed as

πολιτών τρίτων χωρών που αφορούν υποθέσεις μετανάστευσης ή διεθνούς προστασίας, ούτε τους εκπροσωπούν ενώπιον των αρχών. Η ανάληψη τέτοιας δραστηριότητας συνεπάγεται την αυτοδίκαιη έκπτωσή τους από τη θέση του μέλους της ως άνω Επιτροπής.

5. Στην Αρχή Προσφυγών συνιστάται γραμματεία και θέση Διευθυντή, κατηγορίας ΠΕ Διοικητικού-Οικονομικού. Ως Διευθυντής ορίζεται με απόφαση του Υπουργού Προστασίας του Πολίτη, ύστερα από δημόσια πρόσκληση ενδιαφέροντος, υπάλληλος του Δημοσίου, του ευρύτερου δημόσιου τομέα (άρθρο 2 του ν. [3861/2010](#), ΦΕΚ 112 Α') ή Ν.Π.Δ.Δ., κατά προτίμηση με διοικητική εμπειρία. Ο Διευθυντής μετατάσσεται ή μεταφέρεται ή αποσπάται στην Αρχή Προσφυγών σύμφωνα με τις ισχύουσες διατάξεις. Ο Διευθυντής προΐσταται της Γραμματείας της Αρχής και μεριμνά για τη διευκόλυνση του έργου των Επιτροπών.

6. Για τη στελέχωση της Γραμματείας της Αρχής Προσφυγών συνιστώνται:

α. 8 θέσεις ειδικού επιστημονικού προσωπικού, ως εμπειρογνώμονες-εισηγητές. Τα προσόντα του ειδικού επιστημονικού προσωπικού είναι τα οριζόμενα στο άρθρο 2 του π.δ.50/2001. Το γνωστικό αντικείμενο είναι εκείνο της παραγράφου 5 του άρθρου 2.

β. 5 θέσεις ΔΕ Διοικητικού-Λογιστικού, ως γραμματείς.

7. Για την πλήρωση των θέσεων της παραγράφου 6 μπορούν να μετατάσσονται, να

members of the above Committees shall abstain from any legal action on behalf of third-country nationals relating to immigration or international protection cases and shall not represent such clients before the authorities. Taking up such activities shall entail their automatic destitution from membership to such Committees.

5. The Appeals' Authority shall include a secretariat and a Director, who shall hold the grade PE (university graduate) in the branch of Administration Finances. The Director of the Secretariat shall be appointed by decision of the Minister of Citizen Protection, following a public call for interest; s/he shall be a civil servant in a State or a public entity (article 2 of law 3861/2010 O.G. 112 A') of in a state-owned public company, preferably with administrative experience. The Director shall be in charge of the Authority's Secretariat and shall assist the Committees in their tasks.

6. The following posts shall be created for the recruitment of the Appeals' Authority Secretariat: a. 8 posts of specialized scientific staff as experts-rapporteurs. The qualifications for the specialized scientific staff shall be in conformity with the provisions of article 2 of presidential decree 50/2001 (Official Journal A-39). Their areas of studies shall be these referred to in article 2, paragraph 5. b. 5 posts grade DE (secondary education graduates) as secretaries.

7. The posts mentioned in paragraph 6 above may be filled by transferring, moving or

<p>μεταφέρονται ή να αποσπώνται υπάλληλοι από υπηρεσίες του Δημοσίου, του ευρύτερου δημόσιου τομέα (άρθρο 2 του ν. 3861/2010) ή Ν.Π.Δ.Δ.. Για την πλήρωση των θέσεων διενεργείται δημόσια πρόσκληση ενδιαφέροντος, ενώ η επιλογή γίνεται από το οικείο υπηρεσιακό συμβούλιο ύστερα από αξιολόγηση των τυπικών και ουσιαστικών προσόντων των υπαλλήλων.</p> <p>8. Η Αρχή Προσφυγών εδρεύει στην έδρα της Κεντρικής Υπηρεσίας Ασύλου, η οποία παρέχει την αναγκαία διοικητική υποστήριξη για την εύρυθμη λειτουργία της. Οι δαπάνες λειτουργίας της Αρχής Προσφυγών καλύπτονται από τον προϋπολογισμό της Υπηρεσίας Ασύλου.</p>	<p>seconding staff from other State or public sector services (article 2 of law 3861/2010 O.G. 112 A') of from other state-owned public companies. For the purpose of filling these positions, a public call of interest shall be carried out; the selection shall be made by the competent administrative staff committee, following an evaluation of formal and substantial qualifications of civil servants.</p> <p>8. The Appeals' Authority shall be located within the premises of the Central Asylum Service which provides it with the necessary administrative support for its smooth operation. The operational costs of the Authority are covered by the budget of the Asylum Service.</p>
<p>Άρθρο 5 παράγραφος 5</p> <p>Κατά των αποφάσεων ασύλου που απορρίπτουν αίτηση παροχής διεθνούς προστασίας ή ανακαλούν το καθεστώς αυτό επιτρέπεται ενδικοφανής προσφυγή σύμφωνα με τα ειδικότερα οριζόμενα στο προεδρικό διάταγμα που εκδίδεται κατ' εξουσιοδότηση της παραγράφου 3.</p>	<p>Article 5 para 5</p> <p>Asylum adjudications which reject an application for international protection or withdraw such status may be appealed against by a quasi-judicial appeal, according to the specific provisions set in the presidential decree to be issued by virtue of paragraph 3 above.</p>
<p>Άρθρο 7</p> <p>1. Σε διαδικασίες πρώτης υποδοχής υποβάλλονται όλοι οι υπήκοοι τρίτων χωρών που συλλαμβάνονται να εισέρχονται χωρίς τις νόμιμες διατυπώσεις στη Χώρα. Οι διαδικασίες πρώτης υποδοχής για τους υπηκόους τρίτων χωρών περιλαμβάνουν:</p> <p>α. την εξακρίβωση της ταυτότητας και της ιθαγένειάς τους,</p> <p>β. την καταγραφή τους,</p>	<p>Article 7</p> <p>1. All third-country nationals who are arrested while entering the country without the legal formalities shall be subjected to First Reception procedures. First Reception procedures for third-country nationals shall include:</p> <p>a. their identity and nationality verification,</p> <p>b. their registration</p> <p>c. their medical examination and any necessary</p>

<p>γ. τον ιατρικό τους έλεγχο και την παροχή της τυχόν αναγκαίας περίθαλψης και ψυχοκοινωνικής υποστήριξης,</p> <p>δ. την ενημέρωσή τους για τα δικαιώματά και τις υποχρεώσεις τους, ιδίως δε για τις προϋποθέσεις υπό τις οποίες μπορούν να υπαχθούν σε καθεστώς διεθνούς προστασίας και</p> <p>ε. τη μέριμνα για όσους ανήκουν σε ευάλωτες ομάδες, ώστε να υποβληθούν στην κατά περίπτωση προβλεπόμενη διαδικασία.</p> <p>2. Στις διαδικασίες πρώτης υποδοχής μπορούν με απόφαση των αρμόδιων αστυνομικών αρχών να υπάγονται και οι υπήκοοι τρίτων χωρών οι οποίοι συλλαμβάνονται να διαμένουν στη Χώρα παράνομα και δεν αποδεικνύουν την ιθαγένειά και την ταυτότητά τους με έγγραφο δημόσιας αρχής.</p>	<p>care and psycho-social support</p> <p>d. providing proper information about their obligations and rights, in particular about the conditions under which they can be placed under international protection</p> <p>and</p> <p>e. identifying between them those who belong to vulnerable groups so that they be given the proper procedure provided for. 10</p> <p>2. By decision of the competent police authorities, third-country nationals arrested for illegal stay in the country, whose nationality and identity cannot be ascertained by any public document, may also be subjected to First Reception procedures.</p>
<p>Άρθρο 30</p> <p>1. Οι υπήκοοι τρίτης χώρας που υπόκεινται σε διαδικασίες επιστροφής, σύμφωνα με την παρ. 1 του άρθρου 21, τίθενται υπό κράτηση για την προετοιμασία της επιστροφής και τη διεκπεραίωση της διαδικασίας απομάκρυνσης, μόνο εάν στη συγκεκριμένη περίπτωση δεν δύνανται να εφαρμοσθούν αποτελεσματικά άλλα επαρκή και λιγότερο επαχθή μέτρα, όπως εκείνα που προβλέπονται στην παρ. 3 του άρθρου 22. Το μέτρο της κράτησης εφαρμόζεται όταν:</p> <p>α) υπάρχει κίνδυνος διαφυγής ή</p> <p>β) ο υπήκοος τρίτης χώρας αποφεύγει ή παρεμποδίζει την προετοιμασία της επιστροφής ή τη διαδικασία απομάκρυνσης ή</p> <p>γ) συντρέχουν λόγοι εθνικής ασφάλειας.</p> <p>Η κράτηση επιβάλλεται και διατηρείται για το απολύτως αναγκαίο χρονικό διάστημα</p>	<p>Article 30</p> <p>1. Third-country nationals who are the subject of return procedures, pursuant to article 21, paragraph 1 are kept in detention in order to prepare the return and to carry out the removal process only if, in a specific case, no other sufficient but less coercive measures, such as those stipulated in article 22 paragraph 3, can be applied effectively. The measure of detention is applicable when a)</p> <p>there is a risk of absconding or</p> <p>b) the third-country national concerned avoids or hampers the preparation of return or the removal process or</p> <p>c) for reasons of national security.</p> <p>Detention is imposed and maintained for as short a period as possible and as long as removal arrangements are in progress and executed with due diligence. In any case, the</p>

διεκπεραίωσης της διαδικασίας απομάκρυνσης, η οποία εξελίσσεται και εκτελείται με τη δέουσα επιμέλεια. Σε κάθε περίπτωση, για την επιβολή ή τη συνέχιση του μέτρου της κράτησης λαμβάνεται υπόψη η διαθεσιμότητα κατάλληλων χώρων κράτησης και η δυνατότητα εξασφάλισης αξιοπρεπών συνθηκών διαβίωσης για τους κρατούμενους.

2. Η απόφαση κράτησης περιέχει πραγματική και νομική αιτιολόγηση, εκδίδεται εγγράφως, σύμφωνα με τα οριζόμενα στην παρ. 2 του άρθρου 76 του ν.3386/2005 και εφόσον δεν έχει εκδοθεί απόφαση επιστροφής, αυτή εκδίδεται εντός τριών (3) ημερών. Ο υπήκοος τρίτης χώρας που κρατείται, παράλληλα με τα δικαιώματα που έχει σύμφωνα με τον Κώδικα Διοικητικής Διαδικασίας, μπορεί να προβάλει και αντιρρήσεις κατά της απόφασης κράτησης ή παράτασης της κράτησής του ενώπιον του προέδρου ή του υπ' αυτού οριζόμενου πρωτοδίκη του διοικητικού πρωτοδικείου, στην Περιφέρεια του οποίου κρατείται. Κατά τα λοιπά για την αίτηση αντιρρήσεων εφαρμόζονται αναλόγως οι διατάξεις των παραγράφων 4 και 5 του άρθρου 76 του ν.3386/2005 (ΦΕΚ 212 Α'), όπως αντικαταστάθηκαν με το άρθρο 55 του ν.3900/2010 (ΦΕΚ 213 Α'). Η απόφαση επί της αίτησης αντιρρήσεων μπορεί να ανακληθεί, ύστερα από αίτηση των διαδίκων, αν η αίτηση ανάκλησης στηρίζεται σε νέα στοιχεία, κατ' εφαρμογή του άρθρου 205 παρ. 5 του Κώδικα Διοικητικής Δικονομίας. Για τα δικαιώματά του σύμφωνα με την παράγραφο αυτή ο υπήκοος τρίτης χώρας ενημερώνεται αμέσως. Ο υπήκοος τρίτης χώρας, απολύεται αμέσως εάν διαπιστωθεί ότι η κράτησή του δεν είναι νόμιμη.

imposition or the continuation of the detention measure must take into account the availability of adequate detention facilities and the ability to provide decent living conditions for prisoners.

2. The detention order shall contain the reasons in law and fact thereof and shall be issued in written form, in accordance with the provisions of article 76, paragraph 2 of law 3386/2005; if no return decision has been issued, it shall be issued within three (3) days. The third-country national detained, along with their rights to which he is entitled under the Code of Administrative Procedure, may raise objections to the detention order or to its extension before the President or the first-instance administrative court or the judge of this court appointed by the former, which is territorially competent for the Region where s/he is detained. As for the rest of the procedures to submit objections against detention the provisions of article 76 paragraphs 4 and 5 of law 3386/2005 (O.G. 212 Α'), as amended by article 55 of law 3900/2010, shall be valid, by analogous application. The third-country national concerned shall be informed immediately for his/her rights under this paragraph. S/he shall be released immediately if it is ascertained that the detention is not lawful.

3. Σε κάθε περίπτωση η συνδρομή των προϋποθέσεων της κράτησης επανεξετάζεται αυτεπαγγέλτως, ανά τρίμηνο, από το όργανο που εξέδωσε την απόφαση κράτησης. Σε περίπτωση παράτασης της διάρκειας της κράτησης, οι σχετικές αποφάσεις διαβιβάζονται στον πρόεδρο ή τον υπ' αυτού οριζόμενο πρωτοδική του διοικητικού πρωτοδικείου της παρ. 2, ο οποίος κρίνει για τη νομιμότητα της παράτασης της κράτησης και εκδίδει παραχρήμα την απόφασή του την οποία διατυπώνει συνοπτικώς σε τηρούμενο πρακτικό, αντίγραφο του οποίου διαβιβάζει αμέσως στην αρμόδια αστυνομική αρχή.

4. Όταν καθίσταται πρόδηλο ότι δεν υφίσταται πλέον λογικά προοπτική απομάκρυνσης για νομικούς ή άλλους λόγους ή όταν παύουν να ισχύουν οι όροι της παραγράφου 1, η κράτηση αίρεται και ο υπήκοος τρίτης χώρας απολύεται αμέσως.

5. Η κράτηση συνεχίζεται για το χρονικό διάστημα που πληρούνται οι όροι της παραγράφου 1 και είναι αναγκαία για να διασφαλισθεί η επιτυχής απομάκρυνση. Το ανώτατο όριο κράτησης δεν μπορεί να υπερβαίνει το εξάμηνο.

6. Το χρονικό όριο της παραγράφου 5 μπορεί να παραταθεί για περιορισμένο μόνο χρόνο που δεν υπερβαίνει τους δώδεκα μήνες, στις περιπτώσεις κατά τις οποίες παρά τις εύλογες προσπάθειες των αρμόδιων υπηρεσιών η επιχείρηση απομάκρυνσης είναι πιθανόν να διαρκέσει περισσότερο επειδή:

α) ο υπήκοος της τρίτης χώρας αρνείται να συνεργασθεί ή

3. In any case the conditions of detention shall be reviewed automatically, every three months, by the institution that issued the detention order. In case of an extension of the detention, the relevant orders are forwarded to the President - or to the judge appointed by him - of the first-instance administrative Court of paragraph 2, who shall rule on the legality of the detention and shall issue immediately his/her decision, summarize it in written form in a relevant record and forward it immediately to the competent police authority.

4. When it becomes manifest that there no longer exists a reasonable prospect of removal, for legal or other considerations, or the conditions laid down in paragraph 1 no longer exist, detention ceases and the third-country national shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. The maximum period of detention may not exceed six months.

6. The timeline of paragraph 5 may be extended for a limited period not exceeding twelve months, in cases where, regardless of all reasonable efforts by the competent authorities, the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries.

<p>β) καθυστερεί η λήψη των αναγκαίων εγγράφων από τρίτες χώρες.</p>	
<p>Νόμος 4251/2014 Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις</p>	<p>Law n. 4251/2014 Immigration and Social Integration Code and other provisions</p>
<p>Άρθρο 1 παράγραφος 1 1. Για την εφαρμογή των διατάξεων του Κώδικα αυτού:</p> <p>α) Αλλοδαπός είναι το φυσικό πρόσωπο που δεν έχει την ελληνική ιθαγένεια ή που είναι ανιθαγενής.</p> <p>β) Πολίτης τρίτης χώρας είναι το φυσικό πρόσωπο που δεν έχει την ελληνική ιθαγένεια ούτε την ιθαγένεια άλλου κράτους – μέλους της Ευρωπαϊκής Ένωσης κατά την έννοια του άρθρου 20 παράγραφος 1 της Συνθήκης για τη λειτουργία της Ευρωπαϊκής Ένωσης.</p> <p>γ) Ανιθαγενής είναι το φυσικό πρόσωπο που πληροί τις προϋποθέσεις της Σύμβασης της Νέας Υόρκης του 1954 περί του καθεστώτος των ανιθαγενών, η οποία έχει κυρωθεί με το ν. 139/1975 (Α' 176).</p> <p>δ) Πολίτης της Ένωσης: Κάθε πρόσωπο το οποίο έχει την ιθαγένεια κράτους – μέλους της Ένωσης.</p> <p>[...]</p>	<p>Article 1 para 1</p> <p>1. For the implementation of the provisions of this code, the following definitions apply:</p> <p>(a) Foreign national means any natural person who does not have Greek nationality or is stateless.</p> <p>(b) Third-country national means any natural person who is not a Greek national or the national of any other EU Member State within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union.</p> <p>(c) Stateless means any natural person who meets the conditions set out in the 1954 New York Conventions relating to the status of stateless persons, which has been ratified by Law 139/1975 (Government Gazette, Series A, No 176).</p> <p>(d) EU citizen: Any person who is a national of an EU Member State.</p> <p>[...]</p>
<p>Νόμος 3475/2016 Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης και άλλες διατάξεις.</p>	<p>Law n. 3475/2016 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</p>
<p>Άρθρο 1 παράγραφος 1</p>	<p>Article 1 para 1</p>

<p>Στο Υπουργείο Εσωτερικών και Διοικητικής Ανασυγκρότησης λειτουργεί αυτοτελής υπηρεσία, με τίτλο «Υπηρεσία Ασύλου», όπως η υπηρεσία αυτή έχει συσταθεί από το άρθρο 1 του ν. 3907/2011 (Α' 7), η οποία υπάγεται απευθείας στον Υπουργό Εσωτερικών και Διοικητικής Ανασυγκρότησης και έχει τοπική αρμοδιότητα που εκτείνεται σε όλη την Επικράτεια. Η Υπηρεσία λειτουργεί σε επίπεδο Διεύθυνσης και έχει ως αποστολή την εφαρμογή της νομοθεσίας περί ασύλου και των λοιπών μορφών διεθνούς προστασίας των αλλοδαπών και ανιθαγενών, καθώς και τη συμβολή στο σχεδιασμό και τη διαμόρφωση της εθνικής πολιτικής ασύλου. Η Υπηρεσία Ασύλου επίσης είναι αρμόδια για την εφαρμογή της Σύμβασης της Νέας Υόρκης της 28ης Σεπτεμβρίου 1954 περί της νομικής καταστάσεως των ανιθαγενών.</p>	<p>Within the Ministry of the Interior and Administrative Reconstruction operates an autonomous Service, entitled “Asylum Service”, as it is established by article 1 of law 3907/2011 (O.G. A' 7), directly dependent on the Minister and with a territorial competence on the entire country. This Service operates as a Directorate and its mission is to apply the legislation on asylum and other forms of international protection for aliens and stateless persons, as well as to contribute to the development and the formulation of the national asylum policy. The Asylum Service is also competent for the application of the New York Convention of 28 September 1954 on the legal status of stateless persons.</p>
<p>Άρθρο 8 παράγραφος 2</p> <p>Η Υπηρεσία Υποδοχής και Ταυτοποίησης λειτουργεί σε επίπεδο Διεύθυνσης και έχει ως κύρια αποστολή την αποτελεσματική διενέργεια των διαδικασιών υποδοχής και ταυτοποίησης των πολιτών τρίτων χωρών ή ανιθαγενών που εισέρχονται στη χώρα χωρίς τις νόμιμες διατυπώσεις. Για το σκοπό αυτόν η Υπηρεσία Υποδοχής και Ταυτοποίησης είναι αρμόδια:</p> <p>α) για την πραγματοποίηση των διαδικασιών καταγραφής, ταυτοποίησης και εξακριβωσης των στοιχείων, τον ιατρικό έλεγχο, τον εντοπισμό ευάλωτων προσώπων, την παροχή ενημέρωσης, ιδίως για τις διαδικασίες διεθνούς ή άλλης μορφής προστασίας και για τις</p>	<p>Art. 8 para 2</p> <p>2. The Reception and Identification Service shall operate at a level of a Directorate and its main mission shall be the efficient conduct of the procedures for receiving and identifying third country nationals or stateless persons entering the country without complying with the legal formalities. To this end, the Reception and Identification Service shall be responsible for: A. The registration, identification and data verification procedures, medical screening, identification of vulnerable persons, the provision of information, especially for international or another form of protection and return procedures, as well as the temporary stay of</p>

<p>διαδικασίες επιστροφής, καθώς και για την προσωρινή διαμονή των πολιτών τρίτων χωρών ή ανιθαγενών που εισέρχονται στη χώρα χωρίς τις νόμιμες διατυπώσεις και την περαιτέρω παραπομπή τους σε κατάλληλες δομές υποδοχής ή προσωρινής φιλοξενίας,</p> <p>β) για την ίδρυση, λειτουργία και εποπτεία Κέντρων και Δομών για την πραγματοποίηση των ως άνω διαδικασιών,</p> <p>γ) για την ίδρυση, λειτουργία και εποπτεία ανοικτών Δομών Προσωρινής Υποδοχής πολιτών τρίτων χωρών ή ανιθαγενών, οι οποίοι έχουν αιτηθεί διεθνή προστασία,</p> <p>δ) για την ίδρυση, λειτουργία και εποπτεία ανοικτών Δομών Προσωρινής Φιλοξενίας πολιτών τρίτων χωρών ή ανιθαγενών οι οποίοι είτε βρίσκονται σε διαδικασία επιστροφής, απέλασης ή επανεισδοχής, σύμφωνα με το άρθρο 22 του ν. 3907/2011 (Α' 7) ή σύμφωνα με την παρ. 3 του άρθρου αυτού σε συνδυασμό με το άρθρο 30 του ν. 3907/2011 είτε τελούν υπό καθεστώς αναβολής απομάκρυνσης, σύμφωνα με το άρθρο 24 του ν.3907/2011 είτε υπάγονται στις διατάξεις των άρθρων 76 παρ. 5 ή 78 ή 78Α του ν. 3386/2005 (Α' 212).</p>	<p>third-country nationals or stateless persons entering the country without complying with the legal formalities and their further referral to the appropriate reception or temporary accommodation structures. B. The establishment, operation and supervision of centres and structures for the purposes of those procedures. C. The establishment, operation and supervision of Open Temporary Reception facilities for third-country nationals or stateless persons who have requested international protection. D. The establishment, operation and supervision of Open Temporary Accommodation Structures for third-country nationals or stateless persons who are under a return, removal or readmission procedure in accordance with article 22 of law 3907/2011 (O.G. Α' 7) or with paragraph 3 of this article in conjunction with article 30 of law 3907/2011 or whose removal has been postponed in accordance with Article 24 of law 3907/2011 or who fall under the provisions of Article 76 para. 5 or 78 or 78a of Law 3386/2005 (O.G. Α' 212).</p>
<p>Άρθρο 25</p> <p>Η Γενική Γραμματεία Πληθυσμού και Κοινωνικής Συνοχής του Υπουργείου Εσωτερικών και Διοικητικής Ανασυγκρότησης που συστάθηκε με το Π.δ. 11/2010 (Α' 15), όπως μετονομάστηκε με την υποπερίπτωση αα' της περίπτωσης γ' της παρ. 1 του άρθρου 2 του Π.δ. 96/2010 (Α' 170) μετονομάζεται σε Γενική Γραμματεία Μεταναστευτικής Πολιτικής.</p>	<p>Article 25</p> <p>The General Secretariat for Population and Social Cohesion of the Ministry of the Interior and Administrative Reconstruction established by Presidential Decree 11/2010 (O.G. Α' 15), as renamed by case (c) sub-case aa) of paragraph 1 of article 2 of Presidential Decree 96/2010 (O.G. Α' 170) is hereby renamed as General Secretariat for Immigration Policy.</p>
<p>Άρθρο 26</p>	<p>Article 26</p>

<p>1. Συνιστάται Γενική Γραμματεία Υποδοχής, η οποία υπάγεται στο Υπουργείο Εσωτερικών και Διοικητικής Ανασυγκρότησης.</p> <p>2. Στη Γενική Γραμματεία Υποδοχής υπάγεται η Υπηρεσία Υποδοχής και Ταυτοποίησης του άρθρου 8 του παρόντος και η Διεύθυνση Υποδοχής που συνιστάται με το επόμενο άρθρο.</p> <p>3. Συνιστάται θέση μετακλητού Γενικού Γραμματέα με βαθμό 1ο Ειδικών Θέσεων. Για τη στελέχωση του Γραφείου του Γενικού Γραμματέα Υποδοχής εφαρμόζεται το άρθρο 55 του Π.δ. 63/2005, όπως ισχύει.</p>	<p>1. It is hereby established a General Secretariat for Reception under the Ministry of the Interior and Administrative Reconstruction.</p> <p>2. The Reception and Identification Service established by article 8 of this law and the Directorate for Reception established by the following article shall be dependent on the General Secretariat for Reception.</p> <p>3. It is hereby established the post of a revocable General Secretary, at the level of grade 1 Special Posts. The staffing of the Office of the General Secretary shall be made in accordance with article 55 of law 63/2005, as in force.</p>
<p>Άρθρο 28 παράγραφοι 1-3</p> <p>1. Στο Υπουργείο Εσωτερικών και Διοικητικής Ανασυγκρότησης, όπως οριοθετείται με τις διατάξεις του ισχύοντος Π.δ. 105/2014 (Α' 172), συνιστάται αυτοτελής Διεύθυνση Οικονομικών Υπηρεσιών Μεταναστευτικής Πολιτικής, η οποία υπάγεται στον Υπουργό Εσωτερικών και Διοικητικής Ανασυγκρότησης αρμόδιο για θέματα μεταναστευτικής πολιτικής.</p> <p>2. Η Διεύθυνση Οικονομικών Υπηρεσιών Μεταναστευτικής Πολιτικής έχει ιδιο προϋπολογισμό ως Ειδικός Φορέας του Υπουργείου Εσωτερικών και Διοικητικής Ανασυγκρότησης, όπου εγγράφονται πιστώσεις για την αντιμετώπιση των αναγκών υλοποίησης της μεταναστευτικής πολιτικής. Αρμόδιος διατάκτης των σχετικών πιστώσεων είναι ο Υπουργός Εσωτερικών και Διοικητικής Ανασυγκρότησης.</p> <p>3. Η Διεύθυνση Οικονομικών Υπηρεσιών</p>	<p>Article 28 para 1-3</p> <p>It is hereby established, within the Ministry of Interior and Administrative Reconstruction, as defined by the provisions of presidential decree 105/2014 (O.G. A' 172), an autonomous Directorate for Financial Services of the Immigration Policy, which shall be under the Minister of Interior and Administrative Reconstruction, competent for matters of immigration policy.</p> <p>2. The Directorate for the Financial Services of the Immigration Policy shall have its own budget as a separate entity within the Ministry for Interior and Administrative Reconstruction; the budget shall record appropriations so as to meet the requirements for the implementation of the immigration policy. The authorizing officer for the appropriations shall be the Minister of Interior and Administrative Reconstruction.</p> <p>3. The Directorate for the Financial Services</p>

<p>Μεταναστευτικής Πολιτικής έχει ως αρμοδιότητα την κατάρτιση και εκτέλεση του προϋπολογισμού, την παρακολούθηση και την εποπτεία των οικονομικών μεγεθών, τη διενέργεια των προμηθειών και τη διοικητική μέριμνα των υπηρεσιών που είναι αρμόδιες για την εφαρμογή της Μεταναστευτικής Πολιτικής.</p>	<p>of the Immigration Policy shall be responsible for establishing and implementing the budget, monitoring and supervising financial data, procurement of supplies and logistics for the services responsible for the implementation of the Immigration Policy.</p>
<p>Άρθρο 46</p> <p>1. Αλλοδαπός ή ανιθαγενής που αιτείται διεθνή προστασία, δεν κρατείται για μόνο το λόγο ότι έχει υποβάλει αίτηση διεθνούς προστασίας, καθώς και ότι εισήλθε παράτυπα ή/και παραμένει στη χώρα χωρίς νόμιμο τίτλο διαμονής.</p> <p>2. Αλλοδαπός ή ανιθαγενής που υποβάλλει αίτηση διεθνούς προστασίας ενόσω κρατείται βάσει των σχετικών διατάξεων των νόμων 3386/2005 (Α' 212) και 3907/2011 (Α' 7), όπως ισχύουν, παραμένει υπό κράτηση κατ' εξαίρεση, εφόσον αυτή είναι αναγκαία, κατόπιν ατομικής αξιολόγησης και υπό την προϋπόθεση ότι δεν μπορούν να εφαρμοσθούν εναλλακτικά μέτρα, όπως αυτά που αναφέρονται στο άρθρο 22 παρ. 3 του ν. 3907/2011, για έναν από τους παρακάτω λόγους:</p> <p>α. για τη διαπίστωση των στοιχείων της ταυτότητας ή της καταγωγής του ή</p> <p>β. προκειμένου να προσδιοριστούν τα στοιχεία εκείνα στα οποία βασίζεται η αίτηση διεθνούς προστασίας, η απόκτηση των οποίων θα ήταν σε άλλη περίπτωση αδύνατη, ιδίως όταν υπάρχει κίνδυνος διαφυγής του αιτούντος, όπως ο κίνδυνος αυτός ορίζεται στο άρθρο 18 (ζ) του ν. 3907/2011, ή</p> <p>γ. όταν τεκμηριώνεται βάσει αντικειμενικών κριτηρίων, συμπεριλαμβανομένου του</p>	<p>Article 46</p> <p>1. An alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has submitted an application for international protection, and that he/she entered irregularly and/or stays in the country without a legal residence permit.</p> <p>2. An alien or a stateless person who submits an application for international protection while in detention according to the relevant provisions of Laws 3386/2005 (O.G. A' 212) and 3907/2011 (O.G. A' 7) as in force shall remain in detention, exceptionally and if this is considered necessary after an individual assessment under the condition that no alternative measures, such as those referred to in article 22 paragraph 3 of Law 3907/2011 can be applied, for one of the following reasons: a. in order to determine his /her identity or nationality, or b. in order to determine those elements on which the application for international protection is based which could not be obtained otherwise, in particular when there is a risk of absconding of the applicant, as defined in article 18 point (f) of Law 3907/2011, or c. when it is ascertained on the basis of objective criteria, including that he/she already had the opportunity to access the</p>

γεγονότος ότι το πρόσωπο είχε ήδη την ευκαιρία πρόσβασης στη διαδικασία χορήγησης ασύλου, ότι υπάρχουν βάσιμοι λόγοι να θεωρείται ότι ο αιτών υποβάλει αίτηση διεθνούς προστασίας, προκειμένου να καθυστερήσει απλώς ή να εμποδίσει την εκτέλεση απόφασης επιστροφής, εφόσον πιθανολογείται ότι η εκτέλεση της απόφασης αυτής μπορεί να υλοποιηθεί ή

δ. εφόσον συνιστά κίνδυνο για την εθνική ασφάλεια ή τη δημόσια τάξη, κατά την αιτιολογημένη κρίση της αρμόδιας αρχής της παραγράφου 3, ή

ε. όταν υπάρχει σημαντικός κίνδυνος διαφυγής, κατά τη έννοια του άρθρου 2 (ιδ) του Κανονισμού (ΕΕ) αριθ. 604/2013, σύμφωνα με τα κριτήρια του άρθρου 18 στοιχείο ζ' του ν. [3907/2011](#), τα οποία εφαρμόζονται αναλόγως, και προκειμένου να διασφαλιστεί η υλοποίηση της διαδικασίας μεταφοράς σύμφωνα με τον ως άνω Κανονισμό.

3. Η απόφαση κράτησης λαμβάνεται από τον οικείο Αστυνομικό Διευθυντή και, προκειμένου περί των Γενικών Αστυνομικών Διευθύνσεων Αττικής και Θεσσαλονίκης, τον αρμόδιο για θέματα αλλοδαπών Αστυνομικό Διευθυντή, και περιέχει πλήρη και εμπεριστατωμένη αιτιολογία. Στις περιπτώσεις α', β', γ' και ε' της παραγράφου 2 του παρόντος άρθρου, η απόφαση κράτησης λαμβάνεται κατόπιν εισήγησης του Προϊσταμένου της αρμόδιας Αρχής Παραλαβής.

4. α. Η κράτηση των αιτούντων διεθνή προστασία επιβάλλεται για το απολύτως αναγκαίο χρονικό διάστημα. Καθυστερήσεις των διοικητικών διαδικασιών που δεν μπορούν να αποδοθούν στον αιτούντα δεν δικαιολογούν συνέχιση της κράτησης.

asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of a return decision, if it is probable that the enforcement of such a measure can be effected; d. when he/she constitutes a danger for national security or public order, according to the reasoned judgment of the competent authority of point 3 of this Article, or e. when there is a serious risk of absconding of the applicant, pursuant to Article 2 point (n) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 according to the criteria of Article 18 point (f) of law 3907/2011 which apply respectively and in order to ensure the enforcement of a transfer decision according to the above Regulation.

3.The detention order shall be taken by the respective Police Director and, in the cases of the General Police Directorates of Attica and Thessaloniki, by the competent Police Director for Aliens matters and shall include a complete and comprehensive reasoning. In cases (a), (b) (c) and (e) of paragraph 2 of this Article the detention order is taken upon a recommendation of the Head of the competent Receiving Authority.

4. a. The detention of applicants for international protection shall be imposed for the minimum necessary period of time. Delays in administrative procedures that

β. Η κράτηση αιτούντος διεθνή προστασία για τους λόγους των περιπτώσεων α', β' και γ' καταρχήν επιβάλλεται για διάστημα μέχρι 45 ημερών και παρατείνεται για άλλες 45 ημέρες εφόσον δεν ανακληθεί η εισήγηση της παραγράφου 3.

γ. Η κράτηση αιτούντος διεθνή προστασία για τους λόγους των περιπτώσεων δ' και ε' της παραγράφου 2, δεν δύναται να υπερβαίνει τους τρεις (3) μήνες.

δ. Ανεξάρτητα από τη συμπλήρωση ή μη των ανωτέρω ορίων των στοιχείων β' και γ', ο συνολικός χρόνος κράτησης δεν μπορεί σε καμία περίπτωση να υπερβαίνει τα ανώτατα όρια κράτησης, όπως αυτά προβλέπονται στο άρθρο 30 του ν. [3907/2011](#).

5. Η αρχική απόφαση κράτησης και η απόφαση παράτασης της κράτησης διαβιβάζεται στον πρόεδρο ή τον υπ' αυτού οριζόμενο πρωτοδική του διοικητικού πρωτοδικείου στην Περιφέρεια του οποίου κρατείται ο αιτών, ο οποίος κρίνει για τη νομιμότητα της επιβολής του μέτρου της κράτησης και εκδίδει παραχρήμα την απόφαση του, την οποία διατυπώνει συνοπτικά σε τηρούμενο πρακτικό, αντίγραφο του οποίου διαβιβάζει αμέσως στην αρμόδια αστυνομική αρχή. Εφόσον ζητηθεί, ο αιτών διεθνή προστασία ή ο δικαστικός του πληρεξούσιος ακούγεται υποχρεωτικά από τον δικαστή, τούτο δε μπορεί να διατάξει σε κάθε περίπτωση και ο δικαστής. Σε αυτήν την περίπτωση εφαρμόζονται αναλόγως οι διατάξεις της παραγράφου 3 και επόμενες του άρθρου 76 του ν. [3386/2005](#). Η ανωτέρω διαδικασία δεν περιορίζει τη δυνατότητα του αιτούντος να προβάλλει αντιρρήσεις κατά της απόφασης κράτησης ή παράτασης της κράτησης σύμφωνα με τα οριζόμενα στο

cannot be attributed to the applicant shall not justify a continuation of detention. b. The detention of applicants on the grounds mentioned in points (a), (b) and (c) shall, initially, not exceed 45 days and can later be prolonged by a further 45 days, as long as the recommendation of paragraph 3 is not recalled. c. The detention of applicants for international protection on the grounds of points (d) and (e) shall not exceed three (3) months. d. In any case, and independently of whether the time limits for points (d) and (e) above have been completed or not, the total detention period may not exceed in any case the maximum time limits for detention, as they are foreseen in Article 30 of Law 3907/2011.

5. The initial detention order and the order for the prolongation of detention shall be transmitted to the President of the Administrative Court of First Instance, or the judge appointed by this former, who is territorially competent for the applicant's place of detention and who decides on the legality of the detention measure and issues immediately his decision, in a brief record, a copy of which he/she immediately delivers to the competent police authority. In case this is requested, the applicant or his/her legal representative must mandatorily be heard in court by the judge. This can also be ordered, in all cases, by the judge. In this case, the provisions of paragraph 3 and subsequent paragraphs of Article 76 of Law 3386/2005 shall apply respectively. The aforementioned procedure shall not restrict the possibility of the applicant to raise objections against the

επόμενο άρθρο.

6. Οι αιτούντες που κρατούνται, σύμφωνα με τις προηγούμενες παραγράφους, έχουν τα δικαιώματα προσφυγής και υποβολής αντιρρήσεων που προβλέπονται στις παραγράφους 3 και επόμενες του άρθρου 76 του ν. 3386/2005, όπως ισχύει.

7. Οι κρατούμενοι αιτούντες διεθνή προστασία, σε περίπτωση αμφισβήτησης της απόφασης κράτησης, δικαιούνται δωρεάν νομική συνδρομή, σύμφωνα με τη διαδικασία που προβλέπεται στις διατάξεις του ν. 3226/2004 (Α' 24), οι οποίες εφαρμόζονται αναλόγως.

8. Η κράτηση του αιτούντος διεθνή προστασία συνιστά λόγο επιτάχυνσης της διαδικασίας ασύλου, λαμβανομένης υπόψη της, τυχόν, έλλειψης κατάλληλων χώρων και των δυσχερειών εξασφάλισης αξιοπρεπών συνθηκών διαβίωσης των τελούντων σε κράτηση. Οι δυσχέρειες αυτές καθώς και η ευαλωτότητα των αιτούντων κατά το άρθρο 14 παράγραφος 8 του παρόντος συνεκτιμώνται για την επιβολή ή την παράταση της κράτησης. Σε περίπτωση κράτησης αλλοδαπού ή ανιθαγενή ο οποίος υποβάλει αίτηση διεθνούς προστασίας υπό κράτηση, ενημερώνεται αμέσως ο Προϊστάμενος της αρμόδιας Αρχής Παραλαβής ή/και ο Διοικητικός Διευθυντής της Αρχής Προσφυγών, ο οποίος μεριμνά για την κατά προτεραιότητα εξέταση της αίτησης ή της προσφυγής.

9. Οι αιτούντες κρατούνται στους χώρους κράτησης που προβλέπονται στο άρθρο 31 του

detention order or the order to prolong the detention period, pursuant to the provisions of the following Article.

6. Applicants in detention, according to the above paragraphs, have the rights to appeal and submit objections as foreseen in paragraphs 3 and subsequent of Article 76 of Law 3386/2005, as in force.

7. Detainees who are applicants for international protection shall be entitled to free legal assistance and representation to challenge the detention order according to the provisions valid for third country nationals in detention, according to the provisions set in law 3226/2004 (O.G. Α' 24) which apply accordingly.

8. The detention of an applicant constitutes a reason for the acceleration of the asylum procedure, taking into account possible shortages in adequate premises and the difficulties in ensuring decent living conditions for detainees. These difficulties, as well as the vulnerability of applicants, as per Article 14 paragraph 8 above shall be taken into account when deciding to detain or to prolong detention. When an alien or stateless person applies for international protection while in detention, the Head of the competent Receiving Authority and/or the Administrative Director of the Appeals Authority shall be immediately informed and shall ensure the prioritized examination of the application or the appeal.

ν. [3907/2011](#).

10. Στις περιπτώσεις κράτησης αιτούντων, οι αρμόδιες αρχές, με την επιφύλαξη των διεθνών και εθνικών κανόνων δικαίου που διέπουν την κράτηση, εφαρμόζουν, κατά περίπτωση, τα ακόλουθα:

α. Μεριμνούν ώστε οι γυναίκες να κρατούνται σε χώρο χωριστά από τους άντρες και για τον επαρκή σεβασμό της ιδιωτικής ζωής των οικογενειών που κρατούνται.

β. Αποφεύγουν την κράτηση των ανήλικων. Ανήλικοι που έχουν χωριστεί από τις οικογένειές τους και ασυνόδευτοι ανήλικοι κατά κανόνα δεν κρατούνται. Σε όλως εξαιρετικές περιπτώσεις, ασυνόδευτοι ανήλικοι οι οποίοι υποβάλουν αίτηση διεθνούς προστασίας ενόσω κρατούνται βάσει των σχετικών διατάξεων των ν. [3386/2005](#) και [3907/2011](#), παραμένουν υπό κράτηση ως έσχατη λύση και για μόνο λόγο την ασφαλή παραπομπή τους σε κατάλληλες δομές φιλοξενίας ανηλίκων. Η κράτηση επιβάλλεται αποκλειστικά για τον αναγκαίο χρόνο μέχρι την ασφαλή παραπομπή τους και δεν μπορεί να υπερβαίνει τις 25 μέρες. Σε περίπτωση που, λόγω εξαιρετικών περιστάσεων, όπως η σημαντική αύξηση της εισόδου ασυνόδευτων ανηλίκων, και που, παρά τις εύλογες προσπάθειες των αρμόδιων αρχών δεν έχει καταστεί εφικτή η ασφαλή παραπομπή τους σε κατάλληλες δομές φιλοξενίας, η κράτηση μπορεί να παραταθεί για διάστημα 20 ημερών. Ανήλικοι που έχουν χωριστεί από την οικογένειά τους και ασυνόδευτοι ανήλικοι κρατούνται χωριστά από ενήλικους κρατούμενους. Σε περίπτωση κράτησης ανηλίκων, αυτοί έχουν τη δυνατότητα να ασχολούνται με δραστηριότητες ελεύθερου χρόνου, συμπεριλαμβανομένων των παιχνιδιών

9. Applicants are detained in detention areas as provided in Article 31 of Law 3907/2011.

10. In cases of detention of applicants, the competent authorities, without prejudice to the international and national legal rules on detention, shall apply the following as per case: a. They shall ensure that women are detained in an area separately from men as well as the due respect for the privacy of families in detention. b. They shall avoid the detention of minors. Minors who have been separated from their families and unaccompanied minors shall not be detained, as a rule. Only in very exceptional cases, unaccompanied minors who applied for international protection while in detention according to the relevant provisions of Law 3386/2005 and Law 3907/2011, may remain in detention, as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors. This detention is exclusively imposed for the necessary time for the safe referral to appropriate accommodation facilities and cannot exceed twenty-five (25) days. When, due to exceptional circumstances, such as the significant increase in arrivals of unaccompanied minors, and despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities, detention may be prolonged for a further twenty (20) days. Minors who have been separated from their families and unaccompanied minors shall be detained separately from adult detainees. When minors are detained, they shall be given the possibility to occupy themselves with activities, including

<p>και των ψυχαγωγικών δραστηριοτήτων που αρμόζουν στην ηλικία τους και απρόσκοπτη πρόσβαση στην εκπαίδευση.</p> <p>γ. Αποφεύγουν την κράτηση γυναικών κατά τη διάρκεια της κύησης και για τρεις μήνες μετά τον τοκετό.</p> <p>δ. Παρέχουν στους κρατούμενους την προσήκουσα ιατρική φροντίδα.</p> <p>ε. Διασφαλίζουν το δικαίωμα για νομική εκπροσώπηση των κρατούμενων.</p> <p>στ. Μεριμνούν ώστε οι κρατούμενοι να ενημερώνονται σε γλώσσα που κατανοούν για τους λόγους και τη διάρκεια της κράτησης, για το δικαίωμά τους και τους τρόπους αμφισβήτησης της απόφασης κράτησης, καθώς και το δικαίωμά τους για παροχή δωρεάν νομικής συνδρομής.</p> <p>11. Όταν ελλείψουν οι λόγοι που δικαιολογούν την κράτηση ενός αιτούντος σύμφωνα με την παράγραφο 2, οι αρχές που διέταξαν την κράτηση, με αιτιολογημένη απόφασή τους, αφήνουν ελεύθερο τον αιτούντα και ενημερώνουν αμελλητί τις Αρχές Παραλαβής ή την Αρχή Προσφυγών, εφόσον η αίτηση εκκρεμεί σε β' βαθμό.</p>	<p>games and recreational activities appropriate for their age. c. They shall avoid detaining women during pregnancy and for three (3) months after labour. d. They shall provide detainees with the appropriate medical care. e. They shall ensure the right of detainees to legal representation. f. They shall ensure that detainees are informed in a language they understand of the reasons and the duration of their detention, their right and means to challenge the detention decision and their right to free legal assistance.</p> <p>11. When the reasons set out in paragraph 2 justifying detention of the applicant cease to exist, the authorities which ordered the detention, with a reasoned decision, shall release the applicant and inform without delay the Receiving Authorities or the Appeals Authority, if the application is pending before the second instance.</p>
<p>Άρθρο 77 στοιχείο ε</p> <p>Η Υπηρεσία Ασύλου του Υπουργείου Εσωτερικών και Διοικητικής Ανασυγκρότησης, ως Εντεταλμένη Αρχή μέρους η οποία αναλαμβάνει την άσκηση αρμοδιοτήτων διαχείρισης για μέρος του προγράμματος του Ταμείου Ασύλου, Μετανάστευσης και Ένταξης για την προγραμματική περίοδο 2014-2020.</p>	<p>Art. 77 point e</p> <p>The Asylum Service of the Ministry of the Interior and Administrative Reconstruction shall be the Designated Authority and shall undertake the management responsibilities for part of the Asylum, Immigration and Integration Fund program and Internal Security Fund program for the period 2014-2020.</p>

<p>Νόμος 4415/2016 Ρυθμίσεις για την ελληνόγλωσση εκπαίδευση, τη διαπολιτισμική εκπαίδευση και άλλες διατάξεις.</p>	<p>Law n.4415/2016 Regulations for Greek-language education, intercultural education and other provisions</p>
<p>Άρθρο 20</p> <p>Η Διαπολιτισμική Εκπαίδευση αφορά στη δόμηση των σχέσεων μεταξύ διαφορετικών πολιτισμικών ομάδων με σκοπό την άρση των ανισοτήτων και του κοινωνικού αποκλεισμού.</p>	<p>Art.20</p> <p>Intercultural Education refers to building relationships between different cultural groups in order to eliminate inequalities and social exclusion.</p>
<p>Νόμος 4443/2016</p>	<p>Law n. 4443/2016</p>
<p>Άρθρο 62</p> <p>Συνιστάται συλλογικό συμβουλευτικό όργανο υπό την ονομασία «Εθνικός Μηχανισμός Εποπτείας της Εφαρμογής των Αποφάσεων του ΕΔΔΑ», το οποίο υπάγεται στη Γενική Γραμματεία Διαφάνειας και Ανθρωπίνων Δικαιωμάτων (εφεξής «Εθνικός Μηχανισμός»).</p>	<p>Article 62</p> <p>Is hereby established a collective consultative body under the name "National Monitoring System for the Implementation of Decisions of the ECtHR", which is attached to the General Secretariat for Transparency and Human Rights (hereinafter referred to as the "National Mechanism").</p>
<p>Προεδρικό διάταγμα 106/2007 Ελεύθερη κυκλοφορία και διαμονή στην ελληνική επικράτεια των πολιτών της Ευρωπαϊκής Ένωσης και των μελών των οικογενειών τους.</p>	<p>Presidential decree 106/2007 on the Free movement and residence within the territory of the Greek state for EU citizens and their family members</p>
<p>Άρθρο 6</p> <p>1. Οι πολίτες της Ένωσης και τα μέλη της οικογένειάς τους, που είναι επίσης πολίτες της Ένωσης, έχουν δικαίωμα διαμονής στην Ελλάδα για χρονικό διάστημα έως τρεις μήνες χωρίς κανένα όρο ή διατύπωση εφόσον κατέχουν ισχύον δελτίο ταυτότητας ή διαβατήριο.</p> <p>2. Τα μέλη της οικογένειας πολίτη της Ένωσης, που είναι υπήκοοι τρίτης χώρας,</p>	<p>Art. 6</p> <p>1. Union citizens and the members of their families who are also Union citizens shall have the right of residence on the Greek territory for a period of up to three months without any conditions or any formalities if they hold a valid identity card or passport.</p> <p>2. The members of the family of Union citizen, who are nationals of a third country</p>

<p>έχουν δικαίωμα διαμονής στην Ελλάδα για χρονικό διάστημα έως τρεις μήνες χωρίς κανένα όρο ή διατύπωση, εφόσον είναι κάτοχοι ισχύοντος διαβατηρίου ή θεώρησης, όπου απαιτείται και συνοδεύουν ή πηγαίνουν να συναντήσουν τον πολίτη της Ένωσης.</p> <p>3. Οι πολίτες της Ένωσης και τα μέλη της οικογένειάς τους, ανεξαρτήτως ιθαγένειας, έχουν το δικαίωμα διαμονής που προβλέπεται στις ανωτέρω διατάξεις, ενόσω δεν αποτελούν υπέρμετρο βάρος για το σύστημα κοινωνικής πρόνοιας της Ελλάδος.</p>	<p>shall have the right of residence on the Greek territory for a period up to three months without any conditions or any formalities, as long as they hold a valid passport or visa, if required, and accompany or join the Union citizen.</p> <p>3. Union citizens and their family members shall have the right of residence provided in the provision mentioned above, as long as they do not become an unreasonable burden on the social assistance system of Greece.</p>
<p>Άρθρο 7</p> <p>1. Οι πολίτες της Ένωσης έχουν δικαίωμα διαμονής στην Ελλάδα για χρονικό διάστημα μεγαλύτερο των τριών μηνών, εφόσον :</p> <p>(α) είναι μισθωτοί ή ασκούν ανεξάρτητη οικονομική δραστηριότητα, ή(β) διαθέτουν επαρκείς πόρους για τον εαυτό τους και τα μέλη των οικογενειών τους, σύμφωνα με την παρ. 3 του άρθρου 8 του παρόντος, ούτως ώστε να μην επιβαρύνουν κατά τη διάρκεια της περιόδου διαμονής τους το σύστημα κοινωνικής πρόνοιας της Χώρας, καθώς και πλήρη ασφαλιστική κάλυψη ασθένειας, ή</p> <p>(γ) έχουν εγγραφεί σε ιδιωτικό ή δημόσιο εκπαιδευτικό ίδρυμα, εγκεκριμένο ή χρηματοδοτούμενο από το Ελληνικό κράτος, βάσει της ισχύουσας νομοθεσίας ή διοικητικής πρακτικής, για να παρακολουθήσουν κατά κύριο λόγο σπουδές, συμπεριλαμβανομένων μαθημάτων επαγγελματικής κατάρτισης και διαθέτουν πλήρη ασφαλιστική κάλυψη ασθένειας στην Ελλάδα, βεβαιώνουν δε την αρμόδια αστυνομική αρχή, με δήλωση ή ισοδύναμα αποδεικτικά της επιλογής τους, ότι</p>	<p>Art. 7</p> <p>1. Union citizens shall have the right of residence on the Greek territory for a period of longer than three months if they: (a) are workers or self-employed persons, or (b) have sufficient resources for themselves and their family members, according to paragraph 3 of article 8 of the present, in order not to become a burden on the social assistance system of the Country during their period of residence, as well as comprehensive sickness insurance cover, or (c) - are enrolled at a private or public educational institution, accredited or financed by the Greek State, on the basis of the current legislation or administrative practice, for the principal purpose of following a course of study, including vocational training and have comprehensive sickness insurance cover in Greece and assure the relevant competent police authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members,</p>

διαθέτουν επαρκείς πόρους για τον εαυτό τους και τα μέλη της οικογένειάς τους, σύμφωνα με την παρ. 3 του άρθρου 8 του παρόντος, ώστε να μην επιβαρύνουν το σύστημα κοινωνικής πρόνοιας της Χώρας κατά τη διάρκεια της παραμονής τους, ή (δ) είναι μέλη της οικογένειας πολίτη της Ένωσης, που πληροί τους αναφερόμενους στις περιπτώσεις (α), (β) ή (γ) όρους, τα οποία τον συνοδεύουν ή έρχονται να τον συναντήσουν.

2. Τα μέλη οικογένειας πολίτη της Ένωσης που είναι υπήκοοι τρίτων χωρών και τον συνοδεύουν ή πηγαίνουν να τον συναντήσουν, έχουν δικαίωμα διαμονής για διάστημα άνω των τριών μηνών, εφόσον ο πολίτης της Ένωσης διαμένει νόμιμα στην Ελλάδα σύμφωνα με τις διατάξεις της παρ. 1 περιπτώσεις (α), (β) και (γ) του παρόντος άρθρου.

3. Για τους σκοπούς της παραγράφου 1, περίπτωση (α), η ιδιότητα του μισθωτού ή του ασκούντος ανεξάρτητη οικονομική δραστηριότητα διατηρείται για τον πολίτη της Ένωσης που δεν είναι πλέον μισθωτός ή δεν ασκεί ανεξάρτητη οικονομική δραστηριότητα, στις ακόλουθες περιπτώσεις :

(α) αν ο ενδιαφερόμενος είναι προσωρινά ανίκανος για εργασία εξαιτίας ασθένειας ή ατυχήματος,

(β) αν ο ενδιαφερόμενος έχει καταγραφεί αρμοδίως ως ακουσίως άνεργος, έχοντας ασκήσει επαγγελματική δραστηριότητα άνω του ενός έτους, και έχει καταγραφεί ως πρόσωπο το οποίο αναζητεί εργασία στην αρμόδια υπηρεσία απασχόλησης,

(γ) αν ο ενδιαφερόμενος έχει καταγραφεί αρμοδίως ως ακουσίως άνεργος μετά τη λήξη ισχύος της σύμβασης εργασίας ορισμένου

according to paragraph 3 of article 8, in order not to become a burden on the social assistance system of the Country during their period of residence, or. (d) are family members of a Union citizen who satisfies the conditions referred to in points (a), (b) or (c), whom accompany or come and join them.

2. Family members of a Union citizen who are nationals of a third country and accompany or join him, shall have the right of residence for a period of longer than three months, provided that such Union citizen resides legally in Greece, in accordance with the provisions of paragraph 1, points (a), (b) and (c) of the present article.

3. For the purposes of paragraph 1 point (a), a Union citizen who is no longer a worker or selfemployed person shall retain the status of worker or selfemployed person in the following circumstances:

(a) if the person concerned is temporarily unable to work as the result of an illness or accident,

(b) if the person concerned is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office,

(c) if the person concerned is in duly recorded involuntary unemployment after completion of a fixed-term employment contract of less than a year or after having become

χρόνου με διάρκεια μικρότερη του ενός έτους ή αφού κατέστη ακουσίως άνεργος κατά τη διάρκεια των πρώτων δώδεκα μηνών και έχει καταγραφεί στην αρμόδια υπηρεσία απασχόλησης ως πρόσωπο το οποίο αναζητεί εργασία. Στην περίπτωση αυτή, η ιδιότητα του εργαζομένου διατηρείται επί ένα εξάμηνο.

(δ) αν ο ενδιαφερόμενος παρακολουθεί μαθήματα επαγγελματικής κατάρτισης, εκτός της περιπτώσεως που ο ενδιαφερόμενος είναι ακουσίως άνεργος, οπότε η διατήρηση της ιδιότητας του εργαζομένου προϋποθέτει την ύπαρξη σχέσης μεταξύ της προηγούμενης επαγγελματικής δραστηριότητας και της κατάρτισης.

4. Όταν ο πολίτης της Ένωσης διαμένει στην Ελλάδα, επειδή πληροί τους όρους της παρ. 1 περίπτωση (γ) του παρόντος άρθρου, κατά παρέκκλιση από την παρ. 1 περίπτωση (δ) και την παρ. 2 του παρόντος άρθρου, δικαίωμα διαμονής στην ελληνική επικράτεια, ως μέλη της οικογένειάς του, έχουν μόνο ο [η] σύζυγος και τα συντηρούμενα τέκνα, όπως ορίζονται στο άρθρο 2 παρ. 2 του παρόντος. Η είσοδος και διαμονή των συντηρούμενων απευθείας ανιόντων του πολίτη της Ένωσης, που διαμένει στην Ελλάδα επειδή πληροί τους όρους της παρ. 1 περίπτωση (γ), καθώς και του [της] συζύγου του, διευκολύνεται σύμφωνα με τις διατάξεις της παρ. 2 του άρθρου 3 του παρόντος.

5. Το δικαίωμα διαμονής των πολιτών της Ένωσης και των μελών της οικογένειάς τους, ανεξαρτήτως ιθαγένειας, διατηρείται για όσο διάστημα πληρούνται οι προϋποθέσεις του άρθρου 7 του παρόντος. Σε συγκεκριμένες περιπτώσεις όπου υπάρχει εύλογη αμφιβολία για το κατά πόσο πληρούνται οι όροι αυτοί,

involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months

(d) if the person concerned embarks on vocational training, unless he/she is involuntarily unemployed, therefore the retention of the status of worker shall require the training to be related to the previous employment.

4. By way of derogation from paragraphs 1 point (d) and 2 herein, only the spouse and dependent children as defined in paragraph 2 of article 2 herein shall have the right of residence as family members of a Union citizen meeting the conditions under paragraph 1 point (c) above. Entry and residence of dependent direct relatives in the ascending lines and those of the spouse of a Union citizen meeting the conditions under paragraph 1 point (c) shall be facilitated, according to article 3 paragraph 2 herein.

5 Right of residence of Union citizens and the members of their family irrespective of nationality, is maintained for as long as the conditions being set by article 7 herein. In particular cases, where there is reasonable doubt as to if these conditions are met,

διενεργούνται σχετικοί έλεγχοι από τις αρμόδιες για το χειρισμό θεμάτων αλλοδαπών αστυνομικές αρχές του τόπου κατοικίας τους, όταν πρόκειται για πολίτη της Ένωσης ή μελών της οικογένειάς του που είναι επίσης πολίτες της Ένωσης ή τις αρμόδιες Υπηρεσίες Αλλοδαπών και Μετανάστευσης της οικείας Περιφέρειας, όταν πρόκειται για μέλη οικογένειας πολίτη της Ένωσης που είναι υπήκοοι τρίτων χωρών. Οι έλεγχοι αυτοί δεν μπορεί να είναι συστηματικοί.

6. Εφόσον ο πολίτης της Ένωσης διαμένει στην ελληνική επικράτεια για λόγους σπουδών, ως μέλη της οικογένειάς του, που είναι υπήκοοι τρίτων χωρών, νοούνται μόνον οι σύζυγοι και τα συντηρούμενα τέκνα, όπως ορίζονται σύμφωνα με τα στοιχεία (α) και (β) της παρ. 2 του άρθρου 2 του παρόντος.

inspections are performed by the competent police authorities in the place of their residence, which are authorized to handle alien issues for the cases concerning Union citizens or members of their family who are also Union citizens, or by the competent Alien and Immigration Services of the Region, for the cases where the members of the family of the Union citizen are nationals of a third country. These inspections can not be systematic

6. When the Union citizen resides in the greek territory for their studies, third country national who are considered as members of their family are only the spouse and dependent children shall have the right of residence as provided for in Article 2 para 2 points (a) and (b)

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Introduction

Ireland has a number of procedures in place for accepting migrants, each varying in length and complexity of procedure depending on the type of migration application. Migrants from EU and EEA countries are least burdened by bureaucracy by virtue of the free movement of people principle enshrined in EU law. Asylum seekers in Ireland are dealt with through the Direct Provision system, a process which both the delays involved and the conditions in which people live has been criticised by a number of human rights bodies including the UN. The following report aims to explain these variables in Irish migration law and the impact that these may have on accessing services and participation in Irish society at large.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

Asylum in Ireland is regulated under the International Protection Act 2015. This act replaced the Refugee Act of 1996 and significantly amended asylum law in the country. The most important reform that the 2015 International Protection Act introduced was a single procedure whereby refugee status, subsidiary protection, and leave to remain are all examined together in one procedure; having previously been evaluated separately. The Immigration Act 2004 stipulates that the conditions for being unlawfully present in the State do not apply to people who are in the process of applying for asylum, nor does it apply to a refugee who is the holder of a declaration which is in force.¹⁹⁰⁸

While the Minister for Justice and Equality oversees the asylum process in Ireland, applications for asylum are processed at the International Protection Office in Dublin run by the Irish Naturalisation and Immigration Service (INIS). The International Protection Act 2015 stipulates that refugees have the option to apply for asylum and subsidiary protection in Ireland. In order to apply for asylum there must be sufficient evidence that the applicant is unable to return to their home country due to fear or prosecution; are unable to live safely in any part of their country; and not have been able to get adequate protection from the authorities in their own country.¹⁹⁰⁹ The Minister for Justice and Equality is responsible for declaring whether a country is to be deemed a safe country of origin. Applications from countries deemed as safe are less likely to be successful in being granted asylum than applicants who are coming from countries not deemed a safe country of origin.

Asylum can be applied for at the Irish border as soon as the applicant enters the airport/ferry port. Asylum can also be applied for in Ireland if the applicant finds that they cannot return to

¹⁹⁰⁸ Immigration Act 2004, s 5.

¹⁹⁰⁹ International Protection Act 2015, s7.

their country for fear of prosecution. The procedure for granting asylum begins with the applicant being interviewed by an immigration officer, during which the grounds on which the application will be assessed are discussed to ascertain the applicant's reasons for applying for international protection. All applicants have the right to seek legal or interpretive assistance.¹⁹¹⁰ The applicants are required to have their photograph taken and may also be asked to provide fingerprints; refusing to provide fingerprints results in the applicant being deemed as failing to cooperate with the process, affecting the credibility of the application and may result in the application being withdrawn.¹⁹¹¹ Applicants have permission to remain in the state whilst their application is being processed and are given documentation in the form of a temporary residence certificate. In 2000 the Irish Government established the system of Direct Provision, with the purpose of providing support and assistance to asylum seekers as they wait to have their applications for protection processed. This support is given by means of accommodation, food, and education as well as a weekly allowance for both adults and children.¹⁹¹² Applicants living in Direct Provision do so under strict conditions. The prohibition on employment while in Direct Provision was recently found by the Supreme Court to be in breach of the right to work provision guaranteed by the Irish Constitution.¹⁹¹³

For children seeking asylum, the Child and Family Agency (TUSLA) has a social work team for separated children seeking asylum. Separated children are referred to the team by immigration services and will see a social worker and receive an initial assessment. If appropriate, an application for asylum will be made on the child's behalf. An assessment will be carried out on the child to establish the possibility of family reunification or the possibility of their return to their country of origin; medical assessment and care will be carried out if necessary, as well as a trafficking assessment and abuse disclosure, and psychology assessment and intervention if needed.¹⁹¹⁴

In some cases, it may be that Ireland is not the correct country to process an asylum request. The EU's Dublin III Regulation¹⁹¹⁵ determines which country is responsible for processing an asylum application. Where another EU Member State has offered a visa or a work permit to the person claiming refugee status, or where they crossed the border of another Member State before arriving in Ireland, then it is the responsibility of that first State to take charge of the application process.¹⁹¹⁶ If an applicant does not fit the strict definition of a refugee, as set out in national law, they may instead apply for subsidiary protection. Subsidiary protection was introduced after the

¹⁹¹⁰ Citizen's Information, 'Applying for International Protection in Ireland' (Citizens Information, 28 February 2017)

<http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/the_asylum_process_in_ireland/applying_for_refugee_status_in_ireland.html> accessed 8 July 2017.

¹⁹¹¹ Ibid.

¹⁹¹² Reception and Integration Agency, 'Direct Provision' (Reception and Integration Agency, date unknown) <http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs> accessed 13 November 2017

¹⁹¹³ *NHV v Minister for Justice and Equality* [2017] IESC 35.

¹⁹¹⁴ TUSLA Child and Family Agency, 'Separated Children Seeking Asylum' (TUSLA Child and Family Agency, date unknown) <<http://www.tusla.ie/services/alternative-care/separated-children>> accessed 12 September 2017.

¹⁹¹⁵ Council Regulation 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for the examining an application for international protection lodged in one of the Member States by a third-Country national or a stateless person [2013] OJ L180/31.

¹⁹¹⁶ Ibid.

case of *MM v Minister for Justice, Equality and Law Reform*¹⁹¹⁷ where the Court of Justice of the European Union (CJEU) found that Ireland had failed to implement EU law on this subject and held that an applicant who has applied for subsidiary protection after their application for asylum has been rejected should be granted a fresh hearing.

Once an applicant has been granted international protection under the International Protection Act 2015, as a refugee or subsidiary protection, they are granted certain rights. Those granted international protection have the right to enter employment, to access education and training, to receive the same medical care and social welfare as Irish citizens, and to reside in the State for at least 3 years, as well as having the same rights of travel as Irish citizens. They can also apply to the Minister for Justice and Equality for permission for a member of their family to enter and reside in the State.¹⁹¹⁸

2. How does your national law regulate immigration from EU member states and non-EU states?

Nationals from any EU member state automatically benefit from rights conferred on them by EU treaties. The free movement of persons is one of the cornerstones of the European Union. The idea of European citizenship was first proposed by the Maastricht treaty and it is this citizenship that determines the right of free travel by EU nationals. Council Directive 2004/38/EC confirms the right of EU nationals and their family members to move and reside freely within the territory of the member states. EU Directives on the free movement of persons are implemented into Irish National law under the European Communities (Free Movement of Persons) Regulations 2015. Under these regulations, nationals of any EU state may enter Ireland for a period of three months under any conditions. For any period longer than three months, EU nationals may remain in the host State provided they can satisfy the minister that they are seeking employment and have a realistic prospect of gaining employment. A Union citizen may also remain in the host state if they:

- Are in employment or in self-employment in the State;
- Have sufficient resources for themselves and family members so as not to become an unreasonable burden on the social assistance system of the State, and have comprehensive sickness insurance in respect of themselves and family members;
- Are enrolled in an educational establishment accredited or financed by the State for the principle purpose of following a course of study there.

Under these regulations, a person residing in a member state may continue to reside in said member state as long as they continue to fulfil the aforementioned requirements. An EU citizen

¹⁹¹⁷ *M.M. v Minister for Justice, Equality and Law Reform* [2011] IEHC 547.

¹⁹¹⁸ Citizen's Information, 'Rights Conferred on People Granted Refugee or Subsidiary Protection Status or Permission to Remain' (Citizen's Information, 12 January 2017) <http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/refugee_status_and_leave_to_remain/rights_of_convention_programme_refugees_people_given_leave_to_remain.html> accessed 15 September 2017.

is entitled to permanent residence status after living in the host state for a continuous period of five years. EU nationals must be able to provide a valid national identification card or passport as proof of their EU citizenship and must neither be suffering from a disqualifying disease under the regulations nor be a threat to public policy or public security.

Persons who are citizens of non-EU states may have rights under the European Communities (Free Movement of Persons) Regulations 2015 should they be considered a qualifying family member under the regulations. Under these regulations, a qualifying family member is-

- The Union citizen's spouse or civil partner,
- A direct descendant of the Union citizen, or of the Union citizen's spouse or civil partner and is under the age of 21 or a dependent of the Union citizen, or of his or her spouse or civil partner
- A dependent direct relative in the ascending line of the Union citizen, or of his/ her spouse or civil partner.

Such family members may apply to the Minister for a residence card within three months of either arriving in the country or of being declared a qualified family member.

Immigration of non-EU nationals is governed in the Immigration Acts 1999-2004, and related statutory instruments. A visa allows a person to travel to Ireland but does not guarantee that said person will be allowed into the country, also known as "leave to land." The 2004 Act lists the circumstances in which a person will be denied entry into Ireland, such as having one of a number of diseases, where the person does not have a visa when required to do so or where they are not in a position to support themselves and any accompanying dependants.

Nationals from the EU, EEA countries or Switzerland, do not require a visa to enter Ireland for a period of less than three months, all other nationals require permission to enter Ireland for up to 90 days.¹⁹¹⁹ All short stay visas allow the holder to travel to Ireland for tourism or study for up to 90 days. Visas for stays of more than 90 days can be applied for under different categories, including those who have received an employment permit, business permission or a working holiday authorisation, students attending a recognised full-time course for at least one year, and spouses and civil partners of Irish nationals.¹⁹²⁰ A General Employment Permit can be issued for an initial period of two years and can be renewed for a further three years, after which the applicant may apply for long term residency to the Irish Naturalisation and Immigration Service.¹⁹²¹ An employment permit is not a residence permit, and non-EEA nationals are required to register with the Garda National Immigration Bureau in order to be legally resident in the state.¹⁹²² Non-EEA nationals may apply for citizenship through naturalisation by calculation of reckonable residence. Evidence of legal residence which meets the requirements of

¹⁹¹⁹ Irish Naturalisation and Immigration Service, 'Immigration Permission' (INIS, 9 December 2016) <<http://www.inis.gov.ie/en/INIS/Pages/immigration-permission-finder>> accessed 8 July 2017.

¹⁹²⁰ Citizen's Information, 'Registration of Non EEA Nationals' (Citizen's Information, 18 July 2017) <http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/registration_of_non_eea_nationals_in_ireland.html> accessed 24 September 2017.

¹⁹²¹ Department of Business, Enterprise and Trade, 'Types of Employment Permits' (Department of Business, Enterprise and Trade, date unknown) <<https://www.djei.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits/Permit-Types/General-Employment-Permit>> accessed 10 July 2017. .

¹⁹²² Ibid.

reckonable residence will be determined by registration with Immigration.¹⁹²³ Reckonable residence may be calculated by using the time accumulated by the applicant on certain 'stamps'. Stamps are used to determine the type of permission an applicant has, including the activities that can and cannot be carried out in Ireland, and the time period that the applicant can stay in Ireland.¹⁹²⁴ These stamps, when endorsed on a passport, give the applicant permission to remain in Ireland, subject to the conditions of the given stamp. The onus is then on the applicant to renew the permission in order not to be in the country illegally. Upon gaining employment in Ireland, all non-national employees are entitled to the same rights in the workplace as Irish employees.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

As set out above, the Department of Justice and Equality, and more specifically the Minister for Justice and Equality are tasked with managing Ireland's migration policy. In the case of refugees claiming asylum the Department deals with this through the system of Direct Provision. However, there are two other key government bodies who deal specifically with migration, first the Irish Naturalisation and Immigration Service (INIS), and secondly the Garda National Immigration Bureau (GNIB). INIS is responsible for undertaking the administrative functions of the Minister for Justice and Equality in relation to immigration, visa, international protection, and citizenship matters. The GNIB meanwhile deals with all police matters relating to immigration such as border control, registrations, granting permission to remain, deportations and investigations relating to illegal immigration and human trafficking.

The INIS operates under two main frameworks; the Irish Nationality and Citizenship Act 2004 and the International Protection Act 2015. The Irish Nationality and Citizenship Act 2004 provides an outline through which migrants may seek naturalisation and becoming Irish citizens. The process and details of how this process works and the requirements that need to be met are outlined in Part III. The INIS have used this legislation to work on behalf of the Department of Justice and administer the matters of asylum, immigration, and citizenship issues. The GNIB also operates under the same legislation previously mentioned by the INIS. When seeking to deal with trouble experienced during the process, a complaint system is in place whereby those with a grievance may write a letter or email to the customer services department to seek a redress. The Quality Customer Service Office will handle any cases of mistreatment or misconduct. The Garda Ombudsman deals with any issues that arise with An Garda Síochána (the Irish Police Force), including the GNIB.

¹⁹²³ Ibid.

¹⁹²⁴ Irish Naturalisation and Immigration Service, 'Registration Stamps' (INIS, 11 September 2017) <<http://www.inis.gov.ie/en/INIS/Pages/registration-stamps>> accessed 15 September 2017.

The Diversity in the Economy and Local Integration Project (DELI Project), co-funded by the Council of Europe and European Integration Fund was set up in 2014 to help promote diversity and integration of migrants at a local level in their communities. A range of activities have been set up to help the migration process easier for migrants, such as support for migrant owned businesses, public and private dialogues to include migrant participation at the local level, ensuring the needs of the migrant community is met through economic and social inclusion policies and using state aid to increase awareness of any migrant issues raised at a local level.¹⁹²⁵

Another facility set up is the Reception and Integration Agency (RIA), a branch of the Department of Justice and Equality. The RIA deals with accommodation and provides a number of different services to asylum seekers who are under the Direct Provision system. The aim of RIA is to ensure that the needs of the migrants are met and they undergo regular process to review their situations. Before the implementation of RIA, asylum seekers were treated as homeless under the legislation. RIA has had a major impact in ensuring the high standard of living for migrants and ensuring that their accommodation needs are met.¹⁹²⁶

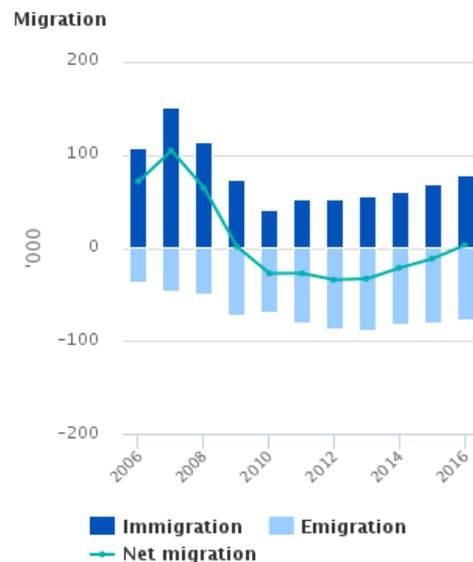
Lastly, the Office for Migrant Integration (OMI) plays an integral part in ensuring the successful integration of migrants into Irish society. This is achieved by actively promoting policies which encourage migrant participation in larger society. The OMI has a very accessible website¹⁹²⁷ which has links to all information relating to migrant affairs and can be easily navigated. The Office works across a number of different government departments to improve migrant integration and to develop migrant policy. Its function is to promote the integration of legal immigrants, manage the resettlement of migrants and to co-ordinate responses to racism relating to integration.

¹⁹²⁵ Dublin City Council, 'Diversity in the Economy and Local Integration' (Dublin City Council, date unknown) <<http://www.dublincity.ie/deli>> accessed 10 September 2017.

¹⁹²⁶ Reception and Integration Agency, 'Background' (Reception and Integration Agency, date unknown) <<http://www.ria.gov.ie/en/RIA/Pages/Background>> accessed 10 September 2017.

¹⁹²⁷ Department of Justice and Equality, 'Accessing Information' (Department of Justice and Equality, date unknown) <<http://www.integration.ie/website/omi/omiwebv6.nsf/page/infoformigrants-accessinginformation-en>> accessed 10 September 2017.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?



From 2009 to 2016, the number of migrants coming to Ireland has varied each year. In 2009, just less than 75,000 migrants arrived in Ireland while in 2010, this dropped to around 35,000. However, since 2010 this number has steadily increased back to its 2009 level of around 76,000 according to the European Migration Network on their website.¹⁹²⁸ Statistics have shown that immigrants to the State have increased by 15% in 2016 from 69,300 to 79,300. According to the INIS Immigration in Ireland Annual Review, ‘The number of citizens from non-EU countries legally living here at the end of 2016 rose to approximately 115,000, compared to 114,000 at the end of 2015. Visa applications rose by 7% compared to 2015, to more than 124,000.’¹⁹²⁹ The current top 5 registered nationalities, which account for over 48.5% of all persons registered, are Brazil (13.2%), India (12.2%), China (9.2%), USA (7.9%) and Pakistan (6%). INIS received nearly 14,500 applications for residency in 2016 alone as stated in the review.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

The European Convention of Human Rights (ECHR) establishes the binding force and execution of judgments of the European Court of Human Rights (ECtHR). Parties are must abide by any final judgment of the ECHR in their case.¹⁹³⁰ In order for the Court to properly protect and vindicate the rights of citizens, judgments must be affected at the domestic level. ‘[A] judgment of the European Court of Human Rights is not an end in itself, but a promise of

¹⁹²⁸ European Migration Network, ‘Useful Statistics Population and Migration Estimates’ (European Migration Network, date unknown) <<http://emn.ie/emn/statistics>> accessed 15 June 2017.

¹⁹²⁹ Ibid.

¹⁹³⁰ European Convention on Human Rights, Article 46.

future change, the starting point of a process which should enable rights and freedoms to be made effective.¹⁹³¹

The ECHR states that the Committee of Ministers, as the executive arm of the Council of Europe, will supervise the implementation of the Court's decisions.¹⁹³² This function is essential, as the responsibility of States to implement decisions at the national level is fundamental in giving effect to the convention. The ECtHR requires 'unequivocal respect for and follow-up to its decisions in the Council of Europe member countries. This alone will provide the Court with the authority it needs in order to protect the fundamental rights of our people.'¹⁹³³ The role of the Committee of Ministers has intensified with the introduction of Protocol 14. The Protocol introduced significant changes aimed at ensuring the effective implementation of ECtHR decisions.¹⁹³⁴ Notably, Article 16 provides for infringement proceedings to be brought against a State for violating the ECHR by failing to implement a decision of the Court. Any state which is found to have violated the ECHR is required to execute the decision of the Court. This may entail the payment by the state of a sum of money to the complainant in the case: this is known as "just satisfaction". In order to achieve *restitutio in integrum*, and to avoid the commission of the same human-rights violation, the state may be required to change its domestic law.

While decisions of the ECtHR are binding, the Court applies a strong margin of appreciation leaving it to national authorities to determine 'the choice of the means to be used in its domestic legal system to give effect to the obligation under Article 53.'¹⁹³⁵ The Court has no authority to indicate how effect should be given to its rulings, as it retains no developed understanding of the domestic legal systems of the contracting parties, and lacks jurisdiction to specify how decisions should be implemented.

The Irish Constitution guarantees, its citizens, a number of express rights, mainly civil and political in nature. However during the 1960's and into the 70's and 80's the Irish Supreme Court also developed a number of unenumerated rights flowing from natural law. Any legislation enacted in Ireland must be in conformity with the provisions contained in the Constitution or will be held by the Courts to be unconstitutional. The Irish system of constitutional supremacy entangled with the common law traditions of judge lead law perhaps places Ireland in the unique position to build a collaborative relationship with the application of ECtHR decisions. Ireland incorporated the ECHR into domestic law on a sub constitutional basis in 2003 through the European Convention on Human Rights Act meaning the Constitution retains primacy over ECHR, and where conflict arises, preference will be given to the Constitution. However in the case of *J Mc D v L*¹⁹³⁶ the Irish Supreme Court stated that it was willing to give effect to the decisions of ECtHR and interpret them in line with the constitution.

¹⁹³¹ Françoise Tulkens, 'Executions and Effects of Judgements of the European Court of Human Rights; the Role of the Judiciary' [2008] Dialogue between Judges 12.

¹⁹³² European Convention on Human Rights, Article 46(2).

¹⁹³³ Council of Europe Press Release No 729/98.

¹⁹³⁴ European Convention on Human Rights, Protocol 14.

¹⁹³⁵ *Belilos v Switzerland* (1988) Series A no 132. .

¹⁹³⁶ [2009] IESC 81.

The decision in *J Mc D v L*¹⁹³⁷ is of particular interest when considering that the binding nature of ECtHR judgments only extends to the parties concerned in the proceedings and is not generally binding on contracting states.¹⁹³⁸ While on the face of it, decisions of ECtHR where Ireland is not a party is not binding on the Irish Courts, the Supreme Court may be willing to give effect to the decision to ensure that the Irish legal order complies with the Convention. This is even more so given the ECHR Act 2003 requires judicial notice of decisions in all cases, and that due account should be taken of the “principles laid down” in such decisions by the Irish courts when interpreting and applying the provisions of the Convention.¹⁹³⁹ The courts have a duty therefore, when interpreting the content of Irish law, to be guided by the jurisprudence of the Strasbourg court, and the principles established by it. Domestic courts may go further than the Strasbourg court in the protection it offers, and the Irish courts should build on the jurisprudence of the Strasbourg courts in offering greater protection to migrants.

Human rights protection applicable to migrants is expressly provided by the Council of Europe legal instruments. Non-nationals on the territory or under the jurisdiction of the States Parties will enjoy the standards of the ECHR, and in some cases the European Social Charter. The rights of migrants are protected by the European Convention on the Legal Status of Migrant Workers. Other Conventions, such as the Convention on Action Against Trafficking in Human Beings and the European Convention of the Prevention of Torture are also applicable to migrants.

The right to respect for private and family life is included in the Convention at Article 8, and it is under this Article that the majority of cases regarding migrants are brought. Case law shows that state discretion in the sphere of immigration law is limited by Article 8.¹⁹⁴⁰ Jurisprudence indicates that deportation of migrants will be in breach of Article 8 if it constitutes a disproportionate disruption of the private and family life of the individual concerned, or of family members lawfully resident in the State. Article 8 may provide further protection to migrants who have integrated into the social fabric of the state. The ECtHR has recognised that the ‘solidity of social, cultural and family ties with the host country and the country of destination’ should be considered with sufficient weight with regard to migrants.¹⁹⁴¹

The Irish courts have followed the precedent of the court in Strasbourg by considering the extent to which migrants have settled and integrated into the state. In the case of *Ogunweke v Minister for Justice, Equality and Law Reform*¹⁹⁴², regard was given to the amount of time spent by the migrant in the state, the depth of integration and the adaptability of children in new environments. The case of *Ugbelase v Minister for Justice, Equality and Law Reform*¹⁹⁴³ dealt with the

¹⁹³⁷ Ibid.

¹⁹³⁸ Ibid.

¹⁹³⁹ The European Convention on Human Rights Act 2003, S 4.

¹⁹⁴⁰ Clíodhna Murphy, ‘Resisting Deportation on the Basis of Integration: Assessing the Impact of Article 8 ECHR’ (Human Rights in Ireland, 23 September 2013) <<http://humanrights.ie/uncategorized/resisting-deportation-on-the-basis-of-integration-assessing-the-impact-of-article-8-echr/>> 18 June 2017.

¹⁹⁴¹ *Uner v the Netherlands* (2007) 45 EHRR 14.

¹⁹⁴² [2008] IESC 25.

¹⁹⁴³ [2009] IEHC 598.

deportation of migrant parents of a citizen child.¹⁹⁴⁴ The Irish High Court considered the case of *Ogunweke*¹⁹⁴⁵ in assessing the Article 8 protection to be afforded, as required by the jurisprudence of the Strasbourg court. However, in general, Irish case law shows that Article 8 considerations by the domestic courts pertaining to migration cases have been weak. The courts have been conservative in applying the right to private and family life in migration issues in the course of analysing the rights laid down by the Convention. Factors of integration into the community, children settled in education have been mentioned by the courts, but the State's interest in controlling levels of migration has been given priority.¹⁹⁴⁶ In the case of *Odenis Rodrigues dos Santos*,¹⁹⁴⁷ the Irish Court of Appeals ruled that the alleged interference with the right to private life under Article 8 did not have consequences of such gravity potentially to engage its operation was reasonable on the facts before him. There has been some inconsistency in the approaches of the Strasbourg court and the Irish courts, with discrepancy mainly surrounding the interpretation of the concepts of "private life," and "settled migrants".¹⁹⁴⁸

In recent years, perhaps not unconnected to the declaration by the Irish Supreme Court in *J Mc D v L*¹⁹⁴⁹ the Irish courts have started to follow the jurisprudence of the ECtHR more closely, giving recognition to "settled migrants", and paying more attention to concerns for "private life" and integration efforts by migrants. The case law of the Irish High Court in *S v MJELR*¹⁹⁵⁰ and *EA v MJELR*¹⁹⁵¹ demonstrates a willingness to recognise where children are embedding in the education system, and where migrant parents of citizen children are being naturalised. National courts have acknowledged where sufficient factors connecting migrants to the state, and as such, migrants are increasingly enjoying more rights on the domestic level, after vindication by the European Court of Human Rights. If the Irish Courts continue down this path, it is likely that they are to become more sympathetic to the reasoning of the ECtHR in relation to Article 8 in the context of migrants perhaps leading to the adoption of a similar approach taken by Strasbourg in considering the integration of migrants into society.

¹⁹⁴⁴ *Ughelase v Minister for Justice, Equality and Law Reform* [2009] IEHC 598.

¹⁹⁴⁵ *Ogunweke v Minister for Justice, Equality and Law Reform* [2008] IESC 25.

¹⁹⁴⁶ Clíodhna Murphy, 'Resisting Deportation on the Basis of Integration: Assessing the Impact of Article 8 ECHR' (Human Rights in Ireland, 23 September 2013) <<http://humanrights.ie/uncategorized/resisting-deportation-on-the-basis-of-integration-assessing-the-impact-of-article-8-echr/>> 18 June 2017.

¹⁹⁴⁷ *Odenis Rodrigues dos Santos and Others v the Minister for Justice* [2015] IECA 210.

¹⁹⁴⁸ *Ibid.*

¹⁹⁴⁹ [2009] IESC 81.

¹⁹⁵⁰ [2011] IEHC 417.

¹⁹⁵¹ [2012] IEHC 317.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

Although the European Commission against Racism and Intolerance does not appear to have made recommendations concerning the integration of migrants in respect of Ireland, on the national level, such recommendations have been implemented in a variety of ways.

The basic legislative framework concerning the integration of migrants in Ireland comprises in a series of anti-discrimination provisions first introduced in the late 1990s.¹⁹⁵² The Employment Equality Acts 1998-2011, which aim to protect a variety of groups at risk of discrimination, including national and ethnic minorities of which most migrants form a part, have been credited with providing an important foundation in the implementation of policy goals concerning the integration of migrants.¹⁹⁵³ In addition, the Equal Status Acts 2000-2012 have among their aims the facilitation of integration of migrants by outlawing discrimination in areas such as the provision of goods and services and education.¹⁹⁵⁴ Many of the areas of life that these pieces of legislation concern are regarded as fundamental for the successful integration of migrants and the development of these legislative frameworks from the late 1990s up to the present decade can be linked to the activities of national bodies concerned with the integration of migrants.¹⁹⁵⁵

The first major policy document generated by the Irish government on the topic of migrant integration came in the form of 'Integration – a Two Way Process', which was published in 1999 as Ireland emerged as a country of net immigration and chiefly concerned integration of refugees who had begun to arrive in large numbers earlier in the decade.¹⁹⁵⁶ This was followed by the National Action Plan Against Racism (2005 – 2008), a government initiative on foot of commitments it made at the World Conference Against Racism, Racial Discrimination, Xenophobia, and related Intolerance in Durban in 2001.¹⁹⁵⁷ This plan aimed to encourage a more inclusive society as regards migrants, by eliminating racism and its manifestations in society generally.¹⁹⁵⁸ The latest major policy initiative in the area of migrant integration in the National Economic and Social Council's 'Migration Nation: Statement on Integration Strategy and Diversity Management'.¹⁹⁵⁹ As well as the establishment of an Office for the Promotion of Migrant Integration within the Department of Justice and Equality and under the supervision of the Minister of State for Equality, Immigration and Integration, it has been proposed to establish a strategy committee to oversee the implementation of the Integration Strategy. It is proposed that this committee would include Government officials as well as representatives from other public bodies and NGOs.¹⁹⁶⁰

¹⁹⁵² Department of Justice and Equality, *The Migrant Integration Strategy: A Blueprint for the Future* (2017).

¹⁹⁵³ Employment Equality Acts 1998-2011.

¹⁹⁵⁴ Equal Status Acts 2000-2012.

¹⁹⁵⁵ Department of Justice and Equality, *The Migrant Integration Strategy: A Blueprint for the Future* (2017).

¹⁹⁵⁶ Ibid.

¹⁹⁵⁷ Ibid.

¹⁹⁵⁸ Ibid.

¹⁹⁵⁹ Ibid.

¹⁹⁶⁰ Ibid.

As part of the Strategy, a wide range of implementing measures and initiatives are being undertaken. This includes the provision of materials for educating migrants in Irish historical and cultural matters, including through languages and formats that are required to make such materials suitable for use by the migrants.¹⁹⁶¹ Funding initiatives will aim to encourage incorporation of the integration strategy in areas such as sports and community organisations, whereby funding grants would be awarded contingent on some efforts to promote integration activities.¹⁹⁶² As well as this, some immigration and residency rules have been placed under review in order to assess their effects on migrant integration. It is proposed to provide government officials across a range of public services with training in order for them to be able to properly advise migrants of their public services entitlements.¹⁹⁶³

Finally, a long list of steps has been planned in the spheres of education and employment with a view to eliminating some of the barriers migrants may face in these areas, which may result in further, consequent barriers to integration. Notably, steps are being undertaken to make it easier for migrants to enter the teaching profession and to thereby encourage migrant engagement with the educational system and, as a result, to participate more easily in employment.¹⁹⁶⁴

7. How is migrants' right to access to healthcare regulated within the national legislation?

As a general rule, it has been observed that the same rules for access to most forms of social security, including healthcare, apply to migrants as to non-migrants in Ireland.¹⁹⁶⁵ However, for many forms of social security, including forms of healthcare, residence-related rules exist that have implications for migrants' access to such services.¹⁹⁶⁶

Provision for migrants' access to healthcare in Irish law is regulated differently depending on which of a number of different categories a migrant falls into. Citizens of EEA member states visiting Ireland temporarily are entitled medical care should they become ill during their stay.¹⁹⁶⁷ Some other categories of EEA migrants, such as posted workers, are also eligible for access to healthcare in Ireland by way of the 'medical card', a card granted by the State which signifies eligibility for comprehensive free healthcare in Ireland.¹⁹⁶⁸ Furthermore, under EU law, access to healthcare in other member states is regarded as coming within citizens' freedom of movement rights. EEA citizens resident in different member states are therefore generally entitled to healthcare in Ireland on an equal basis to that of their counterparts who are Irish citizens

¹⁹⁶¹ Ibid.

¹⁹⁶² Ibid.

¹⁹⁶³ Ibid.

¹⁹⁶⁴ Ibid.

¹⁹⁶⁵ European Agency for Fundamental Rights *Migrants in an irregular situation: access to healthcare in 10 European Union Member States* (2011).

¹⁹⁶⁶ Ibid.

¹⁹⁶⁷ Commission Regulation 2004/883/EC and 2009/987/EC 'The coordination of healthcare in Europe: Rights of insured persons and their family members under Regulations'.

¹⁹⁶⁸ Ibid.

resident in Ireland.¹⁹⁶⁹ This means that EEA migrants in Ireland are generally regarded as ordinarily resident in Ireland for the purpose of availing of health services, meaning they can apply for a medical card on the same basis – that of means – as an Irish citizen living in Ireland could.¹⁹⁷⁰

Aside from the rights to healthcare in Ireland that citizens of other EEA member states have in respect of their nationality, rights to healthcare in Ireland are generally based on residence rather than nationality.¹⁹⁷¹ For nationals of non-EEA states, this means that healthcare can be accessed on the same basis as by Irish nationals where they can show their intent to live in the State for a period of at least a year.¹⁹⁷² The Health Service Executive (HSE), the state body charged with the provision of public healthcare, may seek evidence of a migrant's legal entitlement to reside in the state for this period before deeming a migrant eligible for such status.¹⁹⁷³ Ordinary residence status, like for EEA nationals, brings with it the entitlement to apply for a medical card and thereby, to apply for subsidised healthcare. Students may generally be deemed ordinarily resident in the state when enrolled for a course of study lasting at least one academic year in duration.¹⁹⁷⁴ Asylum seekers are entitled to medical cards while their applications for refugee status are being decided. Once this status is granted, refugees are regarded as ordinarily resident and may therefore apply for medical cards on the same basis as Irish citizens.¹⁹⁷⁵

The situation is more complicated for undocumented migrants. Basic healthcare, regardless of civil status, is a right recognised by a number of different international instruments, including in the 1966 United Nations (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by Ireland.¹⁹⁷⁶ The right to healthcare in emergencies may also be regarded as coming under the right to life and the prohibition of inhuman treatment under the European Convention on Human Rights (ECHR).¹⁹⁷⁷ Significantly, a right to basic healthcare is also recognised at EU level, with the Charter of Fundamental Rights of the EU defining in Art 35 the right to healthcare as including the right of every person to access 'preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws'.¹⁹⁷⁸ Art 51 obliges member states to apply the provisions of the Charter when implementing Union law.¹⁹⁷⁹

There does not appear to be any legislative provision in Irish law relating to access to healthcare for undocumented migrants, as is the case in many other countries. As a result, cost-free access even to emergency care for undocumented migrants is less than certain, with free access instead

¹⁹⁶⁹ European Agency for Fundamental Rights *Migrants in an irregular situation: access to healthcare in 10 European Union Member States* (2011).

¹⁹⁷⁰ *Ibid.*

¹⁹⁷¹ *Ibid.*

¹⁹⁷² *Ibid.*

¹⁹⁷³ European Migration Network, *Migrant Access to Social Security and Healthcare: Policies and Practice in Ireland* (2014).

¹⁹⁷⁴ *Ibid.*

¹⁹⁷⁵ *Ibid.*

¹⁹⁷⁶ International Covenant on Economic, Social and Cultural Rights (1966).

¹⁹⁷⁷ European Convention on Human Rights, Art 3.

¹⁹⁷⁸ Charter of Fundamental Rights of the European Union, Art 35.

¹⁹⁷⁹ *ibid.*, Art 51.

being left to the discretion of the provider.¹⁹⁸⁰ Undocumented migrants do not have access to medical cards.¹⁹⁸¹ One of the only forms of healthcare that is provided reliably free-of-charge to undocumented migrants is screening for several types of infectious diseases, including HIV and other sexually transmitted diseases. Many of these programmes, such as those run by the Women's Health Project, which is sponsored by the HSE, are primarily aimed at migrants who have been trafficked, often for sexual exploitation and include ancillary services such as vaccinations, contraception and counselling.¹⁹⁸²

Effective access to healthcare for undocumented migrants may also be limited by seemingly unrelated immigration legal provisions. Section 8 of the Immigration Act 2003 contains a duty for public authorities to share information concerning non-nationals for the purposes of implementing the law on entry and removal.¹⁹⁸³ Since 2003, an interface has been in operation between the information system of the Department of Social Protection and that of the immigration authorities. Engagement by undocumented migrants with public health services therefore may create the risk – real or perceived – of having their status brought to the attention of the immigration authorities and therefore possible deportation.¹⁹⁸⁴

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Educational institutions play a critical role in integrating migrant children into society and into their new lifestyle. Even though migrant children face numerous challenges when it comes to education, Ireland has made a continuous effort to offer equal rights and access to education to every child. This has been demonstrated through the various support programmes, training teachers and staff, fostering a supportive environment, and effective parent-teacher engagement. Ireland has seen a big jump in diversity since the enlargement of the EU in 2004 and the inward migration of young families in search for employment, job prospects or a higher standard of living.

The ECHR has a number of Protocols attached to it, which provide for additional rights. Ireland has acceded to all ECHR Protocols, except for Protocol 12. Specifically, Protocol 1, Article 2 states that 'no person shall be denied the right to education.' The ECtHR, through its judgments has further protected the right to education, stating that 'the right to education...plays such a fundamental role' in every society.¹⁹⁸⁵ Indeed, numerous cases have come before the ECtHR concerning the infringement of the right to education, suggesting a difference in standard

¹⁹⁸⁰ European Agency for Fundamental Rights *Migrants in an irregular situation: access to healthcare in 10 European Union Member States* (2011).

¹⁹⁸¹ *Ibid.*

¹⁹⁸² European Migration Network, *Migrant Access to Social Security and Healthcare: Policies and Practice in Ireland* (2014).

¹⁹⁸³ Immigration Act 2003, s 3.

¹⁹⁸⁴ European Migration Network, *Migrant Access to Social Security and Healthcare: Policies and Practice in Ireland* (2014)

¹⁹⁸⁵ *Timishev v Russia* App no 55762/00 (ECtHR, 13 December 2005).

between the right guaranteed by the ECHR and the distribution of resources in regards immigration and education.¹⁹⁸⁶

Every child in Ireland is entitled to attend school. It is a mandatory requirement that children between the ages of 6 and 16 years of age attend some form of full-time education. Education is free in state-run schools. Migrants, refugees and asylum seekers are entitled to attend school the same as Irish children. Support for migrant children is offered in primary and secondary school ranging from additional English classes to extra-curricular activities. The English as an Additional Language programme (EAL) was a programme set up by the Department of Education and Skill. It offers additional help to children who have just come to Ireland or those whose first language is not English. The Department has also assigned additional language and learning support teachers to aid the programme's incorporation into the Irish educational system. There were a total of 735 secondary schools recorded in 2015/16.¹⁹⁸⁷ Many different types of secondary schools exist throughout Ireland such as vocational schools, private/fee-paying or community schools. All national schools in Ireland are funded by the state and follow the same curriculum. Some of these schools have undertaken a national programme that is concentrated on attending to the needs of children from disadvantaged areas. This programme is called "Delivering Equality and Opportunity in Schools" (DEIS).¹⁹⁸⁸ Another category of schools in Ireland that promote inclusiveness and access to education are the Educate Together schools. These schools operate independently and provide education to all children regardless of their culture, religion or background. There are currently 81 educate together primary schools in Ireland and secondary schools were recently established too.¹⁹⁸⁹ A study has shown that newcomer migrants are more likely to attend non-Catholic schools than Catholic schools and they are twice as likely to attend a disadvantaged urban school given the cultural and religious diversity.

One of the most successful projects benefitting many migrants and international students is the ability to take their own native language as a subject up to final school examination level (the Leaving Certificate). There are over 25 languages offered in the 2017 examinations (including curricular and non-curricular languages).¹⁹⁹⁰ The State Examinations Commissions have received requests to provide appropriate examinations for pupils who speak their native language. The State Commissions have also accommodated bilingual students by allowing them to use a dictionary in the Junior and Leaving Certificate. An application is made by the student prior to sitting the examinations and, if granted, they may use a dictionary in all subjects except English, Irish and their native language. In a recent report carried out where many secondary schools

¹⁹⁸⁶ Dr Ursula Kilkelly, *ECHR and Irish Law* (2nd edn, Jordans 2009).

¹⁹⁸⁷ Department of Education and Skills, 'Key Statistics 2014/2015 And 2015/2016' (Department of Education and Skill, 30 June 2016) <<https://www.education.ie/en/Publications/Statistics/Key-Statistics/Key-Statistics-2015-2016.pdf>> accessed 4 July 2017.

¹⁹⁸⁸ Department of Education and Skills, 'DEIS - Delivering Equality of Opportunity in Schools' (Department of Education and Skills, date unknown) <<http://www.education.ie/en/Schools-Colleges/Services/DEIS-Delivering-Equality-of-Opportunity-in-Schools-/>> accessed 7 July 2017.

¹⁹⁸⁹ Educate Together, 'What is Educate Together?' (Educate Together, date unknown) <<http://www.educatetogether.ie/about/what-is-educate-together/>> accessed 16 September 2017.

¹⁹⁹⁰ Ecom Ireland, 'Non-Curricular EU Language Subjects' (State Examination Commission, 14 February 2017) <<https://www.examinations.ie/?l=en&mc=ex&sc=eu>> accessed 16 September 2017.

were analysed on their efforts and ability to accommodate students whose first language is not English, it was found that bilingual students who used a dictionary in the state examinations scored higher in general.¹⁹⁹¹ This is a great example of how a migrant student may be skilled or competent in a subject, but face an English language barrier.

Another improvement in Ireland's education system was the introduction of a free year of pre-school for children between the ages of three and four. This was a considerable policy improvement in Ireland and it exemplifies how important pre-school education is, for the child's mental, social and physical development. A key element in this policy change is that it promotes equality among all children as it does not take into consideration the family's income. It is of greater importance that children from disadvantaged areas avail of this service, such as migrant and children of the Traveller community, to help them integrate into society and to build their first step into education. The Department of Health informs parents ahead of time that their child is eligible for this scheme to ensure that they are aware of this opportunity.¹⁹⁹²

Religious schools exist throughout Ireland and they are permitted to prioritise students and give preference to those of a particular faith. Ireland's dominant religion is Catholicism – the 2016 Census reveals that 78% of the population identifies as Catholic while 9.8% of the population are of "no religion".¹⁹⁹³ This may be regarded as a small percentage of the total population, but still a significant portion. However, this may be a disadvantage to migrant children who are of different religious beliefs or whose parents are inexperienced with the enrolment and admission system of schools. Nevertheless, there are guidelines set out in relation to this so that it does not interfere with access to education.¹⁹⁹⁴

Admission systems in schools can vary but migrant children can be put at an even bigger disadvantage when schools also give priority to siblings that are attending or have attended the school in the past. However, the Education Act 1998 places an obligation on schools to accept applications from all potential students and gives migrants the opportunity to be excluded from religious activities in schools.¹⁹⁹⁵

Other barriers to education exists for migrants such as being required to pay full tuition fees when entering higher education, whereas Irish citizen students do not pay fees. As these fees are determined based on residency and nationality,¹⁹⁹⁶ it is clear the difficulty this might pose for newly arrived migrants who wish to further their education. Regardless if the migrant became an

¹⁹⁹¹ Department of Education and Skills, 'Looking at English as an Additional Language' (Department of Education and Skills, date unknown) <<https://www.education.ie/en/Publications/Inspection-Reports-Publications/Evaluation-Reports-Guidelines/Looking-at-EAL-Post-Primary-Schools-.pdf>> accessed 15 September 2017.

¹⁹⁹² Department of Education and Skills, 'Intercultural Education Strategy, 2010-2015' (Department of Education and Skills, date unknown) <https://www.education.ie/en/Schools-Colleges/Information/Intercultural-Education-Strategy/mig_intercultural_education_strategy.pdf> accessed 15 September 2017

¹⁹⁹³ Central Statistics Office, '2016 Census of the Population Chapter 8: Religion' (cso.ie, 2017) <http://www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_8_Religion.pdf> accessed 6 July 2017.

¹⁹⁹⁴ Immigration Council, 'Migrant Children's Rights in Ireland' (Immigration Council, 2017) <http://immigrantcouncil.ie/files/publications/25615-migrantchildren_apr16_final.pdf> accessed 6 July 2017.

¹⁹⁹⁵ Ibid.

¹⁹⁹⁶ Quality and Qualifications Ireland, 'NARIC Ireland' (Quality and Qualifications Ireland, date unknown) <<http://www.qqi.ie/Articles/Pages/NARIC-Ireland.aspx>> accessed 6 July 2017.

Irish citizen during the course of their education, it is still required that they continue to pay full tuition fees. However, a change in policy matters was introduced in 2013 which abolished that provision, ensuring equality among migrants in higher education.¹⁹⁹⁷

The Irish 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. The educational curriculum in Ireland is the same for every child regardless of what school they attend. All primary schools operate on the same curriculum and as a child progresses in their education, they will sit the Junior and Leaving Certificate and proceed to further education if they wish.¹⁹⁹⁸

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Ireland is an attractive destination for foreign workers who are in search for employment or students in pursuit of a high standard of education. In order for employers to be able to recognise and understand their qualifications and experience, a process of translating and comparing international qualifications was created. Professional bodies were set up to oversee its development and to ensure it was administered correctly and fairly.

The European Network of Information Centres (herein “ENIC”) is an authority set up to offer information and advice to employers, students, educational bodies such as universities etc. on the recognition of foreign qualifications. In 1994, UNESCO and the Council of Europe created the ENIC Network with the intention to foster a joint policy and system for the recognition of qualifications in all European countries.¹⁹⁹⁹ National Academic Recognition Information Centre (NARIC) works in a very similar way to ENIC but some European countries only operate with ENIC and others work with both networks, such as Ireland.

Quality and Qualifications Ireland (QQI) was set up by the Education and Training Act 2012 to enable foreign qualification recognition in Ireland. QQI hosts NARIC Ireland in which they provide information and advice regarding qualification recognition in Ireland. The NARIC Ireland database offers information on over 900 qualifications from more than 60 countries. The network operates on a comparability statement which positions the foreign qualification in

¹⁹⁹⁷ Dick Ahlstrom, 'Migrants Win Concession on Third Level Education Fees' (The Irish Times, 25 July 2013) <<https://www.irishtimes.com/news/education/migrants-win-concession-on-third-level-education-fees-1.1475054>> accessed 15 September 2017.

¹⁹⁹⁸ National Council for Curriculum Assessment, 'Curriculum - Primary' (Curriculum online, date unknown) <<http://www.curriculumonline.ie/Primary/Curriculum>> accessed 16 September 2017.

¹⁹⁹⁹ Council of Europe, 'ENIC Network - Higher Education and Research' (Council of Europe, date unknown) <http://www.coe.int/t/dg4/highereducation/Recognition/ENIC_en.asp> accessed 7 July 2017.

question in the framework of the Irish educational system.²⁰⁰⁰ This service is offered online and enables the user to search and identify their qualification on the database. The process of translating foreign qualifications is called “alignment”.

The National Framework of Qualifications (NFQ) is a key feature of the educational and training system in Ireland. It is an arrangement of all the different levels and qualifications one can achieve that can be also displayed in a “fan diagram”.²⁰⁰¹ The way in which foreign qualifications are made recognisable in Ireland is by comparing it to the NFQ. This is typically achieved by a using criteria of award-type and level of qualification and translating it to the same or a similar level on the NFQ. The NFQ is useful as it acts as a guide for international educational bodies to understand Ireland’s qualification system.

The Lisbon Recognition Convention (LRC) was created by the Council of Europe and UNESCO in 1997. Ireland approved the LRC in 2004, among many other countries. The LRC’s main objective is helping people to achieve reasonable recognition of qualifications in Europe.²⁰⁰² QQI and NARIC Ireland endeavour to carry out this purpose by following the guidelines set out in the Convention.

The LRC has numerous principles set down which help to make sure that the information provided regarding recognition is clear, precise, and easily accessible. Transparency is one of the key principles laid down. In order for the recognition information to be accessible by all applicants, each recognition authority is advised to create an online database which displays all previously successful applications of qualification recognition. Ireland, in compliance with the Bologna Agreement for higher education, has compiled an online database of foreign qualifications that are presently recognised in Ireland. Applications that have succeeded in foreign qualification process are displayed on the database, free for future applicants to refer to, should their qualifications match.²⁰⁰³

This is also reinforced by the Bologna process which was set up in 1999 to help create an easier system of qualification recognition in Europe. The process is comprised of 48 member states and the European Commission. The activities and accomplishments achieved by the Bologna process is overseen by ministerial meetings held every 3 years.²⁰⁰⁴ This process has allowed for the creation of the European Higher Education Area whose key objective is encouraging the recognition of qualifications in Europe through designing a system of mutual recognition and common goals. Ireland is a member of the process and as such has taken part in higher education reforms. It has adopted the three-cycle academic degree standards as well as making the system more consistent and inclusive.²⁰⁰⁵

²⁰⁰⁰ Quality and Qualifications Ireland, 'NARIC Ireland' (Quality and Qualifications Ireland, 2017) <<http://www.qqi.ie/Articles/Pages/NARIC-Ireland.aspx>> accessed 6 July 2017.

²⁰⁰¹ Quality and Qualifications Ireland, '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.

²⁰⁰² Council of Europe, 'ENIC Network - Higher Education and Research' (Council of Europe, date unknown) <http://www.coe.int/t/dg4/highereducation/Recognition/ENIC_en.asp> accessed 7 July 2017.

²⁰⁰³ EAR Project 'European Area of Recognition - Manual' (European Area of Recognition, date unknown) <<http://eurorecognition.eu/manual/>> accessed 12 September 2017.

²⁰⁰⁴ Bologna Declaration (1999).

²⁰⁰⁵ Ibid.

There are two different categories set out when trying to get a foreign qualification recognised in a member state: for the purposes of further education or for the purposes of accessing employment. Several professions are under a separate “category” known as regulated professions.²⁰⁰⁶ This means that in order for someone to be able to work in these professions, they must have a license to do so. Examples of such professions include doctors, nurses, teachers and pharmacists.²⁰⁰⁷ Under the EU Directive 2013/55/EU for Mutual Recognition of Professional Qualifications, a person who is fully qualified in one member state can transfer their qualification to another member state and this applies to regulated professions in the same manner as non-regulated professions.²⁰⁰⁸

In Ireland, the international qualification recognition process begins by searching for the required qualification on the online NARIC database. The first step is breaking down the qualification by country and type of education. Once the relevant qualification has been identified, a profile of that particular qualification can be accessed in which it displays important details about it. One of the most important steps is accessing the Comparability Statement which is downloadable and printable. This document is a valuable aid for employers and educational institutions and it can help them to appreciate and identify with a person’s qualification. If a qualification cannot be found on the database, an application form can be filled out in order to obtain advice on the recognition of that qualification.

Such a qualification is then evaluated by experienced evaluators at NARIC Ireland. If the award/qualification is found to meet all relevant criteria and a comparable level is established, it is then added to the NARIC database and published online which ensures that it is available for public viewing.

In the case of a migrant, refugee or asylum seeker who, for valid reasons, cannot fully complete an application or provide the required documents to uphold the qualification claimed, special procedures have been formulated. The applicant is required to provide as much information as possible relevant to the qualification such as student identification number or details of work experience.²⁰⁰⁹ The authority is advised to try and re-assemble the qualification with the information given and to use similar qualifications from the same institute to help. Additional steps may also be required such as an interview or an exam, depending of the individuals’ circumstance. The LRC encourages a flexible approach to qualification recognition when it comes to migrants and refugees.²⁰¹⁰

²⁰⁰⁶ Quality and Qualifications Ireland, 'Recognising Foreign Qualifications in Ireland' (Quality and Qualifications Ireland, date unknown) <http://www.qqi.ie/Publications/Publications/foreign_recognition_leaflet.pdf> accessed 5 July 2017.

²⁰⁰⁷ Department of Education and Skills, 'More Faqs - Professional Qualifications Recognition' (Department of Education and Skills, date unknown) <<http://www.education.ie/en/The-Education-System/Qualifications-Recognition/More-FAQs.html>> accessed 7 July 2017.

²⁰⁰⁸ Department of Education and Skills, 'Professional Qualifications Recognition' (Department of Education and Skills, date unknown) <<http://www.education.ie/en/The-Education-System/Qualifications-Recognition/Information.html>> accessed 5 July 2017.

²⁰⁰⁹ Enic-Naric, 'Recognition of Qualification Holders Without Documentation' (Enic-Naric, 7 March 2016) <http://www.enic-naric.net/fileusers/5335_EAR-HEI-Recognition-of-qualification-holders-without-documentation.pdf> accessed 16 September 2017.

²⁰¹⁰ Ibid.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Ireland's first migrant mayor was former Cllr. Rotimi Adebari who was first elected in 2004 to Portlaoise Town Council in the county of Laois. He was then re-elected in 2009 to the town council and was elected as a member of Laois County Council. Adebari contested a total of six elections, both local and national before finally losing his seat on the council in 2014²⁰¹¹. Seven years after seeking asylum in Ireland, Adebari was a local politician²⁰¹². This is an unusual phenomenon in the Republic of Ireland as the number of migrants that engage in politics as public representatives has been traditionally, a low figure. In 1992, the first migrant was elected to serve as a Teachta Dála (TD) in Dáil Éireann (the Irish parliament)²⁰¹³. Dr. Moosajee Bhamjee was a South African of Indian heritage. He was elected for the Irish Labour Party from the rural constituency of Clare. Since Dr. Bhamjee, there has been one TD elected who was not of Irish heritage, the current serving Minister for Children and Youth Affairs, Dr. Katherine Zappone, who is a Canadian²⁰¹⁴. Much of the politics in Ireland is local and many TDs who serve in the national parliament, have served as local councillors prior to their election. Research²⁰¹⁵ shows that few migrants succeed in breaking through to local politics. In 2004, of six Africans that contested the local elections, only two were elected. In 2014, there was only one African local representative, Sinn Féin councillor, Edmond Lukusa²⁰¹⁶, originally from the Democratic Republic of the Congo. He became active in politics after becoming an Irish citizen. This leads to the question, is acquiring citizenship necessary to engage with politics in Ireland and just what are the requirements for voting and can migrants vote in certain elections prior to becoming citizens?

Every Irish citizen over the age of eighteen has the right to vote in all Irish elections. There are different conditions for migrants of different nationalities when it comes to voting in Ireland²⁰¹⁷. British citizens may vote in all Irish general elections, European elections and local elections.

²⁰¹¹ Christopher Took and Seán Donnelly, 'Electionsireland.Org: Rotimi Adebari' (Electionsireland.org, date unknown) <<http://electionsireland.org/candidate.cfm?ID=6300>> accessed 4 June 2017.

²⁰¹² Owen Bowcott, 'From Asylum Seeker To Ireland's First Black Mayor In Seven Years' (The Guardian, 29 June 2007) <<https://www.theguardian.com/world/2007/jun/29/ireland>> accessed 4 June 2017.

²⁰¹³ Cliona O'Flynn, 'The Indian From Clare' (RTÉ Archives, date unknown) <<http://www.rte.ie/archives/exhibitions/688-elections/699-general-election-1992/287952-election-1992/>> accessed 4 June 2017.

²⁰¹⁴ Katherine Zappone, 'Biography - Katherine Zappone' (Katherine Zappone, date unknown) <<http://katherinezappone.com/bio/>> accessed 4 June 2017.

²⁰¹⁵ UCD School of Applied Social Science, 'Immigrant Political Participation In The Republic Of Ireland: Socio-Political Capital And Motivational Stakes' (UCD, November 2009) <http://www.ucd.ie/t4cms/WP12_Immigrant_Political_Participation_Fanning_o%27Boyle.pdf> accessed 4 June 2017.

²⁰¹⁶ Edmond Lukusa, 'Edmond Lukusa - Sinn Féin | Dublin West' (Voteforchange.ie, date unknown) <<http://www.voteforchange.ie/edmond-lukusa/>> accessed 11 June 2017.

²⁰¹⁷ Office for the Promotion of Migrant Integration, 'Getting Involved In Irish Life' (Integration.ie, date unknown) <<http://www.integration.ie/website/omi/omiwebv6.nsf/page/infoformigrants-voting-en>> accessed 17 June 2017.

Other EU citizens are restricted to EU and local elections while non-EU citizens can vote only in local elections. Once Irish citizenship is granted, the individual has the right to vote in all Irish elections and referenda. To cast your vote, the individual must present themselves at their local polling station. On most occasions, all those entitled to vote will be issued with a polling card to their home address. This must be presented at the polling station and the individual may be asked to present some form of identification. The formalities regarding voting are quite straightforward and it is clear that Irish citizens are afforded the most opportunity to engage politically. Therefore, any migrant that becomes an Irish citizen has the right to participate in the democratic processes of their country of residence.

Foreign nationals that do not have Irish citizenship are prohibited from voting in referenda held within the State. It is proven that disenfranchising migrants through restrictive policies in this area creates a perception of a country that is weak on immigration policy and tends to provide for migrant's representation, merely through weak, ineffectual bodies.²⁰¹⁸ Studies of non-EU migrant's political participation indicate that several factors influence the willingness of foreign nationals to engage civically. Ireland was identified as a country where the higher the level of education, the more likely migrants are to participate politically.²⁰¹⁹ The question surrounding political participation revolves not just around the willingness of migrants to participate in politics e.g. as candidates for election but also on the willingness of others to elect these individuals. In the local elections of 2009, three non-national candidates contested the Mulhuddart ward in Dublin, seeking election to Fingal County Council²⁰²⁰. While Mulhuddart is a district with a large number of foreign nationals²⁰²¹ that have taken up residence there, all of these candidates failed to be elected. While Irish national legislation clearly outlines in what ways migrants can participate in Irish political decisions, there has been little work done in the area of increasing the number of foreign nationals serving as politicians at either a local or national level. To ensure that migrants can participate effectively in the political decisions of their countries of residence, nations such as Ireland should look towards implementing strategies of civic engagement as part of a wider policy of integration. Similar to the recent implementation of gender quotas in Ireland, this could pave the way for a possible quota of migrants to ensure effective representation and in turn, a truly representative democracy. As outlined above, all citizens resident in Ireland, including non-EU citizens are granted the right to vote in local elections. However, non-Irish citizens whether legally resident or not are excluded from voting in all Presidential elections and referendums, based on their nationality. Special status is designated to British citizens resident in Ireland and they are permitted to cast a vote in general elections. However, other EU citizens may not vote in general elections; they are restricted to

²⁰¹⁸ Mipex, 'Political Participation | MIPEX 2015' (mipex.eu, date unknown 2015) <<http://www.mipex.eu/political-participation>> accessed 3 July 2017.

²⁰¹⁹ Ibid.

²⁰²⁰ Christopher Took and Seán Donnelly, 'Electionsireland.Org: 2009 Local - Mulhuddart First Preference Votes' (Electionsireland.org, date unknown) <<http://electionsireland.org/result.cfm?election=2009L&cons=186>> accessed 3 July 2017.

²⁰²¹ UCD School of Applied Social Science, 'Immigrant Political Participation In The Republic Of Ireland: Socio-Political Capital And Motivational Stakes' (UCD, date unknown 2009) <http://www.ucd.ie/t4cms/WP12_Immigrant_Political_Participation_Fanning_o%27Boyle.pdf> accessed 4 June 2017.

local and European elections. The conditions that have been outlined that migrants must satisfy to be entitled to cast their vote and engage politically are rather straightforward in Ireland. No migrant satisfying these aforementioned conditions can be denied their right to vote.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

Foreign nationals can apply for Irish citizenship through naturalisation²⁰²². The Minister for Justice and Equality has complete discretion over whether to grant citizenship through naturalisation. To apply for citizenship through naturalisation, the applicant must satisfy some basic conditions. The individual must be 18 years of age or over but minors born within the State after 2005 can apply also. The individual must also have been a continuous resident for at least 1 year prior to the application being made. In total, the applicant must have been continuously resident in Ireland for five of the nine years preceding the application. Such conditions regarding naturalisation are more favourable for foreign nationals that are married to Irish citizens. Marriage no longer entitles one to automatic citizenship in the Republic of Ireland. As an Irish citizen, you may also hold dual citizenship, however it is important to ensure that the second country in question also allows for dual citizenship and that acquiring Irish citizenship does not void citizenship of ones' home country. Applying for citizenship through naturalisation simply involves completing a form that is available online at the Irish Citizen's Information website and paying a fee of €175.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Ireland has become an increasingly diverse population, according to Census 2011 about 12%²⁰²³ of the Irish population are migrants or non-nationals. This has a lot to do with Ireland's social and economic progression since joining the European Union. Ireland has also been committing to actively integrating these non-nationals into Irish life, utilising European Programs and Funds in order to implement their integration strategies. The main Irish body which handles the funds set out by the EU for Ireland is Department of Justice and Equality. Within this department are main control units which are allocated a specific budget of the funds issued to Ireland from the European Migration Fund; mainly Asylum, Migration and Integration Fund (AMIF), which are the Funds Unit of the Office for the Promotion of Migrant Integration (OPMI) rather than the

²⁰²² Citizen's Information, 'Becoming An Irish Citizen' (Citizen's Information, 22 December 2016) <http://www.citizensinformation.ie/en/moving_country/irish_citizenship/your_right_to_irish_citizenship.html> accessed 4 July 2017.

²⁰²³ Central Statistics Office, '2016 Census of the Population Chapter 7: Migration and Diversity' (cso.ie, 2017) <<http://www.cso.ie/en/csolatestnews/presspages/2017/census2016profile7-migrationanddiversity>> accessed 6 July 2017.

Office as a whole. The existing Audit Authority (AA) in respect of the Solid Funds. Two Delegated Authorities are being appointed. The Repatriation Unit of the Irish Naturalisation and Immigration Service (INIS) will be a Delegated Authority in respect of all return actions. The Repatriation Unit is the RA for the European Return Fund (RF).

Ireland received an average amount of €14,519,077 between 2011 and 2013.²⁰²⁴ About €4.5 million²⁰²⁵ is being made to non-governmental organisations, who can apply for funding through the Department of Justice and Equality. The strategy for implementation and distribution of said funds is laid on in The National Programme AMIF (as adopted by the Commission on March 21st, 2016). The financing plan of the programme provides that 28.3% of the national allocation will be spent on Asylum, 27.9% on Integration, 25.5% on Return, 7.7% on Solidarity and 10.6% on technical assistance.

In relation to relocation the program sets out €5,455,000.00 both for the integration of legal migrants and asylum seekers between 2015 and 2020.²⁰²⁶ Laid out in this document is also what the government of Ireland intends to use the funds to benefit Irish society and particularly integrate migrants into said society. The plan laid out is as follows, first Ireland will continue its efforts to attract highly skilled workers to contribute to our economic development, in particular, streamlining the administrative processes for bringing such people to Ireland, including faster processing and greater flexibility. This will continue as will the operation of the EU research scheme and programmes aimed at entrepreneurs and investors. Secondly, substantial reform is being carried out on international student migration to raise quality standards and tackle abuses. Thirdly, an on-going civilianisation programme will aim to deliver enhanced customer service to all migrants.

More specific actions to be taken are outlined in the Migrant Integration Strategy by the department of Justice and Equality. These actions include but are not limited to; the inclusion of a target of 1% for the employment of EEA migrants and people from minority ethnic communities in the civil service (in most cases civil service employment is not open to non-EEA nationals). This issue is important in terms of beginning the process of making the civil service representative of the broader population. Schools outside the established education system will be encouraged to network with the aim of providing information on child protection and health and safety regulations to them and of developing relationships with them. The establishment by local authorities of networks aimed at reaching out to migrant groups to help them to engage with Government Departments and to provide information on their needs. The establishment of a Communities Integration Fund intended to support organisations in local communities (sports organisations, faith organisations etc.) to undertake actions to promote the integration of migrants into their communities. There is also the monitoring of current school enrolment policies over time to assess their impact on the enrolment of migrant students, as well as the inclusion of a language component in education and training programmes for unemployed

²⁰²⁴ Establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC [2014] OJ 1 516/2014 /01.

²⁰²⁵ Department of Justice and Equality, 'FAQs' (Department of Justice and Equality EU Funds Unit, date unknown) <http://eufunding.justice.ie/en/eufunding/pages/faqs_amif> accessed 25 September 2017.

²⁰²⁶ The Department of Justice and Equality, *The National Programme AMIF*, (21 March 2016).

migrants with poor English proficiency. Initiatives have been set up to ensure that migrant needs in relation to skills acquisition and labour market activation are addressed, as well as to encourage the business sector to play a role in promoting integration. The establishment of a working group to examine data gaps in relation to migrant needs and experience. These programs and expansions will be funded by the AMIF.

Potentially, the most important of these projects is the introduction of the Communities Integration Fund supported by the AMIF. This fund will make €500,000²⁰²⁷ available to community organisations who promote integration within their communities. Up to €5,000 will be granted to each individual organisation.

The non-governmental projects funded are as follows supported by the Communities Integration Fund –

- Mayo Intercultural Action Limited
- The Dublin Rape Crisis Centre Limited
- St. Catherine's Community Services Centre Limited
- City of Dublin Education and Training Board (CDETb)
- Belong To Youth Services Limited
- NASC, The Irish Immigrant Support Centre Limited
- Cultúr, Celebrating Diversity Limited
- SDC South Dublin County Partnership Limited
- Kilmallock Performing Centre Limited
- Galway County Council
- Age Action Ireland Ltd
- Blanchardstown Area Partnership Limited
- Southside Partnership DLR Limited
- Galway City Council
- Crosscare
- Clare Immigrant Support Centre Limited
- Canal Communities Regional Youth Service Limited
- Migrant Information Centre Limited
- Educate Together/Ag Foghlaim le Cheile
- Calipo Theatre Company Limited.

Conclusions

The findings of this paper highlight the varying treatment of migrants by Ireland depending on the type or status of migrant application. There is vast inequality in the process between those migrants from EU and EEA countries compared to those seeking asylum in Ireland. The status

²⁰²⁷ Office for the Promotion of Migrant Integration, 'Communities Integration Fund' (OPMI, 7 February 2017) <<http://www.integration.ie/website/omi/omiwebv6.nsf/page/Communities-Integration-Fund-en>> accessed 25 September 2017.

of a migrant's application also plays a role in accessing services. Those who live in Direct Provision do so under the strictest of conditions and face a number of barriers to participating in society including limited access to social welfare and work. However the landmark case of *NHV v Minister for Justice and Equality*²⁰²⁸ saw the Irish Supreme Court find that a ban on those living in Direct Provision from working to be unconstitutional. This paper has found that education is one of the areas of little restriction with a comprehensive framework for recognising qualifications earned abroad, free access to education for children regardless of status and the implementation of a number of provisions to assist with integration and language learning. On the other end of the scale voting rights is one of the most restricted areas, with the migrant's country of origin being a decisive factor in the extent to which they may participate. Whether this limitation is the reason for low migrant participation in Irish politics is unclear, however even in elections where migrants have the right to vote there does not appear to be a high engagement with the democratic process. This research therefore concludes that while Ireland may have many ambitious policy initiatives relating to migrants, it falls short of reaching its potential by failing to implement these goals in practice.

²⁰²⁸ [2017] IESC 35.

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Introduction

In the last 50 years, Italy has experienced a relevant transformation, starting from an emigrant nation (according to the last statistics from the Ministry of the Interior, there are more than 4.636.647 Italians still living abroad) to become an immigrant destination.

From 1970 until now, migrant citizens with regular residence permits in Italy have increased, with a rate of growth that looks almost unstoppable: at the beginning of 2017, there were more than 5,047,028 foreign nationals resident in Italy.

This numbers, added to the illegal immigrants whose numbers are difficult to define, outline a complex situation, characterized by immigrant flows from almost 200 different countries, especially Central Eastern Europe (Albania, Romania and Ukraine), Northern Africa (Morocco), China and the Indian subcontinent (Pakistan, India, and Sri Lanka).

This historically important phenomenon requires in-depth analysis in order to evaluate the effectiveness of the Italian legislation and intervention policies, and to find concrete solutions to help immigrants settling in our country.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Description of the national legislation regulating asylum

The right to asylum in Italy is expressly codified by art. 10 par. 3 of the Italian Constitution, stating that “the foreign citizen who is prevented in his own country from the effective assertion of the democratic rights guaranteed by the Italian Constitution, has the right of asylum in the Italian Republic, under the conditions set by the law”.

The main pieces of legislation, implementing EU secondary legislation on asylum, are the Legislative Decree (LD) n. 251 of the 19th November of 2007,²⁰²⁹ concerning the “Implementation of Directive 2004/83/EC on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as person who otherwise need

²⁰²⁹ Legislative Decree n. 251 (Implementation of 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) 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] as modified by the Legislative Decree n. 18 (Implementation of the Directive 2011/95/UE on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as person who otherwise need international protection and the content of the protection granted) 2014 [Attuazione della direttiva 2011/95/UE recante norme sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, su uno status uniforme per i rifugiati o per le persone aventi titolo a beneficiare della protezione sussidiaria, nonché' sul contenuto della protezione riconosciuta.

international protection and the content of the protection granted” (Qualification Decree) and the LD n. 25 of the 28th of January of 2008, concerning the “Implementation of the Directive 2005/85/EC on minimum standards for procedures for granting and withdrawing refugee status”²⁰³⁰ (Procedure Decree).

Three different categories of protection are provided for by the Italian legislation: the refugee status, the subsidiary protection and the humanitarian protection.

According to the LD n. 251/07, referring directly to the European Directive 2004/83/EC, a refugee is a “third country national who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”,²⁰³¹ while beneficiary of subsidiary protection is considered a “third country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined by this decree, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”.²⁰³²

The third category of protection is a residual one. Indeed, a permit of stay for humanitarian reasons, lasting 2 years, can be granted when the applicant does not satisfy the conditions for obtaining asylum or subsidiary protection.²⁰³³ In fact, when the Territorial Commission does not recognize the conditions for international protection, indicates “serious reasons of humanitarian nature” and forwards the asylum seeker’s documentation to the Questura that will grant a humanitarian permit of stay.²⁰³⁴

The Italian legislation also defines specific causes of exclusion of the recognition of the refugee status. This is the case, inter alia, of the foreigner who has already been recognized as a refugee in another country; who has committed a crime against peace, a war crime, a crime against

²⁰³⁰ LD n. 25 (Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status) 2008 [Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato] as modified by the Law n. 46 of the 13th of April of 2017.

²⁰³¹ Art. 2 LD n. 251/07.

²⁰³² *Ibidem*.

²⁰³³ Art. 5 par. 6 of the Consolidated Immigration Act – Legislative Decree n. 286 of the 25th of July 1998, (Testo unico sull’immigrazione) makes possible to release a residence permit in a situation in which this is justified by “serious reasons, in particular of humanitarian nature or arising from constitutional or international obligations of the Italian State”. This protection granted to citizens of a third country who are found in objective and serious personal conditions that do not allow their removal from Italy. In order to obtain a humanitarian stay permit, a request has to be forwarded to the Questura who will examine the applicant’s personal and specific situation.

²⁰³⁴ Art. 32 LD 25/08 par. 3. On this point see also Rosa Raffaelli, ‘Background Information for the LIBE Delegation on Migration and Asylum in Italy’ (European Parliament, In-Depth Analysis For The Libe Committee 2017) <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/583136/IPOL_IDA\(2017\)583136_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/583136/IPOL_IDA(2017)583136_EN.pdf)>, accessed 15 July 2017.

humanity; or a serious crime outside Italy, even for political reasons, prior to his/her admission to Italy as a refugee.²⁰³⁵

The Italian legal system defines a single procedure for determining whether an applicant is entitled to the refugee status or to the subsidiary protection.

The authorities that are entrusted with examining the applications for the different types of protection are the Territorial Commissions for the Recognition of International Protection (CTRPI²⁰³⁶ or “territorial commissions”) and the Sub Commissions, administrative bodies within the Ministry of Home affairs, specialized in asylum matters and located on the entire national territory.²⁰³⁷

Each of the 20 Territorial Commissions is composed of 4 members: two representatives of the Ministry of Home affairs, one of whom is a senior police officer, a representative of the Municipality (or Province or Region), and a representative of the UNHCR.²⁰³⁸

Due to the high numbers of migrants and asylum seekers that have arrived in Italy from the sea in the last 4 years, the Italian Government has created the “Hotspot system”, in order to implement the new approach launched by the European Agenda for migration in 2015.²⁰³⁹

According to the European Commission, hotspot centres are sections of external borders characterized by specific and disproportionate migratory pressure, consisting of mixed migratory flows, including asylum seekers and economic migrants.²⁰⁴⁰ These centres, set up only in two Member States, Italy and Greece,²⁰⁴¹ provide first assistance, processing and identification of

²⁰³⁵ Art. 10 and 12 LD 251/07 and art. 29 LD 25/08. Other options of exclusion are established for whom coming from a state other than his/her own that has adhered to the Refugee Convention, and in which he/she has resided for a period of time, excluding the time necessary for his/her transit from that territory to the Italian border, for who has been declared guilty of acts contrary to the purposes and principles of the UN, has been convicted in Italy for a crime established in the Code of Criminal Procedure. According to the art. 12, can't obtain the refugee status also who is considered dangerous for the security of the state. Refugee status is also denied based on an individual evaluation when the legal grounds to claim such status are not met, there are well-founded reasons to believe that the foreigner constitutes a danger to the security of the state, or the foreigner constitutes a danger to public order and safety, after being convicted of certain crimes established in the Code of Criminal Procedure.

²⁰³⁶ Commissioni territoriali per il riconoscimento della protezione internazionale. Home Affairs Ministry 'Distribution of Territorial Commission for the Recognition of the International Protection and Related' (3rd of October of 2016) <http://www.interno.gov.it/sites/default/files/allegati/commissioni_e_sezioni_decreto_costitutivo_situazione_agg_iornata_al_3.10.2016.pdf> accessed 19 July 2017.

²⁰³⁷ Article 4.2-bis LD 25/2008, as amended by Article 5(1)(a)(3) Decree-Law 119/2014.

²⁰³⁸ Article 4.3 LD 25/2008.

²⁰³⁹ The European Commission - Agenda on Migration, adopted in May 2015, stating: “[T]he Commission will set up a new ‘Hotspot’ approach, where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants... Those claiming asylum will be immediately channeled into an asylum procedure... For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants...”.

²⁰⁴⁰ 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. See also Statewatch, *Explanatory note on the “Hotspot approach”* (2015) <<http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>> accessed on 6 July 2017.

²⁰⁴¹ The “hotspot approach” has been implemented in Italy since 2015; the first facilities were opened in Lampedusa. In January 2016, the CIE (centre of identification and expulsion) of Trapani and the reception centre of Pozzallo (CPSA) were converted in hotspots. Finally, in March 2016 hotspot facilities were set up in Taranto. Two other centers, Porto Empedocle and Augusta are still not operating. However, according to the revised roadmap submitted to the European Commission on 31 March 2016, an additional hotspot will be opened soon.

migrants and asylum seekers that have usually arrived after search and rescue operations.²⁰⁴² Afterwards, migrants are transferred to other centres.²⁰⁴³

1.2. Procedure for granting asylum and allocation of responsibility

National legislation in Italy does not specifically regulate the hotspots; currently only a “standard operating procedures”²⁰⁴⁴ (SOPs), drafted by the ministry of Home affairs (and hence not ranking as law) lays down the applicable procedures in the hotspots.²⁰⁴⁵

In these centres, migrants are asked whether they intend to apply for asylum; in case of a positive answer, they are relocated in shelter centres set up on the entire national territory.²⁰⁴⁶

According to the LD 142/2015, the asylum procedure starts when an asylum seeker submits his/her request (through the “C3” form – “*verbale delle dichiarazioni degli stranieri che chiedono in Italia il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra del 28 luglio 1951*”) at the Border Police office or at the provincial Police station within the territory (Questura).²⁰⁴⁷

Then, the application and all the supporting documentation is sent to one of the 20 Territorial Commissions operating on the Italian territory.

However, in practice, asylum seekers usually have the possibility to fill the C3 form only after their arrival in the shelters; from here, these forms are forwarded to the competent Questura.

²⁰⁴² Elisa Maimone, ‘The EU «hotspot approach» and the relocation procedures to the (Italian) test: implementation, shortcomings and critical remarks, (2016) ISSN 2531-4009, Working Papers on European Migration Law N. 3, <<http://immigrazione.jus.unipi.it/wp-content/uploads/2016/09/Maimone-Hotspots-and-relocation-Working-Paper-3-2016.pdf>> accessed 5 July 2017. Beatrice Gornati, ‘Le nuove forme di trattenimento dello straniero irregolare in Italia: dall'evoluzione' dei CIE all'introduzione dei c.d. “hotspot” [2016] Dir. um. dir. int., 2, 490.

²⁰⁴³ All migrants arriving irregularly in Italy are registered under category 2 (illegal entry into national territory "EU IT2"). In a second phase, those who have expressed their intention to seek for international protection, are fingerprinted and registered under category 1 (request for international protection) and transferred to the regional centers. In contrast, migrants registered and identified under CAT 2 who do not intend to apply for international protection will be transferred to Centres of Identification and Expulsion (CIE) to be returned to their countries of origin (see p. 13, *Standard Operating Procedures (Sops) Applicable to Italian Hotspots*). The return procedure faces numerous problems due to the fact that only in case of readmission agreements in force between Italy or the EU and third countries the return procedure will be completed. According to the data of the Home Affairs Ministry, in 2015 only 2.746 migrants out of 5.242 transferred in the CIE have been effectively returned (representing 52% of the total). On this problematic issue, see Chiara Favilli, ‘L'attuazione in Italia della direttiva rimpatri: dall'inerzia all'urgenza con scarsa cooperazione’ [2011] Riv. dir. internaz., 341.

²⁰⁴⁴ Home affairs Ministry ‘Standard Operating Procedures (Sops) Applicable to Italy, an Hotspots’ <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf> accessed 8 July 2017. Carmela Leone, ‘La disciplina degli hotspot nel nuovo art. 10 ter del d.lgs. 286/98: un'occasione mancata’, (2017) 2, Diritto Immigrazione e Cittadinanza <<https://www.dirittoimmigrazionecittadinanza.it/saggi/73-la-disciplina-degli-hotspot-nel-nuovo-art-10-ter-del-d-lgs-286-98-un-occasione-mancata/file>> accessed 13 July 2017.

²⁰⁴⁵ Even the newly enacted law n. 46/2017, modifying the art. 10ter d. lgs. 286/98, simply refers to the hotspot centres without providing further details on the organization and functioning of these centres.

²⁰⁴⁶ LD n. 142 (Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection) 2015 [Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale] as modified by the Law n. 46 of the 13th of April of 2017.

²⁰⁴⁷ Article 6.1 LD 25/2008. The police officers are not designated to directly examine the application; rather they ask questions to the applicant to verify the Italian jurisdiction on the examination of his/her asylum request according to the Dublin III Regulation (European Parliament and Council Regulation (Eu) 604/2013 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 [2013], art. 3).

According to the LD 142/2015, which sets the framework of the so-called “regular procedure”, the Territorial Commission should interview the applicant within 30 days after receiving the application and decide on his request in the following three working days.²⁰⁴⁸

Nevertheless, due to the high numbers of requests, such a time limit is almost never respected.²⁰⁴⁹

During the personal interview, which is not public, the asylum seeker has the opportunity to disclose exhaustively all the elements supporting his/her asylum request.

In all the phases concerning the presentation and examination of an asylum request, including the interview, the applicant, when necessary, receives the assistance of an interpreter in his/her own language or in a language he/she understands. Moreover, the LD 142/2015 specifies that, where necessary, the documents produced by the applicant shall be translated.

As a result of a reform enacted in August 2014,²⁰⁵⁰ the interview before the Territorial Commission is carried out by one member only, which should be of the same sex as the applicant. At the end of this procedure, the interviewer presents the case to all the other members which will take a common decision. The decision must be taken with a majority of 3 members; in case of 2:2, the President’s vote prevails.

After the interview in front of the Commission, five different decisions can be taken: 1. the granting of refugee status and the release of a 5-year renewable residence permit; 2. the granting of subsidiary protection, implying the release of a 5-year renewable residence permit; 3. the adoption of a recommendation to the Police to issue a 2-year residence permit on humanitarian grounds; 4. the rejection of the asylum application; 5. the rejection of the application as manifestly unfounded. Should the application be accepted, the file with all the documents is sent to the head of the police.²⁰⁵¹ In case the application is rejected, the applicant may introduce an appeal before the competent ordinary Court in order to obtain a review of the Territorial

²⁰⁴⁸ According to the Article 28 LD 25/2008, as amended by LD 142/2015, a fast procedure is possible in particular situations, such as 1) where the application is likely to be well-founded; 2) where the applicant is vulnerable, in particular, unaccompanied minors or in need of special procedural guarantees; 3) when the application is made by the applicant placed in an administrative detention centre; 4) if the applicant comes from one of the countries identified by the CNDA that allow the omission of the personal interview when considering that there are sufficient grounds available to recognise subsidiary protection. The LD 142/2015 also introduced an accelerated procedure for applicants placed in CIE. Should the Questura receive the application, it is obliged to immediately send the necessary documentation to the CTRPI that within 7 days of the receipt of the documentation takes steps for the personal hearing. The decision is taken within the following 2 days. These time limits are doubled in the other three cases where the procedure is applicable: (1) the application is manifestly unfounded; (2) the applicant has introduced a subsequent application for international protection; (3) when the applicant has lodged his/her application after being stopped for avoiding or attempting to avoid border controls or after being stopped for irregular stay, merely in order to delay or frustrate the adoption or the enforcement of an earlier expulsion or rejection at the border order (Article 28-bis LD 25/2008, as inserted by LD 142/2015).

²⁰⁴⁹ In case that the CTRPI is unable to take a decision within the time limit or needs to acquire new elements, the examination procedure may last six months. The CTRPI may also extend the time limit in specific cases. The asylum procedure may last for a maximum period of 18 months.

²⁰⁵⁰ Decree Law n. 119 ([...] for assuring the functionality of the Ministry of Interior (Article 5 to 7) 2014 [Disposizioni urgenti in materia di contrasto a fenomeni di illegalità e violenza in occasione di manifestazioni sportive, di riconoscimento della protezione internazionale, nonché per assicurare la funzionalità del Ministero dell'interno].

²⁰⁵¹ According to the art. 13 of the LD 25/08, the refugee status can be revoked when, following its recognition, it is demonstrated that the recognition was based on facts and/or circumstances presented erroneously, or by the voluntary omission of other facts and/or circumstances, or based on a documentation proved as false. The refugee status can be revoked also in the cases defined by the art. 10 and 12 of the LD 25/08.

Commission's decision.²⁰⁵² The appeal must be lodged by a lawyer within 30 days from the notification of the concerned decision.²⁰⁵³

The recently adopted Law n. 46 of the 13th of April of 2017²⁰⁵⁴ has thoroughly reformed the procedure of appeal, introducing 14 new Specialized Sections on '*migration law, international protection and free movement of EU citizens*'. According to the new procedure, the case is discussed before of a judicial panel in an *en banc* session.²⁰⁵⁵ The judges will decide on the applicant's case only by consulting the videotaped interview carried out by the Territorial Commission; only in exceptional cases, oral hearings are allowed.

The judicial panel can either reject the appeal or grant international or humanitarian protection to the applicant; the decision must be taken within 4 months from the submission of appeal.

The Law of 13th of April 2017 has introduced another important change: it has eliminated the possibility to lodge an appeal against the decision of the ordinary court. Such a decision can be appealed only before the Court of Cassation within 30 days.²⁰⁵⁶ Furthermore, the new Law has also established that the request for suspensive effect must be decided by the judge who rejected the appeal. The new piece of legislation has been criticized for several reasons.²⁰⁵⁷

In case the request for asylum is rejected, according with the European legislation,²⁰⁵⁸ the asylum seeker will be considered illegally staying on the Italian territory and he/she will be asked to go back to their countries of origin or to a country of transit in accordance with Community or bilateral readmission agreements. The asylum seeker may also decide to move to a different third-country in which he or she will be accepted.²⁰⁵⁹

²⁰⁵² Art. 35 and art. 35bis LD 25/08 as modified by the L. 46/2017.

²⁰⁵³ Applicants under the accelerated procedure have only 15 days to lodge an appeal. This appeal does not have suspensive effect.

²⁰⁵⁴ Law n. 46 (Introducing urgent provisions to speed up proceedings relating to international protection and for the fight against illegal immigration) 2017 [Recante disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale]. On this point, Chiara Favilli, 'Editoriale n. 2/2017' (2017) 2/2017 Diritto Immigrazione e Cittadinanza <<https://www.dirittoimmigrazionecittadinanza.it/19-fascicolo-n-2-2017/editoriale/28-editoriale>>, accessed 13/07/2017.

²⁰⁵⁵ Art. 35bis c. 1 LD 25/08 as modified by the L. 46/2017.

²⁰⁵⁶ Ibid.

²⁰⁵⁷ Maria Mitola, 'La sospensione dell'efficacia esecutiva delle ordinanze in materia di protezione internazionale a seguito della proposizione dell'appello' (2017) 2/2017 Diritto Immigrazione e Cittadinanza <<https://www.dirittoimmigrazionecittadinanza.it/commenti/86-la-sospensione-dell-efficacia-esecutiva-delle-ordinanze-in-materia-di-protezione-internazionale-a-seguito-della-proposizione-dell-appello/file>> accessed 13 July 2017. The new law raises numerous doubts of illegitimacy due to several factors: the lack of an effective appeal, the residual possibility for the judge to directly interview the applicant, the new procedure of notification, the small numbers of Specialised Sections working on these procedures. On this point, ASGI, 'Il D.L. 13/2017: le principali ragioni di illegittimità' (ASGI, 7 March 2017), <https://www.asgi.it/wp-content/uploads/2017/03/2017_ASGI_dl13-17-analisi.pdf> accessed 13 July 2017; Antonello Cosentino, 'L'Ann della Cassazione sul D. l. n.13/2017, in materia di protezione internazionale e di contrasto dell'immigrazione illegale', (2017) *Questione giustizia*, <<http://www.questionegiustizia.it/stampa.php?id=1249>> accessed 21 July 2017; Vittorio Gaeta, 'La riforma della protezione internazionale: una prima lettura', (2017) *Questione giustizia*, <<http://www.questionegiustizia.it/stampa.php?id=1231>> accessed 21 July 2017.

²⁰⁵⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

²⁰⁵⁹ Art. 10-20. LD 286/98 as modified by the L. 46/2017. See also Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, art. 3.

In particular, asylum seekers who got rejected have the obligation to leave Italy after the notification of the decision,²⁰⁶⁰ otherwise they can be punished according to art. 162 of the Italian criminal code.²⁰⁶¹ Both the judges and the administrative authority, the Prefetto, which represents the Minister of Internal Affairs, can release a removal order against the national of a non-EU country illegally staying in Italy.²⁰⁶² The person which is concerned with the removal order is not allowed to enter on the Italian territory within 3 years after its release.

2. How does your national law regulate immigration from EU member states and non-EU states?

The Italian Constitution recognizes a specific *status* of foreigner in article 10, although it does not give a definition of it. Widely, foreigner means every non-Italian citizen, but a distinction must be made between those who came from other EU Member states, on one side, and non-EU citizens and stateless person, on the other. These two categories enjoy different treatments and, when the Constitution generally refers to foreigners, only the second category should be taken into account.²⁰⁶³

2.1. Immigration from EU member States

Entry and stay of EU-citizens are fully covered by EU legislation,²⁰⁶⁴ implemented at the national level by the Legislative Decree n. 30/2007 (as modified by Legislative Decree n. 32/2008) “on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU and EEA member states”.²⁰⁶⁵ It provides EU citizens with a more favourable treatment for entry and stay, compared to third-country nationals; the only common rules for both categories concern the exit from the State, and namely the expulsion measures set forth by the decree 286/1998. Restriction on the right of free movement or residence can be imposed only for reasons of public policy, public security or public health.

EU citizens have the right of residence in Italy for a period of up to three months without any conditions or formalities other than the requirement to hold a valid travel document. For periods longer than three months, they can report their presence to a police office; otherwise, they must be able to prove that they have not stayed in Italy for longer than three months, and, in case they cannot provide any evidence of their entry, they will be deemed to have stayed for a longer period.

²⁰⁶⁰ Art. 32 c. 4 LD 25/08.

²⁰⁶¹ Art. 10bis c.5 LD 286/98.

²⁰⁶² Under the art. 19 LD 286/98, hypothesis of exception to this procedure are made for people found in a position of especial vulnerability as children, pregnant women, or whoever could face any sort of discrimination based on the race, ethnicity, sex, languages, citizenship, religion, personal or political opinion, personal or social conditions.

²⁰⁶³ Legislative Decree n. 286/1998, art. 1.

²⁰⁶⁴ Article 21 TFEU and Directive 2004/38/CE.

²⁰⁶⁵ Legislative Decree n. 30/2007 (Implementation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) as modified by Legislative Decree n. 32/2008.

EU-citizens who wish to stay in Italy for a period exceeding three months are only required to register with the local *Anagrafe* (Register Office). Permits issued to them may be recognized to their family members as well, even when the latter are not EU citizens.

2.2. Immigration from non-EU member States

The main piece of legislation regulating the entry, stay and exit of non-EU citizens and stateless persons in Italy is the Legislative Decree (“LD”) n. 286/1998 (*Consolidated Code on immigration*) as implemented by the Presidential Decree n. 334/2004. Nationals of EU member states, except as provided for in the implementing rules of Community framework,²⁰⁶⁶ fall outside the scope *ratione personae* of the concerned LD. Hence, the conditions for their entry, stay and removal are laid down by different sources of law.

The first part of the Code (Title I) determines the requirements for the legal entry and the stay in Italy. These rules, based on a system of visas and permits, were enacted for two different purposes: on one hand, to control and manage migration flows and, on the other, to favour the entry of specific categories of immigrants.²⁰⁶⁷

Article 4 of the LD regulates the admission of third country nationals²⁰⁶⁸ and the procedures to obtain the appropriate entry visa, which depend on the reason and the duration of the stay. Visas for staying longer than three months are issued by the diplomatic representation of Italy in the country of origin (or of residence) of the third-country national. Short-term Schengen visas (valid for a period of up to three months) may be issued by diplomatic representations of the country of origin, in case Italy has concluded a specific agreement with this country. Third country nationals who are not in possession of a visa shall be refused entry to the territory of Italy.

Visa applications must be accompanied by a valid travel document together with the supporting documents required by the type of the requested visas.²⁰⁶⁹ Applications should state the purpose of the visit as well as the means of transport and support during the stay. The entry on the Italian territory is refused if the third country national may be considered a threat to the public order or public security of Italy (or of other countries with which Italy has concluded agreements for the abolition of checks at internal borders and for the free movement of people), if he is subject to a prohibition of entry following expulsion, or if he has been condemned for the commission of certain crimes.²⁰⁷⁰ The entry ban operates automatically, *i.e.* without any discretion of the

²⁰⁶⁶ Consolidated Code, article 1, paragraph 2, as amended by D.L. n. 122/2008. *E.g.*, in matters of removal, can be applied the rules of article 13 concerning the administrative expulsion. Contrary, see Supreme Court of Cassation, Case n. 439 [2000], *Riv. pen.* 2001, 181, which excludes the applicability to EU-citizens of the judicial expulsion as an alternative sanction to detention *ex-art.* 16, as the application of the Text to nationals from EU member states “only can occur in case of more favourable treatment.”

²⁰⁶⁷ For example, academic researchers. E. Zanrosso, *Diritto dell'Immigrazione. Manuale pratico in materia di ingresso e condizione degli stranieri in Italia*, Edizioni Giuridiche Simone, 2016.

²⁰⁶⁸ Along with the “Schengen borders code”.

²⁰⁶⁹ Inter-ministerial decree n. 850 of 11 May 2011 defines 21 types of entry visas, along with the requirements and conditions for obtaining them: adoption, business, medical treatment, diplomatic, sports competition, invitation, independent work, subordinate work, mission, family reasons, religious reasons, re-entry, elective residence, research, study, airport transit, transit, transport, tourism, working holiday, volunteer work.

²⁰⁷⁰ Third country nationals who are condemned according to article 380 par. 1 and 2 of the criminal procedure code or for crimes such as drug-related or sexual crimes, smuggling of human beings or recruiting of persons for prostitution or minors for illegal activities. See for more details Art. 4, par. 3.

competent authorities,²⁰⁷¹ when a third country national commits peremptory offences. A higher threshold is applied to expel a third country national representing a threat to the public order and security, if this person enters the territory for family reunification.²⁰⁷²

Once they have legally entered Italy, foreigners who stay for visit, business, tourism or study for periods not exceeding three months are not required to apply for a residence permit; instead, they must report their presence in the country to the border authorities²⁰⁷³ and obtain a Schengen stamp on their travel document on the day of arrival, as an equivalent of the declaration of presence.

Conversely, foreigners who aim to stay for a period exceeding three months must apply for a residence permit²⁰⁷⁴ within eight days of arrival, on pain of administrative exclusion *ex art. 13, par. 2* of the Code. After an agreement between the Ministry of the Interior and the Italian Post Office, the applications for the issuance and renewal of some types of residence permits are today forwarded to the authorized post offices by the "*Sportello Amico*", using a special *kit* (consisting of an envelope which contains two forms and a list of instruction); in all other cases, the applications must be submitted to the "Questura", the central police station set up in every Italian province.

Articles 5 and 4 of the Code are strictly related: the residence permit is issued for the period of time and for the purpose indicated in the visa; the reasons for the denial of issuance or renewal of the residence permits are the same as for the issuance of the visa.²⁰⁷⁵ Regardless of the reasons of immigration, the applicant must provide, in addition to a valid travel document, proof of financial self-sufficiency, adequate shelter and valid health insurance.²⁰⁷⁶ Condition for the issuance of the permit is also the subscription of an agreement of integration ("*accordo d'integrazione*"), aimed at achieving specific integration goals during the stay period.²⁰⁷⁷

According to the length of the stay, there are different types of residence permits: up to nine months for seasonal work; up to one year for subordinate work with a temporary contract, for study or vocational training; up to two years for self-employed work, for subordinate permanent work and for family reunion.

Under the need to achieve the unification of European procedures, the Legislative Decree n. 3/2007 introduced the EC Long-Term Residence Permit²⁰⁷⁸ (previously called Residence Card) for a third-country national and his family members. This permit is addressed to foreigners in possession of a residence permit, that have been legally residing in Italy for a period of at least 5 years, and that have a minimum income equivalent to the amount of the social security benefit. The issuance of this permit is subordinated to the passing of an Italian language test, as prepared

²⁰⁷¹ Administrative Regional Court of Lazio, Roma, 2nd Division, order 18 March 2015, n. 4309.

The constitutionality of this provision was confirmed by the Italian Constitutional Court, Case n. 148 [2008].

²⁰⁷² Code, art. 4, par. 3 referring to article 29 on family reunification; Legislative Decree n. 5/2007. See Italian Constitutional Court, Case n. 202 [2013].

²⁰⁷³ Law n. 68/2007 on Short stay.

²⁰⁷⁴ Law n. 94/2009 (*i.e. Bossi-Fini*) still makes it a crime to enter or stay in Italy illegally: foreign nationals caught staying in Italy without permission commit the offence of illegal immigration.

²⁰⁷⁵ Art. 5, p. 5 and art. 4, p.3.

²⁰⁷⁶ Decree 394/1999, art. 9(3), 9(4).

²⁰⁷⁷ Legislative Decree 286/1998, art. 4-*bis*.

²⁰⁷⁸ *ibid*, art. 9.

by the Minister of the Interior in concert with the Minister of Education. It is valid for an indefinite period and works as personal identification document for 5 years. The Long-Term Residence Permit cannot be granted to a foreigner who is a threat to State security or public order, and cannot be requested by holders of a permit for study, professional training, temporary protection, humanitarian reasons, or asylum when the related status has not been recognised yet. It provides the acquisition of resident *status*, which ensures civil rights of any Italian citizen, on the condition of reciprocity. The EC permit has the same effect when issued by another member State,²⁰⁷⁹ also for highly qualified foreign workers holding a EU Blue Card.²⁰⁸⁰

In case of irregular stay, specific procedures for expulsion and manners of removal of the migrant are applied. The application of these measures is strictly based on the rule of law,²⁰⁸¹ as they affect the constitutional right of personal freedom.²⁰⁸² Articles 13 and 14 of the Code set up the administrative expulsion procedure. The Minister of Interior or the Prefect are entitled to enforce the measure for reasons of public order or state security or, on a case-by-case basis, when the migrant commits some specific violations. Article 15 and 16, instead, regulate, the judicial expulsion. Expulsion is generally carried out by accompanying the foreigner to the borders. The foreigner who is willing to voluntarily leave the country may be admitted to assisted repatriation programs, within the limits of the financial resources of the “return fund” (*Fondo Rimpatri*) established by the Minister of Interior, and in cooperation with international organizations, local authorities and other associations.²⁰⁸³

If immediate expulsion is temporary impossible, the foreigner can be detained in so-called “Permanence Centers for Repatriation”, for the time that is strictly necessary to overcome the impediment.²⁰⁸⁴

Moreover, special rules are applicable to certain categories of migrants who could be classified as especially vulnerable and requiring an extra protection. They are listed in the Chapter III of the Code.²⁰⁸⁵ According to these provisions, foreigners who may be subject to persecution for reasons of race, nationality, religion or political opinions, victims of trafficking or exploitation, minors, pregnant women (or six months after childbirth), can not be expelled.

²⁰⁷⁹ *ibid* art. 9-*bis*, introduced by d.l. 3/2007.

²⁰⁸⁰ *ibid* art. 9-*ter*.

²⁰⁸¹ Italian Constitutional Court, Case 148[2008].

²⁰⁸² *Ibid*, Case 105[2001].

²⁰⁸³ Code, art. 14-*bis* and art. 14-*ter*.

²⁰⁸⁴ This point has been subject to recent changes introduced by Law n. 46/2017 (*Decreto Minniti- Orlando*). Purpose of these new centers (before, called “Centers for identification and expulsion”, *CIE*) should be not reception, but repatriation. However, several doubts of constitutionality have been raised in reason of the violation of personal freedom and about the “failed model of the administrative detention system itself – an inhuman, expensive and ultimately useless system, since about half of those who are processed through the centers are not actually repatriated”. G. Savio, *I trattenimenti nei CIE alla prova delle giurisdizioni nazionale ed europea: poteri del giudice della convalida e condizioni per la proroga del trattenimento*, in “Diritto, immigrazione e cittadinanza”, 2/2014.

²⁰⁸⁵ Articles 18, 18-*bis* and 19.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

In Italy, the coordination of migration policy principally falls under the jurisdiction of the Ministry of Interior and it is assigned to the *Dipartimento per le Libertà civili e l'immigrazione* (Department of Civil Liberties and Immigration) and the *Dipartimento della Pubblica Sicurezza* (Department of Public Security).

Within the Department for Civil Liberties and Immigration, attributions and functions are divided between the *Direzione Centrale dei Servizi Civili per l'Immigrazione e l'Asilo* (Central Directorate of Civil Services for Immigration and Asylum), the *Direzione Centrale per I Diritti Civili, la Cittadinanza e le Minoranze* (Central Directorate for Civil Rights, Citizenship and Minorities), the *Direzione Centrale per le Politiche dell'Immigrazione e dell'Asilo* (Central Directorate for Immigration and Asylum Policies) and the *Commissione Nazionale per il Diritto d'Asilo* (National Commission for the Right to Asylum).²⁰⁸⁶

This organisational set-up is provided for by Article 5 of the Presidential Decree no. 398/2001, as amended by Article 2 of the Presidential Decree no. 210/2009.

The **Central Directorate of Civil Services for Immigration and Asylum** has jurisdiction over the reception of migrants, from the first assistance to the so-called “integrated projects”. It manages the initial reception through the *CDAs- Centri di Accoglienza* (Center for First Assistance of Migrants), where immigrants are identified, and the *CARAs- Centri di Accoglienza per Richiedenti Asilo* (Center for First Assistance of Asylum Seekers), where migrants have access to asylum procedures. The next step is represented by the *SPRAR- Sistema di Protezione per Richiedenti Asilo e Rifugiati* (Protection System for Asylum Seekers and Refugees), provided for by the law n.189/2002, that consists in a network of infrastructures in which a large number of supporting activities, aimed at reaching the so-called “integrated reception”, are carried out: distribution of food and/or garments, Italian language courses, legal and social advice etc. The SPRAR, as well as the CDAs and the CARAs, although under the supervision of the Central Directorate, are conducted by associations, cooperatives and NGOs²⁰⁸⁷ which have been selected as contractors through a public tender launched at local level by the territorial administrations.

The **Central Directorate for Immigration and Asylum Policies**, instead, beyond taking numerous initiatives in order to provide migrants effective assimilation in the social fabric, performs functions of analysis and monitoring of integration policies. The so-called Turco-Napolitano law (law n. 40/1998, Art. 3.2) in order to strengthen the efficiency of this analysis, has established the *Consigli Territoriali per l'Immigrazione* (Territorial Councils for Immigration), advisory bodies which operate at decentralized level aiming to the promotion of integration initiatives. Chaired by the Prefect, they are composed by representatives of the State (namely,

²⁰⁸⁶ 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]

²⁰⁸⁷ Ministero dell'Interno, '*La rete SPRAR*' (Protection System for Asylum Seekers and Refugees) <<http://www.sprar.it/>> accessed 5 July 2017 [Italian].

from prefectures and police headquarters), representatives of local administrations, representatives of employers' organisations and of non EU-workers' organisations, as well as exponents of associations dealing with immigrants' assistance and of associations of immigrants. According to the implementation decree²⁰⁸⁸ of the aforementioned law, "at least two representatives of the most representative associations of immigrants locally operating" should take part to the Council; due to the vagueness of the provision's formulation, however, those are discretionally chosen by local authorities and often paradoxically devoid of an effective representativeness. Moreover, as provided for in the law n.203/1994 (Chapter B), bodies with the same advisory nature and representative purpose could be discretionally established by regions and local administrations, such as the *Consulte Comunali* (Municipal Consultative Bodies) and the *Consigliere Straniero Aggiunto* (Extra Foreign Advisor).²⁰⁸⁹

The **Central Directorate for Civil Rights, Citizenship and Minorities** is responsible for the recognition of the Italian citizenship and the statelessness status. According to the law n.94/2009, Art. 9.1.E, for refugees and stateless persons the procedure at stake is less burdensome.

Last but not least, within the Department of Civil Liberties and Immigration, an essential and chief role is played by the **National Commission for the Right of Asylum**. Chaired by the Prefect, it is made up with two representatives of the Ministry of the Interior (one from the Department of Public Security and one from the Department of Civil Liberties and Immigration), a representative of the Ministry of Foreign Affairs, a representative of the Presidency of the Council of Ministers and UNHCR representatives. As provided for by the legislative decree no.25/2008, Art. 5, the National Commission holds refresher courses for the members of each commission, collects data and statistics over migration and is even responsible for the revocation and cessation of international protection. The National Commission also holds a key position in the exchange of information over migration with the European Commission or public authorities of other countries. Moreover, it coordinates and gives guidance to the *Commissioni Territoriali per il Riconoscimento della Protezione Internazionale* (**Territorial Commissions for the Recognition of International Protection**), pointing to the harmonisation of their activities, e.g. drafting and communicating Country of Origin Information or guidelines reports.²⁰⁹⁰ The Territorial Commissions are the only bodies in charge for the asylum procedure and the recognition of international protection. Due to the impressive rise of asylum applications during the last years, even the number of the operating Commissions has increased: nowadays there are 20 of them, as against 10 before the decree of the Ministry of the Interior of the 11.10.2014. The same Decree has also established 20 Sections which came up beside the Commissions (with the same functions of these last), and which are now 28. The Territorial Commission is composed of four members: a functionary of the Prefecture, a functionary of the Polizia di Stato, a representative of the ANCI (National Confederation of

²⁰⁸⁸ Presidential Decree n. 394/1999 [D.P.R. 31 agosto 1999, n.394].

²⁰⁸⁹ Claudia Mantovan, *Immigrazione e cittadinanza: auto-organizzazione e partecipazione dei migranti in Italia* 69-70.

²⁰⁹⁰ Ministero dell'Interno, *Commissione Nazionale per il Diritto d'Asilo* (National Commission for the Right of Asylum) <<http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/commissione-nazionale-diritto-asilo>> accessed 6 July 2017[Italian].

Local Authorities) and a representative of the UNHCR. A feature that strongly characterizes the Italian asylum procedure is the ascription of a decisional role (above the consultative one covered in the National Commission) to the representatives of the UNHCR. Within the Ministry of the Interior, as mentioned before, even the **Department of Public Security** deals with migration issues: the *Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere* (Central Directorate for Immigration and Border Police) promotes preventive actions and various measures to tackle irregular immigration.²⁰⁹¹ **Other Ministries** play a secondary but complementary role in those fields related to immigration which fall under their responsibilities. The Ministry of Foreign Affairs, and in particular the *Direzione Generale per gli Italiani all'Estero e le Politiche Migratorie* (General Directorate for Italians Abroad and Migration Policies) has jurisdiction over visa requests and juridical administrative issues regarding foreign citizens and/or asylum seekers or refugees (V and VI Office).²⁰⁹²

For the sake of a coherent framework, which could be jeopardized by the overlap of responsibilities between Ministries, the Consolidation Act on Immigration (Legislative Decree no. 286/1998, article 2-bis, as modified by Law no. 189/2002, Art. 2.1) provides for the **Coordination and Monitoring Committee**, led by the President or vice-President of the Council of Ministers and constituted by other relevant Ministers designated *cas par cas* depending on the issues under debate. The Committee is supported by the Technical Working Group, which plans the subjects of the Committee's future undertakings, in order to examine migration-related questions and elaborate potential responses in terms of national strategies, and which synchronizes the attitudes of all the governmental bodies involved.

The whole organisational set-up of the Italian migration governance is based on chronic interconnections between central governmental entities and peripheral ones (e.g. regions, provinces, municipalities) and is inspired by the principle of administrative decentralization (Title V of the Italian Constitution). Other subjects actively involved in this systems are private entities (e.g. non-profits and co-ops) as well as international organisations (e.g. UNHCR representatives in the Territorial Commissions).

In order to have a complete overview of the organisational arrangements, it is fundamental to underline the role of the European Union Commission. First of all, it has allocated the Asylum, Migration and Integration Fund (AMIF) to support national migration policies during the period 2014-2020. Secondly, it controls that the Italian national migration policy is aligned with the principles of the EU migration law.²⁰⁹³ A control of function is also attributed to the Garante della Protezione della Libertà Personale (Authority for the Protection of Personal Freedom) in relation with the respect of fundamental rights during the removal and deportation procedures as

²⁰⁹¹ Ministero dell'Interno, 'Dipartimento della Pubblica Sicurezza' (Department of Public Security) <<http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza>> accessed 6 July 2017 [Italian]

²⁰⁹² Ministero degli Affari Esteri e della Cooperazione Internazionale, 'Direzione Generale per gli Italiani all'Estero e le Politiche Migratorie' (General Directorate for Italians Abroad and Migration Policies) <<http://www.esteri.it/mae/it/ministero/struttura/dgitalianiestero/>> accessed 6 July 2017 [Italian].

²⁰⁹³ Ministero dell'Interno, Fondo Asilo Migrazione e Integrazione - FAMI (Asylum, Migration and Integration Fund – AMIF) <<http://www.interno.gov.it/it/temi/immigrazione-e-asilo/fondi-europei/fondo-asilo-migrazione-e-integrazione-fami>> accessed 20 September 2017

well as during the migrants' detention in *Centri di Permanenza per Rimpatri* (Immigration Removal Centre). Lastly, an *ex post* control over the running of the administrative machine may be represented by the judicial review, in case of denial of international protection or citizenship.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transimmigrants, trends in migratory flows) in your country?

2016 has been a year of record highs for Italy, for what concerns asylum seeking. As it is possible to notice in Figure 3, the number of applications for asylum procedures has exceeded 123.000 in the last year, with an increment of 47% compared to 2015. Comparing Figures 1 and 2, it is evident a rise of applications took place yet in 2015, with an increment of 32% compared to 2014. During the 2014-2016 period, about 270.000 asylum applications have been filed, whereas in the previous 13 years the total number of submitted applications has been of about 365.000. Table 1 and Figure 4 analyze trends of asylum applications over the last years, starting from 1990: the graphic demonstrates a quasi-constant trend of applications during the first decade, never exceeding 2000 applications per year, with important but sporadic peaks in 1991, with 28.400 applications, and during the 1998-2000 period, when about 82.000 submissions in total were presented. Since 2000, asylum seekers have never been less than 10.000 per year, but they followed a fluctuating and not steady trend, reaching new record highs in 2008 (31.723 requests of asylum) and in 2011 (37.350). However, it is after 2014 that asylum seeking has reached a farfetched climax, with a continuous rise of numbers. Available statistics show that, until June 2017, 72.744 applications have been submitted, with an average of 12.124 requests per month. The sea arrivals until the 17th July of 2017, however, amounted to a larger number: 93,213 – see Figure 7. Examining Figures 1, 2 and 3, it is noteworthy that, over the last three years, males have been the vast majority of asylum seekers, women representing only the 10-15% of all the applicants. Furthermore, over 50% of the applicants are Africans, followed by Asians (about 25-30%). Taking nationality into consideration, most of the applicants were recorded as Nigerians (about 22%): 10.040 in 2014, 18.174 in 2015 (+81% compared to the previous year) and 27.289 in 2016 (+50% compared to 2015). Pakistan, Gambia and Senegal followed Nigeria in terms of number of asylum seekers, both in 2015 and in 2016. A remarkable number of applications has been filed also by Eritreans, with an impressive increment of 925% from 2015 to 2016 (729 Eritrean applicants in 2015, compared to 7472 in 2016). In 2015 and 2016, asylum has been granted to about 40% of all the applicants, which have been 71.117 in 2015 and 91.102 in 2016: 5% of them have been recognized as refugees, 14% have received subsidiary protection, while 22% have been granted humanitarian protection. In 2014, when 36.270 asylum seekers were interviewed, only 40% of the applications were denied (-20% compared with the last two years).²⁰⁹⁴ Sea arrivals statistics mainly reflect the trends of asylum seeking exposed before. In

²⁰⁹⁴ Ministero dell'Interno, 'Dipartimento per le libertà civili e l'immigrazione' (Department of Civil Liberties and Immigration, file attached: *Riepilogo anno 2015-2016* and *Riepilogo anno 2014-2015*), <<http://www.libertacivilimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasil>>

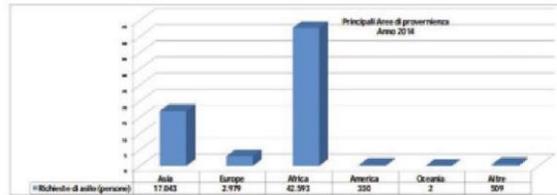
2017 most of the sea arrivals are coming from Nigeria (17,8%), and Bangladesh (10,4%). The majority of sea influxes concerns men, while women and children represent a slight minority (20%). As said before, until July 2017, 93,213 immigrants disembarked on Italian coasts: Italy is facing 9 times the sea arrivals of Greece (10,250) and 14 times those of Spain (6,524). The region most involved region is Sicily, in which more than half of immigrants arriving in Europe land (56,115), followed by Calabria (21,382) – see Figure 7. Concerning immigrants residing in Italy, some interesting data are shown in Figure 5: in 2015 and 2016, they were almost 5 million, and they now represent 8,2/8,3% of the whole population residing on the Italian territory. Most of them have been recorded as Romanians, Albanians and Moroccans. These data are similar to those collected in 2014: over the last three years, the number of foreigners residing in Italy has slightly increased of about 1% each year. Despite this, a noteworthy difference can still be noticed when comparing these statistics to those of 2012, when immigrants were only 4 million and represented the 6,8% of the whole population on the Italian territory. Italy, on 1 January 2016, is classified as the third country of the European Union with the largest number of non-nationals living within its territory. Moreover, in 2015, 178.000 non-nationals acquired the Italian citizenship: Italy is the first EU country in terms of residents granted citizenship – see Figure 6. In 2015, in Italy there were 280.1 thousand immigrants: only 26% of them came from an EU Member State of previous residence and over 206 thousand immigrants came from non-EU countries – see table 2.

Asylum applications in 2014 (Italy)

Source: Commissione Nazionale per il Diritto d'Asilo – Ministero dell'Interno (National Commission for the Right of Asylum – Ministry of Interior)

FIGURE 1

Richieste di asilo (persone)	
Area geografica	N.
Asia	17.043
Europa	2.979
Africa	42.593
America	330
Oceania	2
Altre	509
Totale	63.456



Domande di asilo (Mod. C3)	
Area geografica	N.
Asia	16.634
Europa	2.314
Africa	41.964
America	288
Oceania	2
Altri	509
Totale	61.711

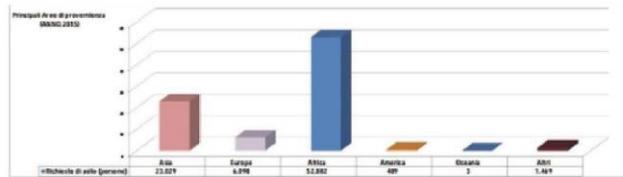
Principali Paesi di Origine			
Nigeria	10.040	Somalia	797
Mali	9.652	Irak	784
Gambia	8.477	Egitto	659
Pakistan	7.064	Siria	502
Senegal	4.615	Tunisia	480
Bangladesh	4.511	Eritrea	474
Afghanistan	2.994	Guinea-Bissau	410
Ghana	2.161	Turchia	403
Ukraina	1.933	Iran	376
Costa d'Avorio	1.485	Marocco	308
Guinea	923	Burkina Faso	284
Totale	63.456		

Asylum applications in 2015 (Italy)

Source: Commissione Nazionale per il Diritto d'Asilo – Ministero dell'Interno (National Commission for the Right of Asylum – Ministry of Interior)

FIGURE 2

Richieste di asilo (persone)		
Area geografica	N.	%
Asia	23.029	27%
Europa	5.098	7%
Africa	52.882	63%
America	489	1%
Oceania	3	0%
Altri	1.469	2%
Totale	83.970	



Richieste di asilo (persone)		
Sesso	N.	%
Maschio	74.280	88%
Femmina	9.690	12%
Totale	83.970	

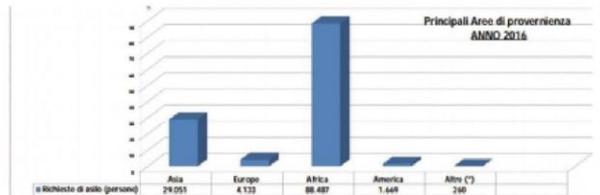
Principali Paesi di Origine					
Nigeria	18.174	22%	Somalia	747	1%
Pakistan	10.403	12%	Eritrea	729	1%
Gambia	8.022	10%	Guinea - Bissau	682	1%
Senegal	6.386	8%	Marocco	604	1%
Bangladesh	6.056	7%	Egitto	589	1%
Mali	5.455	6%	Irak	527	1%
Ucraina	4.653	6%	Siria	497	1%
Afghanistan	3.975	5%	Albania	424	1%
Ghana	3.697	4%	Burkina Faso	412	0%
Costa d'Avorio	3.115	4%	Cina	358	0%
Guinea	1.704	2%	Kosovo	348	0%
Totale	83.970	100%			

Asylum applications in 2016 (Italy)

Source: Commissione Nazionale per il Diritto d'Asilo – Ministero dell'Interno (National Commission for the Right of Asylum – Ministry of Interior)

FIGURE 3

Richieste di asilo (persone)		
Area geografica	N.	%
Asia	29.051	24%
Europa	4.133	3%
Africa	88.487	72%
America	1.669	1%
Altre (*)	260	0%
Totale	123.600	



Richieste di asilo (persone)		
Sesso	N.	%
Maschio	105.006	85%
Femmina	18.594	15%
Totale	123.600	

Principali Paesi di Origine					
Nigeria	27.289	22%	Ucraina	2.628	2%
Pakistan	13.660	11%	Somalia	2.404	2%
Gambia	9.040	7%	Camerun	1.987	2%
Senegal	7.723	6%	Siria	1.590	1%
Eritrea	7.472	6%	Marocco	1.556	1%
Costa d'Avorio	7.459	6%	Irak	1.538	1%
Bangladesh	6.818	6%	El Salvador	1.087	1%
Mali	6.438	5%	Cina	871	1%
Guinea	6.057	5%	Burkina Faso	850	1%
Ghana	5.018	4%	Egitto	787	1%
Afghanistan	2.852	2%	Guinea - Bissau	740	1%
Totale	123.600	100%			

FIGURE
4

Asylum applications per year (Italy)

Source: National Commission for the Right of Asylum – Ministry of the Interior)

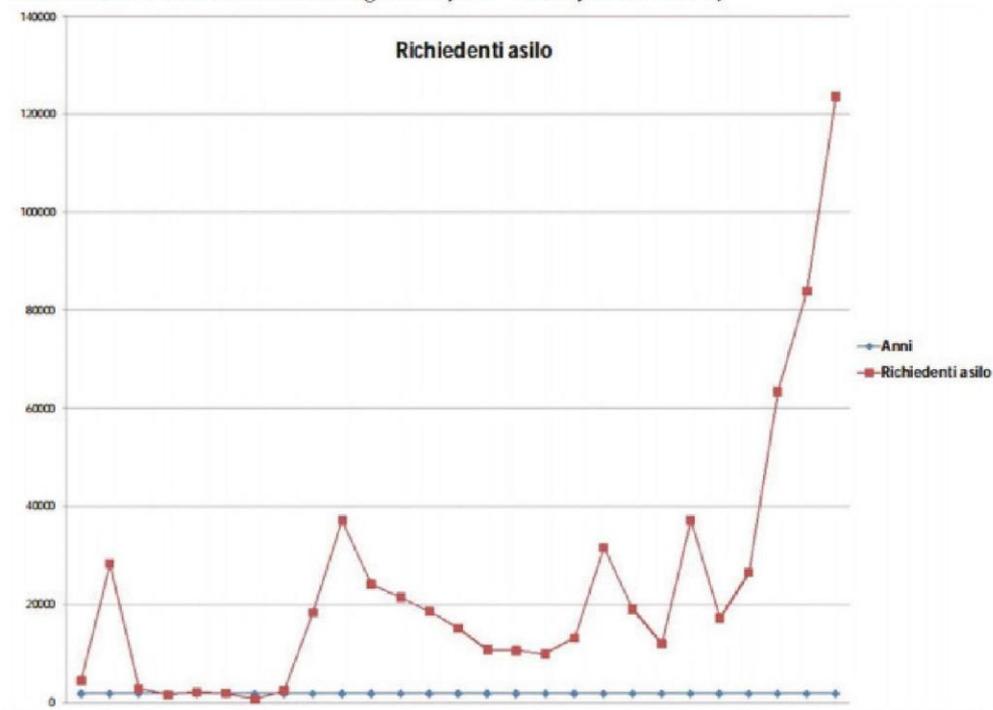


FIGURE
5

Immigrants residing in Italy: 2016

Source: ISTAT (Italy's National Statistics Institute) data, elaborated by tuttitalia.it

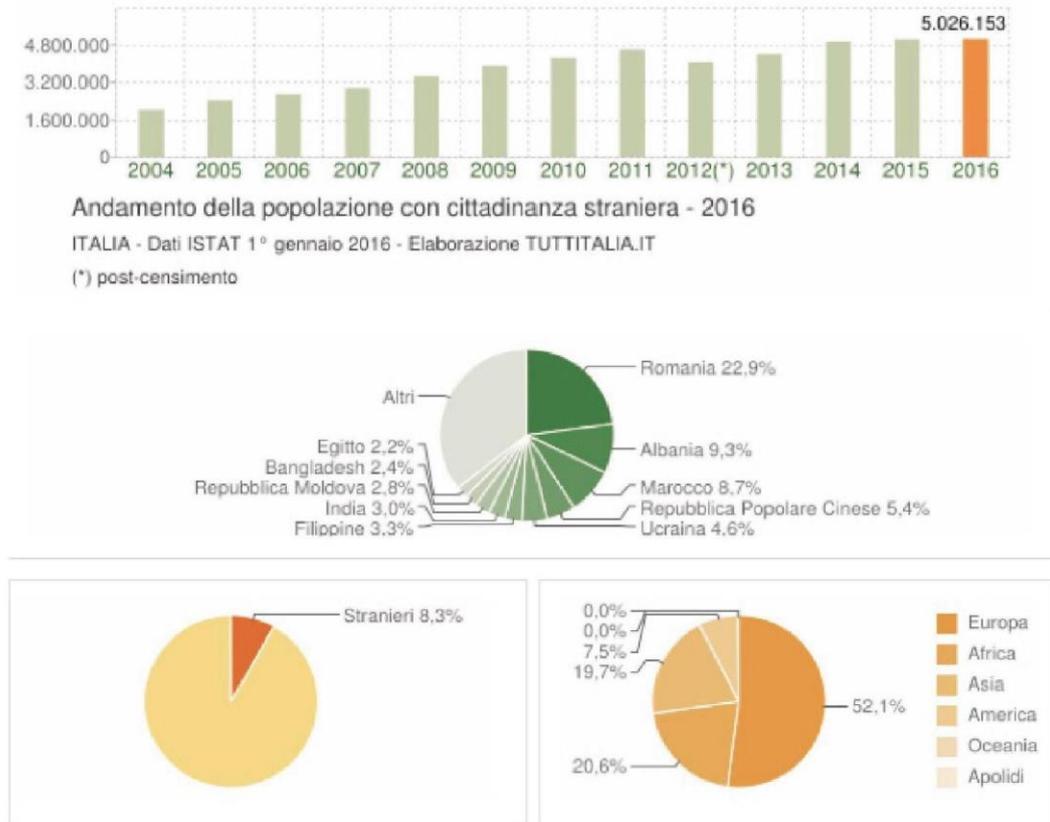


FIGURE 6
+ Five main EU-28 Member States granting citizenship
Source: Eurostat

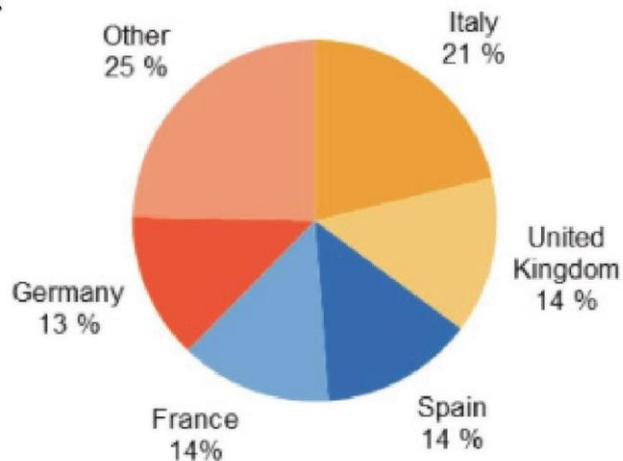


FIGURE 7
+ Source: Refugees Operational Data Portal by UNHCR

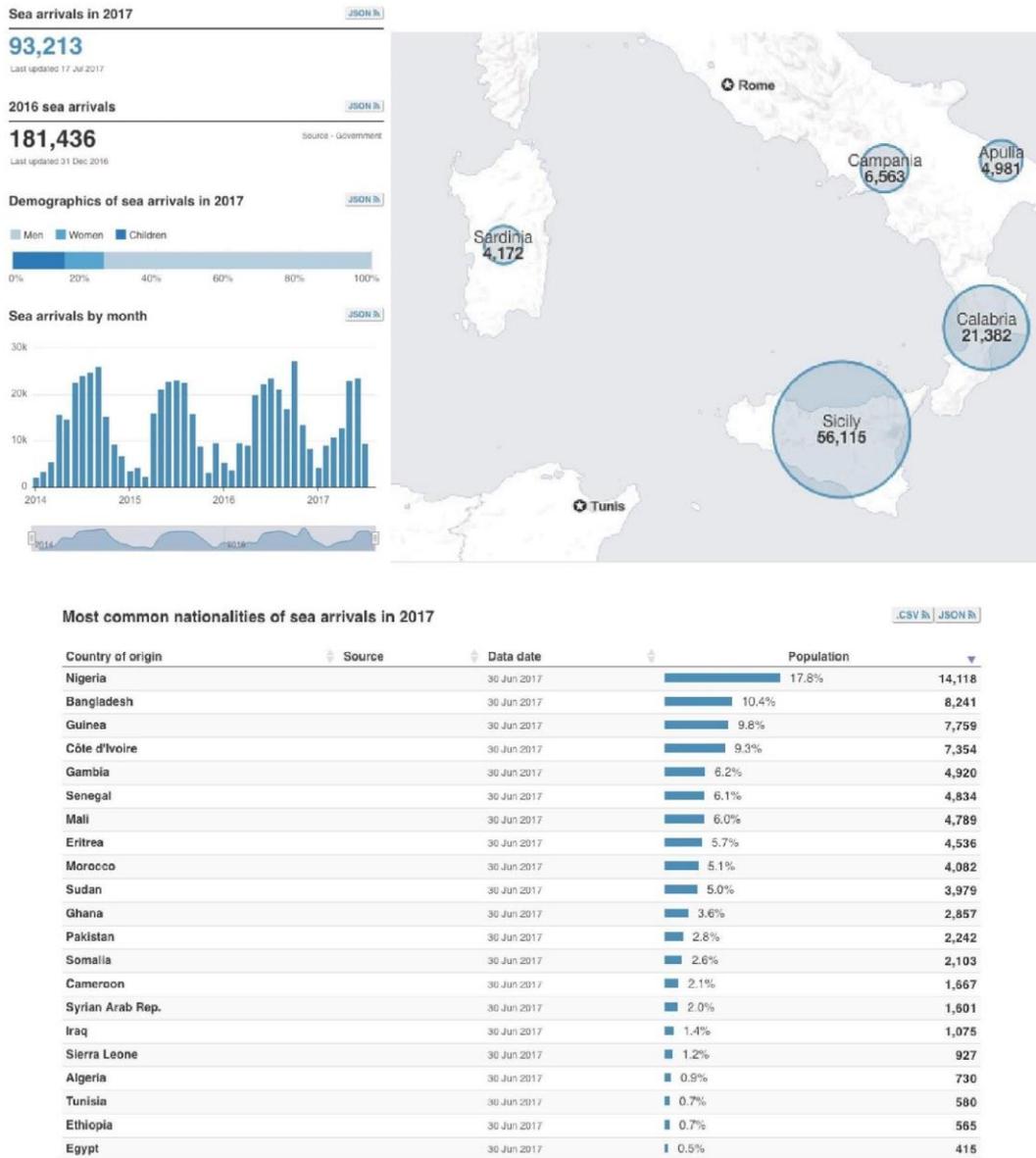


TABLE 1

Asylum applications per year (Italy)
Source: National Commission for the Right of Asylum –
Ministry of the Interior)

Richieste di asilo (persone)	
Anni	Richiedenti asilo
1990	4.573
1991	28.400
1992	2.970
1993	1.736
1994	2.259
1995	2.039
1996	844
1997	2.595
1998	18.496
1999	37.318
2000	24.296
2001	21.575
2002	18.754
2003	15.274
2004	10.869
2005	10.704
2006	10.026
2007	13.310
2008	31.723
2009	19.090
2010	12.121
2011	37.350
2012	17.352
2013	26.620
2014	63.456
2015	83.970
2016	123.600
Totale	641.320
<i>Fonte Vestanet C3</i>	

TABLE 2

Source Eurostat

	Total immigrants		From an EU Member State of previous residence		From a non-member country of previous residence		From an unknown country of previous residence	
	(thousands)	(thousands)	(thousands)	(%)	(thousands)	(%)	(thousands)	(%)
Belgium	146.6	76.2	52.0	52.0	70.0	47.7	0.5	0.3
Bulgaria	25.2	7.1	28.1	28.1	18.1	71.7	0.1	0.3
Czech Republic	29.6	15.4	52.1	52.1	14.2	47.9	0.0	0.0
Denmark	78.5	33.0	42.1	42.1	44.9	57.2	0.5	0.7
Germany	1 543.8	513.2	33.2	33.2	1 015.6	65.8	15.0	1.0
Estonia	15.4	10.2	66.3	66.3	4.5	29.1	0.7	4.6
Ireland	76.9	36.7	50.3	50.3	38.2	49.7	0.0	0.0
Greece	64.4	43.0	66.7	66.7	21.5	33.3	0.0	0.0
Spain	342.1	119.4	34.9	34.9	222.7	65.1	0.0	0.0
France	363.9	133.4	36.6	36.6	230.5	63.4	0.0	0.0
Croatia	11.7	4.4	37.4	37.4	7.2	61.9	0.1	0.6
Italy	280.1	73.8	26.3	26.3	206.3	73.7	0.0	0.0
Cyprus	15.2	8.3	54.7	54.7	6.9	45.3	0.0	0.0
Latvia	9.5	4.9	51.4	51.4	4.6	48.6	0.0	0.0
Lithuania	22.1	15.4	69.4	69.4	6.7	30.4	0.0	0.2
Luxembourg	23.8	21.7	91.2	91.2	2.1	8.8	0.0	0.0
Hungary	58.3	30.5	52.3	52.3	27.7	47.5	0.1	0.2
Malta	12.8	6.3	49.5	49.5	6.5	50.5	0.0	0.0
Netherlands	166.9	78.0	46.7	46.7	87.6	52.5	1.3	0.8
Austria	166.3	71.1	42.7	42.7	90.1	54.2	5.1	3.1
Poland	218.1	102.9	47.2	47.2	115.2	52.8	0.0	0.0
Portugal	29.9	16.5	55.3	55.3	13.3	44.6	0.0	0.1
Romania	132.8	93.7	70.6	70.6	28.6	21.6	10.4	7.9
Slovenia	15.4	4.4	28.4	28.4	11.0	71.6	0.0	0.0
Slovakia	7.0	5.6	79.9	79.9	1.4	20.1	0.0	0.0
Finland	28.7	13.1	45.6	45.6	15.1	52.6	0.5	1.9
Sweden	134.2	38.1	28.4	28.4	92.7	69.0	3.5	2.6
United Kingdom	631.5	295.3	46.8	46.8	336.2	53.2	0.0	0.0
Iceland	5.6	4.1	72.5	72.5	1.5	26.3	0.1	1.2
Liechtenstein	0.7	0.2	34.2	34.2	0.4	65.4	0.0	0.3
Norway	60.8	31.8	52.2	52.2	29.0	47.8	0.0	0.0
Switzerland	153.6	100.9	65.7	65.7	48.4	31.5	4.3	2.8

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Italy was found to breach the provisions of the European Convention on Human Rights (ECHR) or of its protocols for the treatment reserved to migrants in several important judgments delivered by the European Court of Human Rights (ECtHR). This chapter focuses on the implementation of these judgments at national level. The ECHR leaves to the State the possibility to choose the instruments and the procedures to implement its decisions. In the Italian legislative system, the duty to conform to the ECtHR's decisions can be found in Article 117 of the Constitution. Formally, the competence to monitor the implementation of the decisions is recognised to the Parliament by the Article 5 §3 let. a *bis* of Law n. 400 of 1988,²⁰⁹⁵ as amended by Law n. 12 of 2006.²⁰⁹⁶ This provision does not touch the competence of the Government to choose how and when to implement them. Moreover, anyway, there is no national provision which establishes a procedure to be followed in these cases. This leads to the adoption of several different acts, often expression of the executive power, chosen time by time in relation to the exigencies of the situation.

Any High Contracting Party of the Convention has the duty to implement only the judgments in which it appeared as respondent before the ECtHR, but this does not mean that national law and courts are not influenced also by the others. Due to space constraints, the latter profile will be only briefly addressed before concentrating on the most relevant decisions against Italy.

A recent case decided by the Italian Court of Cassation and that clearly explains the influences of the ECHR's judgements is judgment n. 38041/2017.²⁰⁹⁷ The court of Cassation changed the decision of the lower court of expelling an individual who was seriously invalid and who proved that his home country did not have any legislative framework to protect people with disability. The Court of Cassation decided "*in the light of the principles stated by the ECtHR and the Constitutional Court*". The decision was taken only a few months after the ECtHR's case *Paposhvili v. Belgium*²⁰⁹⁸ where the Strasbourg judges affirmed that applicability of Article 3 (Prohibition of Torture) of the ECHR to such cases. This is a recent example of how a decision of the ECtHR, even if not directly referred to a certain State, can produce effects in the territories of all the High Contracting Parties of the Charter.

Moving to the main object of this paper, namely the implementation of the judgments in which Italy appeared as respondent, the oldest case is *Saadi v. Italy*,²⁰⁹⁹ where the Court found a potential violation of Article 3 of the ECHR, as a result of Mr. Saadi's possible deportation to Tunisia.

²⁰⁹⁵ Law n. 400 (Regulation of the Activity of the Government and Organisation of the Presidency of the Council of Ministers) 1998 [Disciplina dell'Attività di Governo e Ordinamento della Presidenza del Consiglio dei Ministri].

²⁰⁹⁶ Law n. 12 (Provisions on the Execution of the Judgments of the European Court of Human Rights) 2006 [Disposizioni in Materia di Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo].

²⁰⁹⁷ Judgment 38041/17 [2017] Court of Cassation <http://www.altalex.com/~media/Altalex/allegati/2017/allegati-free/cassazione%2038041_2017%20pdf.pdf> accessed 21 September 2017 [Italian].

²⁰⁹⁸ *Paposhvili v. Belgium*, App. n. 41738/10 (ECtHR 13 December 2016).

²⁰⁹⁹ *Saadi v. Italy*, App. No. 37201/06 (ECtHR, 28 February 2008).

The findings of the ECtHR led the Italian Court of Cassation to deliver an order²¹⁰⁰ stating that judicial authorities (including *Giudici di pace* (justices of the peace)), as far as expulsion orders are concerned, should assess the concrete risks that an irregular migrant would face in his or her country of origin before an expulsion order can be executed. Furthermore, on May 28 2010, the Ministry of Justice sent a circular²¹⁰¹ to all the domestic Courts of Appeal stressing the need to comply with the ECtHR's interim measures and reaffirming that an evaluation should be made on whether there are "impediments" to expulsion, such as the risk of a violation of rights under Article 3 of the Convention in the country of destination. Regarding the individual measures adopted by the Court, Italy complied with them lifting all the expulsion orders against the applicants and duly paying the sum established as just satisfaction.

The second relevant case is *Hirsi Jamaa and others v. Italy*.²¹⁰² The case concerned the return to Libya of 11 Somalian and 13 Eritrean intercepted at sea, without any assessment of their individual situation. The Court condemned the State for the violation of Article 3 of the Convention, both for the potential ill-treatment that they could have suffered in Libya and for the subsequent risk of ill-treatment in Eritrea and Somalia if they were to be further deported in those countries. The Court also found a breach of Article 4 of Protocol n. 4 (prohibition of collective expulsion of alien) and of Article 13 of the ECHR (right to an effective remedy), in conjunction with Article 4 of Protocol n. 4. As far as the execution of this judgment is concerned, it is important to note that the bilateral agreement with Libya, of 2009, which was at the basis of the return of the migrants to Libya, was suspended in 2011 due to the change of the Libyan regime. Italy also provided to the ECtHR assurances that the guarantees contained in national laws and regulations concerning the treatment of asylum seekers were properly applied.²¹⁰³ In particular, Italy reaffirmed that refugees and asylum seekers would be granted access to all the relevant domestic procedures in all circumstances, including during military and coast guard operations. Furthermore, the Government informed the Court that the naval units had received the order to disembark all the migrants intercepted at sea in Italy. There, they would be able to file an application for asylum or international protection before the Territorial Commissions. Italy also informed the Court of the adoption of the Legislative Decree n. 142 of 2015²¹⁰⁴ which implemented the Directive 2013/32/EU (on common procedures for granting and withdrawing international protection), and the Directive 2013/33/EU (laying down standards for the reception of applicants for international protection). The decree sets up the

²¹⁰⁰ 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 <http://presidenza.governo.it/CONTENZIOSO/contenzioso_europeo/relazione_annuale/relazione_2009.pdf > accessed 13 July 2017 [Italian].

²¹⁰¹ Presidenza del Consiglio dei Ministri 'Relazione al Parlamento Anno 2012 - L'Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo nei Confronti dello Stato Italiano - Legge 9 Gennaio 2006', (2012) 61 <http://presidenza.governo.it/CONTENZIOSO/comunicazione/allegati/PCM_Relazione_2011.pdf> accessed 09 July 2017 [Italian].

²¹⁰² *Hirsi Jamaa and others v. Italy* App. No. 27765/09 (ECtHR, 23 February 2012).

²¹⁰³ Italy, '1265 réunion (20-22 septembre 2016) (DH) - Bilan d'action consolidé révisé (13/07/2016) - Communication de l'Italie concernant l'affaire *Hirsi Jamaa et autres contre Italie* (Requête n° 27765/09)' (13 July 2016) <[http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)785-revF](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)785-revF)> accessed 13 July 2017 [French].

²¹⁰⁴ Legislative Decree n. 142 (Implementation of Directive n. 2013/33/EU and of Directive 2013/32/EU) 2015 [Attuazione della Direttiva 2013/33/UE e della Direttiva 2013/32/UE].

procedures to be followed when a migrant arrives in Italy and includes the possibility to immediately lodge an asylum application which will be evaluated on an individual basis. In principle, this legal background safeguards against expulsions carried out without any individual assessment of the situation of the migrant. For what concerns the individual measures adopted, Italy clarified that the whereabouts of the 9 applicants are unknown, tried to find them contacting the Libyan authorities without success and deposited in an account at their disposal the sum granted as just satisfaction.

The next case, *Dhabbi v. Italy*,²¹⁰⁵ concerns an application from migrants lawfully resident in Italy. The ECtHR found in this case a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life). The victim was a Tunisian national whose application for a family allowance, provided by Section 65 of Law n. 448 of 1998,²¹⁰⁶ had been rejected. As a consequence of the judgment, Italy amended that provision bringing its legislation in line with the Court's requirements. Article 2 §2 of Decree n. 337 of 2001²¹⁰⁷ and Article 13 §1 of Law n. 97 of 2013²¹⁰⁸ recognised access to the allowance, respectively, to European citizens and to non-Europeans who reside in the country for a long-term period. Also in this case, the just satisfaction was duly paid by the State.

Another interesting judgment, related to the breach by Italy of Article 14 in conjunction with Article 8, is *Taddeucci and Mc Call v. Italy*.²¹⁰⁹ The applicants were a homosexual couple registered as an unmarried couple in New Zealand; after the facts of this case they married in the Netherlands. When they moved to Italy, the second applicant (Mr. Mc Call), was refused a residence permit which he had requested on family grounds. The refusal was due to the fact that only different-sex spouses could qualify for a residence permit for "family members". In its judgment, the Court did not question the State's right to reject an application for a residence permit to an unmarried couple. However, Italy was condemned since the Court found that as regards the residence permit for family members, the applicants were treated equally to couples in a significantly different situation, namely different-sex couples that decided not to have their relationship legally recognized. The Court found that there was no objective and reasonable justification for this equal treatment of significantly different situations. The discrimination lied in the fact that the two applicants did not have access in Italy to any form of legal recognition of their union. The discrimination was, thus, found in comparison with heterosexual couples who, in abstract, could have married to obtain the permit. Italy has enacted Law n. 76 of 2016²¹¹⁰ giving to same-sex couples access to a civil partnership comparable to marriage. Therefore, by

²¹⁰⁵ *Dhabbi v. Italy* App. No. 17120/09 (ECtHR, 8 April 2014).

²¹⁰⁶ Law n. 448 (Public Finance Measures for the stabilisation and the development) 1995 [Misure di Finanza Pubblica per la Stabilizzazione e lo Sviluppo].

²¹⁰⁷ Decree n. 337 of the Presidency of the Council of the Ministries (Regulation Amending The Decree n. 452 December 21 2000, of the Ministry of Social Solidarity, Concerning Allowance for Maternity and for Family Units with More than Three Minor Children) 2001 [Regolamento Recante Modifiche al Decreto del Ministro per la Solidarietà Sociale 21 Dicembre 2000, n. 452, in Materia di Assegni di Maternità e per i Nuclei Familiari con Tre Figli Minori].

²¹⁰⁸ Law n. 97 (Dispositions for the Compliance with Obligations Stemming from Italian's Membership to the EU) 2013 [Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea].

²¹⁰⁹ *Taddeucci and Mc Call v. Italy* App. No. 51362/09 (ECtHR, 30 June 2016).

²¹¹⁰ Law n. 76 (Regulation of Civil Unions Between Same-Sex People and Discipline of Cohabitation) 2016 [Regolamentazione delle Unioni Civili tra Persone dello Stesso Sesso e Disciplina delle Convivenze].

adopting this piece of legislation Italy has rectified its breaches since transnational same-sex couples are no longer discriminated with respect to different-sex couples. Furthermore, the just satisfaction has been regularly paid by the State.

*Sharifi and others v. Italy and Greece*²¹¹¹ is another case which is particularly relevant. The Court found that the unregistered return of 4 irregular migrants to Greece, on the basis of a bilateral readmission agreement signed in 1999, amounted to a violation of Article 3 of the ECHR, Article 4 of the Protocol n. 4, and Article 13 ECHR in conjunction with Article 3 ECHR and 4 Protocol n. 4. The applicants had neither been granted access to an interpreter, nor to a lawyer, nor to officials capable of providing them with the minimum information about their rights and the procedures to follow in order to seek international protection in Italy. Furthermore, they did not receive any official, written and translated, documents regarding their return to Greece. On July 13 2016, Italy submitted an action plan²¹¹² concerning the implementation of the judgment. Firstly, this document reaffirmed what already stated in *Hirsi Jamaa and others* in relation to the possibility to seek asylum in Italy.²¹¹³ Secondly, the Government submitted a report²¹¹⁴ of the *Consiglio Italiano per i Rifugiati* (Italian Refugee Council) on the reception conditions and on the procedures to apply for international protection in the Adriatic ports. This report was quoted by the State to highlight that in the Adriatic ports the migrants had access to an effective information system in relation to the options available to apply for international protection. Thirdly, Italy affirmed that, at the moment of the submission of the action plan the readmission agreement was applied in compliance with the principles dictated by the ECtHR and that asylum seekers were not subject to it. In support of these statements, the Government provided some statistics highlighting the lowering of the number of migrants sent back to Greece (from 3.433 in 2009, to 426 in 2015, to only 103 in the first half of 2016). Furthermore, a report, published in November 2013 by *Medici per i Diritti Umani*²¹¹⁵ (Doctors for Human Rights) was quoted by Italy in its action plan. This report was used to show that irregular migrants who were intercepted on the ships coming from Greece had access to NGOs' assistance. The officials of the NGOs interviewed migrants in order to evaluate their legal status. Lastly, the State has underlined that, since 2008, Italy had applied increasingly the sovereignty clause provided for in Article 17 §1 of Reg. UE 604/2013, derogating in this way from the ordinary criteria established in Dublin III Regulation.

The *Sharifi* case is particularly interesting because its implementation has received, on September 20-21 2016, a feedback from the Council of Europe's Committee of Ministers. The latter acknowledges efforts made by Italian authorities to rectify the breach; however, several concerns are expressed. The Committee focuses on the report written by *Medici per i Diritti Umani* and

²¹¹¹ *Sharifi and others v. Italy and Greece* App. No. 16643/09 (ECtHR, 21 October 2014).

²¹¹² Italy, '1265 réunion (20-22 septembre 2016) (DH) - Plan d'action révisé (13/07/2016) - Communication de l'Italie concernant l'affaire *Sharifi et autres contre l'Italie* (Requête n°16643/09) (13 July 2016) <<https://rm.coe.int/16806933e0>>; accessed 15 November 2017 [French].

²¹¹³ *Ibid.*

²¹¹⁴ Consiglio Italiano per i Rifugiati, 'Attività del CIR – Rapporto 2013' (15 May 2014) <<http://www.cir-onlus.org/images/pdf/riv%20new%20TESTO%20RAPPORTO%202013.pdf>> accessed 09 July 2017 [Italian].

²¹¹⁵ Medici per i Diritti Umani, 'Porti Insicuri – Le Riammissioni dai Porti Italiani alla Grecia e le Violazioni dei Diritti Fondamentali dei Migranti' (November 2013) <http://www.mediciperidrittumani.org/pdf/low_rapporto_Medu_2013.pdf> accessed 13 July 2017 [Italian].

highlight several issues raised therein. The NGO complained about the uncertainty of humanitarian organisation's (human and financial) resources and of their insufficient presence in the Adriatic ports. The Committee also paid a special attention to the fact that in the same report the NGO affirmed that the 85% of migrants arriving from Greece were sent back in the next few hours, without any formal procedure, in a clear breach of the above-mentioned bilateral agreement. Another piece of information which is deemed relevant is that in the first half of 2013, only 50% of migrants arriving from Greece had access to the assistance of the organisations. Moreover, the Committee asked for statistical data to clarify the reduction of migrants sent back to Greece, stressing that, without the data related to the total number of arrivals and to the number of asylum requests received, the relevance of the reduction cannot be shown. In its decision, the Committee asks Italy to provide more up to date information in relation to the functioning and funding of the reception system in the Adriatic ports, on the procedures followed there and on migrants' access to NGO assistance, and on the numbers needed to better understand the decrease of migrants sent back to Greece.

Italy communicated an action report on March 16 2017, but the information contained therein were considered by the Committee insufficient to clarify the abovementioned issues. Italy was asked to send further information before the end of September 2017.

Also with regards to the individual measures the Committee of Ministers is not satisfied with the actions of the Italian government. One of the four applicants received international protection in Italy, but the situation of the others is considered not to have been sufficiently clarified in the above mentioned Italian action plan.

The last relevant case is *Kblajfia and others v. Italy*.²¹¹⁶ The case concerned three Tunisian citizens who were intercepted at sea by the Italian coastguard and brought to Lampedusa. There, they stayed at an Early Reception and Aid Centre until a violent riot destroyed the centre. The migrants were then transferred to Palermo. Expulsion orders were, then, issued against them; however, they claimed that they did not receive all the relevant documentation. The ECtHR found a violation of Article 5 of the ECHR (right to liberty and security) §1, §2, §4, and of Article 13 in conjunction with Article 3 of the ECHR. In order to implement the judgement at issue, an action plan/report was awaited by the Italian Government before June 15 2017 but it is not yet available. However, in the yearly report to the Parliament, the Government stated that the Legislative Decree n. 142 of 2015 would permit to leave the emergency approach, leading, together with previous national provisions, to a structure and flexible system to face the arrival of migrants. Moreover, it is underlined that the new hotspot approach would allow the reception of migrants in structures where operators of the UNHCR and of the IOM can deliver them all of the relevant information. In the report it is also stated that the just satisfaction has been duly paid.²¹¹⁷

²¹¹⁶ *Kblajfia and others v. Italy* App. No. 16483/12 (ECtHR, 15 December 2016).

²¹¹⁷ Presidenza del Consiglio dei Ministri 'Relazione al Parlamento Anno 2016 - L'Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo nei Confronti dello Stato Italiano - Legge 9 Gennaio 2006', (2016) 89-90 <http://presidenza.governo.it/CONTENZIOSO/contentzioso_europeo/relazione_annuale/RELAZIONE_2016.pdf> accessed 18 September 2017 [Italian].

In conclusion, ECtHR's judgments have deeply influenced Italian law and practice. As far as the last two judgements are concerned, the information on their implementation provided by the Government are not always complete and clear. The shortcomings of the Italian system have been addressed several times by the Court to bring it in line with human rights standards; the full compliance with these standards is a goal still to be reached.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. The implementation of the recommendations of the European Commission against racism and intolerance (ECRI)

6.1.1. Implementation at a legislative level

Italy has made relevant efforts to implement the Recommendations of the ECRI,²¹¹⁸ included in various reports delivered since its creation. However, the last report, published on 7 June 2016, shows that Italy's legislation presents some *lacunae*. For example, Italy has not so far implemented the recommendation to ratify the Protocol No. 12 to the European Convention on Human Rights establishing a general prohibition of discrimination; neither it has enacted an *ad hoc* ordinary law on equal treatment and prohibition of discrimination,²¹¹⁹ in order to implement the principle of equality laid down by art. 3 of the Italian Constitution. Nevertheless, although a general prohibition of discrimination does not exist under the national system, there are sector-related pieces of legislation providing for equal treatment between foreigners and Italian nationals. Among the others, the Legislative Decree (LD) No. 286/98, the so-called "Turco-Napolitano Act", as amended by Act No. 189/02 of 2002 (known as the "Bossi-Fini" Act) provides for special "Measures for social inclusion" and defines the concept of "Discrimination based on race, ethnicity, nationality or religion".²¹²⁰

In this regard, Italy has to some extent implemented ECRI's General Policy Recommendation No. 7 to combat racism and racial discrimination. Indeed, Act n. 654 of 13 October 1975 ("Reale Act"), as amended by Act No. 205 of 25 June 1993 ("Mancino Act") and Act No. 85 of 24 February 2006, criminalized racial discrimination, incitement to racial discrimination, incitement to racial violence, racial violence, the promotion of ideas based on racial superiority or ethnic or racist hatred and the setting up or running of, participation in or support to any organisation, association, movement or group whose purpose is the instigation of racial discrimination or

²¹¹⁸ The Reports and Recommendations issued to Italy by ECRI can be retrieved at the following: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/Italy_CBC_en.asp> accessed 2 July 2017.

²¹¹⁹ The main source on such prohibition is found in Law No. 300 (Statute of Workers) 1970 [Statuto dei Lavoratori].

²¹²⁰ Artt 42 and 43, Legislative Decree No. 286 (Consolidated Law on Dispositions Concerning the Discipline on Immigration and the Norms on Non-nationals' conditions) 1998 [Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero].

violence. The Mancino Act also prohibits the public display of symbols and emblems of such organisations and, above all, makes racist bias an aggravating circumstance in connection with any offence. However, as mentioned above, these Acts present substantial *lacunae*, e.g. the lack of any reference to “colour and language” as causes of discrimination²¹²¹; in addition, public insults, defamation or threats against a person or group of people are ordinary crimes for the purposes of the Criminal Code, and not separate criminal offences, when committed against a person or group of people on the grounds of their race, colour, language, religion, nationality or national or ethnic origin. For these reasons, the ECRI has underlined the need to amend the Italian Criminal Code,²¹²² which is deficient as far as the prevention and repression of genocide, crimes against humanity and war crimes is concerned. In fact, with the exception of the condoning of genocide, all the other crimes are considered as merely aggravating circumstances, instead of proper criminal offences. Turning to civil and administrative law provisions against racial discrimination, these are to be found in Act No. 300 of 1970 on employment, in the “Turco-Napolitano Act” and in Legislative Decrees N. 215 and 216 of 2003. These are in line with ECRI’s general recommendation No. 7, although they do not cover discrimination on grounds of language and colour, for which no provision is made. The Italian legislation is deficient insofar as all organizations active in the field of combating racism and racial discrimination are not able to take legal action on behalf of alleged victims of these phenomena or in cases of collective discrimination. As an example, this is the case of the National Office Against Racial Discrimination, which is not entitled to take legal action in the event of discrimination.

Another issue raised by the latest ECRI’s report concerns the ratification of the additional Protocol to the Convention on Cybercrime, aimed at criminalizing acts of racist and xenophobic nature committed through computer systems. The ratification of this Convention was approved by one of the houses of Parliament on July 6 2016 and is currently waiting for discussion before the Senate²¹²³. The Italian legal order is also deficient with respect to the collection of data on hate speech and other hate-motivated offences. In addition, political extremism in Italy with strong xenophobic and islamophobic connotations gives rise to concerns.

6.1.2. Practical implementation and impact on society

The abovementioned “Turco-Napolitano Act” and subsequent amendments introduced by the “Bossi-Fini” Act contain measures to facilitate the integration of third country nationals lawfully residing in Italy, whose practical implementation can be deemed appreciable, even though not fully satisfactory. Since 2012, a compulsory individual training based on an “integration agreement”²¹²⁴ has been established, which aims at facilitating integration of foreign nationals and concerns the renovation of the residence permit upon condition, *inter alia*, of the acquisition

²¹²¹ ECRI considered that Art 18*bis*, para. 1, of Law No. 482/1999 on linguistic and cultural minorities providing that the Reale Act “*shall also apply in order to prevent and counter intolerance and violence acts against people belonging to linguistic minorities*” is not equivalent to a prohibition of racism and racial discrimination on ground of language (ECRI Report on Italy, fifth monitoring cycle, published on 7 June 2016, note 7).

²¹²² ECRI Report on Italy, 2016, 12 (see *supra*, note 93).

²¹²³ Legislative Proposal No. 3084, presented on April 29th, 2015.

²¹²⁴ In conformity with Article 4-bis, para. 2 of Legislative Decree No. 286/98, implemented by Presidential Decree No. 179 (see *supra*, note 92).

of a sufficient knowledge of the Italian language and culture and of compliance with the obligation to send children to school.²¹²⁵ Difficulties in accessing housing and home ownership for immigrants have been frequently recalled in the Recommendations directed to Italy, with special reference to disparity in the rent conditions and, also, to discrimination in the procedures of access public housing, which can vary depending on the local authorities. Even though the right to house and to private life is fully granted both at a national and international level, with the Italian law disposing the obligation of equal treatment in matter of access to public housing and equalizing non-nationals to Italian citizens,²¹²⁶ the practical compilation of the waiting lists and their criteria are municipal prerogatives, circumstance that leads to strong *de facto* divergences across Municipalities. This notwithstanding the several sentences of Italian Tribunals asking for the elimination of discriminatory policies. Nevertheless, the flourishing case-law shows a decisive trend toward the elimination of these disparities.²¹²⁷ On the same time, the adoption of Act No. 107/15 “on good schooling” has demonstrated an effort in improving the inclusion at school, introducing provisions with the aim of giving substantial financial and human support to schools with large numbers of foreign pupils and of promoting adult education and trainings specifically addressed to foreigners.²¹²⁸

6.2. The implementation of the recommendations of National Human Rights Bodies on integration

In addition to ECRI, some recommendations on integration have been issued by UNHCR to Italy, which recently addressed some specific questions that are yet to be solved.²¹²⁹ Among the most significant, it has been recommended that, for the first two years after obtaining international protection, refugees should be included in disadvantaged workers categories that should be provided with an assisted access to work. Such *ad hoc* categorization has not been adopted yet, but a relevant initiative in this direction has been the strategy promoted by the Ministry of Labour and Social Policy, mainly focusing on vocational trainings and grant-assisted

²¹²⁵ *ibid*, Art 13.5-bis.

²¹²⁶ The right to house and to private life is protected by the Italian Constitution under the Articles 10, comma 2, and 117, comma 1. Moreover, European Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, implemented in Italy through Legislative Decree No. 3/2007 amending the Italian Consolidated Law on Migration, disposes the principle of equal treatment (see Art. 11, comma 1, lett. F of the Directive, and Art. 9 of the Consolidated Law on Migration; *supra*, note 92). Accordingly, under the Italian Consolidated Law on Migration regular non-nationals enjoy the full sphere of rights of Italian citizens regarding public housing and credit facility (see Art. 11, comma 1, lett. F of the Directive, and Art. 9 of the Consolidated Law on Migration; *supra*, note 92).

²¹²⁷ See *e.g.* Tribunal of Milan, Sent. of 21st March 2002, and the Regional Administrative Tribunal of Lombardy – section of Brescia, Ordinance No. 264 of 25th February 2005. For a full list of relevant cases, see <http://www.piemonteimmigrazione.it/mediato/images/materiale/CASISTICA_GIURISPRUDENZIALE_IN_DIRITTO_ANTIDISCRIMINATORIO.pdf> accessed 22 July 2017).

²¹²⁸ *E.g.* Art 23, Law No. 107 (Reform of the national system of education and formation enabling the reorganization of the current legislation) 2015 [Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti or “La Buona Scuola”], referring to improvement of adult education and trainings, especially for foreigners, to promote knowledge of the Italian language, facilitate access to work and boost social inclusion. See also Art 32, addressing the question of educational projects in schools and requesting for necessary human, financial and technical resources.

²¹²⁹ UNHCR Italy, Focus Group on Integration Final Report 2017.

jobs through the adoption of SPRAR Projects²¹³⁰ and pilot projects coordinated by the Ministry.²¹³¹

All beneficiaries of international protection who are destitute should be allowed access to suitable reception conditions for a minimum period of six months, renewable under specific circumstances. Control and monitoring systems should be standardized, with a particular attention to people with special needs. Such monitoring system should include mechanisms for the consultation and active participation of asylum-seekers, as well as a sanctioning system based on objective and verifiable parameters. However, a standardized mechanism has not been adopted yet; on the contrary, the system is characterised by great inhomogeneity, due to structural deficiencies, lack of adequate funds and administrative unevenness. In fact, Italy presents remarkable geographical inequalities in the process of integration of immigrants, with special reference to the services offered and to available facilities. Data on access to work, housing and scholarization display a strong regional disparity, with the local authorities often being unable to guarantee an effective application of the national and supranational legislation on integration and non-discrimination. Especially in the South, the implementation of integration policies often relies on associations, trade unions and religious organisations.²¹³² To fix this problem, in 2014 the Ministry of Labour and Social Policies signed seventeen regional agreements to strengthen cooperation with regional and local authorities in the field of integration policies.²¹³³

Another noticeable problem is the subjective disparity in acceding integration facilities in Italy. Most of the rights protected under common laws and Courts' decisions are addressed specifically to permanent non-nationals with a regular permit of residence. Additionally, the main category of beneficiaries of integration policies is constituted of the Roma population and non-nationals recently arrived and regularly present in the country. On the contrary, a specific integration policy for refugees and people who qualify for international protection is lacking.²¹³⁴ This situation translates into substantial integration problems, as the lack of post-reception support for beneficiaries of protection upon leaving reception facilities, especially for those who could not stay in a second-line reception SPRAR facility and had to leave the CARA (First Line Reception Centres) immediately after they were recognized international protection.²¹³⁵ As already mentioned, reception standards differ considerably among facilities, especially on a geographical basis, and UNHCR found that in some cases services provided are particularly inadequate to support refugees' social inclusion.²¹³⁶

²¹³⁰ The System of Protection for Asylum Seekers and Refugees has been introduced by Law No. 189 (Modifications in the Law Concerning Immigration and Asylum) 2002 [Modifica alla normativa in materia di immigrazione e di asilo or "Bossi-Fini"].

²¹³¹ UNHCR, Final Report 2017, 19 (see *supra*, note 101).

²¹³² ECRI Report on Italy, 2016, 26 (see *supra*, note 93).

²¹³³ The scope is to project and structure a better system of local services addressed to immigrants, with the aim of facilitating the access to such services. Further details can be found at the following: <<http://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/politiche-di-integrazione-sociale/Pagine/Attivita-e-servizi.aspx>> accessed 22 July 2017.

²¹³⁴ ECRI Report on Italy, 2016, 26 (see *supra*, note 93).

²¹³⁵ UNHCR, Final Report 2017, 8 (see *supra*, note 101).

²¹³⁶ *ibid*, 11.

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. The Constitutional framework and its interpretation

Article 32, para. 1 of the Italian Constitution states that “the Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent”. The provision is enshrined among several other significant rights in the Title II of the Charter, and its most common interpretation includes the duty of the State to provide for every individual an appropriate access to healthcare. In essence, the above-mentioned article also grants to the individual the right of seeking public assistance by the state. This positive obligation is confirmed by the constant jurisprudence of the Italian Constitutional Court, which has interpreted the right to healthcare as a “primary and fundamental right that imposes full and comprehensive protection” by the state.²¹³⁷ Moreover, such duty could not be affected even by financial necessities.²¹³⁸

The applicability of Article 32 to migrants derives from the wording of the same article, which refers to the “individual”, expressing the concept that citizenship should not be taken into account when dealing with the right to healthcare. In addition, such provision should be interpreted in the light of Article 3,²¹³⁹ that sets forth the principle of non-discrimination before the law, and Article 2, which binds the Republic to guarantee not only civil and political rights of the person, but also to fulfil the duties of economic and social solidarity. It should be underlined that, even if the text of Article 3 refers to “citizens”, the same Court has reaffirmed that “when dealing with fundamental rights, the constitutional principle of non-discrimination does not admit any inequity between the citizen and the foreigner”.²¹⁴⁰

It follows that every migrant, regular or irregular, has the same right to seek health assistance from the Italian State; this principle is confirmed by the judgment 252/2001 of the Constitutional Court, stating that “this irreducible core of the protection of health as a fundamental right of the person must thus be recognised also to foreigners, regardless of their position with respect to the rules that discipline the entrance and permanence in the country” (§2).

²¹³⁷ Italian Constitutional Court, judgement 992/1998, §2. See also: Italian Constitutional Court, judgements 88/1979, 559/1987, 992/1988, 105/2000.

²¹³⁸ Italian Constitutional Court, judgement 309/1999, §3. See also: Italian Constitutional Court, judgement 203/2016.

²¹³⁹ Article 3 in conjunction with Article 32 has been used by the Constitutional Court in many cases to avoid discriminations and barriers to the access to healthcare (as example, see judgement 416/1995, setting forth the principle of “equality of health services”).

²¹⁴⁰ Italian Constitutional Court, judgement 62/1994, §4.

7.2. Statutory regulations

7.2.1. The right to access to healthcare of legal migrants

The constitutional provisions on the right to access to healthcare have been implemented on a statutory level in 1978, when the *Sistema Sanitario Nazionale* (National Healthcare System) was created²¹⁴¹ in order to provide free public healthcare to everyone. The principle that legal migrants have access to the Healthcare System has been specified in the legislative decree 286/1998 (“Testo Unico sull’immigrazione”). Indeed, Article 2, para. 1 reaffirms the respect of foreigners’ fundamental rights under national and international law, and Article 2, para. 2 establishes that, in addition, legal migrants have the same rights and duties of Italian citizens.

In accordance with this principle, Article 34 of the same decree provides that legal migrants have the right or the option to register within the National Healthcare System, receiving the same services and conditions of Italians. In particular, the inscription to the National Healthcare System is mandatory for legal migrant workers or work-seekers, asylum seekers, and those who have been admitted in Italy on the ground of family reunification or humanitarian reasons or for adoption. The duty to register is also extended to family members and minors.²¹⁴² On the other hand, other categories of migrants have an option to register within the public system or to pay for private insurance; usually this category includes short-term migrants, as students or au pairs. If they choose to use the public service, they pay the same amount as Italians or other migrants do by paying their taxes.²¹⁴³

7.2.2. The right to access to healthcare of irregular migrants

Since regular migrants enjoy the same rights and duties of Italian citizens, the main issues can be found in the protection of irregular migrants’ right to access to healthcare. First of all, it should be underlined that minors, even if irregular, still have the right under national legislation to register within the National Healthcare System²¹⁴⁴ in accordance with the Italian international commitment in the New York Convention.²¹⁴⁵

Indeed, the status of irregular migrants differs from the full equality in civil rights given to regular migrants: the law simply states that their fundamental rights enshrined in national and international instruments should be respected.²¹⁴⁶ Their right to access to healthcare is set forth by Article 35 of the *Testo Unico sull’immigrazione* (Italian Law on Immigration). The article states that foreign citizens, whose permanence in the country is not in compliance with national migration law, still have the right to seek from public service “urgent” and “essential” medical care (para 3). According to the Circular Letter 5/2000 of the Ministry of Health, “urgent” healthcare should be considered any medical care that cannot be postponed without jeopardizing

²¹⁴¹ Law 833/1978 and 33/1980.

²¹⁴² Testo Unico sull’Immigrazione (d.lgs. 286/1998), Article 34, §1-2.

²¹⁴³ Testo Unico sull’Immigrazione (d.lgs. 286/1998), Article 34, §3-4.

²¹⁴⁴ Testo Unico sull’Immigrazione (d.lgs. 286/1998), Article 35, §3(b). See also: Agreement of the State-Regions conference of December 20 2012, Annex A, §1.1.1.

²¹⁴⁵ United Nations’ Convention on the Rights of the Child, Article 24.

²¹⁴⁶ Testo Unico sull’Immigrazione (d.lgs. 286/1998), Article 2, §1.

the patient's life or health; while "essential" healthcare consists in any treatment, diagnosis or therapy regarding diseases not immediately dangerous, but which could lead to health damage or death if not cured. Moreover, Article 35 of the *Testo Unico* also gives special relevance to some treatments to be always granted, such as the one concerning pregnancy, vaccines, infectious diseases and drug addiction. The procedure to access to such services is specified by Article 43 para.3 of the Presidential Decree 394/1999: since irregular migrants cannot register within the National Healthcare System, they should apply for a six-months valid STP Regional Code, where STP stands for "*Straniero Temporaneamente Residente*", Temporarily Resident Foreigner.

7.3. The regional system and the different approaches towards irregular migrants' healthcare

Following the new Article 117 of the Italian Constitution,²¹⁴⁷ the power of regulation of public healthcare is shared between the State and the Regions. This concurrent discipline means that the State must provide the general provisions on the matter, while regional administration can choose how to put it into practice and regulate it more specifically. In particular, the Ministry of Health determines the LEA (*Livelli Essenziali di Assistenza*), essential services to be granted to everyone – and to irregular migrants in particular, but it is up to the Regions to implement them.²¹⁴⁸ The practice has shown that heavy differences persist between regions, both on an economic and policy ground: some regions have integrated healthcare services for irregular migrants within the normal healthcare system, some others have created specific medical helpdesk directed to them, others do not have any regional provision on the matter, leaving the national discipline directly applicable.

7.4. Illegal immigration as a criminal offence and negative outcomes on access to healthcare

In 2009, the right-wing governed led by Silvio Berlusconi, enacted the law 94/2009, which is generally referred to as "Bossi-Fini" from the name of its creators. One of the most controversial aspect of such statute is the addition of Article 10bis to the *Testo Unico sull'immigrazione* (d.lgs. 286/1998). The provision created a new criminal offence, namely the "crime of illegal immigration". What matters here is the effect that considering illegal immigration as a crime has on access to public healthcare: following the 2009 law, a strong debate on whether illegal migrants should be referred to police when assisted by public hospitals. Indeed, by creating a new crime automatically prosecutable, it seemed that the law required the public medical staff to report to the police any illegal migrant seeking for assistance.²¹⁴⁹ Such interpretation was disproved by the circular 12/2009 of the Ministry of Health, which, in reaffirming the validity of Article 35 para. 5 of the *Testo Unico*, expressly denied the possibility of

²¹⁴⁷ This Article has been heavily modified by the constitutional reform 3/2001, which, inspired by a federalist vision of the State, transferred numerous competences to the regional administrations.

²¹⁴⁸ In particular, the Agreement of the State-Regions Conference of September 7 2016 157/CSR.

²¹⁴⁹ The Italian Criminal Code, at Article 362 requires all public employees to report to the police or the public procedure any crime related to the cures given during their work if it is automatically prosecutable by the state (*reato perseguibile d'ufficio*).

reporting immigrant migrants for the mere fact of being illegally on the Italian soil. Irregular migrants are thus subjected to the same rule applicable to Italians and legal migrants and have to be reported only if any other crime automatically prosecutable occurs.

The fact that the obligation to report has been repudiated does not mean that the effects of the criminalisation of illegal immigration do no longer affect access to healthcare, as irregular migrants have still a reasonable fear of being reported to authorities when seeking public assistance – which requires them to denounce their irregular status.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

The right to education is primarily expressed in Article 31 of the Italian Constitution, according to which the Italian Republic protects youth through the implementation of the necessary institutes and structures. This right is recognized by the Convention on the Rights of the Child of 1989, which represents the most authoritative instrument for the protection and promotion of children' rights. The Convention lays down the prohibition to discriminate on the basis of race, sex, language, religion, political opinion and national origin and other factors for the enjoyment of the rights it contains.²¹⁵⁰ Article 38 of the *Testo Unico sull'Immigrazione* of 1998 n. 286 (Consolidated Act on Immigration) provides that all minors, both Italian and foreigners, have the obligation until the age of 16 to take part in the national education system.²¹⁵¹ They are subject to the provisions of the law concerning the right to education and of access to educational services. The same provision stresses that the effectiveness of these rights is guaranteed by the State, together with the regions (*Regioni*) and the local authorities, also through the activation of special language courses. According to par. 3 of Article 38, the School community welcomes linguistic and cultural differences since they are considered as fundamental values at the basis of mutual respect, cultural exchange and tolerance. For these reasons, the School community promotes initiatives aimed at fostering hospitality and protecting foreigners' cultures and languages of origin, as well as carrying out common intercultural activities. These initiatives are undertaken in cooperation with foreigners' associations, diplomatic and consular delegations and voluntary organizations, taking into consideration different local needs. The availability of the right to education to migrant children has been further clarified by Article 45 PD 394/1999, which provides for foreign children the same right to education of Italian children, even when they do not have a valid title to stay in the Italian territory. It should be noted that Article 6, par. 2 of the mentioned Consolidated Act on Immigration, as modified by Law 94/09, makes sure that the access to the obligatory educational services (*“prestazioni scolastiche*

²¹⁵⁰ Emanuele Rossi, Paolo Addis e Francesca Biondi Dal Monte, *La libertà di insegnamento e il diritto all'istruzione nella Costituzione italiana – Il diritto all'istruzione dei minori stranieri* (Associazione Italiana dei Costituzionalisti, Osservatorio Costituzionale 2006) 13 [Italian].

²¹⁵¹ ASGI, “Access to Education – Italy”, (aida Asylum Information Database), <<http://www.asylumineurope.org/reports/country/italy/reception-conditions/employment-education/access-education>, accessed 9 June 2017>.

obbligatorie”) is not subject to the obligation of the beneficiary to have a residency permit.²¹⁵² This principle applies to the registration of children at the *crèche* (attended by children under the age of 3). Under Article 45 of the mentioned act, migrant children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs.²¹⁵³ They are automatically integrated in the obligatory National Education System and included in the class appropriate to their age. The Faculty commissions can deliberate upon the admission of the foreign student in a different class, basing their decisions on elements such as the school system of the country of origin, the verification of their abilities and skills and the educational qualification owned, if any. Proposals for the allocation of foreign students in each class are formulated by the Faculty commission, avoiding the creation of classes with a predominant presence of foreigners. The Ministry of Education released a communication on this issue on January 8 2010, underlying that the number of foreigners per class should not exceed its 30%.²¹⁵⁴ However, although there are exceptions, as a general rule the schools cannot refuse to enroll foreign minors.²¹⁵⁵ The Faculty commission also defines the necessary adaptation of the teaching programs, in relation to the competencies of the students. Consequently, specific and individual interventions would be adopted in order to facilitate the learning of the Italian language, using, if possible, the institution’s financial and structural resources. The knowledge and practice of the Italian language could also be strengthened by the activation of intensive courses on the basis of specific projects. Finally, it should be noted that foreigners cannot be discriminated with respect to Italians as regards to access to scholarships and other services related to the right to participate to the life of the school community. However, sometimes these rights are subject to the requirement of residence, which cannot be fulfilled for children of parents who are irregular migrants.²¹⁵⁶

All the measures previously mentioned are aimed at contrasting scholastic discrimination. The general principle of equality can be primarily found in Art. 3 of the Italian Constitution, which states, at its first paragraph, that “every citizen has equal social dignity and is equal in front of the law”. Although its authors used the expression “citizen”, the right is not limited to them but can be extended to foreigners and stateless people, as already decided by some Constitutional Court’s judgments during the 1960s.²¹⁵⁷ The principle of non-discrimination applied to the school system is also protected by Art. 34 of the Italian Constitution, according to which the school is open to everyone and primary education should be mandatory and free. Moreover, Italy adopted different international conventions on the principle of non-discrimination, which have become

²¹⁵² In addition, foreign minors cannot be asked to provide a residence permit to enrol in a school until they have not completed their course of studies, even if the latter ends after the minor turns eighteen years old. *I minori stranieri extracomunitari e il diritto all’istruzione dopo l’entrata in vigore della legge n. 94/2009*, available at: <<http://www.meltingpot.org/I-minori-stranieri-extracomunitari-e-il-diritto-all.html>>, accessed 15/07/2017.

²¹⁵³ ASGI, Access to Education.

²¹⁵⁴ Rossi, Addis e Biondi Dal Monte, *La libertà di insegnamento* 15.

²¹⁵⁵ Elena Rozzi, Mariella Console, *Minori stranieri e diritto all’istruzione e alla formazione professionale*, 2014, p. 10, available online at <http://www.piemonteimmigrazione.it/mediato/images/inmediares/materiali/manuali/Minori_stranieri_e_diritto_allistruzione_e_alla_formazione_In_Media_Res.pdf>, accessed 15/07/2017.

²¹⁵⁶ *Ibid*, p. 12.

²¹⁵⁷ Refer in particular to decisions nn. 120/1967, 104/1969, 144/1970, 46/1977, 62/1994, 219/1995.

an integral part of its system.²¹⁵⁸ Nevertheless, its implementation in the sector of education still shows some weaknesses. According to the last Report of the Working Group for the Convention on the Rights of the Child (CRC Group),²¹⁵⁹ Italy should develop specific programs in order to improve the scholastic integration of foreign minors and of minors who are part of minorities. In particular, the Italian State should guarantee the professional, technical and financial resources needed, both for their integration and individual orientation. Moreover, a particular attention should be paid to migrant children and to Roma and Sinti children. The Italian Government is asked to provide for, and financially support, the admission of a cultural mediator, particularly in those schools where the presence of foreign children is higher than the 50%.

The right of education is provided for by two additional pieces of legislation. The first is LD 142/2015, which implements directive 2013/33/EU laying down standards for the reception of applicants for international protection. Art. 21 par. 3 of the mentioned act applies the provisions of art. 38 of the Consolidated Act on Immigration to unaccompanied minors seeking asylum and children of asylum seekers. The second is Law 7 April 2017, n. 47 on the protection of unaccompanied children,²¹⁶⁰ whose enactment has been praised by UNICEF.²¹⁶¹ Paragraph 3 of Article 14 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. However, no additional public financial resources are devoted to perform this task. Furthermore, paragraph 4 protects minors who cannot be identified at the moment of their arrival in the reception facility: indeed, they can obtain the diplomas at the end of their studies even if they turn eighteen while they are completing these studies.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. The recognition procedure

In the Italian legal system a diploma is awarded by the competent national authority, upon the successful completion of each cycle of studies. Foreign qualifications must be recognised as equivalent to those awarded in Italy through the so-called **recognition procedure**. In this

²¹⁵⁸ In particular, Italy ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1965. Furthermore, the same principle is stated in all the main international and European treaties and conventions on the protection of human rights of which Italy is part.

²¹⁵⁹ Gruppo di Lavoro per la Convenzione sui Diritti dell'Infanzia e dell'Adolescenza, *I diritti dell'infanzia e dell'adolescenza in Italia. 9° Rapporto di aggiornamento sul monitoraggio della Convenzione sui diritti dell'infanzia e dell'adolescenza (CRC) in Italia, anno 2015-2016* (2016), par. 4, page 147.

²¹⁶⁰ Legge 7 aprile 2017, n. 47, recante "Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati".

²¹⁶¹ <https://www.unicef.org/media/media_95485.html>, accessed 15/07/2017.

context, reference will be made only to the rules applicable in Italy in order to implement the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 (Lisbon recognition Convention), ratified by Italy by Law n. 148/2002.²¹⁶² This Convention has been ratified by all members of the Council of Europe (with exception of Greece and Monaco) and some non-member states.²¹⁶³ The aim of this Treaty is to simplify the recognition of qualification granted in one Party in another party; indeed, the recognition procedure tend to be complicated due to the differences between legal systems, national educational systems and legal validity of the qualifications.

In cases where a recognition of a foreign qualification diploma concerns a third country that has not ratified the Lisbon Qualification Convention, the Legislative Decree n. 286 of 1998 and its implementation through the Presidential Decree n. 394 of 1999²¹⁶⁴ lay down specific rules which will not be accounted for in this context.

9.2 General Principles

In order to obtain the recognition in Italy of any foreign qualification, there are three steps to perform in advance in the country of origin. These general principles apply both to countries which have ratified the convention and third parties.

- Legal Translation: an official translation in Italian made by a certified translator with legal validity. The list of the certified translators is provided by the Italian diplomatic offices.²¹⁶⁵
- Legalisation: a certification of the authenticity of a document provided by the Italian diplomatic offices. Under the Hague Convention of October 5 1961, ratified by Law n.1253/1966, the Endorsement (hereafter apostille) replaces the legalisation.²¹⁶⁶ As a result of the Brussels Convention of 1987, neither the legalisation nor the apostille is necessary for the contracting parties of this Convention.
- Declaration of Value: a document, issued by the Italian diplomatic offices, containing information about the educational qualification obtained abroad. This document provides information on the legal status and nature of the issuing institution, the access

²¹⁶² Law n. 148/2002 (Ratification and Implementation of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, approved in Lisbon on April 11 1997, and compliance rules of the internal legislation) [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]

²¹⁶³ Australia, New Zealand, Belarus, Holy See, Israel, Kazakhstan, Kyrgyz Republic and Tajikistan.

²¹⁶⁴ Decree n. 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

²¹⁶⁵ Decree n. 445 of the President of the Republic of Italy (Consolidated Law on provisions and regulations on administrative documentation) 2000 [Testo unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa] Art. 33

²¹⁶⁶List of the competent authorities for the *apostille* for each country: <<https://www.hcch.net/en/instruments/conventions/authorities1/?cid=41>>

requirements to the study programme, the legal duration of the studies and the value of the qualification in the country of origin. Instead of the Declaration of Value, the so-called Diploma Supplement is required in the countries in the European Higher Education Area under the Bologna Process.²¹⁶⁷

These documents are to be presented to the competent authorities: the Local School Offices (Uffici Scolastici Provinciali) for the recognition of school diplomas and the University Administrative Offices (Segreteria Universitarie) for the recognition of high-school diplomas giving access to the University and university diplomas.

9.3 The Lisbon recognition Convention and its implementation by Italy

The Convention concerns: 1) the recognition of qualification giving access to higher education; 2) the recognition of higher education qualifications; 3) the recognition of qualifications held by refugees, displaced persons and persons in a refugee-like situation. In Italy the recognition procedure, and the sources of law regulating it, vary depending on the purpose for which an application for recognition of a foreign qualification is made. An application for recognition may be made for **academic purposes**, mainly to get access to Universities (first cycle programmes) or to pursue further studies (second/third cycles programmes) or for the purpose of acceding to an **employment in the public administration**, or for other purposes.²¹⁶⁸

9.4 Recognition of foreign qualifications for academic purposes

The recognition of foreign qualifications to get access to higher education studies (first cycle programmes) or to further University studies (second and third cycles programmes) is regulated by Law n. 148 of July 11 2002. One of the most important aspect of this law is that art. 9 abolishes the principle of nostrification (*equipollenza*), which implied the need to prove that a foreign qualification is equivalent to one earned in Italy, as the exclusive means to have a foreign qualification recognised, regardless of the purpose of the application for recognition.

The application for recognition of foreign qualification for academic purposes should be made to Universities and AFAM Institutions (*Alta Formazione Artistica e Culturale*). These are designated by art. 2 of the competent authorities. The decision on the application for recognition should be made within 90 days from the application. The university may decide to fully recognize the qualification, to refuse the recognition or to only partially recognize it (this means that the interested person has to pass further exams or to complete a period of internship before being able to access the university studies).²¹⁶⁹ In case the applicant wishes to appeal the decision of

²¹⁶⁷ Bologna Process: <<http://www.eua.be/policy-representation/higher-education-policies/the-european-higher-education-area-and-the-bologna-process>>

²¹⁶⁸ For more detailed information see CIMEA: Information Centre on Academic Mobility and Equivalence, in compliance with the Art. IX.2 of the Lisbon Recognition Convention <<http://www.cimea.it/en/services/services-recognition-of-qualifications/recognition-of-qualifications.aspx>>

²¹⁶⁹ Access to University studies (first cycles programmes) is granted if the following conditions are met: the applicant has an official certificate from the foreign secondary school; the qualification obtained allows entry to comparable first cycle programmes in the relevant foreign system and the qualification is obtained after 12 years of

refusal, he/she has to file a complaint to the Regional Administrative Tribunal (*TAR*), within sixty days.

9.5 The recognition of qualifications for non-academic purposes

A recognition of foreign qualifications may be necessary once the foreigners has completed his/her course of studies and wishes to use his qualifications to a) seek employment in the public sector or b) to obtain a career progress in the public administration, c) to be registered in job seeking centres or d) to get access to internships (*praticantati*) necessary to get access to regulated professions. This subject-matter is regulated by the Presidential Decree n. 189 of 2009.²¹⁷⁰ This decree applies to the recognition of diplomas awarded by higher education Institutes of the contracting parties to the Lisbon recognition Convention.

In order to take part in public competitions leading to employment in the Italian public administration (case *a*) above), the holder of a foreign qualification must apply for recognition to the Italian Ministry of Education, University and Research (MIUR) and the *Presidenza del Consiglio dei Ministri - Dipartimento della Funzione Pubblica* (art. 2).²¹⁷¹ The competent authority to carry out the recognition is the President of the Council of Ministers (*Presidente del Consiglio dei Ministri*), upon proposal of the competent ministry.

In all the other cases (*b*), *c*), *d*) above) the individual assessment of the application for recognition is carried out by the Italian Ministry of Education, University and Research (MIUR). The applicant may submit his/her application directly to the interested public administration (art. 3 par. 2) and the final decision will be made within 90 days by the MIUR; such a decision will be communicated to the administration that forwarded the application for recognition. An internal appeal procedure (*procedura di riesame*) is provided for in case the application is rejected.

9.6 The recognition of qualifications held by refugees, displaced persons and persons in a refugee-like situation

For refugees, displaced persons and persons in a refugee-like situation,²¹⁷² the Legislative Decree n. 251 (Implementation of 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) of 2007 is applicable. In particular, its art. 26, § 3 states that persons who are qualified as refugees or have been granted subsidiary protection status are subject to the same provisions regulating the recognition of diplomas, certificates and other foreign qualifications which are applicable to Italian citizens.

schooling. In addition, should a national test or final exam be necessary to enter a higher education institution, this requirement is also mandatory for the applicant.

²¹⁷⁰ DPR n. 189 (Regulation on the recognition of academic qualifications) 2009 [Regolamento concernente il riconoscimento dei titoli di studio accademici, a norma dell'articolo 5 della legge 11 luglio 2002, n. 148]

²¹⁷¹ The procedure is regulated by art. 38, par. 3, of the Legislative Decree n. 165 (General rules on the work in the public administrations) 2001 [Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche].

²¹⁷² Section VII of the Lisbon recognition Convention.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

In the Italian legal system there is an inseparable tie between citizenship and participation to political decisions. “The long-term non-EU foreign residents do not enjoy any kind of political rights, not even at the local level, unless they naturalize”.²¹⁷³ The only exception is made for EU citizens in municipal elections. The main obstacle in the recognition of political rights to migrants is article 48 of the Constitution that reserves the participation in political life to citizens. Although there have been attempts to expand migrants’ influence in political life at all levels, only a cohesive political will can overcome the constitutional obligation.

10.1. Participation in National Political Life

Foreigners do not have the right to vote for the election of the Parliament. Proposals to extend the possibility to vote to foreigners have been made only in 1996. The draft Turco-Napolitano Act (Consolidated Act n. 286 of 1998) included the provision for third country nationals to vote after 5 years of regular residence in the country. However, this provision was not retained in final text of the law. In more recent years, the issue of participation in political life by migrants has gained momentum in the political debate. The Democratic Party (*Partito Democratico*) granted the right to vote in primary elections (*elezioni primarie*) to designate the candidate to the Prime Minister held in December 2012, December 2013 and April 2017 to all documented residents.

10.2. Participation in Political Life at Regional Level

There is no national legislation concerning the right to vote at a regional level. The Constitutional Court, in judgment n. 196/2003 has recognized the possibility for Regions to legislate even in absence of a national legal framework, implementing article 122.1 of the Constitution. In this framework, two regions, Emilia Romagna and Toscana, in 2004 included in their Statutes the possibility for legal residents to vote and to be voted in regional elections.²¹⁷⁴

Article 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.²¹⁷⁵ 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

²¹⁷³ Guido Tintori, *Access to Electoral Rights*, EUDO Citizenship Observatory Robert Schuman Centre for Advanced Studies [2013], p. 1.

²¹⁷⁴ Valeria Ferraris, *La partecipazione politica degli stranieri a livello locale*, Working paper by the International and European Forum on Migration Research [Italian].

²¹⁷⁵ The provision is “inconsistent with article 48 of the Constitution and with articles 117, 121 and 138” that entitles the Parliament with exclusive competence to, respectively, modify electoral standards and to amend the Constitution.

electoral rights (including participation in referendum and other public consultations) to immigrants and legal residents in the Region.²¹⁷⁶

The provisions of the two Statutes have been judged by Council of State (higher administrative court) and the Constitutional Court either unconstitutional – electoral rights as confined to citizens- or as an invasion of central state competences in the field of electoral rights and status of migrants.²¹⁷⁷

10.3. Participation to municipal elections (“elezioni comunali”) by nationals of EU member States and third country nationals

The right to vote and to stand as a candidate at municipal elections is recognized by Article 22 par. 1 of the Treaty on the Functioning of the European Union and by art. 40 of the Charter of the fundamental rights to all citizens of EU members. The latter provision states: “Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.” A more detailed discipline can be found in Directive 94/80/EC which was adopted after the Maastricht Treaty introduced the concept of European citizenship, including the right to stand and to vote in municipal election. The national legislation implementing this Directive is the Legislative Decree n. 197 (Implementation of Directive 94/80/EC concerning the exercise of the right to vote and to stand as a candidate in municipal election) of 1996. Under this law, EU citizens can vote for the major and for local bodies such as *consiglio del comune* (city council) and *circonscrizione* (district) of the city where they are registered in the electoral list of voters. They can be elected *consigliere* (councilman) and members of the *giunta del comune* (municipal council); however, they cannot be appointed as *vice-sindaco* (deputy mayor).

In order to vote EU citizens are required to submit a request to the mayor of the Municipality where they reside, 40 days before the elections. They are therefore enrolled in a special electoral registry called *Liste aggiunte* (additional lists).²¹⁷⁸ However, the right to stand as a candidate has been seriously restricted: the non-citizen has the only right to be appointed as city councillor or alderman, never as mayor or deputy mayor, as stated in article 1.5 of Law n. 197 1996.²¹⁷⁹ Art. 2 par. 4 of the Consolidated Law on Immigration n. 286 1998 [*Testo Unico sull'Immigrazione*] states that: “the foreigner legally resident in Italy participates in public local life.” However, this provision is not in itself sufficient to enable third country nationals to vote. It should be noted that Italy has made a reservation to the Strasbourg Convention on the Participation of Foreigners in Public Life at a Local Level. According to Chapter C of the Convention, each

²¹⁷⁶ Renzo Dickmann, *Le sentenze della Corte sull'inefficacia giuridica delle disposizioni "programmatiche" degli Statuti ordinari*, (Federalismi.it) <http://federalismi.it/AppOpenFilePDF.cfm?artid=2760&dpath=document&dfile=10022005120016.pdf&content=Le+sentenze+della+Corte+sull%27inefficacia+giuridica+delle+disposizioni+%27%27programmatiche%27%27+degli+Statuti+ordinari.+Nota+a+Corte+cost.,+n.372/04,+378/04+e+379/04+-+stato+-+dottrina+-+>> accessed 10 July 2017 [Italian].

²¹⁷⁷ D'Auria, *L'immigrazione e l'emigrazione, in Trattato di diritto amministrativo*, a cura di Cassese, 2007, 3rd edition, Milano, Giuffrè, p 237 [Italian].

²¹⁷⁸ Tintori, cit., p. 7.

²¹⁷⁹ S. Bonfiglio, *Interpretazione costituzionale e cittadinanza inclusiva*, [2003] *La cittadinanza europea* [Italian].

Contracting Party should grant every foreign resident the right to vote and to stand for election in local authority election (art. 6). However, Italy, at the time of ratification of this Convention, declared that it will confine the application of this instrument to Chapter “A” and “B”, placing a reservation on Chapter “C”.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Acquisition of Italian citizenship: *Iure sanguinis*, *iure soli*, judiciary ruling on natural paternity/maternity and adoption

Law n. 91 of 1992²¹⁸⁰ lays down rules concerning the Italian citizenship. There are several ways to acquire Italian nationality: automatic acquisition, acquisition by claim and naturalization.²¹⁸¹ In this context, we will focus on naturalization, merely hinting at the other ways of acquiring the citizenship.

Article 1 of the law establishes a principle of *ius sanguinis* by which citizenship is automatically passed on either from an Italian parent, mother or father, to their child. Individuals born in the territory of the Republic will acquire the Italian citizenship only if their parents are unknown, stateless or cannot pass on their citizenship to their child according to the laws of the State of which they are citizens or do not have known parentage on the Italian territory and whose natural citizenship is impossible to ascertain. A further case of automatic acquisition concerns the foreign minor who is recognized or declared Italian by filiation. Lastly, citizenship extends to those foreign minors adopted by an Italian citizen.²¹⁸²

Pursuant Article 4, the acquisition of citizenship by claim is threefold. A foreigner or stateless person whose direct ancestors up to the second degree were Italian citizens by birth can become citizen if at least one of these three requirements are fulfilled: a) service in the Italian armed forces; b) employment by the Italian government, even abroad; c) residence in Italy for at least two years before reaching to the age of 18 years old; d) Foreigners born on the Italian soil can claim Italian citizenship after continuous legal residence in Italy (up to 18 years old) and attendance at a school recognized by the Italian State. The interested person must submit the request one year before turning 18. Lastly, there is a right to claim Italian nationality by the foreign spouse of an Italian citizen, in case certain conditions are met: a) legal residence in Italy for a period of at least two years (or three if the couple is living abroad); b) absence of a criminal

²¹⁸⁰ Law n. 91 (Citizenship Legislation) 1992 [Legge in materia di cittadinanza]. English version available at: <<http://www.refworld.org/docid/3ae6b4edc.html>>

²¹⁸¹ Bruno Barel, *La cittadinanza* a cura di Paolo Morozzo della Rocca, *Manuale breve di Diritto dell'Immigrazione* (Maggioli 2013) 363. [Italian].

²¹⁸² Farnesina, Ministero degli Affari esteri e della Cooperazione Internazionale, (Minister of International and International Cooperation), “Consular services, Citizenship”, <http://www.esteri.it/mae/en/italiani_nel_mondo/serviziconsolari/cittadinanza.html> last accessed on the 22nd of June.

record for serious crimes; c) the applicant should not be considered a threat to national security and public order (Art. 5).

11.2. Acquisition of citizenship by naturalization

Outside the mentioned cases, every foreigner can apply for naturalization. However, it is important to remember that this procedure is discretionary and depending by a decree of the President of the Republic, upon proposal of the Ministry of the Interior, having heard the Council of State. The law prescribes a legal residence in the country for a required minimum of time. The amount depends upon the category of individuals interested: 3 years for descendants of former Italian citizens up to the second degree and for foreigners born on Italian soil; 4 years for citizens of a European Union country; 5 years for stateless persons and refugees, as well as for adult foreigners over the age of 18 adopted by Italian citizens; 7 years for children adopted by Italian citizens before the entry into effect of Law no. 184/1983; 10 years for the others. However, no period of legal residence is required for foreigners who have been employed in the service of the Italian Republic for a period of at least 5 years, also abroad (Art. 9). Importantly, the act is adopted upon the effective and established integration of the foreigner in the Italian society. For this reason, it has been pointed out by the jurisprudence that the naturalization process is largely discretionary in nature. In fact, the concerned administration does not hold itself to the mere checking of the legal requirements, but it attempts to ascertain a true 'Italian sentiment',²¹⁸³ to the point that it includes in its evaluation any element regarded as relevant, even historical facts.²¹⁸⁴ Regarding the competent organ, whether the applicant's residency is in Italy or abroad, the application for citizenship can be submitted either to an authorized police office (*Prefettura*) in Italy or to a competent Italian consulate in the foreign country. Nevertheless, as of 18 of June 2015, applications must be submitted exclusively electronically.²¹⁸⁵

11.3. Dual Citizenship

A clear principle that allows dual nationality has been established in Law n. 91 of 1992, with Article 11. Hence, as of after 15 August 1992, Italian citizenship is no longer lost in concomitance with the acquisition of other citizenship, unless there is an express and formal renunciation by the Italian citizen, except in some exceptional circumstances²¹⁸⁶. To be noted, minors do not lose their Italian citizenship if one or both parents lose it or acquire foreign citizenship.²¹⁸⁷

²¹⁸³ According to Art. 10 of the Law, the applicant must swear to be faithful to the Republic and to observe the Constitution and the laws of the State.

²¹⁸⁴ Bruno Barel 'La cittadinanza', 384-385.

²¹⁸⁵ See Law n. 94 (Public Security Legislation) 2009 [Disposizioni in materia di sicurezza pubblica], Italian version available at: <<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-07-15:94!vig>>. According to the case law, the decision can be appealed only for lack of legitimacy, without any possible scrutiny based on the motivation, if it is logical and coherent, see Cons. Stato, Sez. VI, 25 Marzo 2009, n.1788.

²¹⁸⁶ See Articles 11 and 12 of the Citizenship Law.

²¹⁸⁷ Farnesina, "Consular services, Citizenship".

11.4. The reform of the law: renewed *ius soli* and the new *ius culturae*

In 2013, the Italian Institute of Statistics estimated that almost 80,000 babies were born in Italy from non-Italian parents.²¹⁸⁸ On October 13 2015, the Chamber of Deputies of the Italian Parliament approved a reform to the current legislation on the acquisition of Italian citizenship, which was transmitted to the Senate for its final discussion and approval. The intention of the proposal is to modify the existing legislation on the acquisition of citizenship of minors whose parents are not Italian citizens, granting another particular case for acquiring citizenship by birth (*ius soli*) and an additional one when the child has concluded a study cycle in Italy (the so called *ius culturae*). The first requires a formal declaration from one of the parents, who must be a legal resident,²¹⁸⁹ before the minor reaches the legal age. In the second case the minor is granted citizenship if these conditions are satisfied: being born in Italy or having entered the country before turning twelve years old, together with the regular attendance of at least one cycle of studying for a minimum of five years. Again, one parent, with a valid residence permit, must present the request. Furthermore, the reform introduces a new case of naturalization for foreigner minors, discretionary in nature, which allows those who entered the country before eighteen years old, legally resident in Italy for at least six years and successfully completed a cycle of education.²¹⁹⁰

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. The EU Policy Framework for migrants' integration

Immigrant integration policies fall within competence of the Member State, but the European Union has always been aware of topical role of migrants in economic, social and cultural development of host countries. The key to maximize the benefits of migration is the successful integration of migrants in the fabric of our societies. Therefore, since the 1999 Treaty of Amsterdam the EU has periodically set priorities and goals to drive EU policies, legislative proposals and funding opportunities, aimed at supporting the process of integration, particularly in countries where the flow of immigration is strong, like Italy.²¹⁹¹ The 7 June 2016 Action Plan on the integration of third country nationals is the latest goals setting document published by the European Commission (EC). The Action Plan provides a comprehensive framework to support Member States' efforts in developing and strengthening their integration policies, and describes the concrete measures the Commission will implement in this regard. All the policy actions

²¹⁸⁸ See, Istat, Italian Institute of statistics, English version at: <<http://dati.istat.it/?lang=en>>.

²¹⁸⁹ He or She must hold either a permanent permit of stay or long-term permit.

²¹⁹⁰ Camera dei Deputati, Commissione Affari Costituzionali, Cittadinanza ed Immigrazione, available at: <http://www.camera.it/leg17/465?tema=integrazione_cittadinanza> [Italian], last accessed on the 21st of June.

²¹⁹¹ For an overview of the development of the EU policy work on integration, see European Commission, Migration and Home Affairs, Integration, <https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration_en>.

relevant for the integration area are included in the Plan: pre-departure and pre-arrival measures, education, employment, access to housing and health care, active participation and social inclusion. The instrument provides also tools for strengthening coordination between the different actors working on integration at national, regional and local level.²¹⁹² For the key to integration is the creation of jobs opportunities, the EC main instrument is the European Social Fund (ESF), that aims at supporting inclusion for vulnerable groups through ensuring better jobs. Italy is using ESF funds to increase employment possibilities for young people, including disadvantaged groups, such as migrants.²¹⁹³

12.2. The EU Funding: the Integration Fund (2007-2013) and the Asylum, Migration and Integration Fund (2014-2020)

In order to implement the policy framework, an adequate, coherent and flexible set of financial resources are essential for the realization of the EU objectives on integration of migrants in host societies. For the period 2007-2013, the European Fund for the Integration of non-EU immigrants (EIF) was financed, with a budget of EUR 825 million, as part of the General Programme “Solidarity and Management of Migration Flows” (SOLID).²¹⁹⁴ The EIF aimed at supporting Member States 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 is those 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. Remarkably, more than 300 programs were enacted by Italy.²¹⁹⁵ At the moment, Italy is supported on its integration policy by the “Asylum, Migration and Integration” Fund (AMIF) with a budget of EUR 3.137 billion for 7 years. Not so different from the previous one in the objectives, the AMIF focuses on supporting legal migration to EU States in line with the labour market needs and promoting the effective integration of non-EU nationals.²¹⁹⁶ The Italian Refugee Council has in particular benefited from

²¹⁹² European Commission, European Website on integration, Migrant Integration Information and good practices, EU policy framework for migrant integration, <<https://ec.europa.eu/migrant-integration/the-eu-and-integration/framework>>.

²¹⁹³ European Commission, European Social Fund, The ESF in Italy, <<http://ec.europa.eu/esf/main.jsp?catId=386>>. An excellent example of the merits of this funding project is the “Diamante Impresa” project, whose objective is to increasing migrants’ employment rate, by introducing incentives to get them employed or to start their own business, see The ESF in the News, Immigrants to Italy get help to find jobs or start a business, 13/01/2017, <<http://ec.europa.eu/esf/main.jsp?catId=67&langId=en&newsId=2713>>.

²¹⁹⁴ An action 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, <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund_en>.

²¹⁹⁵ Ministero degli Interni, Fondo Europeo per l’Integrazione di cittadini di paesi terzi (2007-2013) programmi e strumenti, 7, available at: <http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/21/0180_Volumentto_FEI-ANCI-DEF.pdf> [Italian].

²¹⁹⁶ This Fund will also provide financial resources for the activities and future development of the European Migration Network (EMN). EMN aims to respond to EU institutions' and to EU State authorities' and institutions' needs for information on migration and asylum by providing up-to-date, objective, reliable and comparable data, with a view to supporting policy-making. See, <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en>.

the fund. Among the main successful projects focusing on integration two projects are worth mentioning: “Legami Integri”, which supports a wide range of migrants’ inclusions projects and “FAMI-glia”, aimed at promoting family reunifications schemes.²¹⁹⁷

Conclusions

Everyday, Italy has to face a non-stop flow of migrants: the national legislation is trying to comply with the short and long term evolution of this phenomenon, even if it is difficult to keep up with all the needs emerging from this situation.

Due to the high numbers of migrants and asylum seekers arrived in Italy in the last years, the Italian Government has created the “Hotspot system”, in order to implement the new approach launched by the European Agenda for migration in 2015 and to provide first assistance to migrants. Regarding the treatment of EU and non-EU migrants, EU migrants have a more favourable treatment, as they have a right of residence in Italy up to 3 months without any condition, while third country nationals can be admitted in Italy depending on the reason and duration of their stay. Italy introduced in 2007 the Long Term Residence Permit for foreigners legally residing in Italy for more than 5 year, who can prove to have a minimum income and knowledge of Italian language. In Italy there are different authorities dealing with migrants, most of all directorates belonging to Ministry of Interiors, with jurisdiction in migration issues like reception and integration. Talking about numbers, in the last year application for asylum in Italy increased up to 47% compared on 2016. Most of the applications are from men coming from North Africa. As already known, Italy is the 3rd EU country with the largest number of non-nationals living in its territory, and this number is going to increase: in fact, in the first 6 months of 2017 more than 93.000 migrants disembarked on the Italian coast.

Regarding the implementation of ECHR decisions, ECtHR’s judgments have deeply influenced Italian law and practice: Italy breached the provisions of ECHR several times, with violations related on access to justice, right to an interpreter at court, right to information. The new hotspot approach would allow the reception of migrants in structures where operators of the UNHCR and of the IOM can deliver them all of the relevant information.

The shortcomings of the Italian system have been addressed several times by the Court to bring it in line with human rights standards; the full compliance with these standards is a goal still to be reached.

Regarding the implementation of recommendations against racism, Italy’s legislation presents some lacunae. It hasn’t enacted an ad hoc ordinary law on equal treatment and prohibition of discrimination; anyway, there are sector-related pieces of legislation providing for equal treatment between foreigners and Italian citizens (*i.e.*, Bossi Fini Act). We can observe positive actions regarding housing and right to education even if data on access to work, housing and

²¹⁹⁷ Italian Refugee Council (Consiglio Italiano per i Rifugiati), for a complete list of active projects *see*:
<<http://www.cir-onlus.org/it/cosafacciamo/i-nostri-progetti/14-progetti/2233-frontiere-minori>>
[Italian].

scholarization display a strong regional disparity, with the local authorities often being unable to guarantee an effective application of the national and supranational legislation on integration and non-discrimination.

Every migrant, regular or irregular, has the same right to seek health assistance from the Italian State. The inscription to the National Healthcare System is mandatory for legal migrant workers or work-seekers, asylum seekers, and those who have been admitted in Italy for family reunification, humanitarian reasons or adoption. Irregular migrants still have the right to seek from public service “urgent” and “essential” medical care, and the national legislation expressly denied the possibility of reporting them for the mere fact of being illegally on the Italian soil.

All minors, both Italian and foreigners, have the obligation until the age of 16 to take part in the national education system, also through the activation of special language courses. The access to the obligatory educational services is not subject to the obligation of the beneficiary to have a residency permit. Migrant children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs.

Although there have been attempts to expand migrants’ influence in political life at all levels, foreigners do not have the right to vote for the election of the Parliament, neither at regional level. EU citizens can vote for the major and for local bodies. They can be elected as councilman and members of the municipal council.

National law establishes a principle of *ius sanguinis* by which citizenship is automatically passed on either from an Italian parent, mother or father, to their child. Outside the mentioned cases, every foreigner can apply for naturalization: the law prescribes a legal residence in the country for a minimum of time. A clear principle that allows dual nationality has been established in Law n. 91 of 1992. On October 13 2015, the Chamber of Deputies of the Italian Parliament approved a reform to the current legislation on the acquisition of Italian citizenship, which was transmitted to the Senate for its final discussion and approval. The intention of the proposal is to modify the existing legislation granting another particular case for acquiring citizenship by birth (*ius soli*) and an additional one when the child has concluded a study cycle in Italy (*ius culturae*).

Regarding the use of EU Funding on Integration, Italy is using EFS funds to increase employment possibilities for young people, including disadvantaged groups, such as migrants. More than 300 programs were enacted and, at the moment, Italy is supported on its integration policy by the “Asylum, Migration and Integration” Fund (AMIF) with a budget of EUR 3.137 billion for 7 years.

Table of legislation

<p>Italian Constitution</p>	<p>Article 48. <i>“All citizens, male and female, who have attained their majority, are electors. The vote is personal and equal, free and secret. The exercise thereof is a civic duty. An Act of Parliament shall establish the conditions and the procedures under which Italian nationals resident abroad may exercise their right to vote in Italian elections, and shall guarantee its effectiveness. For this purpose a 'Foreign Constituency' shall be created to which Members to both Houses of Parliament shall be elected. The number of seats shall be established by a constitutional law and comply with the criteria enacted by Act of Parliament. The right to vote cannot be restricted except for civil incapacity or as a consequence of an irrevocable penal sentence or in cases of moral unworthiness as laid down by law.”</i></p>
	<p>Article 117. <i>“Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU-legislation and international obligations. The State has exclusive legislative powers in the following subject matters: a) foreign policy and international relations of the State; relations between the State and the European Union; right of asylum and legal status of non-EU citizens; b) immigration; c) relations between the Republic and religious denominations; d) defence and armed forces; State security; armaments, ammunition and explosives; e) the currency, savings protection and financial markets; competition protection; foreign exchange system; state taxation and accounting systems; equalisation of financial resources; f) state bodies and relevant electoral laws; state referenda; elections to the European Parliament; g) legal and administrative organisation of the State and of national public agencies; h) public order and security, with the exception of local administrative police; i) citizenship, civil status and register offices; l) jurisdiction and procedural law; civil and criminal law; administrative judicial system; m) determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory; n) general provisions on education; o) social security; p) electoral legislation, governing bodies and fundamental functions of the Municipalities, Provinces and Metropolitan Cities; q) customs, protection of national borders and international prophylaxis; r) weights and measures; standard time; statistical and computerised co-ordination of data of state, regional and local administrations; works of the intellect;</i></p>

	<p><i>s) protection of the environment, the ecosystem and cultural heritage.</i></p> <p><i>Concurring legislation applies to the following subject matters: international and EU relations of the Regions; foreign trade; job protection and safety; education, subject to the autonomy of educational institutions and with the exception of vocational education and training; professions; scientific and technological research and innovation support for productive sectors; health protection; nutrition; sports; disaster relief; land-use planning; civil ports and airports; large transport and navigation networks; communications; national production, transport and distribution of energy; complementary and supplementary social security; harmonisation of public accounts and co-ordination of public finance and the taxation system; enhancement of cultural and environmental assets, including the promotion and organisation of cultural activities; savings banks, rural banks, regional credit institutions; regional land and agricultural credit institutions. In the subject matters covered by concurring legislation legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation.</i></p> <p><i>The Regions have legislative powers in all subject matters that are not expressly covered by State legislation.</i></p> <p><i>The Regions and the autonomous provinces of Trent and Bolzano take part in preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities. They are also responsible for the implementation of international agreements and EU measures, subject to the rules set out in State law which regulate the exercise of subsidiary powers by the State in the case of non-performance by the Regions and autonomous provinces.</i></p> <p><i>Regulatory powers shall be vested in the State with respect to the subject matters of exclusive legislation, subject to any delegations of such powers to the Regions. Regulatory powers shall be vested in the Regions in all other subject matters. Municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them.</i></p> <p><i>Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women.</i></p> <p><i>Agreements between a Region and other Regions that aim at improving the performance of regional functions and that may also envisage the establishment of joint bodies shall be ratified by regional law.</i></p> <p><i>In the areas falling within their responsibilities, Regions may enter into agreements with foreign States and with local authorities of other States in the cases and according to the forms laid down by State legislation?</i></p>
	<p>Article 121.</p> <p><i>“The organs of the Region are: the Regional Council, the Regional Executive and its President.</i></p> <p><i>The Regional Council shall exercise the legislative powers attributed to the Region as well as the other functions conferred by the Constitution and the laws. It may submit bills to Parliament.</i></p>

	<p><i>The Regional Executive is the executive body of the Region.</i></p> <p><i>The President of the Executive represents the Region, directs the policy-making of the Executive and is responsible for it, promulgates laws and regional statutes, directs the administrative functions delegated to the Region by the State, in conformity with the instructions of the Government of the Republic.”</i></p>
	<p>Article 122.</p> <p><i>“The electoral system and the cases of ineligibility and incompatibility of the President, the other members of the Regional Executive and the Regional councillors shall be established by a regional law in accordance with the fundamental principles established by a law of the Republic, which also establishes the term of elective offices.</i></p> <p><i>No one may belong at the same time to a Regional Council or to a Regional Executive and to one of the Houses of Parliament, to another Regional Council, or to the European Parliament.</i></p> <p><i>The Council shall elect a President amongst its members and a Bureau.</i></p> <p><i>Regional councillors are not answerable for the opinions expressed and votes cast in the exercise of their functions. The President of the Regional Executive shall be elected by universal and direct suffrage, unless the regional statute provides otherwise. The elected President shall appoint and dismiss the members of the Executive.”</i></p>
	<p>Article 138.</p> <p><i>“Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting.</i></p> <p><i>The said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one fifth of the members of a House or five hundred thousand electors or five region councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes.</i></p> <p><i>A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members.”</i></p>
<p>Statute of the Region of Tuscany</p>	<p>Article 3: General Principles.</p> <p><i>“1. The activities of the regional authority are based on the principles of the Constitution of Italy and the agreements between States on the European Constitution.</i></p> <p><i>2. The objectives of the regional authority include enabling individuals to achieve the full potential of their development, and to foster the principles of freedom, justice, equality, solidarity and respect of personal dignity and human rights.</i></p> <p><i>3. The regional authority upholds the principles of social and institutional subsidiarity; it seeks policy integration in autonomous municipalities and recognizes and fosters social cooperation and its free development.</i></p> <p><i>4. The regional authority guarantees participation in regional political issues to all those who reside in Tuscany and to Tuscans resident outside Italy.</i></p> <p><i>5. The regional authority fosters the right of all individuals who reside in Tuscany and Tuscans resident abroad to participate in regional policy issues .</i></p>

	<p>6. <i>Within the principles of the Constitution of Italy, the regional authority favours extending voting rights to immigrants.</i>”</p>
<p>Statute of the Region of Emilia-Romagna</p>	<p>Article 15: Participation Rights.</p> <p>“1. <i>Within the framework of the constitutionally recognized faculties, the Region recognizes and guarantees to all those who reside in a municipality of regional territory the rights of participation contemplated in this Title, including the right to vote in referendums and other Forms of popular consultation.</i></p> <p>2. <i>The Region recognizes and promotes democratic forms of association and self-management in the respect of their autonomy and assures organizations that express widespread or collective interests the right to make known and publicly exchange their opinions and assessments on matters of regional competence, through appropriate consultation mechanisms.</i></p> <p>3 <i>Any person carer of general or private interest as well as bearers of interest in an associate form that may be prejudiced by a regional act may have the right to intervene in the process of formation of the same, in accordance with the rules laid down by the By-Laws and the Laws regional.</i></p> <p>4 <i>The regional laws define the limits and the rules of implementation of the direct democracy institutes covered in this Title.</i>”</p>
<p>Law n. 91/1992 (Citizenship Law)</p>	<p>Article 1</p> <p>“1.The following shall be citizens by birth: (a)children whose father or mother are citizens; (b)persons born in the territory of the Republic both of whose parents are unknown or stateless, or who do not have the citizenship of their parents under the law of the State to which the latter belong. 2. Children found in the territory of the Republic whose parents are unknown shall be deemed citizens by birth in the absence of proof of their possession of any other citizenship.”</p>
	<p>Article 2</p> <p>“1.Recognition or judicial declaration of the filiation of a person while he or she is still a minor shall determine the person's citizenship in accordance with the provisions of the present Act. 2. If a person whose filiation is recognized or declared is of full age, he or she shall retain his or her citizenship status, but may declare, within one year of such recognition or judicial declaration, or of the declaration that foreign legislation has effect, that he or she chooses the citizenship determined by the filiation. 3. The provisions of this article shall also apply to children the paternity or maternity of whom cannot be declared, provided their right to maintenance has been judicially recognized.”</p>
	<p>Article 3</p> <p>“1. A foreign minor adopted by an Italian citizen shall acquire citizenship.2. The provision of paragraph 1 shall also apply to persons adopted prior to the date of entry into force of this Act. 3. If the adoption of an adopted person is revoked by that person, he or she shall loose Italian citizenship, provided he or she possesses or has reacquired another citizenship. 4. In other cases or</p>

	<p>revocation the adopted person shall retain Italian citizenship. However, if the adoption is revoked while the adopted person is of full age, he or she may, within one year of such revocation, renounce Italian citizenship, provided he or she possesses or has reacquired another citizenship.”</p>
	<p>Article 4 “1.An alien or stateless person whose father or mother, or one of whose direct ascendants in the second degree were citizens by birth shall become a citizen: (a)if he or she actually performs military service for the Italian State, having previously expressed the wish to acquire Italian citizenship; (b)if he or she obtains public employment in the service of the State, including service abroad, and declares the wish to obtain Italian citizenship; (c)if, having reached full age, they have had legal residence for at least two years in the territory of the Republic and declare, within one year of attaining their majority, that they wish to obtain Italian citizenship. 2. Aliens born in Italy who have been legally resident in Italy up to the attainment of their majority shall become citizens if, within one year of that date they declare the wish to obtain Italian citizenship.”</p>
	<p>Article 5 “The alien or stateless spouse of an Italian citizen shall acquire Italian citizenship if he or she has been legally resident for at least six months in the territory of the Republic, or for three years after the date of the marriage, if the latter has not been dissolved or annulled or has not ceased to have civil effects and there is no legal separation.”</p>
	<p>Article 9 “1.Italian citizenship may be granted by Order of the President of the Republic upon the recommendation of the Minister for the Interior, following consultation of the Council of State, to: (a)aliens whose father or mother or one of whose direct ascendants in the second degree have been citizens by birth, or who were born in the territory of the Republic and who, in both these cases, have been legally resident in the territory for at least three years, subject to the provisions of article 4, paragraph 1, subparagraph (c); (b)aliens of full age who have been adopted by an Italian citizen and who have been legally resident in the territory of the Republic for at least five years after their adoption; (c)aliens who, for at least five years, have been in the service of the State, including service abroad; (d)citizens of a State member of the European Community who have been legally resident for at least four years in the territory of the Republic; (e)stateless persons who have been legally resident for at least five years in the territory of the Republic; (f)aliens who have been legally resident for at least ten years in the territory of the Republic. 2. By an Order of the President of the Republic made following consultation of the Council of State and consideration by the Council of Ministers, upon the recommendation of the</p>

	Minister for the Interior and in agreement with the Minister for Foreign Affairs, citizenship may be granted to an alien who has rendered eminent services to Italy, or where its granting is in the special interest of the State.”
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Introduction

The current issues of migration did not accidentally and unexpectedly intervened into a life of Latvians. Nevertheless, in the Latvian legal system, various regulation on migration exists; various institutions are established and officials are currently working together with the international community on modern migration issues. But is it all so effective? Do all not-directly oriented institutions are able to provide services to migrants? What are the recent cases in the field of migration concerning Latvia or Latvians? And what is the status of foreign students in our country? These were the additional questions that we've asked ourselves before the research. The structure of the report is strictly based on the provided questions by the international coordinators. In some topics, we've managed to highlight subtopics to help readers to understand information in easier and in more appropriate way. All translations of legal acts that we've provided here are performed by official institution - State Language Centre (Valsts valodas centrs).

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. National regulations governing asylum

The right to asylum in the Republic of Latvia is regulated by the Asylum Law²¹⁹⁸, enacted on 17 December 2015 with subsequent amendments on 20 April 2017²¹⁹⁹. Subordinate questions are regulated by the Regulations of the Cabinet of Ministers²²⁰⁰ issued on the basis of the Asylum

²¹⁹⁸ The Asylum Law. Published: Latvijas Vēstnesis, 15 January 2016, No. 2.

²¹⁹⁹ Amendments to the Asylum Law. Published: Latvijas Vēstnesis, 10 May 2017, No. 90.

²²⁰⁰ For instance, Regulations of the Cabinet of Ministers No. 320 'Regulations on the Temporary Travel Document'. Published: Latvijas Vēstnesis, 15 June 2017, No. 119.; Regulations of the Cabinet of Ministers No.458

Law. The Asylum Law is *lex specialis* towards the Immigration Law²²⁰¹, which determines general procedures for the entry, residence, transit, exit and detention of foreigners, as well as the procedures by which foreigners are kept under temporary custody in the Republic of Latvia and returned from it in order to ensure the implementation of migration policy conforming with the norms of international law and the State interests of Latvia. The Asylum Law may be applied from the moment the third country national submits a request for granting a status of refugee or alternative status till the respective decision is made.

The existing Asylum Law has replaced the previous Law due to the necessity to transpose the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection²²⁰², the 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 protection²²⁰³ and to pursue Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013²²⁰⁴.

1.2. Procedure for requesting asylum and responsible authorities

According to Article 6 of the Asylum Law a person is entitled to express a wish to acquire refugee or alternative status in oral form or in writing. A person shall submit an application regarding the granting of refugee or alternative status in person to the State Border Guard: 1) at the border crossing point or in the border crossing transit zone before entering the Republic of Latvia; 2) in the unit of the State Border Guard, if the person is in the Republic of Latvia. The State Border Guard shall draw up an orally expressed wish to acquire refugee or alternative status in the presence of the asylum seeker in writing. If a person has expressed the wish to acquire refugee or alternative status to the Office, the State Police or the Latvian Prison Administration, they shall, without delay but not later than within three working days, contact the State Border Guard so that the asylum seeker could submit an application. An unaccompanied minor shall express a wish to acquire refugee or alternative status in accordance with the procedures laid down in the Asylum Law. During the asylum procedure the personal and property relations of the unaccompanied minor shall be represented by the Orphan's Court or a guardian appointed

'Regulations on the Asylum Seeker's Personal Documents and Procedure of Issuance'. Published: Latvijas Vēstnesis, 19 July 2016, No. 137.; Regulations of the Cabinet of Ministers No. 296 'Regulations on the Informational System on the Asylum Seekers Fingerprints'. Published: Latvijas Vēstnesis, 19 May 2016, No. 96.

²²⁰¹ The Immigration Law. Published: Latvijas Vēstnesis, 20 November 2002, No. 169.

²²⁰² The 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. Published: Official Journal of the European Union, 29 June 2013, No. L 180.

²²⁰³ The 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. Published: Official Journal of the European Union, 29 June 2013, No. L 180.

²²⁰⁴ Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. Published: Official Journal of the European Union, 29 June 2013, No. L 180.

thereby, or the head of a child care institution if the head of a child care institution, on the basis of an assessment of the personal situation provided by the unaccompanied minor, deems that the minor needs international protection. He or she has the right to submit an application on behalf of the minor.

After receipt of an application or after reception of an asylum seeker in accordance with 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 person²²⁰⁵ (hereinafter – Regulation (EU) No. 604/2013), the State Border Guard shall: 1) register the application of the asylum seeker no later than within three working days after receipt thereof. If applications are concurrently submitted by a large number of third country nationals or stateless persons and it is not possible to conform to the deadline of three working days, the time period for registration of the application may be extended up to 10 working days; 2) take fingerprints of each asylum seeker who is at least 14 years of age in order to verify his or her identity; 3) identify the asylum seeker and ascertain his or her nationality.

In identifying an asylum seeker and ascertaining his or her nationality, the State Border Guard has the right: 1) to perform inspection of the asylum seeker and his or her possessions, and also to seize objects and documents if they may have a significance in examination of the application or if they may pose a threat to the asylum seeker or those around him or her. Minutes are drawn up regarding these activities. Inspection of the asylum seeker shall be performed by an official of the State Border Guard of the same sex, observing the principles of human dignity, and also physical and psychological inviolability. Inspection of a minor and his or her possessions shall be performed in the presence of a representative of such person; 2) to specify expert-examinations and inspections of documents, objects or language or medical and other expert-examinations and inspections; 3) to take a photograph of the asylum seeker.

In order to ensure that the asylum seeker is able to exercise the rights laid down for him or her in this Law and to comply with the obligations provided for him or her, the State Border Guard and the Office shall inform him or her, in timely manner, regarding the asylum procedure, time periods, his or her rights and obligations during such procedure, regarding the potential consequences regarding a variety of aspects of the asylum procedure. An official of the State Border Guard and the Office shall provide the above-mentioned information to the asylum seeker in writing in a language which he or she understands or is reasonably supposed to understand. If necessary, the official of the State Border Guard and the Office shall provide the above-mentioned information also in oral form.

If the application is submitted by an unaccompanied minor, the Orphan's Court together with the social service office of the local government, the State Border Guard, and the Office shall take measures to look for family members of the minor and ascertain the possibilities of

²²⁰⁵ 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. Published: Official Journal of the European Union, 29 June 2013, No. L 180.

returning such person to their family. The Orphan's Court shall immediately decide on appointing a guardian for the unaccompanied minor. The Orphan's Court shall take a decision to appoint a guardian, finding out the opinion of the Office. Primarily an unaccompanied minor shall be provided care with a guardian or a foster family.

1.3. Personal Document and accommodation of an Asylum Seeker

According to Article 8 of the Asylum Law an asylum seeker shall hand his or her personal identity and travel documents over to the State Border Guard until the time when the final decision is taken to grant or to refuse to grant refugee or alternative status, except where the asylum seeker has another legal basis to reside in the Republic of Latvia.

Article 9 of the Asylum Law entitles an asylum seeker to be accommodated at the accommodation centre for asylum seekers, which is a unit of the Office, where an asylum seeker does not have sufficient resources to ensure living arrangements conforming to his or her health condition during the asylum procedure.

1.4. Procedure for examination an asylum request and responsible authorities

After receipt of an application or after reception of an asylum seeker the State Border Guard, according to Article 23 of the Asylum Law, conducts negotiations with the asylum seeker in order to obtain information necessary for determination of the Member State. This will be responsible for examination of the application in accordance with Regulation (EU) No. 604/2013. It entails an initial interview with the asylum seeker, except the case referred to in Article 35 of the Asylum Law, in order to obtain information regarding his or her individual situation and circumstances, which is necessary in order to take a decision to accept the application for examination or to leave without examination, and basic information regarding the motives for requesting international protection. The State Border Guard shall submit all information regarding the asylum seeker at its disposal, including the information obtained in negotiation and the initial interview, and the application to the Office within 10 working days or within two working days if the application has been submitted at the border crossing point or in the border crossing transit zone.

No later than within one month from the day when a decision was taken to accept the application for examination, the Office shall conduct a personal interview with the asylum seeker. This is in relation to his or her persecution or threats of serious harm and also to obtain information necessary in order to assess the possibility of examining the application in accelerated procedure. If it is not possible to conduct the personal interview within this time period, the head of the Office may extend the time period for the interview by another month. The Office may send the asylum seeker, with consent, to a medical expert-examination which might point to previous persecution performed or serious harm inflicted, if the Office believes it to be essential in order to take a decision to grant refugee or alternative status or to refuse to grant it according to Article 27 of the Asylum Law.

According to Article 32 of the Asylum Law the application of each asylum seeker shall be examined individually, objectively and fairly, using accurate and updated information from

different sources, for example, from the European Asylum Support Office and United Nations High Commissioner for Refugees, and from relevant international human rights organisations, regarding general situation in the country of origin of the asylum seeker, and, if necessary, in countries, which he or she has crossed. An official authorised by the head of the Office shall take a decision to: 1) accept the application for examination or to leave it without examination; 2) grant or refuse to grant refugee or alternative status; 3) transfer the asylum seeker to the responsible Member State, which will examine the application submitted in the Republic of Latvia according to Regulation (EU) No. 604/2013; 4) discontinue examination of the application; 5) resume examination of the application or to refuse to resume examination of application. According to Article 29 of the Asylum Law the application shall be examined and a decision to grant refugee or alternative status or to refuse to grant it shall be taken within three months from the day when the personal interview with the asylum seeker was conducted, but not later than within six months after registering the application. The State Secretary of the Ministry of the Interior or his or her authorised person may extend the time period for another nine months, if: 1) assessment of the application is related to complex factual or legal issues; 2) applications have been simultaneously submitted by a large number of third country nationals or stateless persons and it is not possible to conform to the stated deadline.

A decision to leave the application without examination according to Article 30 of the Asylum Law shall be taken, if at least one of the following conditions exists: 1) another Member State has granted international protection to the asylum seeker; 2) a country, which is not a Member State, is regarded as the first country of asylum of the asylum seeker; 3) a country, which is not a Member State, is regarded as the safe third country for the asylum seeker; 4) the asylum seeker has submitted a repeat application in the Republic of Latvia after a decision to refuse to grant refugee or alternative status has entered into effect, and such circumstances are not referred to therein, which would have significantly changed for the benefit of the asylum seeker and might serve as justification for granting refugee or alternative status.

Furthermore, a decision to accept an application for examination, shall be taken if: 1) the conditions mentioned above do not exist; 2) information has been received from the competent authority of another Member State in accordance with Regulation (EU) No. 604/2013 regarding refusal to take responsibility for examination of the application or the Republic of Latvia is responsible for examination of an application submitted in another Member State and the asylum seeker has been admitted back to the Republic of Latvia; 3) it is not possible to ensure the fulfilment of the previously mentioned conditions.

In examining the application, firstly, a decision shall be taken to grant refugee status to the asylum seeker in accordance with the provisions of the Asylum Law, but if they do not apply to the asylum seeker – to grant alternative status. In examining the application following shall be taken into account: 1) the facts which relate to the country of origin of the asylum seeker during the period when a decision is being taken to grant refugee or alternative status or to refuse to grant it, also the laws and regulations of the country of origin and the manner in which they are applied; 2) the explanations provided and the documents submitted by the asylum seeker; 3) the individual state and circumstances of the asylum seeker. The condition that the asylum seeker

has special procedural or reception needs in itself shall not affect the assessment of the application; 4) results of the medical expert-examination, if such has been performed; 5) whether activities of the asylum seeker, since leaving the country of origin, have not been aimed towards creating conditions for the granting of refugee or alternative status; 6) whether it is justifiably expected that the asylum seeker would accept the protection of such other country where he or she might request citizenship.

According to Article 33 of the Asylum Law accelerated procedures for examination of an application may be applied if at least one of the following conditions exists: 1) in submitting the application, the asylum seeker has indicated only such circumstances, which may not be the grounds for taking a decision to grant refugee or alternative status; 2) the asylum seeker is from a safe country of origin; 3) the asylum seeker has misled the institutions involved in the asylum procedure, providing false information or documents or not submitting corresponding information or documents confirming his or her identity or nationality; 4) it is possible that the asylum seeker has maliciously destroyed or left a personal identification document or travel document, which could have helped to determine his or her identity or nationality; 5) the asylum seeker has provided inconsistent, controversial, obviously false or obviously incredible information, which is in contradiction with sufficiently verified information of the country of origin and causes grounds for an assumption that his or her claim in relation to persecution or threats of serious harm are not convincing; 6) the asylum seeker has submitted a repeat application, which has been accepted for examination; 7) the asylum seeker has submitted the application mainly in order to hinder or prevent his or her removal from the Republic of Latvia; 8) the asylum seeker has illegally entered or illegally extended his or her residence in the Republic of Latvia and has not submitted the application sooner without justified reason; 9) the asylum seeker does not agree to taking of fingerprints; 10) the asylum seeker causes threat to national security or public order and safety or has been removed from the Republic of Latvia, because he or she has caused threat to national security or public order and safety and, in accordance with the provisions of the Immigration Law, has been included in the list of such foreigners who are prohibited from entering in the Republic of Latvia.

1.5. Decision to Discontinue Examination of the Application

A decision to discontinue examination of the application according to Article 34 of the Asylum Law shall be taken, if: 1) a request of the asylum seeker to discontinue examination of the application has been received at the Office; 2) there is a substantial reason to assume that the asylum seeker has indirectly revoked his or her application or refused from it, because he or she has not fulfilled the obligations or has escaped from the State Border Guard accommodation premises for asylum seekers. A decision to discontinue examination of the application shall be taken not later than within three months from the day when any of the circumstances referred above became known, unless the asylum seeker has proved in a timely manner that it has happened due to circumstances independent from him or her.

The asylum seeker has the right, within nine months from the day when the decision to discontinue examination of the application has entered into effect, to request that examination of

his or her application is resumed. This time period shall not apply to cases when the Republic of Latvia, in accordance with Regulation (EU) No. 604/2013, is accepting back an asylum seeker who has revoked his or her application during its examination, prior to taking of a decision to grant refugee or alternative status or to refuse to grant it, and has drawn up an application in another Member State or is residing in the territory of another Member State without a residence permit. An official authorised by the head of the Office shall take a decision to resume examination of the application or to refuse to resume examination of the application within 10 working days after a request of the asylum seeker to resume examination of his or her application was received. Examination of the application shall be resumed and continued from such stage of the asylum procedure, in which it was discontinued.

1.6. Procedure for granting refugee or alternative status and responsible authorities

According to Article 37 of the Asylum Law, the conditions for granting refugee status are a third-country national who, on the basis of justified fear from persecution (several activities, also an accumulation of violations of human rights, which are sufficiently serious to affect an individual - physical or mental abuse, including sexual abuse; legal and administrative measures or also police or judicial measures; a disproportionate or discriminatory charge or a disproportionate or discriminatory punishment; refusal of legal appeal; a charge or punishment for the refusal to perform military service during a conflict; activities which are particularly aimed towards gender or towards minors) due to his or her race, religion, nationality, membership of a specific social group or his or her political views, is located outside the country where he or she is a national, and is unable or due to such fear does not wish to accept the protection of the country where he or she is a national, or a stateless person, who being outside his or her former country of permanent residence is unable or unwilling to return there due to the same reasons and to whom the conditions of Section 45 of this Law do not apply, may apply for refugee status.

According to Article 45 of the Asylum Law refugee status shall not be granted if at least one of the following conditions exists: 1) the person is receiving protection or aid from other structures of the United Nations Organisation, except the United Nations High Commissioner for Refugees. If the above mentioned protection or aid to the person is suspended due to any reason and if the status thereof has not been specifically determined in resolutions of the General Assembly of the United Nations, the provisions shall apply thereto; 2) the competent authorities of the Republic of Latvia have acknowledged that the person has the rights and obligations, which are applicable to citizens of Latvia, or rights or obligations equivalent thereto; 3) the person has committed a crime against peace, a war crime or a crime against humanity, as defined in international documents; 4) prior to arrival in the Republic of Latvia the person has committed a crime, which is not of political nature and which in accordance with the law of the Republic of Latvia should be recognised as a particularly serious crime; 5) the person has performed activities, which are aimed against the objectives and principles of the United Nations Organisation; 6) there is reason to believe that the person poses a threat to national security; 7)

the person, who has been recognised as guilty of committing a particularly serious crime by a court judgement of the Republic of Latvia, poses a threat to the society of Latvia.

Simultaneously, as stipulated in Article 40 of the Asylum Law the conditions for granting alternative status are a third-country national or a stateless person who cannot be granted refugee status. They may apply for alternative status if there is a reason to believe that he or she may be exposed to serious harm (imposition of death penalty to an asylum seeker; torture, inhuman or degrading attitude towards an asylum seeker or inhuman or degrading punishment; serious and individual threats to the life or health of a civilian due to widespread violence in case of international or domestic armed conflicts) after return to their country of origin and due to this reason is unable or does not wish to accept the protection of the above mentioned country.

According to Article 46 of the Asylum Law alternative status shall not be granted if at least one of the following conditions exists: 1) the person has committed a crime against peace, a war crime or a crime against humanity, as defined in international documents; 2) the person has committed a crime which, in accordance with the law of the Republic of Latvia, is recognised as a serious or an especially serious crime; 3) the person has performed activities, which are aimed against the objectives and principles of the United Nations Organisation; 4) there is a reason to believe that the person poses a threat to national security or public order and safety; 5) prior to the arrival in the Republic of Latvia the person has committed a crime, for which the deprivation of liberty would be applied, if it had been committed in the Republic of Latvia and has left his or her country of origin solely in order to avoid punishment for this crime.

Article 10 of the Asylum Law stipulates that a person whose application has been examined and in relation to whom a decision has been taken to refuse to grant refugee or alternative status, a decision to discontinue examination of the application or a decision to refuse to resume examination of the application, shall be issued a voluntary return decision or a removal order shall be taken in relation to such person in accordance with the procedures of the Immigration Law, except the case when he or she has another legal basis to reside in the Republic of Latvia. The asylum seeker or his or her representative may, according to Article 48 of the Asylum Law, appeal the following decisions of an official authorised by the head of the Office to the Administrative District Court according to the address of accommodation of the asylum seeker.

According to Article 55 of the Asylum Law a person shall lose refugee status if he or she: 1) has voluntarily re-accepted the protection of his or her country of citizenship; 2) has voluntarily re-acquired citizenship after he or she had lost it; 3) has acquired citizenship of Latvia or another country and enjoys the protection of the new country of citizenship; 4) has returned to the country, which he or she had left in fear of persecution; 5) cannot refuse the protection of his or her country of citizenship because the circumstances, due to which he or she was recognised as refugee, do not exist anymore; 6) can return to his or her former country of permanent residence as a stateless person because the circumstances, due to which he or she was recognised as refugee, do not exist anymore.

Article 56 of the Asylum Law stipulates that refugee status shall be revoked for a person, if at least one of the following conditions exists: 1) the conditions of Article 45(1) apply to such

person; 2) such person has provided false information or has not provided information, which had a crucial role in granting refugee status, including using falsified documents.

In parallel, according to Article 57 of the Asylum Law a person shall lose alternative status, if the circumstances, due to which he or she was granted alternative status, do not exist anymore or have changed so much that such person does not need the protection of the Republic of Latvia anymore. Alternative status shall be revoked for a person, if at least one of the following conditions exists: 1) the conditions of Article 46(1) apply to such person; 2) such person has provided false information or has not provided information, which had a crucial role in granting alternative status, including using falsified documents.

According to Article 60 of the Asylum Law a person, who has lost refugee or alternative status or for whom such status has been revoked, shall leave the Republic of Latvia within two months from the day of entering into effect of the relevant decision, if he or she has no other legal grounds for residing in the Republic of Latvia.

2. How does your national law regulate immigration from EU member states and non-EU states?

The general legal framework for immigration in Latvia is provided by Immigration Law (*Imigrācijas likums*) although according to Article 2¹ only several articles of this law are also applicable to the citizens of EU member states. In Article 2,¹ Section 2 it is set out that the Cabinet of Ministers must provide a separate set of procedures for the entry and residence in the Republic of Latvia of citizens of the Union and their family members.

According to the terminology of the Immigration Law (*Imigrācijas likums*) (Article 1) a citizen of the Union is a person who is a citizen of either one of the EU member states, European Economic Area states or is a citizen of the Swiss Confederation. On this basis the Cabinet of Ministers has adopted regulation No. 675 of August 30 2011 "Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members" (*Ministru kabineta 2011.gada 30.augusta noteikumi Nr.675 'Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijā Republikā'*) (hereinafter – Regulation No. 675). Provisions of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 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 (hereinafter – Directive 2004/38) have been transposed in Regulation No. 675.

According to Article 16 of Regulation No. 675, a Union citizen and his or her family members are entitled to enter and reside within the Republic of Latvia for up to three months, as of the first day of the entry, provided that he or she is in possession of a valid travel document and he or she does not pose a genuine, present and serious threat to public security, public policy or public health. If the said family member is not a citizen of Union and would need a visa in order

to enter and reside in the Republic of Latvia he or she still benefits from better provisions than those who are not family members to a citizen of Union. For instance, according to Article 21 of Regulation No. 675 the authorities should not charge the state fee for processing the visa application.

When a citizen of the Union wishes to reside in the Republic of Latvia for more than three months (as of the first day of entry) he or she must comply with the provisions set out in the third chapter of Regulation No. 675. According to Article 25 he or she shall register with the Office and shall be granted a registration certificate. However, Article 26 provides some exceptions when the registration is not necessary - accordingly it shall not be necessary to register with the Office, where he or she is in possession of a valid travel document and he or she: 1) resides in the Republic of Latvia for up to six months per year, as of the first day of entry, where the purpose of such residence is to establish an employment legal relationship in the Republic of Latvia. Where, upon expiry of the period of six months, the Union citizen has not yet established an employment legal relationship, he or she and his or her family members may continue to reside in the Republic of Latvia without being registered with the Office for as long as there is evidence that the Union citizen is continuing to seek employment and that he or she has a genuine chance of being employed; 2) is employed in the Republic of Latvia, but resides in another European Union Member State, to which he or she returns at least once per week; 3) is a student of an educational institution registered with the Register of Education Institutions of the Republic of Latvia and his or her intended period of residence in the Republic of Latvia does not exceed one year.

According to Article 27 a citizen of the Union is entitled to receive a registration certificate, provided that he or she satisfies at least one of the following conditions: 1) he or she is employed in the Republic of Latvia in the status of an employee; 2) he or she is a self-employed person in the Republic of Latvia; 3) he or she is a service provider or an employee of a person established in a Member State that provides services in the Republic of Latvia; 4) he or she is a student of an educational institution registered with the Register of Education Institutions of the Republic of Latvia and he or she has sufficient resources for himself or herself not to become a burden on the social assistance system, as well as a valid document issued by a Member State and certifying that the person is entitled to receive in the Republic of Latvia the necessary medical or emergency medical assistance, or he or she holds a health insurance policy; 5) he or she has sufficient resources for himself or herself not to become a burden on the social assistance system, as well as a valid document issued by a Member State, certifying that the person is entitled to receive in the Republic of Latvia the necessary medical or emergency medical assistance, or he or she holds a valid health insurance policy; 6) he or she is a spouse of a Latvian citizen or non-citizen or of a foreigner with the permanent residence permit in the Republic of Latvia, and he or she has sufficient resources for himself or herself not to become a burden on the social assistance system as well as a valid document issued by a Member State, certifying that the person is entitled to receive in the Republic of Latvia the necessary medical or emergency medical assistance, or he or she holds a health insurance policy; 7) trusteeship or guardianship has been established in respect of him or her in the Republic of Latvia.

The list of documents that a citizen of the Union needs to present in order to request a registration certificate is laid out in Article 28 of Regulation No. 675.

In several circumstances, a citizen of the Union can also obtain a permanent residence card. According to Article 30 of Regulation No. 675 a citizen of the union has this right if he or she: 1) immediately prior to applying for the permanent right of residence, has resided legally in the territory of the Republic of Latvia for a continuous period of five years; 2) prior to becoming a citizen of a Member State, has been a citizen or non-citizen of Latvia and has submitted the documents for requesting the permanent residence card within 30 days after the decision regarding the loss of the status as a citizen or non-citizen of Latvia; 3) is a minor child of a citizen of Latvia, a non-citizen of Latvia, a Union citizen holding a permanent residence card, a family member of a Union citizen holding a permanent residence permit or a foreigner holding a permanent residence permit.

Although even if a person has not met the condition of having resided in the territory of the Republic of Latvia in the status of an employee or a self-employed person for a continuous period of less than five years he or she still might have the right to obtain a permanent residence card. Those exceptions are laid out in Article 31 of Regulation No. 675 and include such cases as when the person at the time of ceasing his or her professional activities, has reached the age of retirement specified in regulatory enactments of the Republic of Latvia or has ceased paid employment, to go into retirement prematurely if he or she has worked in the Republic of Latvia for at least the last 12 months and has resided in the Republic of Latvia for a continuous period of more than three years. It also includes cases when the person has resided in the Republic of Latvia for more than two continuous years and terminated employment in the Republic of Latvia due to irreversible incapacity for work as well as cases when the person after three years of continuous employment relationship and residence in the Republic of Latvia, is working in an employed or self-employed capacity in another Member State, while retaining the place of residence in the Republic of Latvia, to which he or she returns each day or at least once a week.

Comparatively the migration from non-Union states are regulated more strictly. Article 4, Section 1 of the Immigration Law (*Imigrācijas likums*) states that in order to enter and reside in the Republic of Latvia the foreigner must have: a valid travel document, a valid visa in a valid travel document, a residence permit issued by the Republic of Latvia or a residence permit of a long-term resident of the European Union, health insurance (although the Cabinet may set out cases when a foreigner may enter and reside in the Republic of Latvia without a health insurance policy), no other obstacles laid down in the law or other laws and regulations regarding entry into the Republic of Latvia; the necessary financial means in order to reside in the Republic of Latvia or another Schengen Agreement Member State and return to the country of residence or to depart to a third country which he or she has the right to enter. At the same time law provides some exceptions. According to Section 2 of Article 4, a visa or residence permit is not necessary for a foreigner who enters and resides in accordance with the procedures laid down in international treaties binding on the Republic of Latvia regarding the abolition of visa requirement or Council Regulation (EC) No. 539/2001 of 15 March 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, use a United Nations passport (Laissez-passer), Vatican passport or European Commission passport as a travel document, is a holder of a properly issued seaman's book and has disembarked ashore while the ship is in port and stays in the administrative territory of the port city, or is a holder of the certificate of a crew member issued in accordance with the International Convention on Civil Aviation of 7 December 1944, enters the Republic of Latvia within the scope of his or her work duties in order to take the next flight and stays in the administrative territory of the city nearest to the airport.

According to the Immigration Law (*Imigrācijas likums*) (Article 1) a visa is a sticker of a certain design affixed in a travel document, it shall certify that a person has requested an authorisation to enter and stay in the Republic of Latvia or in any Schengen Member State, or in several Schengen Member States or cross their territory in transit, and that the institution which has issued the visa in accordance with the competence thereof, does not see any obstacle to the fact that the person enters and stays in the Republic of Latvia or in any Schengen Member State, or in several Schengen Member States during the period of time indicated in the visa and for the number of times indicated therein. However, a visa does not, by itself, provide the right of entrance into the Republic of Latvia or any of Schengen Member States. Foreigners who enter the Republic of Latvia with or without a visa are not allowed to exercise economic activities in an employed capacity. Foreigners can be employed only in cases that are stated in normative acts and if they have received a visa for employment and work permit. Thus, if a foreigner is interested in residing in the Republic of Latvia for a period of time exceeding 90 days within half a year counting from the first day of entrance a residence permit is necessary. According to Article 22 of Immigration Law two types of residence permit can be issued to a foreigner – a temporary residence permit and a permanent residence permit. A temporary residence permit can be issued in the occasions set out in Article 22 of the Immigration Law (*Imigrācijas likums*). The term of the temporary residence permit depends on the reasons of why it has been requested. The circumstances under whom it is possible to request a permanent residence permit are laid out in Article 24 of the Immigration Law (*Imigrācijas likums*). In order to be eligible for a permanent residence permit the person must have a stronger connection to the Latvian state, for instance family connections (such as being a child, a parent or a spouse of a Latvian citizen or non-citizen). In several occasions a person must also have knowledge of Latvian language in order to receive a permanent residence permit.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

In the Republic of Latvia, there are dozens of institutions which have the potential to deal with migrants. Most of the institutions participate in internal administration without being targeted specifically at migrants, such as providing health support or education to the citizens, but also deal with migrants and their issues (labour, social and so on). There are, however, also some

institutions whose aim is to specifically work with migrants. These institutions are: the Ministry of the Interior (*Iekšlietu Ministrija*)²²⁰⁶, The Office of Citizenship and Migration Affairs (*Pilsonības un migrācijas lietu pārvalde*)²²⁰⁷ and the State Border Guard (*Valsts robežsardze*).²²⁰⁸

The national legislative framework for the authorities depends on an essence of migrant status: for labour and education migrants the regulation will be based on the Immigration Law (*Imigrācijas likums*), but for refugees or alternative status seekers the regulation will be based on the Asylum Law (*Patvēruma likums*).

Regarding the internal administration of the authorities, it is worth mentioning the Cabinet Regulation No. 240 (from 2003) on Ministry of the Interior (*Ministru Kabineta noteikumi nr. 240 no 2003. gada „Iekšlietu Ministrijas nolikums”*). The Regulation states: ‘the Ministry of the Interior (hereinafter – the Ministry) is the leading State administration institution in the internal affairs sector, which includes combating crime, protection of public order and safety and the protection of the rights and lawful interests of a person, State border security, fire safety, fire-fighting, rescue, civil protection, record keeping and documentation of population, as well as the sub-sectors for migration and citizenship matters’. So, one of the main areas of the Ministry’s activity is to supervise over migration, as well as to draft and to implement policy relating to migration area.²²⁰⁹

Regulation No. 240 additionally prescribes which institutions are subordinated to the Ministry. These institutions include, but are not limited to: the Office of Citizenship and Migration Affairs and the State Border Guard.²²¹⁰

The activity of the Office of Citizenship and Migration Affairs is also regulated by Cabinet Regulation No. 811 (from 2006) “on the Office of Citizenship and Migration Affairs” (*Ministru Kabineta noteikumi Nr. 811 no 2006. gada „Pilsonības un migrācijas lietu pārvaldes nolikums”*). In the Regulation, the function of implementing a State Migration and Asylum Policy is delegated to the Office.²²¹¹ For the implementation of the policy the Office performs analysis of the processes related to migration, asylum seeking, determination of legal status of persons, registration of inhabitants and provision of persons with personal identification and travel documents, conducting research in the referred to fields and to participate therein,²²¹² as well as cooperating with the State administrative institutions, international and non-governmental organisations and foreign migration services, organizing international meetings and conferences regarding the matters within its competence and participating in the activities thereof, and analysing the experience of Latvia and other states in solving the referred to matters.²²¹³

²²⁰⁶ Ministry of the Interior official internet-resource: <<http://www.iem.gov.lv/eng/>> accessed 2017, 31 August.

²²⁰⁷ The Office of Citizenship and Migration Affairs official internet-resource: <<http://www.pmlp.gov.lv/en/>> accessed 2017, 31 August.

²²⁰⁸ The State Border Guard official internet-resource: <<http://www.rs.gov.lv/index.php?setlang=1>> accessed 2017, 31 August.

²²⁰⁹ The Cabinet Regulation No. 240 (By-law of the Ministry of the Interior) 2003, Sec. 5.1.6. [Ministru kabineta noteikumi nr. 240 Iekšlietu ministrijas nolikums].

²²¹⁰ *ibid*, Sec. 24.4, 24.8.

²²¹¹ The Cabinet Regulation No. 811 (By-law of the Office of the Citizenship and Migration Affairs) 2006, Sec. 2.1. [Ministru kabineta noteikumi Nr. 811 Pilsonības un migrācijas lietu pārvaldes nolikums].

²²¹² *ibid*, Sec. 3.2.

²²¹³ *ibid*, Sec. 3.3.

In the internal structure of the Office, there are some departments actually performing mentioned tasks, like the Migration Division (*Migrācijas nodaļa*), the Asylum Division (*Patvēruma lietu nodaļa*) and the Division on a Displacement of Asylum Seekers (*Patvēruma meklētāju izmitināšanas nodaļa*).²²¹⁴

The State Border Guard is the other institution, which is subordinated to the Ministry of the Interior and which activity is directly connected with migration. The Cabinet Regulation No. 122 (from 2005) “on the State Border Guard” (*Ministru Kabineta noteikumi Nr. 122 no 2005. gada „Valsts robežsardzes nolikums”*) prescribes that the aims of a State Border Guard are to provide integrity of State borders and to prevent illegal migration.²²¹⁵

The others institutions of public administration, like Ministry of Education and Science (*Izglītības un zinātnes ministrija*) and the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*), are also involved with migrant activities, along with other projects and tasks they are obliged to perform.

It is worth to mention as well, the Ministry of Culture (*Kultūras ministrija*) and Society Integration Foundation (*Sabiedrības integrācijas fonds*) as organisations not directly related to migrants, but cooperating with them. Development and promotion of integration policy of society in Latvia are one of the main objectives of these organisations.^{2216,2217}

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

From 1998 to 2016, international protection was requested by 2118 asylum seekers in total. Recent statistics²²¹⁸ show the amount of applications of asylum seekers has progressed rapidly: from 20 applications in 2005 up to 328 in 2015 with a peak in 2014 which had 364 applications in total. It is reasonable to say that overall migration flow to Latvia from countries such as Afghanistan, Syria, Russia and Iraq, has a tendency to increase, considering that not only economic factors constitute a foundation for the desire to migrate to a different country, but also it may be considered as an escape from various warfare activities in Eastern Asia.

Latvia's Office of Citizenship and Migration Affairs have granted 47 refugee statuses and 107 alternative²²¹⁹ statuses in 2016. This can be considered a rather large number, because Latvia's

²²¹⁴ Internal Structure of the OCMA: <<http://www.pmlp.gov.lv/en/home/about-ocma/structure.html>> accessed 2017, 31 August.

²²¹⁵ The Cabinet Regulation No. 122 (By-law of the State Border Guard) 2005, Sec. 2. [Ministru kabineta noteikumi Nr.122 Valsts robežsardzes nolikums].

²²¹⁶ Ministry of Culture: official internet-resource. Integration and society: <<https://www.km.gov.lv/en/integration-and-society/integration-and-society>> accessed 2017, 31 August.

²²¹⁷ Society Integration Foundation: official internet-resource. <<http://www.sif.gov.lv/index.php?lang=en>>, accessed 2017, 31 August.

²²¹⁸ European Migration Network. The Organization of Asylum and Migration Policies Factsheet: Latvia. 2016. http://www.emn.lv/wp-content/uploads/Factsheet-2016_08.12.2016.pdf accessed 14 June 2017 [English].

²²¹⁹ Alternative status is granted to persons who cannot be recognised as refugees under the Geneva Convention, but in accordance with the international agreements entered into by Latvia, EU legislation and practices of the Member States are in need of protection. The alternative may be granted the status of a person, if there are reasonable grounds for believing that: 1) the person in the state of citizenship or mitnes land, if the person is a stateless person,

common practice shows that in total 118 refugee statuses and 255 alternative protection statuses have been given.²²²⁰ According to agreements with the EU Council it was expected that Latvia will host 531 asylum seekers within two years and provide them the necessary support for international protection. 20 July 2015 the EU Council meeting of Ministers of Justice and Home Affairs agreement provides that during the two following years Latvia will host up to 250 persons in need of international protection (that is, 50 persons from third countries, and 200 people from Italy and Greece).²²²¹ On 22 September 2015 an additional agreement by the EU Council of Ministers of Justice and Home Affairs has been conducted and provides that Latvia will additionally host 281 asylum seekers in need of protection.²²²²

As recent statistics²²²³ show, in 2016, there were 8345 long-term migrants registered in Latvia. This number is slightly lower than previous years (e.g. 10365 long-term migrants in year 2014 and 9479 in year 2015). However, despite these immigration flows, in 2015 Latvia was one of the EU Member States where the number of emigrants outnumbered the number of immigrants.²²²⁴ However, immigration trends continue to become more visible within Europe and the whole world making cross-border movement of people an essential factor in planning both national and international policy. According to the information of the United Nations Organisation (UN), approximately 232 million people or 3.2% of the total population of the world in 2013 lived in a country which was not their country of origin.²²²⁵ Since 2004 the number of requests for residence permits has increased three times in Latvia, almost in every group of immigrants. In 2015 there were large increases in applications from several countries of origin compared with 2014, but the numbers stabilised in 2016 for the main countries of origin.

The figures for first time applications for the EU28 for the five countries of origin with the largest number of first time applications in 2016 are shown in the table below:²²²⁶

Country	2015	2016
Syria	377,960	334,820

are threatened with the death penalty or corporal punishment, torture, inhuman or degrading treatment or degrading punishment; 2) the person is in serious and individual threats that endanger the life or health of the widespread violence in situations of international or internal armed conflict; 3) external or internal armed conflict, the person in need of protection, and it cannot return to their country of citizenship or home country.

²²²⁰ Office of Citizenship and Migration Affairs. Asylum seekers: <<http://www.pmlp.gov.lv/lv/sakums/statistika/patveruma-mekletaji.html>>, accessed 2017, 17 June [Latvian].

²²²¹ The reception of asylum seekers in Latvia: frequently asked questions and answers. An asylum seeker, refugee and persons with an alternative status: <<http://www.pmlp.gov.lv/lv/assets/images/patverums/jautajumi%20un%20atbildes.pdf>>, accessed 2017, 17 June [Latvian].

²²²² Ibid.

²²²³ Central Statistical Bureau database. Long term migration in year 2016: <http://data.csb.gov.lv/pxweb/en/Sociala/Sociala_ikgad_iedz_migr/IB0010.px/table/tableViewLayout2/?rxid=cd>, accessed 2017, 19 June.

²²²⁴ Eurostat. Migration and migrant population statistics: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Migration_flows>, accessed 2017, 25 June.

²²²⁵ See Mangule I., Akule D., Summary: Immigration in Latvia: <http://providus.lv/article_files/2709/original/Kopsavilkums_Imigracija_Latvija_EN.pdf?1413206097>, accessed 2017, 25 June..

²²²⁶ Refugee Council Information. Asylum Seekers in Europe. March 2017, 3 p: <https://www.refugeecouncil.org.uk/assets/0004/0083/Asylum_in_Europe_March_2017.pdf>, accessed 2017, 25 August.

Afghanistan	192,940	182,985
Iraq	126,755	126,955
Pakistan	46,520	47,595
Nigeria	30,025	46,145

There is an increase in number of the nationals from the EU and other countries who live in Latvia both with temporary and permanent residence permits. In 2014, there were 23857 foreigners with temporary residence permits living in Latvia, whereas 48724 people have permanent residence permits.²²²⁷ The current geopolitical situation may facilitate migration even more migration in the near future.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

The decisions by the European Court of Human Rights (hereinafter – ECtHR) have mostly been implemented into the national legal acts, especially the Asylum Law. At national level not only does the case-law between the ECtHR and the Republic of Latvia substantially influence the national normative regulation but also cases against other countries have had an effect.

Delineating the issue, very evident and ample alterations concerning the decisions by the ECtHR have been made, elaborating and enacting the novel Asylum Law. For instance, following the judgment in *Saadi v. the United Kingdom*²²²⁸, *Suso Musa v. Malta*²²²⁹, *Kanagaratnam v. Belgium*²²³⁰ and *Ermakov v. Russia*²²³¹ the national law has been supplemented with conditions on the detention of asylum seekers. Namely, a comprehensive legal framework was introduced with regard to the conditions and procedures for the application of restrictive measures. Reduction in the possible period of detention of asylum seekers which can be imposed by the administrative authority, foreseeing detention as a last resort. In addition, the detention of asylum seekers is subject to judicial review both *ex officio* and at the request of the asylum seeker.

The decisions of the ECtHR have been taken into consideration, regarding the procedure of appeal of decisions to refuse to grant the status of refugee or alternative status. At the national level during the elaboration procedure of the Asylum Law broad discussions were held about the competent institutions for the procedure of appeal and about the number of instances, where it will be possible to submit an appeal. Eventually, with reference to the existing practice of the

²²²⁷ See Mangule I., Akule D., Summary: Immigration in Latvia: <http://providus.lv/article_files/2709/original/Kopsavilkums_Imigracija_Latvija_EN.pdf?1413206097>, accessed 2017, 18 June.

²²²⁸ *Saadi v. the United Kingdom*, App no 13229/03 (ECtHR 29, January 2008).

²²²⁹ *Suso Musa v. Malta*, App no 42337/12 (ECtHR 9, December 2011).

²²³⁰ *Kanagaratnam v. Belgium*, App no 15297/09 (ECtHR 13, December 2013).

²²³¹ *Ermakov v. Russia*, App no 43165/10 (ECtHR 7, November 2013).

ECtHR, for instance, case *Baranowski v. Poland*²²³², *Navarra v. France*²²³³, the legislator has decided to dedicate appeal to a court in one instance.

The new Asylum Law was enacted to transpose the above mentioned European Union legal acts. The Regulation contains minimal standard of rights of prosperity, which must be provided for the asylum seekers. Those rights have been introduced taking into account also the respective decisions of the ECtHR.

Furthermore, the national legal framework has been influenced also following the ECtHR case-law, regarding Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms²²³⁴, namely, prohibition of torture, inhuman or degrading treatment, or punishment. Quotes, which are mentioned in respective decisions of the ECtHR, have directly been taken into account, examining applications for refugee or alternative status. For instance, *R.H. v. Sweden*²²³⁵ analyses the correct conduct of interview and evaluation criteria for granting refugee or alternative status and extradition.

The case of *A.S. v. Switzerland*²²³⁶, which is meaningful because it concerns the state, which is responsible for evaluation of the application and criteria for admissibility of returning an asylum seeker to another country. The concept of 'family member' has been narrowed, stipulating, for example, that the brother or sister of an asylum seeker does not fill the status within the meaning of the legal framework for asylum seekers where the individuals concerned have been separated for a long period.

The case of *M.S.S. v. Belgium and Greece*²²³⁷ evaluated the feasibility of extraditing asylum seekers and the criteria for the assessment of possible threats as well as the procedure for appeal and conditions of accommodation center for asylum seekers, where the ECtHR concluded that automated refusal to evaluate the application for refugee or alternative status solely on the basis of the fact that the asylum seeker has applied for the asylum in another country breaches the ECHR.

The case of *Hode and Abdi v. the United Kingdom*²²³⁸ evaluated the question of the granting of refugee or alternative status for an individual who has submitted an application as a family member when the marriage was concluded after an application has been submitted. The ECtHR concluded that refusal to grant refugee or alternative status for family members on the grounds that national regulation had not foreseen the marriage was discriminatory. Such a restriction may not be justified by the margin of discretion afforded to the Member States with regards to their immigration policy. The respective decision has been taken into consideration also reviewing the national criteria for granting refugee or alternative status.

Delineating the ECtHR decisions against the Republic of Latvia, two cases have been reviewed.

²²³² *Baranowski v. Poland*, App no 28358/95 (ECtHR 2, October 2007).

²²³³ *Navarra v. France*, App no 13190/87 (ECtHR 23, November 1993).

²²³⁴ The European Convention on the Protection of Human Rights and Fundamental Freedoms. on 4 November 1950. Accessible: <http://www.echr.coe.int/pages/home.aspx?p=basictexts>.

²²³⁵ *R.H. v. Sweden*, App no 4601/14 (ECtHR 10, September 2015).

²²³⁶ *A.S. v. Switzerland*, App no 39350/13 (ECtHR 30, June 2015).

²²³⁷ *M.S.S. V. Belgium and Greece*, App no 30696/09 (ECtHR 21, January 2011).

²²³⁸ *Hode and Abdi v. the Lebedev v. Russia United Kingdom*, App no 22341/09 (ECtHR 6, November 2013).

The case of *Longa Yonkeu v. Latvia*²²³⁹ concerned the duration of arbitrary detention, inconsistency in the justification for detention and the lack of legal aid, especially the lawfulness of the detention after conclusion of asylum procedure. The ECtHR, referring to the cases of *Ammur v. France*²²⁴⁰, *Nasrulloev v. Russia*²²⁴¹, *Khudoyorov v. Russia*²²⁴², *Ječius v. Lithuania*²²⁴³ concluded that under domestic law, the detention of an asylum seeker beyond the date of the final decision within the asylum proceedings was not authorised, therefore unlawful. Furthermore, the domestic law did not allow detention of asylum seeker beyond the date of a final decision, therefore the ECtHR concluded that there was a breach of Article 5 of the ECHR. In addition, the ECtHR, examining the question about the lawfulness of detention in order to extradite an asylum seeker, pointed that the procedure, relating to deportation of failed asylum seekers in Latvia at the relevant time was regulated by the Immigration Law, the provisions of which were quite complex. Therefore, developments in the the subsequent legislature were welcomed. Nonetheless, evaluating the quality of the law and respective national case-law, the ECtHR found inconsistency with regard to regulatory framework and institutional practice in its interpretation. This highlights the vagueness of the provisions in question, which was such that their practical effect for a failed asylum seeker could not be anticipated. The applicant could not have foreseen that a removal procedure other than that expressly provided for in the Immigration Law would be applied to him or her. Accordingly, the Court considers that the domestic law concerning the deportation procedure was not sufficiently precise and foreseeable in its application and fell short of the “quality of law” standard required under the Convention; hence, the underlying detention orders issued in respect of the applicant cannot be considered to have been “prescribed by law”. Furthermore, the ECtHR noted that national legislation only allowed practically unlimited power to commence a removal procedure, but could also delay the applicant’s removal on the basis of its misconceived perception of the status as an asylum seeker. Although in the present case the delay in the applicant’s removal, which was caused by a misinterpretation of the domestic law, was not excessive, the ECtHR considered that such errors could in other cases raise serious concerns of arbitrariness. However, the consecutive detention was effected in accordance with a procedure prescribed by law and was justified. Because the national authorities have corrected previous mistakes.

The case of *Nassr Allah v. Latvia*²²⁴⁴ regarded the period of detention on the grounds that an asylum seeker may delay the asylum procedure and tenure for court to review a submitted appeal. The ECtHR, citing the cases of *Lebedev v. Russia*²²⁴⁵, *Mooren v. Germany*²²⁴⁶, *Abdulkhakov v. Russia*²²⁴⁷, *S.T.S. v. the Netherlands*²²⁴⁸, and *Savriddin Dzhurayev v. Russia*²²⁴⁹

²²³⁹ *Longa Yonkeu v. Latvia*, App no 57229/09 (ECtHR 15, November 2011).

²²⁴⁰ *Ammur v. France*, App no 19776/92 (ECtHR 25, June 1996).

²²⁴¹ *Nasrulloev v. Russia*, App no 656/06 (ECtHR 11, October 2007).

²²⁴² *Khudoyorov v. Russia*, App no 6847/02 (ECtHR 8, November 2005).

²²⁴³ *Ječius v. Lithuania*, App no 34578/97 (ECtHR 21, June 2002).

²²⁴⁴ *Nassr Allah v. Latvia*, App no 66166/13 (ECtHR 21, July 2015).

²²⁴⁵ *Lebedev v. Russia*, App no 4493/04 (ECtHR 25, October 2007).

²²⁴⁶ *Mooren v. Germany*, App no 11364/03 (ECtHR 9, July 2009).

²²⁴⁷ *Abdulkhakov v. Russia*, App no 14743/11 (ECtHR 2, October 2012).

²²⁴⁸ *S.T.S. v. the Netherlands*, App no 277/05 (ECtHR 7, June 2011).

²²⁴⁹ *Savriddin Dzhurayev v. Russia*, App no 71386/10 (ECtHR 25, April 2013).

stipulated that in order to determine whether the requirement that a decision be given “speedily” has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction. As is the case for the “reasonable time”, the question whether the right to a speedy decision has been respected must be determined on a case-by-case basis. Albeit states are not inquired to dedicate courts of appeal to review the lawfulness of detention, if they choose to do so, the appeal court also has to comply with the requirement of “speediness”. The Court must, in particular, examine whether any new relevant factors that had arisen in the interval between periodic reviews were assessed, without unreasonable delay, by a court with jurisdiction to decide whether or not the detention had become “unlawful” in the light of those new factors. The fact that the detention was ordered by a court and periodically reviewed does not automatically mean that all the requirements have been observed.

The ECtHR concluded that twenty-five days for the domestic authorities to ensure translation of a one-page appeal drafted in simple terms cannot be considered reasonable, bearing in mind the strict standards set down in case-law. Taking into account the period for the appeal court to enact the decision this was found to be excessive.

Therefore, it can be concluded that both cases against the Republic of Latvia affected not the quality of the law but rather the practice of the institutions in their application. Given that the differences in interpretation allowed were corrected, the violations were thus eliminated. Hence, the decisions of the ECtHR have been successfully implemented at the national level, confirmed by the fact that at the date of writing the court has ruled on the violations of rights of migrants in only two cases. In addition, the current issues, affecting the rights of migrants, relate to the amount of benefits and other welfare issues, where the case law of the ECtHR plays a substantial role in order to find necessary solutions to tackle the highlighted problems.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

The recommendations of the European Commission against Racism and Intolerance have contributed to positive changes in Latvian legislation and in practice. On 17 July 2007 and 21 May 2009 Latvia introduced into its Criminal Law²²⁵⁰ two new provisions criminalising the justification, public glorification or public denial of genocide, crimes against humanity, crimes against peace and war crimes. It also included ethnicity as one of the grounds on which incitement to hatred is prohibited. However, on the other hand there are no specific provisions in criminal law or in Latvian Administrative Violations Code dealing with racist speech other than incitement to racial hatred. That is why European Commission against Racism and

²²⁵⁰ The Criminal Law 1998. [Krimināllikums].

Intolerance in its report on Latvia on 21 February 2012²²⁵¹ has recommended that the Latvian authorities make amendments in the criminal law legislation criminalising racist speech (other than incitement to hatred which is already a criminal offence) and also criminalising the production, distribution, acquisition, transportation or storage of items that incite hatred in ethnic, racial or similar grounds and the creation of support/leadership/participation in a group which promotes racism. On 29 October 2014, amendments to Article 149(1) of the Criminal Law entered into force providing for criminal liability for discrimination on the grounds of racial or ethnic origin, nationality or religious affiliation or for the violation of the prohibition of any other type of discrimination. A more severe liability is provided if substantial harm is caused or if they have been committed by a public official, a responsible employee of an enterprise (company) or organisation, a group of persons or if they are committed using an automated data processing system.

Another positive addition in this matter is that the Associations and Foundations Law²²⁵² was amended on 20 July 2011 so that associations and foundations whose mandate includes advocacy of human rights are now authorised under the law to represent injured natural person in institutions or in the court and defend the rights or lawful interests of such persons in matters which are related to the violations of the prohibition of unequal treatment, or with employment of such persons who are not entitled to stay in the Republic of Latvia. Latvian Electronic Mass Media Law²²⁵³ has also been amended on 22 May 2013 adding Article 35 which prohibits commercial announcements on incitement to hatred and inviting to discriminate against any person or group of persons based on sex, age, religious, political or other beliefs, sexual orientation, disability, racial or ethnic origin, nationality or other grounds. Various other civil and administrative laws have been amended to implement recommendations of the European Commission against Racism and Intolerance, for example, the grounds on which discrimination is prohibited were broadened in Law on Consumer Rights Protection, Law on Social Security, and Law on Support for Unemployed Persons and Persons Seeking Employment. However, Latvia hasn't fully adopted a comprehensive body of civil and administrative law prohibiting racial discrimination in all fields.

Latvian authorities also have made progress concerning Recommendation No. 3. on combating racism and intolerance against Roma/Gypsies. Successful integration of Roma is still a big problem in Latvia. The Society Integration Foundation's research in 2015²²⁵⁴ pointed out low average achievement rates in education - almost 40 percent of Roma had left education at primary school - as the most important reason for the high unemployment rate, which is 68 %. That, alongside recommendations from Ombudsmen is why the practice of forming separate

²²⁵¹ European Commissions against Racism and Intolerance forth Report on Latvia, 21 February 2012, para 13 <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf>> accessed June 28 2017.

²²⁵² Associations and Foundations Law 2003. [Biedrību un nodibinājumu likums].

²²⁵³ Electronic Mass Media Law 2010. [Elektronisko plašsaziņas līdzekļu likums].

²²⁵⁴ Society Integration Foundation's research "Roma in Latvia", 2015, http://www.sif.gov.lv/index.php?option=com_content&view=article&id=9866:Prezenteti-petijuma-ROMI-Latvija-rezultati&catid=14:Jaunumi&Itemid=186 accessed June 26 2017 [Latvian].

classes for Roma children has been stopped in the academic year 2013/14. However, there are still local education authorities like Ventspils²²⁵⁵ who haven't done that yet.

National authorities have made some progress regarding ECRI's recommendation that the national authorities ensure the Policy Guidelines for the Integration of Society in Latvia. Awareness-raising campaigns like "Migration, development and human rights"²²⁵⁶, have been organised notably for younger people and training seminars have been held for teachers, civil servants and local government staff. National authorities have also organised seminars for employers and journalists on tolerance and social exclusion, management of diversity and intercultural competences. Currently, the project "Integration of Third-Country Nationals in Latvia: A Professional Opportunity for the Development of Responsible, Varied and Qualitative Journalism in the National and Regional Mass Media in Latvia"²²⁵⁷ is being developed. Moreover, events for the general public have been organised to encourage tolerance towards foreigners and to promote their integration into society.

The Ombudsman's Office has a significant role in elimination of discrimination of any kind and integration of migrants. It's important to note that European Commission against Racism and Intolerance has strongly recommended Latvian authorities to endow the Ombudsman's Office with sufficient funds. That is why the budget of the Ombudsman's Office has been increased from €813597 in 2011 to €1007911 in 2012 and to €1168466 in 2015. The budgetary planning for the period 2017 – 2019 foresees approximately €1300000 per year.²²⁵⁸ The Office provides legal assistance to victims of discrimination, aid in integration of migrants and regularly implements measures aimed at raising public awareness.

7. How is migrants' right to access to healthcare regulated within the national legislation?

Migrants' right to healthcare should be deviated depending on the status of a migrant. Generally, as previously mentioned, rights are regulated by the Immigration Law, Section 4(6) of which stipulates that the procedures for foreigners' health insurance, as well as the procedures by which a foreigner receives health care services in the Republic of Latvia, the minimum insurance amount, the minimum amount of services to be covered and cases when a visa or a residence

²²⁵⁵ Second alternative "Shadow Report" on the implementation of the Council of Europe Framework Convention on the Protection of National Minorities in Latvia. Latvian Centre for Human Rights, 2013, http://cilvektiesibas.org.lv/site/attachments/27/09/2013/Enu_zinojums_LCC_LV_final.pdf accessed June 26 2017 [Latvian].

²²⁵⁶ The second cycle of training seminars for the social workers of Riga municipality "Migration, Development and Human Rights" <http://cilvektiesibas.org.lv/lv/news/ir-novadits-otrais-macibu-seminaru-cikls-rigas-pas-409/> accessed June 25 2017 [Latvian].

²²⁵⁷ "Jaunas iespējas žurnālistu profesionālajai pilnveidei migrācijas jautājumu atspoguļošanā". <http://www.rsu.lv/medijiem/preses-relizes/11140-jaunas-iespejas-zurnalistu-profesionalajai-pilnveidei-migracijas-jautajumu-atspogulosana> accessed June 26 2017 [Latvian].

²²⁵⁸ Explanations of the Law on State Budget, 2017, http://www.fm.gov.lv/files/valstsbudzets/FMPask_L_TB_100217_bud2017.pdf accessed June 26 2017 [Latvian].

permit without health insurance policy may be issued to a foreigner shall be determined by the Regulations of the Cabinet of Ministers. Article 6 of the Regulations of the Cabinet of Ministers No. 591 'Regulations of the Foreigners' Health Insurance'²²⁵⁹[1] stipulates that health insurance policy should cover expenditures for health related services such as: 1) emergency medical assistance; 2) treatment of a critical condition in a hospital for life or health; 3) transportation to the nearest medical treatment institution, which provides the above mentioned services; 4) transport for return to the host country in case of serious illness or death. According to Article 9 the validity period of the policy may not be less than the intended term of stay of the third-country national in the Republic of Latvia or in the territory of the Republic of Latvia and one or more other Schengen member states. According to Article 7 the minimum limit of liability of the insurer for the period of insurance may not be less than €30000, requesting a short-term visa, and €42600, requesting the long-term visa or residency permit.

Article 12 stipulates that a foreigner must receive health care services in the Republic of Latvia in accordance with the procedures prescribed by regulatory enactments regulating medical treatment. Section 16 of the Medical Treatment Law²²⁶⁰ states that everybody has the right to receive emergency medical care in accordance with procedures stipulated by the Cabinet. Nonetheless, Section 17 of the law stipulates that the amount of medical treatment services paid from the State basic budget and from the funds of the recipient of services in accordance with the procedures stipulated by the Cabinet shall be provided to: 1) Latvian citizens; 2) Latvian non-citizens; 3) citizens of Member States of the European Union, of European Economic Area states and Swiss Confederation who reside in Latvia in relation to employment or as self-employed persons, as well as the family members thereof; 4) third-country nationals who have a permanent residence permit in Latvia; 5) refugees and persons who have been granted alternative status; 6) persons detained, arrested and sentenced with deprivation of liberty. Medical treatment services shall be provided at the time and place where it is necessary, in conformity with the medical practitioner's qualifications and the diagnostic, medical treatment and equipment for patient care level of the relevant medical treatment institution. The spouses of Latvian citizens and Latvian non-citizens, who have a temporary residence permit in Latvia, have the right to receive free of charge the care for pregnant women and birth assistance paid from the State basic budget and from the funds of the recipient of services in accordance with the procedures stipulated by the Cabinet. The children of the persons referred above have the right to receive free of charge the amount of medical treatment services paid from the State basic budget and from the funds of the recipient of services. Persons who are not mentioned above, shall receive medical treatment services for a fee. According to Section 18 of the Law other medical assistance to the persons referred to in Section 17 of the Law shall be provided for payment from insurance companies, employers, patients themselves or from other resources in accordance with laws and regulations.

²²⁵⁹ The Regulations of the Cabinet of Ministers No. 591 'Regulations of the Foreigners'. Published: Latvijas Vēstnesis, 31 July 2008, No. 117.

²²⁶⁰ The Medical Treatment Law. Published: Latvijas Vēstnesis, 1 July 1997, No. 167/168.

Moreover, according to Article 27.5. of the Regulations of the Cabinet of Ministers No. 675 ‘The procedure for the entry and residence of Union citizens and their family members in the Republic of Latvia’²²⁶¹ a citizen of the union may receive a registration certificate, which grants the right to stay in another Member State longer than three months, if he has sufficient livelihoods to avoid becoming a burden on the social assistance system and a valid document issued by a Member State certifying that the person in the Republic of Latvia is entitled to the necessary medical or emergency medical assistance or a valid health insurance policy.

In case the foreigner, according to Section 51 of the Immigration Law, has been detained because the removal procedure is applicable to him or her or he or she is subject to the return to a third country or to another Member State of the European Union in accordance with a treaty or agreement, which provides for the readmission of such persons who are staying illegally in the territory of the relevant state, the detained foreigner shall be accommodated in specially equipped premises or accommodation centre separately from persons detained according to criminal procedural procedures or imprisoned persons. According to Section 59(3¹) the scope and procedure for receipt of health care services guaranteed by a third-country national placed in a housing center is determined by the Cabinet of Ministers. Article 2 of the Regulations of the Cabinet of Ministers No. 255 ‘Regulations on the amount and procedure for receiving health care services guaranteed to a detained foreigner in a lodging center’²²⁶² stipulates that before placing a person in the center of the accommodation, a medical practitioner of the accommodation center carries out an examination of the state of health of a person and makes a record on the person's medical card out of the patient's medical record. A person has the right to receive emergency medical assistance as well as primary and secondary health care services.

In the case of an unaccompanied minor, according to Section 47 or 49 of the Immigration Law, may not be extradited and is allowed to reside in the Republic of Latvia for a stated term, health care services should be provided for the above mentioned minor as well as for other minors. Section 3(2) of the Protection of the Rights of the Child Law²²⁶³ stipulates that the State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the State, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.

Identical norm is included in the Convention on the Rights of the Child of the United Nations²²⁶⁴. Article 2 stipulates that State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or

²²⁶¹ Regulations of the Cabinet of Ministers No. 675 ‘The procedure for the entry and residence of Union citizens and their family members in the Republic of Latvia’. Published: Latvijas Vēstnesis, 7 September 2011, No. 141.

²²⁶² Regulations of the Cabinet of Ministers No. 255 ‘Regulations on the amount and procedure for receiving health care services guaranteed to a detained foreigner in a lodging center’. Published: Latvijas Vēstnesis, 19 May 2017, No. 98.

²²⁶³ The Protection of the Rights of the Child Law. Published: Latvijas Vēstnesis, 8 July 1998, No. 199/200.

²²⁶⁴ Convention on the Rights of the Child of the United Nations on 20 November 1989. Accessible: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

other status. In addition, Article 24(1)(2) of the Convention states that State Parties recognize the right of the child to enjoy the highest attainable standard of health and to facilitate the treatment of illness and rehabilitation of health. State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: a) to diminish infant and child mortality; b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

The Asylum seeker's right to healthcare is regulated according to the Asylum Law. According to Section 9 of the Asylum Law if an asylum seeker does not have sufficient resources to ensure living arrangements conforming to his or her health condition and his or her residence during the asylum procedure, he or she shall be accommodated at the accommodation centre for asylum seekers, which is a joint dwelling for non-detained asylum seekers, in which the conditions necessary for everyday life are ensured, by taking also into account that the special reception needs of the asylum seeker, and his or her physical and mental health is protected. According to Section 11 (2) Paragraph 8 in accordance with the procedures laid down in the laws and regulations to receive emergency medical assistance, primary health care, outpatient and inpatient psychiatric assistance in case of serious mental health disorders and also any medical assistance to minors, non-provision of which may pose a threat to the development and health of the child, from the State funds, taking into account the special reception needs of the asylum seeker.

On the basis of Article 8 of the Regulations of the Cabinet of Ministers No. 489 'Internal Rules of the Asylum Seeker Accommodation Center'²²⁶⁵ an asylum seeker lodging center provides a first-time health check if it has not been made to the asylum seeker beforehand. According to Article 24 in order to receive the necessary medical assistance in the amount and according to the procedure specified in regulatory enactments, the asylum seeker turns to the employee of the accommodation center.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

According to Article 2 of Protocol No. 1 to the European Convention on Human Rights, no person shall be denied the right to education. In the exercise of any functions relating to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. In the Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*) Article 112 states that

²²⁶⁵ Regulations of the Cabinet of Ministers No. 489 'Internal Rules of the Asylum Seeker Accommodation Center'. Published: Latvijas Vēstnesis, 27 July 2016, No. 143.

everyone has the right to education, the State shall ensure that everyone may acquire primary and secondary education without charge and that the primary education shall be compulsory. Hence migrant children have the same right to education as Latvian children do. It is also confirmed by the Education Law (*Izglītības likums*).

In accordance with Article 3, Section 1 of the Education Law (*Izglītības likums*) the right to education is for citizens of Latvia, non-citizens of Latvia, citizens of the European Union, citizens of the European Economic Area, citizens of the Swiss Confederation, permanent residents of the European Community who have a valid residence permit in the Republic of Latvia, stateless persons who have a valid travel document for stateless persons issued in the Republic of Latvia, citizens of another state, other than a citizen of the European Union, the European Economic Area or Swiss Confederation (hereinafter – a third-country national), stateless persons who have a valid residence permit in the Republic of Latvia, refugees or persons who have been granted subsidiary protection and persons who have received temporary protection in the Republic of Latvia. The right to education for a minor who has been granted refugee status or subsidiary protection is also set out in Article 50, Section 2 of the Asylum Law [Patvēruma likums] where it is specified that they are provided with opportunities for acquiring education in the official language in a state or local government educational institution. The same applies to minors who have been granted temporary protection.²²⁶⁶

Minor asylum seekers or minor children of asylum seekers too have the right to basic education and secondary education, as well as the right to continue the commenced education after reaching the age of majority according to Article 3, Section 2 of the Education Law (*Izglītības likums*). This right of minor asylum seekers derives also from Article 9, Section 7 of the Asylum Law (*Patvēruma likums*) where it is specified that they are provided with opportunities for acquiring education in the official language in a state or local government educational institution. It also states that it is the Cabinet of Ministers that shall determine the procedures by which a minor asylum seeker shall be provided with opportunities for acquiring education. In order to determine these procedures the Cabinet of Ministers adopted regulation No. 488 of 26 July 2016 "Procedures for the Provision of a Minor Asylum Seeker with Opportunities for Acquiring Education" (2016.gada 26 jūlija Ministru kabineta noteikumi Nr.488 "Kārtība, kādā nepilngadīgam patvēruma meklētājam nodrošina izglītības ieguves iespējas") (hereinafter – Regulation No. 488). In Regulation No. 488 more specific information is given about the procedure on how to provide minor asylum seekers with opportunities to acquire education. For example the timeframe in which the asylum seeker must be able to start acquiring education (according to Article 3 it must happen within 3 months from the day when the person has submitted their asylum application to the State Border Guard); that the Ministry of Education and Science is responsible for determining which educational institution the asylum seeker will attend (Article 7); that it should be chosen according to their place of residence (Article 6) etc.

Even in cases when the minors have no legal ground for residence they still have the right to education whilst in Latvia. Article 3, Section 3 of the Education Law (*Izglītības likums*) determines that a minor third-country national or stateless person who has no legal basis to reside in the

²²⁶⁶ Article 62, Section 3 of Asylum Law [Patvēruma likums], available at www.likumi.lv

Republic of Latvia has the right to acquire basic education during the time period specified for voluntary exit or during the time period for which the expulsion is suspended, as well as during his or her detention.

According to Article 12, Section 5 of the Education Law (*Izglītības likums*) those persons who are not citizens or non-citizens of Latvia but are also referred to in Article 3, Section 1 and also for the minor asylum seekers or minor children of asylum seekers as well as minor third-country nationals or stateless persons who have no legal basis to reside in the Republic of Latvia the fee for acquiring a basic education and secondary education shall be determined and covered in accordance with the same procedures as for citizens of Latvia and non-citizens of Latvia.

The fees that are set for the pre-school, basic and secondary education at an institution established by the state or one of the local governments (municipalities) shall be covered from the State budget or local government budgets, a private educational institution may set a tuition fee for acquiring education there.²²⁶⁷

Altogether this means that migrant children enjoy the right to a free of charge basic and secondary education in Latvia and must be provided with a possibility to attend a state or local government educational institution. If they wish so they can also choose to attend a suitable private educational institution but in that case the state will not bear the expenses.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

The Republic of Latvia signed the Convention on the Recognition of Qualifications concerning Higher Education in the European Region on 11 April 1997. This was ratified by Law on Convention on the Recognition of Qualifications concerning Higher Education in the European Region (*Likums par Eiropas reģiona konvenciju par to kvalifikāciju atzīšanu, kas saistītas ar augstāko izglītību*) on 13 May 1999, and the Law has entered into force for the Republic of Latvia on 26 May 1999.²²⁶⁸

The legal framework for recognition procedure of foreign education documents is provided by the Education Law (*Izglītības likums*), especially by Section 11¹ “Recognition in Latvia of Education Document Certificates Issued by the Foreign States” (*11¹. pants. „Ārvalstīs izsniegto izglītības dokumentu atzīšana Latvijā”*). The Section consists of 5 paragraphs:

1. The first paragraph describes the legal basis for performance of recognition procedure – the application to the institution should be submitted by a holder of the education document, or regarding documents certifying academic degrees, the application must be submitted by relevant

²²⁶⁷ Education Law [Izglītības likums] Article 12, Section 1, available at: www.likumi.lv

²²⁶⁸ The Law on Convention on the Recognition of Qualifications concerning Higher Education in the European Region 1999, Sec. 1. [Likums par Eiropas reģiona konvenciju par to kvalifikāciju atzīšanu, kas saistītas ar Augstāko izglītību].

educational institutions, State institutions, employers or professional organisations. This paragraph also provides additional information which extends the definition of an educational document and to the documents certifying academic degrees conferred abroad. In addition, the paragraph defines the administration body for the procedure of recognition of foreign educational documents, which is the Academic Information Centre (*Akadēmiskās informācijas centrs*).²²⁶⁹ The Centre provides all its services for pay, and the amount of payment is defined by government – The Cabinet of Ministers (*Ministru kabinets*).²²⁷⁰

2. The second paragraph provides two possible provisional results for an expert examination of educational document or document certifying academic degrees:

- In the first option, it should be defined which education document issued in Latvia, or which academic degree conferred in Latvia, is equivalent to the education document issued abroad and may be considered as equivalent;
- In the second option, the list of additional conditions which must be fulfilled in order that the education document issued abroad may be considered as equivalent to an education document issued in Latvia if the education document issued abroad does not conform to the requirements of any education document issued in Latvia should be provided.²²⁷¹

3. The third paragraph provides the form of the result of an expert-examination which will be performed in a form of notice (*izziņa*) with information: which education document issued in Latvia, or which academic degree conferred in Latvia, is equivalent (Paragraph 2a) or the list of additional conditions which must be fulfilled (Paragraph 2b).

4. The fourth paragraph prescribes the right of an institution to recognise an educational document. When notice has been received by the holder of the educational document, he / she must submit the educational document and the notice to the respective institution for which the expert-examination has been performed. The institution, considering the provided notice from the Academic Information Centre, should make a decision on the recognition of the educational document. These institutions, who are entitled to take a decision are defined conditionally for the purpose of application:

- in the purpose of continuation of studies - the institution of higher education: college, institute, academy or university, where an applicant is going to continue their studies;
- in the purpose of employment – the employer;
- in the purpose of practising a professional activity in professions in which the professional activities, or the education required for it, is governed by laws, as well as in other regulatory enactments - the institution is determined within said laws and other regulatory enactments;
- in the purpose of continuation of basic or secondary school education – the Ministry of Education and Science.

²²⁶⁹ The official internet-resource of the Academic Information Centre: <<http://www.aic.lv/portal/en>> accessed 2017, 31 August.

²²⁷⁰ The official internet-resource of the Government: <<http://mk.gov.lv/en>> accessed 2017, 31 August.

²²⁷¹ The Education Law 1998, Sec. 11¹, para. 2. [Izglītības likums].

5. And the last, fifth, paragraph prescribes subordination of the Academic Information Centre to the Ministry of Science and Education (*Izglītības un zinātnes ministrija*).

According to the abovementioned paragraph 1 of Section 11¹ of the Education Law, the price list is provided by the Cabinet of Ministers. The price list, in its legal essence, is a piece of legislation. Regulation No. 409 (from 2015) of the Cabinet has set up the price for recognition of foreign education documents at €41.00 (per 1 document).

In summary, the main stages of the procedure of recognition of foreign education documents are: submitting the application and payment; expert-examination of educational documents; giving notice to the applicant by the Academic Information Centre and making a decision regarding recognition of education document by a respective institution.

The fee must be paid by an applicant according to the invoice which will be provided in a 24-hour period. When payment is performed, and money has been received by the Academic Information Centre, the 30-day period of notification is started. The Academic Information Centre must provide the applicant with notice within this term.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

In accordance with Article 8 of the Constitution of the Republic of Latvia, 'All citizens of Latvia who enjoy full rights of citizenship and, who on election day have attained eighteen years of age shall be entitled to vote'²²⁷². Therefore, migrants have no rights to participate in parliamentary vote. Latvian Law on Elections of the Republic City Council and Municipality Council²²⁷³ states that in the Republic of Latvia only citizens of Latvia and citizens of the European Union who have been registered in the Population Register have the right to elect the Municipality Council. Hence migrants are not legally allowed to directly participate in any parliamentary or Municipality Council political decision making.

Following the general principle set in chapter 8 of the Constitution of the Republic of Latvia everyone is allowed to participate in previously announced peaceful meetings, street processions, and pickets. In addition everyone also has the right to form and join associations, political parties and other public organizations. However, these rights are restricted by law. Article 26 of The Law of the Political Parties states that citizens can become party members only if they have reached the age of 18 and who are either citizens of Latvia, non-citizens of Latvia or citizens of the European Union who are not Latvian citizens but who reside in the Republic of Latvia²²⁷⁴[3]. Migrants are legally allowed to participate in meetings, processions and pickets. It is important to

²²⁷² The Constitution of the Republic of Latvia 1922., Art. 8. [Latvijas Republikas Satversme].

²²⁷³ Law on Elections of the Republic City Council and Municipality Council 1994, Art. 5 (1). [Republikas pilsētas domes un novada domes vēlēšanu likums].

²²⁷⁴ Political Parties Law 2006, Art. 26. [Politisko partiju likums].

note that migrants, in accordance with Article 4 of the law On Meetings, Processions, and Pickets, are now allowed to be organisers of such events.²²⁷⁵

Migrants are also legally allowed to take part in non-governmental organisations. In Latvia, third-country nationals, if they have received a residence permit, are provided with opportunities for political participation in the work of associations and trade unions. However, in practice, most immigrants are not members of trade unions and most of these non-governmental organization's activities are focused on promoting tolerance and cultural diversity, rather than encouraging civic and political participation by immigrants.

In general, it must be recognized that migrants in the Republic of Latvia enjoy full rights to participate in political decisions after the naturalisation process. Otherwise, migrants enjoy the right to vote municipality elections, the European Parliament, to join parties, to take part in rallies, gatherings, and strikes. Migrants can acquire citizenship through naturalisation after they have lived in Latvia with a permanent residence permit for 5 years.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

In the Republic of Latvia, the regulation over citizenship area is performed in accordance with the Citizenship Law (*Pilsonības likums*). The Law prescribes both researched areas: an acquisition of citizenship and a double nationality (or dual citizenship).

The process of acquiring Latvian citizenship can be performed by any person over 15 upon their personal request (before this age, applicant's parents (or legal guardian) should apply for a citizenship)^{2276, 2277}. The request will initiate the prescribed procedure for an applicant to the process called naturalisation (*naturalizācija*). However, there are several restrictions to applicants. If one of the restrictions is exist, then person may not proceed in naturalisation, and therefore, to become a Latvian national. These restrictions are:

1. the person is a threat to the national security, independence, territorial sovereignty and to the society:
 - a. has acted against the independence of the Republic of Latvia, the democratic parliamentary structure of the State or the existing State power in Latvia;
 - b. after 4 May 1990, have propagated fascist, chauvinist, national-socialist, communist or other totalitarian ideas or incited ethnic or racial hatred or discord;
 - c. is related to terrorism or acts in an anti-state or criminal organisation;
 - d. is related to anti-money laundering (AML) crime;
2. the person is serving in the armed forces or military organisation of another country without an authorisation of the Cabinet;

²²⁷⁵ Law On Meetings, Processions, and Pickets 1997, Art 4. [Par sapulcēm, gājieniem un piketiēm].

²²⁷⁶ The Citizenship Law 1994, Sec. 2., para 2 (1). [Pilsonības likums].

²²⁷⁷ The Citizenship Law 1994, Sec. 17., para. 1. [Pilsonības likums].

3. after 17 June 1940, the person has chosen the Republic of Latvia as his or her place of residence directly after demobilisation from the armed forces of the U.S.S.R. (Russia) or the internal military forces of the U.S.S.R. (Russia), and, until the day of conscription into service or enlistment, had not permanently resided in Latvia;
4. the person has been the staff employee of the state security service, intelligence service or counter-intelligence service of the U.S.S.R. or Latvian S.S.R., except a person who has only been the employee of the Planning and Finance or Administrative-Maintenance Division of the State Security Committee of the U.S.S.R. or the Latvian S.S.R.;
5. the person has been convicted in Latvia or any other country for committing a criminal offence that is qualified as a criminal offence also in Latvia during examination of an application for naturalisation. This condition shall not apply to a person who has been convicted for committing a criminal offence in a foreign country, if it has been recognised in accordance with the procedures specified by the Cabinet that in respect of such person a judgment of conviction has been rendered without complying with the principle of fair trial or of proportionality of the punishment;
6. after 13 January 1991, the person has worked against the Republic of Latvia in the C.P.S.U. [Communist Party of the Soviet Union] (L.C.P. [Latvian Communist Party]), the Working People's International Front of the Latvian S.S.R., the United Council of Labour Collectives, the Organisation of War and Labour Veterans, the All-Latvia Salvation of Society Committee or the regional committees thereof, or the Union of Communists of Latvia;
7. the person has not fulfilled tax obligations or obligations of other payments towards the State of Latvia.²²⁷⁸

Despite the wide list of restrictions to the naturalisation procedure, the entitled (to naturalise) person should meet other provisions²²⁷⁹ and must:

- Have had permanent residence in Latvia for at least 5 years;
- be fluent in Latvian language (in Section 20 of the Citizenship Law, specification of what exactly meant by being fluent in language is provided);
- know the basic principles of the Constitution (*Satversme*);
- know the text of the National Anthem and the basics of the history and culture of Latvia;
- have a legal source of income;
- give a pledge of loyalty to the Republic of Latvia;
- not be a subject to the naturalisation restrictions;
- pay the State fee (the Cabinet Regulation No. 849 (from 2013) for application to naturalisation amounting to €28.46,²²⁸⁰ and for some persons (like the registered unemployed, disabled persons, but not refugees) the state fee is lower²²⁸¹ – €4.27).²²⁸²

²²⁷⁸ *ibid*, Sec. 11., para. 1.

²²⁷⁹ *ibid*, Sec. 12., para. 1.

If all these conditions are fulfilled, then the applicant may proceed to the naturalisation procedure. This procedure is regulated according to the Cabinet Regulation No. 973 (from 2013) and de facto the procedure is exams on language, Constitution, Anthem, history and culture. The Regulation contains technical provisions on how exactly the evaluation of applicant's knowledge is performed. If exams are passed, then the applicant is entitled to give a pledge of his or her loyalty to the state and to become a Latvian national.

Double nationality

The regulation over double nationality is prescribed mostly by Section 9 of the Citizenship Law. But, the definition of the double nationality is provided in Chapter 1 of the Citizenship Law (before Section 1): 'Double nationality is the belonging of a person to a citizenship (nationality) of several states'.

Analysing the first paragraph of Section 9, we can "narrow" the definition of double nationality. According to the above-mentioned paragraph 1 of Section 9, the Latvian nationality shall be retained for a Latvian citizen who has:

- acquired citizenship of another Member State of the European Union or Member State of the European Free Trade Association;
- acquired citizenship of another Member State of the North Atlantic Treaty Organisation;
- acquired citizenship of the Commonwealth of Australia, Federative Republic of Brazil or New Zealand;
- acquired citizenship of such country with which the Republic of Latvia has entered into an agreement regarding recognition of dual citizenship;
- acquired citizenship of a country not referred to in the previous 1 – 4 clauses, but has received an authorization of the Cabinet to retain Latvian citizenship in compliance with important State interests. The Cabinet shall take a decision not later than within a year, and it shall not be subject to appeal;
- acquired citizenship of another country through entering into marriage (acquired ex lege) or as a result of adoption.

The next condition for double nationality is provided in paragraph 4 of Section 9: 'Double nationality may not occur for a person who is admitted to Latvian citizenship through naturalisation procedures, except the cases provided for in Section 12, Paragraph 2 of this Law'. The mentioned paragraph 2 of Section 12 allows that a national admitted to Latvian citizenship to retain nationality of its state if the state is one of these: a Member State of the European Union, a Member State of the European Free Trade Association, a Member State of the North Atlantic Treaty Organisation, the Commonwealth of Australia, the Federative Republic of Brazil,

²²⁸⁰ The Cabinet Regulation No. 849 Regulation on a State fee for application on naturalisation of 2013, para. 2. [Ministru kabineta noteikumi Nr. 849 Noteikumi par valsts nodevu naturalizācijas iesnieguma iesniegšanai].

²²⁸¹ *ibid*, para. 3.

²²⁸² The Citizenship Law 1994, Sec. 12., para. 5. [Pilsonības likums].

New Zealand or a citizen of the country with which the Republic of Latvia has entered into agreement regarding recognition of dual citizenship.

And the last condition for clear perception of ‘double nationality’ subject is prescribed by paragraph 6 of Section 9 – the regulation of a respective country shall allow its nationals to have double nationality with the Republic of Latvia.

In summary, a Latvian national is entitled to apply for dual nationality, but regarding refugees, it will be possible only if said refugee has citizenship of one of the following states: 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. This situation is mostly due to the method obtaining nationality – the most common way for a refugee to gain citizenship is naturalisation.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

There are several ways in which Latvia has assisted towards integration of migrants. The responsible authority for integration projects in Latvia is the Ministry of the Interior, whilst the Ministry of Culture is responsible for integration matters. One example of the integration of migrants is the recently established foundation “Asylum, migration and integration fund” (hereinafter – Foundation). This Foundation has number of objectives²²⁸³, some of them are:

- strengthen and develop all aspects of the Common European Asylum System, including its external dimension;
- to provide support for legal migration to the Member States in accordance with their economic and social needs, for example, the needs of the labour market, while at the same time ensuring the integrity of the immigration system, and to promote the effective integration of third country nationals;
- to strengthen fair and effective return strategies in the Member States, which contribute to the fight against illegal immigration, with emphasis on the sustainability of return and readmission in the countries of origin and transit;
- to strengthen solidarity and division of responsibility between the Member States, in particular those most affected by migratory and asylum flows, including through practical cooperation.

For example, one of the Foundation’s projects²²⁸⁴ is dedicated to raising standards for the reception of asylum seekers and to strengthen the capacity of the asylum procedure.²²⁸⁵ The

²²⁸³ Outline of “Asylum, migration and integration fund” 2014.-2020.”: <http://www.iem.gov.lv/lat/es_fondi_un_programmas/patveruma_fonds_2014_2020/>, accessed 2017, 17 June [Latvian].

²²⁸⁴ Project No.PMLP/PMIF/2016/1

project is feasible for two years and it will be completed by December 2017. During the implementation of the project there has been received a considerable amount of funds from the EU, approximately in the range of €1.5 million.

It is also important to mention a rather recent project named “Solidarity and management of migration flows, the framework programme 2007 – 2013.” has been funded by the EU with the aim of promoting the integration of immigrants in society. The previously mentioned project mainly covers the principle of solidarity in managing people flows by ensuring a fair share of responsibilities between Member States as regards the financial burden associated with the introduction of an integrated management system for external borders, as well as the implementation of common asylum and immigration policy.²²⁸⁶ Also, the EU not only funds projects that are related to integration of migrants, but also supports the development of the infrastructure as a whole, granting funds for the reception and accommodation system of asylum seekers, which includes works that cover various adjustments of premises, even the socio-economic integration process.²²⁸⁷

In Latvia on 1 January 2017 there were registered a total of 73965 citizens of third countries²²⁸⁸, of which 26262 have been issued the terminated residence permit and 47703 citizens of third countries have been issued a permanent residence permit. Employment, studies and marriage are considered the main causes of entry of third country citizens in Latvia.²²⁸⁹

Conclusions

During our research we were able to conclude the following:

The general legal framework for immigration in Latvia is provided by Immigration Law, and the framework is widened by Regulations of the Cabinet. The other main legal act is the Asylum Law, which prescribes the framework for a procedure of asylum-seeking or for an application for acquisition of alternative status.

Dozens of official institutions are targeted to specifically deal with migrants such as the Ministry of the Interior, the Office of Citizenship and Migration Affairs and the State Border Guard. Some other institutions can provide services to migrants but they are not targeted for that. It is worth to mention Society Integration Foundation, the main priority of which is to develop and promote integration policy of society in Latvia.

²²⁸⁵ Asylum, migration and integration fund 2014.-2020. year. Project No. PMLP/PMIF/2016/1: <[http://www.pmlp.gov.lv/lv/sakums/par-pmlp/projekti/patveruma,-migrācijas-un-integrācijas-fonda/projekta-īstenošanas-gāita-\(uz-02.01.2017.\).html](http://www.pmlp.gov.lv/lv/sakums/par-pmlp/projekti/patveruma,-migrācijas-un-integrācijas-fonda/projekta-īstenošanas-gāita-(uz-02.01.2017.).html)>, accessed 2017, 20 June [Latvian].

²²⁸⁶ Solidaritātes un migrācijas plūsmu pārvaldīšanas pamatprogramma 2007.-2013.gadam: <<http://www.pmlp.gov.lv/lv/sakums/par-pmlp/projekti/solidaritātes-un-migrācijas-plūsmu-pārvaldīšanas-pamatprogramma-2007.-2013.gadam/>>, accessed 2017, 18 June [Latvian].

²²⁸⁷ Kultūras ministrija. Patvēruma meklētāju uzņemšana un integrācija: Latvijai piemērotas sistēmas izveidošana. Valsts kanceleja, 2015: <http://www.mk.gov.lv/sites/default/files/komunikācijas_files/pm_mekletaji_04-11.pdf>, accessed 2017, 20 June [Latvian].

²²⁸⁸ A citizen of a third country – a person who is not a citizen or a non-citizen – of the Republic of Latvia, another European Union Member State, European Economic Area State or Swiss Confederation citizen.

²²⁸⁹ Ministry of Culture. Citizens of third world countries: <<https://www.km.gov.lv/lv/integracija-un-sabiedriba/treso-valstu-pilsoni>>, accessed 2017, 20 June [Latvian].

From 1998 to 2016, international protection was requested by 2118 asylum seekers in total. Recent statistics show a number of applications of asylum seekers have progressed rapidly: from 20 applications in 2005 up to 328 in 2015 with a peak in 2014 which had 364 applications in total. Overall migration flow to Latvia from countries such as Afghanistan, Syria, Russia and Iraq, has a tendency to increase, considering that not only economic factors constitute a foundation for the desire to migrate to a different country, but also it may be considered as an escape from various warfare activities in Eastern Asia.

The decisions by the European Court of Human Rights have mostly been implemented into the national legal acts, especially the Asylum Law. At the national level not only does the case-law between the ECHR and the Republic of Latvia substantially influence the national normative regulation but also cases against other countries have had an effect.

Migrants' right to healthcare depending on the status of a migrant. And regarding the education – the main point of the Article 2 of Protocol No. 1 to the European Convention on Human Rights, no person shall be denied the right to education, has been implemented into the national legal system.

In regards to recognition of foreign diplomas, the Latvia is a member of Convention on the Recognition of Qualifications concerning Higher Education in the European region of 1997. The main institution that is responsible for implementation of recognition procedure is the Academic Information Centre.

Political decisions: all citizens of Latvia who enjoy full rights of citizenship and, who on an election day have attained eighteen years of age shall be entitled to vote'. Therefore, migrants have no rights to participate in a parliamentary vote.

Migrants have an opportunity to become a citizen of the Republic of Latvia, and the most common way to do so for them is naturalisation procedure. The possibility to hold double nationality is restricted by the list of countries that are considered eligible for double nationality with the nationality of Latvia.

Table of legislation

Provision in Latvian	Translation in English
<p>Ministru kabineta noteikumi Nr. 240 (2003) "Iekšlietu ministrijas nolikums", 5.1.6. punkts:</p> <p>Lai nodrošinātu funkciju izpildi, ministrija izstrādā un īsteno politiku iedzīvotāju uzskaitē un dokumentēšana, kā arī migrācija.</p>	<p>The Cabinet Regulation No. 240 (2003) "By-law of the Ministry of the Interior", Section 5.1.6.:</p> <p>In order to ensure the performance of the functions, the Ministry shall draft and implement the policy in the documentation and record keeping of population, as well as migration.</p>
<p>Ministru kabineta noteikumi Nr. 240 (2003) "Iekšlietu ministrijas nolikums", 24.4. punkts:</p> <p>Ministrijas padotībā ir Pilsonības un migrācijas lietu pārvalde.</p>	<p>The Cabinet Regulation No. 240 (2003) "By-law of the Ministry of the Interior", Section 24.4.:</p> <p>The following institutions are subordinate to the Ministry: the Office of Citizenship and Migration Affairs.</p>
<p>Ministru kabineta noteikumi Nr. 240 (2003) "Iekšlietu ministrijas nolikums", 24.8. punkts:</p> <p>Ministrijas padotībā ir Valsts robežsardze.</p>	<p>The Cabinet Regulation No. 240 (2003) "By-law of the Ministry of the Interior", Section 24.8.:</p> <p>The following institutions are subordinate to the Ministry: the State Border Guard.</p>
<p>Ministru kabineta noteikumi Nr. 811 (2006) "Pilsonības un migrācijas lietu pārvaldes nolikums", 2.1. punkts:</p> <p>Pārvaldei ir šādas funkcijas: īstenot valsts migrācijas un patvēruma politiku.</p>	<p>The Cabinet Regulation No. 811 (2006) "By-law of the Office of Citizenship and Migration Affairs", Section 2.1.:</p> <p>The Office has the following functions: to implement the State migration and asylum policy.</p>
<p>Ministru kabineta noteikumi Nr. 811 (2006) "Pilsonības un migrācijas lietu pārvaldes nolikums", 3.2. punkts:</p> <p>Lai īstenotu noteiktās funkcijas, pārvaldei ir šādi uzdevumi: analizēt procesus, kas saistīti ar migrāciju, patvēruma meklēšanu, personu tiesiskā statusa noteikšanu, iedzīvotāju uzskaiti</p>	<p>The Cabinet Regulation No. 811 (2006) "By-law of the Office of Citizenship and Migration Affairs", Section 3.2.:</p> <p>In order to implement the specified functions, the Office has the following tasks: to analyse the processes related to migration, asylum seeking, determination of legal status of</p>

<p>un personu nodrošināšanu ar personu apliecinošiem un ceļošanas dokumentiem, veikt pētījumus minētajās jomās un piedalīties tajos.</p>	<p>persons, registration of inhabitants and provision of persons with personal identification and travel documents, to conduct research in the referred to fields and to participate therein.</p>
<p>Ministru kabineta noteikumi Nr. 811 (2006) "Pilsonības un migrācijas lietu pārvaldes nolikums", 3.3. punkts: Lai īstenotu noteiktās funkcijas, pārvaldei ir šādi uzdevumi: sadarboties ar valsts pārvaldes iestādēm, starptautiskajām un nevalstiskajām organizācijām un citu valstu migrācijas dienestiem, organizēt starptautiskas apspriedes un konferences par tās kompetencē esošajiem jautājumiem un piedalīties to darbā, analizēt Latvijas Republikas un citu valstu pieredzi minēto jautājumu risināšanā.</p>	<p>The Cabinet Regulation No. 811 (2006) "By-law of the Office of Citizenship and Migration Affairs", Section 3.3.: In order to implement the specified functions, the Office has the following tasks: to cooperate with the State administrative institutions, international and non-governmental organisations and foreign migration services, to organise international meetings and conferences regarding the matters within its competence and to participate in the activities thereof, to analyse the experience of Latvia and other states in solving the referred to matters.</p>
<p>Likums par Eiropas reģiona konvenciju par to kvalifikāciju atzīšanu, kas saistītas ar augstāko izglītību, 1. pants: 1997. gada 11. aprīļa Eiropas reģiona konvencija par to kvalifikāciju atzīšanu, kas saistītas ar augstāko izglītību (turpmāk — Konvencija), ar šo likumu tiek pieņemta un apstiprināta.</p>	<p>The Law on Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Section 1.: By this Law, Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, 11 March is adopted and acknowledged.</p>
<p>Izglītības likums, 11¹ (2). pants: Iesniegto dokumentu ekspertīzes rezultātā tiek noteikts: 1) kādam Latvijā izsniedzamam izglītības dokumentam vai Latvijā piešķiramam akadēmiskajam grādam atbilst ārvalstī izsniegtais izglītības dokuments vai ārvalstī piešķirtais akadēmiskais grāds vai kādam Latvijā izsniedzamam izglītības dokumentam vai Latvijā piešķiramam akadēmiskajam grādam to var pielīdzināt;</p>	<p>Education Law, Section 11¹ (2): As a result of the expert-examination of the submitted documents, it shall be determined: 1) which education document issued in Latvia, or which academic degree conferred in Latvia, is equivalent to the education document issued abroad, or to the attesting document in regard to the academic degree conferred abroad, or which education document issued in Latvia, or which academic degree conferred in Latvia, may be considered as equivalent to</p>

<p>2) kādi papildu nosacījumi jāizpilda, lai ārvalstī izsniegto izglītības dokumentu vai ārvalstī piešķirto akadēmisko grādu varētu pielīdzināt kādam no Latvijā izsniedzamiem izglītības dokumentiem vai Latvijā piešķiramiem akadēmiskajiem grādiem, ja ārvalstī izsniegtais izglītības dokuments vai piešķirtais akadēmiskais grāds neatbilst neviena Latvijā izsniedzama izglītības dokumenta vai Latvijā piešķirama akadēmiskā grāda prasībām.</p>	<p>such; 2) what additional conditions must be fulfilled in order that the education document issued abroad, or the certifying document in regard to the academic degree conferred abroad, may be considered as equivalent to an education document issued in Latvia or an academic degree conferred in Latvia if the education document issued or the academic degree conferred abroad does not conform to the requirements of any education document issued in Latvia or to any academic degree conferred in Latvia.</p>
<p>Pilsonības likums, 11 (1). pants: Ja pastāv vismaz viens no šādiem nosacījumiem, Latvijas pilsonībā neuzņem personu, kura:</p> <ol style="list-style-type: none"> 1) ar savu uzvedību vai darbībām rada draudus Latvijas valsts un sabiedriskai drošībai, valsts demokrātiskajai konstitucionālajai iekārtai, valsts neatkarībai un teritoriālajai neaizskaramībai, tai skaitā, bet ne tikai: <ol style="list-style-type: none"> a) vērsusies pret Latvijas Republikas neatkarību, demokrātisko parlamentāro valsts iekārtu vai Latvijā pastāvošo valsts varu, b) pēc 1990.gada 4.maija paudusi fašisma, šovinisma, nacionālsociālisma, komunisma vai citas totalitārisma idejas vai musinājusi uz nacionālo vai rasu naidu vai nesaticību, c) ir saistīta ar terorismu vai darbojas pretvalstiskā vai noziedzīgā organizācijā, d) ir saistīta ar noziedzīgi iegūtu līdzekļu legalizāciju; 2) bez Ministru kabineta atļaujas dien kādas citas valsts bruņotajos spēkos vai militārā organizācijā; 3) pēc 1940.gada 17.jūnija ir izvēlējusies 	<p>Citizenship Law, Section 11 (1): Provided that at least one of the following conditions exists, the following person shall not be admitted to Latvian citizenship:</p> <ol style="list-style-type: none"> 1) he or she by his or her behaviour or activities causes threats to the security of the State of Latvia and the society, the democratic constitutional order of the State, the independence and territorial immunity of the State, including but not limited to: <ol style="list-style-type: none"> a) has acted against the independence of the Republic of Latvia, the democratic parliamentary structure of the State or the existing State power in Latvia, b) after 4 May 1990, have propagated fascist, chauvinist, national-socialist, communist or other totalitarian ideas or incited ethnic or racial hatred or discord, c) is related to terrorism or acts in an anti-state or criminal organisation, d) is related to legalisation of the proceeds from crime; 2) is serving in the armed forces or military organisation of other country without an authorisation of the Cabinet;

Latvijas Republiku par dzīvesvietu tieši pēc demobilizēšanas no PSRS (Krievijas) bruņotajiem spēkiem vai PSRS (Krievijas) iekšējā karaspēka un līdz dienestā iesaukšanas vai iestāšanās dienai nav pastāvīgi dzīvojuši Latvijā;

4) ir bijusi PSRS vai Latvijas PSR valsts drošības dienesta, izlūkdienesta vai pretizlūkošanas dienesta štata darbinieks, izņemot personu, kura bijusi tikai PSRS vai Latvijas PSR Valsts drošības komitejas plānošanas un finanšu vai administratīvi saimnieciskās struktūrvienības darbinieks;

5) Latvijā vai kādā citā valstī ir notiesāta par tāda noziedzīga nodarījuma izdarīšanu, kas kvalificējams kā noziedzīgs nodarījums arī Latvijā naturalizācijas iesnieguma izskatīšanas laikā. Šis nosacījums neattiecas uz personu, kura notiesāta par noziedzīga nodarījuma izdarīšanu ārvalstī, ja Ministru kabineta noteiktajā kārtībā atzīts, ka attiecībā uz šo personu notiesājošs spriedums ticis pieņemts, neievērojot taisnīgas tiesas vai soda samērīguma principu;

6) pēc 1991.gada 13.janvāra darbojusies pret Latvijas Republiku PSKP (LKP), Latvijas PSR Darbaļaužu internacionālajā frontē, Darba kolektīvu apvienotajā padomē, Kara un darba veterānu organizācijā, Vislatvijas sabiedrības glābšanas komitejā vai tās reģionālajās komitejās vai Latvijas komunistu savienībā;

7) nav izpildījusi nodokļu vai kādu citu maksājumu saistības pret Latvijas valsti.

3) after 17 June 1940, has chosen the Republic of Latvia as his or her place of residence directly after demobilisation from the armed forces of the U.S.S.R. (Russia) or the internal military forces of the U.S.S.R. (Russia), and, until the day of conscription into service or enlistment, had not permanently resided in Latvia;

4) has been the staff employee of the state security service, intelligence service or counter-intelligence service of the U.S.S.R. or Latvian S.S.R., except a person who has only been the employee of the Planning and Finance or Administrative-Maintenance Division of the State Security Committee of the U.S.S.R. or the Latvian S.S.R.;

5) he or she has been convicted in Latvia or any other country for committing such criminal offence that is qualified as criminal offence also in Latvia during examination of an application for naturalisation. This condition shall not apply to a person who has been convicted for committing a criminal offence in a foreign country, if it has been recognised in accordance with the procedures specified by the Cabinet that in respect of such person a judgment of conviction has been rendered without complying with the principle of fair trial or of proportionality of the punishment;

6) after 13 January 1991, has worked against the Republic of Latvia in the C.P.S.U. [Communist Party of the Soviet Union] (L.C.P. [Latvian Communist Party]), the Working People's International Front of the Latvian S.S.R., the United Council of Labour Collectives, the Organisation of War and Labour Veterans, the All-Latvia Salvation of Society Committee or the regional committees thereof, or the Union of Communists of

	<p>Latvia;</p> <p>7) has not fulfilled tax obligations or obligations of other payments towards the State of Latvia.</p>
<p>Pilsonības likums, 12 (1). pants:</p> <p>Naturalizācijas kārtībā Latvijas pilsonībā var uzņemt vienīgi personu:</p> <ol style="list-style-type: none"> 1) kurai naturalizācijas iesnieguma iesniegšanas dienā pastāvīgā dzīvesvieta ne mazāk kā pēdējos piecus gadus ir bijusi Latvijā, no kuriem kopumā pieļaujams gada pārtraukums, kas nevar būt pēdējā gadā pirms naturalizācijas iesnieguma iesniegšanas dienas (citas valsts pilsonim vai bezvalstniekam piecu gadu termiņš tiek skaitīts no pastāvīgās uzturēšanās atļaujas vai pastāvīgās uzturēšanās apliecības saņemšanas dienas); 2) kura prot latviešu valodu; 3) kura zina Latvijas Republikas Satversmes pamatnoteikumus; 4) kura zina valsts himnas tekstu un Latvijas vēstures un kultūras pamatus; 5) kurai ir legāls iztikas avots; 6) kura ir iesniegusi paziņojumu par atteikšanos no savas iepriekšējās pilsonības un saņēmusi iepriekšējās pilsonības valsts ekspatriācijas atļauju, ja tādu paredz šis valsts likumi, vai pilsonības zaudēšanu apliecinošu dokumentu, bet nepilsonis vai bezvalstnieks — apliecinājumu, ka viņam nav citas valsts pilsonības. Šīs prasības neattiecas uz personu, kurai Latvijā piešķirts bēgļa statuss; 7) kura ir devusi solījumu par uzticību Latvijas Republikai; 8) uz kuru neattiecas šā likuma 11.pantā minētie naturalizācijas ierobežojumi. 	<p>Citizenship Law, Section 12 (1):</p> <p>Only the following person may be admitted to Latvian citizenship through naturalisation procedures:</p> <ol style="list-style-type: none"> 1) whose permanent place of residence, as on the day of submitting an application for naturalisation, has been in Latvia for not less than the last five years of which an interruption of one year in total is permitted but which cannot be during the last year before the day of submitting the application for naturalisation (for a citizen of another country or stateless person the five-year period shall be counted from the day of receipt of the permanent residence permit or permanent residence certificate); 2) who is fluent in the Latvian language; 3) who knows the basic principles of the Constitution of the Republic of Latvia; 4) who knows the text of the National Anthem and the basics of the history and culture of Latvia; 5) who has a legal source of income; 6) who has submitted a notification regarding the renunciation of his or her former citizenship and has received an expatriation authorisation from the country of his or her former citizenship, if such authorisation is provided for by the laws of that country, or has received a document certifying the loss of citizenship, but a non-citizen or stateless person – a corroboration that he or she does not have citizenship of another country. Such requirements shall not apply to a person to whom a refugee status has been granted in

	<p>Latvia;</p> <p>7) who has given a pledge of loyalty to the Republic of Latvia;</p> <p>8) who is not subject to the naturalisation restrictions specified in Section 11 of this Law.</p>
<p>Pilsonības likums, 12 (5). pants: Iesniedzot naturalizācijas iesniegumu, persona maksā valsts nodevu. Ministru kabinets nosaka valsts nodevas apmēru, samaksas kārtību un atvieglojumus.</p>	<p>Citizenship Law, Section 12 (5): Upon submitting an application for naturalisation, a person shall pay the State fee. The Cabinet shall determine the amount of the State fee, the payment procedures and exemptions.</p>
<p>Pilsonības likums, 17 (1). pants: Naturalizācijas iesniegumu ir tiesības iesniegt personām no 15 gadu vecuma. Ministru kabinets nosaka atbildīgo institūciju un kārtību, kādā tā pieņem un izskata naturalizācijas iesniegumus. Iesniegumu izskata gada laikā no visu Ministru kabineta noteikumos norādīto dokumentu iesniegšanas dienas.</p>	<p>Citizenship Law, Section 17 (1): Persons from 15 years of age are entitled to submit an application for naturalisation. The Cabinet shall determine the responsible authority and the procedures by which applications for naturalisation shall be accepted and examined. An application shall be examined within one year from the day when all documents specified in the Cabinet regulations have been submitted.</p>

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Law

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Introduction

Migration law is one of the most important and at the same time, one of the most sensitive issues in modern world. The reason for that can be found in the migrant crisis that the world has faced over the past years, but also in the fact that a considerable number of people decide to leave their country and move to another, from different motives, which are often connected with economic and social issues. Globalization has contributed to a greater mobility of people around the world, therefore many states become home to people which are not their citizens. It is well-known that each state provides a different body of rights for its citizens and for non-citizens, even though human rights are equally applied to everyone, in spite of the citizenship. Moreover, each state is obliged to respect human dignity and to provide suitable conditions for normal life of the people living on its territory. There are many conventions which secure migrants rights, but also each state has its own legislation which provides fair treatment for them. Legislation concerning non-citizens is increasingly evolving because of its necessity, having in mind the previously said about the increasing number of migrants in many states. Republic of Macedonia has already adopted a number of laws that regulate significant aspects of migrants' lives. This research gives an answer to some questions concerning national regulation on migrants' rights in Republic of Macedonia.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. National Regulation of the Right to Asylum in the Republic of Macedonia

The Macedonian regulation provides the possibility for foreigners and stateless persons that are persecuted due to their democratic and political beliefs and actions to have the right to asylum under legally envisaged conditions. The ground of this right is established in the Constitution of the Republic of Macedonia (Article 29)²²⁹⁰. On January 18 1994 the Republic of Macedonia has also acceded to:

- the Convention on the Status of Refugees (1951);
- its Protocol (1967); and
- the Convention on the Status of Stateless Persons (1954).

The aforementioned legislation provides a basic regulation of the right to asylum in the Republic of Macedonia, whereas the Law on Asylum and Temporary Protection²²⁹¹ provides detailed

²²⁹⁰ Article 29, Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia no. 52/1991

²²⁹¹ Law on Asylum and Temporary Protection, Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

regulation on the subject in question. The Law on Asylum and Temporary Protection regulates the conditions and the procedure of granting and terminating the right to asylum of a foreign citizen or stateless person, seeking for an asylum in the Republic of Macedonia, as well as the rights and obligations of the asylum seekers and the foreign citizen with granted right to asylum in the Republic of Macedonia. Furthermore, this Law regulates the conditions under which the Republic of Macedonia may grant temporary protection of foreign citizens, as well as their rights and obligations towards the country.

The Law on Asylum and Temporary Protection defines the right to asylum as an international protection that the Republic of Macedonia grants to the following categories of people:

- recognized refugees (refugees as defined in the Convention on the Status of Refugees (1951) and the Protocol on the Status of Refugees (1967)); and
- persons under subsidiary protection.

The Law on Asylum and Temporary Protection also defines the asylum seekers, recognized refugees, people under subsidiary protection, recognized refugees and people under subsidiary protection sur place (already on the territory of the Republic of Macedonia), as well as the acts of persecution and the executors of persecution or serious injuries.

The Law on Asylum and Temporary Protection furthermore regulates the rights and obligations of the asylum seekers until the moment of adoption of final decision in the procedure on recognition of the right to asylum. The rights of the asylum seekers are as follows:

- residence;
- free legal aid;
- accommodation and care in a Reception Centre or other place for accommodation determined by the Ministry of Labour and Social Politics, if needed;
- basic healthcare services according to the healthcare insurance regulation;
- right to social protection according to the social protection regulation;
- right to education according to the regulation on primary and secondary education;
- right to work only in the Reception Centre and right to free access to the labour market if the asylum seeker's request has not been solved for more than a year, following the period of one year;
- contacts with the High Commissioner for Refugees, as well as NGOs with respect to providing legal aid during the course of the procedure on recognition of the right to asylum.²²⁹²

On the other hand, they are obliged to fulfill the following obligations:

- to stay in the Reception Centre or other place for accommodation determined by the Ministry of Labour and Social Politics and not to leave the residence place without: (i) informing the competent institution, or (ii) obtaining permission for leaving the place, if needed;
- to cooperate with the institutions responsible for granting the right to asylum, including: to provide personal data, to hand over identification and other

²²⁹²Law on Asylum and Temporary Protection, Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

- documentation, to enable his/her photographing and fingerprinting, personal search and search of his/her luggage and/or vehicles with which he/she has arrived in the country, as well as to provide information on his assets and income;
- to undergo some health tests, medical treatment and missed vaccination upon request of the healthcare institutions, in case if there is an event that might be considered as a risk upon the public health; and
 - to respect the house rules of the Reception Centre or any other place for accommodation determined by the Ministry of Labour and Social Politics and to avoid being violent.²²⁹³

The Law on Asylum and Temporary Protection was subject to amendment several times during the last years in order to ease the procedure on obtaining right to asylum to potential asylum seekers and to prevent illegal migration. In this respect, several amendments were adopted in regards to harmonization with the EU regulation.

1.2. Procedure for Granting Asylum and Responsible Authority

The responsible authority in the Republic of Macedonia for granting the right to asylum is the Ministry of Interior, and specifically the Department for Asylum. The procedure is initiated by submitting a Request for granting the right to asylum (“**Request**”) by the asylum seeker. The asylum seeker may submit the Request with the border police, the nearest police station or in the office of the Department for Asylum in the scope of the Reception Centre. In case the asylum seeker is already on the territory of the Republic of Macedonia, he/she should submit the Request to the Department for Asylum in the Ministry of Interior. Such Request may be submitted in writing or oral on a record, in Macedonian language or in the language of his/her origin. In the moment of submission of the Request, the foreigner is being photographed and her/his fingerprints are being taken. Following this, the Ministry of Interior is obliged to issue a Certificate for submitted Request within three days of the submission, whereby the status of asylum seeker is being confirmed and it proves that the asylum seeker has the right to residence in the Republic of Macedonia until the final decision upon the Request.²²⁹⁴

Following the submission of the Request, the Department for Asylum notifies the asylum seeker within fifteen days as of the submission, in writing and oral, on the manner of conducting the procedure for granting the right to asylum, the rights and obligations of the asylum seeker, the consequences in case of failure to fulfill these obligations, the right on legal aid, the right to communicate with representatives of the High Commissioner for Refugees, as well as NGOs with respect to providing legal aid during the course of the procedure on recognition of the right to asylum. On the other hand, the asylum seeker is obliged to provide complete documentation and information with respect to its age, family relations, identity, citizenship, former residence, history of travel and reasons on submitting the Request.

²²⁹³ Law on Asylum and Temporary Protection ,Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

²²⁹⁴ Law on Asylum and Temporary Protection ,Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

The procedure on granting the right to asylum may be:

- regular procedure; or
- shortened procedure.²²⁹⁵

The regular procedure lasts six months as of the day of submission of the Request and it includes hearing of the asylum seeker, analyzing whether there are reasons for rejecting the Request, in case the Request should be rejected the Department for Asylum will review whether there are reasons for granting the right to asylum due to subsidiary protection, and adopting a decision on granting/rejecting the right to asylum or granting the right to asylum under subsidiary protection. If the adopted decision refers to rejecting the right to asylum, such decision will include the reasons why the Request has been rejected, legal remedy and timeframe for leaving the country (not earlier than fifteen days as of the day when the decision has become effective). In this event, the asylum seeker has the right to initiate an administrative lawsuit against such decision within thirty days as of receipt of the decision. The Administrative Court should adopt a decision within two months as of the submission of the lawsuit.

The shortened procedure is being conducted when the Request is obviously groundless, unless the Request is submitted by an unaccompanied minor or a person with intellectual disabilities. Examples of a groundless Request include: when the Request is based on a fraud or misuse of the procedure on granting the right to asylum; the country of origin of the asylum seeker is being considered as a safe country, unless the asylum seeker proves that the country is not safe for him/her; there are no grounds in the claims on fear of persecution, etc.

In this event, the Department for Asylum will adopt the decision within fifteen days as of the submission of the Request, and the timeframe for leaving the country will be following five days as of the effectiveness of the decision. As well as with the regular procedure, in the event of the Request has been rejected, the asylum seeker also has the right to initiate an administrative lawsuit before the Administrative Court, within seven days as of the receipt of the decision and such lawsuit should be solved within thirty days as of the submission of the lawsuit.

In any event, the asylum seeker has the right to submit a new Request, in which event he/she will have to prove that the circumstances have changed significantly from the moment of submission of the previous Request.

The Ministry of Labour and Social Politics is another authority responsible for the social security and care for the asylum seekers and refugees. The Ministry of Labour and Social Politics is responsible for the procedure on accommodation with the Reception Centre, social care, health care and basic education and work within the Reception Centre.

A foreigner cannot obtain the right to asylum in the Republic of Macedonia (grounds for exclusion of refugee protection) if there is a reasonable doubt that he/she:

- committed a crime against peace, humanity or committed a war crime, in accordance with the international acts envisaging these crimes;
- committed a serious nonpolitical crime outside of the territory of the Republic of Macedonia, prior entering as a refugee; or

²²⁹⁵ Law on Asylum and Temporary Protection, Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

- is guilty for acts contrary to the purposes and principles of the Organization of the UN;
or
- is considered as danger upon the safety of the Republic of Macedonia.

The right to asylum will cease to exist (grounds for termination of the right to asylum) for recognized refugee that:

- will be voluntarily re-placed under protection of his/her country of citizenship;
- will voluntarily re-obtain citizenship of his/her country
- obtained new citizenship and enjoys protection by the country of citizenship;
- will voluntarily move to the country that he/she left due to fear of prosecution;
- cannot continue rejecting protection from the country of citizenship, due to the fact that the circumstances under which the person was assigned with right to asylum ceased to exist; and
- a stateless person that can go back to his/her country of residence due to the fact that the circumstances under which the person was assigned with right to asylum ceased to exist.

With respect to the removal and re-entry into the Republic of Macedonia, please note that Macedonian law does not envisages any further regulation besides the provisions for deportation of immigrant in case when the request for asylum has been denied.

2. How does your national law regulate immigration from EU member states and non-EU states?

The Macedonian law differs asylum seekers that seek to enter or have already entered in Macedonia illegally from any secure third country, EU member, NATO member or EFTA member country, compared to the asylum seekers from the rest of the countries.

In the event of such an asylum seeker submitting a Request, such Request will be considered as a groundless Request and will be rejected according to the aforementioned shortened procedure, taking into consideration the principle of non-refoulement (the fundamental principle which forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion or where he would be subjected to torture, inhuman or degrading treatment or punishment).

The Macedonian law defines the secure third countries, EU member, NATO member or EFTA member countries as countries that have ratified the Convention on the Status of the Refugees (1951) and the European Convention on Protection of Human Rights, including the standards for effective legal aid, as well as countries that have established asylum procedure in accordance with its national regulation and the Convention on the Status of the Refugees (1951).

Once the immigrants have obtained the migration status (i.e. they became recognized refugees), they are obliged to act in accordance with the Constitution of the Republic of Macedonia, the laws and other regulations and decision of state authorities, as well as in accordance with the

obligations envisaged in the international agreements, ratified in accordance with the Constitution. Under Macedonian law, the recognized refugees have the same rights and obligations as the citizens of the Republic of Macedonia, except the right to vote, to be part of the military service and to perform business activity/to be employed/to establish NGOs or political party in the event when the law prescribes a condition for the person to be a Macedonian citizen. The Macedonian Law on Asylum and Temporary Protection does not envisage any particular steps in order for the immigrant to maintain his/her status. However, the recognized refugees have to comply with the Law on Asylum and Temporary Protection with respect to the grounds for exclusion of migration status and the grounds under which the right to asylum will cease to exist, as described above in question 1.

In the event when the recognized refugee wants to leave the country, there should not be any legal barriers to do so, under the event that the conditions for termination of the right to asylum are met. In this respect they are obliged to notify the state authorities responsible for granting the right to asylum in order for a procedure on terminating the right to asylum to be performed. In this event, the immigrant is obliged to return the personal identity card and the passport to the Ministry of Interior of the Republic of Macedonia.

On the other hand, if the asylum seeker Request has been rejected, he/she should leave the country within the deadline prescribed in the decision of the Department for Asylum. On the contrary, the deportation will be conducted in accordance with the Law on Foreigners²²⁹⁶ on the ground on illegal residency in the Republic of Macedonia. The procedure in the Law on Foreigners implies adoption of a Decision by the Ministry of Interior, including the deadline in which the immigrant should leave the country, as well as the period of prohibition to enter in the Republic of Macedonia (from six months to five years) and the notification to the immigrant that if he do not leave the country in the respective deadline he/she will be deported.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The Ministry of Labor and Social Policy²²⁹⁷ has implemented the Integration Strategy for Refugees and Foreigners in 2008, which should be able to contribute to fast integration of foreigners in the country, in accordance with the international and European legal framework. The Strategy contains thorough analysis of the historical and legal aspects of the integration of the target group, adding the EU integration policy and the national legal framework in the Republic of Macedonia. Laws regulating this subject are: Law on asylum and temporary protection, Law on foreigners, Law on employment and work of foreigners and many other laws that contain applicable regulations.

²²⁹⁶ Law on Foreigners, Official Gazette of the Republic of Macedonia, nos. 35/2006, 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013, 148/2015 and 217/2015

²²⁹⁷ <http://www.mtsp.gov.mk>

The Law on asylum and temporary protection²²⁹⁸ contains the rights and responsibilities of asylum seekers and persons under humanitarian protection. According to Article 2, the right of asylum is protection granted by the Republic of Macedonia, under the conditions and in the procedure defined by this Law, to the following categories of persons:

- recognized refugee (refugee according to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees); and,
- person under humanitarian protection (in compliance with Article 3 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).²²⁹⁹

A specialized public shelter that provides housing for asylum seekers is called for and opened in 2008. It has the capacity of 150 beds and while providing food, shelter and other basic human needs, it also gives the asylum seekers psychological help and support.

The right to enter the country and stay in it is covered by the Law on foreigners²³⁰⁰. According to Article 2, a foreigner, in the context of this law, shall mean a person who is not a citizen of the Republic of Macedonia. A foreigner shall also mean a stateless person, that is, a person who is regarded by no country as its own citizen as in accordance with its national law.²³⁰¹ The law governs the types of visas available to the foreigners and the requirements they have to meet in order to acquire them. The Ministry of Interior²³⁰² of the Republic of Macedonia is in charge of making decisions in that area.

The Law on employment and work of foreigners²³⁰³ regulates the conditions and procedure for employment or work of foreigners in the Republic of Macedonia, unless otherwise defined by an international agreement. According to Article 1, a foreigner shall be considered an employed person in the Republic of Macedonia if he, on the basis of an employment contract, has established a labor relation with an employer whose headquarters or place of residence is in the Republic of Macedonia or if the foreigner has acquired a status of a self-employed person in accordance with this Law, and services provided by foreigners and other forms of work performed by foreigners on the basis of employment contracts or other contracts under the civil law, implemented on the territory of the Republic of Macedonia for a definite period of time, shall be considered work performed by foreigners in accordance with this Law. It contains the procedure for work permits issuance and other procedures foreigners have to follow in order to work legally in the Republic of Macedonia.²³⁰⁴

²²⁹⁸ Law on Asylum and Temporary Protection ,Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

²²⁹⁹ Article 2, Law on Asylum and Temporary Protection ,Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

²³⁰⁰ Law on foreigners, Official Gazette of the Republic of Macedonia, no 35/2006

²³⁰¹ Article 2, Law on foreigners, Official Gazette of the Republic of Macedonia, no 35/2006

²³⁰² <http://www.mvr.gov.mk>

²³⁰³ Law on employment and work of foreigners, Official Gazette of the Republic of Macedonia, no 70/2007

²³⁰⁴ *ibid*

MARRI is also an important subject in the field of migration law. In 2002, the Stability Pact for South Eastern Europe²³⁰⁵ adopted a decision on the establishment of the Regional Initiative for issues of migration, asylum and refugees (MARRI)²³⁰⁶ for the purpose of better management of migration flows in the region. MARRI was founded in Herceg Novi, Republic of Montenegro on 5 April 2004²³⁰⁷. It is a regional initiative on issues of migration, asylum and refugees, whose participants are: Republic of Albania, Bosnia and Herzegovina, Republic of Macedonia, Republic of Montenegro, Republic of Serbia and Republic of Kosovo and its headquarters, the MARRI Regional Center is in Skopje, Republic of Macedonia. The Statute of the Migration, Asylum and Refugees Center defines the activities of the participant countries, as well as internal and operational organization of the Center; on the other hand, the functioning of the initiative is established by the Guidelines and Rules of Procedure.

Decision-making bodies within the MARRI Initiative are:

1. Regional forum – composed of the ministers of interior of the participant countries, as well as senior representatives in charge of the issues of asylum, migration, border management, visa regime and return of displaced persons, and
2. Regional committee - composed of representatives of the Ministries of Foreign Affairs of the participants and its task is to determine the guidelines for MARRI, to coordinate activities, make strategic decisions regarding the activities of the initiative and propose ways of realization of ideas and projects within the Initiative.

In 2006, the Government formed a Coordinative integration body for Refugees and Foreigners. This group is responsible for developing strategies and policies, reviewing reports from the ministries and sending recommendations to the Government to implement and develop final strategies and national action plans for local integration in Macedonia. Founding members are: Ministry of Labor and Social Policy, Ministry of Internal Affairs, Ministry of Education, Ministry of Health, Ministry of External Affairs, Ministry of Local Self-government, Secretariat for European Affairs, Association of the Units of Local Self-government and the Red Cross. The Ministry of Labor and Social Policy leads the process of executing integration measures and it presides with the body.

In 2009, the Ministry of Labor and Social Policy founded the Integration Center for Refugees and Foreigners, which is supposed to function as a helping hand for the Government in the process of executing integration activities. It works as a consulting center for informing refugees and getting access to services like housing, medical care and education.

Having in mind that the Ministry of Labor and Social Policy is part of the Government of the Republic of Macedonia, the funds come from the Government. That also includes funding the aforementioned bodies under the Ministry. They create budgets, which are approved by the Ministry. Then, the Government gives approval to the ministries' budgets and the Parliament votes and it adopts the needed budgets.

²³⁰⁵ https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/stability-pact_en

²³⁰⁶ <http://marri-rc.org.mk>

²³⁰⁷ Herceg Novi Joint Declaration on MARRI, 5 April 2004

In case of maltreatment by the responsible bodies, migrants can turn to the Ministry of Labor and Social Policy and the Ministry of Internal Affairs. They can also address the primary courts in Skopje, the Ombudsman of the Republic of Macedonia and various organizations, such as the Helsinki Committee for Human Rights in Macedonia, Red Cross, Open Gate: La Strada and other venues similar to these.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

Migration from one country to another has dramatically increased in recent years, a trend that is predicted to increase further in the foreseeable future. The official numbers collected by the State Statistical Office²³⁰⁸ show that the number of migrants is gradually growing. According to population estimates (on December 31 2016), the Republic of Macedonia has 2.073.702 inhabitants, which is 13.908 persons or 0.7% more compared with 2011, and 31.761 persons or 1.6% more, compared to 2006. In the period 2006-2016 there has been a continuous increase in the number of immigrated foreigners in the Republic of Macedonia. In 2006, there have been 1.029 immigrated foreigners and 35 emigrated foreigners. The numbers are increasing in the next years, so in 2011 there have been 1.747 immigrated foreigners and 147 emigrated foreigners, and in 2016 there have been 2.481 immigrated foreigners and 190 emigrated foreigners.

The statistics from the State Statistical office regarding international migrations show that the numbers of immigrants are changing from year to year. In 2012, there have been 2.072 foreigners with temporary stay, 1.319 foreigners with extended stay, 1.941 foreigners were with temporary stay and 1.560 foreigners were with extended stay in 2013. In 2014, there have been 2.273 foreigners with temporary stay and 1.670 foreigners with extended stay. In 2015, the statistics show that there have been 3.617 foreigners with temporary stay and 1.482 foreigners with extended stay. Last year, in 2016, there have been 2.481 foreigners with temporary stay, 1.979 foreigners with extended stay.

The official numbers collected by the State Statistical Office also show that most of the immigrated citizens of the Republic of Macedonia and the foreigners are from Europe – 2.501 to be precise, from which 234 are immigrated citizens, and the other 2.481 are immigrated foreigners. The other immigrated citizens and foreigners are from America - 100, Asia - 112, Africa – 15, Australia – 23, and the other is unknown.

The immigrated foreigners in the Republic of Macedonia are from Turkey, Albania, Kosovo, Serbia, Bosnia and Herzegovina and other countries. Most of them are from Turkey. The

²³⁰⁸ Publications by the State Statistical Office

State Statistical Office, Macedonia in figures, 2017

Available from: http://www.stat.gov.mk/PrikaziPoslednaPublikacija_en.aspx?id=27

State Statistical Office, Migrations, 2016

Available from: <http://www.stat.gov.mk/Publikacii/2.4.17.06.pdf>

State Statistical Office, Statistical Yearbook, 2017 Available from:

http://www.stat.gov.mk/PrikaziPoslednaPublikacija_en.aspx?id=34

statistical review also shows the emigrated citizens of the Republic of Macedonia, which are immigrating to USA, Germany, Australia, Switzerland and other countries. The statistics also show that most of the immigrated citizens of the Republic of Macedonia are females; more of them are married compared to the ones which are unmarried, widowed or divorced; and most of them are at the age of 30-64. The main reasons for the migrations are employment, education, family and mostly marriage. Most of the immigrated citizens of the Republic of Macedonia are with secondary school, while there are least doctorates as immigrated citizens in Republic of Macedonia. In Macedonia, from 2.481 immigrated foreigners, only 81 of them are foreigners born in the Republic of Macedonia. The other 2.400 are foreigners born abroad. According to Albanian Centre for Socio-Economic Research²³⁰⁹, migration has been a major determinant of demographic change in Macedonia. Macedonia is a migration area characterized by an intense exodus of the population to other countries, mainly to the EU. Macedonia's migrants usually leave as young working age adults and remain in their destinations for a long period of time (5-10 years). The emigrants are often young married males who depart to earn money abroad. The total number of Macedonian citizens residing abroad is estimated to be more than 300.000 persons who migrated from Macedonia over the last 50 years, representing 15% of the total population. More recent statistics confirm that the current stock of migrants abroad is 447.139, or a quarter of the population. Regarding their educational attainment, the majority of emigrants have low or medium levels of education at the time of departure. There has also been a very slight rural bias among emigrants – slightly more individuals from Macedonia's rural areas tend to go abroad and remain. All ethnic groups experience emigration, but there is a disproportionate level of migration among the Albanian, Roma and Turkish ethnic groups. This may well be an effect of poverty, which also slightly disproportionately affects these ethnic groups (which, on average, also exhibit lower levels of education).

A research from Oncheva²³¹⁰ show that since UNHCR began monitoring on July 1 2015, by mid October 2015 some 515.000 refugees and migrants have departed from Gevgelija. The Ministry of Interior Affairs' statistics on refugees and migrants who have declared their intention to apply for asylum reached 230.248, including 58.217 (25%) children of whom 11.711 (6%) have been unaccompanied since 19th June until November 10 2015. 146.121 (63%) of the arrivals are Syrians, 48.716(21%) Afghans, 17.969 (8%) Iraqis, 4.822 (3%) Pakistanis and the remainder represent other nationalities such as Palestinians, Iranians, Somalis, Congolese and Bangladeshi. 70 asylum applications were registered from which 51 were submitted by Syrians in the same period, while from January to the end of October 1.739 asylum applications were submitted.

²³⁰⁹ Analytica, Education outcomes from migration and remittances in Albania and Macedonia, 9 August 2013, Skopje/Tirana

²³¹⁰ Silvana Oncheva, Margarita Spasenovska, Health aspects of the migrant and refugee crisis in Macedonia, 2015

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Council of Europe's protection of migrants

The European Court of Human Rights plays a crucial role in the protection of human rights in the countries party to the European Convention. As such, its influence is of utter importance in regards to matters of migration law.

Migrants are a special, vulnerable category of people, who for various reasons, often including threat for their lives or wellbeing, have chosen to leave their country of residence seeking a new one. Therefore, the international community is responsible to utilize all of its methods to grant these people a special treatment and ease their already difficult lives. Migrants are protected by international standards, but specifically by Council of Europe standards. The European Court of Human Rights has raised itself on a pedestal of key protector of immigrants' rights.

According to the European Convention on Human Rights, migrants enjoy several rights specific to their position, such as the right to immigration controls in conformity with the human rights standards, rights related to the process of entry and reception, specific duration and condition of the possible detentions, right to judicial review and compensation, right to housing, medical assistance, education, work and protection, right to family reunification etc.²³¹¹

So far, there has not been a single decision by the ECtHR with the Republic of Macedonia as a respondent state in which an application has been filed due to violation of the migrants' rights. However, the valuable case law of this Court from other countries both in the region and beyond shall be of great relevance for the country's treatment of migrants.

5.2. Rights in detention

Perhaps the biggest topic, both in theory and in the practice of the courts is the question of the rights in detention, including the strict grounds for detention, but also the maximum duration and the optimal conditions in detention. Even the countries who do not accept migrants, or who adopt a more strict approach towards their acceptance, are obliged to respect the basic human rights of these groups of people, an obligation which also applies in detention.²³¹²

An interesting case dealing with the rights in detention is *Khlaifia and Other v. Italy*.²³¹³ According to the Court's decision, Italy was found in violation of the applicant's right to liberty and security, their right to be promptly informed for the reasons of detention, as well as their right to a speedy decision by the court on the lawfulness of the decision. The rest of the allegations were disregarded by the Court.

²³¹¹Ktistakis, Y. Protecting Migrants under the European Convention on Human Rights and the European Social Charter. Strasbourg: Council of Europe Publishing; 2013.

²³¹²International Justice Resource Center. "Migration Crisis: Recent developments, human rights standards and European Court decision"; 04.09.2015.

Available from: <http://www.ijrcenter.org/2015/09/04/migration-crisis-recent-developments-human-rights-standards-and-european-court-decision/> [Date of last access: 29.06.2017]

²³¹³ECtHR Case of *Khlaifia and Others v. Italy* (no. 16483/12).

Available from: <http://hudoc.echr.coe.int/eng?i=001-156517>

This is one of the many cases presenting the countries' ill treatment of migrants when under detention. However, most of the countries that are exposed to large migration flows have in some way violated their rights during detention. In the Republic of Macedonia, including the Macedonian-Greek border, several migration camps have been enacted in order to easily control the number and actions of the incoming refugees. However, there have been multiple protests inside these camps, and although the general public is not closely acquainted with the conditions, they are clearly less than perfect. It is obvious that such violations directly infringe migrants' rights to liberty and security.²³¹⁴ In addition, knowing the malfunctioning and inefficiency of the Macedonian judicial system, it is highly possible that migrants have to wait prolonged periods of time to acquire a decision on the lawfulness of the detention decision, often to no avail.

5.3. Extreme poverty and respect for human dignity

As we have previously mentioned the conditions in detention, it is also useful to observe the treatment of migrants generally, and the state's liability for the lack of adequate living conditions. The landmark case *M.S.S. v. Belgium and Greece*²³¹⁵ deals with this. According to the Court, the living conditions, combined with the vulnerability of the applicant and the inaction of the state, combined into a judgment of inhumane and degrading treatment.²³¹⁶ The applicant in question had been living on the street, with no access to sanitary facilities and lacking and without any means of providing for his essential needs. In addition, he was subjected to humiliating treatment showing lack of respect which caused him to feel constant fear and inferiority. The court decided that the state could have reduced this suffering by hastening the process of examining his asylum claim, but also through providing better living conditions.

While it is true that, as mentioned above, the migrants crossing Macedonia's territory are sometimes obliged to live in degrading conditions²³¹⁷, both at liberty and under detention, it is also worth to mention that there have not been any similar cases in our country, with especially inhumane living conditions. With the current economic and political situation in the country, in comparison to other, more developed Western countries, the situation is not as bad. The country attempts to, at least in theory, implement the obligation to protect the migrants against extreme material poverty by providing adequate standards of living, in accordance with international and EU standards.

²³¹⁴ "Hundreds hurt in police clashes at Greece-Macedonia border". The Guardian: 10.04.2016

Available from: <https://www.theguardian.com/world/2016/apr/10/clashes-between-migrants-and-police-at-border-between-greece-and-macedonia> [Date of last access: 11.09.2017]

²³¹⁵ ECtHR Case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09).

Available from: <http://hudoc.echr.coe.int/eng?i=001-156517>

²³¹⁶ International Justice Resource Center. "Migration Crisis: Recent developments, human rights standards and European Court decision"; pp. 47.

²³¹⁷ "Macedonia forces refugees back into Greece as conditions worsen". Telesur: 16.04.2016.

Available from: <https://www.telesurty.net/english/news/Macedonia-Forces-Refugees-Back-into-Greece-as-Conditions-Worsen-20160316-0051.html> [Date of last access: 11.09.2017]

5.4. Conclusion

Although there is no case law regarding the treatment of migrants in the Republic of Macedonia, it cannot be said that this country provides an excellent treatment of these vulnerable groups. Through the observance of two important decisions by the ECtHR, we have seen the basic requirements for protection of the human rights of migrants crossing or living in other countries. While it is true that the Republic of Macedonia lacks the provision of adequate living conditions, and is not very prompt in guaranteeing the migrants' rights in detention, it may be concluded that, comparatively, the country attempts to aid the migrants and, if it does not manage to make it easier, at least does not put a further burden on the lives of the thousands of migrants passing its territory. This, together with the election of a new, pro-European and reformative government in the state, enables us to hope for better protection of the rights of the migrants in the Republic of Macedonia.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

Most of the recommendations initiated in the ECRI report paved certain problematic provisions in the codes of the state, particularly those regarding minority groups with a common point to the LGBT community including the persistent problems of hate speech, the lack of plans to aid the Roma community issues and their representation in society as well as a number of legislative concerns in areas like the refugee crisis, the independence of certain organs among others. It is to be noted that as of May of 2017 Macedonia is undergoing a government change and is in a transitional period still which entails starting, continuing or cancelling a number of programs or acts. As of right now, the new government has strict guidelines that coincide with ECRI's recommendations with the so called **Plan 3-6-9**²³¹⁸ which is promising significant ways of developing new strategies and paths to strengthening a number of areas. This includes everything from issues with procedures of work, administrative, media and judicial reforms, partnering with the civil society, organized crime and corruption and migration. It's also crucial to add that these are still in an early stage of development and few legal acts are in effect.

The **National Strategy for Equality and Non-discrimination 2016-2020**²³¹⁹ was adopted in May of 2016. Whilst some hopeful changes have been highlighted, no crucial matters have been initiated in the document, including no real mention of concrete policies regarding the critiques from the report. Going from the 20 bullet points mentioned in the report, the provisions of the Criminal Code, those most ridiculed for not complying completely with the General Policy Recommendation (GPR) No. 7²³²⁰ have not been adjusted. Within the same grasp, a number of

²³¹⁸ Government of the Republic of Macedonia, Plan 3-6-9, 04.07.2017

²³¹⁹ Ministry of Labor and Social Policy, National Strategy for Equality and Non-discrimination 2016-2020, 2016

²³²⁰ European Commission on Racism and Intolerance, Recommendation No. 7, 13.12.2002

criticisms have been made towards the civil and administrative law provisions – all of which have a focal point that there's no mention of sexual orientation or gender identity as a means of discrimination. It is to be noted that no legal document in Macedonia explicitly states either of the two as a target for discrimination, including the Constitution.

The urgent point on the independence of authorities that would battle discrimination and the Ombudsman as an authority still cannot deal with alleged infringement of legal persons or initiate court cases when a specific victim is not referred to – the provisions stated in the **Law on the Ombudsman (2003)**²³²¹ have not been changed. The Commission for protection against discrimination that was formed with The prevention and protection against discrimination (2010)²³²² came under serious fire in January of 2016 for, what a number of NGOs and experts call, “an incompetent commission” after the choice of new members, as a large number of them have never worked in the field of protecting marginalized groups and have close ties to the now former ruling party – a note the report urged be fixed as a top priority. In their annual report for 2016²³²³, they concluded only 80 cases where they acted upon; however 31 of those have concluded no basis for discrimination. To remark, the new government promised immediate change to make the body a “more independent and expert body”²³²⁴ by changing its member status and expanding their jurisdiction.

Regarding the hefty hate speech critiques followed up with the load of recommendations, it is to be noted that a number of NGO initiatives have taken action with multiple conferences, events, trainings etc. in hopes to educate people on the effects of hate speech and hate crime – however no such changes in the legal department. No official government or regulatory bodies keep any statistical, factual documentation on the situation of what the report calls “the growing problem of racist and homo-/transphobic hate speech”²³²⁵, the Ombudsman as an independent body released a report²³²⁶ on the situations regarding human rights and freedoms, where he begrudgingly noted a number of issues, including the rise of police brutality, the ineffectiveness in dealing with responsibility from authority, the ever growing problem with the prison system and the conditions in it, social security for marginalized communities, group employments on an ethnic basis, hate crimes against ethnic minorities among others.

One of the main points of the report had concerns over the lack of assistance, integration, even rights that the Roma community has. Macedonia adopted the **Strategy for the Roma in Republic of Macedonia 2014-2020** in 2014 which promised a number of improvements in the community including employment, education, health, social security, culture, integration etc. Regrettably, no significant improvements have been made as even more initiatives, projects and reports urge the solving of the same problems which only highlights the lack of success this

²³²¹ Law on the Ombudsman, Official Gazette of the Republic of Macedonia, no60/2003

²³²² Official Gazette of the Republic of Macedonia no. 50/2010 from 13.04.2010

²³²³ http://www.kzd.mk/sites/default/files/Godisen_izvestaj_2016_finalen.pdf

²³²⁴ http://vlada.mk/sites/default/files/programa/2017-2020/ProgramaVlada2017-2020_08062017.pdf

²³²⁵ http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/former_yugoslav_republic_macedonia/MKD-CbC-V-2016-021-ENG.pdf

²³²⁶ Ombudsman, Annual Report on the degree of security, respect, promotion and protection of human freedoms and rights for 2016

strategy has had. No official documents have been received to shed facts or statistics with the made plans however the problem still resides.

ECRI's recommendations with respect to the inclusion of the new Integration Strategy have unfortunately not been taken into account. UNHCR's recent observation²³²⁷ regarding the treatment and policy for refugees critiqued the same points: lack of independent observers, mechanisms for proper screening, the full implementation of laws into practice, training for officials. Macedonia is one of the main transit countries for the "Balkan route" that refugees take, with a mind boggling 90%²³²⁸ of all asylum seekers leaving the country before the procedure is completed – and in 2016 it effectively shut down the route after closing its borders. On a lighter note, UNHCR also concluded that there has been a steady improvement in adopting international standards within legislature and overall capacity – however it still doesn't qualify Macedonia as a safe third country for refugees. With recent changes, the government's position stands that there will be no expansion or building of new refugee camps had another crisis come about.

It is worth noting that the Ministry of Labour and Social Policy has recently drafted the **Refugees and Foreigners' Integration Strategy 2017–2027**²³²⁹. The Strategy itself was outlined with the help of UNHCR and covers four significant areas: housing, education, employment as well as integration and procedural shortcomings and a faster integration process. The legal framework for providing same-sex couples a right to be recognised and protected under the law is – as mentioned above, absent. Macedonia's LGBT rights record lags far beyond those of most other European countries as in Macedonian family law only heterosexual non-marital cohabitation is allowed. In 2015, there was an overwhelming support to a vote that defined marriage as a union between one woman and one man.²³³⁰ In more recent news, for the first time ever in Macedonia, the minister of Culture acknowledged the existence of the LGBT community and promised to promote and protect it at the opening of Pride Week this year – a first in Macedonian history. The Ombudsman has also signed a memorandum to work and improve the status of the LGBT community in late 2016²³³¹, and as a viable institution promised to help and prevent any and every kind of discrimination the community faces.

7. How is migrants' right to access to healthcare regulated within the national legislation?

The migrants' right to access to healthcare is regulated with a few laws, mainly with The Law on Asylum and Temporary Protection and the Law on Health Protection.

²³²⁷ <http://www.refworld.org/pdfid/55c9c70e4.pdf>

²³²⁸ *ibid*

²³²⁹ Ministry of Labour and Social Policy, Strategy for Integration of Refugees and Foreigners in Republic of Macedonia 2017-2027

²³³⁰ Law on Family, Official Gazette of Republic of Macedonia no. 80/1992

²³³¹ http://ombudsman.mk/EN/activities/231373/memorandum_of_cooperation_has_been_signed_between_the_office_of_the_ombudsman_and_the_lgbt_center.aspx

The Law on Health Protection, in article 2 defines that the health protection, in terms of the Law, shall include a system of social and individual measures, activities and procedures for: maintenance and promotion of health; prevention, early detection and eradication of diseases, injuries and other work; environment related health disorders; timely and efficient treatment, and healthcare and rehabilitation. The measures, activities and procedures referred must be based on scientific evidence, must be safe, secure, efficient and in accordance with the professional ethics.

2332

Everyone shall be entitled to health protection and shall be obliged to care for and maintain and promote his/her health in accordance with this and another law. No one has the right to endanger the health of the others. In states of emergency, everyone shall be obliged to provide first aid according to his/her abilities, and in a life-threatening situation, to notify the closest healthcare institution and to enable access to emergency medical care, according to the Law on Health Protection, article 3.

The Law on Asylum and Temporary Protection is the basis of the legal framework for treatment of refugees and asylum seekers in the Republic of Macedonia. The Law on Asylum and Temporary Protection governs the conditions under which the Republic of Macedonia can grant temporary protection as well as the rights and duties of persons under temporary protection. The law guarantees certain rights for recognized refugees. In essence, these rights are those enjoyed by every citizen of the state, with the exception of the right to vote, the right to establish a working relationship, to establish associations of citizens and political parties when the citizenship of the Republic of Macedonia is a legal obligation, according to Articles 50-57 of the Law on Asylum and Temporary Protection.²³³³

The Law on Asylum and Temporary Protection in chapter V regulates the rights and duties of asylum seekers, rights and duties of recognized refugees, rights and duties of persons under subsidiary protection and the right of temporary protection.

According to article 48, the asylum seekers until the taking of a final decision in the procedure for recognition of the right to asylum have the right to basic health services. The asylum seeker is obliged to: subject himself to medical examinations, treatment and omitted immunization upon request of the bodies competent for the activities in the field of the health care, in case of a threat for the public health.²³³⁴

According to article 54, until the acquisition of the capacity of an insured person pursuant to the Law on Health Protection, the recognized refugee has the right to basic health services, same as the nationals of the Republic of Macedonia.²³³⁵ Article 55 claims that the Ministry of Labour and Social Policy takes care of the accommodation, allocation of financial assistance and healthcare of the recognised refugees.

²³³² Article 2, Law on Health Protection, Official Gazette of the Republic of Macedonia, no 43/12, 145/12, 87/13, 164/13, 39/14, 43/14, 132/14, 188/14, 10/15, 61/15, 154/15 and 192/15

²³³³ Law on Asylum and Temporary Protection, Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

²³³⁴ Article 48, *ibid*

²³³⁵ Article 54, *ibid*

The rights and duties of persons under subsidiary protection are regulated in Article 60, which claims that the person under subsidiary protection is entitled to financial assistance under conditions and in the amount established in the Article 53 of the Law and to basic health services pursuant to Article 54 of the Law.²³³⁶

If not otherwise determined by the Law on Health Protection or any other law, the persons under subsidiary protection have the same rights and obligations as the aliens under temporary residence permit in the territory of the Republic of Macedonia.²³³⁷

In the event of a mass influx, the Government may grant temporary protection to persons coming directly from a state where their life, safety or freedom have been threatened by war, civil war, occupation, internal conflict linked with violence or mass violation of human rights. The temporary protection in the Republic of Macedonia cannot last longer than two years. The persons under temporary protection have the rights to healthcare, pension and invalid insurance, under the same conditions prescribed by appropriate regulations for aliens under temporary residence permit in the Republic of Macedonia, humanitarian assistance and basic health services for unemployed persons under temporary protection, according to article 64.

Unlike the recognized refugees and persons under subsidiary protection, the treatment facilities of refused asylum seekers are fully provided by the UNHCR office. By the fact that these persons do not have any status in the Republic of Macedonia, the Ministry of Labor and Social Policy refrains from any protection against these persons. In accordance with the procedure for recognition of the right to asylum in the Republic of Macedonia, after the submission of the application for recognition of the right to asylum in a police station or at a border crossing, the asylum seeker is placed in the Reception Center for asylum seekers. The Reception Center, which is under the competence of the Ministry of Labor and Social Policy, according to the Law on Asylum and Temporary Protection, obliges to provide accommodation, food and healthcare to the asylum seeker until the completion of the procedure for recognizing asylum in the Republic of Macedonia.²³³⁸

The European Charter of Patients' rights declares that every individual has the right to access to all kind of information regarding their state of health, the health services and how to use them, and all that scientific research and technological innovation makes available²³³⁹. The right to information is extensively covered in the Law on the Protection of Patients' Rights. According to Article 7 of this law, "the patient, during all stages of healthcare, shall have the right to be fully informed of: his health status, including a medical assessment of the prognosis and outcome of a particular medical intervention; recommended medical interventions, as well as dates planned for their realization (including a treatment and rehabilitation program); possible advantages and risks of the realization and non-realization of recommended medical interventions; his right to decide upon recommended medical interventions; possible alternatives to recommended medical

²³³⁶ Article 60, *ibid*

²³³⁷ Law on Health Protection, Official Gazette of the Republic of Macedonia, no 43/12, 145/12, 87/13, 164/13, 39/14, 43/14, 132/14, 188/14, 10/15, 61/15, 154/15 и 192/15

²³³⁸ Institute for Human Rights, Human rights in the health protection of the Republic of Macedonia from the aspect of refugees and asylum seekers

²³³⁹ European Charter on Patients' Rights, 2002

interventions; reasons for possible differences in the result achieved by medical interventions as compared to the expected result; the course of the procedure when providing healthcare; recommended lifestyle; and the right to healthcare and health insurance, as well as the procedure for exercising these rights.” Furthermore, the information must be provided to the patient in an understandable and appropriate manner, minimizing technical or expert-level terminology.

The European Charter of Patients’ rights declare that every individual has the right of access to the health services that his or her health needs require. According to Article 3 of the Law on the Protection of Patients’ Rights, healthcare access must include the following conditions: healthcare services constantly available and accessible to all patients on equal basis and without discrimination; continuity of healthcare, including cooperation among all healthcare workers and healthcare facilities along the continuum of care; just and fair procedure for choosing/selecting medical treatment, under conditions of limited resources and rationing, whereby prioritization is based on medical criteria and without discrimination; choice of and ability to change healthcare provider and healthcare facilities; availability of home visits and services in the community where the patient lives; and equal opportunity for protection of healthcare rights for all patients in the territory of the Republic of Macedonia.

Article 9 from the Constitution of Republic of Macedonia endorses a general principle of equality, but only for citizens of the Republic of Macedonia. The different treatment of persons which are not citizens of the Republic of Macedonia related to the rights and freedoms granted with the Constitution, with the legislation and international agreements to which the Republic of Macedonia is a party, and which directly arise out of the citizenship of Republic of Macedonia shall not be deemed discrimination according to article 14, Law on prevention and protection against discrimination.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

The first protocol to the European Convention of Human Rights (20.03.1952) signed by the members of the European Council in its **second article** says that „**No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.**“²³⁴⁰

When it comes to the right of education in the Republic of Macedonia the main legislatives in which we will find the answers to this question are the **Constitution of the Republic** (1991), the **Law on Primary Education** (2008), and the **Law on High School Education** (1995).

²³⁴⁰ Article 2, Protocol 1, European Convention of Human Rights

According to the **article 44** of the Constitution everybody has the right to education, and the education is available to everyone under equal conditions.²³⁴¹ **Article 8** of the Law on Primary Education states that „children with foreign citizenship or the ones that are stateless which are residing in the Republic of Macedonia, have the right to primary education under equal conditions as the children citizens of the Republic of Macedonia, and their education is organized in their native language, in accordance with the international agreements ratified in accordance with the Constitution.“²³⁴² Also **article 5** of the *Law on High School Education* states that foreign citizens and stateless persons can gain high school education in ways and conditions determined by the law.²³⁴³

Unfortunately all those regulations and legislatives are strictly applicable only for the ones with Macedonian citizenship or foreigners lawfully residing in the country, which leads us to the question of the migrants, their legal regulation and status in the Republic of Macedonia, and more specifically, the right to education on the migrant children. Therefore we need to look into the regulations and the Macedonian laws who determine which migrants are under their law and what are their rights and obligations.

The main law and legislation that regulates these questions in Macedonia is the **Law of Asylum and Temporary Protection (2009)** in which it has been stated that the right to an Asylum is given under strict conditions to a person that falls into the next categories: ²³⁴⁴

- Recognized refugees (under the UNCHR Convention Relating to the Status of Refugees, 1951 and the protocol relating to the status of the refugees 1967)
- Persons under Humanitarian Protection (according to article 3 from the European Convention of Human Rights and article 3 from the UN Convention against Torture)

Article 4 of the Law of Asylum and Temporary Protection (2002) of Republic of Macedonia states that a „recognized refugee is a person who after his examination of the application for asylum fulfills the necessary conditions i.e. to be a person who due to a justified fear of being persecuted because of his race, religion, nationality, or belonging to a particular social group or because of its political belief, is outside the country of which he is a citizen and cannot, or because of such fear, does not want to be under the protection of that state, or, that person is without a citizenship is outside the country in which they had a usual place of residence stay, cannot, or because of such fear, does not want to return to her.“²³⁴⁵ According to **article 62** „In the case of a mass influx of people who are coming directly from a state in which their lives, their state of security or freedom are endangered by a war, civil war, occupation, an internal

²³⁴¹ Article 44, Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia no. 52/1991

²³⁴² Article 8, Law on Primary Education, Official Gazette of the Republic of Macedonia no. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015 and 30/2016

²³⁴³ Article 5, Law on High School Education, Official Gazette of the Republic of Macedonia no.44/1995; 24/1996; 34/1996; 35/1997; 82/1999; 29/2002; 40/2003; 42/2003; 67/2004; 55/2005; 113/2005; 35/2006; 30/2007; 49/2007; 81/2008; 92/2008; 33/2010; 116/2010; 156/2010; 18/2011; 42/2011; 51/2011; 6/2012; 100/2012 and 24/2013

²³⁴⁴ Law on Asylum and Temporary Protection ,Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

²³⁴⁵ Article 4, ibid

conflict that is accompanied by violence or a massive violation of human rights, the government shall give them a Temporary Protection. The Government shall periodically review the existence of the circumstances referred to in paragraph 1 of this Article and decide on the extension of the temporary protection. Temporary protection in the Republic of Macedonia can last no longer than two years. ²³⁴⁶

So according to that article, the **article 64** of the same law, it is determined that the persons under temporary protection besides their rights to stay and care in the Republic of Macedonia during the temporary period and right to work, they also have access to health care and pension and disability insurance, Humanitarian aid and basic health services for unemployed persons.²³⁴⁷

Under temporary protection, **they also have the right to basic and secondary education**, and in view of the higher degrees of education. the persons under temporary protection are equally matched with foreigners that have been granted a temporary residence in the Republic of Macedonia. The main state body which implements and exercises these rights is the Ministry of Labor and Social Policy. So in terms of the regulatory framework, the Republic of Macedonia through appropriate legal acts, and in accordance with the European Convention on Human Rights and its first protocol, enables and equates the rights in the primary and secondary education of migrant children, with the children of the citizens of the country.

The main problem with this question and the right of the migrant children to a proper education is that The Republic of Macedonia is only a transitional state for the migrants which most of them are coming from Syria, Iraq and Afghanistan. According to NGO - Helsinki committee of Republic of Macedonia, which is the biggest non governmental organization that deals with these sort of problems, under no legal regulation, the migrant children cannot exercise the right to education, because they don't have the status for a temporary stay. The Helsinki Committee has reported that several non-governmental organizations and associations are giving humanitarian support to the refugee groups, in the refugee camps where they are permanently staying, where they are organizing informal educational classes, more precisely, informal lessons for several educational subjects, which means that behind these modest educational experiences for refugees children the State does not appear as an entity (the Republic of Macedonia) or any of its institutions.

We can conclude that there is a high absence of practicing that right for the migrants, because of two main reasons, one of which is that they don't fulfill the temporary stay status, and the other one as told by the Helsinki Committee is the absence of interest of the migrant parents to give their child a proper education when it comes to the Republic of Macedonia because as said before, they are only transiting through the country with no desire for asylum or temporary settlement.

Also the question of objective complexity and expensive financing for this type of teaching is raised when it comes to an extremely small number of children or children under the age of attending classes. Moreover, there is no official institution which has experience with organizing lectures and educational programs for children refugees. Also, many refugees see Republic of

²³⁴⁶ Article 62, *ibid*

²³⁴⁷ Article 64, *ibid*

Macedonia only as a transit country, not as their final destination. It is also a problem in the process of providing quality education to children refugees.

When it comes to the legal protection specifically on the subject of the migrant children and their parents or their legal guardians there is no concrete law defining this matter. In this field there is just one general law - **The Law on Prevention and Protection against Discrimination (2010)** which provides for the prevention and protection against discrimination in the exercise of the rights guaranteed by the Constitution of the Republic of Macedonia, the laws and ratified international treaties. This law is applied by all state organs, organs of the unit of local self-governments, legal entities with public legal authorizations and legal and natural persons in the field of various matters, including education.

In Article 3 of the Law on Prevention and Protection against Discrimination (2010) it is stated that „**any direct or indirect discrimination is prohibited, reference, or encouraging discrimination, and helping a discriminate treatment based on sex, race, skin color, gender, affiliation to a marginalized group, ethnicity, language, citizenship, socially origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property, health status condition or any other basis which is provided for by law or by law ratified international agreement.**“²³⁴⁸

If a person considers that some of his rights have been infringed because of a discrimination they are entitled to a submission for a lawsuit in front competent court or they could file a complaint in front of the **Commission for Protection against Discrimination** established by this Law.

Unfortunately, in **Article 14, paragraph 1**, it has been foreseen that the different treatment of persons who are not citizens of the Republic of Macedonia related to the rights and freedoms granted by the Constitution, the legislation and the international agreements to which the Republic of Macedonia is a party and which are directly derived from the citizenship of the Republic of Macedonia, shall not be deemed as a discrimination.

This gives a clear frame that The Republic of Macedonia puts its citizens on the first place and their constitutional rights, and the laws or provisions regarding the subject of migrants on this field or any other are very poorly present or do not exist at all. One of the problems is that, as said before, Republic of Macedonia is just a transit state for the migrants, which means that they do not stay permanently in the state, therefore the state has not adopted many laws that regulate this question, as there was no need for them. The other problem is the question of acceptance of the migrants in the surroundings of the local residents. In the Republic of Macedonia, there are still negative attitudes and opinions regarding the migrant issue and the enabling of their settlement in its territory and the acquiring of the same rights and freedoms that Macedonian citizens have. It is expected that this “picture” would be improved with the new strategies and decisions by the new government that should be implemented in the near future, so that the situation in this field could be improved drastically.

²³⁴⁸ Article 3, Law on prevention and protection against discrimination, Official Gazette of RM, no. 50/2010

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Refugees and asylum-seekers have the right to free and accessible primary and secondary education. On the other hand, they are required to pay tuition to enroll in any university in the Republic of Macedonia. That is to say, they have the same access to education as Macedonian citizens. Additionally, the Ministry of Labor and Social Policy has decided to organize courses for kids and adults to learn the Macedonian language, a decision which should be implemented as of this year.

Firstly, it is important to stress that the Republic of Macedonia has ratified the Convention on the Recognition of Qualifications concerning Higher Education in the European Region²³⁴⁹ and it has entered into force in 2003. This means that the adopted laws had to be changed in order for the work of the Ministry of Education and Science of the Republic of Macedonia to be in accordance with the aforementioned Convention. Regarding that issue, the Law on primary education states that foreign citizens have the right to seek validation or equivalence of the school diploma acquired abroad.²³⁵⁰ The Ministry grants all the rights the student would have had in his own country with the diploma, referring to the continuation of the student's education. Aspects taken into consideration are: the education system in which the diploma was acquired, the length of the education, the educational plan and programs, the right the student gets abroad by acquiring the diploma and other relevant facts. If all the aspects taken into consideration are not covered, this process will be finished by taking exams on required subjects. Along with the application, the student has to present the original diploma, a translation of it made by a certified translator and two copies of it, an education plan and programs the student has followed through, and last but not least, proof of previous education and proof of citizenship. The decision for granting validation or equivalence is made by the Minister, based on the proposition of an expert constituted commission.²³⁵¹ If the minister denies the claim, the student has the right of appeal to the State Commission for resolution of second-instance administrative and employment proceedings.

The Law on secondary education proposes the same regulations regarding diplomas in secondary education, as seen in the Law on primary education.²³⁵²

²³⁴⁹Convention on the Recognition of Qualifications concerning Higher Education in the European Region, 1997

²³⁵⁰Law on Primary Education, Official Gazette of the Republic of Macedonia no. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015 and 30/2016

²³⁵¹ibid

²³⁵²Law on High School Education, Official Gazette of the Republic of Macedonia no.44/1995; 24/1996; 34/1996; 35/1997; 82/1999; 29/2002; 40/2003; 42/2003; 67/2004; 55/2005; 113/2005; 35/2006; 30/2007; 49/2007; 81/2008; 92/2008; 33/2010; 116/2010; 156/2010; 18/2011; 42/2011; 51/2011; 6/2012; 100/2012 and 24/2013

There is a whole section (n. 12) in the Law on higher education concerning the equivalence and recognition of higher education qualification. The main criteria for equivalence of a foreign university diploma is the status of the higher education institution that has granted that diploma to the student and it is made in accordance with the European Credit Transfer System²³⁵³, as it is said in Article 157 of the Law on higher education. In order to do so, the student has to submit evidence of passed state exam in an institution of higher education. Aside from that document, the student also has to submit a number of documents including his personal information, the chosen study program and other information about his education. This process is led and overseen by the Ministry of education of the Republic of Macedonia. If the claim, for equivalence is denied, the student has the right of appeal to the State Commission for resolution of second-instance administrative and employment proceedings.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

When it comes to the political side of the Republic of Macedonia and the participation of the migrants in its political decisions and their participation in it, the rules and legislatives are very poor by the number but they are strict and direct.

The participation of a person in the Republic of Macedonia in the political decisions and participations is determined by the Constitution of the Republic, more precisely in **article 22**, in which it's been stated that „every citizen who is 18 years of age acquires the right to vote. The right to vote is equal, general and direct, and is exercised in free elections by secret ballot. The right to vote has been deprived of the persons without legal capacity.“²³⁵⁴ Also **article 23** states that every citizen has the right to participate in the performance of the public functions which corresponds with the fact that the legal framework for participation, organization and legitimization in a public official of the state implies with the status of a citizen of the state.²³⁵⁵ In addition to this, **article 11** of the *Law for political parties* states that a member of a political party can only be a citizen of the Republic of Macedonia which is of legal age and with full legal capacity.²³⁵⁶

We can also find regulations in the main law which is applied for the migrants, **Law of Asylum and Temporary Protection (2009)** in which **article 51** points out that they do not have the right to vote, to serve the national army or to establish business and working relationship and to establish Associations of citizens or political parties in cases when by law conditions are provided for the persons who have the citizenship of the Republic of Macedonia. Recognized refugees

²³⁵³ http://ec.europa.eu/education/resources/european-credit-transfer-accumulation-system_en

²³⁵⁴ Article 22, , Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia no. 52/1991

²³⁵⁵ Article 23, ibid

²³⁵⁶ Article 11, Law on Political Parties, Official Gazette of the Republic of Macedonia no 76/04, 5/07, 8/07, 5/08 and 23/13, Decisions of the Constitutional Court 57/07 and 60/07

may acquire the right to own movable property, real estate, to establish a labor relation or to perform an activity, under conditions determined by law regulating this right for foreigners in Republic of Macedonia.²³⁵⁷

Macedonian law does not prohibit participation of migrants in political decisions in their country of origin. Therefore, they are able to participate in political processes in their countries of origin as long as it is allowed by those countries' national legislations.

By all of this, we can conclude that the law and its regulations in the Republic of Macedonia are clearly on this question and are on point that no other person than a citizen of the Republic has the right to participate in political decisions. The right to vote or any other right of legitimate political entities is forbidden for this category of persons, because of reasons that they have either a temporary residence in the country or transit to other destinations. So neither migrants nor persons with temporary stay can enjoy such privileges. Such an opinion has been confirmed also by the Helsinki Committee for Human Rights, that in the existing legal framework of the Republic of Macedonia, persons who are non-citizens have neither political legitimacy and political decisions nor participation in the process of making ones.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

The law on citizenship of the Republic of Macedonia governs the manner and conditions of acquisition and cessation of citizenship of the Republic of Macedonia. As stated in article 3, acquiring citizenship of the Republic of Macedonia is done in a number of ways, and that includes by origin, by birth on the territory on the Republic of Macedonia, international treaties or through naturalisation – the most common route to a migrant obtaining one.²³⁵⁸

For a migrant to be able to gain the right to citizenship, they first must fulfill a number of requirements as stated in article 7, including:

- to be at least 18 years old at the time of application;
- to have had legal registered residence in Macedonia for at least eight years;
- to have an accommodation and permanent source of substance means allowing for material and social security;
- to not have been sentenced to imprisonment of minimum duration of one year in the country of their citizenship for acts punishable according to the regulations of the Republic of Macedonia;
- to not have any criminal proceedings neither in the Republic of Macedonia nor in the country of their citizenship;

²³⁵⁷ Article 51, Law on Asylum and Temporary Protection ,Official Gazette of the Republic of Macedonia, nos. 49/2013, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016

²³⁵⁸ Article 3, Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004

- to be fluent in Macedonian to the extent that one can easily communicate in the environment, 7) to not have a measure of prohibition of residence in the Republic of Macedonia;
- to not endanger the national security or defense of the Republic of Macedonia with their admission to citizenship of the Republic of Macedonia;
- to sign an oath to be a loyal citizen of the Republic of Macedonia;
- to provide a release from the previous citizenship or proof that it will be provided after the acquisition of Macedonian citizenship.²³⁵⁹

The procedure of facilitated naturalization applies to three categories of people:

- Individuals with a recognized status of a refugee or stateless individual (article 8)
- Emigrants from the Republic of Macedonia up to the first generation (article 11)
- Foreigners whose spouse is a Macedonian citizen (article 12)²³⁶⁰

It is to be noted that a national of the Republic of Macedonia can hold citizenship of another state; however that citizen is considered exclusively a national of the Republic of Macedonia, unless stated otherwise by an international agreement.

It is to be noted that a national of the Republic of Macedonia can hold citizenship of another state; however that citizen is considered exclusively a national of the Republic of Macedonia, unless stated otherwise by an international agreement. This means that in cases like voting, serving in the military and other citizenship based rights or obligations, that person can only do so as a Macedonian citizen and is recognised solely as one. However, no national legislation covers the specifics of double nationality – it only regulates that a person can possess dual citizenship and any other legislation are bound to them as any other citizen of the country, therefore no additional requirements or regulations are needed.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. Instrument for Pre-accession Assistance

As a candidate country for accession to the European Union, Macedonia is a beneficiary of the Instrument for Pre-accession Assistance (IPA) Funds, which benefits both the EU and the candidate country, aiding its overall improvement and bringing it closer to its accession to the Union.

According to a press release of the European Commission²³⁶¹, a total of 24 million euros have been planned as support for migration-related activities in Macedonia. Under the first assistance

²³⁵⁹ Article 7, Law on citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no 67/92, 8/2004

²³⁶⁰ Article 8, Article 11, Article 12, *ibid*

²³⁶¹ European Commission. Press Release Database. "Funding to main migration-related activities in the Western Balkans Turkey. Updated with the most recent data available on 6 October 2015" (06.10.2015)
Available from: http://europa.eu/rapid/press-release_MEMO-15-5535_en.htm [Date of access: 26.06.2017]

phase, IPA I (2007-2013)²³⁶², a total of 12 million have been invested in the renovation of border police stations, the fight against human trafficking and in improving the capacity of the policy in border management. The plans for the second assistance phase, IPA II (2014-2020)²³⁶³, consist of another 12 million Euros intended for the implementation of the EU migration policy in Macedonia. This shall be done through enhancing the infrastructure, working on the current functioning of the visa policy and improving the conditions, both in relation to police stations and the IT equipment available for supporting the asylum and migration policy.

As outlined in the action on IPA II funds for Migration and asylum²³⁶⁴, the specific objective of the funding is to improve the efficiency and effectiveness of the national authorities for border control and management of migration flows. The following have been listed as deliverables of the programme: improving the fight against illegal migration and trafficking of human beings; lowering (or diminishing) the number of migrants/asylum seekers who are not treated in line with the international and EU standards; raising the number of cases resolved via the efficient exchange of information and joint investigation.

The more precise activities undertaken include the strengthening of the national capacities in the area of asylum and migration, establishing of a new Reception Centre for illegal migrants, aligning the national systems with the EU and Schengen requirements for border management etc. The mentioned objectives were planned to be achieved through several types of financing, such as direct grants with the International Migration Organization (IOM), twinning contracts, as well as service and supply contracts.

However, EU's support and funding with regard to the integration of migrants covers more areas than the initial plans. The entire region of the so-called Western Balkans and Turkey has been supported by a further, multi-country IPA II programme, with a total budget of 8 million euros. This was intended as initial funding in 2015, to help the region cope with the increase in migration movement as a result of the European migration crisis.

In addition, Republic of Macedonia was one of the beneficiaries of the EU's overall efforts in dealing with the consequences of the Syrian crisis. As a result, together with Serbia it received 17 million euros which should aid in decreasing the negative impact of the crisis in the region.

Finally, Republic of Macedonia is part of the humanitarian aid granted to support refugees and asylum seekers in the region.²³⁶⁵ In 2015, a total of 1.5 million euros was allocated to support the humanitarian partners and provide drinking water, health care and hygiene utilities, shelter and protection to the migrants in the country. Even further funds were granted via the International Federation of Red Cross and Red Crescent Societies. The final result of this latest funding was

²³⁶²As outlined in the Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-accession Assistance (OJ L 210, 31.7.2006, p. 82).

²³⁶³As outlined in the Regulation (EU) No 231/2014 of 11 March 2014 establishing an Instrument for Pre-accession Assistance (OJ L 77, 15.3.2014, p. 11).

²³⁶⁴European Commission. Instrument for Pre-accession Assistance (IPA II) 2014-2020. "The Former Yugoslav Republic of Macedonia: Migration and asylum, border management and fight against terrorism and organised crime".

Available from: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/ipa_2016_039618.2_mk_migration_and_asylum_border_management_and_fight_against_terrorism_and_organised_crime.pdf [Date of access: 26.06.2017]

²³⁶⁵For more information, please visit: http://ec.europa.eu/regional_policy/en/funding/ipa/fyrom/

the aid given to more than 4600 people, in the form of food, hygiene parcels, first aid kits, drinkable water, blankets etc.

Furthermore, the EU has launched a Civil Protection Mechanism which several countries of the region, including Serbia, have already activated. Should the need arise, Republic of Macedonia can also decide to join this mechanism in order to minimise the consequences of the Syrian migration crisis.

12.2. Other means of funding

However, the European Union funds do not stop with the exhaustion of the IPA programme. Additional funds have been granted to improve the border and migration management systems in the country. A notable example is the assistance of 10 million euros allocated in 2016 to cover the costs for the border police and guest officers from Serbia and the EU Member States, guarding the southern borders of the country.²³⁶⁶

In addition to the European Union, Republic of Macedonia has been assisted by plenty of programmes and funding from several international organisations and bodies, some of them closely related to the EU. A notable example is the International Organization for Migration (IOM)'s contribution²³⁶⁷ to intensifying the response to the migration flows in the region. This aid includes life-saving assistance, protection and counselling for the migrants and asylum seekers, including support for their eventual return home where required, as well as support for the development of the government systems dealing with migration.

12.3. Conclusion

The European Union and its Member States have provided a great amount of programmes and funding with the aim of improving the integration of migrants in the Republic of Macedonia. Through the Instrument for Pre-accession Assistance, Rep. of Macedonia has received tens of millions of Euros aimed at enhancing the conditions for the migrants, but also at covering the expenses incurred by the local and national authorities in dealing with the migration crisis. The other means of funding have also assisted the country in minimising the consequences of the high flow of refugees, but also in improving their life and guarding their health.

Via the funding received from external factors, Republic of Macedonia has seen the digitalisation of its reception centres, which are now fully computerised, albeit previously providing only manual registration. Arriving migrants are nowadays registered very systematically, using a full ten-digit fingerprinting to confirm their identity. They are issued documents bearing their photograph. All of this helps the authorities in both Macedonia and the other countries in the

²³⁶⁶European Commission.Press Release Database. "EU approves additional €10 million to help the former Yugoslav Republic of Macedonia deal with the refugee crisis" (15.02.2016)

Available from: http://europa.eu/rapid/press-release_IP-16-304_en.htm [Date of access: 26.06.2017]

²³⁶⁷ International Organization for Migration: The UN Migration Agency. Press Releases: "IOM Receives New Funding to Intensify Response to Migration Flows to Europe" (25.09.2015).

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so-called Western Balkan Route of the migration crisis in the dealing and identification of refugees, and simplifies the passage of the migrants themselves.

The above answer to the question provides sufficient information to conclude that the European Union has provided adequate funding to aid the repercussions of the migration crisis in the region, and consequently in the Republic of Macedonia. However, knowing the country's financial capacity on the one hand, and its direct exposure to thousands of arriving migrants on the other, leaves us with the opinion that further assistance shall be necessary in order to provide a more efficient handling of the migration crisis. Furthermore, an analysis should be conducted into the methods of spending the granted funds, and their exact efficacy.

Overall, it may be concluded that, as one of the key players in the migration crisis in the region, Macedonia is of great importance for the future development of the refugee movement in Europe, and as such should continue to receive both funding and other means of assistance, in order to successfully conclude the migration crisis and mitigate its consequences.

Conclusions

Migration has affected the whole world, as the numbers show that it has dramatically increased in the past years and it is predicted that the numbers will continue to increase. According to the statistics from the State Statistical office, the number of foreigners migrating in the Republic of Macedonia is increasing each year in the past decade.

Republic of Macedonia has signed and ratified numerous conventions concerning migrants' rights guaranteed under its jurisdiction. However, there are also national laws governing migrants' rights which provide the non-citizens with needed conditions for normal life on the states' territory. Nevertheless, there are certain questions which are yet to be regulated with the national laws, but undoubtedly, the main problems that migrants have to face with, are regulated with the existing legislation. Moreover, Republic of Macedonia is a member of the Council of Europe, so the principles given by the European Court of Human Rights in its decisions have a significant influence over the national legislation, shaping it into a harmonized European legislation on questions concerning migration law.

The foreigners are able to obtain asylum, under clearly stated conditions, meaning that the needed protection would be granted for them as long as they are unsafe in their homeland. Once a person is granted asylum, they are also granted social and economical rights.

In order to get the needed help, the Ministry of Labor and Social Policy and its agencies are prepared and educated in dealing with foreigners, especially with refugees, as they have numerous problems concerning health, shelter etc.

Migrants that decide to settle in Republic of Macedonia are granted a numerous rights, such as a right to education. However, there are rights which are conditioned with obtaining a certain permit, such as the right to work. A small number of rights are not available for foreigners; however this applies only for political rights. Nonetheless, their participation in political decisions in their country of origin is not prohibited by national law.

According to the information given in this report, we can conclude that even though there are numerous laws which regulate the migrants' rights, certain improvement in the national legislation and in the actual conditions of treating the migrants, especially refugees is needed. However, the role of migration law has become significant in the recent years, therefore, this field of law is yet to be shaped and improved.

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Introduction

Following the 2015 migrant crisis, Eurostat shows that the number of irregular migrants has drastically been reduced in the recent years, albeit Malta retains the third largest number of emigrants per capita in the EU. This report seeks to divide the problem of migration into smaller, more graspable concepts and portray how they have been and continue to be tackled by the Maltese Government. This implies that a number of topics will be covered, which include how national and international legislation is safeguarding immigrants' rights and facilitating their journey as well as their stay. With this in mind, the report aims to show that there is no particular ministry in Malta which deals solely with migration. Rather, this is currently falls under the Ministry for Home Affairs and National Security, which further divides its tasks into 6 primary departments. Furthermore, case-law has brought out certain flaws in the asylum procedure, even finding Malta in breach of certain Articles of the European Convention on Human Rights (ECHR). These flaws, along with other recommendations have been implemented into Maltese legislation following the aforesaid breach. That being said, this report seeks to shed light on the various programmes and funding granted by the EU, assist with various factors other than asylum and integration, showing rapid progress in the field. The aim of the report is not only to bring about funding given by the EU but rather to show how Malta is tackling multiple issues such as migrant's access to healthcare, migrant children's education (at times being eligible for a supplementary grant), migrants' voting rights and citizenship rights and more. Through such contributions to the problem, Malta has not only been eligible for funding but has been allocated further funding for other projects throughout the island.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. The Legal Framework

The Immigration Act (Chapter 217 of the Laws of Malta), including its subsidiary legislation and amendments pertained therein, transposing EU directives, is the main legal instrument governing immigration in Malta. It pertains to provisions regarding border control, illegal entry, readmission of illegally present third-country nationals and the issuance of residence permits as well as provisions about asylum seekers concerning namely reception conditions.

Asylum is regulated through the Refugees Act (Chapter 420 of the Laws of Malta), as well as its subsidiary legislation and the transposed provisions of the Qualification and Procedures Directives, which provides for the local asylum determination procedure.

Immigration and asylum policy are interlinked with other sectors such as social security, health and employment. In fact, various diverse national bodies and institutions deal with the issue namely:

- The Ministry of Education and Employment – the Employment and Training Corporation, under the portfolio of the Ministry, deals with the processing and issue of employment licenses;
- The Ministry for Home Affairs and National Security – coordinates operations relating to Irregular Migration and Asylum;
- The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties – has controlling executive power in the integration of migrants;
- The Police Special Branch (Immigration Section) – deals with the apprehension, investigation and identification of migrants, removal of illegally staying foreigners, border control and they bear the responsibility of border checks;
- The Detention Services – deal with accommodating immigrants arriving illegally while their claims to stay are considered or their removal is forfeited;
- The Department for Citizenship and Expatriate Affairs – deals with the acquisition of citizenship and residence permits;
- The Central Visa Unit – deals with entry clearance and processing of visas;
- The Immigration Appeals Board – decides appellate cases regarding detention and removal and sees to appeals in relation to requests for visas;
- The Armed Forces of Malta – deal with air and maritime border surveillance as well as search and rescue operations;
- The Office of the Refugee Commissioner – determines asylum applications at first instance;
- The Refugee Appeals Board – decides appeals against Recommendations of the Refugee Commissioner;
- The Agency for the Welfare of Asylum Seekers – provides accommodation and other services for beneficiaries of protection and asylum seekers.

From the above, it is clear that the Ministry for Home Affairs and National Security is the major player with respect to irregular immigration and asylum, being also responsible for border control issues, and having the Office of the Refugee Commissioner, the Refugee Appeals Board and the asylum determination bodies, under its portfolio. Irregular Immigration and border control are managed by the Police Immigration Department within the Police Special Branch. Other entities of relevance under this Ministry include the Central Visa Unit and the Citizenship and Expatriate Affairs Department which issues Residence Permits.

1.2. What Does National Legislation State?

1.2.1. The Reception of Asylum Seekers

Regarding asylum procedure and reception conditions, the transposition of the Reception Conditions Directive²³⁶⁸ and the recast Asylum Procedures Directive has reformed key aspects of the reception of asylum seekers in Malta. A notable example would be that detention is now no longer mandatory or consequential to a removal order.²³⁶⁹ The amended Reception Regulations has transposed the six grounds for detention of asylum seekers, provided in the recast Reception Conditions Directive. According to these Regulations, when a detention order of an asylum seeker is not made then alternatives to detention, such as reporting or financial guarantees, may be applied to non-vulnerable applicants for a maximum period of 9 months provided that the risk of absconding is still present.

1.2.2. Access to Asylum Seekers

In accordance with Regulation 16(a) Procedural Regulations, the UNHCR shall have access to asylum applicants, including those in detention, in airports or in port transit zones. There is no equal provision regarding NGOs but legal advisers for applicants can access closed areas such as detention facilities and transit zones and in such a way NGOs can indirectly access asylum applicants. Furthermore Regulation 3(3) (c) Declaration Regulations provides that a person seeking asylum in Malta shall be informed of his right to contact the UNHCR.

1.2.3. Reuniting Family Members

Whilst in the past the residence document given to reuniting family members caused difficulty due to the unequal entitlements given by public service providers because of it, this has been fixed through Legal Notice 150 the Family Reunification Regulations which is based on EU Directive 2003/86 and has also extended the period in which this document can apply, from one to three years.

1.2.4. Illegal Entry

As a consequence of the considerable pressure Malta has faced regarding boat immigrants, in 2002 Malta decriminalized illegal entry. However, such immigrants are subject to administrative detention.²³⁷⁰ The Organisation for the Welfare and Integration of Asylum Seekers was established to deal with the ever growing needs of asylum seekers, whilst the Agency for the

²³⁶⁸ In the dissertation Administrative detention of vulnerable asylum-seekers in the European Union Miriam Rapa discusses existing loopholes in this directive which 'dealt very little with detention and vulnerable asylum seekers'.

²³⁶⁹ Asylum seekers arriving irregularly in Malta are now taken to an Initial Reception Centre (IRC).

²³⁷⁰ In the dissertation '*Less than human: the detention of irregular immigrants in Malta*' Daniela Debono discusses how Malta is unusual among states in that it imposes mandatory detention on such migrants and how this can be problematic from a human rights perspective. In the cases of Louled Massoud, Suso Musa and Aden Ahmed the ECtHR found that the right to a speedy remedy under Article 5(4) of the ECHR had been violated since there was no effective and speedy remedy under domestic law for challenging the lawfulness of their detention.

Welfare of Asylum Seekers was established under the Immigration Act, in 2007 and 2009 respectively. Malta joined the Schengen area in December 2007.

1.2.5. Admittance of Third-country Nationals. Admittance of third-country nationals is only allowed if upon entry:

- a valid travel document (passport) and a valid visa are shown;
- documents showing the purpose and conditions of visitation are shown;
- they have sufficient means to support themselves throughout their stay;
- they have not been prohibited by alert on the Schengen Information System;
- they are not a threat to public policy, international security, public health or the international relations of any Member State.²³⁷¹

If any one of the aforementioned conditions are not met, the third-country national may be denied entry by the authorities on the border. The 'principal immigration officer' has the power to grant leave and entry and remain in Malta to any person arriving for a period of up to three months.²³⁷² Third-country nationals who enter and apply for asylum are not removed, but rather, are allowed to remain pending a final decision on their asylum application. Residence permits are issued to third-country nationals who have been authorised to reside for a specific purpose. Residence permits are issued for a validity of maximum one year unless the individual is an exempt person or a long-term resident.

Third-country nationals can acquire Maltese citizenship by registration or naturalization. Persons who have resided continuously for a period of five years may apply for a certificate of naturalization. Third-country nationals wishing to seek employment are required to submit an application form requesting the issuing of an employment license to the relevant authorities before he/she is due to undertake employment in Malta. Third-country nationals will only be granted an employment license in circumstances where no suitable EU citizen is available to fill the vacancy. Refugees and persons are automatically issued a permit and enjoy subsidiary status which allows them to have a full right to work.

Returns are carried out by the Principal Immigration Officer in cooperation with the police. Police escort and charter flight are often required to accompany the deportee.

1.2.6. Asylum and Migration Systems

The Ministry responsible for Home Affairs and the other organisations concerned underwent a steep learning curve since the year 2002 in the areas of irregular immigration and asylum due to the high demand placed on its relatively small organisations and the significant influx of immigrants, many of whom apply for asylum. In the asylum sphere, the Ministry for Home Affairs and National Security has invested significantly to maintain the Office of the Refugee

²³⁷¹ Integration.gov.mt. (2017). *Residence Permit*. [online] Available at: <https://integration.gov.mt/en/ResidenceAndVisas/Pages/Residence.aspx> [Accessed 1 Nov. 2017].

²³⁷² Asylum seekers who arrive in Malta without the required documentation, are classified "prohibited immigrants", can be detained upon arrival in immigration detention facilities based on a limited list of grounds. In such case, their application for protection starts to be examined while they are in detention.

Commissioner with sufficient staff that assures quality and efficiency in treating asylum claims. Equally, this has also been the case with the Refugee Appeals Board.

The overall priorities in the area of asylum and irregular immigration lean towards an efficient and fair asylum process, infrastructural work, upgrading of the structures dealing with the reception, joint actions at the border, resettlement and return possibilities.²³⁷³

1.2.7. The right to information

In accordance with Regulation 4(1) of the Procedural Regulations, asylum seekers are to be informed in a language that they understand, or may reasonably be presumed to understand, of the below mentioned procedure as well as their rights and obligations throughout the procedure.²³⁷⁴ Whilst there is no specific way envisaged by the provision for the information to be given, in practice this is usually given by the Immigration Police and personnel working for the Refugee Commissioner.²³⁷⁵

1.3. Procedure

Applications for international protection are to be lodged with the Refugee Commissioner, as the Office of the Refugee Commissioner (RefCom)²³⁷⁶ is the authority responsible for examining and determining applications for international protection at first instance, in accordance with Article 4 Refugees Act. The Refugee Commissioner is the only entity authorised by law to receive applications for international protection.²³⁷⁷

The procedure implemented can either be the regular procedure or the accelerated procedure²³⁷⁸, both implemented by the RefCom, the latter in the case of inadmissible or manifestly unfounded applications. The application may also be prioritised in terms of Regulation 6(8) Procedural Regulations, by the Refugee Commissioner, only in the case that the application is likely to be well-founded, the applicant is vulnerable, or in need of special procedural guarantees, in particular unaccompanied minors.²³⁷⁹

²³⁷³ 'Overview Of The Main Changes Since The Previous Report Update - Malta' (asylumineurope.org, 2017) <<http://www.asylumineurope.org/reports/country/malta/overview-main-changes-previous-report-update>> accessed 24 July 2017.

²³⁷⁴ In Kathleen Vella's dissertation *Asylum-Seekers In Detention: The Implications Of The Right To A Speedy Remedy To Challenge The Lawfulness Of Detention In Light Of Recent ECtHR Judgements Against Malta*, the author claimed the right to information is somewhat limited in Malta since individuals are only given a two-liner stating that they have the right to appeal from the Removal Order and the period through which they can apply.

²³⁷⁵ 'Provision Of Information On The Procedure - Malta' (asylumineurope.org, 2017) <<http://www.asylumineurope.org/reports/country/malta/asylum-procedure/information-asylum-seekers-and-access-ngos-and-unhcr-0>> accessed 24 July 2017.

²³⁷⁶ The RefCom falls under the Ministry responsible also Police, Immigration, Asylum, Local Government Correctional Services and National Security.

²³⁷⁷ 'List of Authorities Intervening in Each Stage of the Procedure (Including Dublin) - Malta | Asylum Information Database' (Asylumineurope.org, 2017) <<http://www.asylumineurope.org/reports/country/malta/asylum-procedure/general/list-authorities-intervening-each-stage-procedure>> accessed 24 July 2017.

²³⁷⁸ All applicants for asylum are interviewed by the Refugee Commissioner although their case might be classified as being inadmissible following an evaluation of their asylum claim. In such cases, the accelerated procedure kicks in at appeal stage.

²³⁷⁹ It is important to note that due to the very few arrivals and asylum applications lately, no cases have been recently prioritised by the RefCom.

The regular procedure²³⁸⁰, which consists of the examination and determination of eligibility for subsidiary protection by the Refugee Commissioner, starts through an application to the RefCom, and a preliminary interview by the RefCom in which the Dublin procedure is implemented by the Dublin Unit, Immigration Police. The former consists of filling in a form called the Preliminary Questionnaire (PQ) which is the formal registration of the asylum seeker's desire to acquire international protection.²³⁸¹

The latter consists of filling in an Application Form similar to the PQ, as well as a recorded interview after which the applicant is informed that he or she will be notified of the decision in due course. The interview, which is conducted by the RefCom or one of his representatives, and in which it is required under national law that there is an interpreter, can be omitted in restrictive circumstances, namely those pertained in the Asylum Procedures Directive.²³⁸²

What can be granted is Refugee status, subsidiary protection, or humanitarian protection. In the case that the application is refused, the asylum seeker has the right to an appeal to the Refugee Appeals Board²³⁸³, in which case he is granted free legal aid²³⁸⁴ to do so, and in which case the decision of the RefCom would be suspended, meaning that an asylum seeker may not be removed from Malta prior to a final decision being taken on his or her appeal (Regulation 12 Procedural Regulations). There is a 2-week time period, upon notification of the Refugee Commissioner's decision, by which the applicant may appeal to the Refugee Appeals Board. The Refugees Act specifies that the Minister may also lodge an appeal against the recommendation at first instance.²³⁸⁵

Whilst the Refugees Act specifies that there is no appeal from the decision of the Refugee Appeals Board, there is a right to legal redress, which does not have a suspensive effect on RefCom's decision, through judicial review at the Civil Court or through filing an application on the basis of breach of fundamental human rights at the Constitutional Court. The latter, in which case there is an alleged breach of fundamental human rights protected under the European

²³⁸⁰ According to the Regulation 6(4) Procedural Regulations, the Refugee Commissioner shall ensure that the examination procedure is concluded within 6 months after the application is filed, a time-period which may be extended in the case of complex issues, for example when there is a large number of simultaneous applications.

²³⁸¹ If, at this stage, an individual provides information that, *prima facie*, renders him or her eligible for a transfer to another EU Member State in terms of the Dublin III Regulation, the examination of the application for protection is suspended pending the outcome of the Dublin procedure. It is pertinent to note that although the Refugee Commissioner is designated as the head of the Dublin Unit, the immigration police are charged with implementing the Dublin procedure in practice.

²³⁸² This is namely: (a) when the Commissioner is able to make a positive recommendation on the basis of evidence available; or (b) when the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control.

²³⁸³ This Board consists of 3 separate chambers each pertaining 4 persons including a chairperson, and it is an administrative review involving the assessment of facts and points of law. The appeal has suspensive effect, even though there is no time limit established by law until when the Board is to take a decision.

²³⁸⁴ One should point out that the Maltese system has been criticised in this regard. In *Aden Ahmed vs Malta*, the ECtHR was 'struck by the apparent lack of a properly structured system enabling immigration detainees to have concrete access to effective legal aid.'

²³⁸⁵ 'Regular Procedure - Malta' (asylumineurope.org, 2017)
<<http://www.asylumineurope.org/reports/country/malta/asylum-procedure/procedures/regular-procedure>>
accessed 24 July 2017.

Convention on Human Rights (ECHR) and/or the Maltese Constitution, is the only way the decision can be reviewed in terms of its merits.²³⁸⁶

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. EU Member States

Since the area of immigration is a shared area of competence between the EU and Member States, whilst certain common immigration rules²³⁸⁷ are regulated by the Union institutions, such as EU-wide immigration and visa rules set out in the Treaty on the Functioning of the European Union (TFEU)²³⁸⁸, others such as for example residence permit applications are determined by each EU country. A Member can decide on the total number of migrants to be admitted in the Member State for work, conditions behind long-term visas, all final decisions on migrant applications as well as rules to acquire residence and work permits in the case that no EU rules have been adopted on the matter.²³⁸⁹ It is important to note that freedom of movement and residence for persons in the EU is the “cornerstone of Union citizenship” and has in effect brought about the phasing out of internal borders through Schengen agreements, as well as the enactment of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU.²³⁹⁰ This principle has shaped and affected both EU acquis as well as national law.

In Malta, the Ministry for Home Affairs and National Security deals with immigration. Under its portfolio the Department of Citizenship and Expatriates grants residence permits and long-term residence permits to non-EU citizens, and is responsible citizenship and immigration state policy. The Central Visa Unit deals with the provisions of the Schengen acquis and is tasked with implementing the proper functioning of the visa issuing procedures. The Central Visa Unit cooperates with the Malta Consular offices and Immigration Police in order to authorize visa

²³⁸⁶ 'Short Overview Of The Asylum Procedure - Malta' (Asylum Information Database, 2017) <<http://www.asylumineurope.org/reports/country/malta/asylum-procedure/general/short-overview-asylum-procedure>> accessed 24 July 2017.

²³⁸⁷ Common measures to date include:

1. EU-wide rules that allow citizens of countries outside the EU to work or study in an EU country. They cover specifically individuals who are: highly-qualified workers, researchers, students, trainees, school pupils or volunteers, intra-corporate transferees and seasonal workers.

2. EU-wide rules that allow citizens of countries outside the EU who are staying legally in an EU country to bring their non-EU family members to live with them and to become long-term residents.

²³⁸⁸ It is important to note that EU-wide immigration rules generally apply in 25 out of the EU Member States with the exceptions of Denmark, which does not apply EU rules relating to immigration, visa and asylum policies, Ireland and the UK which choose whether or not to adopt EU rules on the matter.

²³⁸⁹ 'EU Immigration Portal' (Ec.europa.eu, 2017) <[http://ec.europa.eu/immigration/tab1.do?searchFromTab1=true&searchByCountryCountryId=0&searchByIdFromMap=17&ctrlIdSection=10&dispatcherVar=&langDefault=7\\$en&userLang=7&languageLocaleId=7](http://ec.europa.eu/immigration/tab1.do?searchFromTab1=true&searchByCountryCountryId=0&searchByIdFromMap=17&ctrlIdSection=10&dispatcherVar=&langDefault=7$en&userLang=7&languageLocaleId=7)> accessed 24 July 2017.

²³⁹⁰ Ottavio Marzocchi, 'Immigration Policy' (EU Fact Sheets, 2017) <http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.12.3.html> accessed 24 July 2017.

issuance to non-EU nationals that require such entry clearance. The Ministry for Foreign Affairs and the Ministry for Education and Employment are also involved in the issue, whilst the Employment and Training Corporation is the authority granting employment licenses to non-EU citizens (with the exception of those with long-term residence status).²³⁹¹

The key legislation governing immigration regarding EU nationals in Malta is:

- The Immigration Act (Chapter 217 of the Laws of Malta;
- Immigration Regulations (Legal Notice 205 of 2004;
- Free Movement of European Union Nationals and their Family Members Order;
- Legal Notice 191 of 2007, as amended by Legal Notices 427 of 2007, 329 of 2011, and 107 of 2012;
- Status of Long-Term Residents (Third Country Nationals) Regulations - Legal Notice. 278 of 2006 as amended by Legal Notice 370 of 2010;
- Family Reunification Regulations - Legal Notice 150 of 2007;
- Conditions of Admission of Third-Country Nationals for the purposes of Studies Regulations - Legal Notice 29 of 2008;
- Third Country Nationals for Scientific Research Purposes (Specific Admittance Procedure) Regulations - Legal Notice 102 of 2008;

According to the Free Movement of European Union Nationals and their Family Members Order (LN 191 of 2007), subject to certain exceptions, “a Union citizen may enter, remain, reside in Malta, seek and take up employment or self-employment therein, and shall enjoy equal treatment with Maltese nationals within the scope of the Treaty”. Subject to certain exceptions, this shall also be applicable to other family members accompanying the Union citizen, the partner of the Union citizen, including those not Union nationals. Exceptions include limitations on grounds of public policy, public security and public health, as well as the termination, refusal or withdrawal of such right in case of abuse of rights or fraud. A Union citizen as well as family members accompanying him may enter and leave Malta with a mere valid identification document.

Article 3 (6) of the Order states that persons not staying in places of accommodation which are covered by article 31 of the Immigration Act applicable to places of accommodation for reward (hotels etc.), need to report their presence to the Principal Immigration Officer within one month of arrival.²³⁹² According to Article 6 of the Order “a Union citizen who has resided legally for a continuous period of five years in Malta” ... “may reside permanently in Malta.” Proof of continuous residence is required.

²³⁹¹ 'EU Immigration Portal' (Ec.europa.eu, 2017) <[http://ec.europa.eu/immigration/tab1.do?searchFromTab1=true&searchByCountryCountryId=0&searchByIdFromMap=17&strIdSection=10&dispatcherVar=&langDefault=7\\$en&userLang=7&languageLocaleId=7](http://ec.europa.eu/immigration/tab1.do?searchFromTab1=true&searchByCountryCountryId=0&searchByIdFromMap=17&strIdSection=10&dispatcherVar=&langDefault=7$en&userLang=7&languageLocaleId=7)> accessed 24 July 2017.

²³⁹² The Free Movement of European Union Nationals and their Family Members Order (LN 191 of 2007) establishes that an administrative penalty of between twenty-three euro and twenty-nine cents (€23.29) and two hundred and thirty-two euro and ninety-four cents (€232.94) may be imposed in the case that family members do not report their presence at the Police Headquarters.

2.2. Non-EU States

2.2.1. Legal Framework

Whilst historically emigration has been a trend in Malta, since 1990 this has ceased to be the case²³⁹³ and in effect Malta has tried to attract affluent third-country nationals to settle in Malta through permanent residence schemes with advantageous tax rates.²³⁹⁴ The inflow of third-country nationals is regulated by the Immigration Act (Chapter 217 of the Laws of Malta), as well as Immigration Regulations (Legal Notice No. 205 of 2004), which regulate residence permits, and specific EU Directives such as Legal Notice No. 278 of 2005 (Regulation on Long-Term Residents) which transposes the provisions of Council Directive 2003/109/EC.

2.2.2. Visas

As per Article 17 of the Immigration Regulations, “no person who, in terms of the Common Consular Instructions requires a visa to cross a border crossing point, may enter Malta without a visa”. However this is subject to exceptions including holders of diplomatic passports, flight crew and attendants on emergency or rescue flights, amongst others.

As per Article 11 of the Immigration Regulations those who are not exempt must satisfy the following conditions namely:

- Possess a valid passport;
- Possess documents showing the purpose and conditions of their visit;
- Must not be reported as a person to be refused entry;
- Must not be considered a threat to public policy or national security;

If a third-country national does not fulfil these conditions, the Principal Immigration Officer has the discretion to allow such a person to enter on humanitarian grounds or in honor of an international obligation of the Government of Malta (Immigration Regulations, Art. 12). The application for a visa, which may be submitted directly by the applicant or through an Embassy, High Commission or Consulate in Malta dealing with the migrant’s country of origin or residence, is processed by the Immigration Police. In accordance with Article 6(b) of the Immigration Act, the Principal Immigration Officer has the power to grant leave for one to enter and remain in Malta, or grant visas for a period up to three months, as well as enforce further conditions.

There are different types of visas which can qualify as a “valid visa” under Article 11(b) of the Immigration Regulations:

- A single-entry visa, normally issued for one month for tourist visits, particular events and so on;
- A multiple-entry visa, normally granted for a period of three, six or twelve months, is issued for frequent visitors, or those trying to establish a business;

²³⁹³ Attard, L., *Maltese migration: an historical perspective* (1983) Valletta, Gulf (Attard 1983)

²³⁹⁴ 'Immigration - Legal Malta' (Legal-malta.com, 2017) <<http://www.legal-malta.com/interest/immigration>> accessed 24 July 2017.

- A transit visa in which case the national would be staying in Malta for a maximum time period of 24 hours requiring the proof of tickets to other destinations;
- A student visa in which proof is required that the applicant would be undertaking a full-time education programme in Malta, and which is issued for the length of the academic year.

2.2.3. Residence Permits

In accordance with the Immigration Regulations (2004), residence permits²³⁹⁵ are issued to third-country nationals authorized to stay in Malta for more than three months for employment, self-employment, retirement, study and long-term residence, amongst others. A permanent residence permit which authorises indefinite residence, but precludes the third-country resident from employment or running a business in Malta, can also be obtained if the third-country resident satisfies certain criteria.²³⁹⁶

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

There is no particular ministry in Malta which deals solely with migration, rather, the issue of migration, and by extension, the responsibility of dealing with migrants in Malta, mainly falls under the responsibility of the Ministry for Home Affairs and National Security, currently headed by Hon. Dr. Michael Farrugia, although it is aided by the Ministry for Foreign Affairs and Trade Promotion, currently headed by Hon Carmelo Abela. The Ministry for Home Affairs and National Security is tasked with, inter alia, responsibility over the reception and possible returning of asylum seekers and refugees, while the Ministry for Foreign Affairs and Trade Promotion is responsible for the external aspects of irregular immigration and the provision of information for legal migration to Malta.²³⁹⁷

Irregular Migration has been the reason for considerable challenges since 2002, when over 1600 people came to Malta seeking refuge.²³⁹⁸ Hon. Dr. Farrugia's Ministry allocates its tasks to six primary departments; the Armed Forces of Malta (AFM), the Malta Police Force Immigration Section, the Detention Service, the Office of the Refugee Commissioner, the Refugee Appeals Board and the Agency for the Welfare of Asylum Seekers (AWAS). Border control and

²³⁹⁵ Generally, all uniform residence permit applicants must submit the following required documents: passport photos, a marriage certificate (if married), proof of financial resources and health insurance, a passport and a birth certificate. A hospital medical certificate may also be required.

²³⁹⁶ Farrugia Ruth, 'Comparative Study Of The Laws In The 27 EU Member States For Legal Immigration Including An Assessment Of The Conditions And Formalities Imposed By Each Member State For Newcomers' [2017] International Migration Law.

²³⁹⁷ 'Migration Scenario' (*Homeaffairs.gov.mt*) <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/Migration-Scenario.aspx>> accessed 11 July 2017.

²³⁹⁸ 'Strategy for the Reception of Asylum Seekers and Irregular Migrants' <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Documents/Migration%20Policy%20FINAL.pdf>> accessed 11 July 2017.

surveillance are the responsibility of the AFM and of the Malta Police Force Immigration Section.²³⁹⁹ The AFM is also responsible for maritime Search and Rescue (SAR) operations and responsible for the coordination of all SAR operations with third countries within Malta's SAR region.²⁴⁰⁰ The Malta Police Force Immigration Section is also tasked with the running of the Eurodac System²⁴⁰¹ and of the SIRENE Bureau, which is a unit composed of personnel who communicate with Schengen Member States via the Schengen Information System for the sharing and responding of alerts related, inter alia, to aliens, stolen vehicles and firearms.²⁴⁰²

The Detention Service is responsible for the "fair, just and humane treatment of migrants and asylum-seekers"²⁴⁰³. After the initial procedures, in which the AFM hand over all irregular migrants either apprehended or rescued to be medically examined by health professionals and interviewed by the police, asylum seekers who fall under the criteria of Article 8 of the European Commission's Reception Conditions Directive, and those held with a view of deportation, are sent to a detention facility. This Service was set up to cater for the needs of migrants residing at closed accommodation centers while their identity is established and their request for asylum processed, with new legislation capping the detention period to a maximum of three weeks in contrast to the previous capping of 18 months.²⁴⁰⁴ Upon release from such closed accommodation centers, approved asylum seekers will be sent to open accommodation centers.²⁴⁰⁵ There exist alternatives to detention in which, following the initial procedures, vulnerable persons and other asylum seekers who are not subjected to detention are immediately sent to open accommodation centers.²⁴⁰⁶

The applications for international protection in Malta are reviewed by the Office of the Refugee Commissioner. The Office reviews applications which, according to the Dublin Regulation, are the responsibility of the Maltese State and refers applications which do not fall under it, in accordance with the aforementioned Regulation to the Dublin Unit.²⁴⁰⁷ It is the Office's duty to first examine whether the applicant fulfils the criteria stipulated by law to be either granted a Refugee Status or a Subsidiary Protection Status, the latter being a person who does not qualify as a refugee according to the criteria set out by law. Those to whom international protection is given are entitled to; (1) remain in Malta with a 3 year residence permit and allowed freedom of movement, (2) leave and return to Malta without a visa, entitled by a Convention Travel Document, (3) have access to, inter alia, education, employment, accommodation and social welfare and (4) be granted access to already existing evidence of foreign formal training and

²³⁹⁹ 'Migration Scenario' (*Homeaffairs.gov.mt*) <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/Migration-Scenario.aspx>> accessed 11 July 2017.

²⁴⁰⁰ *ibid.*

²⁴⁰¹ The EU asylum fingerprint database which houses all fingerprints from all asylum applicants.

²⁴⁰² 'Migration Scenario' (*Homeaffairs.gov.mt*) <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/Migration-Scenario.aspx>> accessed 11 July 2017.

²⁴⁰³ *ibid.*

²⁴⁰⁴ *ibid.*

²⁴⁰⁵ *ibid.*

²⁴⁰⁶ Reception of Asylum Seekers Regulations, SL 420.06 2005.

²⁴⁰⁷ 'The Office of the Refugee Commissioner' (*Homeaffairs.gov.mt*, 2017) <<http://homeaffairs.gov.mt/en/MHAS-Departments/The%20Office%20of%20the%20Refugee%20Commissioner/Pages/Refugee.aspx>> accessed 11 July 2017.

qualifications.²⁴⁰⁸ If the Office does not find the applicant fit to acquire either status, protection in the form of Temporary Humanitarian Protection can be given to those deemed to be in need of protection due to humanitarian reasons.²⁴⁰⁹ Moreover, the decision of the Refugee Commissioner may be appealed before the Refugee Appeals Board, with the applicant being provided with the necessary legal aid at public expense.²⁴¹⁰

The responsibility of applying the relevant national legislation concerning the welfare of asylum seekers and refugees falls under AWAS. This agency was established in 2009 as a Government Agency under the Immigration Act, Chapter 217 of the Laws of Malta. The primary legislation which governs AWAS' operations is the aforementioned Immigration Act and the Refugees Act; Chapter 420 of the Laws of Malta, although it is also tasked with enforcing any other government policy.²⁴¹¹ AWAS' roles include the management of refugee facilities, aid to refugees in the areas of housing, employment, health and the promotion of any government scheme related to voluntary refugee resettlement.²⁴¹² It is also AWAS' responsibility to provide adequate education and training referrals to refugees, such as when it comes to basic language training. Support by this agency also extends to the duty to refer any refugee to counselling or other psychological services if this is asked or deemed to be needed.²⁴¹³ The Migration Policy followed by AWAS and other Departments is set out in the 'Strategy for the Reception of Asylum Seekers and Irregular Migrants'; a document which outlines the applicable legislation, both autochthonous and also that which descended into Maltese law from the European Union and the European Convention on Human Rights, the detention process and medical services available to migrants during their initial reception and their stay at both closed or open centers of accommodation.²⁴¹⁴

The Ministry for Foreign Affairs and Trade Promotion is responsible for the creation and commitment towards international treaties regarding migration. It is also responsible for the provision of necessary information to legal migrants who wish to apply for a residency in Malta.²⁴¹⁵ There also exists the Malta Migrants Association, a network made up of various migrant communities in Malta which aims to educate about life in Malta and to promote integration into Maltese society while highlighting the cultural diversity of migrant groups in Malta.²⁴¹⁶ This association exists under the Ministry for Social Dialogue, Consumer Affairs, and Civil Liberties.

²⁴⁰⁸ *ibid.*

²⁴⁰⁹ *ibid.*

²⁴¹⁰ 'Migration Scenario' (*Homeaffairs.gov.mt*) <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/Migration-Scenario.aspx>> accessed 11 July 2017.

²⁴¹¹ 'Mission and Function' (*Homeaffairs.gov.mt*) <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/Mission-and-Function.aspx>> accessed 11 July 2017.

²⁴¹² *ibid.*

²⁴¹³ *ibid.*

²⁴¹⁴ 'Strategy for the Reception of Asylum Seekers and Irregular Migrants' <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Documents/Migration%20Policy%20FINAL.pdf>> accessed 11 July 2017.

²⁴¹⁵ 'Establishing Residency' (*Gov.mt*) <<https://www.gov.mt/en/Life%20Events/Moving-to-Malta/Pages/Establishing-Residency.aspx>> accessed 11 July 2017.

²⁴¹⁶ 'Malta Migrants Association' (*Socialdialogue.gov.mt*) <<https://socialdialogue.gov.mt/en/Forum%20on%20Integration%20Affairs/Pages/Members%20of%20the%20Forum/Malta-Migrants-Association.aspx>> accessed 11 July 2017.

In conclusion, despite the lack of a ministry dedicated specifically to tackling migration, the responsibility for such mainly falls under the Ministry for Home Affairs and National Security via its Departments. Due to the fact that migration has increased in most years since the initial spike in 2002,²⁴¹⁷ Malta's EU Presidency in 2017 prioritised the strengthening and streamlining of the Common European Asylum System, creating a more holistic approach towards the aims agreed upon during the Valletta Summit on Migration.²⁴¹⁸

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

The collection of data regarding migration in Malta is the responsibility of the National Statistics Office (NSO). The NSO works in accordance with Article 3 of the European Regulation (EC) No. 862/2007 and compiles annual data on, *inter alia*, immigrants establishing usual residency in Malta and emigrants moving away from Malta. Collection and analysis of data regarding migration to or from Malta was also done by the International Organization for Migration (IOM) and Maltese asylum trends were also recorded by the UNHCR; the UN Refugee Agency. There has been a steady increase in migration to Malta since 2002, with only few years registering a decrease in migration, the latter becoming a trend in recent years.

Contrary to popular belief, the majority of migrants living in Malta are from the European Union (EU) Member States.²⁴¹⁹ Nonetheless, recent years show an increase in migration from sub-Saharan Africa arriving from the coast of North Africa and, following the Arab Spring together with the still ongoing Syrian Civil War and unrest in Libya, applications for international protection by Syrian and Libyan asylum seekers have also increased.²⁴²⁰ According to data collected by the UNHCR, from the 200 asylum decisions made by the end of February 2017, 90 applicants (47.1%) were granted Subsidiary Protection, 25 applicants (13.1%) granted Refugee Status, 52 applications (27.2%) being closed and 5 applicants (2.6%) were granted protection by The Hague Process on Refugees and Migration (THP). On the other hand, 19 applications (9.9%) were rejected altogether.²⁴²¹ The most prominent nationality of asylum seekers was Libyan (51), although there was a significant number of Somali (39), Syrian (32), Eritrean (27) and Ukrainian (14) applicants, with the other 37 applicants being from other countries.²⁴²²

The number of asylum seekers have fluctuated almost at par with the number of migrant boat arrivals in Malta. Data from 2014 shows that 64% of applicants that year were granted some form of international protection, 17% were rejected and 19% were closed cases.²⁴²³ To those whom international protection was granted, this is usually in the form of Subsidiary Protection.

²⁴¹⁷ 'Strategy for the Reception of Asylum Seekers and Irregular Migrants' <<http://homeaffairs.gov.mt/en/MHAS-Departments/awas/Documents/Migration%20Policy%20FINAL.pdf>> accessed 11 July 2017.

²⁴¹⁸ 'EU 2017' (EU2017.MI) <<https://www.eu2017.mt/en/Pages/Maltese-Priorities.aspx>> accessed 11 July 2017.

²⁴¹⁹ 'Migration In Malta: Country Profile 2015' (International Organization for Migration 2016).

²⁴²⁰ *ibid.*

²⁴²¹ 'UNHCR Malta Stats & Graphs' (*Unhcr.org.mt*) <<http://www.unhcr.org.mt/charts/>> accessed 11 July 2017.

²⁴²² *ibid.*

²⁴²³ 'Migration In Malta: Country Profile 2015' (International Organization for Migration 2016).

Data from 2004-2016 show that asylum applications peaked in 2008 with 2607 applications, then plummeting in 2010 when there were only 175 applicants. In 2016 on the other hand, there were around 1733 applications for international protection.²⁴²⁴ From these 1733, around 652 were Libyan applicants, followed by Syrian at 287 and Eritrean at 254, from whom only 8.7% of applications were rejected.²⁴²⁵ The population in open centers has also almost consistently decreased over the years, with 2,220 in 2010 and 673 in 2016.²⁴²⁶

Since Malta's joining of the EU, an increase in migrants from other Member States was recorded, with these people exercising their right to free movement within the union. As of 2013, 5.33% of people residing in Malta were migrants, with 12,840 migrants being EU nationals while 9,626 were third country nationals (TCNs).²⁴²⁷

Despite the fact that the majority of immigrants currently residing in Malta are from other EU Member States, many come to the island's shores through illegal channels, generally out of necessity due to conflict happening in their country of origin.²⁴²⁸

When it comes to a gender divide, there is an equal split between male and female immigrants in Malta, a trend which has persisted since 2009. It should be noted, however, that according to the IOM's Malta: Country Profile, there exists a lack of qualitative research for an explanation of these trends.²⁴²⁹ In most migrant communities, there is a higher number of females to males, with only migrant communities from Italy, Somalia and the broad category of "Other Countries" showing the opposite to be true.²⁴³⁰ Interestingly, migrants from the Russian Federation have been over 70% female, the largest gap from any migrant community. On the other hand, non-EU nationals in Malta have over the years been mostly men, with asylum seekers coming by boat from Africa following this trend. This could be explained by the fact that traveling via illegal channels imposes certain risks, along with the fact that a substantial amount of money would be needed to pay the traffickers. Women suffering from forced migration have to face more challenges than men, namely the raising of the funds needed, the need to be a caretaker to any of her children and the fact that smuggler circles are usually male dominated.²⁴³¹ The largest broad demographic of migrants in Malta is EU males (29%) while the smallest demographic in this regard is TCN females (18%).²⁴³²

On the topic of citizenship, Malta's latest census (2011) had indicated that, at the time, around 35,116 foreign born people lived in Malta.²⁴³³ People from the United Kingdom comprised 30% of all foreign born residents, a reflection of Malta's colonial past. Australian born individuals are the second largest block of foreign born residents, comprising 12% of the migrant population in

²⁴²⁴ 'UNHCR Malta Stats & Graphs' (*Unhcr.org.mt*) <<http://www.unhcr.org.mt/charts/>> accessed 11 July 2017.

²⁴²⁵ 'UNHCR Malta Stats & Graphs' (*Unhcr.org.mt*) <<http://www.unhcr.org.mt/charts/category/17/year/9>> accessed 11 July 2017.

²⁴²⁶ *ibid.*

²⁴²⁷ 'Migration In Malta: Country Profile 2015' (International Organization for Migration 2016).

²⁴²⁸ *ibid.*

²⁴²⁹ *ibid.*

²⁴³⁰ *ibid.*

²⁴³¹ *ibid.*

²⁴³² *ibid.*

²⁴³³ *ibid.*

Malta with Canadian born persons coming in at third with 5%.²⁴³⁴ The largest non EU or Commonwealth nationality was Somalian born individuals who comprised around 3% of the total migrant population in Malta.

After the initial spike of undocumented immigrants in 2002, arrivals of irregular migrants had risen almost consistently although it has decreased in recent years. Migrants arriving by boat also spiked again in 2008 when 2,775 people were brought onto Malta's shores.²⁴³⁵ In recent years however, we have registered an ever-decreasing amount of boat arrivals, with only 25 people in 2016.²⁴³⁶ Those who either don't apply for asylum or are not granted any form of international protection are given an order to leave, with the IOM assisting Malta in the returning of migrants from mainly sub-Saharan African and Asian countries. Resettlement of migrants can also be done via the Dublin Regulation while those granted international protection may be eligible to go to other EU Member States. Since 2008, most migrants were resettled in the US, peaking in 2014 when 577 migrants were resettled there. As of March 2017, 61 migrants have been resettled, all of them finding refuge in the US. Adversely, 80 migrants were resettled in Malta from Italy and Greece in 2016, 52 of them being Eritrean, 27 Syrian and 1 Iraqi.²⁴³⁷

While immigration remains a prevalent issue in Maltese society to this day, trends of emigration from the country have changed from that of the previous century. Having gone through large scale emigrations for decades, especially post World War 2, pockets of Maltese communities nowadays exist in Australia, Canada and the United Kingdom. That being said, there had been a considerable number of return migrant, with the trend subsiding after 1984.²⁴³⁸ More recent figures from Eurostat show that emigration from Malta has the third largest emigrants per capita in the EU, preceded by Luxemburg and Cyprus, with 20 emigrants per 1000 people.²⁴³⁹

Upon the review of the data provided by the IOM and the NSO, one can come to the conclusion that despite migration being a hot topic, statistics show that the number of (irregular) migrants has drastically decreased in recent years. The reasons for this are varied, but are a combination of a more united EU effort in the saving and relocating of irregular migrants especially following the 2015 European Migrant Crisis.

²⁴³⁴ *ibid.*

²⁴³⁵ *ibid.*

²⁴³⁶ 'UNHCR Malta Stats & Graphs' (*Unhcr.org.mt*) <<http://www.unhcr.org.mt/charts/category/12/year/9>> accessed 11 July 2017.

²⁴³⁷ 'UNHCR Malta Stats & Graphs' (*Unhcr.org.mt*) <<http://www.unhcr.org.mt/charts/>> accessed 11 July 2017.

²⁴³⁸ 'Migration In Malta: Country Profile 2015' (International Organization for Migration 2016).

²⁴³⁹ 'Migration And Migrant Population Statistics - Statistics Explained' (Ec.europa.eu) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics> accessed 11 July 2017.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Besides the importance of dialogue when it comes to such intolerance or other issues relating to migrants, it is of outmost importance for Member States to enforce actions against such bigotry, and therefore upholding decisions by the ECtHR.²⁴⁴⁰

After reviewing the cases brought forward against Malta, one can note various amendments that took place soon hereafter. As embodied in Article 18 of the Charter of the Fundamental Rights of the European Union, it is crucial to reserve the 'right to asylum'. Nonetheless, it is the responsibility of the state to ensure that migrants are safeguarded in a sufficient manner.²⁴⁴¹

A case in point are the detention centers in Malta, which were degrading, and, unlike most of the other member states in Malta, it is imperative that all migrants are detained once arriving to Malta.²⁴⁴² While using such practices, Malta appeared before the ECtHR for various violations leading to infringements of the European Convention of Human Rights.

For instance, in the case of *Mohamed Jama v. Malta*, the appellant had arrived in Malta as an irregular immigrant. While being detained, the seeker claimed unlawful detention, and additionally, poor conditions while incarcerated that constituted a violation to Article 3 of the ECHR, also having no sufficient remedy following the arrest. The court, found as a result, that there was a violation of Article 5(4) of the ECHR, since no adequate remedy was available to applicant, rejecting the government's claim that constitutional proceedings were effective since such procedure did not suffice to a speedy remedy.²⁴⁴³

In addition, Malta was also held liable for a breach of Article 5(1) of the ECHR, because although the government had sufficient reason to hold the applicant in detention following uncertainty of age, as stipulated in domestic law, when the applicant was held for a further five days after acquiring subordinate protection, that constituted a violation of the ECHR. In this particular case it was also still emphasised that Malta must ensure that the detention centers uphold a certain standard in line with human dignity, since the conditions had still not been of an acceptable standard.²⁴⁴⁴

Moreover in the case *Suso Musa v. Malta*, a cross-examination took place regarding the detention of an asylum seeker, as well as an investigation into whether he had adequate remedies at hand. This resulted after the appellant was detained, and after the individual applied to asylum, it was denied after a year. Simultaneously, the seekers was also questioning the validity of his detention in front of the Immigration Appeals Board. The court decided that his detention was associated with also Article 14 of the Immigration Act and consequently falling under the first branch of

²⁴⁴⁰ Isil Gachet: 'Combating Racism and Racial Discrimination in Europe' (UN Chronicle, September 2007; 44, 3; ProQuest, Pg.24)

²⁴⁴¹ JRS et al, "What does Solidarity Mean for Malta?"; NGO Recommendations on Malta's role in EU-wide Solidarity measures (25th September 2015)

²⁴⁴² Daniela DeBono, 'Less than human': the detention of irregular immigrants in Malta' (Volume: 55 issue: 2, 1st October 2013)

²⁴⁴³ Article 5 (4) of the ECHR was also held to be breached in the cases of; *Louled Massoud v. Malta*; *Aden Ahmed v. Malta* and *Suso Musa vs. Malta*.

²⁴⁴⁴ *Mohamed Jama v. Malta* (26th November 2015, ECtHR) App no. 10290/13)

Article 5. Once again the court in conjunction with report from the ICJ and other competent authorities noted that the conditions at the detention centers could add up to ‘inhuman and degrading treatment’.²⁴⁴⁵

Furthermore, it noted that since there was no prospective reason to keep him detained once it was already established that they were not going to be deported, and thus, established a violation of Article 5 paragraph 1 (f). The appellant was also not given a sufficient remedy to question the legitimacy of his detention established in Article 5 paragraph 4 of the ECHR.

Although the court dismissed the plea of the seeker under Article 5 (2) of the ECHR, the court noted that the prolonged detention and conditions of his stay amounted to a violation of Article 5(1), impeaching his right to liberty and security. Additionally, there was also violation of Article 5(4) due to the lack of sufficient and immediate remedies.²⁴⁴⁶

The court suggested that Malta improves the conditions of detention, while giving an adequate remedy for those appellants seeking to uncover whether there is a satisfactory reason for the detention. Consequently, the procedure was reformed, and each case is being investigated on a ‘case by case’ basis, providing more rapid remedies while detention centers have been improved upon. After amendments to the Immigration Act, detention cannot exceed nine months ensuring appropriate measures are taken.²⁴⁴⁷

Another recent case concerning detention concerns *Aden Ahmed v. Malta*. The case denotes a Somali national who had entered into Malta as an irregular migrant seeking asylum in Malta in 2009. The seeker had been put into detention, while it was alleged that no sufficient reason was given for her removal order. While filing for asylum, the appellant had withdrawn from stating the whole truth out of fear of being sent back and hadn’t retracted the misinformation later on. After her refugee status was dismissed the seeker escaped from detention and approached another Member State in order to ask for asylum and eventually rejoin her family in Sweden. Moreover, once she came to Malta, the authorities found her guilty of escaping detention and misinformation, being granted 6 months imprisonment.

After reviewing the case, the detention centers were first pointed out, ruling that the conditions of the centers were in violation of Article 3 of the ECHR. Once again, the constitutional courts were not seen as a sufficient immediate remedy, and as a result this violates Article 5 (4) since the applicant couldn’t not be presented with other solutions to question her detention. Lastly, the court also held that the Maltese government had been in violation of Article 5 (2) since the seeker was being deprived of liberty since no proceedings were taking place for deportation while she was being detained. As a result, there was no sufficient grounds for the appellant to be detained for 14 and a half months.²⁴⁴⁸

After the aforementioned cases, in 2015, the Chapter 217 of the Immigration Act was amended. As a result, appellants nowadays have the right to be given sufficient reasons to the cause of

²⁴⁴⁵ Article 3 of the ECHR

²⁴⁴⁶ ECtHR - Suso Musa v. Malta, (Application no. 42337/12), 9 December 2013 <<http://www.asylumlawdatabase.eu/en/content/ecthr-suso-musa-v-malta-application-no-4233712-9-december-2013>> as accessed on 17th July 2017

²⁴⁴⁷ Suso Musa v. Malta, 9 December 2013, App no. 42337/12, ECtHR)

²⁴⁴⁸ Aden Ahmed v. Malta (9th December 2013, App. No. 55352/12)

detention from the competent officer and cannot be detained for more than 9 months. Moreover, the seekers are to be advised on alternative remedies available to them.

In conclusion, Malta has seen various advancements in the laws regarding migration, especially detention of asylum seekers. However, the law still seems to remain vague at times²⁴⁴⁹, especially when relating to statuses given to asylum seekers, which at times are not regulated by law which is publicly available, but rather policies, and therefore still leaving migrants unprotected.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Recommendations of the European Commission against Racism and Intolerance (ECRI) on Integration

Undoubtedly, issues relating to discrimination are intrinsically linked to social and political contexts at that moment in time.²⁴⁵⁰ The ECRI, as an impartial figure, plays a crucial role which is significant in such a framework, analysing each country and identifying obstacles relating to racism and intolerance, suggesting the way forward leading to harmonisation and adequate living for migrants.²⁴⁵¹

When discussing integration it is important to highlight that it requires all individuals of the state to participate, also having an unbiased outlook in order to find an equilibrium between parties. On the other hand, the republic should “...ensure the right of immigrants and newcomers to full participation in the economic, social, cultural and political life of the country, ensuring the protection of these rights to the highest possible degree...”²⁴⁵²

Since 2007, as highlighted in the ECRI report on Malta, an institution was constructed, accountable to affairs relating to the “integrations and welfare of asylum seekers” in collaboration with NGOs through education.

Although such mechanisms are already in place, it was also pointed out that the detention centers in Malta were not of an adequate nature, and in themselves were leading to negative connotations upon migrants, leading to difficulties for them to integrate.²⁴⁵³

Furthermore, as established in the Concluding Report on Malta, after the ECRI had upheld that detention should only be applied only in strict cases, the recommendations had been taken into

²⁴⁴⁹ Times of Malta, ‘Malta’s laws on detention are still unclear’, <<https://www.timesofmalta.com/articles/view/20160819/local/maltas-laws-on-detention-are-still-unclear-says-unhcr.622400>> as accessed on 17th July 2017

²⁴⁵⁰ Isil Gachet: ‘*Combating Racism and Racial Discrimination in Europe*’ (UN Chronicle, September 2007; 44, 3; ProQuest, Pg.24)

²⁴⁵¹ http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp <as accessed on 14th July 2017>

²⁴⁵² Migration and Integration Importance <<http://www.integrim.eu/about-integrim/migration-and-integration-importance/>> as accessed on 15th July 2017

²⁴⁵³ European Commission against Racism and Intolerance, Third Report on Malta (Adopted on 14th December 2007).

consideration. Upon amendments to the Immigration Act, detention can only be granted by the Principal Immigration Officer making sure that sufficient reasons are presented upon reviewing the case and prolonged for a period not longer than 9 months. Nonetheless, the appellant may be in the custody of someone else until removed from the country.²⁴⁵⁴

Additionally, the seeker must be provided with enough information on how such detention order can be rebutted, making sure it is in a sufficient language that can be understood by such appellant. Lastly, one may argue that the system has only been somewhat amended, as it is still as was applicable before for other migrants.

To conclude, the ECRI suggested that more efforts are to be made in order to ensure that these individuals seek to integrate. At the moment more projects are taking place with NGOs raising further awareness and opportunities for individuals. Additionally, the European Commission offers various funding opportunities, amongst others the 'Rights, Equality and Citizenship Programme', upholding the principles of Article 21²⁴⁵⁵ while combatting intolerance. As a result, this gives eligible applicants, such as NGOs, the possibility to further raise awareness and opportunities for individuals through financial support and cooperation with the EC.

6.2. Recommendations by National Human Rights Bodies Concerning the Integration of Migrants

The absence of a codified integration policy in Malta can be seen to a threat against integration flourishing. Over and above, it manifests the importance of other human rights bodies to give their input in policies, while suggesting distinct approaches to a progressive embodiment of integration.

Independent bodies that are, separate to states, combatting racism are vital in order to ensure professionals in the field are influencing parties and giving their input in upcoming policies. Consequently, with the launch of the Public Consultation on the National Integration Strategy 2015-2020 which had been launched by the Ministry of Social Dialogue; Consumer Affairs and Civil Liberties, both NGOs and government are working together, bringing forward various policies to be discussed. The main aim is to "promote intercultural relations", while raising awareness and legitimising local communities.²⁴⁵⁶

It is upheld that; "Integration policies should create favorable conditions for migrants' economic, social, cultural and political participation to realise the potential of migration...Integration is an

²⁴⁵⁴ ECRI; 'Conclusions on the Implementation of the Recommendations in Respect of Malta Subject to Interim Follow Up': 5-6 (4th October 2016)

²⁴⁵⁵ Article 21 of the 'Charter of Fundamental Rights of the European Union' hold that 'Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth disability, age or sexual orientation shall be prohibited.

²⁴⁵⁶ Aditus et al, 'NGO Submissions to the Public Consultation on National Migrant Integration Strategy 2015-2020' (1st June 2015):4.

ever evolving process, which requires close monitoring, constant efforts, innovative approaches and bold ideas”²⁴⁵⁷

As a result, this project aims to discuss integration of third Country Nationals, specially dealing with long-term residence, family reunification, citizenship, political participation, health and vulnerable persons amongst others. Meanwhile, utmost importance is given to policy indicators, comparing laws to others across the globe, ensuring that they are safeguarding individuals and that they are of an adequate level.²⁴⁵⁸

While more efforts have been made to address issues relating to integration, inhumane treatment and sufficient remedies, Malta has still lacked to incorporate such issues into its education system. Moreover, asylum seekers in Malta still find it hard to attain self-sufficiency, therefore, finding it hard to find protection, information and to integrate. Due to the lack of support later asylum-seekers are facing poverty, social exclusion and detriment. In addition, there have neither been any offers for language tuition or culture orientation in order to facilitate them to integrate.²⁴⁵⁹

Furthermore, although the Immigration Act, Refugee Act and complementary legislation give a basis for protection given to asylum seekers, other policies and legal mechanisms used are not available to the public; in particular the statuses of THP and THPN. As a result, those falling under such statuses find it hard to get access to healthcare, social security benefits and assistance; finding it hard to earn protection, consequently inhibiting them from integration.²⁴⁶⁰

In conclusion, although one can see progress in the co-operation between the government and human rights NGOs, most submissions are futile and as a result suggestions are not set into action. It is therefore vital to ensure that the state and civil society organisations cultivate themselves, ensuring a way forward in legislating and administering in a non-discriminatory and adequate manner.²⁴⁶¹

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Introduction

It is well documented that in the European Union, as opposed to other States outside Europe, public healthcare is completely funded by taxes, and thus, it is rather easily accessible by

²⁴⁵⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, European Agenda for the Integration of Third Country Nationals, SEC(2011) 957 finals

²⁴⁵⁸ Aditus et al, ‘NGO Submissions to the Public Consultation on National Migrant Integration Strategy 2015-2020’ (1st June 2015), 3.

²⁴⁵⁹ Aditus et al, *Struggling to Survive; An Investigation into the risk of poverty among asylum seekers in Malta* (October 2016), 6.

²⁴⁶⁰ Aditus et al, *Struggling to Survive; An Investigation into the risk of poverty among asylum seekers in Malta* (October 2016), 12-14.

²⁴⁶¹ JRS et al, ‘What does Solidarity Mean for Malta?’ NGO Recommendations on Malta’s role in EU-wide Solidarity measures (25th September 2015).

members of the European Union. The main cause behind the costless healthcare in all States' public sectors, including Malta, is that they embrace the most basic fundamental human rights which are deemed universal.

In fact, the World Health Organisation's (WHO) Constitution regulates the access to healthcare; in the very first page of its Constitution, where it is stipulated that "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." And "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."²⁴⁶²

Therefore, it is shown that every single person must have access to healthcare whether the said individual requires healthcare in his/her country of origin or in any other country, regardless of the status of legality in relation to the person's migration. However, in terms of undocumented migrants, it is often regarded that even though they are entitled, some may not entirely be able to enjoy these entitlements²⁴⁶³.

Despite the Government of Malta being bound to venerate International Law and European Law in areas that they regulate, it is necessary for national legislation to yet still be able to regulate access to healthcare within its own parameters, nonetheless. Such access to healthcare is regulated through national means of subsidiary provisions; such as the Refugees Act of 2000, policies, and Health Units²⁴⁶⁴. Nonetheless, national legislation is limited as to what it may regulate, as previously mentioned. Therefore, certain procedures are made compulsory, such as providing medical attention to all immigrants upon arrival²⁴⁶⁵.

7.2. Healthcare Priority: Primary vs. Secondary Care for Undocumented Migrants?

It is rather a conspicuous fact that one of the deficiencies of free healthcare is that a long waiting-list finds itself in the way more often than not, in many countries. Therefore, the issue arises whether discrimination takes place in terms of categorising people in order to have access for health care. A manifestation of such instance is the fact that undocumented migrants only have access to emergency services for healthcare, and not a full usage of access²⁴⁶⁶; it is compulsory that everyone excluding citizens receives a minimum of free secondary medical care²⁴⁶⁷.

Although under the Constitution of the World Health Organisation it is stated that "The enjoyment of the highest attainable standard of health is one of the fundamental rights", it is deemed rather impossible to avoid prioritisation; however 'prioritisation' must be detached from

²⁴⁶² Constitution of the World Health Organisation, Preamble (Edition 45, Supplement, October 2006) 1

²⁴⁶³ Peter G. Xuereb, *Migration and Asylum in Malta and the European Union: rights and realities, 2002 to 2011: Healthcare for Migrants in Malta* [by Paul Pace], (Msida, University Press 2012) 243

²⁴⁶⁴ *ibid*, 247.

²⁴⁶⁵ Council of Europe, *Responses of the Maltese Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Malta*, (Strasbourg, 2005) 9.

²⁴⁶⁶ Bradford H. Gray & Ewout van Ginneken, *Healthcare for Undocumented Migrants: European Approaches*, (Commonwealth Fund Publication 1650, Volume 33, December 2012) 9

²⁴⁶⁷ HUMA Network, *Access to Healthcare and Living Conditions of Asylum Seekers and Undocumented Migrants in Cyprus, Malta, Poland and Romania*, (March, 2011) <http://interwencjaprawna.pl/docs/wpdt2011_1_en.pdf> accessed 19 July, 65-6.

‘discrimination’, meaning strictly that in the case of anyone in need of immediate healthcare, the authority in charge of providing healthcare must prioritise the emergency first, and treat it as primary medical care²⁴⁶⁸. Thus, healthcare prioritisation deems to be rather inevitable in certain circumstances; however the inevitability is a product of leniency and humanity, within the segregation of “racial, religious, political belief, economic or social condition”²⁴⁶⁹, meaning that certain prioritisation are considered as obligatory, such as the access for completely free medical services for children that are unaccompanied or whose parent is an undocumented migrant²⁴⁷⁰.

In spite of the absent legislation regarding undocumented migrants²⁴⁷¹, highly limited and finite legislation is provided for those applying for international protection, and it is worded in a simple manner, yet enabling an applicant to benefit from most tax-funded institutions that a regular citizen would benefit; as stipulated by Article 13(3) of the Maltese Refugees Act — “An applicant for international protection shall have access to state education and training in Malta and to receive state medical care and services.”

Therefore it is perceptible that most procedures regarding undocumented migrants are regulated by policies which are not legally binding under national legislation²⁴⁷², yet qualify to be sufficient.

7.3. Impugning Access or Entitlement

7.3.1. Undocumented Migrants vs. Asylum-Seekers

Despite the fact that undocumented migrants are only provided with an undemanding policy which is not legally binding, issued by the Ministry of Justice and Home Affairs and the Ministry for Social Solidarity in 2005, titled ‘Irregular Immigrants, Refugees and Integration, Policy Document’²⁴⁷³, undocumented migrants are necessarily entitled to - access for medical care is still readily available, provided that certain simple conditions are met, such as presenting a ‘Police Number’ or an ‘ID Number’²⁴⁷⁴. Nevertheless, this means that whilst in detention they come across various impediments whilst trying to access primary healthcare²⁴⁷⁵, regardless of the gravity of the situation.

Article 13(3) of Chapter 420 (Refugees Act), which awards the entitlement of education and access to health care for those who applied for international protection, liberates a wide spectrum of continuous steps; perhaps it is at that point that national legislation perceives a

²⁴⁶⁸ Peter G. Xuereb, *Migration and Asylum in Malta and the European Union: rights and realities, 2002 to 2011: Healthcare for Migrants in Malta*, 243

²⁴⁶⁹ Constitution of the World Health Organisation, Preamble 1.

²⁴⁷⁰ 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.

²⁴⁷¹ HUMA Network, *Access to Healthcare for Undocumented Migrants and Asylum Seekers in 10 EU Countries*, (2010 HUMA Publications) <<http://www.epim.info/wp-content/uploads/2011/02/Legislative-Rapport-HUMA-Network.pdf>> accessed 19 July, 16.

²⁴⁷² HUMA Network, *Access to Healthcare for Undocumented Migrants and Asylum Seekers in 10 EU Countries*, (2010 HUMA Publications) accessed 19 July, 16.

²⁴⁷³ Peter G. Xuereb, *Migration and Asylum in Malta and the European Union: rights and realities, 2002 to 2011: Healthcare for Migrants in Malta*, 247

²⁴⁷⁴ HUMA Network, *Access to Healthcare for Undocumented Migrants and Asylum Seekers in 10 EU Countries*, (2010 HUMA Publication) accessed 20 July, 95.

²⁴⁷⁵ *Ibid.*

migrant as being eligible for primary entitlement. In fact, as opposed to the situation regarding undocumented migrants, the 'Principal Immigration Officer', as per S.L. 420.06 concerning the 'Reception of Asylum-Seekers Regulations'²⁴⁷⁶, must inform the said asylum-seeker of all the benefits and obligations he is subjected to—

“4.(1) The Principal Immigration Officer shall take the necessary steps in order that, within a reasonable time and not exceeding fifteen days from the day an asylum seeker has lodged his application, the asylum seeker shall be informed of any established benefits and of the obligations with which he must comply relating to reception conditions; in this respect the Principal Immigration Officer shall ensure that an applicant is provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform him concerning the available reception conditions, including health care.”²⁴⁷⁷

Nonetheless, the health of both asylum-seekers as well as undocumented migrants is also taken into account whilst evaluating the expiration of temporary protection. This is stipulated in Chapter 420.05 (Subsidiary Legislation 05) Article 24(1)—

“24. (1) The Principal Immigration Officer shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel and where they would suffer serious negative effects if their treatment was interrupted; these persons shall not be expelled so long as that situation continues.”²⁴⁷⁸

7.4. Right to Emergency Access: What Qualifies as Emergency Under our National Legislation?

Whilst our national legislation thoroughly identifies certain issues as being part of extremity, it is to be noted that in such content, identifying individually every infirmity that may be a case of emergency, will lead to an exhaustive list; which is not always deemed appropriate for such cases, as new types of situations may arise that are deemed to be in immediate demand for healthcare but are not included in such list.

Article 14(1) of Chapter 420.06 stipulates the types of vulnerability in the field of migration; ranging from vulnerable persons to types of illnesses described in a mild vague manner—

“14.(1) In the implementation of the provisions relating to material reception conditions and health care, including mental health, account shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons have been subjected to torture, rape or other serious form of psychological, physical or sexual violence, such as victims of female

²⁴⁷⁶ Chapter 420 S.L. 06 of the Laws of Malta.

²⁴⁷⁷ Chapter 420 S.L. 06 of the Laws of Malta, Article 4(1).

²⁴⁷⁸ Chapter 420 S.L. 05 of the Laws of Malta, Article 24(1)

genital mutilation, found to have special needs after an individual evaluation of their situation. [...] ²⁴⁷⁹.

Undeniably, this rather exhaustive list may be used as a two-fold mechanism to regulate access to healthcare for migrants; in such a way that restrictions may apply to decrease the influx of conjectured access to healthcare (without providing substantial reasons as to why healthcare is demanded as an emergency service), whilst it also provides a suitable mechanism and established guidelines as to evaluating whether an individual should be immediately treated or not. Thus, it (Article 14(1)'s list) can either result in a wrongful decision of not granting emergency services to an individual, or distinctive comprehension of who should be entitled for emergency services and who shouldn't.

7.5. Concluding Remarks

Although the national legislation of Malta is rather ambiguous as to the type of healthcare that should be provided to migrants when compared to other member states²⁴⁸⁰, it is seen that International Law paralleled with European Law, eventually seeps its way through our legislation and policy. A corroboration of this statement may be supplemented with the fact that Maltese legislation and policy, despite the lacunae, is still in line with the Constitution of the World Health Organisation as well as directives issued by the European Union, such as Article 15 of the Council Directive 2003/09/EC²⁴⁸¹ providing the most fundamental right to access healthcare for migrants.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Immigration is no foreign concept to the Maltese Islands, especially in recent years. Malta has essentially been “*a country of emigration*”²⁴⁸², up until recent developments, specifically upon the nation's accession to the European Union. Malta has consistently sought to accommodate many migrants that cross its path and has made it a point to attempt to further integrate such people into the Maltese society, despite the challenges of discrimination that arise as a result of this. Amongst these migrants are children, who face the issue of possibly being pulled out of school too early due to migration, or perhaps never having had the opportunity to enjoy their right to education in the first place.

²⁴⁷⁹ Chapter 420 S.L. 06 of the Laws of Malta, Article 14(1)

²⁴⁸⁰ Refer to FRA: European Union Agency for Fundamental Rights, *Healthcare Entitlements of Migrants in an Irregular Situation in the EU-28*, <<http://fra.europa.eu/en/theme/asylum-migration-borders/healthcare-entitlements>> for a comprehensive synopsis regarding accessibility of healthcare for migrants in other Member States.

²⁴⁸¹ OJ L. 31/18-31/25; 6.2.2003, 2003/9/EC

²⁴⁸² Foundation for Educational Services (FES), ‘*Research Report: Integration in Education of Third Country Nationals*’, October 2012 11.

Malta has strived to ensure that migrant children are given equal opportunities to children who are citizens of the nation. Many schools across the nation, including both state schools as well as private schools have welcomed refugees and asylum seekers.

The relevant legislation regarding the education of both refugees and asylum seekers is the Refugee Act. Also included in this act are Malta's obligations towards such persons envisaged by the Geneva Convention of 1951 as well as the 1967 Protocol, saying that both an asylum seeker and a refugee "*shall also have access to state education and training in Malta.*"²⁴⁸³

With regards to children of migrant workers, the relevant piece of legislation is the Migrant Workers (Child Education) Regulations.²⁴⁸⁴ Under this law, "children of migrant workers" is defined as any child, who has satisfied the national age requirement for compulsory schooling, who resides in Malta and depends on the migrant worker. However, no mention is made as to whether these children are first generation or second-generation migrants²⁴⁸⁵, specifically, whether they were born in Malta or abroad. It can be argued that this serves as an umbrella term, to cater for both situations.²⁴⁸⁶

This law stipulates that the State is entitled to provide free tuition to such children in relation to state schools and providing the teaching of any of the official languages, Maltese and English, to aid in the acclimatization of the child to the Maltese educational system. The State must also make an effort, where possible, to encourage the "*eventual re-integration*" of the children into their state of origin by making available the teaching of their mother tongue and the culture of such country.²⁴⁸⁷ It is interesting to note that this only refers to children of migrant workers, and no other law includes such benefit for refugees or asylum seekers.²⁴⁸⁸

On the topic of language learning, Malta prioritizes the education of migrant children to aid in their overall integration into society, and this is done by the Department of Quality and Standards in Education. The procedure to facilitate learning comprises of a programme spanning over a period of six weeks, and whilst such courses are independent of the school that the child attends, this surely comes with its own advantages. The child will be able to learn both Maltese and English by means of basic courses for beginners which will cater for the students on an individual basis, the main aim being that the child has a basic grasp of both languages linguistically, and would, therefore, be able to communicate in real life situations. Students are usually introduced to one language primarily, and most commonly, Maltese is introduced later on at secondary level education, as a second language if it was not their mother tongue.²⁴⁸⁹

One downside to these programmes is the fact that, culturally, such initiatives have been intrinsically made to create an association between the children forming part of the minority group and those having special needs, therefore giving the implication that migrants have difficulties learning or are less willing to participate in the learning process. As noted by Galea,

²⁴⁸³ Act XX (Refugees Act) 2000.

²⁴⁸⁴ Legal Notice 259 (Migrant Workers (Child Education) Regulations) 2002.

²⁴⁸⁵ Barbara Janta, Emma Harte, RAND Europe, *Education of migrant children* 12.

²⁴⁸⁶ Legal Notice 259 (Migrant Workers (Child Education) Regulations) 2002.

²⁴⁸⁷ *ibid.*

²⁴⁸⁸ RAXEN (European Racism and Xenophobia Network), *Refugees and Asylum Seekers in the Maltese Educational System* (The Jesuit Centre for Faith and Justice 2004) 3.

²⁴⁸⁹ Ministry for Education and Employment, *Language in Education Policy Profile*, 2014 44, 45.

this has “effects on migrants’ access to learning”. Whilst the abovementioned programme for language courses is a good initiative in itself, it presupposes that the migrant students start off at the same educational level as a Maltese national. For this reason, Galea observed that “diversity in education” or “inclusive education” have become largely understood through pedagogies of intervention that aim to address migrant children’s educational needs as a common deficit irrespective of their different lived experiences.²⁴⁹⁰

Migrants, being a minority group from the get-go, are expectedly subject to discrimination not only from individuals, but also sometimes from states themselves. Article 8 of the European Charter for Regional or Minority Languages²⁴⁹¹, which tackles education, serves ‘to promote the use of a regional or minority language in public life’, whilst not discriminating between students and providing accessible education for all. This has been observed and incorporated into the abovementioned legislation *intra lege*. The notion of accessibility to education for all children is also recognized in the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations²⁴⁹², in that a minor in detention shall still have access to education for as long as they remain in Malta.²⁴⁹³

Recent statistics have shown a worrying number of early school leavers in Malta, however, the state has made it a point to introduce measures that should serve as a prevention. One such measure is to encourage and embrace diversity in education, as done by the National Curriculum Framework, specifically in schools. The Strategic Plan for the Prevention of Early School Leaving in Malta (2014) has encouraged that schools support inclusion, as forming part of the Framework For The Education Strategy For Malta 2014-2024, by training teachers to better understand and create an inclusive environment in the classroom, which also includes devising lesson plans for students which reflect a society which is diverse and incorporates various types of cultures, supporting migrant students psychologically to deal with stress, as well as ensuring that the child is enrolled in a school and given the opportunity to integrate in the school community.²⁴⁹⁴

A predominant concept that has stood the test of time in Malta is the superiority of the Church, which is no exception when it comes to education. The fact that the Catholic religion is thought as a subject in schools, with little or no regard to other forms of religion defeats the purpose of an inclusive education. Although Malta has strived to promote inclusiveness and non-discrimination, this subject remains a part of the compulsory school curriculum of some schools, which will have a negative impact on migrant students who may have different religious views.²⁴⁹⁵

²⁴⁹⁰ Simone Galea, ‘*Educating the Migrant Girl. A Politics of Difference*’ (Faculty of Education, 2013) <<https://www.um.edu.mt/library/oar/bitstream/handle/123456789/20200/5.%20EDUCATING%20THE%20MIGRANT%20GIRL.%20A%20POLITICS%20OF%20DIFFERENCE.pdf?sequence=1&isAllowed=y>> accessed 19 July 2017 242-244.

²⁴⁹¹ European Charter for Regional or Minority Languages, 1992.

²⁴⁹² Legal Notice 81 (Common Standards And Procedures For Returning Illegally Staying Third-Country Nationals Regulations) 2001.

²⁴⁹³ Ministry for Education and Employment, *Language in Education Policy Profile*, 2014 56, 57.

²⁴⁹⁴ Ministry for Education and Employment, *A Strategic Plan for the Prevention of Early School Leaving in Malta*, 2014 22.

²⁴⁹⁵ Foundation for Educational Services (FES), ‘Research Report: Integration in Education of Third Country Nationals’, October 2012 18.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

This article examines mainly the present situation of migrant learners within the Maltese educational system. Secondly, it portrays how such learners can reap the benefits of inclusion to augment their *savoir faire* and employability skills. To this effect, the crucial role of both the Ministry for Education and Employment and the National Commission for Further and Higher Education shall be examined in greater detail.

Under Maltese law, primary education is compulsory and in State schools it is free of charge. The Constitution highlights the State's obligation to assist capable and deserving students even if without financial resources.²⁴⁹⁶

Chapter 327 of the Laws of Malta, the Education Act, lays down that it is the right of every citizen of the Republic of Malta to receive education and instruction without any distinction of age, sex, disability, belief or economic means.²⁴⁹⁷ Article 2 of the Protocol 1 of the European Convention on Human Rights provides that 'no person shall be denied the right to education'. This clearly outlines the State's obligations which include *inter alia*, promotion of education and instruction, the existence of a system of schools and institutions accessible to all Maltese citizens catering for the full development of the whole personality including the ability of every person to work.

The migrants' inalienable rights vis-a-vis education are indeed celebrated in Malta. Over the last years, the Ministry for Education and Employment has introduced various measures to reduce poverty and increase social inclusion. LLAPSI and the Migrant Learners' Unit are the latest initiatives to be introduced to target third country national students. Both the Ministry for Education and Employment and the National Commission for Further Higher Education ensure that such goals are achieved to the full.

9.1. The Ministry for Education and Employment (MEDE)

Under Maltese law, the Minister represents the State and ensures that the national policy on inclusive education is applied in all schools. Initially this policy targeted special needs students with specific learning difficulties. Then, it was applied to cater for migrant students' needs whose numbers did not dovetail. The Ministry for Education and Employment has catered for such lacunas by implementing effective measures. The Students' Maintenance Grants Board (SMGB) is an example of such good practices.

²⁴⁹⁶ Constitution of Malta Article 10 and Article 11.

²⁴⁹⁷ Education Act, Chapter 327 of the Laws of Malta

9.1.1. The Students' Maintenance Grants Board (SMGB)

The Government of Malta, provides a one-time grant, a monthly stipend (known as Students' Maintenance Grants) for students in higher education. The Students' Maintenance Grants Scheme operates under a set of regulations and the respective Legal Notice L.N. 308 of 2016 determining eligibility.

In some cases the Supplementary Maintenance Grant (an additional monthly stipend) is issued on proving financial hardship. If applicants present enough evidence to sustain their claim, they receive a favorable reply and consequently are granted the monthly stipend to sustain their studies. Normally, the five years residence entitlement has to be respected to the full, but the SMGB takes into consideration the status or subsidiary long-term residence. The SMGB considers applicants for exemptions such as fees which apply for Non-EU citizens. When applicants apply on the basis of humanitarian conditions, the SMGB waives the five-year clause.

Foreign students applying for the Students' Maintenance Grants under Legal Notice L.N. 308 of 2016 in Malta.		
Institution	Overall number of applicants	Percentage
MCAST Malta College of Arts Science and Technology	58	18.96% were awarded Stipend and One-Time Grant.
University of Malta	25	48% were awarded Stipend and One-Time Grant.

Data as provided by the SMG Board for the academic year 2015/2016

9.2. The National Commission for Further and Higher Education

The National Commission for Further and Higher Education 'fosters its role in the promotion of further and higher education also within the context of internationalisation of education in Malta'.²⁴⁹⁸ Under Maltese law, the National Commission for Further and Higher Education is bound to promote and facilitate access to life-long learning and progression in life-long learning, as well as formulate policies related to the international dimension of further and higher education.²⁴⁹⁹ Articles 64 and 65 bind the Commission to give advice to the Government on any matter which is connected to the further and higher education. When a foreign student applies for higher education in Malta, he is bound to present his foreign school and university qualifications, which are then analysed by this 'independent and consultative agency to government'.²⁵⁰⁰ It is interesting to note that two organisations form the National Commission for Further and Higher Education – Malta Qualifications Council (MQA) combined with the National Commission for Higher Education (NCFHE).

²⁴⁹⁸ National Commission for Further and Higher Education Annual Report 2013.

²⁴⁹⁹ Education Act, Chapter 327 of the Laws of Malta.

²⁵⁰⁰ National Commission for Further and Higher Education Annual Report 2013.

9.2.1. The Malta Qualifications Recognition Information Centre (MQRIC)

The Commission also performs the function of the Malta Qualifications Recognition Information Centre (MQRIC) under the Mutual Recognition of Qualifications Act, as laid down under Maltese Law in Chapter 451 of the Laws of Malta. Being the competent body within the NCFHE that recognises qualifications against the Malta Qualifications Framework (MQF), it has delegated authority to analyse 'a request submitted by an applicant'²⁵⁰¹ and shall notify the applicant of its decision together with the reasons upon which it is based within four months of receipt of all the relevant document'.²⁵⁰²

9.3. Conclusion

In what was probably its most important decision of the 20th century, the U.S. Supreme Court held in *Brown v. Board of Education of Topeka* (1954) that to provide racially segregated ('separate but equal') education was in breach of the equal protection of the laws. The Court said unanimously that 'today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition of the importance of education to our democratic society.

Today it is a principal instrument in awakening the child to cultural values, in preparing them for later professional training, and in helping them to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms'.²⁵⁰³ Both the Ministry for Education and Employment and the National Commission for Further Higher Education are ensuring that the internationalisation of education in Malta makes a leap forward and that migrants' rights thrive.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

EU citizens residing in Malta may not only vote in local²⁵⁰⁴ and European parliament elections²⁵⁰⁵, but may also run as candidates for the latter and for municipal elections²⁵⁰⁶. This is in line with EU legislation, which ensures that the same rights are given to all EU citizens in any

²⁵⁰¹ Mutual Recognition of Qualifications Act, Chapter 451 of the Laws of Malta.

²⁵⁰² *ibid*, Article 4

²⁵⁰³ Janis Mark W., Kay Richard S., & Bradley Anthony W. *European Human Rights Law* (3rd edn, OUP 2010).

²⁵⁰⁴ As long as a residential permit is obtained.

²⁵⁰⁵ By filling out a form along with the residential permit, stating your wish to not remain on your native country's electoral register.

²⁵⁰⁶

'Residence

Formalities

-

Elections' (*Wwwgovmt*, 2015) <<https://www.gov.mt/en/Life%20Events/resformalities/Pages/Elections.aspx>> accessed 18 July 2017.

Member State they wish to migrate to. This is primarily found in Article 22 of the TFEU and was introduced, respectively, in 1993 and 1994²⁵⁰⁷. These rights are also safeguarded by the Charter of Fundamental Rights of the European Union²⁵⁰⁸.

Regarding non-EU nationals, the situation is quite different. Whilst Malta is bound by EU legislation to allow a quite wide political involvement and participation, there is no European legal framework when it comes to third country nationals. Certainly, this is an area of law in which the Union does not have competence to act freely and it is up to each Member State to create and amend its own rules and procedures to allow or prohibit this participation. The current situation in Malta is not complex since there has been no legislation, as of yet, relating to third country nationals. Their political rights are not necessarily prohibited but rather, not yet regulated and this in turn, means that for the time being, these migrants are not allowed to participate in local politics in any way. Local legislation has not yet been amended and therefore, the country's position on the matter is not yet known. However, Malta is not alone, as it is only one of a number of countries who are yet to properly tackle this matter.

In 2015, Malta ranked 25th in the Migrant Integration Policy Index²⁵⁰⁹ in the area of political participation and an overall ranking of 33 out of 38 countries, putting the country in the 'slightly unfavorable' range. The report stated that despite Malta promoting and putting equality at the forefront of the integration agenda, the lack of political involvement rights given to third country nationals residing in the country, posing great difficulty for them to fully integrate into society and feel completely welcomed²⁵¹⁰.

As a result of Malta's poor ranking and relatively neutral approach to the idea of reforming the system, the country was put in the spotlight following the publishing of a report by the FRA²⁵¹¹ earlier this year. The report, titled *'Together in the EU - Promoting the Participation of Migrants and their Descendants'*²⁵¹², Malta was put in the same category as Cyprus, Hungary, Poland and for not having any specific integration plan for integration, targeting at third country nationals²⁵¹³. This report attracted a considerable amount of attention and not only made it to the local press, but also drove national authorities to act. So much so, that an article published soon after the publication of the report, the Civil Liberties Ministry stated that *"a national strategy for integration should be published this year"*²⁵¹⁴.

²⁵⁰⁷ Europaeu, 'EU Citizenship and Free Movement - Electoral Rights' (*Europa.eu*, 2015) <http://ec.europa.eu/justice/citizen/voting-rights/index_en.htm> accessed 18 July 2017.

²⁵⁰⁸ Article 39 & 40; Charter of Fundamental Rights of the European Union, (2000/C 364/01).

²⁵⁰⁹ Mipex.eu, 'Migrant Integration Policy Index - Malta' (*Www.mipex.eu*, 2015) <<http://www.mipex.eu/malta>> accessed 19 July 2017.

²⁵¹⁰ *ibid.*

²⁵¹¹ European Union Agency for Fundamental Rights.

²⁵¹² Europaeu, 'Together in the EU - Promoting the participation of migrants and their descendants' (*Europa.eu*, March 2017) <<http://fra.europa.eu/en/publication/2017/migrant-participation>> accessed 20 July 2017.

²⁵¹³ European Union agency for fundamental rights, 'Together in the EU - Promoting the participation of migrants and their descendants' [2017], 24.

²⁵¹⁴ Sarah Carabott, 'National integration strategy should be published this year' (Times of Malta, 16th March) <<https://www.timesofmalta.com/articles/view/20170316/local/national-integration-strategy-should-be-published-this-year.642509>> accessed 20 July 2017.

Maltese law enables EU nationals residing in Malta to participate in most aspects of the political process, however, this is only thanks to EU-wide common legislation and this becomes abundantly clear when shedding light on the misfortune that is our current national policy for third country nationals. However, things are looking up (or down – depending on personal opinion) and it may very well be that soon, these migrants may also be able to have a say, no matter how small, in the country's governance

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

The resolution adopted by the United Nations Human Rights Council on 30th June 2016 reaffirmed that the right to a nationality of every human person is a fundamental human right enshrined in, inter alia, the Universal Declaration of Human Rights.²⁵¹⁵ In Malta, citizenship is governed by Chapter 188 of the Laws of Malta.²⁵¹⁶ Under Maltese law, although the right to a nationality of every human person is not mentioned in the Constitution, a stateless person can still acquire citizenship via Chapter 188 of the Laws of Malta. However, migrants applying for Maltese Citizenship do not always fall under the definition of 'stateless' and thus the situation of a double nationality may arise if the applicant's original State does not allow dual-citizenship.

The means to acquire citizenship in Malta can be synopsised into two: i) citizenship acquired through a family relation and; ii) citizenship granted to a migrant. The former includes citizenship by birth, descent, marriage and adoption. The latter is more relevant to this paper. In Malta, migrants can acquire Maltese citizenship through naturalisation. Part V of Chapter 188 of the laws of Malta is about citizenship by naturalisation. Article 10(1) of Chapter 188 says that "An alien or a stateless person, being a person of full age and capacity, on making application...may be granted a certificate of naturalisation as a citizen of Malta" if s/he proves the conditions laid down in the subsequent provisos. These provisos include (amongst others) that the applicant has been resident in Malta for twelve months before the submission of the application and that before these twelve months, the applicant has been in Malta for a period which aggregates four years over a span of six years.

According to Article 1 of Chapter 188, the term 'alien' found in Article 10(1) of Chapter 188 means a person who is not a citizen of Malta. Therefore, the requirements mentioned in Article 10(1) are applicable to migrants who are both stateless and non-stateless. From 10(1) it can be observed that for a migrant to be granted Maltese citizenship s/he must prove five years of residing in Malta.

The requirements of Article 10(1) of 188 are different than Chapter 188's Legal Notice 47 of 20142517. This Legal Notice provides that under the Individual Investor Programme (IIP) an

²⁵¹⁵ Resolution 32/5 (On Human rights and arbitrary deprivation of nationality) adopted by the United Nations Human Rights Council on 30 June 2016.

²⁵¹⁶ Maltese Citizenship Act, Chapter 188 of the Laws of Malta.

²⁵¹⁷ Individual Investor Programme of the Republic of Malta Regulations, Legal Notice 47/2014, Laws of Malta.

applicant can be granted Maltese Citizenship if he proves a genuine link to Malta starting (only) twelve months prior to naturalization. So currently there is a situation where non-paying migrants must be resident in Malta for five years prior to be granted citizenship, whilst those who contribute via the IIP only need to prove a genuine link starting twelve months prior to naturalisation and 6 months of actual residency.

Joanna Selvagi in her thesis titled 'An analytical study of citizenship in relation to the individual investor programme' discusses the amendments brought on through Legal Notice 47 (2004) which "*were allegedly goaded on due to the traditional interpretation of citizenship as the bond between an individual and a State*"²⁵¹⁸. She notes that since Malta is part of the European Union, the amendments done to the naturalisation laws of Malta will create not only Maltese citizens, but also EU citizens. Selvagi notes that with the IIP programme the 'genuine link' required for acquiring citizenship may be missing. However she admits this 'genuine link' is sufficed through Maltese legislation on residence. Albeit this, she still notes that it is still not clear whether this position has created 'legal fiction'²⁵¹⁹ or not.

The second part of this section concerns double nationality however Part IV of Chapter 188 of the Laws of Malta speaks of 'multiple citizenship' rather than double nationality. Nationality is referred to when giving the definition of "stateless" in Article 1 of Chapter 188.

Article 7 of Chapter 188 of the Laws of Malta says that: 'It shall be lawful for any person to be a citizen of Malta, and at the same time a citizen of another country. 'Malta allows dual nationality without restrictions. However certain States do not allow multiple citizenship and thus the granting of the Maltese citizenship may automatically revoke the applicant's original citizenship.

Eugene Buttigieg in a report²⁵²⁰ on Maltese Citizenship which was done in collaboration with the Edinburgh University Law School gives a conspectus of the legal evolution of dual nationality in Malta. Multiple citizenship legislation was built in three steps: the amendments of 1989, 2000 and 2007. All these amendments were done to the Maltese Citizenship Act (Chapter 188 of the Laws of Malta). Buttigieg notes how the amendments of 2007 protracted multiple citizenship to more recent generations of migrants with Maltese ancestry.

"The *ius soli* requirement was moved even further up the line of ancestry; provided that somewhere along the applicant's direct line of Maltese ancestry there is an ascendant who was born in Malta of a parent likewise born in Malta, applicants would be entitled to Maltese citizenship even though neither of their parents had been born in Malta."²⁵²¹

The amendments to Maltese laws on dual nationality were mainly targeted to people who had some sort of family relation with a Maltese person rather than focusing on the immigrant who is completely non-related to Malta. However, the fact remains that immigrants who are not related to Malta can still be allowed dual citizenship if the original State of the applicant allows it.

²⁵¹⁸ Selvagi Joanna, *An analytical study of citizenship in relation to the individual investor programme* (University of Malta 2015).

²⁵¹⁹ *ibid*.

²⁵²⁰ Buttigieg Eugene, *The EUDO Citizenship Observatory Country Report on Malta* (Robert Schuman Centre for Advanced Studies in collaboration with Edinburgh University Law School, RSCAS/EUDO-CIT-CR 2010/17 Badia Fiesolana, San Domenico di Fiesole, Italy).

²⁵²¹ *ibid*, 6.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. The desideratum of EU assistance by the Maltese Government regarding the integration of migrants

The Maltese archipelago are easily regarded to be amidst the smallest Member States of the European Union, yet considered to be one of the paramount Member States in certain applicable areas, such as the Integration of Migrants. Engaging simultaneously these two factors eventually results that the Maltese State is constant need of EU assistance²⁵²², to which the EU has evidently agreed to provide.

Nonetheless, when taking into consideration the geographical position of the archipelago, Malta is highly deemed to be in a critical position regarding the Migrant crisis that the European Union is currently facing²⁵²³. In fact, since the amount of intake has rapidly increased from 2015 onwards, where it was reported that Malta had the second largest intake immigrants and migrants in 2015²⁵²⁴, the European Institutes had started to implement various programmes and funding applicable to most Member States, such as —

- The Internal Security Fund (Border and Visa) regarding lawful movement of persons (Subject to the duration from 2014 to 2020)²⁵²⁵ and;
- The Internal Security Fund (Police) sustaining the aforementioned fund in terms of strategic security communicable within cross-borders²⁵²⁶.

This current funding are therefore intertwined within Maltese policy and legislation, in parallel with the rest of EU legislation enforced by the Union itself, in order to specifically cater for the Integration of Migrants on our Islands. Significantly this year, the Maltese Government undertook the Presidency of the Council of the European Union for the term of six months whereby amongst numerous priorities, primitive importance on the issue of Migration was disposed.

²⁵²² Mark Hardwood, *Malta in the European Union*, (First Published 2014, Routledge Company 2016) 120

²⁵²³ The People for Change Foundation and Integra Foundation, *Migration in Malta: Country Profile*, (International Organisation for Migration, Switzerland, 2016) 9
<<https://www.iom.int/sites/default/files/country/docs/malta/Migration-in-Malta-Country-Profile-2015.pdf>>
accessed 12 July 2017

²⁵²⁴ Eurostat, *Migration and Migration Population Statistics*, (Data extracted in March 2017)
<http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics>
accessed 12 July 2017

²⁵²⁵ Office of the Deputy Prime Minister, Ministry for European Affairs, Parliamentary Secretariat for the EU Presidency 2017 and EU Funds, *Internal Security Fund National Programme for Malta 2014-2020: 'Sustainable Management of Internal Security'* (16th Nov 2015).
<<https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Migration%20Funds/Documents/AMIF%20and%20ISF/ISF/Presentation%20ISF.pdf>> accessed 12 July 2017

²⁵²⁶ Eurostat, *Migration and Home Affairs: Internal Security Fund - Police* <https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-police_en> accessed 13 July 2017.

12.2. Asylum, Migration and Integration Fund

12.2.1. Integration of Migrants through Ministerial Responsibilities

The European Union, in aid of allocating funds and programs, set up a fund interlacing the previous funds from prior years; such as the Refugee Fund, Integration Fund and the Return Fund²⁵²⁷. Thus, the objective of this fund established by the European Commission²⁵²⁸ aims to integrate the unification of a standard approach towards a Common European Asylum System embraced by all European Member States²⁵²⁹ as well as implementing an essential and legitimate transportation for Migrants. Thus, through means of creating the Asylum, Migration and Integration Fund (AMIF), the EU deems to be permitted to transpose the funding along with its programme to a National level, consequently authorising national ministries to carry out the instructions given.

Despite the fund providing a total of EUR 3.137 Billion, a comprehensive amount of EUR 17 Million was provided for Malta²⁵³⁰ over the term of 6 years. However, the Maltese Government does not solely benefit from the funding provided, but also from the said programme that is ancillary to the funding. In fact, one of the many objectives regarding integration provided by this programme falls under the Maltese Ministry for Social Dialogue, Consumer Affairs and Civil Liberties²⁵³¹; meaning that the integration process is not exclusively applicable for migrants, but applies also to the citizens of Malta in terms of conveying information and education regarding the subject matter. Nonetheless, the workload does not completely rely on the Ministry itself, other Ministerial Departments also aid the integration process. In fact, the Ministry for Education and Employment follows the directives given by this programme in order to ensure diversity amongst Third Country Nationals in areas where the Ministry controls, by providing training and support programmes²⁵³².

In spite of the Ministerial Responsibilities carrying out actions in aid of the AMIF; it is stipulated under Section 4.1 of the 'AMIF, 2014-2020: Eligibility Rules' that various other entities may be eligible applicants, including Voluntary Organisations, NGOs, Private Organisations as well as International Organisations - given that they provide contribution specifically in the area that the AMIF regulates²⁵³³

²⁵²⁷ Alessandro D'Alfonso, *EU Funds for Asylum, Migration and Borders*, (European Parliamentary Research Service, 2014) 4, 5.

²⁵²⁸ *ibid*, 1.

²⁵²⁹ European Commission, Migration and Home Affairs, *Asylum, Migration and Integration Fund (AMIF)*, <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en> accessed 15 July 2017.

²⁵³⁰ *ibid*.

²⁵³¹ Malta National Programme AMIF 2014-2020, Asylum, Migration and Integration Fund for Malta National Programme, (EC Decision Number C (2016)9391, Revised 2016) 10.

²⁵³² *ibid*.

²⁵³³ Asylum, Migration and Integration Fund and Internal Security Fund 2014-2020: Eligibility Rules, Sustainable Management of Internal Security and Migration Flows, (Version 1 — June 2015) 5.

12.2.2. Aiding Asylum-Seeking Applicants

As previously mentioned, one of the European Commission's main objective for these funding is to develop a system unifying the approach to a Common European Asylum System (CEAS). As a consequence, Malta is deemed to be accountable for a number of obligations enforced by the European Commission, which embraces the four main legal directives of the Common European Asylum System —

- The Dublin II Regulation (EC No: 343/2003);
- The Reception Conditions Directives (2003/9/EC);
- The Asylum Procedures Directive (2005/85/EC);
- The Qualifications Directive (2004/83/EC)²⁵³⁴

Following these rules and regulations as a collective measure enables the Member States to establish the said common approach; however each and every one of them has a single purpose that may be essential for a country to enforce than another; such as the Qualification Directive which deems the Maltese Government to carry out an examination to evaluate whether a person may qualify as a refugee; as it is often regarded that Malta is a 'Gateway to Europe'²⁵³⁵, therefore the Government must take considerable steps and careful actions whilst going through evaluation.

However, following the scrutiny by the Maltese Government, asylum-seekers who are deemed eligible to be transferred in terms of the Dublin Regulation, are provided with a questionnaire that they must fill and are later on provided with international protection in due process whilst the Refugee Commissioner decides upon the final remark on the refugee's faith²⁵³⁶. It is also established that asylum-seekers who are not eligible for international protection as a consequence of ineligibility, subsidiary protections are taken place; such as the Temporary Humanitarian Protection New (THPN)²⁵³⁷ which inclines to carry certain conditions alongside its beneficiaries, including a one year exception to remain in Malta due to specific situations²⁵³⁸

Nevertheless, following these rules and regulation will enable Malta a step closer towards achieving a Common European Asylum System, which was initially recognised in 1995, succeeding alongside other ancillary programmes such as the European Refugee Fund.

²⁵³⁴ Mark Hardwood, *Malta in the European Union*, (First Published 2014, Routledge Company 2016) 120.

²⁵³⁵ The People for Change Foundation and Integra Foundation, *Migration in Malta: Country Profile*, (International Organisation for Migration, Switzerland, 2016) 9-10, accessed 16 July 2017.

²⁵³⁶ Aditus & JRS Malta, *Short Overview of the Asylum Procedure in Malta*, (AIDA: Asylum Information Database) <<http://www.asylumineurope.org/reports/country/malta/asylum-procedure/general/short-overview-asylum-procedure>> accessed 16 July 2017.

²⁵³⁷ The Office of the Refugee Commissioner, *Temporary Humanitarian Protection (New)*, (2011, The Office of the Refugee Commissioner) <<http://www.unhcr.org/mt/component/content/article/234>> Accessed 16 July

²⁵³⁸ Christina Boswell & Andrew Geddes, *Migration and Mobility in the European Union*, (First Edition, 2011, Palgrave MacMillan) 171.

12.3. Third Country Nationals (TCNs)

12.3.1. Free Movement of Workers

One of the European Union's mission is to create general space for citizens of the EU, while simultaneously respecting national borders²⁵³⁹. This mission statement is also heavily embraced by the treaty on the Functioning of the European Union, whereby the bestowal of dedicated mechanisms transposed into legislative provisions are adopted accordingly, such as —

- Free movement of Workers: Article 45 of the Functioning of the European Union (TFEU),
- Free movement of Goods: Article 28 of TFEU,
- Free movement of Persons: Article 2 of TFEU.

In spite of these procedural instruments, the European Union may not be able to provide them to every member of the European Union; namely to those referred to as 'third country individuals'²⁵⁴⁰. On the other hand, third country nationals legally residing in a European member state do, however, enjoy an amount of limited rights²⁵⁴¹. In fact, third country national on our island benefit from most mechanisms provided by the EU. Though the Maltese state provides such benefits to third country nationals, it is nonetheless regulated through means aforementioned; especially with regards to the freedom of movement of workers and their families.

12.3.2 European Social Fund (ESF)

The ESF aimed to reintegrate the labour market through means of promoting employment by virtue of investing in the EU's human capital²⁵⁴²; namely young people, licit workers, disadvantaged groups and those seeking employment²⁵⁴³. In fact, one of the priority axes during the ESF studies regarding the Maltese Islands consisted of 'Malta empowering people for more jobs and a better quality of life'²⁵⁴⁴. Therefore, amalgamating the issue of migration which Malta had encountered, and the European Social Fund, results in one inevitably aiding the other. As reported by the European Commission, Malta has spent a total of 9 Million Euro between 2000 and 2006 in aid of supporting migrants and minorities through the European Social Fund²⁵⁴⁵. Initially the ESF created 3 objectives which sought to improve the integration process, such as

²⁵³⁹ Peter G. Xuereb, *Migration and Asylum in Malta and the European Union: rights and realities, 2002 to 2011: From being an 'Illegal Immigrant' to becoming an EU Citizen: is the door too widely or too narrowly open, or what?* [by Ivan Sammut] (Msida, University Press 2012) 295.

²⁵⁴⁰ *ibid.*

²⁵⁴¹ Giulio Ferraresi, Third Country Nationals and Freedom of Movement in the EU, (Nov 2016) <<http://www.euvisions.eu/nationals-freedom-movement/>> accessed 18 July.

²⁵⁴² European Commission, *The European Social Fund: Migrants and Minorities*, (Background Report by the European Union, 2010) <http://ec.europa.eu/employment_social/esf/docs/br_migrants_minorities_en.pdf> Accessed 8th September 2017

²⁵⁴³ European Commission, *European Social Fund: The ESF in Malta* (Last Updated 19th May 2015) <<http://ec.europa.eu/esf/main.jsp?catId=391>> Accessed 8th September 2017

²⁵⁴⁴ European Commission, *The European Social Fund: Migrants and Minorities*, (Background Report by the European Union, 2010) <http://ec.europa.eu/employment_social/esf/docs/br_migrants_minorities_en.pdf> Accessed 8th September 2017

²⁵⁴⁵ *Ibid* 30.

focusing on promoting the development of regions where the GDP per capita was considered unstable under 75%²⁵⁴⁶, supporting the areas which are still adjusting to an industrial change²⁵⁴⁷ and lastly providing funding in order to establish further solid grounds and improvement for branches which are highly fundamental for the integration for migrants, particularly the education and employment sectors.²⁵⁴⁸

Due to its importance, the last objective was solely funded by the ESF as opposed to the first two which were aided by further subsequent fundings. Henceforth, an parallel Operational Programme (OPII) was set up which primarily expands on the third objective of the Programming Period set up by the ESF, through means of establishing 5 different Priority Axes pertaining more directly to the inclusion of migrants in our society. There 5 Priority Axes are:

- Investing in the employability and adaptability of human capital;
- Towards a more inclusive society;
- Investing in people through education, training and lifelong learning;
- Building the institutional administrative capacity; and
- Technical Assistance.²⁵⁴⁹

In fact, Priority Axis (PA) 1 and 3 are currently considered to be the most primitive tools through which the ESF may aid in obtaining the rest of the Priority Axes where the integration of migrants is concerned. Therefore, all six confirmed operations for the operational programme are based on the aforementioned PAs, whereby the selective ones which are considered to be the most pertinent towards the integration of migrants are the first two which were implemented on the 1st and 9th of January 2016, respectively:

a. Training for Employment: which aims to make the labour-market more dynamic and accessible by helping those seeking to enter into such market by providing advice and educational assistance.

b. Youth Guarantee 2.0: enshrining a similar concept correlating to ‘Training for Employment’ — whereby it is targeting a minority group (namely, youths) of those who are at risk of social exclusion thus leading to unemployability.²⁵⁵⁰

A total sum of €11,908,750 is currently allotted to these PAs which are due 2020. Furthermore, it is easily foreseeable that through these two PAs, the integration of migrants is made easier as the main aim is to eliminate social exclusion. However, despite the good faith of the ESF in namely targeting the minority, such as the migrants; it has not entirely achieved what it has intended to; but has rather moved onto other minority groups. As a matter of fact, around 160,000 Maltese citizens have benefitted from the European Social Fund²⁵⁵¹ as opposed to the low percentage

²⁵⁴⁶ *Ibid* 5, Objective 1 of the Programming Period.

²⁵⁴⁷ *Ibid*, Objective 2 of the Programming Period.

²⁵⁴⁸ *Ibid*, Objective 3 of the Programming Period.

²⁵⁴⁹ Government of Malta, OPII - *Investing in human capital to create more opportunities and promote the wellbeing of society – 2014-2020* <https://eufunds.gov.mt/en/Operational%20Programmes/Programming%20Period%202014%20-%202020/Operational%20Programme%202/Operational-Programme-II.aspx>.

²⁵⁵⁰ *ibid*.

²⁵⁵¹ Ian Borg Press Release, *The European Social Fund: Past, Present and Future Conference*, (MaltaEU2017, 23rd March 2017).

of migrants participating in the ESF between 2007-2008²⁵⁵². Nonetheless it cannot be said to have been a failure, as Malta was not facing a refugee crisis at the time therefore it rendered the issue rather inapplicable.

It must also be added that through the ESF, many barriers have been eliminated prior to the refugee crisis, thus rendering it less severe and providing a smoother transition for integration; such as the elimination of the language barrier whereby assistance was duly being given to those facing this difficulty as well as the benefit of enrolling into a language course — as it is considered fundamental by all PAs.

12.4. Concluding Remarks

Although the Maltese state shows to be in a critical position with regards to the refugee crisis, through means of assistance by the EU, a high level of improvement has been made, criteria have been met and further goals were set. In fact, the number of irregular immigrants have reduced drastically from the initiation of the aforementioned programmes and funding since 2012 and 2013. In 2012, it was stipulated that around 16,617 individuals had entered Malta by boat since 2002²⁵⁵³.

Later on in 2014, when it was presupposed that the policies become more strict, it was shown that very few individuals were able to enter Malta and obtain protection; ²⁵⁵⁴accounting to the fact that through EU assistance, Malta had implemented the correct policies and procedures in terms of assessing such individuals, all in the aid of integrating migrants that are qualified to be provided protection by the State.

Nonetheless, through EU programmes and funding, not only did Malta create a pathway for the easement of the refugee crisis prior to its establishment, but had also aided its very own Maltese nationals in becoming more inclusive and socially accepting. Therefore, the current fundings which are showing rapid progress, are also accumulating to further fundings and programmes as a justified outcome of the ongoing progress Malta is subject to.

²⁵⁵² European Commission, *The European Social Fund: Migrants and Minorities*, (Background Report by the European Union, 2010) <http://ec.europa.eu/employment_social/esf/docs/br_migrants_minorities_en.pdf> Accessed 10th September 2017.

²⁵⁵³ The UN Refugee Agency, *Malta Asylum Trends 2012*, (May 2014, Floriana) <http://www.unhcr.org/mt/charts/uploads/resources/read/files/5_2012factsheet_webversion.pdf> accessed 18 July

²⁵⁵⁴ *ibid*, Malta Asylum Trends 2014.

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Introduction

As with most European countries, migration law has been a hot topic in Dutch news, politics and also in the legal scene for quite a while. This is however nothing new to the Netherlands – over the course of history, Dutch immigration has seen multiple large waves of immigration. From refugees coming from the former Southern Netherlands (under Spanish rule at the time), to those arriving from former colonies in the 1940's, there has nearly always been at least one such wave for every generation.

However, the past is the past, and the current discussion on migration is extensive and politically sensitive on all levels – local, regional, national as well as international. This may lead to miscommunications and misunderstandings, especially when multiple cultures and countries are involved. This contribution will give an objective overview of the current legal framework in the Netherlands, including relevant (case) law and other developments in the area, within the scope of the academic framework of this Legal Research Group.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. A description of the national regulations governing asylum

Various international and European treaties apply in the Netherlands, but in addition to these, asylum law is broadly regulated in Dutch law as well. First of all, the General Administrative Legal Act applies. Asylum law is a special part of administrative law. The consequence of this is that – in principle – the general procedural rules of Dutch administrative law apply. In particular, the most important principles derived from these laws, such as the principle of legal certainty, the principle of equality, the principle of due care and the mandatory balancing of interests apply. The administrative courts have jurisdiction in cases concerning decisions in the field of asylum law.²⁵⁵⁵

Secondly, the Aliens Act 2000 (hereafter: the Aliens Act) applies. This law contains the most important rules of Dutch asylum law and the objective is to regulate as many matters as possible in just one legal instrument. There are provisions on access to the country, lawful stay, enforcement of the rules, measures involving deprivation or limitation of liberty, (forced) departure and deportation as well as legal remedies. Articles 28 through 45 specifically regulate asylum.

With regard to certain subjects, the Alien Act further required more detailed regulation by means of a general administrative measure. This was achieved with the adoption of the Aliens Decree

²⁵⁵⁵ K.M. Zwaan and others, *Nederlands Migratierecht* (Boom Juridische Uitgevers 2016) 34.

2000 (hereafter: the Aliens Decree). The Aliens Decree covers roughly the same subjects as the Aliens Act, but regulates these matters in more detail. It follows the layout of the Aliens Act. For easier comprehension of the rules, the legislator aimed at limiting the number and different levels of regulation. For that reason, the Aliens Decree contains a lot of substantive norms that were previously covered by different regulations. It also contains various policy rules that were previously written down in different instruments. By moving these rules from these instruments to the Aliens Decree, the rules became legally binding, instead of mere policy rules.²⁵⁵⁶

Besides the Aliens Act and Aliens Decree, there is also the Aliens Regulations 2000 (hereafter: the Aliens Regulations). Both the act and the decree state that certain topics should be set out in more detail in a ministerial regulation and the Aliens Regulations fulfil this requirement. Like the Aliens Decree, the Aliens Regulations cover the same topics as the Aliens Act, and follow the same layout. They contain very few substantive norms, as these are now mostly included in the Aliens Decree.²⁵⁵⁷

The fourth legal instrument governing asylum law is the Aliens Act Implementation Guideline. It is once again an elaboration on the Aliens Act and Aliens Decree, containing the applicable policy rules and implementing instructions.²⁵⁵⁸ Contrary to the previously mentioned legal instruments, the Aliens Act Implementation Guideline does not follow the same layout as the Aliens Act, as it has provisions on education, employment and various other topics the Aliens Act does not cover. Furthermore, relevant in the field of asylum are the working instructions of the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst, abbreviated as IND*), the government body responsible for dealing with requests for asylum. These instructions cannot be classified as policy rules, as they are procedural instructions that are not meant to replace the provisions of the Aliens Act Implementation Guideline. In certain circumstances, the Immigration and Naturalisation Service employees may derogate from the instructions. However, it follows from the principles of legal certainty that an alien can invoke these instructions before a court if the IND employee has acted contrary to them.²⁵⁵⁹ Finally, two legal instruments that do not specifically regulate asylum but may still be relevant are the Foreign Nationals Employment Act and the Civic Integration Act, which as the names suggest, deal with employment and integration of aliens.

1.2. The procedure for granting asylum and who is responsible

The Ministry of Justice and Security is responsible for the asylum procedure and as mentioned before, has appointed the IND as the executive body that deals with carrying out the procedure for granting asylum. The asylum procedure starts with the registration of the asylum seeker. The alien has to report to the Aliens Police, Identification and Trafficking department, which is located on the application centre in Ter Apel. Due to the large number of requests for asylum,

²⁵⁵⁶ J.A. Raukema, Explanatory Notes to the Aliens Decree, 1-3.

²⁵⁵⁷ J.A. Raukema, Explanatory Notes to the Aliens Regulations, 1-2.

²⁵⁵⁸ Dienst Terugkeer en Vertrek, *Wetten en Regels*, <https://www.dienstterugkeerenvertrek.nl/VertrekuitNederland/WettenenRegels/index.aspx> accessed 4 July 2017 [Dutch].

²⁵⁵⁹ KM Zwaan and others, *Nederlands Migratierecht* (Boom Juridische Uitgevers 2016) 35.

this registration can now not only take place in Ter Apel, but also in Veenhuizen, Budel, Didam, Leusden, Amsterdam and Rotterdam. During the registration, the personal details of the alien are registered and fingerprints are lifted.

The second step in the procedure is the application of the asylum seeker. The asylum seeker signs his/her request for asylum and the IND conducts an application interview to determine the identity, nationality and travel route of the asylum seeker. This is, among other things, done with a view to the possible responsibility of a different country due to the Dublin Regulation. After the registration and application, the rest and preparation period, which is a minimum of 6 days, starts.²⁵⁶⁰ The asylum seeker is transferred to a reception centre and will not be heard by the Immigration and Naturalisation Service, since this period is intended for the asylum seeker to rest and regain strength. The Dutch Council for Refugees will inform the asylum seeker about the course of the procedure and his lawyer will inform him with regard to the contents of the procedure. The rest and preparation period is also the moment for a medical check in order to detect medical issues that need treatment right away or that can have consequences for the asylum procedure. Important to note is that while the minimum duration of the rest and preparation period is 6 days, there is no maximum duration. The period can be extended when there is a large influx of asylum seekers, which is currently the case. The period can consequently take up to 6 months.²⁵⁶¹

After the rest and preparation period, the actual asylum procedure starts. The general asylum procedure takes no more than 8 days, during which the IND conducts two interviews. On the first day, the initial interview takes place. During the initial interview, the asylum seeker will have to elaborate on his identity, nationality and travel route. On the second day of the procedure, the asylum seeker is given time to consult with his lawyer and possibly submit corrections and supplements to the report of the initial hearing, as well as time to prepare for the detailed interview. This detailed interview is scheduled for the third day and is intended to discover the reasons for the asylum seeker to flee his country. The asylum seeker first has the opportunity to tell his story, after which the IND employee will ask questions. On day 4, the asylum and his lawyer will once again have time to submit corrections and supplements. The requirements for a person to be considered for asylum are listed in Article 29, point 1 of the Aliens Act. Under A, the Article refers to the Convention Relating to the Status of Refugees and states that a person who is a refugee within the meaning of that Convention is eligible for asylum in the Netherlands. Article 1 of the Convention Relating to the Status of Refugees defines a refugee as a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of his country of nationality and is unable (or, owing to such fear, unwilling) to avail himself of the protection of that country; or who, not having a nationality and being outside of the country of his former

²⁵⁶⁰ Rijksoverheid, *Procedure Asielzoeker*, <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/procedure-asielzoeker> accessed 5 July 2017 [Dutch] and Vreemdelingensvisie, *Alles Over de Asielprocedure*, <https://www.vreemdelingensvisie.nl/vreemdelingensvisie/2015/01/alles-over-de-asielprocedure> accessed 5 July 2017 [Dutch].

²⁵⁶¹ Letter n. 243 of the State Secretary for Justice (about the revision of the healthcare system) 2008 [Brief nr. 243 van de Staatssecretaris van Justitie over de herziening van het zorgstelsel van 16 december 2008].

habitual residence is unable or unwilling to return to it. Under B, Article 29 of the Aliens Act states that a person who has made it plausible that he has well-founded reasons to assume that when deported he faces a real risk of severe harm, can be considered for asylum as well. For this ground under B to apply the severe harm should be due to death penalty or execution, torture, inhumane treatment or punishment or there should be a severe and individual threat to the life of the person as a result of random acts of violence in the context of an armed conflict.

After this procedure, the IND can take a variety of decisions. They can decide that the asylum seeker meets the requirements for a residence permit and grant asylum. It is also possible for them to decide that they need more time for the investigation, after which the request will be handled in the extended asylum procedure. A third possibility is the issuance of an intended decision. This will be the case if, according to the IND, the asylum seeker does not meet the requirements for a residence permit and they intend to reject the application. An asylum seeker who receives an intended decision can consult his lawyer and the lawyer can submit a response in which he contests the grounds for rejection. On day 7 or 8, the IND will take a final decision: they either agree with the response and therefore a residence permit is granted after all (in principle for a period of 5 years, after which the IND determines whether or not the asylum seeker still needs protection) or they need more time for the investigation and as a result, the application is moved to the extended asylum procedure, or the application is rejected and the alien is requested to leave the country.²⁵⁶² In accordance with Article 69 of the Aliens Act, the alien has a legal remedy against this decision, and can apply for judicial review before an administrative court.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Introduction

In addition to the previous paragraphs, international and European sources law play a pivotal role in the area of immigration law. From these legal sources, the Directive 2004/38/EC is of paramount importance. Furthermore, a distinction needs to be made regarding the categories of aliens. Firstly, migrants could opt for a short residence of maximum ninety days. Secondly, they can opt for a longer one, which is called regular residence and lasts longer than ninety days. Thirdly, there is the category of those who are refugees and not immigrants and lastly, there is the category of EU citizens in case they choose to reside in the Netherlands.²⁵⁶³ This distinction is important in order to determine which procedure needs to be followed. The question that arises here is how the immigration from both EU and non-EU Member States is implemented and regulated in the Netherlands. Firstly, the regulation with regard to immigration from EU

²⁵⁶² Immigration and Naturalisation Service, *De Procedure in het Aanmeldcentrum*, <https://ind.nl/formulieren/6072.pdf> accessed 5 July 2017 [Dutch].

²⁵⁶³ P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 39.

Member States is discussed. Secondly, the regulation regarding immigration from non-EU Member States is set out. Finally, conclusions are drawn.

2.2. Immigration from EU Member States

Directive 2004/38/EC deals with the right of movement and residence of EU citizens and their family members.²⁵⁶⁴ The Dutch legislator implemented this Directive in the Aliens Decree.²⁵⁶⁵ EU citizens as well as their family members are allowed to enter, exit and reside in the Netherlands freely, on the condition that they have a valid identity card (ID) or passport.²⁵⁶⁶ Their entry can only be refused by the Minister of Security and Justice (Minister) on the grounds of public policy, public security or public health.²⁵⁶⁷

Regarding the right of residence, a distinction should be drawn between the right of residence and the right of permanent residence. The former relates to the residence of less than three months and to that of three months to five years, whereas the latter refers to residence for a period of five years or more. In order to legally reside in the Netherlands for three months, one needs a valid ID or passport, as stated in Article 8.11. Citizens staying longer than three months need to be workers or self-employed persons in the Netherlands or have sufficient resources and a comprehensive health care insurance for themselves and their family members.²⁵⁶⁸ Pursuant to Article 8.13, these persons need to register to the competent authority in order to apply for a residence document: in this case, the Minister. Together with the application, the alien submits at least a valid passport, a statement on with whom the alien is staying and a document showing his family law governed relation.²⁵⁶⁹ Within six months, the Minister issues the residence document with a validity period of a maximum of five years or a period equal to the intended stay of the alien.²⁵⁷⁰ EU citizens and their family members staying longer than five years in the Netherlands continuously, may acquire the right of permanent residence by virtue of Article 8.17. The right of permanent residence shall be requested by the alien. Some discontinuity in the five years of residence is allowed, for instance interruptions of six months or less, or interruptions for compelling reasons, such as a severe illness or a childbirth.²⁵⁷¹ Under Article 8.18 and 8.23, the residence can only be terminated in case of absence from the Dutch territory for two consecutive years or in case of serious concerns relating to public order, security or health. Finally, no termination shall take place if the alien is a minor or if he has lived in the Netherlands for the past ten years.

²⁵⁶⁴ P Craig and G De Burca, *EU Law: Text, Cases, and Materials* (Oxford University Press 2015) 856.

²⁵⁶⁵ A Böcker and AB Terlouw, *De Gelaagdheid van de Vreemdelingenregelgeving in Historisch en Vergelijkend Perspectief* (Kluwer 2013) 126.

²⁵⁶⁶ Decree of 23 November 2000 on the execution of the Alien Act 2000 (Alien Decree 2000), [Vreemdelingenbesluit 2000], Article 8.7 and 8.8.

²⁵⁶⁷ Ibidem, Article 8.8.

²⁵⁶⁸ Ibidem, Article 8.12(1).

²⁵⁶⁹ Ibidem, Article 8.13(3).

²⁵⁷⁰ Ibidem, Article 8.13(5) and (6).

²⁵⁷¹ Decree of 23 November 2000 on the execution of the Alien Act 2000 (Alien Decree 2000), [Vreemdelingenbesluit 2000], Article 8.17(2).

2.3. Immigration from Non-EU Member States

Regarding immigration from non-EU Member States, a distinction needs to be drawn between short residence, long residence and residence as a refugee.²⁵⁷² As far as the short stay of less than ninety days is concerned, Article 5 of the Convention implementing the Schengen Agreement applies instead of the Aliens Act. This article stipulates that the alien should produce documents concerning the purpose of his stay and possess a valid border-crossing document and visa.²⁵⁷³

Aliens who wish to stay longer than ninety days need a regular residence permit.²⁵⁷⁴ The regular residence permit can be divided into a stay for a definite and an indefinite period of time.²⁵⁷⁵ The former relates to a stay of no more than five years, while the latter to more than five years. The request for a permit for a definite time period should be deposited at the IND (the Immigration and Naturalisation Service), pursuant to Article 3.101 of Aliens Decree, or at the Dutch embassy in his/her State according to Article 23 of Aliens Act.²⁵⁷⁶ The conditions can be concluded from Article 16 of Aliens Act, which contains a list of grounds for not granting the residence permit. These include, *inter alia*, a valid temporary residence permit, a valid border-crossing document and a possession of sufficient resources that are permanent. Article 14 of Aliens Act stipulates that the residence permit for a definite period of time is granted for a specific purpose listed in this Article, such as family reunification or labour. Under Article 14(4) of Aliens Act, the permit is valid for a period of five years or a period equal to the intended stay.

Permits for an indefinite period will be granted, if the alien has stayed legally in the Netherlands for five consecutive years, pursuant to Article 21 of Aliens Act. This Article contains a list of grounds for refusal, for instance, when the alien does not have sufficient resources or he poses a threat to national security. Under Article 22, this permit can be withdrawn in cases of absence of twelve months or if the alien threatens public order or security.

The asylum procedure differs from what was mentioned above, as the ratio hereof is to offer protection to aliens.²⁵⁷⁷ Again, a distinction should be made between a permit for a definite or an indefinite period of time. Regarding the permit for a *definite* time period, Article 29 of the Aliens Act lists the aliens who are eligible for a permit under the asylum procedure. Namely, those who are a Convention refugee, or who are at a real risk of severe danger such as the death penalty or torture, and to family members of an alien with such residence permit. The refugee has to go to the Aliens Police to determine his identity, after which he can apply for a permit. The alien then gets a rest and preparation period of six days.²⁵⁷⁸ The IND shall, pursuant to Article 30 of the Aliens Act, determine whether the request should be dealt with by the Netherlands or another state (based on the Dublin Regulation). Subsequently, the IND shall determine the admissibility of the application under Article 30a of Aliens Act. If that is the case, the IND shall assess

²⁵⁷² P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 39.

²⁵⁷³ Article 5(1)(a) Convention Implementing the Shengen Agreement; EM Kampstra, *Hoofdzaken Vreemdelingenrecht* (Kluwer 2015) 9 and 11.

²⁵⁷⁴ P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 61.

²⁵⁷⁵ EM Kampstra, *Hoofdzaken Vreemdelingenrecht* (Kluwer 2015) 27.

²⁵⁷⁶ P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 62; Kampspra 2015, p. 45.

²⁵⁷⁷ EM Kampstra, *Hoofdzaken Vreemdelingenrecht* (Kluwer 2015) 63.

²⁵⁷⁸ 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.

whether it is manifestly ill-founded pursuant to Article 30b, as such applications will always be refused.²⁵⁷⁹ A definite residence permit can be withdrawn if a) incorrect information is provided, b) the alien poses a threat to public order or national security, c) the ground the granting was based on has come to an end or d) the alien has moved from his principal residence.²⁵⁸⁰ The procedure is described more thoroughly in paragraph 1.2.

A permit for an indefinite period of time has, pursuant to Article 34 of Aliens Act, the same grounds for refusal as the definite residence permit. Another ground for refusal is the failing of the civic integration test. The permit can be withdrawn if a) incorrect information is provided, b) the alien is convicted of a felony with imprisonment of three years or more, c) the alien has moved his principal residence or d) the alien poses a threat to public order or national security.²⁵⁸¹ Subsequently, if an alien does not have or no longer has a valid permit, the country of residence must be left within four weeks, out of one's own volition.²⁵⁸² If an alien does not leave the country by himself, they may be deported in accordance with Aliens Act Implementation Guidelines (Vc) A3/6.²⁵⁸³ However, despite their obligation to leave, aliens are not always deported. Firstly, because it is a competence of the Minister to deport aliens and not an obligation.²⁵⁸⁴ Additionally, there are several grounds to not deport an alien. Firstly, aliens cannot be deported as long as this is prevented by their state of health.²⁵⁸⁵ Secondly, an alien cannot be deported when he has submitted a provisional ruling and the alien can wait for the decision in the Netherlands. Thirdly, an alien shall not be deported but with permission of the OM (the Public Prosecution Service) in the event that a criminal prosecution against him is ongoing and has no final ruling yet, the alien has a conviction of a non-suspended custodial sentence which he has not yet served, or a custodial order has been imposed on the alien which has not yet been served.²⁵⁸⁶

2.4. Conclusion

To conclude, it is much easier for EU citizens to migrate than it is for non-EU citizens. The rules concerning immigration of EU citizens are harmonised through Directive 2004/38/EC, which contain only few restrictions on the right to free movement and residence. Aliens almost only need an ID to travel freely within the EU. Non-EU citizens, however, have to comply with more conditions and procedural rules. Not only do they need a valid ID or passport, but they also need documents on the purpose of their stay as well as information of the place and persons

²⁵⁷⁹ Aliens Act of 23 November 2000 to general revision of the Alien Act (Aliens Act 2000), [Vreemdelingenwet 2000], Article 31; KM Zwaan and others, *Nederlands Migratierecht* (Boom Juridische Uitgevers 2016) 347.

²⁵⁸⁰ Ibidem, Article 32(1); KM Zwaan and others, *Nederlands Migratierecht* (Boom Juridische Uitgevers 2016) 351.

²⁵⁸¹ Ibidem, Article 35(1); KM Zwaan and others, *Nederlands Migratierecht* (Boom Juridische Uitgevers 2016) 353.

²⁵⁸² Aliens Act of 23 November 2000 to general revision of the Alien Act (Aliens Act 2000), [Vreemdelingenwet 2000], Article 61; P Samim, *Vreemdelingenrecht Begrepen* (Boom Juridische Uitgevers 2015) 198.

²⁵⁸³ Aliens Act Implementation Guidelines of 1 January 2013 (Aliens Act Implementation Guidelines), [Vreemdelingencirculaire 2013], Article A3/6; Aliens Act of 23 November 2000 to general revision of the Alien Act (Aliens Act 2000), [Vreemdelingenwet 2000], Article 63.

²⁵⁸⁴ EM Kampstra, *Hoofdzaken Vreemdelingenrecht* (Kluwer 2015) 128.

²⁵⁸⁵ Aliens Act of 23 November 2000 to general revision of the Alien Act (Aliens Act 2000), [Vreemdelingenwet 2000], Article 64.

²⁵⁸⁶ Aliens Act Implementation Guidelines of 1 January 2013 (Aliens Act Implementation Guidelines), [Vreemdelingencirculaire 2013], Article A3/6.

they are residing with. The IND plays a major role in this, as it is the competent authority, which predominantly decides upon residence permits. Furthermore, the grounds for refusal and termination are much more limited when it comes to EU citizens.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

Within the Dutch executive branch, the Ministry of Security and Justice (*Ministerie van Veiligheid en Justitie*) is responsible for the Dutch migration policy.²⁵⁸⁷ Like most, if not all, Dutch national policies, the activities falling under the Dutch migration policy are funded by the Dutch central government. The Organizational Decision of the Ministry of Security and Justice 2015 (*Organisatiebesluit Ministerie van Veiligheid en Justitie 2015*) lays down the different departments and bodies falling under the Ministry, and their respective powers and tasks.²⁵⁸⁸ Article 2 of the Organizational Decision divides the Ministry in a number of dependent directorate-generals. Each one of these has their own working field. Immigration has been brought under the Directorate-General for Alien Affairs. It has been laid down in the Organisational Decision that this directorate-general is responsible for executing the tasks and responsibilities deriving from the laws and regulations concerning migration and Dutch nationality law contained in the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*).²⁵⁸⁹ Furthermore, it is responsible for keeping a regulated and controlled flow of incoming and outgoing migrants. On top of that, the directorate-general is responsible for migrants and asylum-seekers during their stay in the Netherlands.²⁵⁹⁰ Naturally flowing from these assigned tasks, the Directorate-General for Alien Affairs is the body in charge of the chain of admittance, supervision and return of aliens.²⁵⁹¹ Lastly, the directorate-general advises the government on migration law and policy and naturalisation and nationality law.²⁵⁹² The Directorate-General for Alien Affairs, being a department of the Ministry of Justice and Security, is hierarchically falling under the responsibility of the Secretary General of the Ministry. As a result, the Secretary General is responsible for monitoring and evaluating the quality of the services the Directorate-General is providing.²⁵⁹³ Furthermore, the Advisory Committee on Migration Affairs is tasked to advise the Minister of Justice and Security on matters of migration law and migration policies.²⁵⁹⁴

²⁵⁸⁷ 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), July 3 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.

²⁵⁸⁸ Ibid.

²⁵⁸⁹ Ibid art. 44(1).

²⁵⁹⁰ Ibid art. 44(1) b.

²⁵⁹¹ Ibid art. 44(1) c.

²⁵⁹² Ibid art. 44(1) d.

²⁵⁹³ Ibid art. 3(1).

²⁵⁹⁴ Law of 23 November 2000 (on the overall Review of the Alien Law), 2000 [Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000)], art. 2.

The Directorate-General for Alien Affairs is divided into five dependent bodies and directorates. Four of these are of particular importance for the execution of the Dutch migration policy.²⁵⁹⁵ First of all, the Directorate for Migration Policy (*Directie Migratiebeleid*) is responsible for the overall policy concerning the admittance of migrants and asylum seekers and their stay and return. When executing this task through its three departments, it must do so from a national and international perspective, and in a socially responsible manner.²⁵⁹⁶

The second directorate, the Directorate Supervision of the Alien Chain (*Directie Regie Vreemdelingenketen*) is responsible for the proper and efficient execution of the Law on Aliens (*Vreemdelingenwet 2000*) and Dutch alien policy. By fulfilling its tasks, it supports all bodies and organizations that deal with the processes concerning aliens entering the Netherlands.²⁵⁹⁷

Thirdly, the IND is responsible for the proper implementation of Dutch migration legislation and Dutch nationality law.²⁵⁹⁸ The IND is responsible for handling all immigration and asylum applications and takes care of the naturalisation and integration processes for those immigrants who wish to obtain the Dutch nationality. It is thus the IND who decides whether applications by migrants or asylum seekers shall be accepted or not.²⁵⁹⁹ Being a dependent body under the Ministry of Security and Justice, it does not have any influence on the laws regulating immigration and asylum policy in the Netherlands.

Lastly, the Service for Return and Departure (*Dienst Terugkeer en Vertrek*) is the body responsible for the execution of the migration regulations that deal with the return of aliens to their home country or a third country. The Service does not have any decisionmaking power itself as it merely executes the task properly.²⁶⁰⁰ As stated in the previous paragraph, the decision to return migrants or asylum seekers to their home country or a third country is made by the IND.

Outside the framework of the Ministry of Justice, a small number of independent bodies exists that also deal with migration. One of them is the Central Organ for the Shelter of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers* or *COA*). This organization has been established by means of a law and is thus a legal person under public law.²⁶⁰¹ The powers of the COA are laid down in its founding law and, by being an independent public administrative body, the COA works within the framework of the Framework Law on Independent Public Administrative

²⁵⁹⁵ 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), July 3 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. 44(2).

²⁵⁹⁶ Ibid art. 45.

²⁵⁹⁷ Ibid art. 46(1).

²⁵⁹⁸ Ibid art. 44(1) jo. 47.

²⁵⁹⁹ Law of 23 November 2000 (on the overall Review of the Alien Law), 2000 [Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000)], art. 2k.

²⁶⁰⁰ 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), July 3 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 46(1)

²⁶⁰¹ Law of 19 May 1994 (on the Establishment of an independent Public Administrative Body responsible for the material and immaterial Shelter of Asylum Seekers), 1994 [Wet van 19 mei 1994, houdende regels betreffende de instelling van een zelfstandig bestuursorgaan, belast met de materiële en immateriële opvang van asielzoekers], art. 2(1)

Bodies.²⁶⁰² The tasks of the COA include the organization of the shelters for asylum seekers and their placements therein. Furthermore, the Minister of Justice can give additional tasks concerning the shelter of asylum seekers.²⁶⁰³

In case of alleged maltreatment of migrants and/or asylum seekers by one of the bodies above, complaints can be filed at the Ombudsman. This entity is responsible for dealing with complaints brought to it by people who feel mistreated by the Dutch government. The Ombudsman has the task of filing reports on these complaints and to make the government aware of its flaws. It can work on the basis of complaints, but also on its own initiative.²⁶⁰⁴

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

The Immigration and Naturalisation Service (IND) of the Ministry of Security and Justice provides monthly updates on the influx of asylum seekers.²⁶⁰⁵ The most recent one dates June 14, 2017 and provides an overview of the month of May, a month during which the total influx of asylum seekers was 2,806, almost 2% less than the previous month (2,857 in April). Among these 1,162 were first applications, 172 were repeated applications, and 1,472 were entries for family reunification. Syrian refugees remained the largest group among first applicants, and overall as well, represent 60% of the total number of applicants. Afghans were the largest group of repeated applications.²⁶⁰⁶

Additional data on these figures can be accessed via Eurostat data, also available on IND's website.²⁶⁰⁷ According to their *Migration and migrant population statistics* released in March 2017, which shows an overview of population flows for each member state, the Netherlands counts a total of 166.9 thousand immigrants, among which 61.4 thousands are citizens of non-EU member countries, and 4.6 thousands are stateless.²⁶⁰⁸ Moreover, OECD Stat provides access to the International Migration Database, which monitors inflows and outflows of foreign

²⁶⁰² Ibid art. 2(3); Law of 2 November 2006 (on the Rules concerning Public Administrative Bodies), 2006 [Wet van 2 november 2006, houdende regels betreffende zelfstandige bestuursorganen (Kaderwet zelfstandige bestuursorganen)].

²⁶⁰³ Law of 19 May 1994 (on the Establishment of an independent Public Administrative Body responsible for the material and immaterial Shelter of Asylum Seekers), 1994 [Wet van 19 mei 1994, houdende regels betreffende de instelling van een zelfstandig bestuursorgaan, belast met de materiële en immateriële opvang van asielzoekers], art. 3(1).

²⁶⁰⁴ Constitution for the Kingdom of the Netherlands of 24 August 1815 [Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815], art. 78a; Law of 4 February 1981 (on the Establishment of the role of National Ombudsman) [Wet van 4 februari 1981, houdende instelling van het ambt van Nationale ombudsman].

²⁶⁰⁵ Immigratie en Naturalisatie Dienst, 'Asylum Trends' (14 June 2017) <<https://ind.nl/en/about-ind/figures-and-publications/Pages/Asylum-Trends.aspx>> accessed 7 July 2017 [English].

²⁶⁰⁶ Immigratie en Naturalisatie Dienst, 'Influx of asylum seekers in May: an increase of first and repeated applications for asylum, a decrease of entries for family reunification' (14 June 2017) <<https://ind.nl/en/news/Pages/Influx-of-asylum-seekers-in-May-an-increase-of-first-and-repeated-applications-for-asylum,-a-decrease-of-entries-for-family.aspx>> accessed 6 July 2017 [English].

²⁶⁰⁷ Immigratie en Naturalisatie Dienst, 'Asylum trends' (February 2017) <https://ind.nl/en/Documents/AT_Eurostat_February_%202017.pdf> accessed 8 July 2017 [English].

²⁶⁰⁸ Eurostat, 'Migration and migrant population statistics' (March 2017) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics> accessed 6 July 2017 [English].

populations and asylum-seekers.²⁶⁰⁹ Likewise, UNHCR's Population Statistics allow for an exploration of this data per country of origin and country of asylum and many more filters.²⁶¹⁰ The Dutch Council for Refugees (*VluchtelingenWerk Nederland*) is an independent professional NGO that advocates for the protection of asylum seekers and refugees through personal support and advocacy aimed at their access, reception and participation in society, primarily in the Netherlands. They publish statistics regularly on refugees and asylum seekers who are present in the country. Their comprehensive report for 2016 relies on data from UNHCR, Dutch governmental agencies, such as The Netherlands Institute for Social Research, and Statistics Netherlands (*Centraal Bureau Voor de Statistiek, CBS*).²⁶¹¹ Similarly, the Employment pointer for Refugees (*Werkwijzer Vluchtelingen*), an initiative supported by the Social and Economic Council of the Netherlands (*Sociaal Economische Raad, SER*) presents data based on aggregated data from CBS and IND.²⁶¹² Given the centralized nature of these statistics at the national level via CBS and IND, the figures are identical, or very similar.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Introduction

The relationship between Dutch national law and International law is of a monist nature. This means that international law is part of the domestic legal order and therefore it is not seen as a different legal sphere. This is clearly indicated in article 93 of the Dutch Constitution, which states that “provisions of treaties and of resolutions by international institutions, which may be binding on all persons by virtue of their contents shall become binding after they have been published.”²⁶¹³ The provision also confirms the possibility for Dutch Courts to directly enforce treaty provisions. As far as the European Court of Human Rights (ECtHR) is concerned, all substantive rights have acquired a self-executing nature within the Dutch legal order, as the Netherlands is a member of the Council of Europe. Whenever domestic legislation is in conflict with a human rights treaty, the national court is not obligated to follow domestic law.²⁶¹⁴ In fact, the Supreme Court of the Netherlands ruled that interpretations of the ECtHR shall be followed

²⁶⁰⁹ OECD.Stat, ‘International Migration Database’ (8 July 2017) <<https://stats.oecd.org/Index.aspx?DataSetCode=MIG>> accessed 8 July 2017 [English].

²⁶¹⁰ UNHCR, ‘Population Statistics’ (June 2017) <http://popstats.unhcr.org/en/persons_of_concern> accessed 8 July 2017 [English].

²⁶¹¹ VluchtelingenWerk Nederland, ‘Vluchtelingen in Getalen 2016’ (Refugees in Numbers, 25 August 2016) <<https://www.vluchtelingenwerk.nl/sites/public/u895/Vluchtelingeningetallen2016.pdf>> accessed 5 July 2017 [Dutch].

²⁶¹² Werkwijzer Vluchtelingen, ‘Feiten & Cijfers’, (Facts and Figures, 17 July 2015) <<http://www.werkwijzervluchtelingen.nl/feiten-cijfers/aantallen-herkomst.aspx>> accessed 4 July 2017 [Dutch].

²⁶¹³ Article 93 of the Dutch Constitution.

²⁶¹⁴ Zwaak, L.F., ‘The Netherlands’, in: Blackburn, R. and Polakiewicz, J. (eds.), *Fundamental Rights in Europe*, Oxford: Oxford University Press (2002), 598.

when applying treaty provisions on a national level.²⁶¹⁵ This also applies to judgments rendered against other contracting states before the ECtHR; a few of these cases have had influence on Dutch immigration law.

The vast majority of immigration cases before the ECtHR are litigated under Articles 3 and 8 of the European Convention of Human Rights (ECHR). With the prohibition against torture and inhumane treatment (Article 3) and the right to family life (reunification, Article 8) serving as legal bases, a deeper level of understanding is required when it comes to migration law in a European context.

5.2. Case law

Article 3 states that “no one shall be subjected to torture or inhumane or degrading treatment or punishment”. Even though this provision does not directly refer to asylum, applicants have frequently used this provision when States made plans to deport them. The rationale behind this is the fact that many asylum seekers would face a real and imminent threat to inhumane and degrading treatment or torture. This particular provision has influenced the case law relating to the expulsion of asylum seekers who do not qualify as refugees under the Convention with regard to the Status of Refugees of 1951. Since the issuance of *Soering v. the United Kingdom* judgement, such individuals can rely on Article 3 of the ECHR to prevent expulsion from the Netherlands where it would result in *refoulement*.²⁶¹⁶ The principle of non-refoulement is a fundamental principle of international law, which prevents asylum seekers from being deported in cases where their “life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion”.²⁶¹⁷

A landmark case against the Netherlands is the judgment of *Salah Sheekh v The Netherlands*.²⁶¹⁸ The Somali applicant Salah Sheekh entered the country with a false passport, asking for asylum. He claimed to belong to a minority population group and thus he has been prosecuted in Somalia. His asylum request was declined by the Dutch authorities, who held that Sheekh’s reasons for his flight from Somalia were insufficient to qualify him as a refugee. Additionally, based on a country report on Somalia by the Foreign Ministry, the Minister of Immigration and Integration considered the situation in Somalia to be “not such that the mere fact that a person came from that country was sufficient for refugee recognition”.²⁶¹⁹ The Court stated that Article 3 implies an obligation not to deport an individual to a country if “substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country”.²⁶²⁰ Standard practice of the Dutch government and judicial authorities is based on the argument “that it [can] not necessarily be concluded solely on the basis of the general situation in a country that a particular person [runs] a real risk, but that it [is] required that individuals [show] that they [have] been singled out for

²⁶¹⁵ Dutch Supreme Court, Judgment, HR 10 November 1989, NJ 1990, 628.

²⁶¹⁶ *Soering v the United Kingdom* App no 14038/88, Judgement (Plenary), 7 July 1989, Series A, Vol. 161.

²⁶¹⁷ Article 33 of the Convention and Protocol Relating to the Status of Refugees.

²⁶¹⁸ *Salah Sheekh v the Netherlands* App No 1948/04, (ECtHR) 11 January 2007.

²⁶¹⁹ *Salah Sheekh v the Netherlands*, 2007, § 27.

²⁶²⁰ *Ibid*, § 135.

persecution”.²⁶²¹ Finally, the Court found that there was a violation of Article 3, ruling that the applicant indeed faced a “real risk” when deported back to his country of origin. The ECtHR clearly took issue with the Dutch assessment procedure, doubting the Foreign Ministry’s report on Somalia, which, in its aftermath, forced the Dutch authority to take this case into serious consideration when deciding asylum cases from that date onwards.²⁶²²

Article 8 of the ECHR has shaped Dutch case law on immigration cases even more substantively than the provision on inhumane and degrading treatment (Article 3). With regard to the acceptance of foreign family members to the Netherlands, the Council of State established a means of decision-making that was based on the judgment of *Abdulaziz and others v. the United Kingdom*, which concerned the initial granting of residence permits to foreign family members.²⁶²³ The applicants, three lawfully and permanently settled residents of the United Kingdom, wanted to challenge the Government’s refusal to permit their husbands to join or remain with them based on the 1980 immigration rules, which were in force at that time. Accordingly, a refusal of admission by the Dutch authorities did not constitute an interference with family life in terms of Article 8 ECHR because the authorities did not interfere to such a degree that would hinder the exercising of family life.²⁶²⁴

Another significant case against the Netherlands concerning migration law in combination with family life is the case of *Jeunesse vs. The Netherlands*.²⁶²⁵ The case concerned a Surinamese national who resided in the Netherlands longer than was permitted on the basis of her tourist visa, resulting in illegal residence. The applicant attempted to receive an ordinary residence permit showing that, according to the Court, she was aware of the “precariousness” of the situation. She married a Dutch national and had three children resulting from that marriage and had lived in the Netherlands for 16 years by the time. The Dutch government argued that it could relocate the family, since the children were of adaptable age. The central issue that the Court had to assess was whether the Netherlands failed its positive obligation to grant her a residence permit and thus enabling her to exercise family life on their territory.²⁶²⁶ The Court took the best interests and impact on the family in the potential case they would move back to Suriname into consideration. It also considered the fact that the applicant had been tolerated in the country for a long time, possessed no criminal record and that her children are of Dutch nationality and that they had never been to Suriname, concluding the Netherlands to have acted in violation of Article 8.²⁶²⁷ This is a different approach to a prior judgement with a comparable situation of the applicant. In *Useinov v. the Netherlands*, the applicant had also lived in the country for a

²⁶²¹ Ibid, § 131.

²⁶²² Elaine Mak, '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' [2007] 1(1) EUROPE & LAW JOURNAL

<https://www.academia.edu/2203029/On_the_ECtHRs_judgement_in_the_case_of_Salah_Sheekh_v._the_Netherlands_and_its_effects_on_asylum_policy_and_adjudication_in_the_Netherlands1> accessed 6 July 2017

²⁶²³ *Abdulaziz, Cabales, and Balkandali v the United Kingdom* App nos 9214/80; 9473/81; 9474/81, Judgement (Plenary), 28 May 1985.

²⁶²⁴ Ibid § 67-68.

²⁶²⁵ *Jeunesse v the Netherlands* App no 12738/10 (ECtHR, 3 October 2014).

²⁶²⁶ Ibid § 105.

²⁶²⁷ Ibid § 116-119.

considerable period of time and had no criminal record.²⁶²⁸ The court was of the opinion that no exceptional circumstances were present, that the applicant first entered the Netherlands in 1992 at the age of 27 [and that] he must still have [connections] with the FYR of Macedonia, where he presumably grew up and underwent his schooling".²⁶²⁹ Therefore, it deemed the application inadmissible in that case.

5.3. Conclusion

As the Netherlands is a member of the Council of Europe, it is obliged to follow the provisions of the ECHR, but Dutch courts also strongly implement interpretations of the ECtHR on a national level when litigating immigration cases. While these judgments often concern other Contracting States, and therefore do not pose an obligation to change Dutch immigration legislation, the Dutch authorities have changed their line of reasoning based on several of these cases. Examples of these changes have been brought forward in the previous paragraphs. To conclude, due to the monist nature of the relationship between national and International law, ECtHR case law has had considerable influence on Dutch migration law.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Monitoring Activity of the European Commission against Racism and Intolerance

The European Commission Against Racism and Intolerance (ECRI) is a body of the Council of Europe, which works towards the aim to combat racism and intolerance throughout the European continent.²⁶³⁰ The following paragraphs will provide an overview of the ECRI's recommendations and concerns concerning the latest monitoring cycles regarding the Netherlands.

ECRI reiterates its recommendation that the Dutch authorities introduce a provision to the effect that racist motivation constitutes a specific aggravating circumstance in sentencing.²⁶³¹ However, this central recommendation was not implemented by the Dutch legislature, as observed by the ECRI in its 2016 Monitoring Cycle.²⁶³²

The ECRI, in its 2013 report, previously recommended to the authorities to develop a national strategy and policy against racism and racial discrimination, which tackles – at the national level –

²⁶²⁸ *Useinov v the Netherlands*, App no 61292/00, (ECtHR, 11 April 2006).

²⁶²⁹ *Ibid.*

²⁶³⁰ European Website on Integration, Office for the Promotion of Migrant Integration. <http://www.integration.ie/website/omi/omiwebv6.nsf/page/Racism-ECRI-en>

²⁶³¹ European Commission Against Racism and Intolerance, 'ECRI Report on The Netherlands' (fourth monitoring cycle) ECRI (2013) CRI (2013)39

²⁶³² European Commission Against Racism and Intolerance, 'ECRI Conclusions on the Implementation of the Recommendations in Respect of The Netherlands Subject to Interim Follow-up' ECRI (2016) CRI (2016)24

certain issues and, more generally, sets out objectives, mechanisms for implementation, monitoring and evaluation.²⁶³³ This recommendation was found to be partially implemented.²⁶³⁴ While it is true that on the one hand, the Dutch authorities set up the National Action Programme on Discrimination in 2010, which is entrusted with the task to combat racial discrimination on the labour market, on the other hand, no general governmental programme was put in place in order to combat discrimination.²⁶³⁵ Additionally, the ECRI acknowledges that a labour sector-specific anti-discrimination plan has been implemented. However, other fields have not been covered by the national measures.²⁶³⁶ Furthermore, the government still leaves a large share of the responsibility to prevent and combat racism and racial discrimination to local authorities.²⁶³⁷

In 2013, the ECRI strongly recommended that the Dutch authorities should address any exploitation of temporary agent workers, who are not permanently resident in the Netherlands, by creating a system of licenses for temporary employment agencies, who regularly inspect them, and ensure that such workers could benefit from the safeguards provided for under the law.²⁶³⁸ It can be affirmed that several steps were taken in the Netherlands in order to counteract the exploitation of temporary foreign workers. A remarkable one is the 2015 Sham Employment Arrangement Act, which was aimed at preventing the underpayment of the aforementioned category of workers.²⁶³⁹ Furthermore, additional enforcement powers were granted to the Social Affairs and Employment Inspectorate consisting in the imposition of fines upon the inspection of temporary employment agencies.²⁶⁴⁰ However, the above-mentioned enforcement powers are quite limited by the impossibility of the Inspectorate to withdraw the non-complying businesses' licenses.²⁶⁴¹

6.2. National Bodies

The following bodies are the main actors, set up by the Dutch government, pursuing the fight against racism and discrimination in the Netherlands.

6.2.1. The National Ombudsman

The National Ombudsman's mandate encompasses the handling of complaints concerning the action of administrative authorities.²⁶⁴² The number of complaints received in 2011 includes *circa*

²⁶³³ European Commission Against Racism and Intolerance, 'ECRI Report on The Netherlands' (fourth monitoring cycle) ECRI 2013 CRI (2013)39

²⁶³⁴ European Commission Against Racism and Intolerance, 'ECRI Conclusions on the Implementation of the Recommendations in Respect of the Netherlands Subject to Interim Follow-up' ECRI (2016) CRI (2016)24

²⁶³⁵ *Ibid*

²⁶³⁶ *Ibid*

²⁶³⁷ *Ibid*

²⁶³⁸ European Commission Against Racism and Intolerance, 'ECRI Report on The Netherlands' (fourth monitoring cycle) ECRI (2013 CRI) (2013)39

²⁶³⁹ European Commission Against Racism and Intolerance, 'ECRI Conclusions on The Implementation of the Recommendations in Respect of The Netherlands Subject to Interim Follow-up' ECRI (2016) CRI (2016)24

²⁶⁴⁰ *Ibid*

²⁶⁴¹ *Ibid*

²⁶⁴² Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Springer Science 2004) p 30

700 cases concerning racism and racial discrimination.²⁶⁴³ Even though the Ombudsman's decisions are not binding, the 95% of his/her recommendations (i.e. the need to impose compensation) are taken into serious consideration by the authorities.²⁶⁴⁴ If recommendations relating to important cases are not followed, the Ombudsman may raise the matter with the Parliament.²⁶⁴⁵ 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.²⁶⁴⁶

6.2.2. Local anti-discrimination bureaus

The ECRI notes that the Dutch authorities developed an anti-racism strategy as much as possible at the local level, rather than at the national one.²⁶⁴⁷ This may be observed through the Municipal Anti-discrimination Services Act of 2009, which requires every municipality to provide its inhabitants with access to an anti-discrimination service (ADV) and to set up a nationwide network of ADVs, which strictly collaborates with the police in registering complaints concerning discrimination.²⁶⁴⁸ Thanks to this legal instrument, a dense and well performing network of local ADVs is now in place, as the ADVs of 418 municipalities received a total of 6 794 complaints from residents and non-residents in 2011.²⁶⁴⁹ Notwithstanding the above-mentioned success, the ECRI is concerned about the national budget dedicated to the ADVs.²⁶⁵⁰ The 6.2 million of euros received are clearly insufficient to meet the needs of over 6000 cases received.²⁶⁵¹

6.2.3. Netherlands Institute for Human Rights (NIHR)

The NIHR is entrusted with the task of conducting investigations, reporting and making recommendations on the protection against discrimination, dealing with complaints, and encouraging the ratification and observance of human rights treaties and European and international recommendations on this matter.²⁶⁵² Moreover, it can provide advice on laws and regulations either upon request of the authorities or on its own initiative.²⁶⁵³ In its monitoring cycle of 2016, however, the ECRI has expressed the need for financial independence of the NIHR.²⁶⁵⁴

²⁶⁴³ European Commission Against Racism and Intolerance, 'ECRI Report on The Netherlands' (fourth monitoring cycle) ECRI (2013) CRI (2013)39

²⁶⁴⁴ Ibid.

²⁶⁴⁵ Ibid.

²⁶⁴⁶ Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Springer Science 2004) p 31

²⁶⁴⁷ European Commission Against Racism and Intolerance, 'ECRI Report on The Netherlands' (fourth monitoring cycle) ECRI (2013) CRI (2013)39

²⁶⁴⁸ Ibid.

²⁶⁴⁹ Ibid.

²⁶⁵⁰ European Commission Against Racism and Intolerance, 'ECRI Conclusions on the Implementation of the Recommendations in Respect of The Netherlands Subject to Interim Follow-up' ECRI (2016) CRI (2016)24

²⁶⁵¹ Ibid.

²⁶⁵² Alain Klarsfeld (Ed.), *International Handbook on Diversity Management at Work: Country Perspectives on Diversity and Equal Treatment* (2nd edition, Edward Elgar 2014) p 165

²⁶⁵³ Ibid.

²⁶⁵⁴ European Commission Against Racism and Intolerance, 'ECRI Conclusions on the Implementation of the Recommendations in Respect of The Netherlands Subject to Interim Follow-up' ECRI (2016) CRI (2016)24

6.2.4. National Consultation Platform on Minorities (Landelijk Overleg Minderheden: LOM)

Finally, LOM's role consists in discussing policy matters of interest to "ethnic minority groups" with the government three times per year, thereby granting the continuity and functioning of the dialogue between the central government and minority groups.²⁶⁵⁵

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Introduction

The main article to answer the question how migrants' right to healthcare is regulated is Article 10 of the Aliens Act.²⁶⁵⁶ In particular, subsection one states that migrants, who are not legally residing in the Netherlands, do not have the right to medical provisions or benefit. In subsection two, an exception has been made for medically necessary healthcare, education and for providing free legal aid. But this is only a small fraction of the entire healthcare system in the Netherlands. To give a complete answer to the main question, the following aspects will be covered. Firstly, a small introduction to the Dutch healthcare system is given by highlighting the important acts for this topic. Secondly, it is discussed which people have access to healthcare insurance as healthcare insurance is critical for quality healthcare. Thirdly, the exceptions that are in place for illegal aliens so that they have access to healthcare are analysed. Then, the types of healthcare are mentioned, as well as the different groups, which are entitled to and, finally, a conclusion with the final answer to the research topic is drawn.

7.2. The Dutch healthcare system

To find an answer to this research question, a few Dutch acts are of paramount importance and of those acts, only the relevant clauses will be mentioned. First of all, there is the Healthcare Act,²⁶⁵⁷ which regulates the basic principles of the Dutch healthcare system. It states that everyone who is insured by law is obligated to take out an insurance policy. This act also states which healthcare costs shall be insured. The second one is the Long-Term Health Care Act²⁶⁵⁸. This act regulates who is insured by law for long-term treatments and it also states, further in detail, which forms of healthcare are insured. The third one is the Regulation Health Care Insurance,²⁶⁵⁹ which further regulates what kind of healthcare is insured, but also specifies the medically necessary healthcare for specific groups of migrants who have not gotten insurance.

²⁶⁵⁵ Liza Mugge, *Beyond Dutch Borders: Transnational Politics Among Colonial Migrants, Guest Workers, and the Second Generation* (Amsterdam University Press 2004) p 21

²⁶⁵⁶ Vreemdelingenwet 2000.

²⁶⁵⁷ Zorgverzekeringswet.

²⁶⁵⁸ Wet langdurige zorg.

²⁶⁵⁹ Regeling zorgverzekering.

And the final one is the Health Care for Migrants Regulation.²⁶⁶⁰ This Act regulates the way in which migrants can access healthcare, the kinds of healthcare the migrants have access to and who is responsible to pay for the costs afterwards.

7.3. Who has access to healthcare insurance?

As mentioned above, the Long-Term Health Care Act states who are and who are not insured by law for long-term health care in the Netherlands. Article 2.1.1 states that residents of the Netherlands are insured by law, as those who work in the Kingdom of the Netherlands under an employment contract. Excluded in subsection two are illegal aliens. This means that migrants, who do not fulfil Article 8 of the Aliens Act,²⁶⁶¹ are not entitled to healthcare insurance.²⁶⁶² Legal migrants, who fulfil one of the subsections of Article 8 of the Aliens Act, are insured by law. This means that they are obligated to take out an insurance policy. When the migrants are under the supervision of COA (the Dutch institute responsible for the intake of migrants), the COA will provide them with a health insurance card by being responsible for the costs of healthcare.²⁶⁶³ The COA will conclude a collective insurance for all the migrants that fall under the Healthcare for Migrants Regulation.²⁶⁶⁴ When the migrants are legally residing in the Netherlands, they are obligated to take out their *own* insurance policy and therefore they lose the collective insurance of COA. From that stage onwards, the migrants are part of the same healthcare system as any other resident of the Netherlands.²⁶⁶⁵

7.4. Exceptions for illegal aliens

Migrants who do not meet the requirements of Article 8 of the Aliens Act and who are not under the supervision of COA, are not legally residing in the Netherlands. This means that they are not insured by law and therefore cannot take out an insurance policy.²⁶⁶⁶ However, there is an exception for medically necessary healthcare, among other things, in Article 10 subsection 2 of the Aliens Act.²⁶⁶⁷ This provision stipulates that illegal immigrants are liable for the costs of healthcare, unless the health care is medically necessary. Whether a treatment is necessary is subject to the judgement of the healthcare provider.²⁶⁶⁸ The treatments that are insured by the basic healthcare insurance to which all the residents in the Netherlands are entitled, may be qualified as medically necessary, except for in vitro fertilisation and gender treatments.²⁶⁶⁹ In case of medically necessary healthcare, the healthcare provider can apply for compensation of the

²⁶⁶⁰ Regeling zorg asielzoekers.

²⁶⁶¹ Vreemdelingenwet 2000.

²⁶⁶² Van den Ende, in: *T&C Gezondheidsrecht* 2015, art. 2.1.1 Wlz [Dutch].

²⁶⁶³ Article 10 Healthcare for Migrants Regulation (Regeling Zorg Asielzoekers); article 3 Benefits Act (Regeling verstrekingen asielzoekers 2005).

²⁶⁶⁴ Regeling zorg asielzoekers; Hendriks & Toebes, *NJB* 2016/949 [Dutch].

²⁶⁶⁵ Hendriks & Toebes, *NJB* 2016/949 [Dutch].

²⁶⁶⁶ Van den Ende, in: *T&C Gezondheidsrecht* 2015, art. 2.1.1 Wlz [Dutch].

²⁶⁶⁷ Vreemdelingenwet 2000; Zwaan 2016, p. 388-389 [Dutch]; *Kamerstukken II* 2007/08, 31249, 3.

²⁶⁶⁸ Van den Ende, in: *T&C Gezondheidsrecht* 2015 [Dutch], art. 2.1.1 Wlz; Zwaan 2016, p. 388-389 [Dutch].

²⁶⁶⁹ Article 3b.1 Healthcare Insurance Regulation (Besluit zorgverzekering).

costs at the government agency CAK (an office with various administrative tasks in the area of health care).²⁶⁷⁰

7.5. Types of healthcare migrants are entitled to

When the migrants are still under the supervision of COA and are therefore entitled to the collective insurance, they have access to nearly all types of healthcare that residents of the Netherlands are entitled to. Excluded are in vitro fertilisation and transgender care.²⁶⁷¹ The types of healthcare can be found in the Healthcare Act and the Long-Term Healthcare Act.²⁶⁷² The main subjects are medical care from a general practitioner and an obstetrician, dental care, pharmaceutical care, access to assisting implements, routine care, general care including maternity care, the stay in a healthcare institute and transportation. Furthermore, migrants have the possibility to bring a translator to an appointment with a physician.

However, some restrictions are in place for migrants. Migrants who are under the supervision of COA are not free to choose their own physician. They are only able to use the contracted healthcare providers. Also, appointments with a general practitioner are expected to last no more than ten minutes. This can be too short in case of more complex healthcare issues.²⁶⁷³

When migrants are legally residing in the Netherlands, they have to take out their own insurance policy. This means that the migrants have now the exact same options for a healthcare insurance as residents do, but it also means that they have to pay for the insurance, that there is an obligatory deductible excess and that they lose their right to a free translator.²⁶⁷⁴

7.6. Conclusion

In conclusion, how is migrants' right to access to healthcare regulated within the national legislation?

Migrants under the supervision of COA and legal immigrants have access to essentially the same healthcare as do residents of the Netherlands. Some problems do arise for the migrants under the supervision of COA, mainly due to the fact that they are not free to choose their own physician and that appointments with a general practitioner are scheduled for around 10 minutes. Another problem may arise when the migrant is legally residing in the Netherlands. He may not yet speak Dutch on a sufficient level to explain the problems he might have to a physician, but he no longer has a right to a free translator.

Illegal aliens cannot take out an insurance policy. They have access to medical care, but they are in principle liable for the costs of healthcare. This is not the case when health care is medically necessary. The biggest problem in this case is that this is subject to the judgement of the physician in question. In some cases, this might result in too little medical care because the physician is reticent to provide the necessary care in case the person in question is uninsured.

²⁶⁷⁰ Article 7a.1 Healthcare Regulation (Regeling zorgverzekering).

²⁶⁷¹ Hendriks & Toebes, *NJB* 2016/949 [Dutch].

²⁶⁷² Zorgverzekeringswet; Besluit zorgverzekering; Wet langdurige zorg.

²⁶⁷³ Hendriks & Toebes, *NJB* 2016/949 [Dutch].

²⁶⁷⁴ Hendriks & Toebes, *NJB* 2016/949 [Dutch].

Thankfully, the Healthcare Regulation²⁶⁷⁵ offers the possibility for financial support for the physician, so that he can make a decision based on medical considerations rather than financial ones.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. Introduction

Good education is an important basis for the future. The right to education is a fundamental right, which gives children the possibility to develop and explore. This right can be found in Article 2 of the first Protocol to the ECHR. This right does not grant a right for an alien to enter or stay in a given country. In principle, the expulsion of a student does not interfere with Article 2. However, a different treatment exclusively based on nationality could infringe this right to education. In this section, the Dutch educational system for migrant children is briefly summarized. A distinction is drawn between regular immigration law, asylum law and more specifically unaccompanied minor aliens. Between those three, a distinction is drawn between legally residing persons and non-legally residing persons.

8.2. General remarks

Article 23 of the Dutch Constitution does not grant an individual the right to education, but it states that education is in the constant concern of the Government. Detailed rules regarding education can be found in different acts. Children have the right to primary and secondary education, which is described in the Primary Education Act of 1984 and the Secondary Education Act of 1968 respectively. In these acts, the legislator did not make a distinction between nationals and aliens or asylum seekers. Each and every child between the age of 5 and 16 has an obligation to attend school. Children between the age of 16 and 18 have an obligation to obtain a basic qualification. The rules on compulsory education are to be found in the Compulsory Education Act. This also applies to children with a different nationality, asylum seekers and aliens. Every child under the age of 18 is always entitled to education.

In principle, aliens can only be entitled to benefits like education, if they legally reside in the Netherlands. A decision to grant legal residence can be given on grounds for asylum (28 Aliens Act) and on regular grounds (14 Aliens Act). Regular grounds are linked to a certain purpose of residence, like employment or study. If you legally reside in the Netherlands for a period during which the period pending deportation or granting is included, you will have a right to benefits. If you do not legally reside in the Netherlands, you will not have the right to benefits based on the principle, which links eligibility for benefits to residency status. This may be found in Article 10 of the Aliens Act. However, as paragraph 2 states, exceptions are possible regarding education and healthcare. The Netherlands, in compliance with Article 2 of the first Protocol, made such

²⁶⁷⁵ Regeling zorgverzekering.

exception for children who are subject to compulsory education. In the next paragraphs, the different categories of migrants are discussed, including whether they have a right to education or not, as well as any problems that could arise.

8.3. Regular immigration law

8.3.1. Children of legally residing parents

If the parents of a migrant child have a residence permit, they have the right to the same benefits as Dutch citizens, which includes the right to education.

8.3.2. Children of non-legally residing parents

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. In practice, this may raise problems. Irregular migrants have to send their children to school and schools have to accept them. However, they might want to stay below the radar because they risk expulsion.

8.4 Asylum law

8.4.1. Children of parents with legal asylum residence

If children of asylum seekers legally reside in the Netherlands on the basis of an asylum residence permit, they enjoy the same benefits as Dutch children, based on the principle linking eligibility for benefits to residency status. In addition, the European Union, in Directive 2003/9/EC, decided that children of asylum seekers should have access to education within three months after the submission of their asylum application. Member States should try to accelerate this process and provide for education as soon as possible. It is not always feasible that children can start education the first day they arrive in the Netherlands. In general, the Netherlands tries to provide for education within 72 hours of their arrival. Most asylum seekers' centres are connected to a (primary) school, but parents can also choose a different school for their children. Municipalities must provide for education to children of school age and can be advised by the Central Organ for the Shelter of Asylum Seekers (*COA*).

8.4.2. Children of parents without legal asylum residence

In principle, an illegal person does not have the right to benefits, but the exception from Article 10(2) of the Aliens Act kicks in. The children have to go to school, even though the parents might risk expulsion. The Dutch Supreme Court, however, decided 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. The State must provide for adequate reception and care for the children, which includes the education of the children. In practice, the families will

often go to special locations and will be frequently moved. The COA will provide for education, but this might be problematic because of the constant moving and lack of available resources.

In 2015, the Netherlands Institute for Human Rights examined the situation in asylum centres and concluded that education is offered in both the emergency and the regular accommodation. Children of asylum seekers have to start with education 72 hours after their arrival in the Netherlands. However, in asylum centres, it may take weeks or even months before the children can start with education, which could violate the prompt access to education. The Institute concluded that a delay of a few days would be acceptable, but starting education months or even weeks later would violate Article 28 of the UN Convention on the Rights of the Child.

8.5. Unaccompanied minor aliens (UMA)

8.5.1. Legally residing unaccompanied minors

The unaccompanied minor can be legally residing in the Netherlands based on a residence permit or a no-fault residence permit. 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 he filed for an asylum application and if he cannot go back to his country of origin for three years, as a result of circumstances beyond his control. If the minor is legally residing in the Netherlands, they enjoy the same benefits as nationals, including education.

8.5.2. Non-legally residing unaccompanied minors

In principle, illegals do not have a right to benefits. However, the exception of education for children of school age applies. In this case, the child might also be afraid to be expelled. However, the constitutional context plays an important role here. Many treaties safeguard the rights of the child. It may be derived from the ruling of the Dutch Supreme Court that children are in the care of the State and they cannot easily be put on the streets or be expelled. Especially unaccompanied minors are a particular vulnerable group, which is why there is an option to grant a no-fault residence permit.

8.6. Conclusion

Every child in the Netherlands is subject to compulsory education. The admission on primary and secondary schools is not conditional on legal residence. The same rules apply for Dutch children and children of asylum seekers and aliens. On the basis of the principle of linking eligibility for benefits to residency status, legal residence implies entitlement to benefits like education. The flipside of this principle entails that if you do not legally reside in the Netherlands, you do not have a right to benefits. However, the Netherlands made an exception when it comes to education. Every child under the age of 18 is always entitled to education, regardless of the status of legal residence (of the parents). Therefore, migrant children are being equally treated as nationals. They have the right to education. Since the Primary Education Act, Secondary Education Act and Compulsory Education Act also do not distinguish between

nationals and migrant children; every school must accept (illegal) migrant children and may not discriminate. If the school would discriminate and for example decline an application, it would violate the different acts mentioned above.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

The governing body of regulations for the Netherlands is diverse and in some ways unique. Firstly, the Netherlands is a full member of the Bologna process since 1999. Generally, diplomas from foreign institutions are handled by the Higher Education Institution (HEI). Before sending their diploma to be translated recognized to the Dutch equivalence rate, an international student can usually find information online beforehand. To illustrate, Tilburg University Law School has an extensive explanation of requirements and equivalences for foreign diplomas for virtually every country. However, each and every country is different. For example, English speaking students coming from Australia, New Zealand or South Africa might expect to be treated equal to each other. This is however not the case, as South African students will always need an academic English exam (such as IELTS), whereas students from the US or UK do not.²⁶⁷⁶

Nuffic is the NARIC Centre (National Academic Recognition Information Centre) and the National ENIC Centre (European Network of Information Centres) in The Netherlands. The European ENIC and NARIC Centers work closely together in developing policy for the recognition of diplomas and degrees, meaning that Nuffic is the central point of contact in the Netherlands for evaluation of foreign qualifications. They advise Dutch higher education institutions on the recognition of foreign qualifications (such as diplomas) based on the principles of the Lisbon Recognition Convention and the EAR manual (European Area of Recognition Project). Nuffic's extensive descriptions of foreign education systems are available for download by the general public as well.

Should one wish to be involved in Nuffic, he or she would go through a six-step procedure which begins when one registers with a Higher Education Institution, sends an application package, and passes the credential evaluation. Once advice is sought, the selection process will commence culminating in the selection decision. Through this process, Nuffic tries to provide a holistic and complete approach in providing a common basis for understanding the particularities in the different national academic fields.²⁶⁷⁷

²⁶⁷⁶ "Foreign education systems" (Foreign education systems - Nuffic English May 24, 2017) <<https://www.nuffic.nl/en/diploma-recognition/foreign-education-systems>> accessed July 8, 2017

²⁶⁷⁷ "Academic diploma recognition in The Netherlands – how does it work?" (Nuffic) <<https://www.studyinholland.nl/documentation/academic-diploma-recognition-in-the-netherlands-how-does-it-work.pdf>> accessed July 8, 2017

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Introduction

To answer the main question concerning the participation of migrants in political decisions, the following subjects will be addressed. At first, the legal basis for the right to vote in the Netherlands. Secondly, the requirements migrants need to fulfill before they are allowed to vote and the differences with EU-nationals will be addressed. Thirdly, the possibility for migrants to vote in the Netherlands for matters in their country of origin. And finally, forms of redress when migrants are impeded to vote.

10.2. Legal basis for the right to vote

The right to vote in the Netherlands is a fundamental right and is therefore mentioned in the Dutch Constitution in Article 4. Article 4 states that all the Dutch citizens have the right to choose members of public representative bodies (*algemeen vertegenwoordigende organen*). Articles 54 and 129 of the Constitution further regulate the right to vote for the National Government, the Provincial Council and the Municipal Council and in Article 130, an exception has been made for non-natives to vote for the Municipal Council. The right to vote is set out in more detail in the Elections Act.²⁶⁷⁸ This Act regulates the way the Dutch vote for the different bodies in the Netherlands and elaborates further on their right to vote.

10.3. When are migrants entitled to vote?

Migrants who haven't yet obtained Dutch citizenship aren't allowed to vote for the National Government, this is stated in Articles 4 and 54 of the Dutch Constitution. Furthermore, migrants aren't allowed to vote for the Provincial Council either, this is stated in Articles 4 and 129 of the Dutch Constitution. 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 Act²⁶⁷⁹ and Article B3 of the Elections Act.²⁶⁸⁰ The requirements to vote are the following, according to Article B3 of the Elections Act. Firstly, the migrant must be a resident of the applicable municipality. Secondly, the migrant must have reached the age of eighteen. Thirdly, the migrant has to be legally residing in the Netherlands according to Article 8 of the Aliens Act,²⁶⁸¹ and finally, the migrant must have resided in the Netherlands for at least five years.

When the migrant at hand is an EU-national, the rules are a bit different. European citizens always have the right to vote for the European Parliament and for the Municipal Council in the

²⁶⁷⁸ Kieswet.

²⁶⁷⁹ Gemeentewet.

²⁶⁸⁰ Van der Pot 2014, p. 330 [Dutch].

²⁶⁸¹ Vreemdelingenwet 2000.

Member State of residence to the same extent as national citizens.²⁶⁸² This means that European citizens don't have to reside in the Netherlands for at least 5 years to be able to vote. So, the only requirements for EU-nationals are that they must be eighteen years old and that they reside in the municipality where they want to vote, this is also regulated in Article B3 of the Elections Act.

10.4. Can migrants vote in the Netherlands for matter in their country of origin?

This question is tough to answer, because it is mostly up to the country of origin to offer a way for residents abroad to vote. The Netherlands for example offer different ways for residents abroad to vote, like proxy voting, voting by letter and voting at Dutch embassies.²⁶⁸³ Another example is the way Swiss nationals can vote in the Netherlands for elections in Switzerland. The Swiss government has a website where Swiss nationals can find information concerning their political rights in Switzerland when they are abroad, among other things, and there is a possibility to vote in the Netherlands for matters in Switzerland.²⁶⁸⁴

10.5. Forms of redress

The right to vote in the Netherlands is a constitutional right according to Article 4 of the Constitution. This means that interested parties are able to claim the protection under the Constitution with the judiciary in the Netherlands when their right to vote is impeded.²⁶⁸⁵ Furthermore, the right to vote is mentioned in Article 3 of the first Protocol to the ECHR and in Article 25 of the ICCPR, so there is a possibility of international protection.²⁶⁸⁶ In addition, a migrant who is under employment must be able to vote, the employer must enable the employee to do so. If this is not executed correctly, and the employee hasn't been able to vote due to his employment, the employer can be punished under criminal law according to Article Z9 and J10 of the Elections Act.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Legal Framework

In conformity with Article 2 of the Constitution of the Kingdom of the Netherlands, Dutch nationality shall be regulated by an Act of Parliament.²⁶⁸⁷ Therefore, the requirements for obtaining the Dutch citizenship can be found in a law of 1892. According to this law, the Dutch

²⁶⁸² Van der Pot 2014, p. 337 [Dutch].

²⁶⁸³ Van der Pot 2014, p. 333 [Dutch].

²⁶⁸⁴ The portal of the Swiss government <<https://www.admin.ch/opc/en/classified-compilation/20152081/index.html>>, accessed 15 September 2017; "Switzerland and the Netherlands" <<https://www.eda.admin.ch/countries/netherlands/en/home/services/political-rights.html>>, accessed 15 September 2017.

²⁶⁸⁵ Kortmann 2012, p. 348 [Dutch].

²⁶⁸⁶ Kortmann 2012, p. 429 [Dutch].

²⁶⁸⁷ Article 2 The Constitution of the Kingdom of the Netherlands

citizenship follows the principles of “*jus sanguinis*” (right of blood) instead of those of “*jus soli*” (right of the soil). Nationality is primarily determined by one or both parents possessing Dutch nationality, rather than being born in the territory of the State.²⁶⁸⁸ A child is Dutch if one of the parents was a Dutch citizen at the time of birth, regardless of the territory of birth.²⁶⁸⁹ With regards to migration law, the subject-matter is to be governed under the Dutch Nationality Act (*Rijkswet op het Nederlandschap*).²⁶⁹⁰

Under Dutch Law, the term “immigrant” can be broadly defined under the Aliens Act of the Netherlands (*Vreemdelingenwet*) and includes a wide-ranging category of persons. Section 1(m) defines an alien as “any person who does not have Dutch nationality and who is not treated as a Dutch national by virtue of any provision of law.”²⁶⁹¹ Refugees and asylum seekers,²⁶⁹² as well as a wide-ranging category of individuals that have been granted, on any grounds, residence in the Kingdom of the Netherlands fall under this broad definition.²⁶⁹³ Respectively, the Dutch Aliens Circular (*Vreemdelingencirculaire*) includes people that have been granted residence for study, temporary or regular employment, highly skilled work, and for family reunification.²⁶⁹⁴ However, the term of “migrant” may deem to exclude nationals of other European Union Member States, as they fall within a separate category with different rights and obligations in terms of the right to work and right of residence.²⁶⁹⁵

For a migrant with no family ties to the Kingdom of the Netherlands, there are several means and conditions which one must satisfy in order to be eligible for acquiring the citizenship of the Kingdom of the Netherlands. Hence, a migrant can seek to follow either a) the optional procedure, a simplified version of the naturalisation process,²⁶⁹⁶ or b) the ordinary naturalisation procedure.²⁶⁹⁷

If one has to choose between these two options, a preference is given to the simplified naturalisation process, as it has a lower entry level barrier and it is a less timely and costly procedure. Following any of abovementioned procedures, the migrant must have previously been awarded a valid residence permit and have lived uninterruptedly in the Kingdom of the Netherlands (the length of residence differs between the procedures). It is noteworthy that the Kingdom of the Netherlands does not consist solely of the Netherlands, but it also encompasses the territories of Aruba, Curaçao and Sint Maarten, and the 3 special municipalities of Bonaire, Sint Eustatius and Saba.

²⁶⁸⁸ Kostakopoulou, Dora (2008). *The Future Governance of Citizenship*. Cambridge University Press. pp. 26–27

²⁶⁸⁹ Christopher G. A. Bryant (1997) Citizenship, national identity and the accommodation of difference: Reflections on the German, French, Dutch and British cases, *Journal of Ethnic and Migration Studies*, 23:2, 157-172, 166.

²⁶⁹⁰ Rijkswet op het Nederlandschap

²⁶⁹¹ Section 1(m) of the *Vreemdelingenwet*

²⁶⁹² Section 1(j) of the *Vreemdelingenwet*

²⁶⁹³ Section 1(l) of the *Vreemdelingenwet*

²⁶⁹⁴ *Vreemdelingencirculaire*

²⁶⁹⁵ Section 1(e) of the *Vreemdelingenwet*

²⁶⁹⁶ Article x Rijkswet op het Nederlandschap

²⁶⁹⁷ Article x Rijkswet op het Nederlandschap

11.2. Optional procedure – simplified naturalisation process

This option represents a more expeditious and simplified procedure for acquiring nationality. It is primarily designed to suit individuals that have lived all their life, or a significant part of their life in the Kingdom of the Netherlands, have been married to a Dutch national, or have lost their Dutch nationality at one point in time. In order for the individual to apply for the optional procedure, he or she must go through the process at a local municipality.

Generally speaking, the procedure is not as easy accessible to a migrant as the conditions are quite strict. Hence, among the other situations already prescribed above, an individual with a migratory background must fulfil any of the following conditions in order to be eligible for obtaining citizenship under the optional procedure:

- If the migrant has been married to a Dutch citizen / the registered partner of a Dutch citizen for at least 3 years, and has been living uninterruptedly in the Kingdom of the Netherlands for at least 15 years with a valid residence permit.
- If the migrant is 65 years of age or older and has been uninterruptedly in the Kingdom of the Netherlands for at least 15 years with a valid residence permit.

To sum up, for a migrant, the simplified naturalisation process is not generally accessible. The process is shaped for individual with close family ties to Dutch nationals or otherwise for people with a long history connecting them to the Kingdom of the Netherlands. It is worth mentioning that through the optional procedure, one does not need to renounce his/her other nationality, nor to sit any required language or other integration test.

11.3. The naturalisation procedure

The naturalisation procedure is the more accessible method and with conditions less burdensome for the applicant. It is a method which has been designed for migrants, or people with a smaller connection to the Netherlands to apply and seek to obtain the Dutch nationality.

For a migrant seeking to acquire the Dutch nationality, the best advised method in doing so is through the naturalisation procedure. In order to be eligible for obtaining nationality through the naturalisation process, one must fulfil all of the following conditions:

- The individual should be at least 18 years old.
- The individual should have lived uninterruptedly in the Kingdom of the Netherlands for at least 5 years with a valid residence permit. During this time, the residence permit must have always been extended on time. The residence permit must also be valid during the procedure. In that regard, the residence permit must have been awarded as a permanent and not as a temporary one.²⁶⁹⁸
- The individual must not exhibit a danger to the public, demonstrated by the fact that he or she in the four years preceding the application, the applicant has not been given any

²⁶⁹⁸ For reference on what temporary residence permits are, See : <https://ind.nl/en/Pages/temporary-and-non-temporary-purposes-of-stay.aspx>

custodial sentence, training order, community service order or high monetary penalty.²⁶⁹⁹

- The individual should provide evidence that he or she is sufficiently integrated in Dutch society.²⁷⁰⁰

If a migrant fulfils the conditions set forth above, then he or she may seek to apply through the naturalisation procedure. As part of the integration requirements, the migrant must apply and successfully pass a language and integration test. The first test consists of 40 questions concerning, amongst others, questions about the state, income and financial matters, healthcare, residence, traffic, etc. The second test aims to assess whether the migrant speaks, understands, reads and writes the Dutch language at a minimum of A2 level.²⁷⁰¹

Lastly, as part of the process of obtaining Dutch nationality, if all the above requirements are fulfilled, the migrant must seek to renounce all other nationalities. The final step in the process is the attendance of a naturalization ceremony in which the migrant must make a declaration of solidarity.

11.4. Double nationality

The underlying principle in the Dutch Nationality Act is that double nationality is not allowed and that once a person has acquired the Dutch nationality, he or she must renounce any other nationalities and maintain solely the Dutch one. This may be particularly emphasised in the naturalisation procedure. However, in practice certain exemptions are allowed. As was mentioned above, obtaining the Dutch nationality through the optional procedure does not require a migrant to renounce their former nationality.

Article 9 of the Dutch Nationality Act lays down that an application may be refused if “the applicant possessing a foreign nationality has not made every effort to renounce that nationality and/or is not prepared to make such effort after his or her naturalisation, unless this cannot reasonably be expected from him or her.” Hence, if one is looking to obtain nationality through the naturalisation process, the principle that has to be followed is that any other nationality should be renounced.

In conformity with the statement “this cannot reasonably be expected”, several exceptions have been confirmed that would allow for the migrant to maintain his or her previous nationality. Thus, amongst others, one does not have to abide by the requirement of renouncing any previous nationality if:

- The applicant automatically loses the original nationality when becoming a Dutch citizen.
- The country of which the applicant is a national does not allow for renunciation of citizenship.
- The applicant is married to a Dutch citizen.

²⁶⁹⁹ <https://ind.nl/en/dutch-citizenship/pages/option.aspx>

²⁷⁰⁰ <https://ind.nl/en/dutch-citizenship/pages/naturalisation.aspx>

²⁷⁰¹ RICKY VAN OERS, From Liberal to Restrictive Citizenship Policies: the Case of the Netherlands, *International Journal on Multicultural Societies (IJMS)*, Vol. 10, No. 1, 2008: 40-59, 46

- The applicant is below the age of 18 years old.
- The applicant is in possession of an asylum residence permit.
- The applicant will incur a significant loss as a result, due to either paying large sums of money to go through the process or losing certain rights.
- The applicant must fulfil the military service before being able to renounce nationality.²⁷⁰²

In the end, all those stated above are examples of events under which it appears to be unreasonable for a migrant to be asked to renounce their original nationality. The maintenance of double nationality is possible under such kind of circumstances, though other situations may also fall within such a scope. However, the burden of proof is upon the shoulders of the applicant in such situation. If proven, such situations constitute an exception from the general rule that the applicant is expected to renounce his or her original nationality when becoming a Dutch citizen.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

The European Union's 2014 census on migrant integration policy index (MIPEX) placed the Netherlands at the 11th place out of 38 survey countries. MIPEX suggests that the Dutch approach to integration barely qualifies as 'slightly favourable' for guaranteeing equal rights and opportunities for immigrants, scoring 60/100.²⁷⁰³

The Central Organ for the Shelter of Asylum Seekers (COA) is responsible for the reception, supervision and departure (from the reception location) of asylum seekers coming to the Netherlands. According to their website: "due to the recent high inflow of asylum seekers, the Netherlands currently does not have enough reception places for them in normal reception centres. That is why asylum seekers are accommodated in (temporary) emergency reception locations with limited facilities."²⁷⁰⁴ COA fulfils its mission and carries out its project with the support of funds and grants. An example is the European Refugee Fund (ERF) of the European Union, which is meant to finance projects for reception and integration of asylum seekers and refugees.²⁷⁰⁵

In 2014, the European Commission inaugurated the *Asylum, Migration and Integration Fund* (AMIF), which is set up for the period 2014-20, with a total of EUR 3.137 billion for the seven years. The fund should promote the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and

²⁷⁰² <https://ind.nl/en/Pages/Renouncing-your-current-nationality.aspx>

²⁷⁰³ Migrant Integration Policy Index, 'Netherlands' (2015) < <http://www.mipex.eu/netherlands> > accessed 4 July 2017 [Dutch].

²⁷⁰⁴ Centraal Orgaan Opvang Asielzoekers, 'Asylum seekers', (unknown) <<https://www.coa.nl/en/asylum-seekers>> accessed 7 July 2017 [English].

²⁷⁰⁵ Centraal Orgaan Opvang Asielzoekers, 'Keten en Samenwerkingspartners', (Chains and Partners, unknown) <<https://www.coa.nl/nl/over-coa/keten-en-samenwerkingspartners/internationaal>> accessed 7 July 2017 [Dutch].

immigration. All EU States except Denmark participate in the implementation of this Fund. In the Netherlands, the granting of AMIF subsidies is administrated by the Agency of Social Affairs and Employment (*Agentschap SZW*) under the Ministry of Social Affairs and Labour (*Ministerie van Sociale Zaken en Werkgelegenheid*).²⁷⁰⁶ According to the latest updates, the deadline for submissions for the current year was 28 March. The results have not been published yet. The subsidies granted for the year 2015 were published in December 2016 as the table below shows (only integration related projects are displayed)²⁷⁰⁷:

Project-type	Year	Recipient	Amount of Subsidy
Integration	2015	Stichting BMP	€ 1.296.995
Integration	2015	COA	€ 2.115.726
Integration	2015	Stichting Movisie	€ 684.493
Integration	2015	Stichting voor Vluchteling-Studenten UAF	€ 168.109
Integration	2015	Gemeente Amsterdam, Dienst Werk en Inkomen	€ 1.504.921
Integration	2015	VluchtelingenWerk Nederland	€ 2.265.927
Integration	2015	Gemeente Breda	€ 1.215.363

Conclusions

In a legal field as diverse as migration law, it will always be difficult to make short conclusions. There will always be an exception, a new development or a different point of view – this is what makes the area so complex and interesting to research. As the questions have been answered in depth in the paragraphs above, this conclusion shall serve only to give a short overview of what was answered.

The Dutch asylum procedure is complex, and extensively regulated. The Immigration and Naturalisation Service does a considerable amount of research on and with the asylum seeker, and has a variety of options on how to close the procedure, which may be contested in different ways by the asylum seeker. The regulations on residence permits are less extensive, though also complex by virtue of their diversity. There is a strong differentiation between the regulations that are applicable to EU citizens, and those that apply for non-EU citizens.

The acquisition of citizenship is even more complicated, as there are multiple naturalisation procedures, which have different requirements and vary slightly in consequence. For example, one must renounce ones previous nationality in order to obtain Dutch nationality through the regular naturalisation procedure, while this is not the case for the simplified procedure.

²⁷⁰⁶ Agentschap SZW, 'EMVF 2014-2020: Asiel, Migratie en Integratiefonds (AMIF), (AMIF 2014-2020: Asylum, Migration and Integration FunD, unknown) <<https://www.agentschapszw.nl/subsidies-en-regelingen/a/asiel-migratie-en-integratiefonds-amif>> accessed 7 July 2017 [Dutch].

²⁷⁰⁷ Agentschap SZW, 'Verleende subsidies' (Subsidies Granted, 20 December 2016) <<https://www.agentschapszw.nl/subsidies-en-regelingen/a/asiel-migratie-en-integratiefonds-amif/inhoud/verleende-subsidies>> accessed 7 July 2017 [Dutch].

The authority to deal with migrants is shared between various institutions, falling mostly within the working field of the Ministry of Security and Justice. This includes the Immigration and Naturalisation Service, as well as several directorates. Some independent bodies, like the Central Organ for the Shelter of Asylum Seekers, work within their own, independent sphere.

In the litigation of migration cases, the Dutch authorities adhere strongly to ECtHR rulings, even when the cases concern other Contracting States. However, the recommendations of the European Commission against Racism and Intolerance are largely implemented only to partial extent. The same may be said about the recommendations of national human rights bodies.

Migrant's rights in more specific areas such as health care, education or the right to vote may be found in different places. Whereas the right to health care may be found in a specific regulation (the Health Care for Migrants Regulation), the right to education is found in the more general Aliens Act. Both are however supported by the general Dutch regulations, be it the general Health Care (Insurance) regulations or the general Compulsory Education Act. The right to vote may only be found in one such general Dutch regulation – the Elections Act, as well as in the Constitution.

With regards to the recognition of diplomas, the procedure in the Netherlands is facilitated by Nuffic, which is the central point of information as well as the advisor to the Higher Education Institution. Due to this holistic approach, the procedure is not as scattered as the other procedures mentioned in this contribution.

As for the more statistically oriented areas of this research, the most important numbers of this report were that the Netherlands counted a total of 166.9 thousand immigrants as of March 2017, among which 61.4 thousands were citizens of non-EU member countries, and 4.6 thousands were stateless. It is also interesting to note that the Netherlands received just over €9.250.000 in Asylum, Migration and Integration Fund (AMIF) subsidies for several integration-oriented recipients.

As stated above, these findings are but a short conclusion on what was brought up in the other paragraphs. Above all, we hope our contribution, as well as this Legal Research Group in general, contributes to a just world, in which there is respect for human dignity and cultural diversity.

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Introduction

Migration law is an extensive legal area, including both formal, material and procedural aspects. Migration law is a frequently debated topic in Norwegian politics, and the various governments in office tend to introduce extensive changes to the legal regime regulating migration law.

This report aims to give an overview of how some specific areas of migration law is regulated in Norway. The legal regime is vast, and a complete description of this is impossible. This report will provide a more succinct and concise outline of the questions provided.

Writing this report, we have primarily used Norwegian legislation to map the legal situation regarding the various questions. Moreover, for some legal areas, the applicable directorate or ministry have set regulations, which contain further precisions of the content of the Acts.

The Norwegian legal system contains elements of both common and civil law, and decisions by the Norwegian Supreme Court carries great weight as source of law. Moreover, the preparatory works for the Norwegian acts are recognised as a valid secondary source of law, and these provide useful guidance for understanding the content of the Acts, as these usually are quite succinct.

Other secondary sources include circulars and legal theory, and we have to a large extent utilised governmental websites and guidelines as well.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

Norwegian law contains no explicit right to asylum. There is, however, an implicit right both to seek and enjoy asylum, and a comprehensive body of law that regulates the refugee status determination process related to the granting of asylum. As such, Norwegian regulations governing asylum formally is in line with Article 14 of the Universal Declaration for Human Rights.²⁷⁰⁸ Furthermore, Norway's asylum regulations aim to implement the refugee law and human rights principles enacted in the 1951 Convention on the Status of Refugees (the Refugee Convention) and the European Convention on Human Rights (ECHR), both to which Norway is a signatory. As opposed to its generally dualistic approach to international law, Norway practices sector monism within the field of immigration law, including regulations governing asylum. In practice, this means that in case of national regulations regarding asylum perceived as being in non-compliance with Norway's international obligations, precedence will be given to the international obligation at hand.²⁷⁰⁹

²⁷⁰⁸ The article states that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution”.

²⁷⁰⁹ Preparatory work Ot.prp. nr. 75 (2006-2007), 401.

Access to seeking and enjoying asylum and the multiple rights and obligations connected to this is primarily regulated by the Immigration Act²⁷¹⁰. The key regulation in terms of asylum is found in Chapter 4 under the headline “Protection” in Section 28 a) and b), titled “Residence permit for foreign nationals in need of protection (asylum)”. Section 28 a) is modelled after Article 1 in the Refugee Convention, while Section b) seeks to meet Norway’s obligations according to ECHR Article 3. Chapter 5 is titled “Right of residence on the grounds of strong humanitarian considerations or a particular connection with Norway” and contains one single paragraph regulating so-called humanitarian protection. Regulations, circulars and instructions passed by the Ministry of Justice and Public Security are key in understanding the actual application of the law.

1.1. The eligibility requirements for a person to be considered for asylum under Norwegian law.

Under Norwegian asylum law, being granted asylum and being granted refugee status is the same. As such, if a person meets the eligibility requirements for being a refugee, asylum is granted. As briefly touched upon above, refugee status in Norway is granted based on two different legal regimes; the Refugee Convention and the ECHR. The Norwegian definition of a refugee is often framed as an *extended refugee definition*, because it not only applies to people recognised as refugees under the Refugee Convention.

According to the Immigration Act Section 28 a refugee is someone with;

- a well-founded fear of being persecuted due to his or her ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable, or, owing to such fear, is unwilling to avail for protection from his or her country, or
- without falling within the scope of a) but nevertheless faces real risk of being subjected to death penalty, torture or other inhuman or degrading treatment or punishment upon return.

If granted refugee status, the person is normally given asylum, that is, the right to stay. There are however exceptions from this, and these will be covered in greater detail below.

1.2. The eligibility requirements for a person to be considered for humanitarian protection under Norwegian law.

A person who does not meet the eligibility requirements for being granted asylum, may be granted legal stay in Norway due to strong humanitarian consideration or particular connection with Norway. This is termed as humanitarian protection and is regulated by Section 38 of the Immigration Act. According to the Section, whether there is strong humanitarian consideration, depends on an overall assessment of the person’s situation, where importance is given to:

²⁷¹⁰ Act concerning the entry of foreign nationals into the Kingdom and their presence in the realm 2008 [Utlendingsloven].

- whether the foreign national is a minor who would be without proper care if returned
- has compelling health circumstances
- is subject to social or humanitarian circumstances relating to the return situation
- have been victim of human trafficking

In cases concerning children, the best interests of the child shall be a fundamental consideration. As opposed to decisions made in accordance with Section 28 (1) a and b, importance may be given to considerations relating to immigration control. According to the law, relevant in this regard is:

- possible consequences for the number of applications based on similar grounds,
- social consequences,
- the need for control, and
- respect for the other provisions of the Act.

Another significant difference between Section 28 and 38, is that persons granted residence permit based on a recognition of need of humanitarian protection will not be given the same rights as a person recognised as refugees. Consequently, humanitarian protection may be termed a subsidiary form of protection.

1.3. The Norwegian asylum granting process and the bodies involved.

At an overall level, The Norwegian Directorate of Immigration (UDI) is the central government agency specifically dealing with migration and implementation of the Norwegian government's immigration and refugee policy.²⁷¹¹ In the asylum granting process, UDI is instrumental because it not only serves as the first instance in the decision-making hierarchy, but it is also central in the evolution of interpretation practices within this field of law. In the following, the focus will be on the asylum granting process in Norway.

There are two main processes in which refugees may be granted asylum in Norway, both in which depend on the criteria in either the Immigration Act Section 28 a) or b) being met. The first process depends on the refugee seeking asylum after physically accessing “the realm or the Norwegian border”. The second is initiated upon request by the United Nations High Commissioner for Refugees (UNHCR) or other international organisations when the refugee has left his or her country of origin, but not entered Norway. In the following, these processes will be referred to as the *normal procedure* and *the quota procedure*. Only the normal procedure will be presented in depth as the refugee status determination criteria, and the grounds for being granted asylum, are identical in both processes.²⁷¹² Furthermore, even though the UNHCR initiates the quota procedure, it is the Norwegian immigration administration that undertakes the asylum granting process.

In the normal procedure for seeking asylum, different sub-processes apply depending on what country the applicant seeks protection from. The responsibility for receiving and registering the asylum application is placed with the National Police Immigration Service (PU). PU is also

²⁷¹¹ For more on the bodies/entities specifically dealing with migrants, see Question 3.

²⁷¹² It should be noted that under Section 35, residence permit may also be granted based on Section 38, however, this is not referred to as asylum. See 1.2 and 1.3.

responsible for mapping the applicant's travel route, and, in cooperation with Norwegian ID Centre, for investigating the applicant's identity. Based on the PU registration, the application is placed in the appropriate sub-procedure. Although so-called Dublin-cases represent significant exceptions, most asylum seekers will be called to a refugee status determination interview at UDI after being registered with PU²⁷¹³. As already mentioned, UDI serves as the first instance in the asylum granting process. This entails that UDI undertakes the actual status determination process and produces the administrative decision stating whether the asylum seeker is being granted asylum or not, and what rights and duties which rests upon the applicant.²⁷¹⁴ This means that even in cases where the PU registration causes the asylum seeker to be placed in a category that is not called for an asylum interview, UDI will be the responsible body for passing a decision in their case.

Asylum seekers should be called for an interview with UDI "at the earliest opportunity, and under any circumstances before an administrative decision is made in the case".²⁷¹⁵ The asylum interview is decisive of the outcome of an asylum application, and while the application is obligated to do "his or her best to present necessary documentation and to assist in obtaining necessary information", UDI also holds an independent responsibility for obtaining necessary and available information about the application before the administrative decision is made.²⁷¹⁶ According to the Immigration Act Section 81 (1), the asylum interview must be undertaken in a language in which the applicant can communicate "adequately".

In sum, the claims presented by the asylum seekers' during the interview are to be assumed as valid by UDI, if the applicant has provided necessary information, is perceived as generally credible and his or her story seems "somewhat likely"²⁷¹⁷. One major difference between the asylum granting process and the procedure to grant humanitarian protection is that while a person can apply asylum, one cannot apply for humanitarian protection. However, if a person is not granted asylum, "the decision-making authority shall on its own initiative consider whether the provisions of Section 38 shall be applied", meaning that UDI and UNE are obligated to consider whether a rejected asylum seeker meets the criteria for humanitarian protection.²⁷¹⁸ Another major difference is that in the assessment of whether to grant a humanitarian protection, importance may be attached to considerations relating to "immigration control", including "possible consequences for the number of applications based on similar grounds", "social consequences" and "the need for control".²⁷¹⁹

In order to assess the asylum seeker's claim, UDI collects information from sources other than those provided by the asylum seeker. The Norwegian Country of Origin Information Centre (Landinfo) is an independent and objective expert body administratively governed by UDI, that

²⁷¹³ The need for protection for an asylum application processed as a Dublin case will not be assessed by the UDI.

²⁷¹⁴ What is a decision according to Norwegian law is regulated by the Act relating to procedure in cases concerning the public administration 1967 [Forvaltningsloven], Section 2.

²⁷¹⁵ Immigration Act, Section 81 (1).

²⁷¹⁶ Immigration Act, Section 93 (4). See also Act relating to procedure in cases concerning the public administration 1967 [Public Administration Act], Section 17.

²⁷¹⁷ See Supreme Court of Norway Rettstidene [2011] 1481, especially section 39-46, where the Supreme Court states that reasonable doubt must be given in favour of the asylum seeker.

²⁷¹⁸ The "single procedure", cf. Immigration Act, Section 28.

²⁷¹⁹ Immigration Act, Section 38 (4).

provides information about social conditions and the human rights situation in countries during the status determination process. In practice, information about the country of origin provided by Landinfo is given considerable weight in individual cases, and even though its researchers never participate in the actual decision-making process, they often serve as expert witnesses in cases being tried either within The Immigration Appeals Board (UNE) or in court.²⁷²⁰

The actual processing time within UDI varies depending on the number of asylum seekers arriving to Norway, what country the applicant seeks protection from, the complexity of the case and political prioritization. For example, if UDI assumes that you are from a country where the inhabitants can get help from their own authorities, the asylum application will be processed and, in most of the cases, rejected within 48 hours.²⁷²¹ In other cases, where the asylum seeker is from Armenia, Bangladesh, Georgia, Belarus, India, Nepal, Russia (ethnic Russians only) or Kosovo (minorities only), their cases will be processed within three weeks.²⁷²² In the non-prioritized cases however, it may take more than one year before a decision is reached by UDI.²⁷²³

Asylum seekers denied asylum and humanitarian protection are entitled to free legal aid, and they may appeal the decisions.²⁷²⁴ At the initial stage, UDI processes the complaint, and if the decision is upheld, the case will be referred to UNE.²⁷²⁵ UNE then decides whether to process the complaint in the Grand Board, or by its secretariat. Cases not raising considerable doubt may be processed by a single Board chair, which entails that the chair delegates the decision to UNE's secretariat.²⁷²⁶

In practice, the majority of decisions are reached after a written complaint process handled by a case worker in the UNE secretariat. Only about five percent of the cases are assessed by UNE's Grand Board. If called to a Grand Board meeting, the asylum seeker may have a right to meet in person and if so, he or she will have a right **to bring a lawyer or another authorised representative to the hearing. In the majority of the cases brought to the board, a chair and two members will decide the outcome of the appeal. In some cases, however, a grand board is summoned, and this consists of three Board chairs and four Board members.**²⁷²⁷ The Ministry of Justice and Public Security is authorised to instruct both UDI and UNE in regards as to how the law is to be interpreted and in exercise of discretion,²⁷²⁸ and final decisions reached in UNE may be appealed into the court system.²⁷²⁹

²⁷²⁰ Norwegian Association for Asylum Seekers, <https://www.noas.no/wp-content/uploads/2017/07/Har-du-ensak_Marginal-domstolsproving-av-landfaglig-info_2017.pdf>, accessed 30 September 2017.

²⁷²¹ Circular regulating the 48-hour procedure RS 2011-030.

²⁷²² The list will change according to instructions coming from The Ministry of Justice and Public Security.

²⁷²³ Governmental websites, <<https://www.udi.no/en/word-definitions/waiting-times-for-those-who-have-applied-for-protection-asylum/#link-10668>>, accessed 30 September 2017.

²⁷²⁴ Immigration Act, Section 92 (1).

²⁷²⁵ Immigration Act, Section 76 (1).

²⁷²⁶ Immigration Act, Section 78 (1), (2) and (3).

²⁷²⁷ Immigration Act, Section 76 (2).

²⁷²⁸ Prop. 90 L (2015–2016) Proposisjon til Stortinget (forslag til lovvedtak) Endringer i utlendingsloven mv. (innstramninger II), <<https://www.udi.no/en/word-definitions/waiting-times-for-those-who-have-applied-for-protection-asylum/#link-10668>>, accessed 30 September 2017. More on this under question 3.

²⁷²⁹ The Constitution of the Kingdom of Norway 1814 [Grunnloven], Section 89.

1.4. A description of the grounds for exclusion of refugee protection;

Even if a person is considered a refugee according to the Immigration Act, Section 28 a) or b), exclusion from refugee status may happen under certain circumstances. This could be done based on serious criminal offences, on so-called subjective sur place or on what is considered an internal flight alternative.

According to Section 28 (4), refugee status is not to be granted if the person falls within the scope of Article 1D or E of the Refugee Convention, or where there are serious reasons for considering that he or she:

- (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes,
- (b) has committed a serious non-political crime outside Norway's borders, prior to his or her admission to Norway as a refugee, or
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations.

Nor does the right to be recognised as a refugee apply if the foreign national has been convicted by final judgment of a particularly serious crime and for this reason constitutes a threat to Norwegian society. If there are grounds for expelling a foreign national out of regard for fundamental national interests under section 126, second paragraph, section 126, fifth paragraph, applies.

Nor shall a foreign national be entitled to recognition as a refugee if there are grounds for expelling him or her based on fundamental national interests, or the foreign national, having been convicted by final judgment of a particularly serious crime, thereby constitutes a danger to Norwegian society.

Nor shall a foreign national be entitled to recognition as a refugee if the foreign national left his or her country of origin solely in order to avoid penal sanctions for one or more criminal acts that might have been punishable by imprisonment if the acts had been committed in Norway.

Furthermore, the Immigration Act accepts exclusion from refugee status in cases when the person's need for protection has arisen since the applicant left his or her country of origin, and is a result of the applicant's own acts. According to Section 28 (4), when assessing whether an exemption shall be made from the general rule, "particular importance shall be attached to whether the need for protection is due to acts that are punishable under Norwegian law, or whether it seems most likely that the main purpose of the acts was to obtain a residence permit".²⁷³⁰

Norway also considers internal protection as an alternative to granting refugee status. According to Section 28 (5)

"The right to be recognised as a refugee under the first paragraph shall not apply if the foreign national may obtain effective protection in other parts of his or her country of origin than the

²⁷³⁰ Supreme Court of Norway Høyesterett [2017] 569-A

area from which the applicant has fled, and it is not unreasonable to direct the applicant to seek protection in those parts of his or her country of origin”.

The exclusion clauses are not the same as exceptions from the *non-refoulement* rule, which is arguably universal, and in any case, seen as absolute in the Norwegian context. In practice, this means that even though a person is excluded from refugee status, as long as the need for protection is still present, the person will not be returned, Section 73, ref. Section 31 (5).

1.5 A description of the grounds for revocation of asylum status.

If a foreign national has already been granted a residence permit as a refugee under section 28, the residence permit may be revoked if the foreign national:

- has voluntarily re-availed himself or herself of the protection of the country of nationality,
- having lost his or her nationality, has voluntarily re-acquired it,
- has acquired a new nationality, and enjoys the protection of the country of his or her new nationality,
- has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,
- can no longer refuse to avail himself or herself of the protection of the country of nationality, because the circumstances in connection with which he or she was recognised as a refugee under section 28 or received protection under section 34 are no longer present, or
- is not a national of any country, and because the circumstances as a result of which the foreign national was recognised as a refugee are no longer present, is able to return to the country of former residence. A residence permit shall not be revoked under the first paragraph

(e) or (f) if the foreign national can invoke compelling grounds in connection with prior persecution for rejecting the protection of the country in which he or she has citizenship rights or for refusing to return to the country of former habitual residence.²⁷³¹

According to Section 63, a temporary or permanent residence permit may be revoked if the foreign national has knowingly given incorrect information or failed to disclose matters of material significance for the administrative decision, or where this otherwise follows from general rules of administrative law. A temporary or permanent residence permit may also be revoked where a foreign national who is not a national of a Schengen country is to be expelled from such a country based on an assessment which could have led to expulsion out of regard for fundamental national interests, see section 126, second paragraph.

²⁷³¹ Immigration Act, Section 37.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Definition of a migrant

In general, a migrant is understood as a person who leaves their habitual place to reside somewhere else, either within his or her own country or across international borders. The Immigration Act²⁷³² applies to foreign nationals' admission and their residence in the realm, but Norwegian nationals can be obligated by the Act cf. section 2.

A foreign national is any person who is not a Norwegian national cf. section 5, and a person is Norwegian if he or she is born in Norway and one of his or her parents is a Norwegian citizen or adopted by parents with Norwegian citizenship.²⁷³³

The Immigration Act defines the foreign nationals' status in accordance with the reason for their entry to Norway, whether the purpose is work, education, protection, humanitarian reason or family immigration.

The Immigration Act section 28 regulate migrants' applications for being recognised as a refugee, which is contingent upon a well-founded fear for persecution due to that person's background.²⁷³⁴ As described above, foreign nationals with strong humanitarian consideration, or with special connection to the Norwegian realm, he or she shall be considered as a migrant cf. section 38 first paragraph. Collective protection can also be granted in a mass flight situation cf. section 34.

The spouse of a foreign national who has or will be granted permanent residence permit may be granted admission and permanent residence permit to the realm cf. section 40 first paragraph.

Chapter 13 implements the EFTA Convention on EEA citizens and their families' right to enter and stay in other EU member states. The EEA and EFTA agreements give EEA citizens a more favorable legal position in certain areas of immigration law, as compared to other foreigners moving across borders within the EEA.

EEA members can permanently reside in Norway, provided that the member have resided in Norway for five consecutive years.²⁷³⁵ Rules on residence is replaced by a registration system, but if a family-member of an EEA member is from a third world country, a scheme of residence card is currently applicable.

The chapter must be interpreted in accordance with the interpretation and application of the European Human Rights Court, as well as the practice of the EFTA court.

Nordic foreigners are considered to freely enter the boundaries of each other's countries.²⁷³⁶

²⁷³² Act concerning the entry of foreign nationals into the Kingdom and their presence in the realm 2008 [Utlendingsloven].

²⁷³³ Act on Norwegian nationality 2005 [Statsborgerloven] sections 4 and 5.

²⁷³⁴ See Question 1.

²⁷³⁵ Section 116, 117.

²⁷³⁶ Helsingfors Convention 23 March 1962 [Helsingforsavtalen]

2.2. General immigration process

The administrative immigration process is regulated in chapter 11 of the Immigration Act, which regulates both migration decisions in general, as well as asylum decisions in particular.²⁷³⁷

The chapter is divided into three parts, where the first part regulates the general administrative proceeding rules. The second part concerns the application for protection, especially for vulnerable foreign nationals. The third part regards representatives of unaccompanied minors seeking asylum.

Nevertheless, it is the general rules of the Administrative Act²⁷³⁸ that governs administrative proceedings, unless otherwise is said in the Immigration Act²⁷³⁹. This include individual decisions, such as granting visa, residence permit or deportation, while the more specialized chapter 11 of the Immigration Act will supplement the Administration Act.

As an administrative proceeding rule, public officials are obliged to refer to the grounds for the decision. Therefore, the Immigration officials are obliged to send an advance notification and ensure a thorough clarification, by for instance giving the migrant possibility to communicate in a language he or she can speak. Moreover, section 81 of the Immigration Act regards the refugees' right to express their opinions before a decision regarding rejection, expulsion or revocation of residence cards is made.

Section 82 reaffirms the Immigration officials' obligation to provide guidance within their field of competence, namely on the foreign national's right to a representative, legal aid and contact with his or her country's representation.²⁷⁴⁰ In addition, the foreign national is obligated to appear and provide information that may be of importance to the decision unless this conflicts with their need for protection, cf. section 83.

This right of information is extensive and may come in conflict with ECHR art. 8. Therefore, the information must be both necessary and proportional to the case.

According to section 84 A, the Immigration authorities are given right to register, compel and save personal and sensitive information for the return cases. This data can only be used by the body itself for the return case.

Section 84 B excludes employees in child care and asylum institutions from their duty of secrecy to the Immigration office. The access to request data from child care services is limited to information about the origin of country, identity, caregiver, age and vulnerability of the minors.

There are particular requirements for those seeking family reunification, such as information about the sponsors' or the spouses' conduct, DNA testing and age clarification methods.

Section 85 regulates the authorities' right to use information of conduct when dealing with a case in accordance with section 40 (5), which states that if it is most likely that the applicant or the applicants children will be abused or grossly exploited, residence permit can be rejected and 6th, regarding the legal amount of partners, thus applicants and sponsor. The assessment of the

²⁷³⁷ Immigration Act, Sections 80 – 93.

²⁷³⁸ Act relating to procedure in cases concerning the public administration 1967 [Forvaltningsloven].

²⁷³⁹ Immigration Act, Section 80.

²⁷⁴⁰ Cf. the Administrative Act, section 11.

likelihood of such crimes is based on information given from the police to the immigration authorities which can prove such crimes to likely happen. The given information must be relevant for the assessment.

Section 86 allows for the immigration authorities to request DNA-testing from both spouses in the assessment of family immigration cases, provided that it is necessary to determine the biological bond. If the person declines the authorities request without a reason ground, it may be used in the assessment of the decision against him.

Section 87 allows for the authorities to request the national foreigner to carry out an age test. If a spouse's children are over the age of 18, they are not considered in the applicant's family immigration. This applies also to applications for residence on humanitarian grounds.

Section 90 regulates the implementation of the decisions, and decisions concerning rejection of status, admissibility and expulsion are prioritized. As earlier described, the foreign nationals are in some cases entitled to free legal aid.²⁷⁴¹ This also applies also for decisions the Ministry decides should be reviewed by Directorate of Immigration.²⁷⁴²

The particular immigration rules in section 93 to 98 concern foreign nationals applying for protection. The foreign nationals shall, without undue delay, be lodged with the police and hand over all identity related documentation, and provide information regarding his or her identity and assist in further information.²⁷⁴³ While the application is being assessed, the applicant shall be offered accommodation.²⁷⁴⁴ After the asylum interview and identity clearance has found place, and there is no question of rejecting the application, the right to take employment may be given.²⁷⁴⁵

2.3. Revocation of residence permit

Foreign nationals who seek individual protection under section 28 or collective protection in a mass flight situation under section 34, their residence permit under section 60 and 62 may be revoked in accordance with the Immigration Act section 37.²⁷⁴⁶

The preparatory works of the section state that the conditions shall be applied carefully,²⁷⁴⁷ and the same is stated by the UNHCR regarding the similar regulation in the Refugee Convention 1 C. In light of this, the Ministry has faced some critique for an increased focus on revocation of residence permit of refugee status and residence permit, especially for Somalian nationals cf. sec. 37 e and f.

In the case of *Nunez v. Norway*, the ECHR criticized Norway for not taking the child's best interest into sufficient consideration. Although their mother had committed crimes and given incorrect information, the child's interest to stay with their mothers, and the lack of effective decision making, spoke in favour of the residence of the mother.

²⁷⁴¹ Immigration Act, section 92. See question 1 for more information.

²⁷⁴² Immigration Act, sections 76 (3) and 79 (2).

²⁷⁴³ Immigration Act, section 93.

²⁷⁴⁴ Immigration Act, section 95.

²⁷⁴⁵ Immigration Act, section 94.

²⁷⁴⁶ The section is described in question 1 (see part 1.6).

²⁷⁴⁷ Preparatory work Prp. Nr 75 (2006-07) 419-420.

In a Norwegian Supreme Court case from 2016, a non-Norwegian national got his family unification permit revoked due to his marriage to a Norwegian national being pro forma. This entailed that his children got their residence permits revoked as well, and the court held that the children's permit could not be assessed separately as they initially were granted due to their father's permit.²⁷⁴⁸

As part of the proportional assessment, the ECHR practice has developed a concept of "settled migrants". This entails that those who has been residing in a country for several years, and has not committed any crimes, should not have their residence permit revoked.

The revocation mandate rests on the authorities' discretion to assess whether revocation is proportional. And, unlike the ECHR, the proportionality assessment focuses on the false statements given by foreign nationals when applying for residence, and whether a criminal offence is committed.

Revocation can also be issued if the foreign national is expelled from another Schengen country, based on an assessment of national interest under section 126 second paragraph, cf. section 63 second paragraph.

2.4. Right to leave

Section 64 regulates refugee travel documents and immigrants' passports.

A foreign national who have been granted residence permit under the Immigration Act section 28, shall upon application be granted travel documentation for travels outside Norway, provided no particular reasons contradicts this, cf. section 64 first paragraph.

If the foreign national has travel documents issued from a foreign state, this right applies only where Norway is obliged by international agreement to issue travel documents for refugees cf. section 64 first paragraph.

If the foreign national has, or will be granted, residence permit on for asylum, and not as a refugee, he or she can travel outside of Norway only if the government of his country of origin so warrants. Moreover, there must not be any particular reason against granting such travel documents, and the King may issue regulations for granting immigration passports in other cases.

2.5. Deportation and expulsion regulation

The Immigration Act's provisions for exclusion operate with distinction between foreign nationals that do not hold a residence permit (section 66), foreign nationals that hold a temporary residence permit (section 67), foreign nationals that hold a permanent residence permit (section 68), and foreign nationals born in Norway (section 69).

Section 66 requires the following for expulsion:

- the foreign national has grossly or repeatedly breached one or more provisions of this act, wilfully or grossly negligent has provided materially false or obviously misleading

²⁷⁴⁸ Supreme Court of Norway Rettstidene [2016] 2017-A

information in a case regulated by this Act, or evades implementation an administrative decision requiring him or her to leave Norway

- the foreign national has served received penalty for an offence which under Norwegian law is punishable by imprisonment for a term exceeding three months for less than five years ago while abroad, or has a special sanction imposed on him due to a criminal offence as mentioned.

If the foreign national applies for residence permit and does not inform about earlier imposed sanctions, under sanction 63 as mentioned above, can be excluded from Norway.

- When the foreign national in Norway has received a penalty or special sanction for an offence that is punishable by imprisonment or for breaching certain sections of the Penal Code Chapter 27 on a minor level.
- When an administrative official in a Schengen country have issued a final deportation or exclusion decision due to lack of complying with the countries provisions regarding entry or residence
- When the foreign national has contravened the General Penal Code Chapter 18 on terrorism, or provided a safe haven for someone whom the foreign national knows have committed such a crime
- When the foreign national's application for protection have been denied assessment due to already having been granted asylum or other form of protection from another country, or if that foreign national has entered Norway after residing in a state or area where the foreign national was not persecuted, cf. 32 a and d.

Unless it would constitute a disproportionate measure, cf. section 70, a foreign national without a residence permit shall be expelled if:

- the foreign national has not complied with the obligation to leave the realm within the time limit given pursuant to section 90, fifth paragraph, or
- the foreign national has not been given a time limit for voluntary return because there is a risk that the foreign national will evade implementation, sf. section 90, fifth paragraph (a), and section 106 a, or
- an application has been dismissed as manifestly unfounded or as a result of materially false or manifestly misleading information, cf. section 90, fifth paragraph (b), or
- the foreign national has been found to pose a threat to public order see section 90, fifth paragraph (c) or fundamental national interests cf. section 129 fifth paragraph

In accordance with section 67, a foreign national holding a temporary residence can be expelled:

- where the foreign national less than five years previously while abroad has served or received a penalty for an offence which under Norwegian law is punishable by imprisonment for a term exceeding one year, or
- where the foreign national less than one year previously while in Norway has served or received a penalty or special sanction for an offence which is punishable by imprisonment for a term exceeding one year, or for breach of the General Penal Code section 182 first paragraph (riot), section 231 second paragraph (negligent drug violation), section 237 third paragraph (negligent disease transmission), section 262

- (violation of the Marriage act), section 263 (threat), section 305 (sexual offensive behaviour against children under 16), section 374 (gross negligent fraud) or section 380 (gross negligent tax fraud), or
- where the foreign national has served or received a penalty or special sanction for contravention of section 168, 189 second paragraph, 271 first paragraph of the General Civil Penal Code, or
 - where the foreign national has contravened Chapter 18 of the General Civil Penal Code, or has provided a safe haven for a person whom the foreign national knows has committed such a crime.

If the foreign national committed a criminal offence before receiving temporary residence, section 66 first paragraph b and c shall apply correspondingly.

After section 68, a foreign national holding a permanent residence permit, can be expelled if he or she:

- less than five years ago served, or is sentenced to sanction, while abroad, for an offence which under Norwegian law is punishable by imprisonment for a term of or exceeding two years. Where a special sanction has been imposed as result of a criminal offence, the same shall apply.
- less than one year previously while in Norway has served or received a penalty or special sanction for an offence which is punishable by imprisonment for a term of or exceeding two years, or for breaching the sections of the General Penal Code as mentioned under section 67 first paragraph (b).
- has contravened Chapter 18 of the General Penal Code as mentioned in section 67 first paragraph (d).

Where the foreign national committed a criminal offence before receiving permanent residence, as mentioned under section 67 first paragraph, a, b and second paragraph, shall apply correspondingly.

The fundamental condition for the migrants' rights, protection and obligations is whether the foreign national holds a residence permit. Violation of the General Penal Code plays a central part. Although the Directorate of Immigration's decisions have an administrative character, by implementing the Immigration Act and the government's immigration and refugee policy, the punitive character of the General Penal Code impacts the administrative decisions. The degree of impact depends upon the foreign national's residence permit status. In *Engel vs NL*, the European Court of Human Rights (ECHR) concluded that the serious punishment for not following orders for an offence was not administrative but punitive in character. The Norwegian Supreme court applies Constitutional Code section 96 in a more formal manner.

Under section 69, Norwegian citizen may not be expelled. A foreign national born in the realm, and subsequently has continuously had a fixed abode here, may not be expelled. Although the sections give a fixed impression of Norwegian immigration law, there are considerations the executive officer may pay attention to

Section 70 was also mentioned under section 66 first paragraph f, and it requires the assessment of expulsion to take the disproportionate measure into consideration. The evaluation must take

into consideration the degree of seriousness of the offence and the foreign national's connection with the realm against the foreign national concerned or the person's closest family members. In cases concerning children, the child's best interest shall be a fundamental consideration. The King may by regulation made further provisions in respect of the assessment under the first paragraph.

2.6. Migrant status and the right to leave – differences between EU and non-EU members

According to the provisions, all nationals who are not residing in the realm from birth or adoption, or is born in the Norwegian realm but one of the parent are not a Norwegian national, may be granted residence permit where the duration and content depends on the grounds for the entrance.

A foreign national protected by EAA or EFTA convention may, without seeking permission, enter the realm and reside or work for three months, or six months if the foreign national is seeking work.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

As the legislative branch of power, the Norwegian Parliament sets out the legal framework for migration regulation in Norway.²⁷⁴⁹ Chapter 10 of the Immigration Act gives express to the current organisation of Norwegian immigration authority. At the government agency level, overall national responsibility for Norway's refugee, migration and integration policy lays within the Ministry of Justice and Public Security. The ministry regulates the field through regulations, circulars and instructions, in addition to budgets and allocation letters.²⁷⁵⁰ In 2015, the first ever Minister of Immigration and Integration was appointed.²⁷⁵¹

The Norwegian Directorate of Immigration (UDI) is the central government agency that implements and helps to develop the Norwegian government's immigration and refugee policy, while The Directorate of Integration and Diversity (IMDi) is responsible for the actual settlement and integration process.²⁷⁵² The work of IMDi's is regulated by the the Introduction

²⁷⁴⁹ Furthermore, the Norwegian Parliament decides how many refugees to be accepted under the quota procedure initiated by UNHCR, ref. Question 1.

²⁷⁵⁰ It should be noted that under different Governments other ministries have been responsible for the national migration regulation system, i.e; The Ministry of Justice and the Police, The Ministry of Local Government and Regional Development and The Ministry of Labour and Social Inclusion

²⁷⁵¹ Governmental website, <[ELSA Norway](https://www.regjeringen.no/en/aktuelt/endringer-i-regjeringen/id2467606/.>, accessed 30 September 2017</p></div><div data-bbox=)

Act.²⁷⁵³ In cases of labour migration, follow-up responsibility rests on the Ministry of Labour and Social Affairs and The Service Centres for Foreign Workers (SUA).

At a local level, UDI is responsible for the running of receptions centres for asylum seekers. In practice, these are operated by contractors within the regulatory framework and budget set out by UDI. When granted residence permit, responsibility for the migrant is transferred to IMDi. IMDi has local offices several places in Norway, but is dependent on close collaboration with both public municipality level bodies as well as private businesses and humanitarian organisations.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Immigrants

The following statistics are derived from The Norwegian Directorate of Immigrants (UDI) and is based on available figures from 2015, 2016 and 2017. As the majority of third-country nationals immigrate to Norway due to family reunification, protection needs and labour market access, the following presentation will be limited to figures on migration within these categories. In the following, the Directorate of Integration and Diversity's (IMDi) definition of an immigrant as "a person who resides and lives in Norway but is born abroad by foreign-born parents" (my translation) is used.

4.2. Individuals who received a residence permit in Norway in 2016, compared to 2017

To live and work in Norway, individuals from countries outside the EEC-area need a residence permit. In 2016, 44600 persons were granted residence permit, in contrast to 35400 in 2015. The increasing number of residence permits being issued between 2015 and 2016 was not a result of a higher number of people applying for residence permits in 2016, but a result of an increased budget allocation to UDI which led to the number of decisions produced going up.

4.2.1. Family reunification (35% of the residence permits)

Family reunification accounted for a major part of the registered immigration to Norway in 2016, and amounted to a total number of 15 600 persons. These numbers make a 20 % increase from the preceding year. This is a result of increase in resources at UDI, and not the result of more applications.

²⁷⁵³ Act on an introductory programme and Norwegian language instruction for newly arrived immigrant 2003 [introduksjonsloven]

4.2.2. Protection (37% of the residence permits)

16 500 individuals received protection in 2016. This number includes the 800 whose decisions were revised by UNE. Those who received protection by Norway constitute 37% of all residence permits granted in 2016. This represents an increase of 7 700 from 2015, which equals an increase of 87%. Among those who were granted protection, 13 300 were refugees and 3 200 transit migrants.

4.2.3. Labour migration (16% of the residence permits)

Migrant workers represented the third greatest immigrant group in 2016. The 7 100 individuals who were granted work permits accounted for 16% of all residence permits granted that year. The number of migrant workers in 2016 was 600 fewer compared to 2015.

4.3. Refugees

As of August 2017, 9000 refugees have been registered this year, compared to 30 000 during the year-end of 2015/2016. This is the lowest number of refugees immigrating since 1997, according to the UDI²⁷⁵⁴.

UDI's prognosis states an increase of asylum applicants from November 2017, when the Schengen-borders are due to reopen. It is anticipated that immigration due to crisis and war will be a contributing factor to future migration flows, and as a result of this the figures will increase. UDI's prospect for 2017 predicts a number of applicants between 2 000 and 10 000, with a planning figure of 3000 refugees. The previous forecast consisted of a planning figure of 7000, which is consistent with the planning figure for 2018.

4.4. Transit immigration

There are no specific figures on transit immigration to Norway, as these are a part of the general statistics.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Norway became a member of the Council of Europe in 1943 and ratified the European Convention of Human Rights (hereafter "the Convention") in 1953. Since then the country has had 28 cases before the European Court of Human Rights (hereafter "ECtHR" or "the Court"). The influence of the Court reaches many areas of Norwegian law and society, and the following analysis will look at whether, and how, decisions concerning migrants have changed Norwegian legislation and legal practice.

²⁷⁵⁴ <<https://www.udi.no/aktuelt/laveste-antallet-asylosokere-siden-1997/>>, accessed 30 September 2017.

5.1. The European Convention of Human Rights and General Implementation of ECHR decisions

The Convention for the Protection of Human Rights was made into Norwegian law through the Human Rights Act²⁷⁵⁵ of 1999. Section three of the Act determines that if a Norwegian rule should contradict the Convention, the international law will prevail.

The strong position of the Convention makes its interpretation a vital part of Norwegian law, and the influence of the ECHR over national legislation was for many years a much-debated topic by Norwegian academics. Today, Norwegian Courts use the same principles of interpretation as the ECHR when considering Norwegian cases related to the Convention. The Supreme Court (Høyesterett) has determined that Norwegian values and principles may also be used, in addition to the ones defined by ECHR.²⁷⁵⁶

5.2. The Implementation of Decisions where Norway was the Respondent State

All of the cases that the ECHR has considered concerning Norway, have been closed by final resolution by the Committee of Ministers²⁷⁵⁷. Some cases are significant for migrants because of their effects on Norwegian law and will be studied more closely below.

5.2.1. Case of Nunez vs. Norway 2011²⁷⁵⁸

In this case the Court concluded that the expulsion of Ms Nunez with a two-year re-entry ban was a violation of Art. 8 of the Convention.

Ms Nunez was originally from the Dominican Republic, and had been deported with a re-entry ban of two years. She returned with a different passport only four months after being deported, and she was living in Oslo with her two children until her identity was uncovered. While the ECHR agreed that the applicant's actions were serious, the interests of her young children were more important and expulsion from Norway would infringe on their rights in accordance with Art. 8.

The Nunez-case has been important to the treatment of deportation and family reunification cases in Norway, especially in regards to children's right to be a relevant party in cases that affects them.

In a 2017 Supreme Court verdict concerning loss of citizenship and deportation,²⁷⁵⁹ the judge Utgaard cited the Nunez-case and highlighted how ECtHR's interprets Art. 8 through a weighing of interests, rather than considering family members as a formal party to a case. The case emphasises the importance of attaching sufficient weight to the interest of children, regardless of whether they are considered a party to the case.

²⁷⁵⁵ Act relating to the strengthening of the status of human rights in Norwegian law 1999 [Menneskerettsloven].

²⁷⁵⁶ Supreme Court of Norway Rettstidene [2000] 996.

²⁷⁵⁷ Country Factsheet Norway Department for the Execution of Judgements of the European Court of Human Rights <<https://rm.coe.int/168070975>>, accessed 30 September 2017.

²⁷⁵⁸ *Nunez v. Norway* [2011] ECHR App no 55597/09.

²⁷⁵⁹ Supreme Court of Norway Høyesterett [2017] 1130

The Nunez-case was also cited when The Ministry of Justice and Public Security issued a formal instruction²⁷⁶⁰ to UDI on how the Immigration Act section 70 should be interpreted and practised. According to the Ministry, relevant considerations included case processing time and the connection between the child and the parent being deported.

5.3. The Implementation of Decisions where Norway was not the Respondent State

Decisions by the ECHR where Norway was not a respondent state were less likely to have the same direct effect compared to decisions where Norway is a respondent. These decisions do, nevertheless, influence Norwegian legislation through national courts and in a broader sense through academia and legislation.

5.3.1. The Right to Asylum

In a Supreme Court decision from 2015²⁷⁶¹ the court made references to several ECtHR cases when deciding whether a denied application for asylum was unlawful. The Supreme Court applied arguments from both *H. and B. v. The United Kingdom*²⁷⁶², and *Tarakhel v. Switzerland*²⁷⁶³ to their decision.

Furthermore, the Supreme Court made efforts to analyse the Norwegian Immigration Act and ensure that it was in accordance with the Convention and the views of the Court.

Judge Utgaard said in section 82 of the decision that he would consider whether the protection under Art. 3 set forth by the Court required an assessment of the conditions in the country of origin before he considered whether this complied with Norwegian law in section 88:

“...the threshold for the conditions at the place of return according to the convention could be different for internal displacement in the case of children with their parents, or children alone, compared with the threshold for single adults, complies with the provisions of section 28 third paragraph of the Immigration Act”.

This Supreme Court decision has been referred to in lower courts as well as rulings by the Grand Board of UNE.²⁷⁶⁴ The influence of the ECtHR over Norwegian migration policies therefore has potential to reach a wide selection of public bodies involved in migration control and may be considered extensive, even in instances where Norway has not been a respondent state.

Decisions made by the ECHR that concern migrants are, as we have seen, implemented in a variety of ways. Where Norway has been a respondent state, the applicants have received just satisfaction and necessary legal changes are conducted following the decision. For the majority of migrants in Norway though, the courts and various government agencies, provide more immediate decisions that nevertheless considers the viewpoint of the European Court of Human Rights and attempts to ensure the correct interpretation of the Convention.

²⁷⁶⁰ Governmental website, <<https://www.regjeringen.no/no/dokumenter/gi-142011-instruks-om-utoving-av-skjonn-/id662252/?q=nunez>> accessed 30 September 2017.

²⁷⁶¹ Supreme Court of Norway Høyesterett [2015] 2524-P

²⁷⁶² *H. and B. v. the United Kingdom* [2013] ECHR App no 70073/ 10 and 44539/11.

²⁷⁶³ *Tarakhel v. Switzerland* [2014] ECHR App no 29217/12.

²⁷⁶⁴ The Immigration Appeals Board.

To summarize, decisions made by the ECHR that concern migrants are implemented in a variety of ways. Where Norway has been a respondent state, the applicants have received just satisfaction and necessary legal changes are conducted following the decision. For the majority of migrants in Norway though, the courts and various government agencies, provide more immediate decisions that nevertheless considers the viewpoint of the European Court of Human Rights and attempts to ensure the correct interpretation of the Convention.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

This is a brief review of the status in Norway concerning racism and integration of migrants. Particularly, how different recommendations from the ECRI and other human right bodies has been implemented into the Norwegian law, justice system and society. This is largely related to Norway's affiliation to international law and directives, and to a large extent how EU directives are incorporated and valued by the legislators.

6.1. Norway on an international level

Norway is not a member of the EU, and is not formally bound by the EU's directions of discrimination. Nevertheless, the state of law in Norway is closely tied to many of EU's member countries and is thus affected by the evolution in EU, both through cooperation with other EU-countries, and through agreements and treaties.

The Schengen-agreement and the Dublin-agreement have great consequences for Norway. Furthermore, Norway has committed itself to sign and ratify EU's directives and agreements that are EEA-relevant, even though not being formally obligated to these regulations.

The non-discrimination package with the EU Framework Directive²⁷⁶⁵ and the EU Racial Discrimination Directive²⁷⁶⁶, which deal with ethnicity, age and disability, are not EEA-relevant. Nevertheless, the Norwegian legislature has determined that national regulations must at a minimum fulfil the standards of the above-mentioned directives.

The factors mentioned above are one of numerous reasons why these regulations are relevant, and emphasize the importance of adjusting to recommendations and international guidelines to maintain the cooperation.

6.2. Implementation of recommendations against racism and intolerance

There are several international control units that issue recommendations to countries based on observations and research. The UN, the Council of Europe and the EU are some of the most

²⁷⁶⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

²⁷⁶⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

well-known units, and also some of the most legitimate ones. However, the implementation of the recommendations is affected by the fact that these points only serve as recommendations. Consequently, it is not for certain that the legislative power in Norway will act very strongly to accommodate them.

The European Commission against Racism and Intolerance (ECRI) is a control unit on the matter, and it observes the evolvement in the member States of the Council of Europe. ECRI deals with different aspects of racism and intolerance, as well as integration.

Their latest report on Norway covered the situation of June 2014,²⁷⁶⁷ and this is an important source on the topic. While it contains several recommendations, the report's summary shows that Norway has developed and evolved in many areas in alignment with previous recommendations. Below are some of the recommendations from the ECRI report listed;

Young refugees should receive better access to education.

Better procedures in preparation for immigrants with low educational background and lack of reading and writing abilities, in accordance to the labour market's demands, will need to be identified and conveyed to the local municipalities.

Refugees will receive work permits although they cannot present legal travel documents

These points only serve as recommendations, and as mentioned earlier the legislative power in Norway is not likely to act very strongly to accommodate them.

This is also the situation reflected in the latest report from UN's Committee on the Elimination of Racial Discrimination (CIRD),²⁷⁶⁸ published September 2017. There is yet to be published a conclusion based on this report, but it seems that the Norwegian government is largely following the previous recommendations despite the fact that there are room for improvement.

6.2.1. Legislation against racism and racial discrimination

Racial discrimination is a major obstacle for successful integration. In example, discrimination in access to the labour market is one area that prevents integration, according to CIRDs report from 2015.²⁷⁶⁹

Through the Ethnicity Anti-Discrimination Act,²⁷⁷⁰ Norway has taken an important step in implementing international guidelines for human rights, racism and intolerance. The law was a result of the EU's programs to fight discrimination, and the purpose of the Act was to bring civil, criminal and administrative law in line with ECRI's General Recommendation no. 7.

The Ethnicity Anti-Discrimination Act will be revoked by the entry of Norwegian Law 2017-06-16-51, which is expected to be effective 01.01.2018. According to the Government, the new law will not result in a substantive change, but combine the regulations that at the moment span four different areas of law.²⁷⁷¹

²⁷⁶⁷ ECRI Report on Norway. 24 feb 2015. <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Norway/NOR-CbC-V-2015-002-ENG.pdf>> accessed 30 September 2017.

²⁷⁶⁸ CERD/C/NOR/CO/21-22.

²⁷⁶⁹ Committee on the Elimination of Racial Discrimination, concluding observations on the twenty-first and twenty- second periodic reports of Norway, 2015, 5.

²⁷⁷⁰ Act relating to a prohibition against discrimination on the basis of ethnicity, religion and belief [Diskrimineringsloven om etnisitet]

²⁷⁷¹ Preparatory Work, Prop. 81 L (2016-2017).

One of ECRI's main concerns is that Norway still has not ratified Protocol No. 12 to the ECHR. The protocol was drawn up because the anti-discrimination protection under Article 14 of the Convention (ECHR) is limited to the rights the Convention protects, while Protocol No. 12 is not. Norway has signed the protocol, but is yet to ratify it despite encouragement from the ECRI.

6.2.2. Integration

In 2011 Norway became a member of the European Migration Network (EMN), an EU network and information system where member states can share and develop information regarding integration of immigrants.

Since the year of 2008, Norway is positioned as a surveillance country for the EU's National Point of Contact on Integration. Norway is the only non-member state involved with this,²⁷⁷² and this gives Norway the opportunity to engage in the field, and share information, knowledge and experience with EU-members.

The recommendations from the different international units serve as guidance, revealing which areas that could- or should be improved. This does not mean that Norway does not seek to improve on the field of integration. Parallel to the focus in Norway, these points are surrounding the area of labour and education, which shows the correlation between national and international goals.

Hence, international guidelines and recommendation mostly works as inspiration and guidance for the Parliament. One example is the OECD's report *Making Integration Work*.²⁷⁷³ This report summarizes the experiences of the member states and concludes with ten lessons on integration.

The Parliament used these conclusions in the latest white Paper on integration, as well as a guideline for creating goals for future integration policies.²⁷⁷⁴ Participation in the labour market stands out as an important area for Norwegian integration policies, especially among immigrants with a background of refugee.²⁷⁷⁵

Even though Norway has several examples of successful action plans for integration, the Government has experienced criticism from various human right bodies the previous years. According to Pål Nesse, senior advisor in The Norwegian Refugee Council, it seems that the gap between Norway's integration and discrimination acts and the recommendations from national bodies is increasing. Indicative of this is the fact that UNCHR multiple times in 2016 and 2017 has pointed out that Norway, more than before, departs from their recommendations.²⁷⁷⁶

²⁷⁷² Preparatory Work, Innst. 327 S (2009-2010).

²⁷⁷³ *Making Integration Work*, Refugees and other in need of protection, 2017.

²⁷⁷⁴ Preparatory Work, Meld.St.30 (2016-2017).

²⁷⁷⁵ See the recommendation from the Ministry of Justice and public Security, Meld.St.30 (2016-2017).

²⁷⁷⁶ Pål Nesse, *Flyktninghjelpen*, 2017.

7. How is migrants' right to access to healthcare regulated within the national legislation?

The Norwegian Human Rights Act²⁷⁷⁷ gives express to the fundamental human right to health through the incorporation of the European Convention on Human Rights, the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women and UN Convention on Economic, Social and Cultural Rights. Importantly, Article 12 of the last mentioned convention states that that the States Parties “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. This represents an unequivocal and universal right to health for the citizens in the contracting states.

The right to access to healthcare is more specifically regulated in the Patients' Rights Act²⁷⁷⁸. Its sections 2-1 a. and b. state that all patients have a right to receive necessary healthcare services, and “healthcare” is given a broad definition in sections 1-3 c. and d. Both somatic and mental issues are encompassed by the definition, as well as drug related and dental issues”.²⁷⁷⁹

7.1. Legal requirements for migrants to have access to healthcare services

The term “patient” is defined as any person who approaches the healthcare authorities about healthcare²⁷⁸⁰, and does not seem to differentiate between Norwegian citizens and migrants.

This is further supported by the Immigration Act,²⁷⁸¹ where section 4 implies that everyone legally and permanently residing in Norway will enjoy the same rights as Norwegian citizens.

In accordance with section 2, full access is granted migrants who have stayed, or are planning to stay, in Norway for more than 12 months. The same applies for migrants already accessing the social security programme, or migrants that are a citizen of a country that Norway has a mutual healthcare agreement with. These alternatives presume that the migrants are legally staying in the country.

7.1.1. Migrants irregularly residing in Norway

The Regulation concerning the right to healthcare services for people without permanent stay,²⁷⁸² however, contains some criteria for when non-permanent migrants are granted full access to the Norwegian healthcare system.

²⁷⁷⁷ Act relating to the strengthening of the status of human rights in Norwegian law 1999 [Menneskerettsloven].

²⁷⁷⁸ Act relating to patients' rights 1999 [Pasientrettighetsloven]

²⁷⁷⁹ Directorate of Health, online guidance service for asylum seekers, refugees and family reunited, <<https://helsedirektoratet.no/retningslinjer/asyloskere-flyktninger-og-familiegjenforente/seksjon?Tittel=rettigheter-ansvar-organisering-10000>>, viewed on 01. September 2017.

²⁷⁸⁰ Patients' Rights Act, section 1-3 a.

²⁷⁸¹ Act concerning the entry of foreign nationals into the Kingdom and their presence in the realm 2008 [Utlendingsloven].

²⁷⁸² Regulation concerning the right to healthcare services for people without permanent stay in the kingdom 2011 [Forskrift om rett til helse- og omsorgstjenester til personer uten fast opphold i riket].

According to the same regulation, migrants irregularly residing in Norway will only have a limited access to the healthcare system. This also applies for undocumented migrants, and it is regulated in sections 3 to 6.

Firstly, all children under the age of 18 years are entitled to receive necessary healthcare, regardless of the legality and duration of their stay in Norway.

Secondly, adults are entitled to necessary healthcare if their condition may result in imminent death, permanently reduced functioning, serious harm or immense pain. Moreover, women have right to healthcare before, during and after childbirth, and right to termination of pregnancy according to the Act concerning termination of pregnancy.²⁷⁸³

Lastly, people who are in 'pressing need' of health care services will also have a right to receive immediate health care.

Anyone in Norway have the right to be evaluated by a specialist healthcare service, and information about their eligibility for receiving the abovementioned healthcare must be given within ten days. The period may be shorter if their condition is considered critical or life threatening.²⁷⁸⁴

For people seeking asylum, this right to access to healthcare is granted from the time they contact the Norwegian government for protection in Norway.²⁷⁸⁵

7.2. Accessibility for immigrants

The Patients' Rights Act section 3-2 states that every patient shall receive sufficient information to have insight of their condition, what the healthcare service involves and of any risks or side-effects. Healthcare personnel can only derogate from this if the patient is in danger of serious harm, or in another life-threatening condition.

Moreover, section 3-5 specifies that the information must be specified in terms of the individual recipient's cultural and linguistic background. The personnel are also required to ensure, in as far as possible, that the patient understands the information, and this may necessitate the use of an interpreter.

These provisions are prerequisites for section 4-1, which states that the healthcare services only can be given with the consent of the patient, and it makes the services better accessible for the immigrants.

UDI has also issued several informational leaflets about healthcare services in various languages²⁷⁸⁶, and the Norwegian government has established a national centre for migration and minority health, NAKMI. The centre promotes knowledge about healthcare among immigrants in Norway, and they raise awareness about particular need of certain immigrant groups amongst Norwegian healthcare personnel.²⁷⁸⁷

²⁷⁸³ The Act concerning termination of pregnancy 1975 [Abortloven]

²⁷⁸⁴ The Human Rights Act, sections 2-1 a. and b.

²⁷⁸⁵ Act relating to patients' rights 1992 [Pasient- og brukerrettighetsloven].

²⁷⁸⁶ Directorate of Immigration, *Vulnerable people*, <<https://www.udi.no/ord-og-begreper/sarbare-personer/>>, accessed 01 September 2017.

²⁷⁸⁷ Nasjonal kompetanseenhet for minoritetshelse, <<http://www.nakmi.no/om/>>, accessed 01 September 2017.

Moreover, several Norwegian NGOs focus on migrants' access to healthcare. Two of these are the Church City Mission and the Red Cross which support undocumented migrants in Norway. The organisations inform about their right to access to healthcare, and run a healthcare service at a secret address in Oslo. The Church City Mission is co-founded by the EU Public Health Programme. There are similar healthcare services based on voluntary efforts in several cities in Norway.

Another NGO is the radio channel Voice of Oslo.²⁷⁸⁸ One of their regular programmes provides immigrants with information about available health services, and it is cast in Urdu, Somali and Arabic. Moreover, there are health personnel available for questions during the programmes.

7.3. Equality in health care services

Norway has ratified the UN International Convention on the Elimination of All Forms of Racial Discrimination, and is obliged to “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law” in accordance with article 5. Moreover, it is specified that this includes the right to “public health, medical care” in point (iv). As mentioned before, this is guaranteed in the Immigration Act section 4, which entails that everyone legally and permanently residing in Norway will enjoy the same rights as Norwegian citizens.

7.3.1. Prohibition against discrimination

The Ethnicity Anti-Discrimination Act²⁷⁸⁹ states that discrimination on the basis of national origin, descent, skin colour and language is prohibited. This includes both direct and indirect unlawful differential treatment.

The provisions are enforced by the Equality and Anti-Discrimination Representatives and the Equality and Anti-Discrimination Tribunal²⁷⁹⁰, which are also responsible of contributing to the implementation of the Act.

These implementing and monitoring bodies operate with a negative burden of proof, as the defendant must substantiate that discrimination did not in fact occur. The plaintiff is entitled to compensation for economic loss, and for non-economic loss to a reasonable extent depending on the circumstances. Moreover, perpetrators of intentional gross breach of the Act can be subject to imprisonment for up to three years. It should be noted that this is subject to a positive burden of proof.

The Norwegian Directorate of Health has also set national strategic goals for equality in health services²⁷⁹¹. There is a public professional board, SOHEMI, that assists them in reaching this, and this board emphasises on linguistic and cultural barriers of certain immigrants group.²⁷⁹²

²⁷⁸⁸ Voice of Oslo, <<http://www.voiceofoslo.com/?p=35>>, accessed 01 September 2017.

²⁷⁸⁹ Act relating to a prohibition against discrimination on the basis of ethnicity, religion and belief 2013 [Diskrimineringsloven om etnisitet], section 6.

²⁷⁹⁰ Ibid., section 23.

²⁷⁹¹ National strategy about immigrants' health 2013-2017. <[ELSA Norway](https://www.regjeringen.no/no/dokumenter/likeverdige-helse--og-omsorgstjenester/id733870/>, accessed 01 September 2017.</p></div><div data-bbox=)

7.3.2. Specific services for vulnerable migrants

The Norwegian healthcare service has taken several measures to accommodate the needs of migrants in vulnerable positions, and there is a focus on individualised approaches to patients throughout the healthcare legislation.

For example, asylum seekers with special needs are quartered in assisted facilities, and there is a reflection programme for migrants that have been caught up in human trafficking²⁷⁹³. This entails access to free legal aid, individualised assistance, social security and safe accommodation²⁷⁹⁴.

The Directorate also provides individualised programmes for migrants exposed to family-related violence, forced marriage or body mutilation. These encompass specialised healthcare, safe accommodation and free legal aid²⁷⁹⁵.

Examples of other projects include “Seksjon ambulant virksomhet”, where the hospitals focus individual rehabilitation and suicide prevention of traumatised migrants.²⁷⁹⁶

Moreover, the 2010 guideline “Equality and Diversity” has been implemented at Ahus, the hospital with the highest percentage of immigrants in Norway²⁷⁹⁷. They have started a project dedicated to support Tamils in Norway, after rapports show that this is an immigrant group with degrading mental health and troublesome social integration.²⁷⁹⁸

Another vulnerable group of immigrants is the undocumented migrants, and these only have a limited access to the healthcare system. There are, however, several NGOs providing services to undocumented migrants, as mentioned above.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Every child in Norway has a right to education. The Constitution of the Kingdom of Norway²⁷⁹⁹ states this right in section 109, granting all children the right to primary education, and high school education.

According to the Education Act²⁸⁰⁰ section 2-3 every child is obligated to attend primary school, and has the right to a high school education, both publicly funded.

²⁷⁹² Directorate of Health, <<https://helsedirektoratet.no/om-oss/organisasjon/rad-og-utvalg/fagrad-for-likeverdige-helse-og-omsorgstjenester-til-innvandrerbefolkningen-sohemi>>, accessed 01 September 2017.

²⁷⁹³ Directorate of Immigration, <<https://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2013-014/>>, accessed 01 September 2017.

²⁷⁹⁴ Rosa, <<http://rosa-help.no/hva-betyr-lovlig-opphold/>>, accessed 01 September 2017.

²⁷⁹⁵ Directorate of Immigration, <<https://www.udi.no/ord-og-begreper/sarbare-personer>>, accessed 01 September 2017.

²⁷⁹⁶ Lovisenberg hospital, <<https://www.lds.no/avdelinger/lovisenberg-dps/seksjon-ambulant-virksomhet/>>, accessed 01 September 2017.

²⁷⁹⁷ Kari E. Bugge, Bjørg Hagevang, *Utviklingsprosjekt i Ahus "støttetilbud for norsktamiler"*, <<http://norskph.no/wp/wp-content/uploads/2016/09/Støttetilbud-for-norsktamiler-rapport.pdf>>, accessed 01 September 2017.

²⁷⁹⁸ Ibid.

²⁷⁹⁹ The Constitution of the Kingdom of Norway, Lov av 17. mai 1814 [Kongeriket Norges grunnlov].

²⁸⁰⁰ Act relating to primary and secondary Education, 1998 [Opplæringsloven].

Further, Norway is obligated by several international treaties which further grants educational rights²⁸⁰¹. Among others, notable treaties are the United Nation's Universal Declaration on Human Rights article 26, the UN's Convention on the Rights of the Child articles 28 and 29, and the European Convention on Human Rights Protocol 2 article 2.

The rights granted in the Education Act are non-discriminatory and apply to every child, regardless of their nationality or other conditions. Thus, regular migrant children have the very same rights as other Norwegians.

With regards to irregular or undocumented migrants, the Education Act section 2-1 nr. 2 states that the rights in the Act apply whenever it is likely that the child will stay in Norway for more than three months. According to the preparatory works of the provision, the right applies regardless of whether the children's stay in Norway is legal or not.²⁸⁰²

The process shall be applied as quickly as possible, and no later than one month post arrival. The obligation to attend primary school begins when the child has stayed in Norway for at least three months. The rights in the Act ceases if the child stays outside of Norway for more than three months.

Any discrimination in this regard is illegal, and could be subject to prosecution upon the Anti-Discrimination Act²⁸⁰³ section 6, the Norwegian Constitution section 98, among other provisions.

In Bergen municipality, officials claim newly arrived migrants in school age start attending school less than one month post arrival.²⁸⁰⁴ Migrant children in school age attend the same curriculum and courses as other Norwegian children, while the school often adapt their education to their individual needs.

Further, the Education Act section 1-3 entitles every child to adapt education, where his or her individual preconditions should be considered. How this right is applied is a matter to the municipalities, and thus might be applied differently, as long as they are legal according to the Act.

²⁸⁰¹ <<https://www.regjeringen.no/no/dokumenter/Retten-til-utdanning/id88393/>>, viewed on 13 September 2017.

²⁸⁰² Preparatory work Ot.prp. nr. 46 (1997-1998), 153.

²⁸⁰³ Act on prohibition of discrimination based on ethnicity, religion, etc., 2017 [Lov om likestilling og forbud mot diskriminering], into force from January 01 2018.

²⁸⁰⁴ Stated in meeting with Sølve Sætre, Special advisor on migrants and integration to Bergen Municipality, 6 September 2017.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

The Lisbon Recognition Convention is an international agreement concluded between the member states of the Council of Europe and UNESCO's European region.²⁸⁰⁵ The convention facilitates academic mobility across the member states, and it contains certain criteria and procedures for acknowledging foreign qualifications for higher education.

The convention was ratified by Norway in 1999, and the Norwegian government is obliged to meet its standards regarding routines for assessing foreign school and university diplomas.

This part will explore how this is implemented in relation to the recognition of qualification for enrolling at an institute offering higher education in Norway, and in relation to the recognition of foreign higher education diplomas.

9.1. Recognition of foreign qualifications for enrolling at Norwegian institutes offering higher education

9.1.1. The responsible institution

The body handling all applications to public primary higher education in Norway is Samordna Opptak ("Coordinated Admissions"). This body harmonises all applications and offers assistance to the applicants, and it is therefore the main gateway for people with foreign qualifications to get access to higher education in Norway.

There is also a handful of private institutions offering higher education in Norway. These follow the same procedure as Samordna Opptak regarding the recognition of foreign qualifications, and it will therefore not be accentuated in this article.

9.1.2. Criteria

The legal basis for the admission of foreign qualification to higher education institutions is the Regulation concerning admission to higher education.²⁸⁰⁶ Its three main criteria are included in Section 2-2, which applies to all immigrants, except from other Nordic countries.

Firstly, the applicant must document achieved education equivalent to the Norwegian system. The admission body has issued an extensive list of which baccalaureates automatically qualify, the so-called GSU-list.²⁸⁰⁷

²⁸⁰⁵ Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997.

²⁸⁰⁶ Regulations concerning admission to higher education 2017 [Forskrift om opptak til høyere utdanning]

²⁸⁰⁷ NOKUT, <http://www.nokut.no/Documents/NOKUT/Artikkelbibliotek/Utenlandsk_utdanning/GSUlista/2017/GSU_list_en_norsk_14032017.pdf>, accessed 01 September 2017

Secondly, the applicant must be proficient in both English and Norwegian. The GSU-list specifies whether the applicants must undertake separate language tests, and the requirement for Norwegian does not apply for programmes in foreign languages.

Thirdly, all applicants must provide the necessary documents. The admission body has made an overview of which documents are required from the different countries, and this is available online²⁸⁰⁸.

Foreign applicants must fill out and submit a physical form, enclose the relevant documents and subsequently accept a potential offer²⁸⁰⁹.

9.1.3. Special procedures for vulnerable migrants

The admissions body also provides a possibility for accepting applications from migrants who cannot properly document their education or work experience. If necessary, refugees have the option of filling out and submitting a specified form to the admissions body.²⁸¹⁰

9.2. Recognition of foreign certificates of higher education

9.2.1. The responsible institution

In accordance with the Act relating to Universities and University Colleges, the national centre for quality in education, NOKUT, is the main body for recognising foreign higher education.²⁸¹¹ NOKUT also works to ease access to information about both Norwegian and foreign educational systems, and is the national centre for information about the Lisbon Recognition Convention.

9.2.2. Criteria

The Lisbon Recognition Convention article IV.1 states that the contracting parties shall “recognise the higher education qualifications issued by other Parties”, as long as they meet the general requirements to access the programmes of higher education in that other state.

Section 6-1 of the Regulation on quality assurance and quality development in higher education and tertiary vocational education encompass the criteria NOKUT follows when they assess applications for recognition of diplomas for higher education.²⁸¹²

Firstly, the diploma must be sufficiently documented, including its recognition as higher education in the country of origin. NOKUT has specific guidelines for countries that do not have a system for official recognition of higher education²⁸¹³.

²⁸⁰⁸ Samordna Opptak, <https://www.samordnaopptak.no/info/utenlandsk_utdanning/>, accessed 01 September 2017

²⁸⁰⁹ Samordna Opptak, <https://www.samordnaopptak.no/info/utenlandsk_utdanning/forhandsvurdering/forhandsvurdering/index.html>, accessed 01 September 2017

²⁸¹⁰ Samordna Opptak, <[https://www.samordnaopptak.no/info/pdfer/skjema-papirloese-flyktninger\(1\).pdf](https://www.samordnaopptak.no/info/pdfer/skjema-papirloese-flyktninger(1).pdf)>, accessed 01 September 2017

²⁸¹¹ Act relating to Universities and University Colleges 2005 [Universitets- og Høyskoleloven] section 3-4

²⁸¹² Regulation on quality assurance and quality development in higher education and tertiary vocational education 2010 [Forskrift om kvalitetssikring og kvalitetsutvikling i høyere utdanning og fagskoleutdanning]

Secondly, the educational programme must be equivalent to the Norwegian higher education. The evaluation of this consists of a comparison between the systems of education by NOKUT's professional board, and diplomas may be partially recognised if there are significant differences. Lastly, some specific criteria apply for the different study levels. For instance, a bachelor degree requires three years of higher education while a master's degree requires five years and a piece of independent work.

The procedure for recognising a foreign diploma of higher education is that an application firstly is sent to NOKUT. The professional board then gives information and advice to NOKUT, which will come to a conclusion. The applicant is then informed and may subsequently accept the potential offer.

9.2.3. Special procedures for vulnerable migrants

The Lisbon Recognition Convention article IV.2 states that the contracting parties can provide the holder of a higher education qualification issued in one of the other Parties to obtain an assessment of that qualification, as an alternative procedure to the procedure in IV.1 as described above. This provision is sought incorporated in NOKUT's UVD process for rejected applications, which is especially relevant for refugees and people with similar circumstances.²⁸¹⁴

The UVD process will be available after an initial application has been rejected, and the applicants will then go through an extensive process.

Firstly, NOKUT assesses language documentation and residence permits and if applicable, CV and work experiences. The applicant will then be interviewed by both NOKUT and a professional board in order to confirm that the information provided is likely to be accurate. The applicant will have to do both written and oral assignments in the process.

This will form the basis of the assessment, and the applicant will in the end be informed whether or not he or she holds the qualifications initially asserted.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1 The Right to Vote in National Elections

The right to vote in the Parliamentary election is regulated by the Election Act²⁸¹⁵ and is limited to Norwegian citizens. Thus, only migrants who have acquired Norwegian citizenship may vote in national elections.

²⁸¹³ NOKUT, <<http://www.nokut.no/no/Utdanning-fra-utlandet/NOKUTs-generelle-godkjenning/NOKUTs-kriterier/>>, accessed 01 September 2017

²⁸¹⁴ Ibid.

²⁸¹⁵ Act relating to parliamentary and local government elections 2002 [Valgloven]

The Act declares in section 2-1²⁸¹⁶ that you can vote if you are a Norwegian citizen who will have turned 18 years of age before the end of the election year, who has not lost the right to vote pursuant to Article 53 of the Constitution, and who is, or has ever been registered in the Population Register as resident of Norway.

Employees in the diplomatic corps or consular service and their households are entitled to vote even if they do not satisfy the residential criteria.

Article 53 of the Constitution regulates the loss of voting rights. The right to vote is lost to persons who is sentenced for criminal offences, in accordance with the relevant provisions laid down by the constitution, or who enters the service of a foreign power without the consent of the government.

10.2 The Right to Vote in Municipal and County Council Elections

Norway is a party to the Convention on the Participation of Foreigners in Public Life at Local Level, but declared that the convention would not apply to the territory of Svalbard. Section 2-2 of the Election Act supports the voting rights set forth in Article 6 of the convention.

In municipal and county council elections, the following persons are entitled to vote, cf. section 2-2 of the Election Act:

- everyone who is entitled to vote in the parliamentary elections, including those who are not Norwegian citizens, but who otherwise satisfy the requirements, provided that they are
- citizens of other Nordic countries (i.e. Denmark, Iceland, Finland or Sweden) who have turned 18 years of age by the end of the election year, and who have been registered in the Population Register as residents in Norway no later than June 30 in the election year, or
- other foreign citizens who have turned 18 years of age by the end of the election year, and 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.

Foreigners who have resided in Norway for more than three years may also be elected to the municipal or county council, cf. Election Act section 3-3.

²⁸¹⁶ Election Manual by the Norwegian Ministry of Local Government and Modernisation.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. National Citizenship

A national foreigner can apply for citizenship cf. Norwegian Nationality Act²⁸¹⁷ section 7, once he or she has been granted admission to the country cf. Immigration act chapter 2, upon application has been granted temporary residence permit in accordance with chapter 3 to 6, and upon application has been granted permanent residence permit cf. para 62.

The conditions that must be fulfilled at the time of the administrative decision, is that the applicant:

- *has provided documentary evidence of or otherwise clearly established his or her identity, cf. fourth paragraph.*

The identity includes name, time of birth and nationality, usually in the form of passport or other documentation with identification as purpose. The validity of the documentation must be highly probable²⁸¹⁸.

- *reached the age of 12,*

This right applies independently from the parents' citizenships, and releases parents who wish to keep their original citizenship to choose between the consideration of the child and him or herself. The right for the child is also important where one or both of the parents do not meet the conditions laid in this section. And it is also an advantage for children who study abroad to know they can return to Norway without fearing for their residence permit to laps.

- *is and will remain a resident of the realm,*

This can be difficult to prove; therefore, the applicant must indicate in the application whether he or she intends or is planning to travel abroad, and for what purpose. If the applicant, after being granted citizenship, travels abroad, it will not affect his or her citizenship, unless the intention was present at the time of the administrative decision.

- *fulfils the conditions for a settlement permit laid down in section 62 of the Immigration Act,*

This condition also reflected the connection to the Norwegian realm. As mentioned earlier, section 62 requires the applicant to have resided in the realm for 3 years. Thus, 3 years is sufficient period of residence to prove connection to Norway and grant permanent residence permit.

- *has spent a total of seven years in the realm in the last ten years, with residence or work permits of at least one year's duration, residence during one or more application-processing periods to be included in the seven-year period, cf. fifth paragraph,*

This is an objective consideration reflecting the necessity of the connection to the realm, and means that the actual residence, the subjective consideration, is not an issue, as long as the seven years residence is objectively fulfilled. If the applicant has stayed in the realm for a while and then travelled abroad, the different periods of residence shall be counted together. Because of

²⁸¹⁷ Act on Norwegian nationality 2005 [Statsborgerloven]

²⁸¹⁸ Preparatory work, Otprp. Nr. 41 (2004-2005) 85.

the evidential consideration, the Ministry decided that the calculation of the residence applies from the day residence or work permit of at least one year's duration was granted, but residence based on a permit given for less than one year is not calculated.

This regulation is stricter than the previous law, where actual residence was the main measure and not the legal residence²⁸¹⁹. Nevertheless, the new regulation makes it more predictable to the applicant to orient him or herself regarding the condition.

– *satisfies the requirement regarding Norwegian language training laid down in section 8.*

This condition is further elaborated under section 8, where 300 hours of Norwegian class is required.²⁸²⁰ This emphasizes the importance of Norwegian language and social studies.

– *has not been sentenced to a penalty or special criminal sanction, or has observed the waiting period cf. section 9, and*

According to section 9, a person who is sentenced to a penalty or special criminal sanction must undergo a waiting period. If the applicant was given a custodial sentence or a special criminal sanction, the waiting period shall be calculated from the end of the sentence or sanction. In the case of a suspended sentence of imprisonment, the waiting period shall be calculated from the expiry of the probation period. The waiting period shall otherwise be calculated from the date of the criminal act.

– *satisfies the requirement regarding release from another nationality laid down in section 10.*

This condition will be elaborated further under 11.2.

– *The applicant is not entitled to Norwegian nationality pursuant to the first paragraph if this is contrary to the interests of national security or to foreign policy considerations.*

According to the Department of Justice, this paragraph is rarely applied and is a narrow exception with a high threshold. It is more common that the application may be suspended until all circumstances are clarified.

If the applicant is granted citizenship, but later becomes a threat to the national security, citizenship cannot be reversed, unless the applicant knowingly has given incorrect information or failed to disclose matters of material significance to the administrative decision, which will make the administrative decision invalid.

If the applicant receives an expulsion decision due to national security in accordance with the Immigration Act section 126, cf. chapter 8, without having committed criminal offence according to Norwegian law, and the identification is not clear or the origin of country does not want to national foreigner to return, residence permit cannot be granted, thus citizenship will automatically be excluded cf. section 7 first paragraph d.

In the opinion of the Ministry, application for citizenship should be refused without awaiting the decision for permanent residence permit cf. Immigration Act section 62, when it is assumed that the interest of national security implies this.

Foreign policy consideration also includes other states' security. If, for instance, a national foreigner seeks refuge in Norway and applies for citizenship, while his or her origin of country

²⁸¹⁹ Preparatory Work, Otprp. Nr.41 (2004-2005) Chapter 8.7.

²⁸²⁰ Act on an introductory programme and Norwegian language instruction for newly arrived immigrant 2003 [introduksjonsloven] section 17.

wants the applicant extradited, it is politically unfortunate to treat both cases at once. The national foreigner can submit new application after the extradition case is finished.

Residence with permits that would have been given for a period of at least one year, but which were issued for a shorter period, cf. section 60, first paragraph, third sentence, of the Immigration Act, shall be taken into account when calculating residence time, cf. the Citizens' Act, Section 7, first paragraph, letter e, sections 11, 12, 15, 16, 17 and 18. The same applies to residence permits under the Immigration Act section 60, first paragraph fourth sentence, which forms the basis for permanent residence permit.

With this paragraph, the Ministry decided that the calculation of the residence applies not only from the day residence or work permit of at least one year's duration was granted, but also residence based on a permit given for less than one year.

Sections 7, 11, 12, 15, 16, and 17 regard minors at the age of 12, persons who are married to, a registered partner of, or cohabitant with, a Norwegian national, former Norwegian nationals and stateless persons. Section 18 regards particular groups of applicants, such as in the case of collective migration under the Immigration Act section 34.

Special conditions for refugees may not be set, although they cannot use the citizenship of their country of origin. Refugees in general are granted work and residence permit, asylum and travel documentation which provides a possibility to travel abroad except the origin of country. As refugees inhabiting in the realm, they shall receive consular service and a certain amount of diplomatic protection. Not granting refugees this special condition does not contradict The Council of Europe's Convention of 1997, because the proposed general terms of acquisition are sufficiently favourable to the requirements of the Convention.

The application for nationality shall be accompanied by a comprehensive certificate of good character issued by the police. The said certificate shall also show any offences for which the applicant has been charged or indicted.

The ministry stresses the importance of consequences for violating the country's law and regulations for access to citizenship, in order to prevent criminality. The violations apply to all forms of imprisonment, non-punishable respondents in accordance with criminal law, regardless of how long time it has been since the imposition. This deviates from the rule in section 6 of the Penal Registration Act,²⁸²¹ that certain circumstances are eventually omitted from the police certificate, but is necessary for the awaiting period under section 9 to be enforced, which requires all form of criminal offences and sanctions to be enlightened.

The ministry states that it can be perceived as very unfortunate in relation to the general sense of law if a serious crime committed by an unreasonable perpetrator has no consequences for his or her application for citizenship. The decision will be based on discretion, and the Ministry does not find an absolute barrier to citizenship, such as in Denmark, France, Austria and the United States, desirable.

In the case of severe reactions, one should consider postponing the right to citizenship for as long as it is not practically possible to receive Norwegian citizenship. If the offence is not imposed shortly after arriving in the country, and is not of a particular serious nature, the affaire should not lead to an addition to the ordinary residence period cf. section 9.

²⁸²¹ Act on the treatment of information in the police and prosecution authorities 2010 [Politiregisterloven]

11.2. Double nationality

The primary rule is that a national foreigner who applies for Norwegian citizenship must release him or herself from the original nationality cf. section 7 first paragraph g, which is further elaborated under cf. section 10.

The first paragraph of section 10 regulates the requirement for a solution depending on the possibility of being released of another citizenship. If the applicant cannot be released from any other nationality before the application is granted, the applicant must, within one year of being granted Norwegian nationality, document that he or she has been released from any other nationality. Some countries do not resolve their nationals before another citizenship has been granted, therefore this makes an exemption for applicants from these countries.

If the applicant cannot be released from any other nationality before reaching a certain age, the applicant must within one year after reaching this age document that he or she has been released from any other nationality. In the circumstance of section 7 first paragraph b the conditions for children are wider.

An exemption may be granted if release is deemed to be legally or practically impossible, or for other reasons seems to be unreasonable cf. section 19. This provision regards the fact that the applicant's home country does not resolve its citizens from citizenship, that the solution takes disproportionately long time, or that the solution fee is very high. The provision is not to be understood as a general dispensation act.

If release from any other nationality is not documented before the time limit expires, the provisions regarding revocation set out in section 26, first paragraph, shall apply. This paragraph confirms the primary rule under section 10 first paragraph.

However, this shall not apply if an exception is made from the requirement of release pursuant to section 10, first paragraph, fourth sentence. It would be unreasonable to revoke the citizenship if new circumstances have occurred after Norwegian citizenship is granted, but after the citizenship was granted.

If release from another nationality is documented after the expiry of the time limit prescribed in section 10, first paragraph, revocation may be waived unless special reasons warrant not doing so. This allows exception from recall in accordance with the provision in the first sentence, for cases where the solution is documented, but this is done after the one-year period in section 10.

Special reasons may warrant revocation. Such reasons may be, for example, that a person who have committed criminal offenses submit a release of former citizenship long after the one year period, in order to avoid revocation and possible expulsion from Norway. It must be presumed that renounced citizenship from his or her country will be submitted once a national foreigner applies for Norwegian citizenship, and not wait until a speculated expulsion case will be raised.²⁸²²

²⁸²² Preparatory work, Otprp. Nr.41 (2004-2005) 232.

An administrative decision regarding nationality may be revoked if it is possible to reverse it pursuant to section 35 of the Public Administration Act²⁸²³ or general rules of administrative law. This clarifies that invalid Norwegian citizenship can be revoked.

However, revocation of nationality that is based on incorrect or incomplete information may only be carried out if the applicant has furnished the incorrect information against his or her better judgment or has suppressed circumstances of substantial importance for the decision. Incorrect information being weighted in the decision that the applicant cannot be blamed for, cannot provide grounds for recall.

According to the provision, the decision shall be considered valid until it is revoked. However, the effect occurs from the original time of the acquisition date when the nationality is revoked due to invalidity. The person shall be considered to have never been Norwegian., and this paragraph is based on discretion. Subject to the first paragraph, the provision is not intended to be used as an exception provision. Statelessness does not preclude recall, but may be an important factor in the decision in accordance with the purpose of section 26.

The question of recall for children must be considered separately when the parents' citizenship is called back due to invalidity.²⁸²⁴

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Norway is not a part of the EU as per this report, and thus is not entitled to be a beneficiary of funds from the EU Asylum, Migration and Integration Fund,²⁸²⁵ or the European Social Fund.²⁸²⁶ Initiatives and measures regarding asylum and migration is funded mainly by the Norwegian State²⁸²⁷.

The Norwegian Directorate of Immigration,²⁸²⁸ is responsible for dealing with immigration to Norway and dealing with integration issues and migrants' needs. The Directorate implements programmes aimed at better integration of migrants. The programmes and the work of the Directorate is funded by the Norwegian State.

The Directorate funds and operates an Introductory programme, which most migrants are obliged by law to attend, according to the Act on an introductory programme and Norwegian language instruction for newly arrived immigrants, the Introduction Act²⁸²⁹ section 2. The programme aims at providing the migrants with fundamental skills in Norwegian language and

²⁸²³ Act relating to procedure in cases concerning the public administration 1967 [Forvaltningsloven],

²⁸²⁴ Preparatory Work, Otprp. Nr. 41 (2005-2005) 233.

²⁸²⁵ <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en>, accessed 13 September 2017.

²⁸²⁶ <<http://ec.europa.eu/esf/home.jsp?langId=en>>, accessed 13 September 2017.

²⁸²⁷ Officials in Bergen still claim funds are sufficient. Stated in meeting with Sølve Sætre, Special advisor on migrants and integration to Bergen Municipality, September 06 2017.

²⁸²⁸ The Directorate of Immigration (Norwegian: Utlendingsdirektoratet), agency subject to the Norwegian Ministry of Justice and Public Security.

²⁸²⁹ Act on an introductory programme and Norwegian language instruction for newly arrived immigrants 2003 [Introduksjonslova].

society, and prepare the migrants for employment in the labour market, or for education in Norway. The programme is adapted for every single individual, taking into consideration their preconditions, language skills and economic situation.

According to the Introductory Act, participation in the programme triggers the right to benefits, currently amounting to NOK 187 268²⁸³⁰ as of May 1 2017, about € 20 000, every year.

Further, the Directorate operates programmes to support employment for newly arrived migrants (i.e. «Jobbsjansen»). In addition, the Norwegian Labour and Welfare Administration, run several programmes for migrants. Several municipalities operate separate local programmes.²⁸³¹ Non-governmental organizations (NGOs) such as the Red Cross²⁸³², the Church City Mission²⁸³³ and the Salvation Army runs separate programmes with the same aim. NGO programmes are often applicable to apply for grants from the Directorate or municipalities to fund their work, or they could be self-funded. Some NGOs might be applicable to apply for support from EU programmes.

Conclusions

This paper shows that migration law in Norway is regulated by an extensive legal regime. As seen in section 2 of this report, the Immigration Act is the principal piece of legislation with regards to the formal, material and procedural immigration process. The Norwegian Directorate of Immigration is the central government agency, and both governmental and non-governmental organisations provide important additional guidance about migrants' rights in Norway, cf. section 4.

Furthermore, the legal areas described in this article are largely based on international conventions. The ECHR is of paramount importance, and as described in section 6, Norway is bound to comply with the case law of the ECtHR. Moreover, international conventions like the Refugee Convention are pivotal in ensuring equal treatment of migrants seeking refuge in the various state parties, cf. section 2.

International agreements also seem to have an increased importance for social and economic rights, such as health, cf. section 8, and education, cf. sections 9 and 10. The Norwegian government is, as we have seen, to a large extent seeking to make the enjoyment of these rights equal for citizens and immigrants, although some concerns are raised regarding the factual accessibility of the services, cf. section 7.

²⁸³⁰ Websites of the Norwegian Work and Welfare Administration, <<https://www.nav.no/no/NAV+og+samfunn/Kontakt+NAV/Utbetalinger/Grunnbeloep+i+folketrygden>>, viewed on 16 September 2017.

²⁸³¹ <<http://etablere.abutvikling.no/>>, viewed on 15 October 2017.

²⁸³² <<https://www.rodekors.no/tilbudene/aktiviteter-pa-asylmottak/>>, viewed on 15 October 2017.

²⁸³³ <<https://kirkensbymisjon.no/tiltak/dyrk-et-prosjekt-for-innvandrere-og-flyktninger/>>, viewed on 15 October 2017.

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Introduction

In recent years Europe had to face enormous flood of people not only escaping from the areas of conflict in the Middle East but also from states where the standard of living forced many families to seek better life within the borders of European states.

The primary concern of this research is to ascertain the situation of migrants in the Republic of Poland and how does it cope with the current situation in Europe. In this study authors tried to answer main concerns that had arose, that is what are the legal instruments existing in Polish law concerning migrants and what governmental bodies deal with the question of migrants? What are the statistics of migrants arriving to Poland? How does Poland implement the decisions of ECHR and recommendations of European Commission concerning migrants? How does Poland deal with the question of healthcare and education of migrants? Finally, the authors deal also with the question of political participation, citizenship and integration of migrants.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Ideological conditions

Willing to determine the moment that initiated the regulation of the international protection in the Polish legal system, one has to look into the axiology related to the concept of the protection of human rights. Europe was the birthplace of the ideology that united premises from the areas of politics, ethics, and philosophy and that valued highly the significance of freedom and dignity of an individual together with limiting the power of the state.

The present shape of human rights is established on the foundation that has been laid after World War II. They were then proclaimed as a manifesto for peace and strong renouncement of war. The axiological outline of this system was presented by the Charter of the United Nations and was further affirmed by the Universal Declaration of Human Rights. Those documents presented a vista on the human rights that in the following years transformed into an important pillar of the international public law. This transformation marked the beginning of the worldwide universalization of the human rights.²⁸³⁴

Human rights, understood as universal moral laws of a fundamental character,²⁸³⁵ were with time subjected to constitutional regulations in many countries, becoming a foundation of their legal systems — as was the case with Poland.

²⁸³⁴ Bartosz Liżewski, *Operacjonalizacja ochrony praw człowieka w porządku Europejskiej Konwencji Praw Człowieka* (Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2015) 49-55 [Polish].

²⁸³⁵ Wiktor Owsiatyński, *Prawa człowieka i ich granice* (Wydawnictwo Znak, 2011) 43 [Polish].

1.2. Constitution of the Republic of Poland from 1997.

1.2.1. Constitutional right to asylum in the light of international law

The question of the protection of foreigners in the domestic legal system was regulated already in the Constitution of the Republic of Poland from 1997. Article 56 (right to asylum) states the following:

Paragraph 1. Foreigners can use the right to asylum in the Polish Republic according to the rules defined by the statute.

Paragraph 2. A foreigner who comes to the Polish Republic seeking protection from persecution may be granted the status of a refugee according to the binding treaties signed by the Polish Republic.

Both those paragraphs refer to different legal acts. The rules governing the granting of an asylum, mentioned by the paragraph 1, are defined by a statute from the 13th of June 2003 about granting foreigners protection on the territory of the Polish Republic. Paragraph 2 does not point to any specific treaties and its style suggests that Poland has been bounded by treaties that regulated the question of granting foreigners with the status of a refugee even before the effective Constitution came into force. In fact, Poland was a side in the Geneva Conventions and the 1967 New York Protocol before 1997 — thanks to this knowledge we may assume that the law of the art. 56 paragraph 2 is a positive reference to those acts.²⁸³⁶ This vague mentioning of “binding treaties” allows for future signing of other treaties concerning international protection, without the need of interfering with the Constitution. This interpretation of the discussed law encompasses also European Union regulations (including art. 18 of the Charter of Fundamental Rights of the European Union, affirming the right to asylum, and art. 78 of the Treaty on the Functioning of the European Union, concerning the collaborative policy in the areas of protection and asylum).

Accepting this regulation results in establishing a constitutional law of the same standards as in the ratified treaties and in the European Union law making. The Constitution may not be limited by domestic statutes in any way that would be noncompliant with the treaties.²⁸³⁷

1.2.2. Exercising the constitutional rights and freedoms

From the perspective of foreigners, art. 37 of the Constitution describes another important regulation:

Paragraph 1. Those governed by the Polish Republic are free to exercise their rights and freedoms guaranteed by the Constitution.

Paragraph 2. Exceptions from this rule, regarding the foreigners, are defined by a statute.

In a democratic state of law the limitation of the foreigner’s rights may only take place in the areas of political and social rights.²⁸³⁸ In this case, the constitution does not exclude any of the

²⁸³⁶ Paweł Sarnecki, *Komentarz do art. 56 Konstytucji* ([in] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, tom 3, redakcja: Lech Garlicki, Wydawnictwo Sejmowe, 2013), 2 [Polish]

²⁸³⁷ Barbara Kowalczyk, *Polski system azylowy* (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2014), 55 [Polish]

²⁸³⁸ Krzysztof Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w konstytucji RP* (Wydawnictwo Wolters Kluwer Polska SA, 1999), 85 [Polish]

rights — it only signifies that possible exceptions in exercising the constitutional rights and freedoms may apply only to foreigners. Nevertheless, fundamental laws regarding the essence of the human dignity may not be limited in any way. Any limitations are acceptable only on the grounds of a democratic state of law, equality, and other constitutional rules.²⁸³⁹

1.3. Procedure for granting asylum

1.3.1 The asylum statute

The statute from the 13th of June 2003 about granting foreigners protection on the territory of the Polish Republic (further referred to as “the asylum statute”) foresees four ways of providing protection: granting the status of a refugee, granting complementary protection, granting asylum, granting temporary protection.

The first chapter of the third part of the asylum statute is devoted to granting asylum. Art. 90 of this statute allows for granting a foreigner with an asylum within the Polish Republic if such a step is necessary to protect him and if granting asylum is beneficial for the Polish Republic. For an asylum to be granted, a special form must be submitted with the following information:

- background information on an applicant and on a represented person, allowing for carrying on the proceedings;
- naming the home country of the applicant and of a represented person;
- describing the essential events that led to applying for an asylum.

The form for granting an asylum will not be considered if an applicant will not allow for being photographed and for sampling his fingerprints. If the applicant is currently abroad, he is obliged to attach his photography to the form — his fingerprints are then sampled after his arrival to the territory of the Polish Republic on the basis of a domestic visa issued for those applying for an asylum. If an applying foreigner is residing on the territory of Poland, the process of sampling his fingerprints and photographing him is organized by the commander of the Border Patrol unit that operates in the area of Warsaw.

While applying for an asylum, a foreigner may also submit a form for people for whom he provides (for a spouse, for unmarried children, for children born during the process of application). Applying in the name of others requires their written consent, which is equal in force to granting the applicant the authorization to represent others in the case of granting international protection.

With the exception of cases proceeded as urgent (details of these proceedings are defined by art. 39 of the asylum statute), the application process should not take more than six months from the day of submitting an application. In exceptional cases (with extraordinary levels of complicatedness, large number of applications submitted over a short period of time, tardiness on the side of an applicant), the process may be extended up to fifteen months.

The duties of an applicant over the course of proceedings regarding granting the international protection are detailed in art. 41 of the statute:

²⁸³⁹ Orzeczenie Trybunału Konstytucyjnego z dnia 15 listopada 2000 r. (sygn. P 12/99) [Polish]

- providing necessary information to define the actual state of affairs, especially regarding the applicant's age, his prior experiences that may influence the case, his identity, citizenship, relatives, countries and places of prior residence, prior applications for an asylum, routes he travelled and the causes for applying for international protection.
- sharing any evidence that prove the circumstances pointed out in the application form
- being present when summoned by the unit that carries out the proceedings in order to submit clarifications or to participate in an interview.

1.3.2. Administrative proceedings

Proceedings in the case of granting an asylum are conducted in accordance with the statute from the 14th of June 1960, The Code of Administrative Proceedings. Lex specialis regarding the general administrative proceedings is composed of the norms stated in the asylum statute and in the statute from the 12th of December 2013 about foreigners (regulating the questions of visas, entering and residing on the territory of Poland, leaving this territory, and applying detention). Nevertheless, those acts do not introduce essential modifications, they only adjust the procedure to the needs of proceedings regarding granting international protection. As is stated by Barbara Kowalczyk, such solution is rooted in the “character of an asylum as a form of protection limited to a single country, tied to the idea of a state's sovereignty that can't be regulated by and binding treaties”²⁸⁴⁰.

1.4. Officials responsible for the asylum procedure

The central unit of the state administration that is concerned with granting foreigners an asylum within the Polish Republic is the Head of the Office for Foreigners.²⁸⁴¹ Granting or denying asylum requires an approval of the minister responsible for foreign affairs. This requirement is justified by the possibility of a situation when granting someone with an asylum will affect the relations between the countries.

In the case of a negative decision on an asylum, the applicant may request re-examination of the application. Head of the Office for Foreigners is responsible for reconsidering the application. The person seeking protection subsequently has the possibility of setting up a case in the administrative court. It will follow the usual procedure provided for other proceedings in administrative court. The unfavorable decision does not close the way to apply for protection or another form of legalization of residence on other grounds.

The asylum law does not specify any reasons that could exclude the right to asylum. The only prerequisites, which should be guided by the decision are: the need to provide protection to the applicant and the important interests of the Polish Republic. This gives the discretion of responsible authorities. A person who has received asylum loses that right when he or she pursues an activity directed against the defense or the security of the State or the security and

²⁸⁴⁰ Barbara Kowalczyk, *Polski system azylowy* (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2014), 327 [Polish]

²⁸⁴¹ Szef Urzędu (Biuletyn Informacji Publicznej Urzędu do spraw Cudzoziemców) <<http://www.bip.udsc.gov.pl/szef-urzedu>>accessed 20 July 2017 [Polish]

public order. Depriving asylum also occurs when the reasons for which it was granted no longer exists²⁸⁴².

2. How does your national law regulate immigration from EU member states and non-EU states?

In Poland the difference between immigrants is mostly made on the basis of citizenship and nationality. As the EU member, Poland implements the law that promotes EU citizens over the third states' citizens. However, the family members of EU citizens are treated in a manner that rather resembles the regulations on EU citizens. Therefore, the family members of EU citizens who are not necessarily EU citizens as well as those who come from the EU would be presented in the part dedicated to the Immigration from EU Member States. For the purposes of EU citizens, their family members are defined as their spouse, ascendants and descendants as well as ascendants and descendants of their spouse.²⁸⁴³ The most popular Polish definition of the emigrant states it is the foreigner who for the economic reasons is heading voluntarily and legally to another country with the aim to temporarily or permanently locate its interest on this territory.²⁸⁴⁴

2.1. Immigration from EU Member States

A fundament of the immigration from EU Member States is surely the EU law.²⁸⁴⁵ The Polish basic implementation is an Act of July 14 2006.²⁸⁴⁶

2.1.1. Ground Rules of the Immigration from EU Member States

It is a well-known rule that anyone crossing the border should have a travel document. However, if the EU citizen or its family member cannot present travel documents or other documents confirming their identity, they may present another proof. What is essential is that these characteristics must raise no doubts as to their authenticity.

2.1.2. Admission into the Polish Territory

The EU citizen or the family member who is not EU citizen can be refused the entry into the Polish territory, when its entry to the register of the foreigners whose residence on the Polish territory is undesirable is in force; or its residence in Poland could constitute a threat to state

²⁸⁴² Barbara Kowalczyk, *Polski system azylowy* (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2014), 327 [Polish].

²⁸⁴³ Aleksander Maksimczuk, *Leszek Sidorowicz, Ochrona granic i obsługa ruchu granicznego* [2007] LEX [Polish].

²⁸⁴⁴ Izabela Wróbel, *Wspólnotowe prawo imigracyjne* 2008 LEX [Polish].

²⁸⁴⁵ Directive 2004/38/EC of the European Parliament and of the Council of April 29 2004 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.

²⁸⁴⁶ Act of July 14 2006 on Entry into the Polish territory, Residence and Departure from this Territory of the Citizens of the Member States of the European Union and their Family Members 2006, [Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin], hereinafter referred to as the Act on Entry, Residence and Departure.

defence or security, to the protection of safety and public order or to public health. The decision on the refusal of entry into the Polish territory is immediately enforceable. If the family member who is not EU citizen is refused the entry into the Polish territory basing on the arguments related to the security, the decision is accompanied by the decision on the annulment of the visa.²⁸⁴⁷

2.1.3. The Right of Residence

Without fulfilling any additional requirements, the EU citizen and the family member who is not EU citizen can reside in Poland up to 3 months. EU citizen who entered the Polish territory with the aim of searching for a job can reside for up to 6 months, unless it proves after this period that it actively continues to look for a job and has an actual chance to be hired.²⁸⁴⁸ During that time, EU citizen is obliged to have a valid travel document or other valid document proving his identity and citizenship; the family member who is not EU citizen is obliged to have a valid travel document.²⁸⁴⁹

The EU citizen has the right to reside for the period longer than 3 months if it is an employee or the person working at its own account on the Polish territory or is a spouse of the Polish citizen. The same applies to the EU citizens who have sufficient financial means to support themselves and their family members on the Polish territory so as not to create burden for the social assistance or who study or participate in vocational training in Poland and fulfil the insurance requirements. If the aim of the residence in Poland is to work, the EU citizen to whom the restrictions on access to the labour market apply, receives the right of residence for the period longer than 3 months after receiving a promise of the work permit on Polish territory.²⁸⁵⁰ It is worth to mention that the marriage is controlled on the basis of specific requirements for it to fulfil.²⁸⁵¹

The EU citizen that ceased to be an employee or the person working on its own account, maintains its right of residence if this situation is a result of the periodical inability to work caused by a disease or accident, it is the case of unwilling unemployment that is confirmed in the register of unemployed run by the employment office or the EU citizen undertakes education or vocational training. In some cases of unwilling unemployment, it is possible to obtain extension of 6 months of the right of residence.²⁸⁵² The right of residence either regular and extended covers the family member who joins the EU citizen or resides with it on the Polish territory. However, the right attributed to the EU citizen because of its studies or trainings is limited to its

²⁸⁴⁷ Art. 11 of the Act on Entry, Residence and Departure 2006. (Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin). [Polish]

²⁸⁴⁸ Aleksander Maksimczuk, Leszek Sidorowicz, *Ochrona granic i obsługa ruchu granicznego*, 2007 LEX [Polish].

²⁸⁴⁹ *Ibid.*, art. 15.

²⁸⁵⁰ *Ibid.*, art. 16.

²⁸⁵¹ Izabela Wróbel, *Wspólnotowe prawo imigracyjne* 2008 LEX [Polish], Art. 25 of the Act on Entry, Residence and Departure 2006.

²⁸⁵² Aleksander Maksimczuk, Leszek Sidorowicz, *Ochrona granic i obsługa ruchu granicznego*, 2007 LEX [Polish].

spouse and child remaining on its or spouse's maintenance who joins the citizen or resides with it in Poland.²⁸⁵³

In case of a divorce, marriage annulment, death or departure from Poland of the EU citizen who has the right of residence, its family member maintains the right of residence. The rules of how the family member who is not an EU citizen maintains the right of residence are specified in the act, with additional requirements. Additionally, in case of death or departure of the EU citizen with the right of residence, the child of the EU citizen residing and learning or studying in Poland and the parent who has the custody over it, regardless their citizenship, maintain the right of residence until the end of the child's education or studies. The same applies to the child of an EU citizen who was an employee on the Polish territory but did not maintain the right of residence if the child resides to learn or study on the Polish territory.²⁸⁵⁴

If the residence on the Polish territory is longer than 3 months, then the EU citizen is obliged to register its residence and the family member who is not an EU citizen is obliged to obtain a residence card of the family member of the EU citizen. This obligation does not concern the EU citizen who is searching for a job for 6 months or more if it proves that it still actively searches for the job and there is an actual chance that it will be hired. The family member who is not an EU citizen must have the residence card for the EU citizen's family member which confirms its right of residence on the Polish territory and authorizes with the valid travel document to cross the border multiple times without a visa. The residence card of the family member is valid for 5 years.²⁸⁵⁵

2.1.4. Permanent Residence

The EU citizen acquires the right of permanent residence after 5 years of uninterrupted residence on the Polish territory. The family member who is not an EU citizen acquires the right of permanent residence after 5 years of uninterrupted residence on the Polish territory with the EU citizen. The family members both who are and are not EU citizens and resided on the Polish territory for the uninterrupted period of 5 years and maintained the right of residence – acquire a right of permanent residence as well.²⁸⁵⁶ It is possible to be granted the right of permanent residence before the end of 5-year-long period of residence when the specific requirements for employees or persons working on its own behalf are satisfied.²⁸⁵⁷

The requirement of providing the work or other activity for profit on its own behalf and account in Poland in this regard is also fulfilled when it is provided in another member state. The specific unwilling absences or independent from the person are included in the period of work.²⁸⁵⁸

The right of permanent residence granted to an employee or a person working on its own account is obtained by its family member, regardless its citizenship. In case of death of its death before being granted the right of permanent residence, the family member who resided with it in

²⁸⁵³ Ibid., art. 17-18.

²⁸⁵⁴ Ibid., art. 19, 19a.

²⁸⁵⁵ Ibid., art. 20.

²⁸⁵⁶ Ibid., art. 40-42.

²⁸⁵⁷ Aleksander Maksimczuk, Leszek Sidorowicz, *Ochrona granic i obsługa ruchu granicznego*, 2007 LEX [Polish].

²⁸⁵⁸ Ibid., art. 45.

Poland on the day of its death obtains the right of permanent residence, regardless its citizenship.²⁸⁵⁹

The residence on the Polish territory is considered as undisrupted when temporary absences did not exceed 6 months a year in total. The exceed is allowed if the absence was for the compulsory military service or because of an important personal situation (especially pregnancy, childbirth, illness, studies, vocational training), delegation, which requires a residence outside Polish territory, under the condition that this period is no longer than 12 consecutive months. The residence is always disrupted by the decision on expulsion.²⁸⁶⁰

The permanent residence card of the family member of the EU citizen confirms its right of permanent residence on the Polish territory and authorizes it along with the valid travel document to cross the border without the visa. This card is valid for 10 years.²⁸⁶¹

2.1.5 Decision on Expulsion from Polish Territory

The EU citizen or its family member who does not have a permanent residence right can be expelled if their residence constitutes a threat to state defence or security or protection of security and public order or public health.²⁸⁶² If they have the permanent residence permit, the decision on expulsion can be issued if they pose a serious threat to state defence or security or protection of security and public order.²⁸⁶³ If the EU citizen resides in Poland for more than 10 years, the decision on expulsion can be issued only if the said threat is made through a threat to peace, humanity, sovereignty or defence of Republic of Poland or because of the terrorist activities.²⁸⁶⁴

The decision on expulsion of EU citizen or its family member orders to leave Polish territory within the time limit of no less than 31 days. If the level of threat requires it, in the decision on expulsion, it is ordered to execute it by force by bringing the EU citizen or its family member to the border of the country where it is expelled or to the airport or seaport of this country. In such case, the time limit can be shorter than 31 days. Moreover, the execution by force is ordered also when the EU citizen or its family member does not leave Polish territory within the set time limit.²⁸⁶⁵

2.2. Immigration from Non-EU Countries

The basic Polish law in this area is the Foreigners Act of December 12 2013.²⁸⁶⁶ It covers multiple areas of the situation of foreigners in Poland. The EU citizens are not considered

²⁸⁵⁹ Ibid., art. 46.

²⁸⁶⁰ Ibid., art. 47.

²⁸⁶¹ Ibid., art. 54..

²⁸⁶² Ibid., art. 66.

²⁸⁶³ Ibid., art. 67.

²⁸⁶⁴ Ibid., art. 68.

²⁸⁶⁵ Ibid., art. 71.

²⁸⁶⁶ The Foreigners Act of December 2013, [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach], hereinafter referred to as the "Foreigners Act".

foreigners in this act. The entire law in this matter is based on the citizen-foreigners dichotomy.²⁸⁶⁷

2.2.1. Ground Rules for the Immigration from the Countries outside the EU

Each foreigner who crosses the border is obliged to have a valid travel document, a valid visa or other valid document authorising him to enter the Polish territory and to reside at this territory, if it's obligatory and a permit to enter another country or permit to reside in another country if such permits are obligatory in case of transit passing.²⁸⁶⁸ Apart from the document obligations, foreigners that enter the territory of Republic of Poland are obliged to justify the aim and conditions of their planned residence, have and present on request documents confirming their insurance and sufficient financial means. The foreigner may present an invitation as a document confirming that it has financial means sufficient to cover the costs of the planned residence on the Polish territory, including the costs of accommodation and alimentation and to cover the costs of the return journey or accommodation and costs of transit to the third country that allows entry.²⁸⁶⁹ The Act consists of a detailed list of who an inviting person might be.

A national visa authorizes to enter the Polish territory and authorizes continuous residence on it or to the several residences on this territory that follow each other and totally lasts no more than 90 days during the validity of visa. The allowed aim of issuing the visa are listed in the Act.²⁸⁷⁰

The visa issued with the aim to execute work can be issued to the foreigner who presents the work permit or written statement of the employer about the intention to hire the foreigner if the work permit is not obligatory. It is issued for the period of the residence corresponding to the period indicated in the permit or statement but not longer than the period dedicated to this type of visa.²⁸⁷¹

2.2.2. Temporary Residence

The temporary residence permit is given on the foreigner's motion, if it fulfils the requirements determined basing on the declared aim of residence and the circumstances which are the grounds for the application justify its residence on the Polish territory for a period longer than 3 months. The temporary residence permits are given for the period indispensable to achieve the aim of the foreigner's residence on the Polish territory, but no longer than 3 years.²⁸⁷²

The temporary residence and work permit is granted when the aim of the residence is to execute work and the foreigner fulfils jointly the conditions regarding the insurance, earnings, accommodation, moreover, its new position cannot be occupied by the local labour market and its remuneration determined in the contract cannot be lower than the amount of remuneration for the comparable work for the same amount of time a week or on the comparable position.²⁸⁷³

²⁸⁶⁷ Dorota Pudzianowska, *Obywatelstwo w procesie zmian*, 2013 LEX [Polish].

²⁸⁶⁸ Art. 23 of the Foreigners Act 2013.

²⁸⁶⁹ Aleksander Maksimczuk, Leszek Sidorowicz, *Ochrona granic i obsługa ruchu granicznego* 2007, LEX [Polish].

²⁸⁷⁰ Art. 58 and 59 of the Foreigners Act 2013.

²⁸⁷¹ Aleksander Maksimczuk, Leszek Sidorowicz, *Ochrona granic i obsługa ruchu granicznego* 2007, LEX [Polish], Art. 64 of the Foreigners Act.

²⁸⁷² Art. 98 of the Foreigners' Act 2013.

²⁸⁷³ Art. 114 of the Foreigners Act 2013.

Except for the above-mentioned permits for temporary residence there are also specific temporary residence permits such as for studying, running business activity or conducting a scientific research. Each of them has a different procedure and the foreigners are granted various separate means of challenge. Cases must be analysed separately and then it might be assessed whether more detailed regulations apply. It causes problems for those who are not fluent in Polish and Polish law.²⁸⁷⁴

2.2.3. Permanent residence

The permanent residence permit is granted for the indefinite period, on the foreigner's application, if it is the child of the foreigner granted appropriate permit or Polish citizen who is under its custody in determined periods; if it has Polish origin and plans to reside and live on the Polish territory permanently; if it is married to Polish citizen for 3 years before filing the application and fulfils requirements of uninterrupted stay; if it is a victim of human trafficking and remained on the Polish territory for at least a year on the grounds of the temporary residence permit for victims of human trafficking before applying for the permanent residence permit, cooperated with the law enforcement authorities and justified its fears of returning to its country of origin; if it stayed in Poland for uninterrupted period of at least 5 years basing on its refugee status, supplementary protection or permit for humanitarian reasons; if it stayed on Polish territory for at least 10 years on the grounds of the tolerated residence permit in cases specified in the act²⁸⁷⁵; if it was granted an asylum on Polish territory or if it has a valid Pole Card and it intends to live on the Polish territory.²⁸⁷⁶

It is checked whether granting the permanent residence permit would not constitute a threat to the state defence or security or protection of security and public order. Moreover, if the basis for the application is marriage with the Polish citizen, its authenticity is also verified.²⁸⁷⁷

The residence of the foreigner that is the basis to grant the permanent residence permit is considered as uninterrupted if none of the absences was longer than 6 months and all absences in total did not exceed 10 months unless the absence was caused by professional or studying reasons, special personal situation or accompanying the foreigner: by its spouse or a minor child.²⁸⁷⁸

The main difference between the foreigners who obtained the permanent residence permit and citizens is that only the permanent residence permit may be retracted or annulled by the administrative decision.²⁸⁷⁹

2.2.4. Decision on Obligating the Foreigner to Leave Polish Territory

Each foreigner is obliged to leave Polish territory before the expiry of the time period for which it is authorized to stay in Poland. Moreover, the foreigner is obliged to leave Polish territory

²⁸⁷⁴ Patrycja Joanna Suwaj, Jan Zimmermann (ed.), *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, 2013 LEX [Polish].

²⁸⁷⁵ Art. 351 of the Foreigners Act 2013.

²⁸⁷⁶ Art. 195 of the Foreigners Act 2013.

²⁸⁷⁷ Art. 205 and 208 of the Foreigners Act 2013.

²⁸⁷⁸ Art. 195 of the Foreigners Act 2013.

²⁸⁷⁹ Dorota Pudzianowska, *Obywatelstwo w procesie zmian*, 2013 LEX [Polish].

within 30 days from the day of the refusal to extend the visa, to grant temporary or permanent residence permission, EU long-term resident permission or of the withdrawal of these permissions. The same applies to the refusal to grant a refugee status or supplementary protection or deprivation of these rights and withdrawal of the permit for humanitarian reasons.²⁸⁸⁰

The basis for the decision obliging the foreigner to leave Poland would be, among others, residing on Polish territory without a valid visa or any other valid documents authorizing its stay, not leaving Polish territory after the authorized time for residence, working without the obligatory work permit, not having sufficient financial means to cover the costs of residence in Poland, return journey or transit, crossing the border contrary to the law, further residence of the foreigner in Poland would constitute a threat to public health.²⁸⁸¹

The decision determines the time limit for voluntary return of between 15 and 30 days from the day of delivery of the decision. This time limit is not set if there is a possibility of foreigner's escape or it is required by the state defence or security reasons or protection of safety and public order. If the decision does not have the time limit, it is immediately enforceable.²⁸⁸²

If the foreigner does not leave Polish territory within the determined time limit, the time limit was not set or after the decision was issued: the possibility of the foreigner's escape occurred or further residence constitutes a threat to state defence or security or protection of security and public order, the decision is due to the execution by force. The execution by force is made by bringing the foreigner to the border or to the airport or seaport of the country of destination.²⁸⁸³

Summing up, it is noticeable that the regulations regarding EU and non-EU citizens vary in Polish legal system. It is easier to enter Polish territory being EU citizen or its family member and the conditions of their expulsion are milder. Finally, it should be noted that all the decisions described in this part can be appealed to the higher instance of the administrative hierarchy and then can be subject to the judicial review. However, the issuance of visa by consuls is excluded from the judicial review which was questioned before the CJEU and, depending on the judgement, it might change in the near future.²⁸⁸⁴

²⁸⁸⁰ Art. 299 of the Foreigners Act 2013.

²⁸⁸¹ Art. 302 of the Foreigners Act 2013.

²⁸⁸² Art. 315 of the Foreigners Act 2013.

²⁸⁸³ Art. 329 of the Foreigners Act 2013.

²⁸⁸⁴ See: Opinion of Advocate General of September 7 2017, Case C-403/16, Soufiane El Hassani v Minister of Foreign Affairs, ECLI:EU:C:2017:659.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Office for Foreigners

The agency that plays a vital role in Poland is the Office for Foreigners. It was established in 2007 in place of the Office for Repatriation and Foreigners. Presently art. 8 of the Statute from the 12th of December 2013 about foreigners²⁸⁸⁵ is the basis on which the Office is operating. This Statute defines the Office to be a part of the public service through which the Head of the Office for Foreigners executes his statutory assignments. Among those, outlined in the art. 6 of the above mentioned statute, is monitoring foreigners entering the territory of the Polish Republic, their transit through this territory, their residence, exit, bestowing them with the status of a refugee²⁸⁸⁶, providing them with supplementary protection, accepting their residence due to humanitarian reasons, granting them a tolerated residence permit, providing them with asylum, or granting them temporary protection. The work of Head of the Office for Foreigners is supervised by the Minister responsible for the internal affairs, currently the Minister of the Interior and Administration²⁸⁸⁷. The Office is operating on the basis of its by-law that was appended to the Minister's of the Interior and Administration Executive Order number 1, decreed on the 5th of January 2017 in order to proclaim the by-law of the Office for Foreigners.²⁸⁸⁸ It divides the Office onto organizational cells that operate under the direct command of the Head of the Office for Foreigners. The detailed scope of the tasks undertaken by the organizational cells of the Office and the way in which they are organized is defined by the Executive Order number 4, decreed by the Head of the Office for Foreigners on the 6th of March 2017 in order to establish the organizational design of the Office for Foreigners.²⁸⁸⁹

3.2. Council for Refugees' Affairs

Council for Refugees' Affairs belongs to the public service operating under art. 89p of the Statute from the 13th of June 2003 about granting foreigners protection on the territory of the

2885 The Statute from the 12th of December 2013 about foreigners 2013, [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach].

2886 The Statute from the 12th of December 2003 about granting foreigners protection on the territory of the Polish Republic 2003, [Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej].

2887 <<https://www.mswia.gov.pl/pl/ministerstwo/kierownictwo>> accessed 15 November 2017 [Polish].

2888 Executive Order number 1, decreed on the 5th of January 2017 in order to proclaim the by-law of the Office for Foreigners 2017, [Zarządzenie nr 4 Szefa Urzędu do Spraw Cudzoziemców z dnia 6 marca 2017r. w sprawie ustalenia regulaminu organizacyjnego Urzędu do Spraw Cudzoziemców].

2889 Executive Order number 4, decreed by the Head of the Office for Foreigners on the 6th of March 2017 in order to establish the organizational design of the Office for Foreigners, 2017, [Zarządzenie nr 4 Szefa Urzędu do Spraw Cudzoziemców z dnia 6 marca 2017r. w sprawie ustalenia regulaminu organizacyjnego Urzędu do Spraw Cudzoziemców].

Polish Republic.²⁸⁹⁰ Council's task is to hear appeals and complaints about the decisions made by the Head of the Office for Foreigners in cases regarding granting the status of a refugee. What is more, Council is the organ of the public administration that recommences legal action, cancels, changes, or declares as invalid its own decisions and resolutions. Moreover, the Council deals with gathering information on the home countries of foreigners or cooperation with other agencies working in the area of migration and refugees. The by-law of the Council for Refugees' Affairs is granted by the Prime Minister, who also appoints and recalls Council's members.

3.3. Voivode

Polish Republic consists of 16 voivodeships — in each of those operates a Provincial Office, headed by a voivode who is a subject executing the goals of the public administration on the level of a single province. He is a representative of the Council of Ministers, called on the basis of the Statute from the 23rd of January 2009 about voivodeships and public administration of the level of a voivodeship.²⁸⁹¹ Voivodes are appointed and recalled by the Prime Minister at the request of the Minister responsible for the internal affairs, currently the Minister of the Interior and Administration. Because of this fact, the supervision and control over a voivode is exerted by the Prime Minister and an appropriate minister. The complete scope of a voivode's duties is derived from individual statutes. For example, the Statute from the 12th of December 2013 about foreigners states that a voivode's duty is to issue or deny temporary residence permits, and to issue special foreigner's documents such as a permanent residence card, a Polish traveling permit for a foreigner, and a document asserting one's right for a tolerated residence, called "permit for tolerated stay". Voivode's additional competences arise from the Statute from the 28th of July 2011 about legalizing the residence of some of the foreigners on the territory of the Polish Republic and about altering the statute about granting foreigners protection on the territory of the Polish Republic and about foreigners.²⁸⁹² He may issue permissions for residence for a definite stay for those foreigners, who illegally reside on the territory of the Polish Republic, or deny them. In case of denying a permission, a foreigner is allowed to appeal from this decision to the Head of the Office for Foreigners. Because of a broad scope of a voivode's duties in the area of foreigners' rights, Provincial Offices were equipped with special Departments for Citizen's and Foreigner's affairs. For example in the Małopolskie Voivodeship the Department for Citizen's and Foreigner's affairs was created on the basis of the by-law of the Małopolska Provincial Office in Cracow stated by the Małopolskie Voivode in an Executive Order.²⁸⁹³

2890 Statute from the 13th of June 2003 about granting foreigners protection on the territory of the Polish Republic 2003, [Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej].

2891 Statute from the 23rd of January 2009 about voivodeships and public administration of the level of a voivodeship 2009, [Ustawa z dnia 23 stycznia 2009 r. o wojewodzie i administracji rządowej w województwie].

2892 Statute from the 28th of July 2011 about legalizing the residence of some of the foreigners on the territory of the Polish Republic and about altering the statute about granting foreigners protection on the territory of the Polish Republic and about foreigners 2011, [Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach].

2893 Executive Order (nr pos. 32/16) from the 8th of February 2016 about granting Małopolska Provincial Office in Cracow its by-law (Dz. Urz. Woj. Małopolskiego poz. 2074) 2016, [Zarządzenie Wojewody Małopolskiego z dnia

3.4. Consul

A consul is described as a Polish official operating outside the borders of the Polish Republic. Art. 1 of the Statute from the 25th of June 2015 about the consular law²⁸⁹⁴ outlines the basic scope of the duties of a consul. Among those duties lies protecting the interests of both the Polish Republic and its citizens living abroad, strengthening the bond between the Polish Republic and its citizens (together with the people of Polish descent living in the receiving country), and supporting the economical, scholar, scientific, and cultural cooperation between the Polish Republic and the receiving country. In their dealings, consuls respond directly to the Minister of Foreign Affairs. Art. 18 of the above mentioned statute enumerates a more detailed spectrum of a consul's duties. They are mostly concerned with sustaining the relationships with the receiving country and caring for the interests of Polish citizens living abroad. Nevertheless, this spectrum is not limited and may be broadened by specific competences granted through individual statutes. Even art. 21 of the above mentioned statute introduces the possibility for European Union's citizens to receive the help of Polish consuls as if they were Polish citizens. According to art. 66 of the Statute from the 12th of December 2013 about the foreigners, a consul is responsible for issuing or denying a Polish visa. This document, according to the art. 59 of the above mentioned statute allows for entering the territory of the Polish Republic and staying there (during one or many spells) for a total maximum number of 90 days during the validity of a visa. Consul is a characteristic subject in light of foreigners and migrants, as he permanently resides outside of the state's borders and, in a way, performs the selection of individuals who express a will to arrive to the territory of the Polish Republic. Nonetheless, he is not concerned with the stay of foreigners in Poland or their particular rights.

3.5. Border Guard

According to art. 1 paragraph 1 of the Statute from the 12th of October 1990 about the Border Guard²⁸⁹⁵, this unit is defined as a formation created to protect the state border, to control the movement across the border, and to counteract illegal migration. It is within their competences to enforce the law regarding the foreigners entering the territory of the Polish Republic, to recognize, analyze, and combat migrational dangers, such as the criminal side of the illegal migration. Border Guard is also obliged to cooperate with subjects and organs dealing with granting foreigners permits for entering or staying in the Polish Republic — this cooperation encompasses executing legal actions requested by those subjects and organs, for example issuing permissions for crossing the state border such as visas.

8 lutego 2016 r. w sprawie nadania Statutu Małopolskiemu Urzędowi Wojewódzkiemu w Krakowie], altered by: - executive order (nr. pos. Rej. 474/16) of the Małopolska Voivode from the 18th of November 2016 altering the executive order about granting Małopolska Provincial Office in Cracow its by-law 2016, [Zarządzenie Wojewody Małopolskiego z dnia 18 listopada 2016 r. zmieniające zarządzenie w sprawie nadania Statutu Małopolskiemu Urzędowi Wojewódzkiemu w Krakowie].

2894 Statute from the 25th of June 2015 about the consular law 2015, [Ustawa z dnia 25 czerwca 2015 r. Prawo konsularne].

2895 Statute from the 12th of October 1990 about the Border Guard 1990, [Ustawa z dnia 12 października 1990 r. o Straży Granicznej].

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Growing number of economic immigrants

Poland is becoming a place for more and more immigrants. The number of aliens who have a residence permit has exceeded 300,000 this year. Most of them are citizens of the neighboring countries of Poland, culturally close; Ukrainians and Belarusians. This group includes economic immigrants as well as refugees looking for asylum on the Polish territory.

In the first half of this year, foreigners paid 89,000. applications for a residence permit in Poland. That's up by 42%. compared with the first half of last year, and compared with 2015 - by 87%. Interestingly, the overwhelming majority is seeking legalization for a temporary stay, and only 11 percent of applications are for permanent residence.

The immigration of Ukrainians to Poland and the fact that most of them are no longer evidence of the circulation of these immigrants. The growing tendency of its causes lies in the difficult economic situation of Ukrainians, which is the result of the economic crisis in Ukraine and the ongoing war since 2014. Most of them come to Poland for a few months, often working illegally, and the money they send to their families in their home country. Together, they sent in their homes 5 billion dollars (1.16 billion euros) in their homes.^{4.3} Refugees seeking protection in Poland.

The number of refugees in Poland, which in various forms received protection of the Polish state, is 5534 persons.

By the end of the first half of 2017, over 3,000 people applied for international protection, a decrease of 60% over the previous year. These conclusions do not come from the newcomers arriving in Europe from the Middle East or North Africa, but from the former Soviet Union. As many as 71 percent of these requests were made by representatives of the Chechen minority fleeing the authoritarian rule of the Kadyrov regime. What is regrettable, only 8% of all asylum applications received a positive decision.

4.2. Educational Immigration to Poland

Currently there are 57,199 foreign students studying in 157 countries, representing 4.1% of all students. And again worth pointing out, most of them are Ukrainians (53 percent of all foreign students). Representatives from Belarus, Spain, Sweden and Norway are also followed.

4.3. Characteristics of migration to Poland

Poland is a place of migration mainly of representatives of countries neighboring Poland. This is due to the poor economic situation of these states and sometimes war or persecution as in the case of Ukraine or the Chechens. It is also characteristic that a large number of these people do not apply for legalization of permanent residence, but immigration is a temporary solution for

the domestic budget. Poland is also becoming more and more attractive for groups of students who want to study on the Vistula. The overwhelming majority are European students, and only a handful of them are Asian students.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Main body

The question of migrants applying for asylum or for international protection is not a new issue for Poland. Yearly thousands of foreigners apply for the migrant status in Poland. The record year was 2013, where over 15 thousand applications were filed. However, since numerous conflicts emerged ex. in Syria the flow of migrants in Europe increased significantly. Still, one of the biggest groups of migrants that arrive to Poland are refugees from Chechnya.

5.1.1. Implementation of European Court of Human Rights' decisions.

The obligation of the members of the Council of Europe to implement the judgements of the European Court of Human Rights stems from Art. 46 of European Convention on Human Rights.²⁸⁹⁶

In 2007 Polish Prime Minister established a special interministerial Committee for matters of the European Court of Human Rights, which deals with the execution of Court's judgements in respect of Poland.²⁸⁹⁷ Committees' tasks are drafting governmental official position in regard to individual complaints and decisions made by the ECHR. What is more, the Committee analyses parliamentary bills in context of their compliance with the convention and also formulates proposals of appropriate actions that should be made by Poland.²⁸⁹⁸

In February 2014 Polish Parliament as one of the first in Europe decided to constitute a permanent subcommittee for the enforcement of the European Court of Human Rights' judgements by Poland which was widely approved by the Council of Europe.²⁸⁹⁹

5.2.2. Terespol border crossing

The main passage for migrants is Terespol border crossing. In this year, a Chechnyan refugee was seeking asylum in Poland. He attempted to submit an asylum application 27 times, however

²⁸⁹⁶Article 46 of European Convention on Human Rights 1950.

²⁸⁹⁷Ministry of Foreign Affairs of the Republic of Poland, Poland and the European Court of Human Rights <http://www.strasbourg.mfa.gov.pl/en/poland_in_the_council_of_europe/poland_and_the_european_court_of_human_rights/?printMode=true>accessed 15 November 2017.

²⁸⁹⁸Ministry of Foreign Affairs of the Republic of Poland, Wykonywanie orzeczeń Europejskiego Trybunału Praw Człowieka <http://www.msz.gov.pl/pl/polityka_zagraniczna/europejski_trybunal_praw_czlowieka/wykonywanie_orzeczen_europejskiego_trybunalu_praw_czlowieka/>accessed 15 November 2017.

²⁸⁹⁹Helsińska Fundacja Praw Człowieka, Apel o powołanie sejmowej podkomisji ds. Wykonywania wyroków ETPC <<http://www.hfhr.pl/apel-o-powolanie-sejmowej-podkomisji-ds-wykonywania-wyrokow-etpc/>>accessed 15 November 2017.

the Polish Border Guard refused in every case to grant him international protection.²⁹⁰⁰ On 8th June in the morning the foreigner's attorney Sylwia Grzegorzczuk-Abram sent documents to the ECHR confirming that he was tortured and persecuted in his home country. In that situation ECHR used interim measures which are considered as 'urgent measures' and apply only where there is 'an imminent risk of irreparable damage'.²⁹⁰¹

The Court's decision came to Polish Ministry of Foreign Affairs within hours. Polish Border Guards ignored the Court's order and sent him back to Belarus. A day later, the Chechnyan made another attempt to cross the Polish border, now equipped with the ECHR decision. The Border Guard also this time refused him to enter Poland. What is more, they took from him the decision of the ECHR. Polish Ministry of Foreign Affairs claim that the Chechnyan refugee did not fulfil conditions required for applying for the asylum since he was escaping the Chechnyan law authorities.²⁹⁰²

What is more, the Ministry claims that the refugee did not cross the Polish border, so he could not be expelled from the country. Contrary to that claim, Grzegorzczuk-Abram claims that since the Polish authorities, that is the Border Guard, handled his case, the Chechnyan was under Polish jurisdiction. Thus, Polish authorities violated article 2.1 of ICCPR and Article 1 of the ECHR Convention.

The decision made by Polish authorities is harshly opposing to non-refoulement principle enshrined in Article 33 of 1951 Geneva Convention which prohibits expulsion or returning of a refugee 'where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'²⁹⁰³. What is more, such actions constitute violation of Article 34 of the European Convention on Human Rights. HFHR also points that 'the behaviour of the Border Guard officers working at the Terespol station, who refused to receive the foreigner in Poland despite having been ordered to do so by the ECtHR, may also be treated as an abuse of a public official's powers, the offence under Article 231 of the Polish Criminal Code'²⁹⁰⁴. Undoubtedly, Polish authorities acted contrary to the ECHR decision *S.H. v. United Kingdom* and *M.S.S. v. Belgium and Greece*²⁹⁰⁵ from 2011 where

²⁹⁰⁰ Ludmila Anannikova, *Prawa człowieka nie dla czeczeńskiego uchodźcy. Nawet trybunał praw człowieka nie ma wpływu na Polskę*, <<http://wyborcza.pl/7,75398,21947892,prawa-czlowieka-nie-dla-czeczenskiego-uchodzcy-nawet-trybunal.html>>accessed 15 November 2017.

²⁹⁰¹ ECtHR, *Mamatkulov and Askarov v. Turkey* (GC), 4 February 2005, Application No. 46827/99 and 46951/99 para. 104.

²⁹⁰² Ludmila Anannikova, *Prawa człowieka nie dla czeczeńskiego uchodźcy. Nawet trybunał praw człowieka nie ma wpływu na Polskę*, <<http://wyborcza.pl/7,75398,21947892,prawa-czlowieka-nie-dla-czeczenskiego-uchodzcy-nawet-trybunal.html>>accessed 15 November 2017.

²⁹⁰³ The UN Refugee Agency, *Convention and Protocol Relating to the Status of Refugees*.

²⁹⁰⁴ Helsińska Fundacja Praw Człowieka, *Attorneys at border: Poland failed to implement ECtHR judgment*, <<http://www.hfhr.pl/en/attorneys-at-border-poland-failed-to-implement-ecthr-judgment/>>Accessed 15 November 2017.

²⁹⁰⁵ ECtHR - *M.S.S. v Belgium and Greece* [GC], Application No. 30696/09.

in both cases the Court stated that sending back a person seeking for asylum to the state of origin where a person would be persecuted clearly violates provisions set in ECHR Convention. Recently an analogous situation occurred on the Terespol border crossing. The Helsinki Foundation for Human Rights has filed a submission to the European Court of Human Rights to apply interim measures regarding the situation of three Syrian refugees who were applying for international protection on the border crossing in Terespol. The border guards refused to grant a passage to Poland, despite the fact that under European law refugees escaping from the area of conflict have rights to obtain help in Poland. On 20th July the ECHR decided to apply the interim measures and urged Poland authorities not to send them back to Belarus. Regardless of that, the border guards refused three Syrians to enter Poland and had them sent back to Belarus. This burning problem was also highlighted by Amnesty International, Helsinki Foundation for Human Rights and Human Rights Watch who declared that 'The European Commission should take actions against Poland sending back to Belarus people seeking for international protection.' In their assessment, actions taken by Polish authorities violate human rights, EU law and decisions made by ECHR.²⁹⁰⁶ Human rights organisations raise that since the year 2016 Polish authorities are impeding the entrance of migrants and are sending them back to Belarus, in which there is no protection mechanism. Migrants from Chechnya and other Central Asia states are then sent to countries from which they've fled, thus they are endangered of torture and inhumane treatment in their home countries.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

According to the recommendations of Polish Commissioner for Human Rights which were stipulated in his statement to Prime Minister 5th of October 2015 r., Polish authorities should focus on encouraging migrants to stay in Poland, not to treat it as 'transit state'. They should provide them opportunities for integration with Polish society as well as possibility to learn Polish, open educational paths and enable professional career. Poland should create kind of attitude towards migration issues which is recognized as 'Culture of Receiving'. Together with recommendations of the European Commission against Racism and Intolerance it formulates kind of 'map' for Polish authorities responsible for preparations and implementations of migration policy. Cooperation between public and local authorities, civic society and of course migrants itself is necessary to fulfil these recommendations.

One of the most important issues concerning migration policy is integration of migrants with local society. Refugees centres in Poland are located outside the cities, far from the cultural

2906

Amnesty International, Polska: UE powinna zająć się problemem odsyłania uchodźców na Białoruś <<https://amnesty.org.pl/polska-ue-powinna-zajac-sie-problemem-odsylania-uchodzcow-na-bialorus/>> accessed 15 November 2017.

centres, universities and work places. Integration cannot be effective in such circumstances. Consequently they are excluded from the society, they experience troubles with creating relations with locals, learning Polish language and entering into labour market. What is more, they do not have the possibility to experience Polish culture and traditions.

European Court of Justice, in the case *Saciri* C-79/13 (ECLI:EU:C:2014:103), highlighted the fact that financial support must be sufficient to ensure worthy level of live and appropriate for health situation of a person. Referring to the Court of Justice recommendations, Commissioner for Human Rights demands that the level of financial support should be adapted to individual needs as well as renting and living costs. There is Individual Integration Program in Poland which lasts one year however surviving with the budget (from 420 PLN to 1149 PLN per month) provided by Polish government through this program is practically impossible, especially for the foreigner who does not have anybody to support him, does not know the language and very often has traumatic past. The reality force numerous of them to seek for illegal jobs and live in flats with very low standard. European Commission against Racism and Intolerance additionally recommended that Polish authorities should increase the length of the individual integration programmes for persons under international protection so as to be able to 'resolve the problems of language proficiency and acquisition of the basic skills needed to find employment'.²⁹⁰⁷ According to numerous specialists and non-governmental organizations, one year given is not enough to achieve three main aims of Individual Integration Program which are: learning Polish language, finding well paid job and becoming economically independent and integrating with Polish society. However Polish government did not decide to change neither the length of the program nor amount of money. Worth mentioning is also the lack of social workers who could provide effective individual integration support to achieved above mentioned aims.

Difference between the theory coming from recommendations of the European Commission against Racism and Intolerance and of Polish national human rights bodies is also visible in the access to labour market for migrants. People who obtained refugee status in Poland can work without any specific permission under the same conditions as Polish citizens. Equality in access to labour market should mean also equality in access to mechanisms of employers' protection. One of the most important rules stipulated in Polish Labour Code is prohibition of discrimination. Theoretically this rule is applicable to all employers and means that they should be treated equal, regardless of their sex, religion, origin, colour of the skin etc. but also regardless of the fact if they are migrants or Polish citizens. However it applies only to employment contracts but not temporary ones, the protection of migrants is only theoretical. Precarious agreements are still used much more often in relations with migrants, especially these coming from low income states. Numerous employers are afraid of hiring foreigners because of language barrier and cultural differences. The reason of such situation can be also low legal awareness in this topic. A huge negligence is visible from the side of government but also local authorities who seem disregard refugees living in their administrative districts and not to consider them as equal citizens. In consequence they neither consider them as potential employers nor provide any

²⁹⁰⁷ European Commission against Racism and Intolerance, Raport on Poland, 2015, § 77.

professional training or activation offer for them - there is lack of practical courses that would make their integration process easier. Centres of Family Aid in Warsaw and Lublin are two exceptions that are worth mentioning. The situation that repeats very often is that the majority of responsibility of national and local authorities is transferred to non-governmental organizations that provides language courses, professional and legal consulting services etc. This is for sure not the optimal situation and some legal changes must be undertaken.

Apart from formal issues with integration, migrants experience many problems of social nature. There is lots of negative opinions about migrants in the mentality of Polish society, mainly provoked by false information in media. Lack of strategic approach to this issue prolong their integration process, make it harder and more complicated.

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Subjects Entitled to Healthcare Benefits Financed from Public Funds.

The right to access healthcare financed from public funds is regulated in the Article 2 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds (Dz.U. 2004 nr 210 poz. 2135). According to the Act the subjects entitled to this benefits are persons covered by general health insurance and persons other than those covered by general health insurance which have their place of residence in the territory of Republic of Poland or have been granted a refugee status or supplementary protection or a temporary residence permit. The permit must be granted in conjunction with being in the territory of Republic of Poland or being in this territory in order to reconnect with a family and are members of the family of a foreigner residing in the territory of Republic of Poland in connection with granting him a refugee status or supplementary protection. Also they have to meet the income criteria from the Article 8 of the Act of 12 March – On Social Assistance (Dz.U. 2004 nr 64 poz. 593) and do not apply under the circumstances underlined in the Art. 12 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds on the same terms and within the limits set for those covered by insurance. There are also two special categories that are entitled to this benefits. First one are persons other than those previously described which are under 18 years old and have Polish citizenship or have a place of residence in the territory of Republic of Poland and have been granted a refugee status or supplementary protection or a temporary residence permit in conjunction with being in the territory of Republic of Poland or being in this territory in order to reconnect with a family and are members of the family of a foreigner residing in the territory of Republic of Poland in connection with granting him a refugee status or supplementary protection. Second category are persons other than those previously described that have a place of residence in the territory of Poland and are in the period of pregnancy, childbirth or puerperium and have Polish citizenship or have been granted in the Republic of Poland a refugee status or supplementary protection or a temporary residence permit in conjunction with being in

the territory of Republic of Poland or being in this territory in order to reconnect with a family and are members of the family of a foreigner residing in the territory of Republic of Poland in connection with granting him a refugee status or supplementary protection.²⁹⁰⁸

7.2. Categories of Subjects Covered by General Health Insurance.

The category of subjects covered by general health insurance has many subdivisions. Some of them grant the access to healthcare benefits financed from public funds to migrants that meet specified requirements on the basis of international agreements and special institutions. Subjects are divided into two main groups.

First main group are persons covered by general health insurance. These are persons that have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states. They also have to reside on the territory of one of the European Union member states or one of the European Free Trade Association member states. Another category covered by Polish general health insurance are persons that do not have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states that stay on the territory of the Republic of Poland on the basis of visa to work, temporary residence permit (with exclusion of permits granted upon the obligation to appear personally before a judicial body, extraordinary personal circumstances that require the presence of a foreigner on the territory of the Republic of Poland or matters of Republic of Poland that require the presence of a foreigner on its territory²⁹⁰⁹), permanent residence permit, residence permit of a long-term resident of the European Union, permission to stay for humanitarian reasons or permission for tolerated stay. Next three groups covered by Polish general health insurance are persons that have been granted by the Republic of Poland a refugee status, complementary protection or are using temporary protection on its territory, persons that do not have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states that legally reside on the territory of European Union member state or European Free Trade Association member state (with exclusion of the Republic of Poland if they are a subject to the obligatory health insurance in accordance with the Article 66 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds or are a subject to the voluntary health insurance in accordance with the Article 66 of the same Act) and persons that have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states, that do not reside on the territory of one of the European Union member states or one of the European Free Trade Association member states and are a subject to the obligatory health insurance in the territory of Republic of Poland.²⁹¹⁰

²⁹⁰⁸ Article 2 Section 1 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds 2004, [Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych].

²⁹⁰⁹ Article 181 Section 1 of the Act of 12 December 2013 – On Foreigners 2013, [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach].

²⁹¹⁰ Article 3 Section 1 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds 2004, [Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych].

Second group is called as “also covered by general health” and these are students and PhD students who study in the Republic of Poland and graduates who are taking obligatory internships in the Republic of Poland that do not have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states (with exclusion of persons that are legally residing on the territory of European Union member state or European Free Trade Association member state if they are a subject to the obligatory health insurance in accordance with the Article 66 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds or are a subject to the voluntary health insurance in accordance with the Article 66 of the same Act). Another category of persons also covered are members of religious orders and members of higher clergy and theological seminaries, postulants, novices and juniors of religious orders and their counterparts that do not have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states (with exclusion of persons that are legally residing on the territory of European Union member state or European Free Trade Association member state if they are a subject to the obligatory health insurance in accordance with the Article 66 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds or are a subject to the voluntary health insurance in accordance with the Article 66 of the same Act). They also have to stay in the territory of Republic of Poland on the basis of visa to work, temporary residence permit, permanent residence permit, residence permit of a long-term resident of the European Union, permission to stay for humanitarian reasons, permission for tolerated stay or have been granted by the Republic of Poland a refugee status, supplementary protection or are using temporary protection on its territory and their family members if they are residing on the territory of the Republic of Poland and are not a subject to health insurance described in the Article 66 Section 1 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds with reservation of the Article 66 Section 2 and 3 of the same Act. Next category of those also covered consists of persons taking adaptive internships and their family members if they are residing on the territory of European Union member state or European Free Trade Association member state and they are not a subject to health insurance in accordance with the Article 66 Section 1 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds with reservation of the Article 66 Section 2 and 3 of the same Act. Last category from this Section covered by general health insurance are persons taking Polish language courses and preparatory courses in order to study in Polish that are described in the Act of 27 July 2005 – Law on Higher Education and do not have citizenship of one of the European Union member states or citizenship of one of the European Free Trade Association member states (with exclusion of persons that are legally residing on the territory of European Union member state or European Free Trade Association member state if they are a subject to the obligatory health insurance in accordance with the Article 66 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds or are a subject to the voluntary health insurance in accordance with the Article 66 of the same Act).²⁹¹¹

²⁹¹¹ Article 3 Section 2 of the Act of 27 August 2004 – On Health Care Benefits Financed From Public Funds 2004, [Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych].

7.3. Regulations Concerning Irregular Migrants' Right to Access Healthcare.

Generally irregular migrants' residing on the territory of Republic of Poland are not entitled to public healthcare. From this rule there are exceptions. The first are foreigners placed in guarded facilities or persons in custody for expulsion and they are entitled to free health services, which also include free medicines and sanitary articles.²⁹¹² The second exception entitles unaccompanied minors who are placed in foster care or childcare centers, foreigners applying for refugee status, resettled or relocated foreigners in case of danger to their lives or health and foreigners benefiting from temporary protection to healthcare that is financed from the public funds.²⁹¹³ Also there are situations when health benefits are free for all foreigners. These are health services provided for the purpose of combating infections and communicable diseases and causally related to these infections and infectious diseases (including quarantine, sanitary and epidemiological surveillance, sanitary-epidemiological studies and vaccination against infectious diseases), health care services for mentally ill or mentally handicapped people (patients in hospitals also receive free medical treatment, medical supplies and supplies), drug treatment services for alcohol addicts and drug treatment services for drug addicts.²⁹¹⁴

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. Polish educational system.

8.1.1. Legal bases of the Polish educational system.

The shape of the Polish educational system derives from both national and international legal acts. Among them the most important are: Protocol nr. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (especially art. 2), the Constitution of Poland, the Statute about the educational system, the Statute about higher education, the Convention on the Rights of the Child, and the Charter of Fundamental Rights of the European Union. According to all of those acts, a child's right for education is universal. Article 2 of the Protocol nr. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms states that nobody can be stripped of his right for education. Fulfilling its role in the areas of upbringing and education, the State recognizes parents' right for providing their children with a type of education that agrees with their own religious and philosophical beliefs. What is more, art. 28 of the Convention on the Rights of the Child states that all its signatories recognize a child's right for education. Countries that signed the convention also pledge to make elementary education

²⁹¹² Article 118 Section 1 of the Act of 12 December 2013 – On Foreigners 2013, [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach].

²⁹¹³ Article 63, 70, 86i and 112 of the Act of 12 December 2013 – On Granting Protection To Foreigners Within The Territory of the Republic of Poland 2003, [Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej].

²⁹¹⁴ Prawo i Medycyna, *Dostęp cudzoziemców do bezpłatnych świadczeń opieki zdrowotnej w Polsce* <<http://www.prawoimedycyna.pl/index.php?str=artykul&id=1335>> accessed 8 October 2017.

mandatory and free of tuition for everybody, to support middle education in all of its forms, to take steps towards improving the accessibility of higher education, to inform children about various possible educational and professional choices, and to take steps towards diminishing the number of children who resign from the educational system. Signing countries are also obliged to support their international cooperation in the area of education with a particular focus on decreasing ignorance and illiteracy. The convention is also obliging countries to facilitate the access to scientific and technological knowledge and to innovative teaching methods. Similarly, the Charter of Fundamental Rights of the European Union states that the right for education must be universal, meaning that education should be tuition-free, what is stated by the art. 14 of the Charter of Fundamental Rights of the European Union. However, regarding the Polish the educational system, the most essential legal act is the basic law that states in its art. 70 that every person governed by the Polish Republic has the right for education. This law encompasses Polish citizens as well as foreigners who are residing on the Polish Republic's territory, regardless of the legal basis of their stay. This article signals also the existence of individual statutes regulating the way in which the Polish educational system operates, such as the statute about the educational system and the statute about higher education. Those statutes define the organization of education through all its levels.

8.1.2. Structure of the Polish educational system

According to the Polish lawmaking, the education obligation exists on the whole territory of the Polish Republic.²⁹¹⁵ This obligation is a broad concept that encompasses both the compulsory period of a one-year pre-school preparation and the subsequent years of participation in the educational system. The compulsory period of a one-year pre-school preparation commences in the calendar year in which a child has its sixth birthday — this is stated in the art. 14 of the statute about the educational system. According to art. 15 of the same statute, the education obligation of a child begins with the commencement of the academic year of the same calendar year in which a child has its seventh birthday. This obligation continues up to the day when a child finishes a middle school, but no longer than the child's eighteenth birthday. According to the art. 2 of the statute about the educational system, this obligation encompasses kindergartens and schools: primary, secondary, upper-secondary, and artistic. It is relevant because while considering the problem of migrating children and their access to education, one has to focus on the basic elements of the Polish educational system: kindergartens, primary schools, secondary schools, and upper-secondary schools. As it was stated beforehand, a kindergarten works as a preparation for commencing education in the primary school. Presently, primary schools consist of a six-year period of education that ends with a six-grader's exam. The next stage — middle school — also ends with an exam, in this case a middle school exam. However, on the 1st of September 2017 middle schools will be liquidated and the duration of the primary stage of education will be extended to eight years instead of six. According to the art. 1 paragraph 21 of

²⁹¹⁵ Stanisław Trociuk, 'Realizacja prawa małoletnich cudzoziemców do edukacji' (Raport of the Ombudsman, 31 July 2013) <https://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_pdf> accessed 10 July 2017

the statute about the educational system that will come into life on the 1st of September 2017, primary school pupils will be passing the eight-grader's exam. Article 7 of the statute about the local governments of municipalities says that establishing and supervising public primary schools belongs to the tasks of municipalities.

8.2. Accessing the Polish educational system by migrants' children

8.2.1. Kindergarten

According to the paragraph 3 of the Executive Order of the Minister of Education from the 9th of September 2016 about teaching individuals who are not Polish citizens and individuals who are Polish citizens but were taught by schools that functioned in the educational systems of other countries, individuals who are not Polish citizens may benefit from education and tutelage in all kinds of public kindergartens on the same terms as Polish citizens. They are also subject to the same rights and duties. Attending private kindergartens (not governed by the state) depends on fulfilling the requirements stated by the kindergarten's board.²⁹¹⁶

8.2.2. Primary, secondary, and upper-secondary schools.

Foreigners attend public primary, secondary and upper-secondary schools on the same terms as Polish citizens, as they are also subsumed under the education obligation. According to art. 94a of the statute about the educational system, individuals who are not Polish citizens and who are obliged to gain education may benefit from education and tutelage in all kinds of public kindergartens on the same terms as Polish citizens until their eighteenth birthday or until they finish an upper-secondary school. Similarly to the case of kindergartens, foreigners who are residing on the Polish Republic's territory, regardless of the legal basis of their stay, have the same right for education as Polish citizens²⁹¹⁷. Depending on the child's age or its educational level, the requirements that must be met in order for the child to attend a certain school and class are detailed by paragraphs 3 and 4 of the Executive Order of the Minister of Education from the 9th of September 2016. According to those paragraphs, the deciding factor is the distance between the school and a child's place of stay. When a child is at the verge of commencing its education in a primary school, this distance plays the deciding role in assigning it to a proper educational unit. When a child is old enough to attend grades between second and sixth, assigning it with a spot in a school is still decided by the distance, although this factor is then supported by certain documents. According to the before mentioned Executive Order of the Minister of Education paragraph 2 point 3, these documents are: a diploma, certificate or other document proving finishing a school or another stage of education abroad; a certificate issued by a school abroad attesting that a child has attended school and pointing out the last grade that a pupil has finished in a foreign school; a document attesting the sum of years that a

²⁹¹⁶ Monika Gwiazda *'Migrant' Access to education in Poland* (The Rule of Law Institute Foundation, 2010). <<http://panstwoprawa.org/wp-content/uploads/2015/11/Rights-and-Obligations-of-Migrants-living-in-the-Republic-of-Poland.pdf>>accessed 10 July 2017.

²⁹¹⁷ Monika Gwiazda *'Migrant' Access to education in Poland* (The Rule of Law Institute Foundation, 2010). <<http://panstwoprawa.org/wp-content/uploads/2015/11/Rights-and-Obligations-of-Migrants-living-in-the-Republic-of-Poland.pdf>>accessed 10 July 2017.

pupil spent at school. If defining this period is impossible on the basis of the presented certificates, a parent or a pupil of age must present a written declaration that states the amount of years through which he participated in the educational system. If one cannot present such documents, the school board may decide to accept a student on the basis of an interview, as is stated by the paragraph 13 of the Executive Order of the Minister of Education from the 9th of September 2016. According to the paragraph 5 of the same Executive Order, an analogous situation occurs in the case of pupils who are old enough to attend middle school. In the case of upper-secondary schools, a student that comes from abroad is qualified to an appropriate grade or an appropriate semester and accepted in a public high school on the basis of presented diplomas and certificates that attest his prior participation in the educational system. The distance between the school and a pupil's place of stay is no longer relevant in this case, what is stated by the paragraph 6 of the same Executive Order. Foreigners are obliged to realize the same scope of general education as Polish students, regardless of the school they attend. The scope of education, as well as the requirements that foreign students are facing, are adjusted to their needs and lowered capabilities deriving from their lack of fluency in Polish. The modification of a scope of education is usually performed by the teachers themselves²⁹¹⁸. According to the paragraph 17 of the Executive Order, foreign students who fall under the education obligation, do not speak Polish (or speak it at an insufficient level), need an adjustment of the educational process, and an adjustment of the educational form, may receive a special preparatory faculty in the school that they attend. Classes within the preparatory faculty are conducted by teachers responsible for certain subjects who may be supported by aids who have the command of the student's first language. Education in the preparatory faculty is realized in accordance with the scope of education realized by the school and is adjusted to the educational and developmental needs of its students, as well as to their psychophysical capabilities. According to the paragraph 18 of the same Executive Order, the agency that governs a public school may organize within its premises special Polish language classes that are free of tuition. Those classes may be designed for individuals or groups of students and must take at least two hours per week in order to allow them to gain a sufficient command of Polish that will allow them to participate in regular classes. If a teacher of a certain subject states that a foreign student needs to catch up with the material, this student may attend compensatory classes that take place outside of the regular school schedule and that are organized by the agency that governs the school, as stated in the paragraph 19 of the Executive Order.

²⁹¹⁸Stanisław Trociuk, 'Realizacja prawa małoletnich cudzoziemców do edukacji' (Report of the Ombudsman, 31 July 2013) <https://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_pdf> accessed 18 July 2017.

8.3. Executing the Right for Education of Underaged Foreigners Residing in the Foreigners' Centers

8.3.1. Underages Residing in Foreigners' Centers Applying for the Status of a Refugee

Foreigners' centers for those applying for the status of a refugee are a form of social aid that Poland provides for immigrants who seek protection from being persecuted in their home countries. First and foremost, they provide foreigners with lodging, board, medical and material aid. Foreigners stay in those centers until the proceedings regarding granting them status of refugees are not finished. These centers also provide classes for children and youngsters — these classes are usually carried out by teachers from schools attended by the underaged residents of those centers. The classes focus mainly on learning Polish, but also on helping children in solving their home assignments. These centers are also organizing compensatory classes, most often from English and knowledge about culture. Most of the centers also host special kindergartens with a staff of volunteering pedagogues, foreign women living within the centers, or pedagogues in cooperation with the inhabitants. All foreigners who attend school receive handbooks and school accessories that are donated by the Office for Foreigners in cooperation with their appropriate center. All parents are also allowed to ask the Office for Foreigners for funding special, paid classes for their children, as long as those classes may actually affect a child's development in a specified area. In most of the centers, the education obligation is realized by the majority of children. Children who are admitted into the center near the end of the school year are the exception from this rule. The biggest problem faced by children living in those centers is their mobility that often forces them to cease education in one school and resume it in another one. Schools' headmasters point out that very rarely a single child stays in one center (and in one school) for more than a year, what in turn disrupts a stable educational process.²⁹¹⁹

8.3.2. Underages Residing in Guarded Foreigners' Centers

Guarded foreigners' center is a precautionary measure that is used when a legal action is taken against a foreigner, aiming at banishing him from the territory of the Polish Republic and when there is a risk that an individual will escape; when a verdict has been passed about banishing an individual from the territory of the Polish Republic but without a leaving date; when a foreigner has not left the territory of the Polish Republic in the due time, defined by a deportation verdict; or when an individual has attempted to or has already illegally crossed the Polish border. The decision to place an individual in a guarded foreigners' center must be made by court. One's stay in such center may last up to 60 days with a possible extension to 90 days. Court is also in power to extend the stay of a foreigner in such center on the basis of art. 89 of the statute about granting foreigners protection on the territory of the Polish Republic. Foreigners lodged in those centers, including children, have a limited freedom of movement and are constantly surveilled by

2919 Stanisław Trociuk, 'Realizacja prawa małoletnich cudzoziemców do edukacji' (Report of the Ombudsman, 31 July 2013) <https://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_.pdf> accessed 19 July 2017.

the Border Guard. Those centers are organizing classes for children and youngsters, usually in cooperation with local schools that are left with the task of designing those classes. The shape of the classes, the activities that are 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. The main problem with teaching foreigners who reside in guarded centers is the lack of legislative regulations defining this type of education, outlining the tasks that schools have to carry out or pointing out the funding of these classes. The fact that schools take part in the process of educating foreigners and the form of this participation are the effects of a prevalent practice.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

The rule of the article 191a of the act on the tertiary education²⁹²⁰ that was introduced into the Polish legal order on the 18th of March 2011²⁹²¹ regulates the area of recognizing diplomas issued by foreign universities on the territory of the Republic of Poland. The solution proposed by the act views foreign diplomas as equal to those issued by the domestic universities. According to the paragraph 1 of the discussed act, diplomas that are considered to be equal to those coming from Polish universities come from tertiary education institutions operating on the area of:

- a member state of the European Union
- a member state of the Organisation for Economic Co-operation and Development
- a member state of the European Free Trade Association that at the same time is a party of the European Economic Area agreement.

It needs to be noted that at the moment of writing this publication, the list of countries that issue diplomas regarded as equal to those obtained from Polish institutions consists of: Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, Netherlands, Ireland, Iceland, Israel, Japan, Canada, South Korea, Liechtenstein, Lithuania, Luxembourg, Latvia, Malta, Mexico, Germany, Norway, New Zealand, Portugal, Romania, Slovakia, Slovenia, United States of America, Switzerland, Sweden, Turkey, Hungary, Great Britain and Italy.

87Act of 27th of July 2005 regarding Higher Education 2005, [Ustawa z dnia 27 lipca 2005 r. - Prawo o szkolnictwie wyższym].

88 (Act of 18 March 2011 amending the act Law regarding Higher Education, academic degrees, academic titles) 2011, [Ustawa z dnia 18 marca 2011 r. o zmianie ustawy - Prawo o szkolnictwie wyższym, ustawy o stopniach naukowych i tytule naukowym oraz o stopniach i tytule w zakresie sztuki oraz o zmianie niektórych innych ustaw].

The lawmaker offered also a solution to the problems arising from the differences in the modes and quality of education that occur between the Polish and foreign institutions. In the latter part of the paragraph 1 art. 191 of the act, the lawmaker states that: (i) a diploma issued by a foreign institution that affirms graduation from the 3-year program is considered as a proof of having finished the undergraduate course; (ii) completing a foreign graduate course or a unified program of at least 4 years is a proof of having finished the postgraduate course (providing that the course is considered as such in the country that issues the diploma). The above mentioned solution allows for using foreign diplomas coming from “acclaimed” universities in countries that have signed international treaties with Poland.

Nevertheless, not every diploma issued by a foreign university that resides in one of the named countries may be acknowledged on the territory of Poland. In order for a diploma to be valid in the Polish Republic, the issuing institution must be accredited in the country in which it resides and operates. To evade possible uncertainties about the nature and status of the issuing institution, the website²⁹²² of the Ministry of Science and Higher Education has published an au courant list of foreign universities that are accredited — at the moment of writing this article, the list consists of 2758 institutions.

A person using a foreign diploma, issued by an accredited university, will not have to take any other measures to legitimize this document and will be able to use it freely on the territory of Poland. What is more, the diploma will be regarded as equal to its counterpart in the Polish system of education.²⁹²³

However, if the credibility of the presented document is doubtful for the interested party, it may be verified. In order to do so, the interested party has to submit a motion to the Minister of Science and Higher Education, who, in the space of 21 days from the date of submitting the motion, will issue his opinion or certification, assessing the validity of a diploma in question.

Aside from stating foreign diplomas to be equal with those issued by Polish institutions ex lege, the Polish act is also foreseeing the possibility of recognizing a foreign diploma through the process of nostrification. Those methods may not be used simultaneously or interchangeably.²⁹²⁴

Nostrification of a diploma — defining its Polish counterpart — falls under the competences of (i) the council of a school's faculty that has the legitimation to grant the degree of a doctor in a given field and (ii) the council of a school's faculty that has the legitimation to grant the habilitation in a given field. The shape of the procedure of nostrification is defined through the regulation issued by the Minister of Science and Higher Education²⁹²⁵.

Nostrification procedure beings with submitting a proper motion to one of the above mentioned councils. Examination of those motions must be paid for — the cost of those process is stated

89 Ministerstwo Nauki i Szkolnictwa Wyższego, *Akty prawne dotyczące uznawania wykształcenia* <http://www.nauka.gov.pl/uznawanie-wykształcenia/akty-prawne.html#Lista_instytucji> accessed 20 July 2017 [Polish].

90 por. Bednarczyk-Plachta, Agnieszka. Art. 191(a). *W: Prawo o szkolnictwie wyższym. Komentarz. System Informacji Prawnej LEX*, 2017 [Polish].

91 Por. *ibid.*

92 Executive Order of Minister of Scicen and Higher Education (Recognition diplomas obtained abroad) 2015, [Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 19 sierpnia 2015 r. w sprawie nostryfikacji dyplomów ukończenia studiów wyższych uzyskanych za granicą oraz w sprawie potwierdzenia ukończenia studiów wyższych na określonym poziomie kształcenia].

by the director of a given council. Paying this fee is indispensable, but may be alleviated if the subject is in a poor financial condition. Alleviation may be done only after submitting a proper motion to the director of a given council. As a result of the council's proceedings, a decision is made to acknowledge or to dismiss the foreign diploma.

Higher education obtained through graduation from a course conducted by a foreign institution may be accompanied by obtaining a vocational degree that, under special circumstances, may be considered as equal with the Polish vocational degree. If their equivalence is not affirmed, the title holder may still use it on the territory of the Republic of Poland in its original form, but may not use the perks coming from obtaining its Polish counterpart.

Rules defining the recognition of vocational degrees obtained outside of Poland are defined in the act from the 22nd of December 2015 on the rules of recognizing vocational qualifications gained in the member states of European Union.²⁹²⁶ The act encompasses vocational qualification obtained in:

- a member state of the European Union
- a member state of the European Free Trade Association that at the same time is a party of the European Economic Area agreement
- the Swiss Confederation.

The procedure of recognizing the vocational qualification is commenced upon the motion of the interested party that has to be submitted to the proper institution, pointed out in the act²⁹²⁷, that grants the vocational qualifications and professional licenses for those, who earned them on the territory of Poland. The discussed motion is submitted, in Polish, on a special form prepared by the Ministry of Science and Higher Education.

The motion²⁹²⁸ has to contain the following information: (i) first name (names), last name, date and place of birth of the petitioner; (ii) petitioner's nationality; (iii) definition of the regulated profession or activity, its form, and the duration of time in which the petitioner was performing the profession or activity in a member state; (iv) possessed qualifications or licenses; (v) obtained training courses; (vi) enumeration of documents attached to the motion. The documents mentioned in the last point are defined over the course of proceedings²⁹²⁹ - together with the appropriate copy of a form. It needs to be noted that all documents linked to the procedure of recognizing one's vocational qualifications should be submitted in Polish or together with their Polish translation. An appropriate body gives then its verdict over the space of three months from the moment of submitting all the necessary documents, but in exceptional cases this period may be extended by a month. If giving a verdict depends on the outcome of a qualifying period or a qualifying exam, the date of passing a verdict becomes suspended until the petitioner

93 Act (Rules regarding recognition professional qualifications acquired in EU member State) 2015, [Ustawa z dnia 22 grudnia 2015 r. o zasadach uznawania kwalifikacji zawodowych nabytych w państwach członkowskich Unii Europejskiej].

94 Art. 7 lex cit.

95 Art. 13 lex cit.

96 Executive Order of Minister of Science and Higher Education (documents in the proceedings regarding recognition professional qualifications) [Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 16 listopada 2016 r. w sprawie dokumentów w postępowaniu w sprawie uznania kwalifikacji zawodowych do wykonywania zawodu regulowanego albo podejmowania lub wykonywania działalności regulowanej w Rzeczypospolitej Polskiej].

submits the assessment of possessed skills. A qualifying period or a qualifying exam are essential if an appropriate body decides that it will base its decision on an outcome of such assessment. The conditions under which a qualifying period or a qualifying exam will take place, together with their cost, are defined in a regulation issued by a minister responsible for an area corresponding to examined qualifications necessary to perform a regulated profession.

A list of regulated professions is now shared on a dedicated website²⁹³⁰ hosted by the European Commission — presently, it consists of 350 entries regarding the professions that are regulated on the territory of Poland.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Characteristics of the right

Presently, the participation of foreigners in the political life assumes three, most popular forms. The first of them bases on granting the active and passive right to vote in local and regional elections. The second of them allows foreigners to join political parties and other organizations operating within the public sphere, together with workers' unions and foundations. The third form bases on the promotion of advisory bodies and using them for providing opinions or as consultants.²⁹³¹ The aspect of participation of foreigners' in the public sphere is underdeveloped in Poland. The notion is not a subject of wide discussion, and the discussion regarding the third form — that of advisory bodies — is almost non-existing. According to the MIPEX (Migrant Integration Policy Index) ranking from the 2010 that examined all the European Union countries, Poland took the 30th spot, being second to last.²⁹³² According to a document that was cancelled in March 2016, called "Poland's Migrational Policy" and passed in 2012, one of the goals was to create an environment that would promote immigrants' active existence in the civil society. The document was cancelled without a substitution, and the Polish Commissioner for Human Rights has submitted an enquiry to the Ministry of Internal Affairs, asking for new guidelines regarding the migrational policy.

97 European Commission, <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprofs&id_country=23&quid=1&mode=asc&maxRows=*> accessed 4 September 2017.

2931 S. Łodziński, D. Pudzianowska, M. Szaranowicz-Kusz, *Prawa wyborcze dla cudzoziemców – tak czy nie?* (Wydawnictwo Naukowe Semper 2014)16 [Polish].

2932 *ibid.*,19

10.2. Election law

10.2.1. Election law on the level of a state

Election law on the level of a state in Poland, both active and passive, is restricted to Polish citizens only. Such state of affairs derives directly from the Constitution of Poland which gives the right to elect the President of the Republic of Poland, deputies, senators, and members of the local governments solely to Polish citizens.²⁹³³ Regulations regarding this matter may also be found in the Parliament's and Senate's Electoral System and in the Electoral Code.

10.2.2. Election law on the local level

This law was subjected to change in 2004 in the light of Poland's membership in the European Union. As a consequence of adjusting the state law to the European Union's law,²⁹³⁴ election law was broadened on the local level. Regarding the local government election on the level of a municipality, active and passive right to vote was granted to the citizens of European Union member countries who permanently reside on the area of a given community. The broadening of a passive right to vote was done with the omission of the possibility for a foreigner to run for a post of a chief executive officer of a municipality. What is more, Poland did not ratify, and probably will not ratify, the Convention on the participation of foreigners in the public life on the local level from the 5th of February 1992. This convention grants the right to vote in local elections for those foreigners who have been living in a given country for a period of 5 years.²⁹³⁵

10.2.3. Foreigners from the EU countries

Foreigners who are citizens of EU member countries may take part in the elections to the European Parliament. This regulation derives directly from the art. 39 of the Charter of Fundamental Rights of the European Union, and is copied in the art. 10, point 2 of the Electoral Code. In the case of European Parliament elections, a foreigner must remember to enlist himself to the registry of voters in a municipal office corresponding to the person's place of residence. After being enlisted in a Polish registry of voters, a person cannot take part in the European Parliament elections in a different country, not even in his/hers country of birth. Active right to vote in the European Parliament elections is possessed by every EU citizen who is above 18 years of age, was not stripped of his public rights, and was not incapacitated by a binding juridical verdict. Foreigners coming from the EU countries were also granted the right to vote in local referendums, as according to the Act on the local referendum, the right to participation is granted to all those who are permanently residing on the territory of a given unit of a local government and have an active voting right.²⁹³⁶

²⁹³³Constitution of Republic of Poland art. 62.

²⁹³⁴Charter of Fundamental Rights art. 40.

²⁹³⁵Convention on the Participation of Foreigners in Public life at Local Level, art. 6.

²⁹³⁶Act of 15 September 2000 (Local referendum), art. 3,[Ustawa z dnia 15 września 2000 r. o referendum lokalnym].

10.2.4. Foreigners from outside the EU

Foreigners from the third countries have no voting right in Poland, even in the local referendums. The lack of voting rights does not derive from regulations stated in the Constitution of Poland, what was asserted by the verdict of a Constitutional Tribunal.²⁹³⁷ The Constitution states that a local government's community is created by the collective of inhabitants of a territorial unit.²⁹³⁸ Because of that, the nationality or citizenship of a foreigner are irrelevant. Nevertheless, foreigners coming from outside the EU are not granted with these rights. It is needed to say that a regulation from art. 132 point 3 of the Electoral Code says that contributions to the organization's electoral committee and the electors' electoral committee may come only from Polish citizens. Due to this, not all subjects possessing passive voting right are equal and for some of them it is difficult to actually exercise the rights they have been granted.²⁹³⁹

10.3. Right to associate

10.3.1. Political parties

Poland is a side in the International Covenant on Civil and Political Rights. Art. 22 of this Covenant says that a siding state must provide everyone with a freedom to form associations. This freedom is also relevant when it comes to creating and joining workers' unions. This regulation derives from the Constitution of Poland and grants the right to associate to everyone.²⁹⁴⁰ Art. 11 of the Constitution of Poland and art. 2 of the Act on political parties preordain that the right to form and join political parties is given only to Polish citizens.

10.3.2. Associations

Foreigners who reside permanently on the territory of Poland are granted with the right to form unions and associations. They can both join already existing ones' (if such a possibility is acknowledged in the statute) and form new ones on the same basis, as Polish citizens. This derives directly from the regulation mentioned in the art. 4 point 1 of the Act on associations. Point 2 of this article defines the situation of foreigners who do not reside permanently on the territory of Poland — they can join only those associations, whose statutes allow them do so.

10.3.3. Foundations

The right to establishing foundations on the territory of Poland is granted to every natural person, without considering his or hers citizenship and place of residence — this according to art.2 point 1 of the Act on foundations. The right to associate in workers' unions and employers' unions was granted to all subjects who, respectively, are workers or employers, in the art.2 of the Act on workers' unions. This law is not restricted to Polish citizens, thus also applying to foreigners.

²⁹³⁷ Constitutional Court of Republic of Poland, sygn. K 18/04 [Polish].

²⁹³⁸ D. Pudzianowska, *Prawa wyborcze dla cudzoziemców - tak czy nie?* (Międzynarodowa Organizacja do Spraw Migracji, Instytut Socjologii UW, 2014). 108 [Polish]

²⁹³⁹ *ibid.* 111

²⁹⁴⁰ Constitution of Republic of Poland, art. 58.

10.3.4. Freedom of assembly

Freedom of assembly was regulated by the Act on assemblies, passed in 2015. According to the regulations stated in this act, the right to take part in, or organize and assemble, is granted to every person that is capable of undertaking legal actions, thus treating equally foreigners and Polish citizens.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Acquisition of citizenship

In Republic of Poland there are few ways to acquire Polish citizenship. Regulations on acquiring citizenship of Republic of Poland are described in the Act on Polish Citizenship . *Dz.U. 2012 poz. 161 Ustawa o obywatelstwie polskim* [Polish]

11.1.1. Acquisition of Polish citizenship by law

Ius Sanguinis - the Polish citizenship is acquired by birth from parents, if at least one parent has Polish nationality, the child is entitled to have this nationality as well.

Ius Soli - right of the soil applies only in case when the birth takes place on territory of Poland and parents are unknown or their nationality is undefined or either do not have any citizenship.

Adoption - a child is entitled to have Polish citizenship in case of adoption by a person or people of this nationality, only if the adoption took place before the age 16 of the child. In this case, it is assumed that the adopted child acquired Polish citizenship on the day of birth. Such a child acquires Polish citizenship by power of law.

11.1.2. Granting Polish citizenship

Upon the request, the President of the Republic of Poland may grant a foreigner, Polish citizenship. The President of the Republic of Poland is not limited in his constitutional powers by any conditions and may grant Polish citizenship to any foreigner. Polish citizenship of both parents includes children under their parental responsibility. In case the child is over 16 years old, the citizenship may be granted with his own consent. All the conditions of granting Polish citizenship are described in Chapter 3 of the Act.

The request should include:

- basic data of the applicant (foreigner)
- address of residence
- information about parents
- information about family members who have Polish citizenship
- information on the possession of Polish citizenship in the past and on its loss
- information on sources of income, professional achievements, social and political activity

- information on polish language knowledge
- data of spouse
- information if the applicant has applied for polish citizenship in the past
- justification

Respectively the request of parents who have underage child should additionally include data of the child.

Elements which should be attached to the request:

- documents confirming information contained in the application
- pictures of applicants

The Minister of Internal and Administration specifies the request form.

Requests form for all types of acquisition of polish citizenship have to contain above informations. The recognition of the application has no specific deadline.

11.1.3. Recognition as a Polish citizen

Foreigns living in Poland on the basis of specific permits, are entitle to apply for Polish citizenship if by living in Poland for a long time legally:

- have integrated themselves with the Polish society,
- have learned polish language,
- have provided themselves with housing and livelihoods,
- respect Polish legal order and do not pose a threat to the national defense or national security.

In particular: refugees, persons without citizenship, children and spouses of Polish citizens and people with Polish origin.

Citizenship is recognized on request. The decision of recognition as a Polish citizen is taken by the Voivode. An appeal body to recognize the decision is the Minister of Interior and Administration. In special cases, a minister's decision may be appealed to an Administrative Court.

Pursuant to Article 30 section 1 of the Polish Citizenship Act, Polish law presents seven situations of a foreigner in which this person can be considered as a Polish citizen.

a) A person who has been living on the territory of the Republic of Poland for at least 3 years continuously,

- has a permit to settle,
- has a long-term EU resident permission, or permanent resident permit,
- has a constant source of income,
- can prove that is legally entitled to the occupied dwelling

b) The situation is simmlar to the situation a), but in case the foreigner has got only one out of three kind of permissions to stay, need to prove his life in Poland for at least 10 years.

c) A foreigner, who has been living in Poland for at least 2 years and being for minimum 3 years married to a Polish citizen, or does not have any nationality.

d) A person with the refugee status granted in the Republic of Poland, who based on permit to sattle has been living in Poland continuously for at least 2 years.

- e) Underage foreigner, whose one parent is a Polish citizen (who has received the Polish citizenship after the birth of the child), living legally in Poland, under the condition that the second parent, not being a Polish citizen, has agreed to the citizenship recognition of the child.
- f) Underage foreigner, who has been living in Poland legally and whose at least one parent has restored Polish citizenship. The recognition may occur under the condition that the second parent, not being a Polish citizen, has agreed to the citizenship recognition of the child.
- g) A foreigner who has been living for at least a year in Poland, on the basis of a permanent residence permit, which he obtained in relation with Polish origin or the possession of *Karta Polaka* a Pole's Card.

In all those cases excluding underage children the applicant for citizenship is obligated to evident knowledge of Polish language. The knowledge of the language must be confirmed by the official document.

The request should be rejected if the acquisition of Polish citizenship could be a threat to the protection of public security and order.

11.1.4. Restoration of Polish citizenship

The institution of restoration of citizenship appeared in the Polish legal order in 2012. It was created due to the issues of people who have had Polish citizenship in the past and lost it before year 1999. To introduce restoration will be necessary to recall Polish historical and political context. In 1939 Poland was attacked by Germany and Soviet Union and after the IInd World War Poland and another East-European countries came under the control of Soviet Union. The legal order imposed on us predicted the loss of citizenship for soldiers who failed against communists for the independence of Poland. Some of the people have lost their Polish citizenship due to the right to only one citizenship. Simultaneously with acquisition of citizenship of another country, they were losing Polish citizenship. Finally the government of Independent Third Polish Republic decided to gratify all the people who have been deprived of Polish citizenship by the government controlled by Soviet Union, and allowed the restoration of citizenship.

Polish citizenship is restored by the administrative decision of the Minister of the Internal and Administration, upon the request. The application form includes biography, address of the last place of residence in the territory of the Republic of Poland before the loss of Polish citizenship, and information about the circumstances of the loss of citizenship. The request should be rejected if the applicant acted to the detriment of Poland, especially its independence and sovereignty, or participated in the violation of human rights. The Minister is obligated to consult his decision with government security institutions.

All the information about possibilities of acquisition of Polish citizenship can be found in English language on the website of Polish Ministry of the Interior and Administration, although all the application forms are available only in Polish language. Any documents issued in foreign language should include a copy translated by sworn translator or translation approved by the consul.

11.2. Possibility of Double Nationality

In 1960s Polish People's Republic (current Republic of Poland) has signed agreements with some countries from East part of Europe to avoid double citizenship. Those agreements were terminated in the 1990s and the early 21st century. Only the new Act on Polish citizenship from 2009 introduces official possibility of having double citizenship.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. Europe 2020

The European Union in the Europe 2020 Strategy has defined its strategic goals and development priorities. On this basis, the so-called Horizontal Policies were developed. Each project that should be realized within European Funds is evaluated in the context of compliance with three core policies.²⁹⁴¹

- Sustainable Development-The Union is committed to ensuring that Europe's economic development is not at the expense of the environment. In addition, the Union promotes rational and economical use of natural resources and environmental protection by reducing gaseous emissions or promoting the use of environmentally friendly technologies.
- Equal opportunities - Projects co-financed by European funds should be compatible with equal opportunities policy. This means ensuring equal treatment for women and men. No discrimination based on age, opinion, origin, religion or disability is allowed.
- Information society - The realization of information society policy is the dissemination of modern informational technologies in everyday life of citizens, enterprises and public administration.

The total amount of funds allocated to Member States in 2014-2020 for regional policy will exceed 351 billion euros, so more than one third of the total expenditure of the European Union, of which the Republic of Poland will receive 82.5 billion euros. The Minister of Development is responsible for the implementation of European Funds in Poland. It is his task to coordinate the implementation of assumptions stemming from the most important document describing, how and for what the European Funds will be used between 2014 and 2020.

²⁹⁴¹Fundusze Europejskie, *Czym są Fundusze Europejskie?*<<https://www.funduszeuropejskie.gov.pl/strony/o-funduszach/zasady-dzialania-funduszy/czym-sa-fundusze-europejskie/>>accessed 15 July 2017 [Polish].

12.1.1. Supported areas

Much of the draft of the Partnership Agreement is devoted to thematic areas around which future programs support will be concentrated. According to the European Commission, these will be 11 thematic objectives.²⁹⁴²

- Support for research, technological development and innovation (eg co-financing innovative solutions in enterprises, research infrastructures of scientific units);
- Increasing the use of information and communication technologies (eg support for computerization of enterprises, development of e-services);
- Increasing the competitiveness of small and medium enterprises (eg new investments in companies);
- Supporting the transition to a low-carbon economy in all sectors (eg renewable energy investments);
- Promoting adaptation to climate change, risk management (eg supporting flood infrastructure);
- Environmental protection and the promotion of resource efficiency (eg co-financing of investments in water waste management and waste management);
- Promotion of sustainable transport (eg financing of road construction, development of ecological transport);
- Support for employment and mobility of workers (eg start-ups, training for employees);
- Support for social inclusion and the fight against poverty (eg support for people at risk of exclusion by integration and creation of social infrastructure);
- Investing in education, skills and lifelong learning (eg kindergarten, extracurricular, adult courses);
- Strengthening of institutional capacity and effectiveness of public administration (eg administrative administration, training for civil servants).

Access to funds from individual operational programs has different categories of entities. Beneficiaries of EU structural funds assistance may be companies (especially small and medium-sized enterprises), public institutions, associations and individuals. Structural funds assistance may also be sought by foreign companies based in Europe. For instance, the largest Operational Program Infrastructure and Environment is largely implemented through the implementation of major infrastructural investments, making the so-called „big projects”. These are projects worth over € 30 billion for environmental projects and more than € 50 billion for other projects whose implementation - due to its value and key character for the country – requires approval by the European Commission. Therefore, most funds from this program go to government administration, large enterprises or local government units, although applicants for funds under various activities of this program can also be entrepreneurs, health care institutions, NGOs or churches and religious organizations.

²⁹⁴² *European funds, 2014-2020* <<http://old.cpe.gov.pl/pliki/2453-materialy-informacyjne-spotkanie-nr-5.pdf>> accessed 15 July 2017 [Polish].

12.1.2. Criteria for participation of migrants in the projects

Foreigners may be participants of the projects if they meet the criteria for the project. Nevertheless, when the foreigners are qualified for the project, special attention should be paid to persons having a temporary or permanent residence card in the country, (the reasons for which a foreigner resides in Poland). If the reasons are such as: continuing work in the territory of Poland, performing work by a foreigner delegated by a foreign employer in Poland, conducting business activity in Poland, starting or continuing studies in Poland in stationary mode. Some projects also offer the opportunity to benefit from EU in support and activation of passive or unemployed people. Foreigners who run business in Poland or are partners in commercial companies have the right to apply for support from EU Structural Funds for their enterprise²⁹⁴³.

12.2. Projects addressed to migrants

12.2.1. National projects

Within the framework of the European Funds Program 2014-2020 some of the announced competitions were carried out, with particular focus on the target group of foreigners residing in Poland.

Department of European Social Fund Implementation In MPiPS Acting as an Intermediate Body for Measure 2.4 *Modernizing public and private employment services and better aligning them to the needs of the labor market* POWER announced in 2015 a project implementation competition, which will provide a tool for assessing the quality of public employment services of local, regional and central services in the area of the simplified system of employment of foreigners and the concept of its implementation. The applicant (Leader) or Partner in the project, according to the access criterion, needs to be a scientific unit. The amount of funds destined for co-financing projects within the framework of the competition amounted to PLN 3,000,000. The level of co-financing was 100%.²⁹⁴⁴

National Center for Research and Development announced in 2016 the recruitment of applications for co-financing of projects under Measure 3.3 for International Training Programs, contest No. 1 / MPK / POWER / 3.3 / 2016. Funds could be sought by higher education (public or non-public). Co-financing could be provided for the implementation of projects involving: the implementation of programs in foreign languages addressed to students from Poland and to foreigners; implementation of international study programs and organization of international summer schools in Poland enabling foreign students to study and enabling Polish people to study in an international environment ; the inclusion of lecturers from abroad who

²⁹⁴³ *European funds, 2014-2020* <<http://old.cpe.gov.pl/pliki/2453-materialy-informacyjne-spotkanie-nr-5.pdf>>accessed 15 July 2017 [Polish].

²⁹⁴⁴< <http://www.kapitalludzki.gov.pl/power/nabory-wnioskow/dzialanie-24cudz/>>accessed July 15, 2017 [Polish].

have achievements in scientific, professional or artistic work, introduction of education programs in Polish universities.²⁹⁴⁵

The Mazowieckie Voivodeship Board is the Managing Authority for the Regional Operational Program for Mazowieckie Voivodeship 2014-2020 (ROP VM). Within the ROP VM, the Investment Priority 9i Active Inclusion envisages the implementation of Measure 9.1 This is the social-occupational activation of excluded people and counteracting social exclusion, which aims to improve the employability of people excluded and at risk of exclusion and prevent social exclusion and poverty. In the target action, the target group includes, among others persons or families benefiting from social assistance under the Social Welfare Act of 12 March 2004 or eligible for social assistance, which means meeting at least one of the conditions set out in Article 7 of the Law of 12 March 2004 about social help. The content of Article 7 of the Social Welfare Act states that social assistance is provided to people and families due to difficulties in the integration of foreigners who have obtained refugee status in the Republic of Poland, supplementary protection or temporary residence permit granted in connection with the circumstance referred to in Art. 159 sec. 1 pt. 1 lit. C or d of the Act of 12 December 2013 on Foreigners. Accordingly, foreigners in situations defined in the Act may be supported by the European Social Fund within ROP VM.

The Warsaw Family Assistance Center has received co-financing for the implementation of a project co-financed by the European Social Fund within the framework of the Mazowieckie Vivodship Regional Operational Program for the years 2014-2020. "Support - Activation – Inclusion". The goal of the project is to increase the level of social inclusion and employment prospects for 285 people at risk of exclusion within the 21 months of the project. 50 people (17.5% of the total target group) are foreigners with international protection. The project is being implemented from 01.01.2017 to 30.09.2018²⁹⁴⁶.

12.2.2. EU projects

EU competence in the field of integration is limited. Existing instruments include the European Migration Forum (formerly known as the European Integration Forum); website about integration; and a network of national contact points for integration. In July 2011, the Commission adopted a European integration program for third-country nationals. In June 2016, the Commission presented an action plan covering a framework of action and concrete initiatives to support Member States' actions for the integration of around 20 million third-country nationals legally residing in the EU²⁹⁴⁷.

The Asylum, Migration and Integration Fund (FAMI) is a European Union fund established for 2014-2020. It replaced three funds from the SOLID General Program - Solidarity and Management of Migration Flows: European Fund for the Integration of Third-country Nationals

²⁹⁴⁵<https://www.funduszeuropejskie.gov.pl/nabory/33-umiedzynarodowienie-polskiego-szkolnictwa-wyzszego/> accessed 15 July 2017 [Polish].

²⁹⁴⁶ Juźwiak Edyta, Head of the department in the Office of Help and Social Projects, Department of Child and Family Relief, Office of the City of Warsaw.

²⁹⁴⁷Parlament Europejski do Waszych usług *Polityka migracyjna* <http://www.europarl.europa.eu/atyourservice/pl/displayFtu.html?ftuId=FTU_5.12.3.html> accessed September 24 2017 [Polish].

(EFIO/TN), European Refugee Fund (ERF) and European return Fund (ErF). The overall objective of FAMI has been defined as contributing to the effective management of migration flows and to the implementation, strengthening and development of a common policy on asylum, complementary and temporary protection and a common immigration policy fully respecting the rights and principles enshrined in the Charter of Fundamental Rights of the European Union (EU). This will be achieved through specific objectives, which is by strengthening and developing a common European asylum system, supporting legal migration to Member States according to their needs, improving effective return strategies for their countries of origin and strengthening solidarity and sharing of responsibilities among Member States through cooperation. Within the specific objectives, the so-called National targets, equal for all Member States were singled out.

12.3. Integration of Third-Country Nationals programme

Funding will be available for the following activities to integrate persons in need of international protection who have been relocated from another Member State or resettled from outside the EU: for people resettled from outside the EU – clearly linked pre-departure and post-arrival activities; for people relocated from another Member State – post-arrival activities building on pre-departure information activities; and activities to prepare host communities for the arrival of relocated or resettled people.

The objectives are to support: pre-departure activities aimed at preparing resettled third country nationals for their life in the EU; these should serve as a basis for subsequent post-arrival activities; specific post-arrival activities, especially building on/deepening pre-departure activities and enabling effective integration of resettled and relocated people; and; capacity-building in the receiving communities, in particular for service-providers and potential employers.

12.4. EU Specific Object

In the new financial perspective, the activities carried out by the Member States themselves (as defined in the National Program) have been clearly separated from collective actions - transnational and implemented within the framework of the so- Special Action, but targeted to the same target group that consists of : people owning refugee status or status of person in need of subsidiary protection; applicants for refugee status or subsidiary protection who have not yet received a final decision; persons profiting from temporary protection; persons who are resettled or have been resettled to a Member State or who are transferred or have been transferred from a Member State.

The European Commission uses the Asylum, Migration and Integration Fund to call for applications, which include:

- Strengthening and developing all aspects of the Common European Asylum System;
- Support for legal migration to Member States in line with their economic and social needs and promoting the effective integration of non-EU citizens;

- Developing fair and effective return strategies in Member States that contribute to combating illegal immigration, with emphasis on sustainability and stability of return and effective readmission in countries of origin and transit;
- Increase of solidarity and sharing responsibilities between Member States, especially the countries most affected by migration.

Conclusions

The Republic of Poland as one of the European states faces the problem of migration which emerged in last years. It has to be stressed that Polish legal system regulates laws that serve as a protection for migrants. Rights of the foreigners are protected by provisions enshrined in the Polish Constitution.

What is more, Polish regulations grant a foreigner an asylum if it is necessary to protect the person and its beneficial for the Republic of Poland. Polish law treats immigration from EU member states and non-EU states in a different way.

The Office of Foreigners is the main body coping with issues concerning migrants.

Many migrants that are coming to Poland are of Ukrainian origin, but also a vast group of Chechens seek asylum in Polish territory.

One of Poland's main issue is the implementation of interim measures applied by the European Court of Human Rights. Several recent border cases prove that Polish authorities should improve the situation on the Polish border and act accordingly to the Court's decisions. Additionally, Polish authorities should put more effort into creating conditions that could allow migrants to integrate more with the Polish community.

On the other hand, Polish health care system which financed from the public funds is available for a broad spectrum of subjects including people migrating from other States.

Also Polish educational system allow migrants' children to participate in it on the same rules like Polish citizens and provides free education for all people. Polish law protects people irrespective of their country of origin. Polish educational system also honors foreign diplomas that fulfill conditions specified in Polish legal system regulations.

When it comes to election rights only citizens of Poland can participate in elections on national level. However after the implementation of the EU laws permanent residents can vote in local elections. Still, people without EU citizenship are not granted voting rights on the Polish territory. That is why participation of foreigners in political life in Poland is limited and underdeveloped.

There are several ways to acquire a Polish citizenship and what is more, Polish law allows citizens to have double citizenship.

Largest possibilities for integration and support of migrants are provided by the European Funds enacted under the Europe 2020 Strategy. From all Member States, Poland received the highest co-financing, which exceeded twice the second largest co-financing in terms of volume received by Italy. Such great support gives the opportunity to make an active use of the funds for all of

the purposes that the program is dedicated to. Beginning with support for education, research conducted in scientific centers, business development, to the activation of the unemployed and threatened with exclusion. The organization of a competition under a given program and to its purpose depends entirely on the institution of the Member State concerned, but it may be any foreign national staying legally in the territory of the State, with particular reference to when the foreigners are the target group of the program concerned.

EU Specific Objectives		National objectives
1. Asylum	Reinforcement and development of all aspects of the Common European Asylum System	<ol style="list-style-type: none"> 1.Reception/asylum (asylum and reception systems) and reception systems) 2.Evaluating asylum policy 3. Resettlement
2. Integration and legal migration	Support for legal migration to EU Member States (EU) in line with their economic and social needs, such as labor market needs, whilst ensuring the coherence of the integration systems of EU Member States, and promoting effective integration of third-country nationals in the EU	<ol style="list-style-type: none"> 1. Legal migration 2. Integration 3. Building capacity
3. Returns	Increasing fair and effective return strategies in Member States that contribute to combating illegal migration, with emphasis on sustainability and stability of return and effective readmission in countries of origin and transit	<ol style="list-style-type: none"> 1.Accompanying measures for return procedures 2. Return measures 3. Cooperation
4. Solidarity	Transmission of applicants and / or beneficiaries of international protection	<ol style="list-style-type: none"> 1. Relocation

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Introduction

"Migration law is a human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very own make-up as a human family" (Ban Ki-moon). This quote reflects perfectly why migration law is so important in our present day. Refugees or asylum seekers are ordinary people, unlucky enough to have been born in a troubled zone.

For this reason, Romania supported the EU regulations on migration and decided to join forces with the European Union to help in this cause. The following research will thoroughly present how Romanian legislation deals with the problem of migration from both the perspective of national and international law.

We examined laws which regulate these issues in our country, in accordance with the international law, as well as statistics and case law which provide concrete examples for a comprehensive understanding of the matter. We also examine the status of the asylees in Romania, what rights they have and how they are treated by our national law.

We aim with this research for the reader to understand, how Romania governs the whole principle of migration and what measures it takes to be in compliance with the international and European regulations on migration law.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. The Concept of Asylum

In the doctrine, it has been stated that the notion of "asylum"²⁹⁴⁸ rather refers to certain places, surfaces or territories, where a person cannot be arrested because that certain place is protected by a supernatural, national, divine or human force.²⁹⁴⁹

1.2. Asylum Seekers and Asylee

The asylum seeker is not defined by any Romanian law. From the doctrine, it can be deduced that the asylum seekers can be foreigners which, in their home country, are subjects of persecution for their political, democratic or humanitarian activities and that take refuge on the

²⁹⁴⁸ The word "asylum" is of Latin origin and it is formed from the Greek word "asilon", which is a form of the adjective "asylos" (inviolable). Therefore, asylum means "protection against persecution", "a safe place", "a place where one can find refugee, shelter";

²⁹⁴⁹ A. Grahl-Madsen, *The Status of Refugees in International Law, vol. II – Asylum*, Entry and Sojourn, A.W. Sijthoff, Leiden, 1972, 3;

territory of another state.²⁹⁵⁰ Someone who has received a positive decision on his or her asylum claim is called a **refugee**.²⁹⁵¹

Another opinion states that the asylum seeker is a private individual that, in his home country, is persecuted for his activities in favour of humanity, progress and peace.²⁹⁵²

The asylee is a private individual which was granted asylum, in accordance to the rules provided by international judicial instruments and internal normative deeds. The asylee is, therefore, a former asylum seeker that has gained a right to asylum with all the rights and duties it assumes.

1.3. The Status of the Asylee in Romanian Law

For the first time in Romania's history, by the Law n. 122/2006 (henceforth referred to as Law), the status of the asylee has been regulated.

At the moment of the Law's elaboration, the humanitarian protection was regulated in sync with the international disposals, but after Romania joined the European Union, the EU *acquis* was integrated into the Law.

When it came into effect, the Law transposed the Directives 2001/55/EC, 2003/9/EC, 2003/86/EC, 2004/83/EC and 2005/85/EC. For example, the Asylum Procedures Directive 2005/85/EC establishes that all procedures of this kind from the court of first instance must be identical in all EU states. Among other regulations, the Directive also instills a standard judicial procedure and an accelerated one and the right of the asylum seeker to judicial assistance. These regulations were transposed into the Law, which proves that the national legislation on the right to asylum took major steps in the right direction.

According to Article 3 from the Law, the central authority responsible for implementing Romania's policies in this domain is the National Office for Refugees, under the command of the Ministry of Internal Affairs.

The access to the asylum procedure is granted to all foreign citizens or stateless persons that are on Romanian soil or at the border, from the moment of the request, which must be written or spoken. It is necessary for the solicitor to request clearly the protection of the Romanian State.

The Law is applicable without discrimination, and with the exceptions of a few situations, the asylum seeker cannot be banished or extradited.

While addressing the request, the principle of family unity will be respected and all decisions regarding underage children will take into consideration the principle of his superior cause.

All information and documents regarding the asylum requests are confidential.

The decision regarding the request of asylum is taken after individually examining every request and after consulting information from the asylee's home country. Against the rejection of the asylum request, there is the possibility of a complaint and the seeker is granted the assumption of good faith with all the legal consequences it involves.

Article 17 of the Law states the rights of an asylum seeker, such as: the right to be assisted by an attorney in any phase of the procedure, the right to a translator in any phase of the procedure,

²⁹⁵⁰ T. Drăganu, *Drept constituțional și instituții politice. Tratat elementar, vol. I*, Ed. Lumina Lex, Bucuresti, 1998, 153;

²⁹⁵¹ <https://www.asylumaid.org.uk/the-asylum-process-made-simple/> accessed on September 1 2017, 17:15;

²⁹⁵² I. Muraru, Gh. Iancu, *Constituțiile române. Texte. Note. Prezentare comparativă*, Ed. Actami, Bucuresti, 2000, 32.

the right to access the information contained in his file, the right to protection of his personal data, the right to be granted a temporary identification document and so on.

Article 19 of the Law regulates the obligations of the asylum seeker, whom is compelled to: present to the authorities exhaustive and real information about himself and his request, put forward all the documents relevant to his situation at the State's disposal, follow all the competent authority's requests, respect and oblige to the laws of the Romanian State and so on.

1.4. The Procedure for Granting Asylum

The Law provides two kinds of procedures: the ordinary procedure and the accelerated procedure.

The ordinary procedure is triggered by a written or spoken request, which must be drafted in Romanian. If the solicitor is under age of 18 years old, the request must be filed by the legal representative.

Once the request is filed, fingerprints are taken and then the seeker is interviewed in order to determine the form of protection required.

The National Office for Refugees is responsible for the interview and the decision of admitting or rejecting the asylum request. The disposal has to be taken in a maximum of 30 days. Once the decision is taken, and if the request is admitted, then the form of protection is established.

If the request is rejected, a complaint can be addressed to the General Inspectorate of Immigrations. Afterwards, the final decision will be made by a court of justice in a maximum time frame of 30 days. The judicial disposal decision may be challenged with appeal in a 5 days term which will be solved in a 30 days term from his registration by the court which grants the second degree of jurisdiction.

The accelerated procedure is utilized for blatantly groundless requests or for requests of persons that represent a certain danger to national security or the public order according to Romanian law.

A complaint can be made against the decision in a term of 2 days from communication. During the period in which the complaint is judged, the asylum seeker can remain in the Romanian territory. The complaint has to be solved in a maximum of 10 days and the decision is final therefore it is not subject to an appeal, being definitive.

According to Article 98 of the Law, the right to asylum **ceases** in a few cases exhaustively enumerated by the article, such as: the asylee voluntarily reinstated himself under the protection of the country of which he's a citizen, after he lost his citizenship he voluntarily regained it, he gained a new citizenship and is under the protection of the State he gained it from and so on.

Article 100 of the Law states that the right to asylum is **annulled** in the following scenarios: the asylee gave false statements, left out certain facts or used false documents, which were decisive in granting the protection and there are no other reasons to maintain the status or if it was discovered – after granting the protection – that the asylee was under one of the situations presented by Article 25 (for example: he committed a crime against peace and humanity or a war crime, he committed a severe crime outside of Romania, before entering Romanian soil and so on).

1.5. Special Procedures

The Dublin Procedure's main goal is to determine one single EU Member State to be responsible for examining a request for international protection that was presented in one of them by a third country national or a stateless person. Therefore, the Dublin Regulation can be applied only when an asylum seeker makes such a request to a Member State. In Romania, the following main cases have fallen under The Dublin Procedure's appliance: the asylum seeker makes a request for international protection in Romania and after the background check it is found that he has already made a request to another Member State or it is found that he was seized for an illegal entrance in another Member State or it is found that he possesses a visa/another residence document, legally issued by another Member State that previously allowed him to enter the territory of the Member States, even if these documents were not effectively used; another possibility is that the asylum seeker is illegally on Romanian soil and after the background check it is found that he had already made a request for international protection in another Member State.²⁹⁵³

After one Member State takes responsibility for the asylum seeker, he/she will be transferred to that State where the international procedures will be applied. The transfer term is between 6 and 18 months.

Another special procedure *sensu lato* is **tolerance**²⁹⁵⁴, regulated by the Emergency Decree n. 194/2002 (henceforth referred to as Decree). It covers the situation in which the General Inspectorate for Immigrations can tolerate one's staying on the Romanian territory, if that person is not a Romanian citizen, nor a citizen of an EU or EEA Member State and he/she can't leave the Romanian territory because of objective motives. The objective motives the Decree refers to include, but are not limited to: being criminally charged and the judge establishes a ban on leaving the city/country, the public custody instilled against someone ends, the enforcement of the obligation to return was suspended, when one's presence is temporary required on Romania's territory because of important public interests and so on.

In order to be granted tolerance, the applicant has to make a written request and provide the authorities with the documents that serve as proof to the applicant's motives for not leaving the country.

If the motives for which one was granted tolerance cease to exist, the tolerance ceases as well.

The non-granting of the tolerance on the territory of Romania can be contested within 5 days of communication, at the Territorial Court of Appeal. The court shall give its ruling within 30 days, the court ruling being final.

The asylum procedure for **unaccompanied minors**, asylum seekers, is also a special one. Unaccompanied minors become asylum seekers from the moment they make written or oral request to the competent authorities. Asylum requests of unaccompanied minors will always be processed in ordinary procedure. For unaccompanied minors, requesting asylum is a precondition for automatic access to the territory, thereby ensuring access to the asylum

²⁹⁵³ <http://igi.mai.gov.ro/ro/content/procedura-dublin> accessed October 23 2017, 18:55, [Romanian];

²⁹⁵⁴ <http://igi.mai.gov.ro/ro/content/tolerearea> accessed October 23 2017, 14:25, [Romanian].

procedure. Solving asylum applications from unaccompanied minors will be prioritized. Unaccompanied minors who have requested the protection of the Romanian State are not liable for illegal entry or stay on Romanian territory.

If the asylum request from an unaccompanied minor is made to other competent authorities, the General Inspectorate for Immigration - Asylum and Integration Directorate will be immediately informed and it will ensure transporting the applicant to the Inspectorate's specialized asylum structure, a body competent to analyze the request. The unaccompanied minor shall be issued with a provisional certificate stating a temporary identity document and shall be provided with the transport to the competent Inspectorate structure where the formalities referred to in the above paragraph are to be carried out.

Asylum seekers will be given a personal file and will be photographed and imprinted (fingerprints will not be made for minors under 14). Asylum seekers will also be informed of their rights and obligations as well as of the asylum procedure. At the time of filing the asylum application, asylum seekers will be issued with a temporary ID document (for unaccompanied minors, this document will be issued after their registration with the Inspectorate).

Unaccompanied minors who received a form of protection in Romania according to the law, based on a definitive and irrevocable decision are taken in the system of child protection services, organized by the county councils or local councils of Bucharest districts.

If the demand of the unaccompanied minor on granting a form of protection under the law was rejected by a final ruling, minors will be taken by the General Directorate of Social Assistance and Child Protection, which will take the steps required by law to establish a protection measure for him and inform the General Inspectorate for Immigration - the Migration Department about his situation, according to the law.

1.6. Romania and the EU Emergency Relocation Mechanism

In its European Agenda on Migration presented on May 13 2015, the Commission proposed a series of immediate actions to address the unprecedented influx of migrants on the EU's southern borders, and the large numbers of tragic deaths of people attempting to cross the Mediterranean irregularly.

The European Commission proposed to use the emergency response mechanism under Article 78 (3) of the TFEU for the first time in order to set up a temporary relocation scheme applying to a total of 40 000 persons (from states with an average asylum recognition rate of above 75%) in need of international protection, arrived in either Italy (24 000) or Greece (16 000) after 15 April 2015 (no retroactivity).

The relocation from Italy and Greece to other EU Member States would take place over the period of 2 years in accordance with a distribution key based on four criteria: i) the national GDP (40%), ii) size of the population (40%), iii) unemployment level (10%) and iv) the number of asylum-seekers already hosted (10%). Thus, the proposed decision entails a limited and temporary derogation to the provisions of the Dublin Regulation as regards the criteria for determining the State responsible for examining an asylum application.

The Parliament also proposed that asylum seekers should be given the possibility, before they are relocated from Italy and Greece, to rank Member States by order of preference, according to criteria such as family, social and cultural ties, such as language skills, previous stays, studies and work experience.

On May 18 2017, the European Parliament issued a resolution, urging Member States to fulfill their obligations on relocation. The Parliament acknowledged that some progress had been made, but expressed its disappointment regarding the unfulfilled commitments of Member States to solidarity and responsibility sharing. It called on the Member States to give priority to the relocation of unaccompanied minors and other vulnerable applicants.²⁹⁵⁵

As of October 19 2017²⁹⁵⁶, Romania has formally pledged 2,182 places and has effectively relocated 45 refugees from Italy, 683 from Greece and has 3,452 remaining places to fulfill in order to meet its commitment. At the same time, Romania relocated 11 Syrian citizens, on the basis of the agreement between the European Union and Turkey.²⁹⁵⁷

Romania has six accommodation centers for asylum seekers in Timișoara, Galați, Rădăuți, Șomcuta Mare, Giurgiu and Bucharest. Romania is not a preferred destination for refugees and some people who were officially asylum seekers in Romania have been caught while trying to leave the country illegally in the last year.²⁹⁵⁸

Romania's Minister of External Affairs, Teodor Melescanu, has recently declared that an offer has been made to relocate to Romania 1942 refugees from Italy and Greece.²⁹⁵⁹

Although a recent article has shown that only 0.1% of total asylum seekers in EU apply for Romania²⁹⁶⁰, the country is making great strides in complying with the EU regulations and respecting its commitment to the Emergency Relocation Mechanism.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. General

Once Romania joined the European Union, the principle of freedom of movement has led to the absolutely need for change regarding certain legislation in order for Romania not to discriminate its citizens in its treatment towards European Member States citizens, amendment which caused

²⁹⁵⁵ <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-1st-emergency-relocation-scheme> accessed October 20 2017, 13:30;

²⁹⁵⁶ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf accessed October 20 2017, 14:00;

²⁹⁵⁷ <https://www.romania-insider.com/romania-needs-to-welcome-3500-more-migrants-ec-says/> accessed October 20 2017, 14:09;

²⁹⁵⁸ <https://www.romania-insider.com/100-asylum-seekers-caught-trying-leave-romania-illegally/> accessed October 20 2017, 15:10;

²⁹⁵⁹ <https://www.antena3.ro/actualitate/ministrul-afacerilor-externe-am-facut-o-oferta-pentru-relocarea-in-romania-a-1-942-de-refugiati-428989.html> accessed October 20 2017, 16:30, [Romanian];

²⁹⁶⁰ <https://www.romania-insider.com/0-1-total-asylum-seekers-eu-apply-romania/> accessed October 20 2017, 17:46.

differential treatment between citizens from European Union member states in comparison to citizens of states which were not members of the European Union.

Nowadays, Romania's most important law on the matter of status of the foreign citizens on its territory is represented by the Government Emergency Ordinance n. 194/2002 (henceforth referred to as EO), republished in 2008. This provision in particular does not apply to them because Article 2 (1) a) states that a foreign citizen is the one whom does not hold Romanian citizenship or the citizenship of an European Union member state, therefore it means that EU citizens have overall an similar regime to the native Romanian citizens.

As stated before, citizens from EU Member States are granted the same rights and of course the same obligations as a Romanian national given the existence of the concept of "European citizenship" stated for the first time in the Maastricht Treaty.

Under the national law the concept of immigrant is not defined in anyway, remaining for the doctrine to clarify this aspect.

The eligibility requirements to enter the Romanian State described by Article 6 of the EO are as follows:

- The person has a valid permission act which grants him/her the right to cross the border;
- The person possesses a Romanian visa issued in accordance with the EO or possesses a valid residence permit;
- They present reliable documents in order to justify the reason for their staying and the resources they have in order to financially support themselves in Romania;
- They prove by reasonable means that they will gain access to the State of destination, or that they will leave the Romanian territory (in case of transit);
- They do not belong to the category of undesired persons or the ones whose access on the Romanian territory has been prohibited;
- They have not previously infringed the purpose of their visa or tried to enter Romanian territory using false documents;
- Their names have not been mentioned in the Schengen Information System in order to stop their entrance;
- They are not a threat for the national security.

Also, it is compulsory for the non-EU citizens to provide the Romanian authorities (within 3 days after legally crossing the Romanian border) with all the information regarding his/hers identity.

2.2. Immigration Regarding Non-EU Citizens

EO no. 194/2002 regulates certain types of visas which are necessary in order to spend time on the Romanian territory. In this context, the most relevant is the long-term visa because it directly implies that a non-EU citizen is going to spend a long amount of time in Romania. This resonates with the concept of immigration, for it can become the first step for non-EU citizens to reside in our country.

2.2.1. Long Term Visa

Long term visa can be obtained for 90 days by the citizens of non-EU States, for the following reasons:

- To develop commercial activities;
- Exercise a profession under a special law if it is permitted;
- Subordinated labor;
- Studies;
- To reunite family;
- Religious or humanitarian activities;
- Other reasons.

The reasons mentioned above should be doubled by the conditions stated in Article 27 of the EO and by a submitted application. The non-EU citizens can receive a long term visa if they enter the Romanian territory legally as stated in Article 6, or their entrance on the Romanian territory, it is not prohibited according to Article 8 or, their application for the visa was not refused and they have not been banned from entering another EU Member State's territory.

2.2.2. License for Permanent Residence

2.2.2.1. Common Case

Another step for immigration is obtaining the license/permit for a permanent residence, which grants the non-EU citizen almost all the rights of a Romanian national, except the right to vote.

The conditions for obtaining such a license/permit are:

- Legal and continuous residence on the Romanian territory;
- Can support himself/herself financially, at least at the level of the minimum wage;
- Has paid the social contributions to the State;
- Holds a residence;
- Is able to speak Romanian on a medium level;
- Does not represent a security threat for the State.

According to article 75 of the EO, the non-EU citizens will receive an equal treatment in matter of access to working places, studies at all levels, social security, health insurance, tax deduction, access to the public services, freedom of association, and finally they can establish their residence in Romania or change it on the same base as the Romanian citizens.

2.2.2.2. Vulnerable People

Under Article 130 of the EO, citizens of the non-EU States, which were victims of the crimes mentioned in Article 141 benefit from a special treatment, as they can obtain their license even if they illegally entered the Romanian State. However, their application must be made by a district attorney or a judge, under the following conditions:

- The person showed clear intention to cooperate with the Romanian authorities;
- The connection with the person who convinced them to commit the crime ceased;
- The license is opportune for judicial investigation;

- Their presence on the Romanian territory will not affect public order or security of the State.

Another vulnerable category consists of unaccompanied infants. Their rights to obtain temporary license is conditioned by the following formalities:

- Authorities determine their identity and the way they entered the State;
- They ensure the legal representation in order to take care of them and also grant them accommodation for their stay;
- Authorities try to identify their parents;
- Children are able to access the educational system;
- If their parents are not located in Romania the child will be sent to them;
- And if, finally, the parents are not identified, the child obtains the right to obtain temporary license to remain on the Romanian territory.

2.2.3. Admission, Benefits and Obligations

The Romanian policy on this matter is the integration of these people by guaranteeing them access to economic, cultural and social life.

In order to fully integrate them, the Romanian State can organise:

- Courses for learning the Romanian language;
- Courses in order to polish their professional abilities;
- Ensure their full information on the matter of rights and obligations;
- Courses in order to learn history, culture, civilization, and the Romanian law system;
- Meetings with Romanian citizens in order to better understand each other.

Also, the Romanian authorities shall cooperate with different international NGOs in order to better integrate the individuals into the Romanian social life.

The particular obligations the immigrant must respect are the following:

- He/she has to communicate any changes regarding his/her personal life such as change of citizenship, marriage, newborn child, death of a family member on the Romanian territory;
- Any change regarding his/her workplace;
- Loss or change of the passport.

If he/she changes his/her residence he/she must inform in maximum 15 days the Romanian Immigration Office in order to take evidence. Also, if the passport is lost or stolen he/she has to inform the authorities within 40 hours.

2.2.4. Exclusion of Migration Status

The Romanian visa can be cancelled in several situations:

- If the visa was issued by mistake although the person did not meet the conditions in order to obtain it;
- Visa was obtained on the ground of false documents;
- Non-EU citizens tried to introduce on the Romanian territory other non-EU citizens or helped them during their stay;

- They infringed regulations regarding Romanian border.

In other situations, visa can be revoked on the following basis:

- Non-EU citizens do not meet all the requirements anymore (the requirements that were necessary to obtain the visa in the first place);
- The purpose for which the visa has been accorded has not been respected;
- After obtaining the visa, they are declared undesired on the Romanian territory.

2.2.5. Expulsion

In order to apply this legal punishment, the person has to commit a crime mentioned in the Romanian Criminal Code. In such a case, the judge has the possibility to accord him public custody before being expelled from the country. What must be mentioned is that expulsion is prohibited if the life of the individual would be at risk in the specific State where he/she should be sent to.

Also, under Article 96 EO, Romania has to respect the decisions of expulsion of strangers from other EU Member States in the following cases:

- The decision of departure is taken for security matters:
 - The individual was convicted for committing a crime for which the Romanian Criminal Code states more than 1 year of deprivation of liberty;
 - There is proof which shows that the individual wants to initiate or continue an activity which threatens the security of the EU Member States;
- The individual did not respect the conditions of his/her entrance on the territory of the State.

2.3. Immigration Regarding Citizens of EU Member States

Citizens from EU Member States are granted the same rights and of course the same obligations as a Romanian national, given the existence of the concept of "European citizenship". Therefore, the treatment of the EU citizens is fully assimilated to the Romanian citizens.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The public authority dealing with migrants in Romania is the General Inspectorate for Immigration, which was set up under the authority of Ministry of Internal Affairs in 2012. The institution is not new however, it was preceded by the Authority for Aliens and The National Refugee Office until 2007 and then, after a vast institutional reform by the Romanian office for immigration which unified under the same authority the responsibilities in the field of migration control and asylum.

On June 20 2007, the Government Emergency Order n. 55 and the Government Decision n. 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).

The inspectorate is a specialized structure of the central public administration with juridical personality that operates under the authority of the Ministry of Internal Affairs. The Inspectorate's activity is considered public service and its goal is to serve the people and the community and also to support other institutions in putting law into practice. The person in charge is a general inspector appointed by an order of the Internal Affairs minister and has the ability to give out dispositions that have a juridical value. A secretary of state coordinates the activity and supports the general inspector's work.

The main responsibilities of the inspectorate regarding the implementation in Romania of policies in the fields of migration, asylum, aliens integration into the society as well as adopting relevant legislation. These goals are mainly carried out by the activity of the general inspector who is able to give out dispositions and by the executive personnel composed of police officers, public workers and other contract based employees.

Among the inspector's main assignments concerning migration there are:

- Grants visas for the entrance in Romania of aliens and approves invitations and family reunification requests according to the law;
- Grants work permits for the purpose of obtaining the right of staying for work purpose;
- Reviews the requests for obtaining the right of staying and where the criteria is met he grants this right or he prologues it according to the legislation;
- Enrolls the residency on Romanian territory of citizens from EU and EEA and their families and grants permanent residence to EU/EEA citizens and their families;
- Annuls or revokes the right of staying or limits the residency right according to the laws;
- Gives out legal documents attesting identity, staying, residency or other travel documents;
- Establishes interdictions at the entry in the country.

Asylum related attributions include:

- Registers, analyses and solves asylum requests on an administrative level;
- Sends out to the competent courts complaints from asylum seekers and sends them out copies of the files in question;
- Decides upon granting access on Romanian territory for asylum seekers who have filled a request at border control offices for entering the country;
- Can decide on sending the alien to a safe third party country and works with border police in order to arrange that the aliens get there safe.

Given the importance of this authority in the field of migration, the Inspectorate has an active role in elaborating the national strategy for immigration and implementing it through annual action plans. Moreover, it can elaborate, implement and monitor projects with external financing

through its special departments. The Inspectorate has attributions in coordinating other public authorities both at central and territorial level that are also involved in the social integration of aliens who have previously acquired a form of protection in Romania or a right of staying and that of citizens of EU/EEA. The Inspectorate can also store and check personal data about the aliens and can conduct studies and researches in order to improve its activity.

One important component of the institution are the external collaborations. This being said, the Inspectorate is in good relations not only with the Ministry of Internal Affairs, which patronizes it, but also with various other authorities and organisations. Among these, there are foreign institutions with the same activity and international organisations, diplomatic missions and accredited offices in Romania, the UNHCR (United Nations High Commissioner for Refugees), the International Organisation for Migration and other non-governmental organisations involved with migration and refugees topics.

The Inspectorate draws its finances from the State budget through the budget of the Ministry of Internal Affairs, as well through other sources approved by the law. Moreover, the Inspectorate can use the money and goods that have other sources of provenience, such as donations or sponsorships obtained through internal or international agreements.

As far as ways of redressing are concerned, the foreigners who consider themselves wronged by the General Inspector's dispositions can challenge said documents in court. The competence in this matter belongs to the Court of Appeal in whose jurisdiction the territorial structure of the Inspectorate has its headquarters. The terms for filing a complaint vary depending on the type of legal document that is challenged. For example, if the request to be tolerated on the territory of Romania is denied by the Inspectorate, the term for filing a complaint is 5 days which start to be counted from the day the decision was communicated to the person in question. Regarding asylum related requests, they are solved by the Inspectorate through decisions. Against these decisions, the person who has an interest can file a complaint which is solved by a court in first instance. The complainant has all the ways of redressing from common law, meaning he/she can appeal the decision.

If a person considers that the personnel of the Inspectorate had a wrong conduct while on duty, he/she can sue the Inspectorate and the Romanian State. During trial the person would have to prove that the conditions of civil tort liability. These conditions are: the existence of a prejudice, the existence of an illicit deed, the causality report between them and the guilt in the form of negligence, imprudence or intention belonging to the person who caused the prejudice.

With a view to assure a better cohesion between EU actions and internal actions, Government Decision n. 780 from September 20 2015 establishes a National Strategy regarding Migration (referred to as "the Strategy" from hereby) for the years 2015-2018 which comprises the steps to follow concerning migration and authorities who monitor the process. One of the breakthroughs of this law was the creation of the Coordinating Group for the implementation of the National Strategy regarding migration (referred to as the Group from hereby). The activity of the Group is led by the secretary of state who also coordinates the activity of The Inspectorate.

The main responsibilities within the Group include:

- Coordinating the activities within the institutions that have activities in the field of migration, ensuring that the objectives of the Strategy are carried out and that Romania respects its obligations and commitments;
- Monitoring the implementation of communitarian and international practices in the field;
- Quarterly evaluation or every time it is necessary of the stage of the Strategy;
- Annually elaboration of reports regarding the evolution of the migration phenomenon and based on them the proposal of new directions and plans for action.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

Romania has registered during the period between January 1 2012 and December 31 2016 **a total of 8690 asylum applications**, 2510 of which in 2012.²⁹⁶¹ The beginning of 2017 already counts 613 requests registered during the first three months of the year. All these applications come from people of **more than 65 different citizenships**, but more than a half of these people have their origins in Afghanistan, Republic of Iraq and Syrian Arab Republic.²⁹⁶²

The number of first-time applicants during the past years is as follows: in 2016: 1855 out of 1880, in 2015: 1225 out of 1260, in 2014: 1500 out of 1545, in 2013: 1405 out of 1495 and in 2012: 2420 out of 2510.²⁹⁶³ These numbers represent the harsh reality: there are **constantly** plenty of people in need of asylum.

Person granted refugee status means a person covered by a decision granting refugee status taken by administrative or judicial bodies during the reference period.

Refugee status means status as defined in Article 2 (e) of Directive 2011/95/EC within the meaning of Article 1 of the Geneva Convention relating to the Status of Refugees of July 28 1951, as amended by the New York Protocol of January 31 1967.

According to the Article 2 (d) of the Directive 2011/95/EC, **refugee** means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former

²⁹⁶¹ Asylum and first time asylum applicants - annual aggregated data (rounded) - <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00191&plugin=1> accessed June 1 2017, 12:25;

²⁹⁶² http://popstats.unhcr.org/en/asylum_seekers_monthly accessed June 1 2017, 12:45;

²⁹⁶³ Asylum and first time asylum applicants - annual aggregated data (rounded) - <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00191&plugin=1> accessed June 1 2017, 13:03.

habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it.²⁹⁶⁴

Person granted subsidiary protection status means a person covered by a decision granting subsidiary protection status, taken by administrative or judicial bodies during the reference period.

Subsidiary protection status means status as defined in Article 2 (g) of Directive 2011/95/EC. According to Article 2 (f) of the Directive, **person eligible for subsidiary protection** means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of citizenship, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

First instance decision means a decision made in response to an asylum application at the first instance level of the asylum procedure²⁹⁶⁵, while **final decision on appeal** means a decision granted at the final instance of administrative/judicial asylum procedure and which results from the appeal lodged by the asylum seeker rejected in the preceding stage of the procedure.²⁹⁶⁶

2016 concluded with a number of 820 positive decisions divided in 605 granting refugee status and 215 granting subsidiary protection.²⁹⁶⁷ Those decisions have been given both in first instance (805 out of a total of 1295) and as final decisions on appeal (15 out of a total of 115).²⁹⁶⁸ More than a half (61%) of those whose applications have been accepted are from Syria, while the second and the third place are occupied by migrants from Iraq (17%) and Eritrea (5%).²⁹⁶⁹

In 2015, there were given 480 positive decisions in first instance and 45 on appeal, significantly less than the year before (2014), when there were 740 positive decisions in first instance and 35 on appeal. 2013 counts the most positive decisions from the last years: 915 in first instance and 925 on appeal, while 2012 counts the least: 230 in first instance and 275 on appeal.

²⁹⁶⁴The sixth page of Eurostat 70/2017 - April 26 2017 - <http://www.europeanmigrationlaw.eu/documents/Eurostat-AsylumDecisions-2016.pdf> accessed June 1 2017, 13:27;

²⁹⁶⁵First instance decisions on asylum applications by type of decision - annual aggregated data - <http://www.europeanmigrationlaw.eu/documents/Eurostat-AsylumDecisions-2016.pdf> accessed June 1 2017, 16:07;

²⁹⁶⁶Final decisions on asylum applications - annual data - <http://www.europeanmigrationlaw.eu/documents/Eurostat-AsylumDecisions-2016.pdf> accessed June 1 2017, 16:44;

²⁹⁶⁷The third page of Eurostat 70/2017-26th of April 2017, < <http://www.europeanmigrationlaw.eu/documents/Eurostat-AsylumDecisions-2016.pdf> accessed June 1 2017, 16:58;

²⁹⁶⁸The fifth page of Eurostat 70/2017-26th of April 2017, <http://www.europeanmigrationlaw.eu/documents/Eurostat-AsylumDecisions-2016.pdf> accessed June 1 2017, 16:58;

²⁹⁶⁹The forth page of Eurostat 70/2017-26th of April 2017, < <http://www.europeanmigrationlaw.eu/documents/Eurostat-AsylumDecisions-2016.pdf> accessed June 1 2017, 16:58;

According to an UNHCR statistic regarding the sex of the persons of concern, there are about **twice as much men** than women looking for asylum in Romania.²⁹⁷⁰ The most of these people are between **18 and 59 years old**, according to the same statistics.

Romania is not a much demanded country in terms of immigration. Considering its infrastructure, economy, work and integration possibilities it is not a popular choice among asylum-seekers, refugees or other protected category of people. Migratory flows tend to lead to Western Europe and to the more developed countries. Usually these people avoid Romania, simply because of the geographical position. After having been built so many wire-fences on different borders (e.g. Hungary) many migrants changed their route to cross from Serbia to Romania and then to continue their way to Western Europe.

Emergency Transit Centre (ETC) Timisoara, **Europe's first evacuation facility**, opened its doors in May 2008 as part of a Tripartite Agreement between Romania, UNHCR, and International Organization for Migration (IOM). With a capacity to host up to 200 people, the facility provides temporary shelter to refugees who need immediate evacuation from their first country of refuge.²⁹⁷¹

According to the authorities, in 2015, Romania was running six reception centres for refugees, with a **total capacity of 1,500 places**.²⁹⁷²

On July 2 2015 the Romanian Government adopted the Memorandum regarding the conclusions of the European Council on June 25. This document stated that Romania must relocate 1705 people through the relocation mechanism and 80 people through the extra-EU relocation program.²⁹⁷³ According to the relocation scheme from September 2015, Romania was supposed to welcome 585 people from Italy and 1890 from Greece.²⁹⁷⁴

According to the tenth report on relocation and resettlement (from March 2 2017) Romania has relocated very few individuals so far.²⁹⁷⁵ A European report presented by the European Parliament on May 16 2017 shows that there have been relocated only **586 refugees out of 4180** that were allocated to Romania.²⁹⁷⁶

²⁹⁷⁰ <http://popstats.unhcr.org/en/demographics> accessed June 1 2017, 16:59.

²⁹⁷¹ ETC Timisoara | Emergency Transit Centre, <http://www.unhcr.org/ceu/100-enwhat-we-doresettlementetc-timisoara-html.html> accessed June 2 2017, 09:09;

²⁹⁷² <http://imigranti.ro/cati-refugiati-sunt-in-romania> accessed June 1 2017, 09:49, [Romanian];

²⁹⁷³ The 22th Page of the National Strategy Regarding Migration for 2015-2018 <https://www.edu.ro/sites/default/files/u39/Anexa%201%20Proiect%20HG%20strategie%20imigratie%20si%20plan%20actiune.pdf> accessed June 2 2017, 11:10, [Romanian];

²⁹⁷⁴ Council Decision (EU) 2015/1601 of September 22 2015 Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN> accessed June 2 2017, 11:32;

²⁹⁷⁵ Report from the Commission To The European Parliament, The European Council and the Council https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_tenth_report_on_relocation_and_resettlement_en.pdf accessed June 2 2017, 12:12;

²⁹⁷⁶ <http://www.euractiv.ro/extern/pe-cere-stator-ue-sa-acelereze-relocarea-refugiator-romania-a-primit-568-din-cei-4.180-alocati-7690> accessed June 2 2017, 12:12, [Romanian].

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

In Romania, there have been 3 visits of the European Committee for the Prevention of Torture and other forms of punishment or Inhuman or Degrading Treatment or Punishment (CPT) following which the CPT expressed his demand of several changes regarding this domain in 3 different reports. In the last visit (2006) concerning the detention centre for foreigners in Otopeni as well as in different premises of detention for foreigners in the area of International Airport of Bucharest-Otopeni (Henri Coanda), the Committee examined the measures taken by the Romanian authorities as a result of its two first visits (in 1999 and 2002). The Romanian Government sent a response concerning how the demands of the CPT were accomplished after the Committee's visit to Romania from June 8-19 2006.

Analysing the implementation of the decisions taken by the European Court of Human Rights concerning migrants at national level, we should take into account the latest response of the Government regarding the conditions of detention of foreigners who want to cross our border, as well as 3 important cases: *Lupsa v Romania* (case n. 10337/04), *Kaya v Romania* (case n. 33970/05) and *Abmed v Romania* (case n. 34621/03). Moreover, it is important to mention that, in general, the recommendations have been respected and implemented at national level, considering that Romania does not confront with a large number of refugees so far.

In the 3 cases mentioned above, Romania was convicted to pay to the injured part moral damages during 3 months, according with the European Court of Human Rights case-law and competence. The last case, *Abmed v Romania*, has a particular importance because, following the response of the Court concerning a violation of Article 1 of Protocol n. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms response which was similar in the other two cases (*Lupsa v Romania* and *Kaya v Romania*, where the authorities did not provide the applicants with the slightest information regarding the reason they were declared undesirable on Romanian territory, nor any indication about the facts of which the applicant was accused), the Government Emergency Ordinance n. 194/2002 regarding the regime of foreigners in Romania [Ordonanța de Urgență Guvernului României nr. 194/2002 privind regimul străinilor in România] was amended by the Government Emergency Ordinance n. 56/2007 regarding the employment and detachment of foreigners on the territory of Romania [Ordonanța de Urgență a Guvernului României nr. 56/2007 privind încadrarea în muncă și detașarea străinilor pe teritoriul României], as an implementation of the decision taken by the European Court of Human Rights. In fact, in the case *Abmed v Romania*, an Iranian man named Hamdoon Ahmed Ahmed was declared as an undesirable person on the Romania's territory taking into account the provisions of the Government Emergency Ordinance n. 194/2002 which was applicable at the time of the facts. Moreover, the prosecutor in charge admitted that there was enough evidence to sustain the fact that his actions were a cause of endanger for the security of the state. In all of the 3 cases, the complainants were completely integrated on the Romanian society. They were living in Romania for at least 10 years and they were occupying important positions in the society, for example in the case *Abmed v Romania*, Hamdoon Ahmed was the administrator of a commercial

society in Romania, or in the case *Lupşa v Romania*, the Serbo-Montenegrin Dorjel Lupşa was a Yugoslav citizen who established in Romania a society who had like object the commercialization of the coffee.

Moreover, as a consequence of the decision taken by the Court in the case *Abmed v Romania*, the Government Emergency Ordinance n. 102/2000 concerning the status and regime of refugees in Romania [Ordonanța de Urgență Guvernului României nr. 102/2000 privind statutul și regimul refugiaților în România] which was applicable at the time of the facts, was repealed by the Law n. 122/2006 concerning the asylum in Romania [Legea nr. 122/2006 privind azilul în România] which also suffered subsequent modifications until the current form.

From the last visit in 2002 concerning the detention centre for foreigners in Otopeni as well as in different premises of detention for foreigners in the area of International Airport of Bucharest-Otopeni (Henri Coanda), the CTP affirms in 2006, after the examination of the conditions in which foreign nationals could be detained in the transit area, that the legal framework governing the detention of foreign nationals has changed significantly since the 2002 visit. The Court mentions the amendments to the law from 2001 regarding foreigners : Government Emergency Ordinance n. 194/2002 mentioned above, Law n. 357/2003 regarding the approval of the law n. 194/2002 on the regime of aliens in Romania [Legea nr. 357/2003 privind aprobarea Ordonanței de Urgență Guvernului României nr. 194/2002 privind regimul străinilor în România] and Law n. 482/2004 regarding the modification and completion of Government Emergency Ordinance n. 194/2002 on the regime of aliens in Romania [Legea nr. 482/2004 pentru modificarea și completarea Ordonanței de Urgență a Guvernului nr. 194/2002 privind regimul străinilor în România]. As a consequence, there has been introduced at the time a judicial review of the detention of foreign nationals and the suspensive nature of any appeal against a removal order, time limits for the detention of foreign nationals : foreign nationals subject to an administrative deportation decision could be detained for a maximum period of six months and those who were sentenced to a judicial expulsion after serving a sentence of imprisonment may, in anticipation of their remoteness, be kept in detention for a maximum of two years. If the aliens concerned cannot be deported within the above time limits, they must be released and they will receive, on a temporary basis, the status of tolerated people. The new law at the time allowed the indefinite detention of foreign nationals (including asylum seekers and refugees recognized as such) which are declared undesirable because of the threat they pose to national security. Also, foreigners who have applied for asylum upon arrival at an international airport in Romania are, based on the new law, subject to a procedure for asylum at the border. Under this procedure, asylum seekers are in principle required to stay in the transit areas. However, if there is no final decision within twenty days, they are automatically allowed to enter the territory subject to the ordinary asylum procedure and Romanian (while being accommodated in an open reception centre). Nevertheless, the detention centre for foreigners from Otopeni has expanded considerably since the last visit in 2002 by the construction of a new building.

The response of the Government after the visit from 2006 concerning the conditions in which foreign nationals could be detained in the transit area should also be considered. Romania opened a number of transit accommodation centres in 2000 for the medium-term (maximum 20 days)

administrative detention of people who request asylum at the border. Six transit facilities were in operation by 2006. One of them is the Bucharest-Baneasa International Airport (CPT 2006), as well as the Bucharest Henri Coanda Airport (CPT 2006), a facility at the Constanta Harbour and a centre in Romanesti, at the border with Moldova.

Among the important changes, the Government refers to the transfer, within the shortest time, in a proper centre of any national stranger who may be placed in custody for an extended period in the area of transit from the Airport International Bucharest – Baneasa. The report also contains information regarding the insurance of necessary conditions for foreigners in the Centre as the right to receive three visits each week, half an hour each, the right to see a doctor or a psychologist, the right to take advantage of the assistance offered by NGOs and the services of a lawyer. If necessary, they can be transferred to a medical unit nearby. Also, the information ensures that at the Otopeni hosting centre are hired a doctor, 4 medical assistants and a psychologist, all full-time. The psychologist makes daily assessments, writing psychological observation for each hosted foreigner.

The schedule was also changed. The foreigners are hosted separately, by categories, but the daily program is currently taking place in common for all foreigners. In the report from 2006, the Government also affirmed the intentions of buying 20 radio and TV devices in 2007.

According to the new modifications from 2006, all the foreigners whom are subjected to an administrative decision of expulsion are, at the entrance in the Centre, subjected to medical examination.

In case of isolation, in each cell for the implementation of the measure of isolation was mounted a bed set in the floor, equipped with mattresses and lingerie. The foreigners from the isolation have now access to an hour of free time for daily exercise.

Moreover, the rules of procedure of the centre provides the following penalties: verbal warning, work to the benefit of the centre such as cleaning the spaces intended for cultural and sporting activities, ban, for a limited period of time, from sporting, educational and cultural activities, and other benefits. The isolation is arranged for a period of 24 hours by the head of the centre or his legal substitute, which is required to announce the leadership of the authority for foreigners on the taking of these measures and the reasons that led to these measures. Coercive measures such as immobilization and putting the handcuffs are arranged by the head of the centre or his legal substitute only if foreign behaviour endangers the lives of other inmates or the staff of the centre.

Last but not least, there can be mentioned 2 of the latest law-cases of the ECHR, such as *N.M. v. Romania*, (case n. 75325/11 from May 10 2015) in which the Court found the applicant's complaints under Articles 5 Para 2, 6 and 13 in conjunction with Article 3 to be inadmissible and therefore rejected them, and *S.C. v. Romania* (case n. 9356/11 from 10 February 2015) in which the Court decides that there has been a violation of the Article 5 (1) f) and ordered the applicant to be compensated.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

Compared to international migration and taking into consideration that work appears to be less attractive to immigrants, Romania is considered a very interesting country considering the point of view of **transit opportunities** and **a country of emigration**. In other words, **the migration of Romanian workforce is the dominant national characteristic²⁹⁷⁷ at the present moment**. However, in accordance to the conclusions of the “Immigration and asylum in Romania – 2006”, carried out by the Interministerial Group for the Coordination of Implementation of National Strategy on Migration²⁹⁷⁸, the integration of Romania into the structures of the European Union would lead to an increased number of migrants in Romania.

Among the findings of the experts who conducted this research:

- As regards the interest of foreigners to visit Romania - for tourism or business - there has been a significant increase in the number of applications for short-stay visas (mostly foreign citizens with a high trend towards migration);
- The number of foreigners who have applied for work visas of long or temporary stay has increased in 2006 and 2007 with +27% and 57%, respectively. A fact which proves that **Romania, originally a country of transit, becomes a destination country for migrants**;
- Source countries with regard to migration continue to be The Republic of Moldova, Turkey and China, these countries of origin of a large majority of those who have carried out commercial activities in Romania²⁹⁷⁹;
- There has been a significant increase in the number of foreigners who got married to the Romanian citizens and of those who have their temporary residence in Romania: 17 % of the total number of visa applications;
- The number of foreigners currently residing in Romania, only 0.2% of the population of Romania, reduced in comparison with other Member States - the number of foreign employees represents only 0.58% of the total labour force in Romania and has no negative effects on the national labour market. Despite taking into account the liberalization of the labour market, as well as the gradual increase in the active population in Romania, it had been estimated that 200,000 - 300,000 foreigners would work in Romania in 2013-2015.

In this context, Romania, through its institutions and bodies with powers in this field, shall effectively engage itself in the management of migration, respecting European policies. In this

²⁹⁷⁷ According to the Organization for Economic Co-operation and Development (OECD), the main countries of immigration origin in the EU15 were in 2004: Romania, Poland, Morocco, Bulgaria, Turkey, Ukraine, Germany, the Russian Federation and the United Kingdom. < <https://www.oecd.org/migration/mig/46292981.pdf> >, accessed May 25 2017, 19:30.

²⁹⁷⁸ The document is published on the official website of the Ministry of the Interior and the Administrative Reform < <http://www.mira.gov.ro/> >, accessed on May 28 2017, 17:50, [Romanian];

²⁹⁷⁹ Of the total of 8,952 work permits requested in the first quarter of 2007, only 22% were citizens;

regard, we would like to point out that in December 2005 the European Parliament adopted the Global Approach to the Migrations: priorities for actions centered on Africa and the Mediterranean based on a sharing of responsibilities between the Member States and Third countries.

This comprehensive approach, which defines policies and a coherent action, refers to a wide range of problems regarding migrations and covers the multiple areas of action: development, employment, but also justice, freedom and security. The results of this strategy have already been evaluated²⁹⁸⁰ in the Conclusion of the European Commission that the actions need to be further increased within the framework of a comprehensive approach, to establish a common policy on migration and a common asylum policy, to combat immigration, to ensure fair treatment for immigrants and partnerships with countries of origin and transit.

The creation of an effective and unitary legislative framework is a priority for the Parliament of Romania. Among the adoptions in 2007, there can be mentioned: The Strategy And the Action Plan on Migration, The National Commission for the Management of an Integrated Border in 2007-2010, The National Strategy for Combating Trafficking of Persons, The Laws Regulating in Romania, The Laws for the Organization and Operation of the Ministry of the Interior and the Administrative Reform and so on.

At the same time, Romania implies constant concern and sustained effort of its institutions with the aim of harmonization and implementation of the *acquis communautaire* in the fields of Justice, Home Affairs and Freedom of the Movement of Persons, taking into account the fact that Romania has 2000 kilometres of the outer border of the Union. At present, the task of ensuring effective border control and monitoring Romania's eastern border, to combat migration, illegal trafficking and the trafficking of human beings, represent priorities and important challenges for Romania.

It is necessary to emphasize that it is a global approach to this phenomenon, integrating economic, social and demographic factors and involving broad participation and input from NGOs, media and local communities, which is most appropriate for building the necessary links between the institutional and the socio-cultural dimensions of migration.

7. How is migrants' right to access to healthcare regulated within the national legislation?

According to the provisions of the European Convention on Human Rights, there is no express right to health care, although it is an aspect of moral and physical integrity that falls within Article 8 which guarantees the right to respect for private and family life.

Similarly, the Convention does not guarantee the right to any specific health care standard or the right of access to medical treatment under certain circumstances, but the responsibility of a

²⁹⁸⁰ Communication from the Commission to the Council and the European Parliament “*The global approach to Issue of migration a year later: towards a comprehensive European policy on migration*” COM (2006) 735 final, Brussels, 30.11.2006, <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52007DC0248>>, accessed on May 3 2017, 15:40.

Member State, in accordance to the provisions of the Convention, may still be engaged if it is demonstrated that the authorities from a Member State endanger a person's life through acts or omissions that denied him/her health care services that are otherwise available to the entire population.

Article 34 from the Constitution of Romania establishes the right to health, where the State is obliged to take measures to ensure hygiene and public health, to organize a system of health insurance, accidents, maternity and recovery, to control the medical practices and paramedical activities, as well as other measures for the protection of the physical and mental health of the persons which are established according to the law.

The Romanian legislation states that everyone is entitled to receive medical assistance under the same conditions as any Romanian citizen, according to Law n. 95/2006. In Romania, citizens must seek medical insurance to receive full medical services.

There are also situations where health insurance is provided free of charge, namely: people under age of 18, students without an income, aged between 18 and 26, handicapped people that possess a certificate that states the handicap, pregnant women that do not have a stable income greater than/equal to the minimum wage on the economy, the individual has no income but his/her spouse has health insurance (co-incurred). Also, if one is legally employed, the employer has the obligation to pay a contribution to the insurance system.

Asylum seekers healthcare is provided by healthcare centres of accommodation of the General Inspectorate for Immigration which constantly monitors the health of asylum seekers and, in case of sickness provides primary care and free treatment. For people who suffer from acute or chronic life threatening, they benefit of emergency Services.

The applicability of the Charter is limited to those aspects which fall within the European Union law. EU Charter does not make distinction on grounds of nationality but subjects the exercise of the right to healthcare base on the national law and practices there for the EU regulations have subsidiary applicability.

Law n. 95/2006 regarding health reform states the categories of public institutions which have the obligation to ensure a certain level of healthcare, and, also the categories of persons who can benefit from health insurance with or without the contribution under the same conditions as the Romanian citizens.

Article 1 of the abovementioned law states that all Romanian citizens domiciled in the country, as well as foreign citizens and stateless persons who have applied for and obtained the extension of the temporary residence right or are domiciled in Romania and are proved by this law conclude an insurance contract with the health insurance houses, directly or through an employer, the model of which is established by an order of the President of CNAS (National Health Insurance House) with the approval of the board of directors”.

Paragraph two from the same legal provision also mentions the quality of insured and insurance right ceases with the loss of the right to domicile or stay in Romania.

Also, the Government Emergency Ordinance n. 94/2002 regarding the foreigner's regime in Romania stipulates that in order to request or extend the right to stay in the country the foreigner has to prove the health insurance.

There are exceptions to these provisions, and here are mentioned the persons who have obtained a form of protection in Romania and are subject to the Law n. 122/2006 on political asylum in Romania.

They are required to ensure compliance with the law on health care reform, but are not obliged to provide annually the proof of health insurance to the General Inspectorate for Immigration. Therefore, all foreigners in third countries with temporary or long-term residence in Romania have the obligation to have a health insurance regardless of the purpose of their stay and the legal status, for example: people with a form of protection in Romania or foreigners coming to work.

The discrimination of a person or group of people on the grounds of belonging to a particular race, nationality, ethnicity, religion by refusing access to public health services, such as the choice of family doctor, healthcare, health insurance or emergency services, constitutes contravention according the provisions of Law n. 137/2000 Article 10 b)²⁹⁸¹.

Under the Family Reunification Directive, stated by the Article 7 (1) b) and c) the sponsor of the reunification may be required to prove that he has a health insurance for himself and his members which covers all the risks normally covered by the nationals of the member state concerned, and sufficient resources to alienate herself and her family members without recourse to the social assistance system of the member state concerned.

Article 5 (1) b) from the “Long-Term Residents Directive” (Directive 2003/109/EC) provides that, before granting long-term resident status, third-country nationals and family members are required to provide evidence of health insurance covering all risks that are normally covered by the host state of their own citizens. Also, they must demonstrate that they have stable and regular resources sufficient to support themselves and their family members without resorting to the social assistance system in that state.

Individuals that have acquired long-term resident status have the right to equal treatment with nationals of the host Member State with regard to national security, national assistance and social protection, as defined by national law.²⁹⁸²

Recital 13 of the Directive 2003/109/EC stipulates that in the case of social assistance, the possibility of limiting long-term residents' benefits to basic benefits must be understood so that the concept covers at least the minimum subsistence income, sickness or pregnancy benefit, for child-care and long-term care. The modalities of granting these allowances must be determined by the internal legislation.

In conclusion, both asylum seekers, recognised refugees and people enjoying subsidiary protection have the right to equal access to healthcare as well as State citizens, this being mentioned and established in the national legislation of the State. They also benefit from and have the right to emergency medical care, treatment for serious illness as well as social and medical assistance for people with special needs.

²⁹⁸¹ Luciana Lazarescu, Andra Panait, Andreea Iordache, Valentina Dimulescu, Marius Antofi , *Între discriminare, abuz și exploatare. Accesul imigranților la drepturile civile*, Raport de Cercetare, October 2015, 52, < https://ec.europa.eu/epale/sites/epale/files/dim_raport_cercetare_final_26_10_15_imigranti.pdf >, accessed September 15 2017, 15:15, [Romanian];

²⁹⁸² *Handbook on European Law Relating to Asylum, Borders And Immigration*, ch 8 “Economic and Social Right”, 219;

Our legislation also strictly prohibits any form of discrimination; for example the Government Ordinance n. 137 from August 31, 2000. When there is a case of discrimination, the National Council for Combating Discrimination can be petitioned by the injured person. The petition may be formulated in writing and sent to the National Council for Combating Discrimination by one of the legal means (post, e-mail, and fax) or may be made orally by audience note. The Council can take notice of any situation, announcement or event for which there is evidence of the existence of facts which involve committing an act of discrimination. National Council on Combating Discrimination is an administrative-judicial authority that has the competence to investigate, detect and sanction the facts of discrimination. It is competent to receive petitions on discrimination on any criteria.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

According to Article 2 of the First Protocol to the European Convention of Human Rights, no person should abridge of the right to education in the exercise of any functions which it is assumed in relation to education and to teaching, the State should respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays a fundamental role in the development of society.²⁹⁸³ Over the years, children's rights have been placed first; the right to education, the right to good development, the right to health and not only, have been the focus of the European Conventions. Children's rights are protected by a variety of international human rights instruments and committees that control compliance with the UN Convention on the Rights of the Child.²⁹⁸⁴

They claim that non-discrimination requirements also apply to asylum seekers and migrants in regular and irregular situations.

According to Article 17 Part II from the European Social Charter (Revised), Member States have the obligation to provide effective access to education for children irregularly placed on their territory as it provides to any other child.²⁹⁸⁵ The Romanian State must assist foreigners with the right to stay in Romania in order to integrate them into economic, social and cultural life. In the legislation of our State, the superior interest of the children prevails.²⁹⁸⁶

²⁹⁸³ Guide of Article 2 of Protocol No1 to the European Convention of Human Rights 6;

²⁹⁸⁴ *Handbook on European Law Relating to Asylum, Borders and Immigration*, Ch. 8 “*Economic and Social Rights*”, 211;

²⁹⁸⁵ *Ibid.*, 212;

²⁹⁸⁶ Luciana Lazarescu, Andra Panait, Andreea Iordache, Valentina Dimulescu, Marius Antofi , *Între discriminare, abuz și exploatare. Accesul imigranților la drepturile civile*, Raport de Cercetare, October 2015, 61, < https://ec.europa.eu/epale/sites/epale/files/dim_raport_cercetare_final_26_10_15_imigranti.pdf >, accessed September 15 2017, 16:25, [Romanian];

Article 3 (6) of Government Emergency Ordinance n. 194/2006 on the aliens' regime in Romania, republished in 2008, provides that foreigners in education of all grades have access without restriction to school activities and training in society.

In order to facilitate the access to the Romanian educational system, the minors who are asylum seekers benefit, free of charge during a school year, from a preparatory course for enrollment in the national education system. 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 *Ministerul Educatiei, Cercetarii, Tineretului si Sportului* (Ministry of Education, Research, Youth and Sports), appreciates 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.

Romanian education is based on the **principle of equity**. Article 2 Para. 4 of the National Education Law (Law n. 1/2011) states that the State guarantees to the citizens of Romania equal rights of access to all levels and forms of pre-university and higher education, as well as to lifelong learning without any form of discrimination. Equally, the same provisions apply to minors who request or benefit from a form of protection in Romania, as well as to foreign or stateless persons with a right of legal residence, provisions recorded in Article 2 (6) of the aforementioned law.

At the same time, various countries nationals recognized as long-term residents under the Long-Term Residents Directive (Directive 2003/109/EC) enjoy equal treatment with citizens of the EU Member States in access to education, training and scholarships, as well as the recognition of qualifications - referred to in Article 11. They also have the right to travel to other EU Member States for legal education and training purposes - referred to in Article 14²⁹⁸⁷.

According to Article 11 of the Government Ordinance n. 137/2000, refusal of access (to a system of State or private education) to any person or group of persons at any form, level and level, because of their belonging to a particular race or nationality is sanctioned. These provisions apply to all phases or stages in the education system, including admission or enrollment in educational establishments or institutions and the assessment or examination of knowledge²⁹⁸⁸.

In accordance with Article 12 (3) of the “Free Movement Directive” (2003/109/EC), under certain conditions, third-country institutions are children of EEA nationals who have the right to stay in order to continue or complete their studies, including after the EEA deceased or left the territory of that State.

²⁹⁸⁷ *Handbook on European Law Relating to Asylum, Borders and Immigration*, Ch. 8 “Economic and Social Rights”, 211.

²⁹⁸⁸ Luciana Lazarescu, Andra Panait, Andreea Iordache, Valentina Dimulescu, Marius Antofi , *Între discriminare, abuz și exploatare. Accesul imigranților la drepturile civile*, Raport de Cercetare, October 2015, 61, < https://ec.europa.eu/epale/sites/epale/files/dim_raport_cercetare_final_26_10_15_imigranti.pdf >, accessed September 15 2017, 15:15, [Romanian];

These children have the right to be accompanied by the parent in whose custody they are, until they complete the studies program.

In conclusion, the access to education of children is an essential one, most of them having a vital role in the development and drawing of the personality of each. Protecting children's rights in education comes naturally and as a matter of priority in every democratic society, which is why the refusal of education gives birth to the vulnerability of a child. That is why states have made this a priority, because without access to education the world of a child is half naked, a world without questions, without answers, a world without critical thinking.

That is why in our legislation, there are non-discrimination laws that prohibit in any form discrimination against migrant children and parents or guardians, like Law n. 272/2004 on the protection and promotion of children's rights and the Government Ordinance n. 137/2000, which prohibits any form of discrimination.

When the parent, or the child suspects, is discriminated against in any form, they can address the National Council for Combating Discrimination, through a complaint.

Because children rights is a matter of priority in our legislation, migrants children benefit of the same school curriculum as for national children as well, migrant children benefit free of charge, during a school year, a preparatory course for enrollment in the national education system, during the course of learning the Romanian language, minors can be enrolled as audiences in the education system.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

In Romania, the process through which the diplomas acquired from foreign schools and universities are recognized, is handled by the National Centre for Recognition and Equivalence of Diplomas (CNRED), agency that is coordinated by the Ministry of Education.

CNRED recognizes automatically or by applying compensatory measures (tests for measuring the knowledge/ exams for differences or internships for adaptation) if there are substantial differences.²⁹⁸⁹

In order to gain recognition for the grades from 1 to 10, the student has to undergo the next steps:

- A formal request (a standard application);

²⁹⁸⁹ Ordin n. 4022/14.05.2008, [Ordinul privind aprobarea metodologiei de recunoaștere a diplomelor și certificatelor obținute la absolvirea studiilor universitare de nivel licență, master sau postuniversitare la instituții acreditate de învățământ superior din străinătate];

- A transcript of the grades issued by the educational establishment from wherein the child comes, with the necessary specifications about the classes the child took and its grades- copies and legal translations;
- Available identity document – copy²⁹⁹⁰.

The file containing the documents aforementioned will be submitted either to the county board of education or to the educational establishment in which the student studies or wishes to study.²⁹⁹¹ The staff of the county board of education that is qualified in this sense will evaluate the transcript of grades and to establish in which grade the child should be placed. No equivalence will be needed if the educational system from the country from wherein the child comes has correspondence in the Romanian educational system.

If the parent/s or the guardian/s wish, they can forward a written request for their child to be put in an inferior grade, if they consider necessary.²⁹⁹²

For equivalence of pre-university study periods graduated abroad (XI-XII), there are necessary the same documents as stated previously at the recognition of the 1 – 10 grades, with the exception that the file can be also submitted to the Ministry of National Education Registration Office.

For recognition of diplomas for holders of long-term/permanent residency permit in UE, EEA and Swiss Confederation, for admission to undergraduate programs, the next documents must be submitted to the university or Ministry of National Education Registration Office:

- Application form;
- Proof of having completed secondary school (high school diploma/certificate) : copy for documents in Romanian/ English/ French/ Spanish/ Italian or copy and an official translation in Romanian for documents in other languages;
- Proof of having completed all secondary school levels (transcript of high school years/certificate of each level), the copies being translated as written in the previous point;
- Identification paper - copy (passport or identity card);
- Proof of payment for evaluation fee - 50 RON – copy.

Moreover, it is necessary for the future student to bring, if his/her country is part of the Hague Apostille, a document from the competent authorities will be needed.

If the country of origin of the future student is not part of the Hague Apostille²⁹⁹³, the diplomas shall be authenticated or accompanied by an authentication certificate from the competent authorities in the issuing countries. Legalization/authentication is done by the Ministry of Foreign Affairs from the issuing country and the issuing country's Embassy/Consular Office in Romania; for countries where Romania does not have a diplomatic mission or countries which

²⁹⁹⁰ Article 2 of the Official Romanian Publication Law Part I, 734/01.10.2015, Annex 1, 2015, [Articolul 2 din Monitorul Oficial al României Partea I, 734/01.10.2015 Anexa 1];

²⁹⁹¹ Ibid., Article 3.

²⁹⁹² Ibid.;

²⁹⁹³ List of countries for which the authentication of study documents is requested can be found at <https://www.cnred.edu.ro/en/list-of-countries-for-which-the-authentication-of-study-documents-is-requested> accessed October 1 2017, 09:14.

do not have diplomatic missions in Romania, the study documents shall be legalized by the Ministry of Education and the Ministry of Foreign Affairs from the issuing country.

Legalization/authentication exemption is allowed under the law of an international treaty to which Romania is party or on a reciprocity basis.

The authentication process shall not be longer than 30 days and a certificate shall be issued by the CNRED.

The equivalence of vocational or post-secondary diplomas awarded abroad will be recognized by submitting the application at the Ministry of National Education Registration Office:

- Application form;
- Post-secondary school diploma / professional/vocational diploma – copies or legalized translated copies if the documents are not issued in an international language;
- Study document for previous school cycle – copy;
- Proof of having completed all study levels (transcript of all years/certificate of each level including course description and skills acquired); study document showing the name of completed courses, length of study, course descriptions and skills acquired – copies or legalized translated copies if the documents are not issued in an international language;
- Identification papers - copy (passport or identity card).

The procedure concerning the existence or inexistence of a Hague Apostille is the same as the aforementioned one.

With the equivalence of diplomas form the pre-university diplomas, following the procedures explained previously, the refugees will be able to access the labour market in Romania.

University study recognition for refugees²⁹⁹⁴, in order to access the labour market must be recognised by the Ministry of National Education Registration Office. For this to happen, one must submit a file containing the following documents:

- Application form;
- Study document to be recognised– copies or legalized translated copies if the documents are not issued in an international language;
- Academic transcripts- in the case of regulated professions and in the situation of the recognition of specialization or when the field of study is not clearly mentioned in the diploma - copies or legalized translated copies if the documents are not issued in an international language;
- To practice regulated professions in Romania (if the study document is obtained in third country's): syllabus of courses/full description of courses, postgraduate diplomas-copy, if the document is issued in English/French/Spanish/Italian or copy and authorized translation into Romanian language if it is issued in other languages;
- Identification papers - copy (passport or identity card).

The procedure concerning the existence or inexistence of a Hague Apostille is the same as the aforementioned one.

²⁹⁹⁴ Ordin n. 6121/20.12.2016 in the Official Romanian Publication Law Part I, 2016, [Ordinul nr. 6121 din 20.12.2016 din Monitorul Oficial al României Partea I].

If any of the previously listed authentication or recognition of diplomas or certificates is lost or partial or complete damage of the certificate, a duplicate can be issued upon submission of official request and the following documents: copy of the diploma which was recognized, copy of personal identity document, evaluation fee of 50 RON, a notary statement regarding the loss or damage of the certificate – original.

Any of the CNRED's decision on recognition can be appealed once within 45 working days from the day the applicant received the decision. CNRED issues an answer within 60 working days. The time span indicated above may be extended if considerable research is required and an information is given to the applicant via post or email.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Firstly, the relevant Romanian legislation framework does not use the term migrant, instead making the distinction between citizen and non-citizen (aliens and stateless persons). An alien is a person who does not have either Romanian citizenship or the citizenship of a Member State of the European Union, European Economic Area or the citizenship of the Swiss Confederation²⁹⁹⁵. Thus, the category of migrants is limited to citizens of the so-called “third party” states in the European Union's' legislation.

From the category of migrants, the aliens (i.e. citizens of a third party state) do have the right of association, but not to the extent of the right of association as envisioned in the Constitution of Romania. Whereas the Constitution allows citizens (and, thus, to those assimilated to them) to freely associate into political parties, trade unions and other forms of associations²⁹⁹⁶, the right of association stipulated for aliens is much more restrictive. While the Government Emergency Ordinance n. 194/2002 speaks about the equal treatment of aliens and stateless persons²⁹⁹⁷, this equal treatment is limited to certain rights, which may also be stipulated in a restricted form in comparison to the constitutional rights the citizens have. Thus, the right of association is only stipulated for aliens that have obtained a long-term residence permit²⁹⁹⁸, which can associate in trade unions or professional organizations²⁹⁹⁹. The right of association, limited to apolitical and non-lucrative associations, as well as trade unions³⁰⁰⁰ is also stipulated for the alien or stateless person who has been granted the refugee status or subsidiary protection.

However, the right of association is not granted to all aliens, but only to stateless persons who have obtained the refugee status or subsidiary protection, and is only limited to apolitical and non-lucrative associations, such as trade unions and professional organizations.

²⁹⁹⁵ Article 2 of the Government Emergency Ordinance n. 194, 2002, [Articolul 2 din OUG nr. 194/2002];

²⁹⁹⁶ Article 40 of the Constitution of Romania, 2003, [Articolul 10 din Constituția României];

²⁹⁹⁷ Article 80 of the Government Emergency Ordinance n. 194, 2002 [Articolul 80 din OUG nr. 194/2002];

²⁹⁹⁸ Ibid., Article 2 Letter d);

²⁹⁹⁹ Ibid., Article 80, Para. 1, Letter h);

³⁰⁰⁰ Article 20, Letter k) of the Law n. 122, 2006, [Articolul 20 Lit. k) din Legea nr. 122/2006].

As for the electoral rights, they are only stipulated by Constitution and laws for citizens of Romania and Member States of the European Union, European Economic Area and the Swiss Confederation (which are not considered aliens, being assimilated to Romanian citizens). Aliens and stateless persons have neither the right to vote nor to be elected in any function or position. These rights can only be achieved by acquiring Romanian citizenship or the citizenship of a Member State of the European Union, European Economic Area or the Swiss Confederation.

Romanian citizenship is granted if the restrictive conditions stipulated by the Romanian Citizenship Law, the first of which is to either be born and reside, at the date of the application, on Romanian territory or, if not born in Romania, to have been residing for at least 8 years – or, if married and cohabitating with a Romanian citizen – at least 5 years since the date of marriage³⁰⁰¹.

However, these due dates may be reduced to as much as half if the applicant is either and internationally renowned personality, citizen of a Member State of the European Union, has been granted refugee status or has invested more than 1 million Euros in Romania³⁰⁰².

In case of being unlawfully impeded to participate in any decision-making process, the migrants who do possess the above mentioned rights are protected by either contraventional or criminal legislation.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

Article 5 of the Constitution states that “the Romanian citizenship is acquired, kept or lost according to the organic law”.

The citizen is the private individual that owns at least a citizenship. The citizenship is that quality of a private individual which expresses the permanent social-economic, political and legal relations between the private individual and the State, proving the individual's pertaining to a State and which grants the individual the possibility of being the holder of all the rights and duties regulated by the Constitution and the laws.³⁰⁰³

At the moment, the citizenship must not be confused with the term “nationality” which refers to one's ethnic origin.³⁰⁰⁴

The quality of foreigner marks a private individual who is not a citizen of a State or is stateless. In most cases, the Constitution and laws of a State determine whether an individual is a foreigner or not. In principle, they have less rights and can assume less duties than the citizens of the State in question.³⁰⁰⁵

³⁰⁰¹ Article 8 of the Law n. 21, 1991, [Articolul 8 din Legea nr. 21/1991];

³⁰⁰² Article 8, Para. 2, Law n. 21, 1991 [Articolul 8 Paragraful 2 din Legea nr. 21/1991];

³⁰⁰³ I. Muraru, *Drept Constituțional și Instituții Politice*, Ed. Lumina Lex, București, 2001, 137 ;

³⁰⁰⁴ *Union Europeene et Nationalites. Le Principe de Non-Discrimination et ses Limites*, Bruylant, Bruxelles, 1999 ;

³⁰⁰⁵ Gheorghe Iancu, Vlad Alexandru Iancu, *Dreptul de Așil. Privire Comparativă cu Statutul Juridic al Refugiatului*, Ed. Universul Juridic, București, 2015, 13.

In Romania, it results from the Constitution and Law n. 21/1991 that the acquisition of Romanian citizenship is not conditioned in any way by the loss of the citizenship of another State. Also, our legislation admits double or multiple citizenship.

According to Articles 1 and 2 of Law no. 21/1991(henceforth referred to as Law), the Romanian citizenship is the bond of an individual to the Romanian State and the means of attainment are those presented in this Law.

According to Article 4 of the Law, the Romanian citizenship can be acquired through birth, adoption and release through request. Obviously only the former two options are available for migrants.

Article 6 of the Law states that the Romanian citizenship is acquired through adoption by the child who's a foreign citizen or a stateless person, if the adopters are Romanian citizens. In case the adoptee is major, his consent is necessary. There is a fiction created according to which the child is presumed born in that family.

Also, the Romanian citizenship can be released through request to the foreign citizen or the stateless individual if that person meets the following criteria:

- The individual must be a major;
- The individual resides on Romanian territory for at least 8 years or if he's married to and lives with a Romanian citizen, for at least 5 years since the date of the matrimony. If a person left the territory for more than 6 months, that year isn't taken into consideration;
- Proves through behaviour, actions and attitude, loyalty to the Romanian State and doesn't attempt or support actions against the law order or the national security;
- Has the legal means for a decent life, according to the laws governing that matter;
- Is well known for his good behaviour and was not convicted in Romania or in any other country for a crime that makes him unworthy of being a Romanian citizen;
- Knows the Romanian language and has elementary notions of the Romanian culture, enough to integrate himself/herself in the country's social life;
- Knows the Constitution and the National Anthem.

If the criteria is met, a request is formulated, solved by the President of the National Authority for Citizenship.

If the request is admitted, the individual is invited to take the oath and from that moment on he/she becomes a Romanian citizen.

If the request is denied, the President's order is subject to appeal in a maximum of 15 days at the Bucharest Court of Law. The decision of Bucharest Court of Law can be challenged at the Bucharest Court of Appeal.

Article 10 of the Law states that the Romanian citizenship can also be granted to persons that lost it while allowing them to keep their foreign citizenship and giving them the option of maintaining their residence in a foreign country. They have to meet the same criteria as those mentioned above, with the exception of the first one and the last two.

But given the fact that a lot of countries do not allow double citizenship, the Romanian State cannot guarantee individuals the "safety" of their other citizenship.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

The European Union has an important role in Romania with regard to migration issues. The legislation of the European Union and its practices greatly influence the development of refugee protection mechanisms.

Through the Agreement between the European Union and Norway, Iceland and Liechtenstein for the European Economic Area (EEA) Financial Mechanism 2009-2014 Romania has benefited from a financial assistance of 190 million Euros. 170.310 Euros of this amount have been invested in the cooperation in the field of illegal migration and protection of human rights. Among others, the expected outcome of this programme aims to improve and to promote the practices for admission of refugees. This project's promoter is the General Inspectorate of Border Police.

The project entitled "ICAR - Centre of Resources and Services for Migrants" (May 1st 2015 - April 30th 2016) has been funded of EEA Grants 2009-2014 under the NGO Fund in Romania. The project has been developed in partnership with the West RVTS Resources Centre in Bergen, Norway. The purpose of the project was to fulfil the need of social services for different categories of foreigner (mostly asylum seekers), offering a special attention to vulnerable people. Since 1992, ICAR (a non-governmental foundation) focused on providing free medical, psychological, social and legal assistance to those who, for political reasons, experienced the harsh repression of totalitarian regimes.

In 2002, ICAR Foundation has extended its target population to refugees and asylum seekers, survivors of human rights violations in their country of origin. For this purpose, collaboration protocols were signed with the United Nation High Commissioner for Refugees (UNHCR), local authorities and institutions. They organize psychosocial counselling sessions, Romanian language classes, cultural orientation sessions and different social activities for asylum seekers and refugees living in the foundation's centres.

From 2012, ICAR has outreached offices in all the reception and accommodation centres of the Romanian Immigration Office throughout the country: Bucuresti, Galati, Radauti, Timisoara, Somcuta Mare, Giurgiu. The geographical expansion was possible due to the project "Specific social and psychological assistance for asylum seekers in Romania", ref. n. ERF/09.01/02.01, financed through the General Program "Solidarity and Management of Migration Flows" – European Refugee Fund.

According to the organizations' annual reports, ICAR Foundation's activity from 2007 to 2014 benefitted of financial support from EU as follows:

- In 2007, 173336 Euros from the European Commission (through the European Initiative for Democracy and Human Rights);
- In 2008, 180.281 Euros from the European Commission (through the European Initiative for Democracy and Human Rights), 6.028 Euros from International

- Rehabilitation Council for Torture Victims and 6.000 Euros from The Royal Netherlands Embassy in Bucharest (through MATRA-KAP program);
- In 2009, 54,290 Euros from the European Union (EU);
 - In 2012, 122.377 Euros from the European Commission (EC);
 - In 2013, 122.377 Euros from the European Commission (EC);
 - In 2014, 53.000 Euros from the European Union (EU) and European Economic Area (EEA) Grants of 64.000 €.

On October 14 2015, the Romanian Government approved a law project that is transposing Directive 2013/33/ EU into national law. This directive aims to improve reception standards for asylum seekers. This would increase the asylum seeker's allowance to 1,117 RON for summer and to 1,185 RON for the winter period. It also regulates the possibility that, in case of exceeding the accommodation capacity in special refugee centres, asylum seekers may benefit, within the limits of the funds, from a sum of money in order to rent a living space for a period of maximum 12 months.

The Asylum, Migration and Integration Fund is the continuation of the three funds implemented in the 2007-2013 as a financial exercise, namely the European Return Fund, the European Fund for the Integration of Third-Country Nationals and the European Refugee Fund.

The National Program for the “Asylum, Migration and Integration Fund” was elaborated on the basis of Regulation (EU) no. 514/2014 of the European Parliament and of the Council of April 16 2014 laying down general provisions on the Asylum, Migration and Integration Fund and the Financial Instrument for Police Cooperation, Crime Prevention and Combating and Crisis Management, in order to coordinate practical cooperation on asylum between Member States, support Member States facing particular pressure on their asylum systems and contribute to the implementation of the Common European Asylum System. The total amount allocated to this fund is of 21,915,877 Euros (EU funds).

Conclusions

This report has mainly focused on providing information about the legal and economical tools Romanian legislation provides in regard with the issue of immigration and asylum seekers.

As the statistics presented in the report show, Romania has registered between 2012 and 2016 a total number of 8690 asylum applications. The beginning of 2017 already counts 613 requests registered during the first three months of the year.

Even though the term of “asylee” has only been defined by doctrine means, the status of an asylum seeker has been regulated by Law no. 122/2006, which transposes the Directives 2001/55/EC, 2003/9/EC, 2003/86/EC, 2004/83/EC and 2005/85/CE. As Article 3 of this law states, the authority responsible for implementing Romania’s policies in the area of asylum is the National Office for Refugees, under the command of the Ministry of Internal Affairs. The procedure for granting asylum is open to all foreign citizens or stateless persons that are on Romanian soil or at the border, without discrimination. With very few exceptions, the asylum

seeker cannot be banished or extradited and the principle of family unity will be rigorously respected. Law no. 122/2006 provides both an ordinary procedure and an accelerated one. It also states the rights and the obligations of an asylum seeker, the cases in which asylum ceases or it can be annulled. Other special asylum procedures applicable are as follows: The Dublin Procedure, tolerance and the procedure for unaccompanied minors.

In terms of immigration, both from EU and non-EU states, Romanian legislation has been put up to date with the European legislation through EO no. 194/2002, republished in 2008 which thoroughly regulates all the aspects concerning the matter of immigration: obtaining a long term visa, obtaining a licence for permanent residence, the right to leave, expulsion, exclusion of migrant status. As we may observe from the content of the law, the previously mentioned procedures only apply to non-EU immigrants, as EU citizens do possess the same rights as Romanian citizens.

The public authority dealing with migrants is the General Inspectorate for Immigration that operates under the authority of the Ministry of Internal Affairs. It focuses mainly on implementing the EU policies in the fields of migration, asylum, aliens integration into the society, adopting relevant legislation and elaborating the national strategy on this matter.

Throughout the years, a major role in connection with immigrants and asylum seekers at a national level was played by the European Court of Human Rights. The Court has issued a number of decisions that were meant to revamp the legislation in order to further enhance it and steer the system in the right direction. Fortunately, Romania respected and implemented most of the recommendations. It has also implemented the recommendations of the European Commission by adopting: The Strategy And the Action Plan on Migration, The National Commission for the Management of an Integrated Border in 2007-2010, The National Strategy for Combating Trafficking of Persons, The Laws Regulating in Romania, The Laws for the Organization and Operation of the Ministry of the Interior and the Administrative Reform.

Another major role regarding the integration of immigrants was played by the European Union. Through the Agreement between EU, Norway, Iceland and Liechtenstein for the European Economic Area (EEA), Romania has benefited from a financial assistance of 190 million Euros. 170.310 Euros of this amount have been invested in a project entitled "ICAR - Centre of Resources and Services for Migrants" that aims to respond to the uncovered need for basic and social services among vulnerable migrants (asylum seekers, refugees, non EU-nationals).

Another matter of priority in the Romanian migration system is children's rights, with emphasis on their unrestricted access to education, based on the principle of equity. As a consequence, minors who request or benefit from a form of protection in Romania, as well as foreign or stateless persons with a right of legal residence, are guaranteed equal rights of access to all levels and forms of pre-university and higher education, as well as to lifelong learning without any form of discrimination (Article 2 (4) and (6) of the National Education Law 1/2011). According to Article 11 of GO 137/2000, refusal of access to a system of state or private education to any person or group of persons at any form and level because of their belonging to a particular race, nationality, ethnicity, religion is sanctioned. In case an immigrant has acquired a diploma from a foreign school and wishes that it is recognised by the Romanian authorities, he/she must

undergo a certain procedure which is handled by the National Centre for Recognition and Equivalence of Diplomas (CNRED), coordinated by the Ministry of Education. The authority recognizes the diploma automatically or by applying compensatory measures (tests for measuring the knowledge/ exams for differences or internships for adaptation) if there are substantial differences. Different procedures apply, depending on the State where the immigrant has completed his/her studies.

In terms of political aspects, migrants are subject to restrictions in certain fields. The right of association in trade unions or professional organizations is only stipulated for aliens that have obtained a long-term residence permit. For the persons who have been granted the refugee status or subsidiary protection, the right of association is being limited to apolitical and non-lucrative associations, as well as trade unions. As for the electoral rights, aliens and stateless persons have neither the right to vote nor to be elected in any function or position. However, they may achieve this right by acquiring Romanian citizenship or the citizenship of a member state of the European Union, European Economic Area or the Swiss Confederation. Romanian citizenship can be obtained either by adoption or by release through request, after undergoing the procedure that has been detailed in the previous pages. It is not conditioned in any way by the loss of the citizenship of another State and discrimination by any criteria is also prohibited.

To conclude, immigration is an issue that our society is confronting with nowadays, alongside many other States. The number of refugees and asylum seekers has increased dramatically in the previous years due to political and economical changes. Whether they choose to leave their country of origin due to worsening conditions, persecution or simply because they are on the lookout for a better life, Romania, as a democratic State and State Member of the EU has the obligation to integrate and support them through this process of transition. As stated throughout the report, our state does possess and applies all the legal tools in order to guarantee the rights of these individuals.

Table of legislation

<p>Articolul 17 din Carta ONU</p> <p>(2) Statele părți au obligația de a asigura accesul efectiv la educație pentru copiii care sunt plasați neregulamentar pe teritoriul lor, așa cum le furnizează oricărui alt copil.</p>	<p>Article 17 of the UN Charter</p> <p>(2) The State Parties have the obligation to provide effective access to education for children unlawfully placed on their territory as it provides to any other child.</p>
<p>Articolul 8 din Convenția Europeană a Drepturilor Omului</p> <p>(1) Orice persoană are dreptul la respectarea vieții sale private și de familie, a domiciliului său și a corespondenței sale.</p> <p>(2) Nu este admis amestecul unei autorități publice în exercitarea acestui drept decât în măsura în care acesta este prevăzut de lege și constituie, într-o societate democratică, o măsură necesară pentru securitatea națională, siguranța publică, bunăstarea economică a țării, apărarea ordinii și prevenirea faptelor penale, protecția sănătății, a moralei, a drepturilor și a libertăților altora.</p>	<p>Article 8 of the European Convention of Human Rights</p> <p>(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>
<p>Articolul 2 din Primul Protocol Adițional la Convenția Europeană a Drepturilor Omului</p> <p>Nimănui nu i se poate refuza dreptul de instruire. Statul, în exercitarea funcțiilor pe care și le va asuma în domeniul educației și al învățământului, va respecta dreptul părinților de a asigura aceasta educație și acest învățământ conform convingerilor lor</p>	<p>Article 2 of the First Protocol to the European Convention of Human Rights</p> <p>No person should abridge of the right to education in the exercise of any functions which it assumed in relation to education and to teaching, the State should respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</p>

<p>religioase și filozofice.</p>	
<p>Articolul 5 (1) din Constituția României</p> <p>Cetățenia română se dobândește, se păstrează sau se pierde în condițiile prevăzute de legea organică.</p>	<p>Article 5 (1) of the Constitution of Romania</p> <p>The Romanian citizenship is acquired, kept or lost according to the organic law.</p>
<p>Articolul 34 din Constituția României</p> <p>(1) Dreptul la ocrotirea sănătății este garantat. (2) Statul este obligat să ia măsuri pentru asigurarea igienei și a sănătății publice. (3) Organizarea asistenței medicale și a sistemului de asigurări sociale pentru boală, accidente, maternitate și recuperare, controlul exercitării profesiilor medicale și a activităților paramedicale, precum și alte măsuri de protecție a sănătății fizice și mentale a persoanei se stabilesc potrivit legii.</p>	<p>Article 34 of the Constitution of Romania</p> <p>(1) The right to health protection is guaranteed. (2) The State is obliged to take measures to ensure hygiene and public health. (3) The organization of the medical care and social security system in case of sickness, accidents, maternity and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person shall be established according to the law</p>
<p>Articolul 40 din Constituția României</p> <p>(1) Cetățenii se pot asocia liber în partide politice, în sindicate, în patronate și în alte forme de asociere. (2) Partidele sau organizațiile care, prin scopurile ori prin activitatea lor, militează împotriva pluralismului politic, a principiilor statului de drept ori a suveranității, a integrității sau a independenței României sunt neconstituționale. (3) Nu pot face parte din partide politice judecătorii Curții Constituționale, avocații poporului, magistrații, membrii activi ai armatei, poliștii și alte categorii de</p>	<p>Article 40 of the Constitution of Romania</p> <p>(1) Citizens may freely associate into political parties, trade unions, employers' associations and other forms of association. (2) The political parties or associations which, by their arms or activities, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional. (3) Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants,</p>

<p>funcționari publici stabilite prin lege organică. (4) Asociațiile cu caracter secret sunt interzise.</p>	<p>established by an organic law, shall not join political parties. (4) Secret associations are forbidden.</p>
<p>Articolul 7 din Directiva 2003/86/CE</p> <p>La depunerea cererii de reîntregire a familiei, statul membru în cauză poate cere persoanei care a depus cererea să furnizeze dovada că susținătorul reîntregirii dispune:</p> <p>b) de o asigurare de sănătate care acoperă toate riscurile acoperite în mod normal pentru proprii resortisanți în statul membru în cauză, atât pentru susținătorul reîntregirii cât și pentru membri familiei;</p> <p>c) de resurse stabile, constante și suficiente pentru a se întreține pe sine și pe ceilalți membri ai familiei fără a recurge la sistemul de asistență socială al statului membru în cauză. Statele membre evaluează aceste resurse în raport cu natura și caracterul lor constant și pot ține seama de nivelul salariilor și pensiilor minime naționale, precum și de numărul membrilor familiei.</p>	<p>Article 7 of the Directive 2003/86/EC</p> <p>When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:</p> <p>b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;</p> <p>c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.</p>
<p>Articolul 5 din Directiva 2003/109/CE</p> <p>(1) Statele membre cer resortisanților țărilor terțe să facă dovada că dispun pentru ei și pentru membri familiei lor care se află în întreținerea lor:</p> <p>b) de o asigurare de sănătate pentru toate riscurile acoperite în mod obișnuit pentru proprii resortisanți în statul membru în cauză.</p>	<p>Article 5 of the Directive 2003/109/EC</p> <p>(1) Member States shall require third-country nationals to provide evidence that they and their dependent family members have:</p> <p>b) of health insurance for all risks normally covered by its own nationals in the Member State concerned.</p>
<p>Articolul 1 din Hotărârea de Guvern nr.</p>	<p>Article 1 of the Government Decision no.</p>

<p>572/2008</p> <p>(1) Se constituie Grupul de coordonare a implementării Strategiei naționale privind imigrația, organism consultativ, fără personalitate juridică, care funcționează pe lângă Ministerul Internelor și Reformei Administrative, denumit în continuare Grupul, în scopul coordonării implementării documentelor strategice periodice din domeniul imigrației în cadrul unui mecanism de cooperare interinstituțională.</p> <p>(2) Grupul este subordonat Consiliului interministerial pentru afaceri interne și justiție, constituit potrivit art. 1 lit. a) din Hotărârea Guvernului nr. 750/2005 privind constituirea consiliilor interministeriale permanente.</p>	<p>572/2008</p> <p>(1) It is hereby established the Coordinating Group for the implementation of the National Strategy regarding Migration, consultative organism without legal liability, which functions through the Ministry of interior and Administrative Reform. Its purpose is the implementation of strategic documents in the field of migration in the context of an inter-institutional mechanism.</p> <p>(2) The Group is subordinated to The Interministerial Council for Internal Affairs and Justice which was established according to art 1. Letter a) of Government Decision no 750/2005 regarding the establishment of interministerial permanent conciliums.</p>
<p>Articolul 2 din Hotărârea de Guvern nr. 572/2008</p> <p>Mecanismul de cooperare interinstituțională în domeniul imigrației are un caracter permanent și constituie elementul principal pentru implementarea eficientă a strategiei, politicilor și legislației în domeniu, asigurând în acest sens:</p> <p>a) coordonarea acțiunilor instituțiilor cu atribuții în domeniul imigrației, asigurând astfel implementarea obiectivelor Strategiei naționale privind imigrația, denumită în continuare strategie, precum și respectarea obligațiilor și angajamentelor asumate de România;</p> <p>b) monitorizarea procesului de punere în aplicare a practicilor comunitare și internaționale în domeniu;</p> <p>c) evaluarea semestrială sau ori de câte ori se impune a stadiului implementării politicilor și</p>	<p>Article 2 of the Government Decision no. 572/2008</p> <p>The mechanism for interinstitutional cooperation in the field of migration is permanent and is the main element for the efficient implementation of the strategies, policies and legislation in the field, assuring in this way:</p> <p>a) the coordination of the institutions actions with attributions in the field of immigration, ensures the implementation of the objectives of the National Strategy on Immigration, hereinafter referred to as the strategy, as well as the observance of the obligations and commitments assumed by Romania;</p> <p>b) monitoring the process of implementing the practices in the field of the community and international;</p> <p>c) the half-year evaluation or whenever the implementation of policies and programs</p>

<p>programele ce decurg din strategie;</p> <p>d) elaborarea anuală, pe baza datelor statistice furnizate de autoritățile competente, a unor studii cu privire la evoluția fenomenului migraționist, în raport cu care se emit decizii și recomandări și se stabilesc direcții de acțiune;</p> <p>e) creșterea gradului de interoperabilitate și facilitare a schimbului de date și informații necesare procesului decizional.</p>	<p>stemming from the strategy is required;</p> <p>d) the annual elaboration, based on the statistical data provided by the competent authorities, on studies on the evolution of the migration phenomenon, in relation to which decisions and recommendations are issued and directions of action are established;</p> <p>e) increasing the degree of interoperability and facilitating the exchange of data and information necessary for the decision-making process.</p>
<p>Articolul 2 din Hotărârea de Guvern nr. 639/2007</p> <p>(1) Inspectoratul General este condus de un inspector general, numit prin ordin al ministrului administrației și internelor, ajutat de 2 inspectori generali adjuncți. Inspectorul general are calitatea de ordonator secundar de credite.</p> <p>(2) În exercitarea atribuțiilor sale, inspectorul general al Inspectoratului General emite dispoziții.</p> <p>(3) Activitatea Inspectoratului General este coordonată de un secretar de stat desemnat de ministrul internelor și reformei administrative.</p>	<p>Article 2 of the Government Decision no. 639/2007</p> <p>(1) The general Inspectorate is run by a general inspector appointed by order of the minister of administration and internal affairs, and is helped by 2 deputies. The General Inspector is also a secondary authorizing officer.</p> <p>(2) In exercising its attributions, the general inspector issues dispositions.</p> <p>(3) The activity of the General Inspector is coordinated by a state secretary appointed by the minister of internal affairs and administrative reform.</p>
<p>Articolul 5 din Hotărârea de Guvern nr. 639/2007</p> <p>Inspectoratul General îndeplinește următoarele atribuții principale:</p> <p>a) în domeniul migrației:</p> <ol style="list-style-type: none"> 1. avizează acordarea vizelor de intrare în România a străinilor conform competențelor legale; 2. aprobă invitațiile și cererile de reîntregire a familiei în conformitate cu prevederile 	<p>Article 5 of the Government Decision no. 639/2007</p> <p>The General Inspector has the following main attributions:</p> <p>a) in the field of migration:</p> <ol style="list-style-type: none"> 1. approves visas to enter Romania to foreigners according to his legal competence; 2. approves invitations and requests for family reunification in accordance with the stipulations of Government Emergency

Ordonanței de urgență a Guvernului nr. 194/2002 privind regimul străinilor în România, republicată, cu modificările și completările ulterioare;

3. acordă autorizația de muncă în vederea obținerii unui drept de ședere în scop de muncă, în condițiile legii;

4. verifică îndeplinirea de către străini a condițiilor necesare pentru acordarea și prelungirea dreptului de ședere în România, potrivit legii;

5. prelungește dreptul de ședere temporară în România a străinilor care îndeplinesc condițiile prevăzute de lege;

6. acordă dreptul de ședere permanentă în România străinilor care îndeplinesc condițiile legale;

7. înregistrează rezidența pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European, precum și a membrilor de familie ai acestora;

8. acordă rezidența permanentă cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European, precum și membrilor de familie ai acestora;

9. constată, în condițiile legii, căsătoriile încheiate de conveniență;

10. anulează ori revocă, după caz, dreptul de ședere sau limitează exercitarea dreptului de rezidență, în condițiile legii;

11. întreprinde demersurile legale corespunzătoare pentru clarificarea situației juridice a străinilor minori neînsoțiți;

12. eliberează, în condițiile legii, documente care atestă identitatea, șederea sau rezidența, precum și documente de călătorie;

13. prin lucrătorii anume desemnați constată contravențiile și aplică sancțiunile contravenționale prevăzute de Ordonanța de urgență a Guvernului nr. 194/2002,

Decision no 194/2002 regarding the legal status of foreigners in Romania, revised with the modifications and ulterior completions;

3. grants the work permits with a view to obtaining the right of stay in the purpose of working according to the law;

4. verifies if foreigners fulfill all the conditions necessary for granting or prolonging their right of stay in Romania according to the law;

5. prologues the right of temporary stay in Romania for the foreigners who fulfill the conditions stipulated by the law;

6. grants the right of permanent stay in Romania to the foreigners who fulfill the legal conditions;

7. registers residency on Romanian territory for the citizens of the European Union member states and The Economic European Agreement, as well as for their families;

8. grants permanent residency to citizens of states that are members of the European Union and The European Economic Agreement, as well as to their family members;

9. takes act of the convenience marriages according to the law;

10. annuls or revokes the right of stay or limits its exercise according to the law;

11. takes legal action towards clarifying the situation of underage foreigners who are unaccompanied;

12. issues, according to the law, documents that attest identity, stay or residency as well as documents of travel;

13. through certain specialized workers finds contraventions and applies sanctions according to the Government Emergency Decision no 194/2002 republished with modifications and ulterior completions and the Government Emergency Decision no

republicată, cu modificările și completările ulterioare, și de Ordonanța de urgență a Guvernului nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European, cu modificările și completările ulterioare;

14. exercită atribuțiile conferite prin lege cu privire la regimul îndepărtării străinilor de pe teritoriul României;

15. face propuneri, în condițiile legii, de luare și prelungire a custodiei publice a străinilor care nu pot fi îndepărtați în termen de 24 de ore;

16. acordă, în condițiile legii, tolerarea rămânării temporare a străinilor pe teritoriul României;

17. gestionează și coordonează activitățile desfășurate în centrele de cazare a străinilor luați în custodie publică;

18. instituie, în condițiile legii, interdicții de intrare în România;

19. pune în executare hotărârile de declarare ca persoane indезirabile;

20. transmite trimestrial Ministerului Muncii, Familiei și Egalității de Șanse situația statistică a autorizațiilor de muncă, a permiselor de ședere în scop de muncă și a certificatelor de înregistrare a cetățenilor Uniunii Europene care desfășoară activități dependente pe teritoriul României;

21. confirmă statutul de rezident al străinilor incluși pe lista de participanți prevăzută de art. 110 alin. (2) din Ordonanța de urgență a Guvernului nr. 194/2002, republicată, cu modificările și completările ulterioare, precum și autenticitatea datelor prezentate în acest document de călătorie

b) în domeniul azilului:

1. primește, înregistrează și soluționează, în etapa administrativă, cererile de azil depuse la

102/2005 regarding the freedom of movement on Romanian territory for citizens of European Union member states and European Economic Agreement with the modifications and ulterior completions;

14. exercises the attributions offered by law regarding the legal regime of extracting foreigners of the Romanian territory;

15. proposes, according to the law, taking or prolonging public custody of foreigners who cannot be extracted off the territory in 24 hours; 16. grants, according to the law, permission for temporary stay on the Romanian territory;

17. manages and coordinates the activity carried out in housing centers of the foreigners taken into public custody;

18. establishes, according to the law, bans for entering Romania;

19. executes decisions through which some persons are declared undesirable;

20. sends quarterly statistics of the work authorizations, stay permits in the purpose of work and registration certificates for the European Union citizens who undertake activities on the territory of Romania to the Ministry of Labor, Family and Chance Equality; 21. confirms the statue of residency for foreigners enlisted as participants according to art. 110 (2) of Emergency Government Decision no 194/2002, republished with modifications and ulterior completions, as well as the authenticity of data comprised in the travel documents.

b) in the field of asylum:

1. receives, registers, and solves, in the administrative stage, asylum requests files at its territorial structures or at other structures of the Ministry of Internal Affairs and Administrative Reform;

2. receives and forwards to the courts the

structurile sale teritoriale sau la alte organe ale Ministerului Internelor și Reformei Administrative;

2. primește și transmite instanțelor judecătorești competente plângerile formulate de solicitanții de azil, în temeiul prevederilor Legii nr. 122/2006 privind azilul în România, cu modificările ulterioare;

3. pune la dispoziție instanțelor judecătorești, în copie, actele care au stat la baza pronunțării hotărârilor atacate în domeniul azilului;

4. este parte în procesele care au ca obiect cereri de azil;

5. inițiază procedura prevăzută de legea română pentru numirea unui reprezentant legal în cazul solicitanților de azil minori neînsoțiți și le asigură acestora protecția necesară până la numirea unui reprezentant legal;

6. decide cu privire la acordarea accesului pe teritoriul României al solicitanților de azil care au depus cererea de azil în punctele de control pentru trecerea frontierei de stat;

7. poate decide cu privire la retrimiteră străinului într-o țară terță sigură, în condițiile prevăzute de Legea nr. 122/2006 privind azilul în România, cu modificările ulterioare;

8. trimite și analizează cererile de preluare/reprimire a unor solicitanți de azil și efectuează, în colaborare cu Inspectoratul General al Poliției de Frontieră, transferul solicitanților de azil către țările terțe sigure;

9. asigură accesul la asistență medicală în condițiile legislației referitoare la azil și regimul juridic al străinilor;

10. întocmește și transmite Ministerului Muncii, Familiei și Egalității de Șanse documentele necesare pentru plata ajutoarelor materiale ce se acordă persoanelor care au obținut o formă de protecție în România;

11. consultă Ministerul Afacerilor Externe

complaints filed by asylum seekers according to the Law no 122/2006 regarding asylum in Romania, with modifications;

3. makes available for the courts copies of the paperwork that were at the base of a decision which was later appealed in the field of asylum; 4. is part of the processes in which the asylum requests are solved;

5. starts the legal procedure for appointing a legal representative for an unaccompanied underage asylum seeker and assures that the child is protected until such a representative is named;

6. decides on granting access on Romanian territory for asylum seekers who have filed requests at the customs;

7. can decide upon sending the foreigner in a third party country according to Law no. 122/2006 regarding asylum in Romania with ulterior modifications;

8. sends and analyses requests of taking over or receiving asylum seekers and transfers asylum seekers to safe third party countries with the help of the General Inspector of the Border Police;

9. enables access to medical care according to the laws regarding asylum and the legal statue of aliens;

10. draws up and sends to the Ministry of Labor, Family and Chance Equality the necessary paperwork for the payment of financial aid granted to the people who have acquired a form of protection in Romania;

11. along with the Ministry of External Affairs establishes the countries that are safe;

12. receives, analyses, manages and studies the information about the situation in the countries of origin of the asylum seekers

c) general attributions:

1. develops, implements and monitors projects with external financial support

pentru stabilirea țărilor de origine sigure și a țărilor terțe sigure;

12. primește, analizează, prelucrează și gestionează informațiile referitoare la situația din țările de origine ale solicitanților de azil;

c) atribuții cu caracter general:

1. elaborează, contractează, implementează și monitorizează proiecte cu finanțare externă, prin intermediul structurii proprii create în acest scop și cu sprijinul compartimentelor de specialitate; 2. participă la elaborarea strategiei naționale în domeniul imigrației și implementarea acesteia prin planuri de acțiune anuale, asigurând totodată și secretariatul tehnic al Grupului Interministerial de Coordonare a Implementării Strategiei Naționale privind Imigrația;

3. coordonează, conform prevederilor Ordonanței Guvernului nr. 44/2004 privind integrarea socială a străinilor care au dobândit o formă de protecție sau un drept de ședere în România, precum și a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European, cu modificările și completările ulterioare, activitatea instituțiilor publice, a autorităților administrației publice locale și a organizațiilor non-guvernamentale implicate în integrarea străinilor care au dobândit o formă de protecție în România sau un drept de ședere în România și a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European;

4. elaborează studii, analize și prognoze referitoare la migrația străinilor pe teritoriul României și înaintează conducerii Ministerului Internelor și Reformei Administrative propuneri de soluționare a problemelor identificate cu această ocazie în domeniul controlului fenomenului migrației;

5. gestionează Sistemul național de evidență al străinilor, asigurând funcționarea, păstrarea și

through its especially created structure and with the support of specialized structures;

2. takes part in the development of the national strategy in the field of migration and in its implementation through annual action plans and at the same time provides the Technical Office for the Interministerial Group for Coordinating the Implementation of the National Strategy regarding Migration;

3. coordinates, according to Government Decision no 44/2004 regarding the social integration of foreigners who have acquired a form of protection or a right of stay in Romania, as well as of European Union member states and European Economic Agreement citizens with modifications and ulterior completions, the activity of public institutions, public administration authorities and non-governmental organizations that are involved in the integration of foreigners who have acquired a form of protection or a right of stay in Romania, as well as of European Union member states and European Economic Agreement citizens;

4. elaborates studies, analysis, and forecasts regarding migration on the territory of Romania and forwards to the Ministry of Interior and Administrative Reform proposals for solutions to the problems identified with this occasion in the field of managing migration;

5. manages the National Foreigner's records and assures that it functions as well as keeps and uses its data according to the law;

6. collects, stores, studies, puts to action and exchanges data and information about the foreigners with illegal stay as well as the places and environments that they frequent and the people who take part in human traffic;

7. carries out activities with a view to

exploatarea evidențelor în conformitate cu prevederile legale;

6. culege, stochează, prelucrează, valorifică și face schimb de date și informații despre străinii cu ședere ilegală, locurile și mediile frecventate de aceștia, precum și despre cei care au ca preocupări traficul de persoane, în condițiile legii; 7. desfășoară activități colective de culegere de informații specifice domeniului său de activitate, pe care le pune la dispoziție, pentru valorificare, structurilor specializate din sistemul de ordine publică și securitate națională;

8. verifică în bazele de date ale structurilor din sistemul de ordine publică și securitate națională cu care are încheiate protocoale de colaborare situația străinilor care au solicitat protecția statului român;

9. cooperează cu alte structuri ale Ministerului Internelor și Reformei Administrative, cu instituții ale statului care au atribuții în domeniul imigrației și azilului și colaborează cu cetățenii, în condițiile legii;

10. cooperează cu instituții similare din străinătate și cu alte organisme internaționale cu competență în domeniile migrației, azilului și integrării sociale a străinilor, în baza înțelegerilor la care România este parte;

11. cooperează cu misiunile diplomatice și cu oficiile acreditate în România, în condițiile legii; 12. colaborează și cooperează cu Întitul Comisariat al Națiunilor Unite pentru Refugiați - reprezentanța din România, în condițiile stabilite de acordul încheiat între această organizație și Guvernul României;

13. colaborează și cooperează cu Organizația Internațională pentru Migrație - biroul din România;

14. colaborează cu organizații non-guvernamentale cu atribuții în domeniul refugiaților și migranților;

collecting specific information for its field of activity and forwards this information to specialized structures with the purpose of being put to action in the system of public order and national security;

8. checks the databases of structures from the public order and national security system with whom it has agreements for the situation of foreigners who have asked the protection of the state;

9. cooperates with other structures of the Ministry of Interior and Administrative Reform, with public institutions who work in the field of migration and asylum and with the citizens in accordance with the law;

10. cooperates with similar foreign institutions and other international organisms with competence in the fields of migration, asylum and social integration of the foreigners based on the agreements that Romania takes part in;

11. cooperates with the diplomatic missions and accredited offices in Romania, according to the law;

12. collaborates and cooperates with the United Nations High Commissary for Refugees- the Romanian Office, in terms established by the agreement signed by this organization and the Romanian Government;

13. collaborates and cooperates with The international Organization for Migration- the Romanian Office;

14. collaborates with non-governmental organizations with attributions in the field of refugees and migrants;

15. exercises any other attributions granted by law.

<p>15. exercită orice alte atribuții conferite prin lege.</p>	
<p>Hotărârea de Guvern nr. 780/2015 Capitolul IX din Anexele nr. 1 și 2</p> <p>Instituțiile responsabile pentru implementarea planurilor de acțiune anuale fac parte din Grupul de coordonare, activitatea sa fiind condusă de secretarul de stat care coordonează activitatea Inspectoratului General pentru Imigrări din cadrul Ministerului Afacerilor Interne care îndeplinește funcția de președinte.</p>	<p>Government Decision no. 780/2015 Chapter IX of the Annexes no. 1 and 2</p> <p>The institutions responsible for the implementation of annual action plans are part of the Coordinating Group, its activity being run by the state secretary who coordinates the activity of the General Inspectorate for Immigration from the Ministry of Internal Affairs and who is also the president of the Group.</p>
<p>Articolul 1 (1) din Legea nr. 21/1991</p> <p>Cetățenia română este legătura și apartenența unei persoane fizice la statul român.</p>	<p>Article 1 (1) of the no. Law 21/1991</p> <p>The Romanian citizenship is the bond of an individual to the Romanian State</p>
<p>Articolul 2 din Legea nr. 21/1991</p> <p>Modurile de dobândire și de pierdere a cetățeniei române sunt cele prevăzute în prezenta lege.</p>	<p>Article 2 of the Law no. 21/1991</p> <p>The means of attainment and loss of the Romanian citizenship are those presented in this Law.</p>
<p>Articolul 4 din Legea nr. 21/1991</p> <p>Cetățenia română se dobândește prin :</p> <p>a) naștere; b) adopție; c) acordare la cerere.</p>	<p>Article 4 of the Law no. 21/1991</p> <p>The Romanian citizenship can be acquired through:</p> <p>a) birth; b) adoption; c) release through request.</p>

<p>Articolul 6 (1) din Legea nr. 21/1991</p> <p>Cetățenia română se dobândește de către copilul cetățean străin sau fără cetățenie prin adopție, dacă adoptatorii sunt cetățeni români. În cazul în care adoptatul este major, este necesar consimțământul acestuia.</p>	<p>Article 6 (1) of the Law no. 21/1991</p> <p>The Romanian citizenship is acquired through adoption by the child who's a foreign citizen or a stateless person, if the adopters are Romanian citizens. In case the adoptee is major, his consent is necessary.</p>
<p>Articolul 8 din Legea nr. 21/1991</p> <p>(1) Cetățenia română se poate acorda, la cerere, persoanei fără cetățenie sau cetățeanului străin, dacă îndeplinește următoarele condiții:</p> <p>a) s-a născut și domiciliază, la data cererii, pe teritoriul României sau, deși nu s-a născut pe acest teritoriu, domiciliază în condițiile legii pe teritoriul statului român de cel puțin 8 ani sau, în cazul în care este căsătorit și conviețuiește cu un cetățean român, de cel puțin 5 ani de la data căsătoriei;</p> <p>b) dovedește, prin comportament, acțiuni și atitudine, loialitate față de statul român, nu întreprinde sau sprijină acțiuni împotriva ordinii de drept sau a securității naționale și declară că nici în trecut nu a întreprins asemenea acțiuni;</p> <p>c) a împlinit vârsta de 18 ani;</p> <p>d) are asigurate în România mijloace legale pentru o existență decentă, în condițiile stabilite de legislația privind regimul străinilor;</p> <p>e) este cunoscut cu o bună comportare și nu a fost condamnat în țară sau în străinătate pentru o infracțiune care îl face nedemn de a</p>	<p>Article 8 of the Law no. 21/1991</p> <p>(1) Romanian citizenship may be granted, upon request, to the person without citizenship or to the foreign citizen, if they fulfill the following conditions:</p> <p>a) they were born and domiciled, on the date of the request, on Romanian territory or, even though they were not born on this territory, have been domiciling, in the conditions laid out by the law, on Romanian territory for at least 8 years or, in the case in which they are married or cohabit with a Romanian citizen, for at least 5 years from the date of marriage;</p> <p>b) proves, by demeanor, actions and attitude, loyalty to the Romanian state, does not carry out or support actions against the rule of law or national security and declares that they did not do so in the past;</p> <p>c) is at least 18 years old;</p> <p>d) has secured in Romania legal means of decent existence, in the conditions laid out by the legislation regarding the regime of aliens;</p> <p>e) are known for their good demeanor and has not been convicted, neither in Romania</p>

<p>fi cetățean român;</p> <p>f) cunoaște limba română și posedă noțiuni elementare de cultură și civilizație românească, în măsură suficientă pentru a se integra în viața socială;</p> <p>g) cunoaște prevederile Constituției României și imnul național.</p> <p>(2) Termenele prevăzute la alin. (1) lit. a) pot fi reduse până la jumătate în următoarele situații:</p> <p>a) solicitantul este o personalitate recunoscută pe plan internațional;</p> <p>b) solicitantul este cetățeanul unui stat membru al Uniunii Europene;</p> <p>c) solicitantul a dobândit statut de refugiat potrivit prevederilor legale în vigoare;</p> <p>d) solicitantul a investit în România sume care depășesc 1.000.000 de euro.</p> <p>(3) Dacă cetățeanul străin sau persoana fără cetățenie care a solicitat să i se acorde cetățenia română se află în afara teritoriului statului român o perioadă mai mare de 6 luni în cursul unui an, anul respectiv nu se ia în calcul la stabilirea perioadei prevăzute la alin. (1) lit. a).</p>	<p>or elsewhere, for a crime that renders them unworthy of being Romanian citizen;</p> <p>f) knows the Romanian language and possesses elementary notions of Romanian culture and civilization, in a measure sufficient in order to integrate in the social life;</p> <p>g) knows the provisions of the Romanian Constitution and the national anthem.</p> <p>(2) The terms provided in para. (1) letter a) may be reduced as much as half in the following situations:</p> <p>a) the requester is an internationally reknown personality;</p> <p>b) the requester is a citizen of a member state of the European Union;</p> <p>c) the requester has been granted refugee status, in accordance with legal provisions in effect;</p> <p>d) the requester has invested in Romania sums that exceed 1.000.000 euros.</p> <p>(3) If the foreign citizen or the person without citizenship who has requested that he be granted Romanian citizen is outside of Romanian territory for a period bigger than 6 months in the course of a year, the respective year is not to be taken into account in determining the period provided in paragraph 1 letter a).</p>
<p>Articolul 10 (1) din Legea nr. 21/1991</p> <p>Cetățenia română se poate acorda și persoanelor care au pierdut această cetățenie, cu păstrarea cetățeniei străine și stabilirea domiciliului în țară sau cu menținerea acestuia în străinătate, dacă îndeplinesc în mod corespunzător condițiile prevăzute la art. 8 alin. (1) lit. b)-e).</p>	<p>Article 10 (1) of the Law no. 21/1991</p> <p>The Romanian citizenship can also be granted to persons that lost it while allowing them to keep their foreign citizenship and giving them the option of maintaining their residence in a foreign country. They have to meet the same criteria mentioned in art. 8(1) letters b)-e).</p>

<p>Articolul 1 din Legea nr. 95/2006</p> <p>Toți cetățenii români domiciliați în țară, precum și cetățenii străini și apatrizii care au solicitat și au obținut prelungirea dreptului de ședere temporară sau au domiciliul în România. Societățile de asigurări de sănătate, direct sau prin intermediul unui angajator, al cărui model este stabilit printr-un ordin al președintelui CNAS (Casa Națională de Asigurări de Sănătate), cu aprobarea consiliului de administrație.</p>	<p>Article 1 of the Law no. 95/2006</p> <p>All Romanian citizens domiciled in the country, as well as foreign citizens and stateless persons who have applied for and obtained the extension of the temporary residence right or are domiciled in Romania. Health insurance companies, directly or through an employer, the model of which is established by an order of the President of CNAS (National Health Insurance House) with the approval of the board of directors.</p>
<p>Articolul 3 (1) din Legea nr. 122/2006</p> <p>Autoritatea centrală responsabilă de implementarea politicilor României în domeniul azilului, precum și de aplicarea dispozițiilor prezentei legi este Oficiul Național pentru Refugiați din subordinea Ministerului Administrației și Internelor.</p>	<p>Article 3 (1) of the Law no. 122/2006</p> <p>The central authority responsible for implementing Romania's policies in this domain is the National Office for Refugees, under the command of the Internal Affairs Ministry.</p>
<p>Articolul 4 din Legea nr. 122/2006</p> <p>Autoritățile competente asigură accesul la procedura de azil oricărui cetățean străin sau apatrid, aflat pe teritoriul României ori la frontieră, din momentul manifestării de voință, exprimată în scris sau oral, din care să rezulte că acesta solicită protecția statului român, cu excepția situațiilor prevăzute expres de prezenta lege.</p>	<p>Article 4 of the Law no. 122/2006</p> <p>The access to the asylum procedure is granted by the responsible authorities to all foreign citizens or stateless people that are on Romanian ground or at the border, from the moment of the request, which must be written or spoken. It is necessary that the solicitor clearly requests the protection of the Romanian State.</p>
<p>Articolul 7 din Legea nr. 122/2006</p>	<p>Article 7 of the Law no. 122/2006</p>

<p>Autoritățile române asigură respectarea principiului unității familiei, în conformitate cu prevederile prezentei legi.</p>	<p>The Romanian authorities ensure that the principle of family unity is respected, according to this law.</p>
<p>Articolul 8 din Legea nr. 122/2006</p> <p>În aplicarea prevederilor prezentei legi, toate deciziile cu privire la minori se iau cu respectarea interesului superior al copilului.</p>	<p>Article 8 of the Law no. 122/2006</p> <p>While applying this law, all decisions regarding minors will be taken respecting the superior interest of the child.</p>
<p>Articolul 18 din Legea nr. 122/2006</p> <p>Accesul la educație al solicitanților de azil minori</p> <p>(1) În vederea facilitării accesului la sistemul de învățământ românesc, solicitanții de azil minori beneficiază, în mod gratuit, de un curs pregătitor intensiv în vederea înscrierii în sistemul național de învățământ.</p> <p>(2) Cursul pregătitor prevăzut la alin. (1) este organizat de Ministerul Educației Naționale și Cercetării Științifice, în colaborare cu Inspectoratul General pentru Imigrări.</p> <p>(3) Solicitantul de azil minor este înscris la cursul pregătitor în termen de 3 luni de la data depunerii cererii de azil.</p> <p>Concomitent, solicitantul de azil minor poate fi înscris ca audient în anul de studii corespunzător.</p> <p>(4) La finalul cursului pregătitor prevăzut la alin. (1), o comisie de evaluare, ale cărei componentă și funcționare se stabilesc prin ordin al ministrului educației naționale și cercetării științifice, apreciază nivelul de cunoaștere a limbii române și stabilește înscrierea minorilor solicitanți de protecție internațională în România, în anul de studiu corespunzător.</p>	<p>Article 18 of the Law no. 122/2006</p> <p>Access to Education of Minor Asylum Seekers</p> <p>(1) In order to facilitate the access to the Romanian educational system, the asylum seekers minors benefit, free of charge, from an intensive preparatory course for enrollment in the national education system.</p> <p>(2) The preparatory course stipulated in paragraph (1) is organized by the Ministry of National Education and Scientific Research, in collaboration with the General Inspectorate for Immigration.</p> <p>(3) The minor asylum seeker is enrolled in the preparatory course within 3 months from the date of the application.</p> <p>At the same time, the minor asylum seeker may be registered as an audience in the appropriate year of study.</p> <p>(4) At the end of the preparatory course provided in paragraph (1), an evaluation commission, of which composition and functioning shall be established by order of the minister of national education and scientific research, appreciates the level of knowledge of the Romanian language and establishes enrollment of minors seeking international</p>

	<p>protection in Romania in the corresponding year of study</p>
<p>Articolul 20 din Legea nr. 122/2006</p> <p>(1) Recunoasterea statutului de refugiat sau acordarea protecției subsidiare conferă beneficiarului următoarele drepturi:</p> <p>k) să beneficieze de dreptul la asociere în ceea ce privește asociațiile cu scop apolitic și nelucrative și sindicatele profesionale, în condițiile prevăzute de lege pentru cetățenii români;</p>	<p>Article 20 of the Law no. 122/2006</p> <p>(1) The recognition of the statute of refugee or granting subsidiary protection bestows on the beneficiary the following rights:</p> <p>k) to benefit of the right of assembly for associations with apolitical and unprofitable purpose and professional syndicates, in the conditions laid out by the law for Romanian citizens.</p>
<p>Articolul 2 din Monitorul Oficial al României, Partea I, 734/1.10.2015, Anexa 1</p> <p>Dosarul pentru echivalarea perioadelor de studii menționate art. 1 conține:</p> <p>a) Cerere;</p> <p>c) Foile matricole eliberate de o unitate de învățământ din străinătate sau de organizațiile furnizoare de educație, care desfășoară pe teritoriul României activități de învățământ corespunzătoare unui sistem educațional din altă țară, din care să rezulte disciplinele studiate și calificativele/notele obținute – copii și traduceri autorizate.</p>	<p>Article 2 of the Official Romanian Publication Law Part I, 734/1.10.2015, Annex 1</p> <p>The file for the equivalence of the mentioned periods of study art. 1 contains:</p> <p>a) Request</p> <p>c) A transcript of the grades issued by a foreign educational establishment or education providers, which carry on the territory of Romania educational activities corresponding to an educational system in another country, from which it can be identified the studied subjects and the obtained grades - copies and legal translations.</p>
<p>Articolul 3 din Monitorul Oficial al României, Partea I, 734/1.10.2015, Anexa 1</p> <p>(1) Dosarul prevăzut la art. 2 se depune la:</p> <p>a) La inspectoratul școlar județean</p>	<p>Article 3 of the Official Romanian Publication Law Part I, 734/1.10.2015, Annex 1</p> <p>(1) The file provided in art. 2 is filed at:</p>

<p>b) La unitatea de învățământ la care elevul participă în calitate de audient</p> <p>(4) Echivalarea se realizează automat, fără susținerea de măsuri compensatorii, pentru toate clasele promovate la unități de învățământ din străinătate sau de organizațiile furnizoare de educație, care desfășoară pe teritoriul României activități de învățământ corespunzătoare unui sistem educațional din altă țară, cu clasele corespunzătoare din sistemul de educație românesc.</p> <p>(5) La cererea exprimată în scris a părinților sau a tutorilor legal instituți, înscrierea se poate face într-o clasă inferioară ultimei clase absolvite în străinătate sau la organizațiile furnizoare de educație, care desfășoară pe teritoriul României activități de învățământ corespunzătoare unui sistem educațional din altă țară.</p>	<p>a) County School Inspectorate</p> <p>b) At the school where the pupil participates as an audience</p> <p>(4) The equivalence shall be automatically performed, without supporting compensatory measures, for all classes promoted at foreign educational establishments or educational providers, which carry on the territory of Romania educational activities corresponding to an educational system of another country, with corresponding classes From the Romanian education system.</p> <p>(5) At the written request of the legally established parents or guardians, the entry can be made in a lower grade than the last grade graduated abroad or to educational providers, which carry on the territory of Romania educational activities corresponding to an educational system in another country.</p>
<p>Articolul 4 din Monitorul Oficial al României, Partea I, 734/1.10.2015, Anexa 1</p> <p>Pentru evaluare dosarului de echivalare nu se percep taxe.</p>	<p>Article 4 of the Official Romanian Publication Law Part I, 734/1.10.2015, Annex 1</p> <p>No fees are charged for evaluating the file.</p>
<p>Articolul 5 din Monitorul Oficial al României, Partea I, 734/1.10.2015, Anexa 1</p> <p>(1) Atestatul de echivalare emis de inspectoratul județean/ Inspectoratul Școlar al Municipiului București este valabil pentru înscrierea în orice unitate de învățământ preuniversitar din țară și la încadrarea pe piața forței de muncă.</p>	<p>5 of the Official Romanian Publication Law Part I, 734/1.10.2015, Annex 1</p> <p>(1) The equivalence certificate issued by the County Inspectorate / School Inspectorate of the City of Bucharest is valid for enrollment in any pre-university education unit in the country and for joining the labor market.</p>

<p>Articolul 11 din Monitorul Oficial al României, Partea I, 4022/14.05.2008</p> <p>(1) Procedura de recunoaștere și echivalare a diplomelor și certificatelor din învățământul preuniversitar este următoare:</p> <p>a) CNRED recunoaște automat sau prin aplicare de măsuri compensatorii (teste de cunoștințe/examene de diferență sau stagii de practică/perioade de studiu) în cazul în care există diferențe substanțiale, diplome și certificate de studii complete sau parțiale obținute în țări terțe.</p>	<p>Article 11 of the Official Romanian Publication Law Part I, 4022/14.05.2008</p> <p>(1) The procedure for the recognition and equivalence of diplomas and certificates in pre-university education is as follows:</p> <p>a) CNRED automatically recognizes or applies compensatory measures (exams of knowledge / difference exams / internships / study periods) if there are substantial differences, diplomas and certificates of full or partial education obtained in third countries.</p>
<p>Articolul 16 din Monitorul Oficial al României, Partea I, 4022/14.05.2008</p> <p>Actele necesare în vederea recunoașterii studiilor efectuate în străinătate:</p> <p><i>Învățământ preuniversitar:</i></p> <p>(1) Cerere tipizată</p> <p>(2) Actul de studii ce urmează a fi recunoscut – copie xerox</p> <p>(3) Documentele școlare/foile matricole pentru perioadele de studii care nu au fost finalizate printr-o diplomă – copie xerox sau scanată</p> <p>(4) Traducerea legalizată , cu excepția actelor de studii redactate în limbi de circulație internațională</p> <p>(5) Procură notarială dacă este cazul</p> <p>(6) Documente personale de identificare, în copie xerox, dacă este cazul</p> <p><i>Învățământ universitar:</i></p> <p>(1) Cerere tipizată</p> <p>(2) Actul de studii ce urmează a fi recunoscut – copie xerox</p> <p>(3) Documentele școlare/foile matricole pentru perioadele de studii care nu au fost</p>	<p>Article 16 of the Official Romanian Publication Law Part I, 4022/14/05.2008</p> <p>The necessary documents for the recognition of studies abroad:</p> <p><i>Pre-university education:</i></p> <p>(1) Typical application</p> <p>(2) Act of studies to be recognized - xerox copy</p> <p>(3) School documents / enrollment sheets for periods of study that have not been completed by a diploma - xerox or scanned copy</p> <p>(4) Legalized translation, except for study papers in international languages</p> <p>(5) Notary proxy if applicable</p> <p>(6) Personal identification documents in xerox copy, if applicable</p> <p><i>University education:</i></p> <p>(1) Typical application</p> <p>(2) Act of studies to be recognized - copy xerox</p> <p>(3) School documents / matriculation sheets for periods of study that have not been completed by a diploma - xerox or scanned</p>

<p>finalizate printr-o diplomă – copie xerox sau scanată</p> <p>(4) Traducerea legalizată , cu excepția actelor de studii redactate în limbi de circulație internațională</p> <p>(5) Suplimentul la diplomă/foaie matricolă și/sau alte documente adiționale sau copia lor legalizată în copie xerox și traducere legalizată, cu excepțiile menționate.</p> <p>(6) Procură notarială dacă este cazul</p> <p>(7) Documente personale de identificare, în copie xerox, dacă este cazul.</p>	<p>copy</p> <p>(4) Legalized translation, except for study papers written in international languages</p> <p>(5)(Supplement to the diploma / matrix sheet and / or other additional documents or their certified copy in xerox copy and legalized translation, with the exceptions mentioned.</p> <p>(6) Notary Procuratorate if applicable</p> <p>(7) Personal identification documents in xerox copy, if applicable.</p>
<p>Articolul 4 din Monitorul Oficial al României, Partea I, 6121/20.12.2016</p> <p>(1) În vederea continuării studiilor în România, pentru cetățenii menționați la art. 3 lit a)-d). Centrul Național de Recunoaștere a Diplomelor, denumit în continuare CNRED.:</p> <p>a) Recunoaște automat actele de studii obținute în statele membre ale Uniunii Europene, ale Spațiului Economic European și în Confederația Elvețiană, precum și în țările la universități de prestigiu, prevăzute în Lista universităților de prestigiu din alte state, aprobată prin ordin de ministru.</p> <p>b) Recunoaște actele de studii obținute în state terțe la alte universități decât cele prevăzute în Lista universităților de prestigiu din alte state, aprobată prin ordin de ministru.</p>	<p>Article 4 of the Official Romanian Publication Law, Part I, 6121/20.12.2016</p> <p>(1) In order to continue the studies in Romania, for the citizens mentioned in art. 3 lit a) -d). National Center for the Recognition of Diplomas, hereinafter referred to as CNRED:</p> <p>a) Automatically recognize the study papers obtained in the Member States of the European Union, the European Economic Area and in the Swiss Confederation, as well as in third countries at prestigious universities, listed in the List of prestigious universities in other states, approved by order of the Minister.</p> <p>b) Recognize study papers obtained in third countries at universities other than those listed in the List of prestigious universities in other states, approved by order of the minister.</p>
<p>Articolul 1 din Ordonanța de Urgență a</p>	<p>Article 1 of the Government Emergency Ordinance no. 55/2007</p>

<p>Guvernului nr. 55/2007</p> <p>(1) Se înființează Oficiul Român pentru Imigrari, organ de specialitate al administrației publice centrale, cu personalitate juridică, în subordinea Ministerului Internelor și Reformei Administrative, prin reorganizarea Autorității pentru Străini și a Oficiului Național pentru Refugiați, care se desființează.</p> <p>(2) Oficiul Român pentru Imigrari preia toate drepturile și este ținut de toate obligațiile Oficiului pentru Migrația Forței de Muncă în domeniul eliberării documentului care atestă dreptul la muncă al străinilor.</p> <p>(3) Oficiul Român pentru Imigrari își exercită atribuțiile ce îi sunt date prin lege pentru implementarea politicilor României în domeniile migrației, azilului, al integrării străinilor și a legislației relevante în aceste domenii.</p> <p>(4) Personalul Oficiului Român pentru Imigrari este constituit din polițiști, funcționari publici și personal contractual.</p> <p>(5) Sediul Oficiului Român pentru Imigrari se stabilește prin hotărâre a Guvernului.</p>	<p>(1) It is hereby established the Romanian Office for Immigration, a specialized body of the central public administration, with legal liability, subordinated to the Ministry of Internal Affairs and Administrative Reform, through reorganizing the foreigners Authority and National Office for Refugees, which is dissolved.</p> <p>(2) The Romanian Office for Immigration takes all the rights and obligations of the Office for Labor Migration in the field of issuing the documents certifying the foreigners working right.</p> <p>(3) The Romanian Office for Immigration will exercise the power given by the law to implement Romanian's policies concerning migration, asylum, foreigner integration and relevant legislation in these fields.</p> <p>(4) The staff of The Romanian Office for Immigration contains police officers, public servants and contractual staff.</p> <p>(5) The Headquarter of the Romanian Office for Immigration will be established by Government Decision.</p>
<p>Articolul 2 din Ordonanța de Urgență a Guvernului nr. 55/2007</p> <p>(1) Activitatea Oficiului Român pentru Imigrari constituie serviciu public și se desfășoară în interesul persoanei și al comunității, în sprijinul instituțiilor statului, exclusiv pe baza și în executarea legii.</p> <p>(2) În exercitarea atribuțiilor ce îi revin, Oficiul Român pentru Imigrari cooperează cu alte structuri din cadrul Ministerului Internelor și Reformei Administrative și cu alte instituții ale statului care au atribuții în asigurarea ordinii de drept, colaborează în</p>	<p>Article 2 of the Government Emergency Ordinance no. 55/2007</p> <p>(1) The activity of The Romanian Office for Immigration is regarded as public service and takes place in the interest of the people and the community, by supporting the public institutions and exclusively based on and in applying the law.</p> <p>(2) In order to fulfill its attributions, The Romanian Office for Immigration cooperates with other structures of the Ministry of Internal Affairs and other public institutions that have attributions in maintaining the</p>

<p>acest sens cu cetatenii si poate încheia acorduri cu institutii similare din strainatate, precum si cu organizatii internationale, în conditiile legii.</p>	<p>order of law. With this view, it collaborates with the citizens and can sign agreements with similar foreign institutions as well as with international organizations in accordance with the law.</p>
<p>Articolul 10 din Ordonanța Guvernului nr. 137/2000</p> <p>Constituie contravenție, conform prezentei ordonanțe, dacă fapta nu intră sub incidența legii penale, discriminarea unei persoane fizice, a unui grup de persoane din cauza apartenenței acestora ori a persoanelor care administrează persoana juridică la o anumită rasă, naționalitate, etnie, religie, categorie socială sau la o categorie defavorizată, respectiv din cauza convingerilor, vârstei, sexului sau orientării sexuale a persoanelor în cauză prin:</p> <p>b) refuzarea accesului unei persoane sau unui grup de persoane la serviciile de sănătate publică: alegerea medicului de familie, asistența medicală, asigurările de sănătate, serviciile de urgență sau alte servicii de sănătate.</p>	<p>Article 10 of the Government Ordinance no. 137/2000</p> <p>It is a contravention, according to the present ordinance, if the act does not fall within the scope of the criminal law, the discrimination of a natural person, of a group of persons because of their belonging or persons who administer the legal person to a certain race, nationality, ethnicity, religion, social category or to a disadvantaged category, namely because of the beliefs, age, sex or sexual orientation of the persons concerned by:</p> <p>b) denial of access of a person or group of people to public health services: family doctor's choice, health care, health insurance, emergency services or other health services.</p>
<p>Articolul 3 din Ordonanța de Urgență a Guvernului nr. 194/2006</p> <p>(6) Străinii din învățământul de toate gradele au acces fără restricții la activități școlare și formare în societate</p>	<p>Article 3 of the Government Emergency Ordinance no. 194/2006</p> <p>(6) Foreigners in education of all grades have access without restriction to school activities and training in society</p>
<p>Articolul 75 din Ordonanța de Urgență a Guvernului nr. 194/2002 Republicată</p>	<p>Article 75 of the Government Emergency Ordinance no. 194/2002 Republished in</p>

<p>în 2008</p> <p>Titularii unui drept de sedere permanenta beneficiaza, in conditiile legii, de tratament egal cu cetatenii romani in ceea ce priveste:</p> <p>a) accesul la piata muncii, inclusiv in privinta conditiilor de angajare si de munca, la activitati economice in mod independent si la activitati profesionale, cu aplicarea corespunzatoare a prevederilor Legii nr. 300/2004*) privind autorizarea persoanelor fizice si a asociatiilor familiale care desfasoara activitati economice in mod independent, cu modificarile si completarile ulterioare, cu conditia ca activitatea desfasurata sa nu presupuna, chiar si ocazional, exercitarea unor prerogative ale autoritatii publice;</p> <p>b) accesul la toate formele si nivelurile de invatamant si de pregatire profesionala, inclusiv la acordarea burselor de studiu;</p> <p>c) echivalarea studiilor si recunoasterea diplomelor, a certificatelor, a atestatelor de competenta si a calificarilor profesionale, in conformitate cu reglementarile in vigoare;</p> <p>d) securitatea sociala, asistenta si protectia sociala;</p> <p>e) asistenta de sanatate publica;</p> <p>f) deduceri de impozit pe venitul global si scutiri de taxe;</p> <p>g) accesul la bunuri si servicii publice, inclusiv obtinerea de locuinte;</p> <p>h) libertatea de asociere, afiliere si apartenenta la o organizatie sindicala sau profesionala.</p>	<p>2008</p> <p>The holders of a right to permanent residence benefit, under legal conditions, by an equal treatment with Romanian citizens, with regard to:</p> <p>a) access to labour market, including with regard to employment and working conditions, to independent economic activities and to professional activities, with corresponding enforcement of the provisions of Law No. 300/2004*) on the authorization of natural persons and family associations who carry out economic activities in an independent manner, with subsequent updates and amendments, in condition that the activity carried out shall not imply, even occasionally, the exercise of public functions;</p> <p>b) access to all forms and levels of education and professional training, including studying grants;</p> <p>c) establishment of the comparability of studies and recognition of diplomas, certificates, competence certification documents and professional qualifications, in accordance with the regulations in force;</p> <p>d) social security, social assistance and social protection;</p> <p>e) public health insurance;</p> <p>f) global income tax deductions and tax exemptions;</p> <p>g) access to public goods and services, including housing;</p> <p>h) freedom to association, affiliation and membership to a labour or professional organization.</p>
<p>Articolul 130 din Ordonanța de Urgență a Guvernului nr. 194/2002 Republicată în 2008</p>	<p>Article 130 of the Government Emergency Ordinance no. 194/2002 Republished in 2008</p>

(1) Străinilor victime ale traficului de persoane, traficului de migranți sau ale infracțiunii prevăzute la Articolul 141 li se poate acorda un permis de ședere temporară, chiar dacă au intrat ilegal în România, la solicitarea procurorului sau instanței de judecată, în următoarele condiții:

- a) manifestă o intenție clară de a coopera cu autoritățile române pentru a facilita identificarea și tragerea la răspundere penală a participanților la săvârșirea infracțiunilor ale căror victime sunt;
- b) au încetat relațiile cu persoanele suspectate de comiterea infracțiunilor ale căror victime sunt;
- c) acordarea dreptului de ședere este oportună pentru derularea investigațiilor judiciare;
- d) șederea acestora în România nu prezintă pericol pentru ordinea publică și securitatea națională.

(2) Dreptul de ședere poate fi acordat, pentru o perioadă de 6 luni, cu posibilitatea prelungirii pe noi perioade în aceleași condiții.

(3) Dreptul de ședere poate fi revocat în următoarele situații:

- a) nu mai sunt îndeplinite condițiile prevăzute la alin. (1);
- b) titularul dreptului de ședere, în mod intenționat, a reînnoit contactele cu persoanele suspectate de comiterea infracțiunilor prevăzute la alin. (1);
- c) dacă se constată că străinul a indus în eroare autoritățile competente cu privire la calitatea de victimă sau cu privire la datele și informațiile furnizate;
- d) când victima încetează să coopereze;
- e) când autoritățile competente constată existența vreunui dintre cazurile prevăzute la

(1) Aliens who are victims of trafficking of human beings, trafficking of immigrants or the offence stipulated by Article 141, of the offence stipulated by Art. 264 (3) or by Art. 265 of Law No. 53/2003 – the Labor Code, republished, may be granted a right to temporary residence, even if they have entered illegally, upon request of the prosecutor or the court of law, under following conditions:

- a) they show a clear intention to cooperate with the Romanian authorities in order to facilitate the identification and prosecution of participants to the offences the victims of which they have been;
- b) they have stopped relations with persons suspected of committing offences the victims of which they are;
- c) granting the right to reside is favourable to carrying out judicial investigations;
- d) their stay in Romania does not present a danger to public order and national security.

(2) The right to residence may be granted, for the duration of 6 months, with the possibility of extension for new periods, under similar conditions.

(3) The right to residence may be revoked in following situations:

- a) the conditions stipulated in paragraph (1) are no longer fulfilled;
- b) the holder of the right to reside has renewed, with intention, the contacts to the persons suspected to have committed the offences stipulated by Paragraph (1);
- c) if ascertained that the alien intentionally mislead the competent authorities with regard to the quality of a victim or to the data and information provided;
- d) when the victim stops cooperation;
- e) when competent authorities ascertain the

<p>art. 10 din Codul de Procedură Penală. (4) Permisul de ședere pentru persoanele prevăzute la alin. (1) se eliberează în regim gratuit.</p>	<p>existence of one of the cases stipulated by Article 10 of the Criminal Procedure Code. (4) The residence permit for the persons mentioned by Paragraph (1) shall be issued free of charge.</p>
<p>Articolul 141 din Ordonanța de Urgență a Guvernului nr. 194/2002 Republicată în 2008</p> <p>(1) Facilitarea cu intenție în orice mod a șederii ilegale pe teritoriul României a străinilor constituie infracțiune și se pedepsește cu închisoare de la 6 luni la 5 ani.</p>	<p>Article 141 of the Government Emergency Ordinance no. 194/2002 Republished in 2008</p> <p>(1) Intentional facilitation, in any possible way, of the illegal stay of aliens on the territory of Romania shall constitute an offence and shall be punished by imprisonment between 6 months to 5 years.</p>
<p>Articolul 149 din Ordonanța de Urgență a Guvernului nr. 194/2002 Republicată în 2008</p> <p>De la data aderării României la Uniunea Europeană, prevederile prezentei ordonanțe de urgență vor înceta să fie aplicabile cetățenilor statelor membre ale Uniunii Europene și ale spațiului economic european.</p>	<p>Article 149 of the Government Emergency Ordinance no. 194/2002 Republished in 2008</p> <p>Starting with the date of Romania's accession to the European Union, the provisions of this emergency ordinance shall no longer be applied to citizens of EU and EEA Member States.</p>

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Introduction

In the present research we are going to study different aspects of migration law in accordance to the Russian Federation. First of all, we consider the regulations concerning the right to asylum and the procedure for granting it. According to this topic, we discuss the refugee status and temporary asylum in Russia. Then we define the difference in the legal regulation of immigration between the EU states citizens and the Non-EU states citizens.

Secondly, we give a description of the authorities dealing with migrants, and specifically of the legal framework that these authorities follow. The profound research on the framework concerning the migration law is given throughout all the work, as well as the statistics regarding migrants in Russia (i.e. asylum-seekers, immigrants, transit migrants).

Concerning the international law, we study the implementation of the decisions by the European Court of Human Rights at national level, as well as the recommendations of the European Commission against Racism and Intolerance. We also give a profound description of the migrants' rights (i.e. their political and economic rights).

The research mostly observes the national level in regard to migration law of the Russian Federation. At this level we study the migrants' right to access to healthcare and how it is regulated within the national legislation. We also observe the right of the migrants' children to education under Article 2 of the First Protocol to the ECHR, considering different level of education. We present a profound research on the procedure of acquisition of the Russian citizenship by migrants and the possibility of double nationality.

These are the main topics presented and observed in the research with references to the legal framework and statistics. In conclusion there are the results of our research concerning migration law in the Russian Federation.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Description of the National Regulations Governing Asylum

In the Russian Federation the right to asylum distinguishes three:

- the right to political asylum;
- the right to be regarded as a refugee, and
- the right to temporary asylum.

Migration is governed by federal legislation. The major principles of refugee status and temporary asylum policies are defined by the Constitution of the Russian Federation (the “Constitution”) [Конституция Российской Федерации] and legislative acts, which regulate the

entry and registration of foreign nationals and stateless persons in the Russian Federation (“Russia”). They are as follows:

- Federal Law n. 109-FZ of July 18 2006 “On Entry into and Exit from the Russian Federation, Migration Registration of Foreign Nationals and Stateless Persons” (the “Federal Law on Migration Registration”) [О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации];
- Federal Law n. 4528-I of February 19 1993 “On Refugees” (the “Federal Law on Refugees”) [О беженцах];
- Federal Law n. 115-FZ of July 25 2002 "On Legal Status of Foreign Citizens and Citizenship" (the “Federal Law on Legal Status of Foreign Citizens”) [О правовом положении иностранных граждан в Российской Федерации].

Procedural issues are resolved by a set of government resolutions and regulations, including Resolution n.274 of April 9 2001 “On Granting Temporary Asylum in the Territory of the Russian Federation” of the Russian Government” (the “Government Resolution”) [О предоставлении временного убежища на территории Российской Федерации].

1.1.1. The Right to Political Asylum

The right to political asylum means that a person can enter the territory of Russia and remain there without deportation. Article 63 of the Constitution states that Russia shall grant political asylum to foreign nationals and stateless persons according to the universally recognized provisions of international law.

The issue of political asylum is regulated by Presidential Decree n.746 of July 21 1997 “On approval of the regulations on the procedure for granting political asylum by the Russian Federation” (the “Presidential Decree”) [Об утверждении Положения о порядке предоставления Российской Федерацией политического убежища]. The particularity of this right is that a person who considers himself/herself as a political refugee should have already been persecuted or been at risk of being persecuted in the state of his/her citizenship or in the usual residence for his/her social and/or political activity and/or convictions. Such social/political activities or convictions must not contradict the democratic principles recognized by international community and international law.³⁰⁰⁶ As a rule, the right to political asylum is also provided to family members of the person who got political asylum.

1.1.2 The Right to be Regarded as a Refugee

A refugee is a person who, owing to the well-founded fear of being persecuted for reasons connected to his/her race, religion, nationality, membership in a particular social group or political opinion, is outside of the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country.³⁰⁰⁷

³⁰⁰⁶ Presidential Decree, art. 4.

³⁰⁰⁷ Federal Law on Refugees, art. 1.

1.1.3. The Right to Temporary Asylum

Temporary asylum can be granted to a person, whose application for a refugee status was denied. He or she still cannot be expelled from the territory of Russia for humanitarian reasons. Humanitarian reasons may constitute the following:

- being subjected to tortures;
- being subjected to arbitrary deprivation of life and freedom, and
- being subjected to access to emergency medical assistance in case of severe health problems.

Granting of political asylum in the territory of Russia is regulated by the Presidential Decree. Petitions accepted by foreign missions are examined by the Ministry of Internal Affairs of Russia which makes decisions on them.

During the application consideration period the applicant is given a certificate of consideration of the application for being recognized as a refugee. This certificate is the document proving the identity of the applicant and gives him/her the right to stay on the territory of Russia during the application consideration period, and the possibility to appeal against refusal to be recognized as a refugee.

1.2. What Is the Procedure for Granting Asylum and Who Is Responsible?

1.2.1. Refugee Status

The basic method for protecting foreign nationals and stateless persons within the territory of Russia is to recognize them as refugees. According to Russian legislation a refugee is a person who:

- is not a citizen of Russia;
- is to be found outside the country of his/her origin because of the well-founded fear of becoming a victim of persecution for his/her race, religion, citizenship, national or social identity or political conviction, and
- is unable or unwilling to avail himself/herself of the protection of his/her country due to such fear, or having lost his/her nationality and staying beyond the country of his/her former place of residence as a result of similar developments, cannot return to it and does not wish to do so because of such fear.³⁰⁰⁸

This definition is almost entirely the same as to that found in the 1951 Convention and 1967 Protocol relating to the Status of Refugees.³⁰⁰⁹

The Federal Law on Refugees states that a person who has expressed the wish to be recognized as a refugee and who has attained the age of 18 can apply for a refugee status. It can be done either personally or through an authorized representative via a diplomatic mission or a consulate office of Russia in his/her place of residence or outside the state of his/her nationality.³⁰¹⁰

³⁰⁰⁸ Federal Law on Refugees, art. 1.

³⁰⁰⁹ Convention and Protocol Relating to the Status of Refugees, July 28 1951 (Convention) & January 31 1967 (Protocol).

³⁰¹⁰ Federal Law on Refugees, art. 4.1.

Foreign nationals or stateless persons can also apply for recognition as a refugee at a checkpoint on the state border of Russia. If they are forced to cross the Russian border illegally, potential refugees must apply for a respective status within 24-hour period after crossing the border at a checkpoint or beyond it. This can be done 1) at the federal executive body in charge of security dealing with the border service; 2) at the regional agency of the federal executive body for internal affairs or 3) at the regional agency of the federal executive body dealing with the migration service.³⁰¹¹

According to Russian legislation applications for the refugee status must be filed by all adult applicants and by unaccompanied minors.³⁰¹² The ensuing procedure for determining the refugee status comprises two stages: 1) the preliminary examination of an application for granting the refugee status³⁰¹³, and 2) consideration on the merits.³⁰¹⁴

1.2.1.1. First Stage of the Refugee Status Recognizing Procedure

During the first stage of the refugee status procedure the authorities define whether conditions that constitute the grounds for recognizing a person as a refugee are present or absent. The waiting period for applicants who are outside of Russia is one month starting from the date the application is received by the diplomatic mission or the consulate office.³⁰¹⁵ For those who apply for the refugee status at a border checkpoint or inside the Russian territory, this stage takes up to five business days to be completed.³⁰¹⁶

Following the results of the preliminary examination of the application the person is either given a certificate stating that his or her application has been received or a notice of refusal of the application. This certificate serves as the document that identifies the person who is seeking for a refugee status.³⁰¹⁷

After receiving the certificate, applicants must surrender their national (civil) passport and/or other identification documents. Submission of the refugee status application changes legal status of a petitioner and entitles him/her to certain rights, such as:

- the right to have an interpreter;
- the right to receive a lump-sum grant for every family member accompanying the applicant (the amount varies but must be no less than one hundred rubles (approximately US\$1.41) per person);
- the right to receive a place to live in a temporary accommodation center, where a refugee and his/her family can receive food and medical aid, and
- the right to receive vocational training and job placement assistance.³⁰¹⁸.

³⁰¹¹ *ibid.*

³⁰¹² *ibid.*, art. 4.2.

³⁰¹³ *ibid.*, art. 4.

³⁰¹⁴ *ibid.*, art. 7.

³⁰¹⁵ *ibid.*, art. 4.5.1.

³⁰¹⁶ *ibid.*, art. 4.5.2.

³⁰¹⁷ *ibid.*, art. 4.7.

³⁰¹⁸ *ibid.*, art. 6.1.

Those who have received the certificate are required to undergo a mandatory medical examination. Refusal to undergo medical examination can become the ground for the denial of a petitioner's application.³⁰¹⁹

1.2.1.2. Second Stage of the Refugee Status Recognizing Procedure

During the second stage of the refugee status recognizing procedure the authorities carry out more detailed review of information presented in the application. The decision on granting a refugee status must be made based on:

- interviewing the applicant and verifying the truthfulness of the information provided by this person and his/her family members;
- reviewing information about the applicant in the possession of Russian authorities and evaluating the circumstances of the applicant's arrival into Russia, and
- reviewing the grounds for his/her staying within the country.

The law does not limit the number of interviews that may be requested from the applicant to clarify the facts he/she has provided.³⁰²⁰

Following the results of the examination of the application, the decision is taken either to grant the refugee status or to deny the refugee status application.³⁰²¹ If the refugee status is granted, the applicant is provided with a refugee certificate that replaces all his/her former documents, including foreign IDs, and serves as the only identification document recognized by Russian authorities. The refugee certificate is valid throughout the whole territory of Russia and gives a refugee the right to stay within the territory of the country. Information about the children of the refugees is contained in the certificate of one of the parents.

Persons recognized as refugees, including accompanying family members, are entitled to the following rights:

- Information about their rights and responsibilities through translation services if required, including assistance with document processing;
- Travel allowance and baggage shipment to the assigned place of their residence;
- Protection by the Ministry of Internal Affairs at the place of temporary accommodation to ensure their safety;
- Food and public utilities in the centers of temporary accommodation;
- Access to housing paid from the special fund for temporary accommodation;
- Medical assistance in the amount equal to that received by Russian citizens;
- Vocational training and job placement assistance;
- Employment or the opportunity to establish their own business;
- Social protection and social security;
- Participation in public activities.

³⁰¹⁹ *ibid*, art. 6.2.3.

³⁰²⁰ *ibid*, art. 3.3.

³⁰²¹ *ibid*, art. 7.

1.2.2. Temporary Asylum

Apart from granting refugee status, Russia provides individuals with the possibility of obtaining temporary asylum, which, according to the Federal Law on Refugees, creates the possibility for a foreign national or a stateless person to stay temporarily in Russia.³⁰²²

Temporary asylum can be granted to a foreigner whose application for the refugee status was denied but who cannot be expelled from the territory of Russia for humanitarian reasons.³⁰²³ However, the law does not specify what motives or reasons can be regarded as *humanitarian*. Granting temporary asylum for humanitarian reasons falls within the discretion of the decision-making body.

To receive temporary asylum in Russia, a foreign national or a stateless person must file an application. Upon receiving the application, the applicant is given a certificate indicating that he/she has applied for temporary asylum in the country, which gives him/her the official right to stay in the territory of Russia. The term of consideration of the application is up to three months.³⁰²⁴

All applicants are subject to fingerprinting conducted simultaneously with the submission of their application³⁰²⁵ and to a compulsory medical examination. They are required to meet certain health standards to be eligible for asylum.³⁰²⁶

As for the grounds for revocation of the asylum status, a person loses temporary asylum:

- due to the elimination of the circumstances which warrant granting them temporary asylum;
- upon receiving the right to permanent residence in the territory of Russia or the acquisition of Russian citizenship or citizenship of another country;
- upon departure to a place of residence outside the territory of Russia.³⁰²⁷

The revocation's decision is not subject to appeal. Also, Russian legislation does not prohibit the submission of another application for getting temporary asylum if the previous petition has been denied.

2. How does your national law regulate immigration from EU member states and non-EU states?

In Russia there is no special legal definition of the term *migrant*. According to art 1 of the Federal Law on Migration Registration it can be stipulated that migrants are 'foreign citizens and stateless persons carrying out displacements, related to their entry to Russia, transit through Russia, movement throughout Russia in selecting and change the place of residence within the territory of the Russia or their leaving the territory of Russia'.

³⁰²² *ibid*, art. 1.

³⁰²³ *ibid*, art. 12.

³⁰²⁴ Government Resolution, art. 2.

³⁰²⁵ *ibid*, art. 3.

³⁰²⁶ *ibid*, art. 6.

³⁰²⁷ Federal Law on Refugees, art. 12.

There is a general immigration policy which establishes the rules for all people entering the country, regardless where do they come from – both from EU member states and non-EU states. The Federal Law on Migration Registration governs the procedure of entry into and exit from Russia for foreign citizens and stateless persons, the documents legalization, and issuance procedures.

According to the statutory provisions herein foreign citizens might not get the permission to enter the territory of Russia,³⁰²⁸ and there might different reasoning for such situations:³⁰²⁹

- if a person has violated the rules of crossing the state border of Russia, customs rules, sanitary regulations at a checkpoint on the state border – the entry will be denied until the irregularity is eliminated;³⁰³⁰
- if a person has provided deliberately false information on himself or herself or about the purpose of his/her stay in Russia;³⁰³¹
- if a person has been held accountable under the administrative law in compliance with the legislation of Russia for two or more times in the last three years;³⁰³²
- if a person takes part in the activity of foreign or international non-governmental organization, which was considered unacceptable in the territory of Russia³⁰³³.

The grounds for denial of permission to enter Russia for a foreign citizen or a stateless person are stipulated in article 27 of the Federal Law on Migration Registration. They are as follows: 1) when considering the purpose of ensuring the defensive capability or security of the state or public order or protecting the health of the general public;³⁰³⁴ 2) a foreign citizen or a stateless person has an unremoved or unexpunged conviction for a grave or especially grave crime committed in the territory of Russia or abroad, which is deemed a crime under federal law;³⁰³⁵ and other cases.

As for procedure for the legalization and issuance of documents for entry into Russia, article 24 of the Federal Law on Migration Registration states that foreign citizens may enter and exit from the Russia if they have a visa issued on the basis of valid identification documents that are recognized as such by Russia, unless otherwise stipulated by the Federal Law on Migration Registration, international treaties of Russia or Presidential decrees.

Chapter IV of the Federal Law on Migration Registration establishes the grounds for:

- the visa issuance to a foreign citizen;³⁰³⁶
- the type of visa depending on the aims³⁰³⁷ and numbers³⁰³⁸ of the entry;
- subjects authorized to prolong validity of visa.³⁰³⁹

³⁰²⁸ Federal Law on Migration Registration art. 26.

³⁰²⁹ *ibid*, art. 27.

³⁰³⁰ *ibid*, part 1 art. 26.

³⁰³¹ *ibid*, part 2 art. 26.

³⁰³² *ibid*, part 4 art. 26.

³⁰³³ *ibid*, part 9 art. 26.

³⁰³⁴ *ibid*, part 1 art. 27.

³⁰³⁵ *ibid*, part 3 art. 27.

³⁰³⁶ *ibid*, art. 25.

³⁰³⁷ *ibid*, art. 25.1.

³⁰³⁸ *ibid*, art. 25.2.

³⁰³⁹ *ibid*, art. 25.3.

Having obtained the required documents, upon entering Russia a foreign citizen or a stateless person must receive and fill in a migration card – this document contains information about a foreign national who enters Russia and also serves as an instrument of control over his temporary stay in Russia. The text of a migration card has got the English language translation.³⁰⁴⁰

According to the “Rules for the Use of Migration Cards” [Правила использования миграционной карты], migration card slips shall be issued to foreign nationals upon their entrance to Russia free of charge by the officials of the immigration (border) control organs or by representatives of the transport service organizations which organise the entrance of foreign nationals into Russia.³⁰⁴¹

The migration card must be submitted at the checkpoint on the state border of Russia upon exiting of the abovementioned foreign citizen or stateless person out of the territory of Russia. The format of migration cards, the procedure and financing measures for supplying migration card are established by Government Resolution n. 413 of August 16 2004.

After entering Russia, a foreign citizen or a stateless person must register with the *Migration Register*, which records and consolidates all data on foreign citizens and stateless people (together with their travelling within the territory of Russia).³⁰⁴² The general procedure for such registration is notification.³⁰⁴³ It means that a foreign citizen is obliged to notify the migration registration body about his/her arrival (with some exceptions).

To maintain a migration status, migrants must get a special *permit for a temporary residence* or a *residence permit* at the place of residence or at the place of their staying on the territory of Russia.³⁰⁴⁴

According to part 2 of article 31 of the Federal Law on Migration Registration, if a permit for a temporary residence or a residence permit issued to a foreign citizen is cancelled, this foreign citizen is obliged to leave Russia within 15 days. Thus, the obligation to leave Russia is the same as exclusion of a migration status.

The legislation of Russia does not have a single list of grounds for exclusion of migration status. There are grounds for the cancellation of a permit for a temporary residence and the cancellation of a residence permit, which largely copy each other. For example, if a migrant comes out for a forcible change of the foundations of the constitutional system of Russia, or creates by other actions a threat to the security of Russia or to the citizens Russia).

Migrants as well as citizens of Russia have the right to leave the territory of Russia. According to article 24 of Federal Law n. 114-FZ, foreign citizens may leave Russia if they have a Russian visa, or the other valid documents, which are recognized as such by Russia, unless international treaties of Russia provide for otherwise (for example, document identifying and residence permit).

³⁰⁴⁰ The Rules for the Use of Migration Cards, approved by Decision No. 413 of the Government of the Russian Federation, 2006, para. 2.

³⁰⁴¹ *ibid*, para. 3.

³⁰⁴² Federal Law on Migration Registration, art. 2.1.1.

³⁰⁴³ *ibid*, part 2 art. 4.

³⁰⁴⁴ *ibid*, art. 14 and 20.

It is worth noting that the exit from Russia for foreign citizens or stateless persons may be restricted. It occurs, e.g. in the situations when foreign citizens or stateless persons have not fulfilled their obligations to pay taxes provided for by the Russian legislation.

Apart from the general immigration procedure applicable to EU-members and non-EU-members, there are some regulations which govern the entry of citizens of certain states or other special categories.

A period of temporary stay in Russia for a foreign citizen, who has arrived with compliance to visa-free regime, cannot exceed 90 days during each 180 day period³⁰⁴⁵.

Also there is Decree of the President of Russia n. 637 “About assistance measures for voluntary resettlement to Russia of compatriots living abroad” of June 22 2006 which approves the State Program for the Promotion of Voluntary Resettlement to Russia of Compatriots Living Abroad. According to Article 1 of the Federal Law n. 99-FZ “On State policy of Russia respecting compatriots abroad” of 24 May 1999 compatriots are people who were born in the same state, who are living or were living in it and possessing common language, history, cultural heritage, traditions and customs, and also who are descendants of such people in a straight descending line. This policy is aimed to consolidate compatriots living abroad with needs to develop Russian regions.

To sum up, there is general regulation of immigration in Russia, concerning all people who enter the territory of Russia. Other specific procedures for individual categories of people (based on nationality or activity intended to be performed in the territory of Russia) could be established by bilateral treaties. Furthermore, Russia allows compatriots to resettle back into the territory of Russia by a simplified procedure.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The General Administration for Migration Issues of the Ministry of Internal Affairs of Russia (the “**General Administration**”) is an independent structural subdivision of the central apparatus of the Ministry of Internal Affairs of Russia, which ensures and carries out within its competence the functions of the Ministry for the development and implementation of state policy and legislative regulation in the field of migration.

The General Administration performs the functions of the Ministry's main subdivision in the sphere of securing³⁰⁴⁶:

- Proceedings on citizenship of Russia, making up and issuance of basic documents certifying the identity of a citizen of Russia;

³⁰⁴⁵ Federal Law on the Legal Status, pt 1 art 5.

³⁰⁴⁶ Order of the Ministry of Internal Affairs of the Russian Federation n.192 of April 15 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.

- Registration of citizens of Russia at the place of stay and at the place of residence within Russia, control over compliance by citizens and officials with the rules for registration and termination of registration of citizens of Russia;
- Migration registration of foreign citizens and stateless persons in Russia;
- Registration and issuance of documents for foreign citizens and stateless persons for entrance to Russia, residence and temporary stay in Russia;
- Implementation of federal state control in the field of migration;
- Implementation of control and supervision in the sphere of external labor migration, attraction of foreign workers to Russia and employment of citizens of Russia outside Russia in accordance with the legislation of Russia, etc.

The main tasks of the General Administration are³⁰⁴⁷:

- Organization and participation in the formation of the main directions of state policy in the field of migration;
- Ensuring the improvement of regulatory and legislative regulation in the field of migration;
- Ensuring the interaction of the Ministry units with federal executive authorities, executive authorities of the constituent entities of Russia on matters within the competence of the General Administration;
- Organization and coordination of the activities of territorial bodies of the Ministry of Internal Affairs of Russia on issues within the competence of the General Administration;
- Organizational and methodological support of the activities of the territorial bodies of the Ministry of Internal Affairs and their structural divisions, organizations established to solve tasks on the implementation of the state migration policy, on issues within the competence of the General Administration;

The main functions of the General Administration are³⁰⁴⁸:

- Analysis of the migratory situation in Russia;
- Drafting federal constitutional laws, federal laws, regulatory acts of the President of Russia and regulatory acts of the Government of Russia, regulatory acts of the Ministry of Internal Affairs of Russia, as well as preparation of proposals for improving legislative and other regulatory acts of Russia, activities of the General Administration;
- Preparing or participating in the preparation of draft reviews and conclusions on draft international treaties of Russia, legislative and other regulatory acts of Russia;
- Preparation or participation in the preparation of responses to the inquiries of the Representative of Russia at the European Court of Human Rights on the activities of the General Administration; answers to requests of deputies of the State Duma, members of the Federation Council of the Federal Assembly of Russia and members of the Public Chamber of Russia on the activities of the General Administration;

³⁰⁴⁷ *ibid*, art 9.

³⁰⁴⁸ *ibid*, art 10.

- Implementation of measures to prevent and suppress illegal migration, organization of immigration control in respect of foreign citizens and stateless persons, including in conjunction with regulatory and law enforcement agencies;
- Organization of prevention and suppression of crimes and administrative violation in law in accordance with the competence of the General Administration;
- Identification, synthesis and dissemination of innovative and international experience on matters within the competence of the General Administration, as well as advanced forms and methods for the most efficient use of force and police resources in the established field of activities;
- Performance of other functions in the established field of activities envisaged by regulatory acts of the Ministry of Internal Affairs of Russia.

The General Administration is headed by the Chief, who is appointed and dismissed by the established procedure. The Chief of General Administration has deputies appointed and dismissed by the established procedure. Main Directorate (department) chief meeting valid, the procedure and composition are determined by the head of the Main Directorate (department).

The General Administration for Migration Issues of the Ministry of Internal Affairs of Russia carries out its activities directly or through its territorial bodies at the districts. In accordance with the established procedure the General Administration interacts with the units of the Ministry of Internal Affairs, the relevant units of law enforcement agencies, state and municipal bodies, public associations and organizations and in accordance with international treaties of Russia with law enforcement agencies of foreign states and international police organizations.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

In Russia legislation there are no concepts like *immigrant* or *migrant worker*, but such terms as “Russian citizen”, “foreign citizen” and “foreign citizen working on temporary labour hiring”. On definition accepted in Russian statistics as legal immigrants (or long-term foreign migrants) in Russia can be considered foreign citizens who received residence permit, permission for temporary residing for a term of more than 9 months, as well as moving to Russia to permanent stay (that is, receiving Russia citizenship).³⁰⁴⁹

In the legislation the following status of foreign citizens in Russia territory is accepted:

- temporary foreign citizen staying in Russia is arrived to Russia on the grounds of visa either in order not requiring visas and receiving migration card but not seeking for living or permission for temporary residing (the term of stay in Russia is limited by 90 days during 180 days);
- temporary foreign citizen living in Russia is receiving permission for temporary residing (for example, at employment);

³⁰⁴⁹ *The Operational Monitoring of The Economic Situation in Russia* [2016] Gaidar Institute for Economic Policy 23 [Russian]

– foreign citizen constantly living in Russia - receiving residence permit.

In 2000s the level of external migration flows increased substantially, while the level of internal migrations of the population in Russia had lowered. At the same time the number of foreign citizens totally residing in Russia at the beginning of 2015 accounted for 10.9 million persons, most of them were inhabitants of CIS and the Ukraine of working age, with visa-free mode of entry to Russia.³⁰⁵⁰

After the beginning of economic growth in the country in 2000s, the main part of migration flow was presented by foreign migrant workers. Most of the foreigners temporarily residing in Russia are citizens from the least developed CIS countries, predominantly from the Ukraine, Uzbekistan, Tadjikistan, Kirghizia, Moldova. Employers use their desperate situation, using their labour with by violating the legislation (not issuing them any permission for work, not paying taxes).

Migrant workers from the republics of Central Asia often do not speak any Russian, do not have a profession.

Until 2002 in Russia there was no appropriate legislation on minimum standards of migration. Among states not entering CIS, the largest number of migrants to Russia come from China, as well as Vietnam, Afghanistan, Turkey.

In the first quarter of 2010 the number of migrants from CIS states-members started reducing. For citizens of EAEU countries-members (Kazakhstan, Belarus, Armenia, Kirghizia) it is not required to get the work permits for work in Russia, they have the same labour rights as Russian citizens do. Increase of migration was observed in exchange with Republic Moldova, the Ukraine, Azerbaijan, Tadjikistan.³⁰⁵¹

For 9 months of 2013 3,3 million of foreign labour migrants arrived to Moscow and Moscow area, and 2,5 million of labour migrants - to St. Petersburg and Leningrad Oblast.³⁰⁵²

Illegal migration is astonishing according to the statistics. In 2000 21,2 million of foreign citizens drove to Russia and 17,9 million of persons left. In 2004 - 21,2 and 20,8 million persons, in 2005 - 20,9 and 19,8 million persons, in 2006 - 21,2 and 19,9 million persons, respectively. Many foreigners who drove to Russia, remain subsequently in Russian territory with infringement of migration legislation and go to the category of illegal migrants.³⁰⁵³

According to the UN report published in 2002, Russia was on the second place (after the USA) with the number of legal and illegal migrants living in the country territory. According to appreciation of UN experts there are more than 13 million of such persons in Russia - 9 % of the population.

According to data of the Russian Federal Migration Service in November 2014 there were illegally in Russia territory about 3 million foreign citizens who considerably exceeded the term of legal stay on the territory of Russia (90 days).

³⁰⁵⁰ Stepan Opalev, Elena Myazina, *RBC study: how foreigners leave Russia*, (February 4 2015, RBC)

< www.rbc.ru/society/04/02/2015/54d0c05e9a7947df123f23e1/ > accessed June 3 2017 [Russian].

³⁰⁵¹ Socio-economic situation in Russia [2010] Federal State Statistics Service of the Russian Federation <http://www.gks.ru/bgd/regl/b10_01/IssWWW.exe/Stg/d04/4-0.htm/> accessed 3 June 2017.

³⁰⁵² <<https://ria.ru/society/20131022/971905857.html>> accessed 3 June 2017.

³⁰⁵³ Fedotova M.F., Shoiko I.S., *Modern Migration Policy of the Russian Federation* [2010] *Journal of Law and Security* 35 [Russian].

In the first quarter of 2010, pursuant to the Russian Federal Migration Service units, the status of forced settler or refugee was received by 853 persons (in the first quarter 2009 - 2516 persons).

According to the data of the Russian Federal Migration Service, on April 1 2010 in the country 56,7 thousand forced settlers and refugees were totaled. More than 35 % of them (19,8 thousand) accounted for the former Kazakhstan inhabitants, 19 % (10,6 thousand) - Georgia, 12 % (7,0 thousand) - Uzbekistan, 5 % (3,0 thousand) - Tajikistan. More than 12 thousand persons (21 %) moved inside Russia from regions with unstable political atmosphere.

The process of settlement of forced migrants goes on in all subjects of Russia. The largest number of forced settlers and refugees went to Republic Northern Ossetia - Alanya, 6,5 thousand (10,7 thousand persons) - to Republic Ingushetia, 2,8 thousand - to Belgorod area, from 2,0 thousand to 1,6 thousand - to Samara and Orenburg area, Krasnodar and Stavropol Territory, from 1,3 to 1,1 thousand - to Nizhniy Novgorod area, Altay territory, Kemerovo, Novosibirsk and Volgograd area. Thus, we can conclude that the main flow of migrants falls on large cities and megacities.

Starting from July 1 2014 the Federal migration service of Russia granted status of refugees to 325 thousand of forced settlers from the Ukraine.

With the increase of rates of migration crisis Russia became the key transit of illegal migrants and refugees on their way from Middle East and Northern Africa to European countries. For the last few months, according to Finnish authorities about a thousand of Middle East settlers went through Russia to Finland. In Norway they numbered 700 illegal migrants who arrived through Russian territory.³⁰⁵⁴

According to data of UN, by the beginning of 2016 more than 5 million Syrian citizens were forced to leave their country on the look-out for safety. In the territory of Russia as of April 5 2016, according to data of The Federal migration service of Russia there were 7096 Syrian citizens.

For past year this number decreased (on April 5 2015 there were 8205 persons). To this number embassy officers with families, and those who arrived before conflict, constantly live and work in Russia, and do not seek for refuge.

During the year of 2015 5,000 refugees, primarily Syrian citizens, left Russia through the border point in Murmanskaya area and moved to Norway. This process continued until November 2015, when Norway tightened its border crossing policy, Norwegian authorities sent back to Russia those Syrian citizens, who had legal status.

However, a large number of Syrian citizens stayed in Norway. There is also statistics on 500 refugees who departed to Finland the similar way. This looks like a reason for reduction of the number of Syrian citizens in Russian territory, though small flow of Syrian citizens to Russia still proceeds.³⁰⁵⁵

³⁰⁵⁴ <<https://www.bloomberg.com/europe/>> accessed 3 June 2017.

³⁰⁵⁵ <<http://refugee.ru/publications/sirijskie-bezhentsy-v-rossii/>> accessed 3 June 2017.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

The actions of the European Court on Human Rights (the “ECHR”) in respect of Russia are determined by the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms³⁰⁵⁶ (the “Convention”), the Constitution and other federal legislation.

Now that Russia has ratified the Convention of 1950, it has entered into respective commitments including the enforcement of judgements of the ECHR. According to the article 1 of Federal Law n.54 of March 03 1998 “On the Ratification of the Convention on Protection of Human Rights and Fundamental Freedoms and its Protocols” [О ратификации Конвенции о защите прав человека и основных свобод и протоколов к ней] the ECHR resolutions are compulsory for Russia if they are given on cases in connection with alleged violations of its commitments on the Convention of the 1950 by Russia.

According to para 11 of Resolution of the Plenum of the Supreme Court n.5-P of October 10 2003 the final resolutions of the ECHR are binding for all public authorities of Russia including the courts.

Russia promotes mandatory resolutions of the ECHR for the Russian national law and law enforcement. Binding power of the ECHR decisions for the national legal system is closely connected with an issue of Russian state sovereignty. That is why positions of the ECHR are not always identical to the opinion of the Constitutional Court of Russia. Furthermore, para 2.2 of the Decision of the Constitutional Court of Russia n.21-P of July 14 2015 enshrined the priority of the Constitution of Russia over the ECHR decisions because of state sovereignty.

The Constitutional Court of Russia is the public authority which (upon requests of the federal executive authority) addresses the issue of the enforcement of the resolutions given by international bodies defending human rights and freedoms.³⁰⁵⁷ That is why the opinion of the Constitutional Court of Russia is the key to the issue of enforcement of ECHR resolutions and changing the Russian legislation. That is the reason for the following reviewing and comparison of the opinions of the ECHR and positions of the Russian law (including the decisions of the Constitutional Court of Russia) on main issues related to migrants.

5.1. The Problem of Correlation of the Right of Each Person to Respect for Private and Family Life and Compulsory Measures of the State in Migration Policy

The position of the ECHR is as follows. Article 8 of the Convention recognizes the right of everyone to respect for his private and family life (para 1) and does not allow public authorities to interfere with the exercise of this right, except as provided in para 2.

According to the ECHR position the above normative provisions do not interfere the state control of the foreigner’s entry and their stay in the territory of the state in accordance with the norms of international law and its treaty obligations. In matters of immigration art 8 or any other

³⁰⁵⁶ Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4 1950

³⁰⁵⁷ Federal Constitutional Law n.1-FKZ of July 21 1994, para 3.2 art 3

provision of the of the Convention cannot be regarded as implying a duty on the state to respect the choice of the country of cohabitation that couples do and to allow the reunification of family members in its territory.³⁰⁵⁸

The ECHR came to the conclusion that the Convention does not guarantee foreigners the right to enter a certain country or to reside in its territory and not be expelled and that the state's responsibility for ensuring public order obliges it to control the entry to the country; at the same time such decisions should be justified by an urgent social need and correspond to a legitimate aim as they may violate the right to respect for private and family life protected in a democratic society by art 8 of the Convention.³⁰⁵⁹

Concerning the admissibility of expulsion in a democratic society the ECHR noted that the importance given to certain criteria would be different depending on the circumstances of the particular case and that the state has certain limits of discretion, since it is connected with the need to establish fair balance between competing interests of an individual and society as a whole. According to the ECHR position administrative expulsion from the country can be regarded as an interference with a person's right to respect for his family life but which does not entail a violation of this article as long as it is justified within the meaning of its para 2.³⁰⁶⁰

It is worth noting that the Constitutional Court expressed its position only on family life in contrast to the ECHR which expressed its position regarding both private and family life. According to the position of the Constitutional Court family and family life are values that are protected by the Constitution of Russia and international treaties of Russia, but they do not have absolute advantages in all cases over other constitutionally significant values and the existence of families does not provide foreign citizens with undisputed immunity from legal and effective coercive measures in the field of migration policy which are commensurate with the dangers of migration offenses (especially mass ones) and practices of avoiding liability.

Within the permissible limits stipulated by the constitutional and international legal norms, by the boundaries of the legislative as well as the law enforcement and, above all, judicial discretion, Russia has the right to decide whether a certain type of migration offenses creates an urgent social need in the current situation for the compulsory expulsion of aliens who committed these offenses and whether its application is acceptable to persons with family responsibilities.

To sum up when solving the problem of the correlation of the right of every person to respect for private and family life and compulsory measures of the state in the part of migration policy the Constitutional Court of Russia often uses the practice of the ECHR as arguments for its decision³⁰⁶¹ which means the coincidence of the positions of the European Court of Human

³⁰⁵⁸ *Abdulaziz, Cabeles et Balkandali v. the United Kingdom* of May 28 1985, para 68; *Gul v. Switzerland* of February 19 1996, para 38; *Kiyutin v. Russia* of March 10 2011, para 53.

³⁰⁵⁹ *Berrehab v. Netherlands* of May 28 1988, para 28; *Moustaquim v. Belgium* of February 18 1991; *Beldjoudi v. France* of February 26 1992; *Boughanemi v. France* of April 24 1996, para 41; *C. v. Belgium* of August 7 1996; *Ahmut v. Netherlands* of November 28th 1996; *El Boujaidi v. France* of September 26 1997, para 39; *Dalia v. France* of February 19 1998; *Uner v. Netherlands* of October 18th 2006, para 54; *Liu and Liu v. Russia* of December 6 2007, para 49; *Andrey Shebashov v. Latvia* of November 9 2000 (on the admissibility of a complaint).

³⁰⁶⁰ *Nunez v. Norway* of June 28, 2011, para 71; *Alim v. Russia* of September 27 2011, para 78, 80, 81, 83 and 93.

³⁰⁶¹ Ruling of the Constitutional Court of the Russian Federation n.545-O-O of May 19 2009 “On the refusal to accept the complaint of the citizen of the Republic of Moldova, Natalia Grigorievna Morar, for violation of her constitutional rights by the para 1 pt 1 art 27 of the Federal Law “On the Procedure for Exit from the Russian

Rights and the Constitutional Court of Russia in part of the state's right to enforce coercive measures against persons with family responsibilities, for example, expulsion from Russia. The similarity of positions is based on the fact that the Constitutional Court gives a similar interpretation to the provisions of the Convention as well as the ECHR on the family life and the legislation of Russia meets international standards, therefore changes are not required.

5.2. The Problem of Period of Detention in Specialized Institutions for Persons Who are Subject to Compulsory Expulsion Outside Russia

From January 2014 to June 2015 the ECHR has issued 7 resolutions which were connected with the problem of period of detention in specialized institutions for persons who are subject to compulsory expulsion outside Russia stated in the judgment of the European Court of April 18 2013 in the case of *Azimov v. Russia*, application n.67474 / 11, including judgments: see *Ismailov v. Russia*, judgment of April 17 2014, application n.20110/13; see *Akram Karimov v. Russia*, judgment of May 28 2014, application n.62892/12; see *Egamberdiyev v. Russia*, judgment of June 26 2014, application n.34742/13; see *Rakhimov v. Russia*, judgment of July 10 2014, application n.50552/13; see *Kim v. Russia*, judgment of July 17 2014, application n.44260/13; see *Eshonkulov v. Russia*, judgment of January 15 2015, application n.68900/13; see *Khalikov v. Russia*, judgment of February 26 2015, application n.66373/13.

The ECHR found violations by Russian authorities of Article 5, subpara 1 and 4 of the Convention in connection with the unlawful deprivation of freedom of applicants in the course of administrative expulsion procedures expressed in the absence in the court's order of information about certain detention time in the center of temporary detention for foreign citizens and in fact the excessively long detention of the applicants. At the same time attention is paid to the lack of norms in the Russian legislation that stipulate the time of limitation of freedom for administrative expulsion and deportation as well as lack of the norms regulating the procedure for appeal the legality of application of this measure.

At the same time the arguments of the Russian authorities that the detention time in specialized institutions for administrative expulsion is limited by the deadline established by Russian legislation for the enforcement of resolution to an administrative infraction were dismissed. It is noted that the specified detention time in specialized institutions in any case cannot be recognized as proportional, because in fact it can exceed the maximum term for serving one's

Federation and Entry Into the Russian Federation", para 2.1; The Ruling of the Constitutional Court of the Russian Federation n.179-O-O of January 25 2012 "On the complaint of the citizen of the Republic of Tajikistan Aliyev Mavluda Aliевна on violation of her constitutional rights by subpara 14 of para 1 of art 7 and para 2 of art 31 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation", para 2.2; The Ruling of the Constitutional Court of the Russian Federation n.628-O of March 5 2014 "On the refusal in acceptance for consideration of the complaint of the citizen of the Chinese National Republic Zheng Hua on infringement of his constitutional rights by pt 1.1 of art 18.8 of the Code of Administrative Offences of the Russian Federation", para 3.1; The Decision of the Constitutional Court of the Russian Federation n.5-P of February 17 2016 "On the case on the verification of the constitutionality of the provisions of para 6 of art 8 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation", pt 1 and 3 of art 18.8 of the Code of Administrative Offences of the Russian Federation and subpara 2 of pt 1 of art 27 of the Federal Law "On the Procedure for Exit from the Russian Federation and Entry Into the Russian Federation" in connection with the complaint of the citizen of the Republic of Moldova M. Turcan", para 5.1.

punishment in the form of administrative arrest and make up to two years. In this regard attention is drawn to the fact that the restrictive measure aimed at the execution of administrative punishment should not be punitive and be more severe than the maximum administrative penalty that provides for the limitation of freedom (administrative arrest).

Thus, the ECHR has established a stable legal position according to which the detention in specialized institutions for administrative expulsion equals to imprisonment within the meaning of Article 5 of the Convention and must comply with the requirements set forth in it. Such requirements include the reasonableness and proportionality of the relevant restrictive measure, the mandatory setting by the court of a clear reasoned period for its application, taking into account the real possibility of administrative expulsion or deportation and the possibility for appeal the legality of the relevant judgment.

In connection with the judgments above the ECHR in the Report with results of monitoring of law enforcement in Russia for 2015 in particular in Appendix n.5 “The List of judgments of the European Court of Human Rights in connection with which it is necessary to amend the legislation of Russia” (as of August 20 2016) states that: “At present it seems necessary to prepare by the Ministry of Internal Affairs of Russia (taking into account the transfer of functions of the FMS of Russia) changes in the current legislation taking into account the conclusions of the European Court of Human Rights and the proposals of the competent bodies of state power with regard to establishment of: maximum detention time in specialized institutions for administrative expulsion and deportation; the grounds and procedure for establishing, extending and suspending the detention time in relevant institution; the procedure for appeal a decision to place a person in a specialized institution for the purpose of administrative expulsion and a decision to extend the detention time in specialized institutions for administrative expulsion...”

As for the position of the Constitutional Court of Russia in the Judgment of May 23 2017 n.14-P “On Verification of the Constitutionality of the Provisions of Articles 31.7 and 31.9 of the Code of Administrative Offenses of Russia in connection with the complaint of the person without citizenship N.G. Moshiladze” refers to the position of the ECHR regarding the interpretation of Article 5 of the Convention according which “...the place and conditions of detention must be acceptable and its duration should not exceed the time which is necessary to achieve the goal pursued (see *Azimov v. Russia*, judgment of April 18 2013; *Ismailov v. Russia*, judgment of April 17 2014, etc.)”.

At the same time the Constitutional Court notes in the judgment that in Russia at the moment persons who are subject to compulsory expulsion outside Russia may be detained in specialized institutions prior to their actual transfer across the State border of Russia, while the detention of such persons in a special institution may continue before the expiration of the statute of limitations for the execution of the administrative expulsion outside Russia, which is two years.

In addition the uncertainty about the duration of the detention is exacerbated by the absence of rules providing for judicial review. Here the Constitutional Court also appeals to the position of the European Court of Human Rights which notes that for the persons liable to be expelled during their detention in a special institution it is important to guarantee their right of judicial

review for the legality of the application of this restrictive measure to them. In addition the Constitutional Court points out that «in the opinion of the ECHR...the court's appointment of this measure restricting the freedom of the person being expelled without specifying a specific time for its application in conjunction together with the impossibility of review the question of the legitimate of detention in a special institution entails the restriction of the right to freedom and personal inviolability; this, in turn, gives the detention in a special institution the punitive character (see *Kim v. Russia*, judgment of July 17 2014; *Eshonkulov v. Russia*, judgment of January 15 2015; *Khalikov v. Russia*, judgment of February 26 2015; etc.). In the operative part of the judgment the Constitutional Court recognizes the need to amend Russian legislation on this issue.

Therefore, it can be stated that the Constitutional Court of Russia considering the problem of the detention time in a specialized institution of persons who are subject to compulsory expulsion outside Russia refers to the judgments of the ECHR concerning this issue, appeals to the position of the ECHR and gives the similar argument when considering this issue. In addition, the Russian legislation also establishes a list of judgments of the ECHR according to which it is necessary to amend Russian legislation and provide for a set of measures which are necessary for realization of the ECHR judgments at the national level.

5.3. The Issue of Migrants' Political Rights

There is an issue with political rights of migrants. Russian legislation contain two categories of migrants at that case: migrants, who do not have Russian citizenship and migrants, who have Russian citizenship together with foreign state citizenship as well as the residential permit or other document certifying the right of the citizen of Russia to permanently reside in the territory of the foreign state. Every category has some restrictions in political rights comparing with Russian citizens.

The Constitution of Russia guarantees for the first group the right to association, including the right to create trade unions for the protection of his or her interests³⁰⁶², the freedom of ideas and speech³⁰⁶³.

According to art 32 of the Constitution the second group must obtain not only the rights of the first group, but also the right to participate in managing state affairs both directly and through their representatives³⁰⁶⁴. This includes the right to elect, be elected to bodies of state power and to local self-government bodies, to participate in referenda.

However, the Federal Law n.67-FZ of July 12 2002 “On basic guarantees of electoral rights and the right of citizens of Russia to participate in the referendum” establishes restrictions higher than in the Constitution. The Law deprives the citizens of Russia with the foreign state citizenship as well as the residential permit or other document certifying the right of the citizen

³⁰⁶² The Constitution of the Russian Federation, pt 1 art 30

³⁰⁶³ *ibid*, pt 1 art 29

³⁰⁶⁴ *ibid*, pt 1 art 32

of Russia to permanently reside in the territory of the foreign state of the right to be elected to bodies of state power and local self-government bodies.³⁰⁶⁵

Nowadays Russia is the only state of Council of Europe that has this kind of restrictive regulation on political rights of its citizens. This issue became the subject of consideration after the Russian politician Vladimir Kara Murza attempted to challenge the constitutionality of Art 31 of this federal law. He wanted to take part in the election to Moscow Oblast's Duma in 2006, but was dismissed from election's candidates list because he had not only Russian citizenship, but also citizenship of the United Kingdom of Great Britain and Northern Ireland. After that he tried to defend his right to be elected, but the Russian Constitutional Court declined his complaint. The Russian Constitutional Court backed up its position with the argument that people with foreign state citizenship have the political and legal bond with a different state, which can be the obstacle in the realisation of the principle of independence³⁰⁶⁶. Today the ECHR is considering the Kara Murza's complaint.

5.4. The Conclusion

In general the opinion of Russia about the most important issues of migrants is the same with positions of the ECHR. If there are contradictions or detection of violations of human rights, Russia pays attention for it and implements the decisions of the ECHR to its legislation.

But it is appropriate to focus on the fact that the Constitution Russia is considered to be more important than the decisions of the ECHR because of state sovereignty. It means that enforcement of ECHR judgements will always depend on accordance to the principles and foundations of the Constitution of Russia.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

The European Commission against Racism and Intolerance (the “**ECRI**”) has regularly submitted recommendations to Russia. The Commission conducted monitoring and published a report on the situation in Russia.³⁰⁶⁷

In its third report, ECRI strongly encouraged Russia authorities to take all necessary steps to facilitate the legalisation regulating the situation of non-nationals working illegally in the country and to take all necessary measures to protect foreign workers in an irregular situation from any

³⁰⁶⁵ Federal Law n.67-FZ of July 12 2002 “On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in the referendum”, pt 3¹ art 4

³⁰⁶⁶ Ruling of the Constitutional Court of the Russian Federation No. 797-O-O of December 4 2007 “On the refusal to accept the complaint of Vladimir Kara Murza for violation of his constitutional rights by the para. 3¹ art. 4 of the Federal Law “On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in the referendum”

³⁰⁶⁷ ECRI Report on the Russian Federation (fourth monitoring cycle, October 15 2013), <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Russia/RUS-CbC-IV-2013-040-eng.pdf>>, accessed July 15 2017

forms of exploitation by employers and members of the police. ECRI strongly recommends that the authorities review the quota system with a view, in particular, to increasing quotas and reducing the costs for employers of obtaining work permits for foreign workers. They should also explore new mechanisms for the legalisation of irregular migrants in all categories and in all sectors of work. Finally, they should take more resolute action against breaches of labour regulations on the part of employers, along with measures to address corruption in this field.

In 2013 ECRI recommended that Russia would sign and ratify 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. At the moment these recommendations have not yet been implemented by Russia.

ECRI was informed that a very small number of complaints from migrants had been received among the registered by the Federal Commissioner for Human Rights indicating that there was no information on or trust in this institution.

ECRI notes that it is very expensive for the employers to obtain a work permit for foreign workers which holds back some employers. Thus, it turns out that the violation of labor regulation and the basic rights of migrants occurs on a large scale. Unlawful migrants, naturally, do not want to report abuses because of fear of deportation from Russia. The ECRI is deeply concerned by reports describing the mass distribution of the lower class of migrant workers who have become one of the most vulnerable groups in Russia today.

ECRI calls on the authorities to consider the possibility of creating a special commissioner or department in the existing structure of the Human Rights Ombudsman, to specifically address the problems faced by labor migrants. At the moment there is no such special post.

ECRI strongly recommended that the authorities organise an awareness raising campaign for the public on the importance for the country of Russia's migrant work force, to promote a positive image of migrants and to stress the necessity of respecting their rights and treating them with dignity.

ECRI calls on the authorities of Russia to implement to adapt the state migration policy which includes integration measures such as language training, advice and assistance in obtaining social benefits and security, training and other measures to promote labor market integration, as well as appropriate training for officials dealing with immigrants matters. And although Russia is taking some steps in this area, there has been no significant progress.

7. How is migrants' right to access to healthcare regulated within the national legislation?

Within the Russian legislation there are a few laws governing the migrant's right to access to healthcare. The right to medical care for foreign citizens residing and staying in the territory of Russia is established by the legislation of Russia and the relevant international treaties of Russia:

- Federal Law n. 323 of November 21 2011 “On the Fundamentals of Healthcare for Citizens in Russia”;

- Federal Law n.115 of July 25 2002 “On Legal Status of Foreign Citizens in Russia”;
- Federal Law n.326 of November 29 2010 “On Compulsory Medical Insurance in Russia”.

The procedure for providing medical assistance to foreign citizens is determined by the Government of Russia, particularly, by the Resolution of the Government of Russia n.186 of March 06 2013 “On Approval of the Rules for the Provision of Medical Assistance to Foreign Citizens in the Territory of Russia”. Persons without citizenship permanently residing in Russia enjoy the right to medical assistance on an equal basis with citizens of Russia, unless otherwise stipulated by international treaties of Russia³⁰⁶⁸.

In Russia the types of medical assistance include:

- Primary health care;
- Specialized, including high-tech, medical assistance;
- Ambulance, including an ambulance specialized medical assistance;
- Palliative medical assistance; and
- The following forms of medical assistance are recognized: emergency, urgent and planned³⁰⁶⁹.

Medical assistance to foreign citizens temporarily residing or permanently residing in Russia is rendered by medical and other organizations, regardless of their organizational and legal form, as well as by individual entrepreneurs engaged in medical activities.

In accordance with Resolution of the Government of Russia n.186 of March 06 2013 “On Approval of the Rules for the Provision of Medical Assistance to Foreign Citizens in the Territory of Russia” medical assistance in emergency form with sudden acute illnesses, conditions, exacerbation of chronic diseases, which pose a threat to the life of the patient, is rendered free of charge to foreign citizens by medical organizations. Medical assistance in urgent form (with exception of ambulance, including an ambulance specialized, medical assistance, which is provided to foreign citizens for diseases, accidents, injuries, poisonings and other conditions requiring urgent medical intervention. Medical organizations of the state and municipal health systems provide this kind of medical assistance to foreign citizens free of charge.) and the planned form is provided to foreign citizens in accordance with contracts for the provision of paid medical services or contracts (policy) of voluntary medical insurance and (or) contracts in the field of compulsory medical insurance. Foreign citizens who are insured persons in accordance with the Federal Law "On Compulsory Medical Insurance in Russia" have the right to free medical assistance in the framework of compulsory medical insurance.

The insured persons are citizens of Russia, permanently or temporarily residing in Russia foreign citizens, stateless persons (with the exception of highly qualified specialists and members of their families, as well as foreign citizens who work in Russia in accordance with Article 13.5 of the

³⁰⁶⁸ Federal Law n.323 of November 21 2011 “On the Fundamentals of Health Care of Citizens in the Russian Federation”, art 19.

³⁰⁶⁹ *ibid*, art 32.

Federal Law n.115 of July 25 2002 “On Legal Status of Foreign Citizens in Russia”) as well as persons entitled to medical assistance in accordance with the Federal Law on Refugees³⁰⁷⁰:

- working under an employment contract, including heads of organizations who are the sole participants (founders), members of organizations, owners of their property, or civil-law contract, the subject of which is the performance of work, the provision of services, under an author's contract, and authors receiving payments and other remuneration under agreements on alienation of the exclusive right to works of science, literature, art, publishing license agreements, licensing agreements on granting the right to use the work of science, literature, art;
- independently providing themselves with work (individual entrepreneurs engaged in private practice, notaries, lawyers, arbitration managers);
- who are members of peasant (farmer) farms;
- who are members of the family (clan) communities of the indigenous small-numbered peoples of the North, Siberia and the Far East of Russia living in the regions of the North, Siberia and the Far East of Russia engaged in traditional economic activities;
- unemployed citizens:
 - children from the day of birth until they reach the age of 18;
 - non-working pensioners, regardless of the reason for the appointment of a pension;
 - citizens who are enrolled in full-time education in professional educational organizations and educational organizations of higher education;
 - unemployed citizens registered in accordance with the legislation on employment;
 - one of the parents or guardian involved in the care of the child before reaching the age of three;
 - able-bodied citizens engaged in the care of disabled children, disabled invalids of the I group, persons who have reached the age of 80;
 - other citizens who do not work under an employment contract and are not indicated in subparagraphs "a" - "e" of this paragraph, with the exception of servicemen and persons equated to them in the organization of medical assistance.

A highly qualified specialist and members of his or her family who are foreign citizens and who have arrived in Russia must have a policy of medical insurance in force in the territory of Russia or must have the right on the basis of a relevant agreement concluded by the employer or the customer with the medical organization for the receipt primary health assistance and specialized medical assistance. The provision of these guarantees for the receipt by the highly qualified specialist and members of his or her family of the medical assistance during the validity period of the employment contract signed with this highly qualified specialist or a civil law contract for the performance of work (rendering services) is an obligatory condition of the employment contract

³⁰⁷⁰ The Federal Law n.326 of November 29 2010 “On Compulsory Medical Insurance in the Russian Federation”, art 10.

or an essential condition of the specified civil contract for the performance of works (rendering of services)³⁰⁷¹.

Foreign citizens, who are sent by a foreign commercial organization registered in the territory of a Member State of the World Trade Organization for the purpose of carrying out work in the territory of Russia and who have arrived in Russia must have a policy of medical insurance in force in the territory of Russia or must have the right on the basis of a relevant agreement signed by the employer with the medical organization for the receipt of a primary health assistance and specialized medical assistance³⁰⁷².

In general, when carrying out work, a foreign employee must have a contract (policy) of voluntary medical insurance in force in the territory of Russia or be entitled to receive medical assistance on the basis of an agreement signed with the employer or a customer with a medical organization for the provision of a paid medical service to a foreign employee. A contract (policy) of voluntary medical insurance or an agreement signed by the employer or a customer with a medical organization for the provision of a paid medical service to a foreign employee must ensure that the foreign employer receives primary health assistance and specialized medical assistance in an emergency form³⁰⁷³.

Moreover, medical assistance in the planned form is provided on condition that the foreign citizen provides written guarantees for the performance of the obligation to pay the actual cost of medical services or the prepayment of medical services on the basis of the anticipated volume of provision of these services as well as the necessary medical documentation (an extract from the medical history, clinical, radiological, laboratory and other data) when it is available³⁰⁷⁴. After completion of the treatment of a foreign citizen at his or her address or at the address of a legal entity or natural person, representing the interests of the foreign citizen, an extract from the medical documentation with an indication of the period of medical assistance in the medical organization, as well as the measures taken to prevent, diagnose, treatment and medical rehabilitation are sent³⁰⁷⁵.

The situation with migrants' right to access to healthcare in Russia is not very easy. Medical assistance to migrants is provided in different volumes and under different conditions depending on legal status of the migrant. Persons who have residence permit receive full medical assistance, on a par with Russian citizens. Foreign citizens who do not hold a residence permit have the right to benefit from free medical assistance only in the volume which will help prevent direct life threat. Obviously, given their lack of legal protection, they come mostly for emergency medical assistance, meaning, when the pressure is too high and they have no other way out. Pregnant women are in the most difficult situation as they can be registered with a doctor only for a fee. While delivery can be qualified as extreme condition when assistance is to be provided

³⁰⁷¹ Federal Law n.115 of July 25 2002 "On Legal Status of Foreign Citizens in the Russian Federation", art 13.2.

³⁰⁷² *ibid*, art 13.5.

³⁰⁷³ *ibid*, art 13.

³⁰⁷⁴ Resolution of the Government of the Russian Federation n. 186 of March 06 2013 "On Approval of the Rules for the Provision of Medical Assistance to Foreign Citizens in the Territory of the Russian Federation", art 7.

³⁰⁷⁵ *ibid*, art 8.

for free, medical observation throughout the pregnancy is qualified as planned medical services which are provided to foreign citizens with a fee.

Unlike emergency, planned medical assistance can be obtained with a fee, either at private clinics, or public clinics which have the right to provide medical services on paid basis. Self-treatment has become the most popular way for migrants to solve their health issues; the next popular way is appealing to paid medical services. Purchasing individual health insurance is not very common which is explained by the non-profitability of such expenses, whereas there is a possibility to request doctor's services for a fee when it is necessary.

Since paid medical services are often viewed as inaccessible for financial reasons, migrants may use other alternative options: for example, go back to the country of origin where medical services are cheaper. However, it is considered to be too expensive to organize a trip home in order to visit a doctor, therefore doctor visits are sometimes combined with trips home for vacation.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Russia is a State Party to the Convention on the Rights of the Child of 1989 and it establishes the right to education (in particular for children) at the constitutional level. Part 1 of art 43 of the Constitution sets out that everyone has the right to education. According to art 1 of the Convention on the Rights of the Child the Constitution guarantees general access and free-of-charge basis of pre-school, secondary and higher vocational education in state or municipal educational establishments and at enterprises.³⁰⁷⁶

Also it establishes that everyone has the right to receive free higher education in a state or municipal educational establishment and at an enterprise on a competition basis.³⁰⁷⁷ Pursuant to part 3 of art 62 of the Constitution foreign nationals and stateless persons are vested in Russia the rights and obligations *pari passu* with Russian citizens.

Thus, the Constitution provides absolute equality of access to education for everyone, including children of migrants.

Such legal rules are also reflected in international treaties which Russia is party to. For example, "The Agreement of the Eurasian Economic Union" signed in Astana on May 29 2014 (hereinafter — "The Agreement of the Eurasian Economic Union") establishes that children of a worker of a Member State residing together with the worker in the territory of the state of employment shall be entitled to attend pre-school institutions and receive education in accordance with the legislation of the state of employment.³⁰⁷⁸

Specific provisions about the procedures for obtaining education are contained in federal laws and other regulatory acts. The main law in this sphere is Federal Law n.273-FZ of December 29

³⁰⁷⁶ The Constitution, pt 2 art 43

³⁰⁷⁷ *ibid*, pt 3 art 43

³⁰⁷⁸ The Agreement of the Eurasian Economic Union (signed in Astana on May 29 2014), pt. 5 art. 98

2012 “On Education in Russia”. This law is based on principle that “the right for education in Russia is guaranteed regardless of gender, race, nationality, language, origin, property, social status and official position, attitude to religion, belief, membership in social organisations and also other circumstances”.³⁰⁷⁹

Besides this, the law guarantees accessible for all and free-of-charge education in accordance with federal state educational standards, if a person is educated for the first time.³⁰⁸⁰ Nevertheless, there are common rules, which are required for all foreign citizens, which are temporary located in the territory of Russia. Part 2 of art 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 on such terms and conditions, which are established in accordance with this Federal Law or an international treaty of Russia.

Thus, registration is imperative for legal staying on the territory of Russia. Without fulfilling this requirement, the right to education cannot be exercised. Such requirement has been introduced in the interests of the host state. That is why migrant children should provide the necessary documentation to prove the validity of their staying on the territory of Russia. It the only condition which differs citizens and non-citizens of Russia in the issue of the access to education.

There is a famous case *Timishev v. Russia* of December 13 2005 which addresses the issue of access to education which is guaranteed by the Convention of 1950 and the Convention on the Rights of the Child. In this situation the education rights of claimant’s children were unlawfully restricted when the competent public authorities refused to admit claimant’s children to the school demanding a registration at the place of residence. Such refusal is unacceptable.

According to the Russian law the rights and freedoms of citizens are non-derogable on the basis of the registration by place of residence. Also, Federal Law n.273-FZ of December 29 2012 “On Education in Russia” guarantees the right to education regardless of the registration by place of residence.

Para. 66 of the ECHR resolution in the case of *Timishev* establishes that the Convention of 1950 and its Protocols do not tolerate denial of the right to education. Russia authorities have confirmed that the Russian law does not allow to make a dependence between the right to education and parents’ registration at the place of residence. This ECHR decision pointed out that such requirement leads to restriction of the right and this is unacceptable.

The Constitutional Court of Russia does not have any special decisions in this way, because there are no such restrictions in the Russian law. In this situation it is more important to de-facto remove violations which restrict access to education.

Thus, the ECHR has paid attention to the violation of domestic legislation about the right to education of migrants’ children. This fact was recognised by Russia (de jure the right was not violated, but de facto the children were not able to enter the school because of unlawful claims

³⁰⁷⁹ Federal Law n. 273-FZ of December 29 2012 “On Education in the Russian Federation”, pt 2 art 5

³⁰⁸⁰ *ibid*, pt 3 art 5

for the documents). Pursuant to ECHR decision the clear instructions were issued in order to avoid further violations of any legislation.

As the legislation of Russia abides by the Convention on the Rights of the Child which indicates primary, secondary, general, vocational and higher education, let us consider the procedure for access to each of them in more details.

8.1. Primary and Secondary Education

Russian education system is divided into general, professional, additional and professional education³⁰⁸¹ and Russia establishes the following levels of general education:

- pre-school education,
- primary general education,
- basic general education,
- secondary general education.³⁰⁸²

The procedure for entering the school for children is the same - in accordance with their age and level of current educational background.³⁰⁸³

Admission of foreign citizens and stateless persons, including compatriots living abroad, to an organisation providing educational activities (the “**OEA**”) for training at general educational programs at the expense of the federal budget, budgets of the constituent entities of Russia and local budgets is carried out in accordance with international treaties (for example, part 8 of art 98 of “The Agreement of the Eurasian Economic Union”, Federal Law n.273-FZ of December 29 2012 “On Education in Russia” and Order of the Ministry of Education and Science of Russia n.32 of January 22 2014 “On Approval of the Procedure for Admission of Citizens for Education on the Educational Programs of Primary General, Basic General and Secondary General Education” (the “**Order**”)).

In accordance with paragraph 9 of the Order citizens are admitted to the OEA on the basis of a personal application of the parent (legal representative), providing the original identity document of a foreign citizen or a stateless person in Russia in accordance with Article 10 of the Federal Law of July 25 2002 n. 115-FZ “On Legal Status of Foreign Citizens in Russia”. The model application form is placed on the information board and (or) on the official OEA website on the Internet. The OAE can receive applications in the form of an electronic document, using information and telecommunications networks.

For admission to the OEA parents (legal representatives) of children who are foreign citizens or stateless persons should additionally present the document, confirming the relationship of the applicant (or legality of representation of the child’s rights) with these children and the document, confirming the applicant’s right to stay in Russia. Foreign citizens and stateless persons submit all documents in Russian language or with a certified translation into Russian.

According to paragraph 11 of the Order when applying for admission to the OEA for obtaining a secondary general education the certificate of basic general education of a standard form is

³⁰⁸¹ Ibid, pt 2 art 10.

³⁰⁸² ibid, pt 4 art 27.

³⁰⁸³ ibid, pt 1 and pt 3 art 67.

provided.³⁰⁸⁴ Requirement to provide any other documents as a basis for admission of children to the OEA is not allowed.³⁰⁸⁵

Acceptance of applications for the first grade of the OEA for citizens, living in a particular territory, begins no later than on February 1 and ends no later than on June 30 of the current year. Enrollment in the OEA is made by the administrative act of the OEA within seven working days after receiving all the documents. For children who do not live in a particular territory, acceptance of applications for the first class starts on July 1 of the current year and lasts until filling vacancies, but not later than September 5 of this year. The OEA which has completed admission to the first class of all children, living in a particular territory, accept children, who do not live in a particular territory, before July 1³⁰⁸⁶.

For the convenience of parents (legal representatives) of children the OEA establishes a schedule for acceptance of documents, depending on the address of registration at the place of residence (stay)³⁰⁸⁷.

Therefore, the right of every child to education in Russia can be enforced from the moment when the applicant has submitted all necessary documents for child admission to the educational organization.

8.2. Secondary Vocational Education

The procedure of the admission to the program of secondary vocational education for foreign citizens is established in Order n. 36 of the Ministry of Education and Science of Russia of January 23 2014 “On Approval of the Procedure for Admission to Training on Educational Programs of Secondary Vocational Education”.

Admission to educational organisations for the secondary vocational education is implemented by application of people who have general basic or general secondary education, if there are no other rules in Federal Law n. 273-FZ ”On Education in Russia”.³⁰⁸⁸

Acceptance of documents starts not later than June 20 of the current year. Receiving of applications for full-time education in educational organisations lasts till August.¹⁵ In case of any vacant places the acceptance is extended till November 25 of the current year. Receiving of applications for studying on specialties (professional) educational programs which requires from applicants certain creativity, physical or psychological abilities lasts till August 10.

The period of receiving applications for other forms of learning (blended, distance) is fixed in the admission policy of the educational organization.³⁰⁸⁹ The applications are submitted in Russian language.

³⁰⁸⁴ Order n. 32 of the Ministry of Education and Science of the Russian Federation of January 22 2014 “On Approval of the Procedure for Admission of Citizens for Education on Educational Programs of the Primary General, Basic General and Secondary General Education” para 11.

³⁰⁸⁵ *ibid*, para 12.

³⁰⁸⁶ *ibid*, para 14.

³⁰⁸⁷ *ibid*, para 15.

³⁰⁸⁸ Order of the Ministry of Education and Science of the Russian Federation n. 36 of January 23 2014 «On Approval of the Procedure for Admission of Citizens to Training on Educational Programs of Secondary Vocational Education», para 4.

³⁰⁸⁹ *ibid*, para 20.

The list of documents for foreign citizen applicants can be seen in Article 21.2 of the Order of the Ministry of Education and Science of Russia n. 36 of January 23 2014.³⁰⁹⁰

The applicants can send their applications and all necessary documents by postal service and also in electronic form if such ability is provided by the educational organization.³⁰⁹¹

8.3. Higher Education

Pursuant to part 3 of art62 of the Constitution foreign citizens and stateless persons are vested in Russia the rights and obligations on the equal terms with the Russian citizens. In accordance with Paragraph 1 of the Order of the Ministry of Education and Science n. 50 of January 14 2003 “On acceptance to state educational establishments of higher vocational training (higher educational establishments) of Russia” there are accepted the citizens of Russia, the citizens of Belarus, persons without citizenship, compatriots abroad, as well as foreign citizens.

Documents should be submitted within the working period of selection committees at higher educational establishments.

A foreign citizen applying for baccalaureate or specialist degree program presents an official document detailing his or her previous education issued by the foreign state (general education or vocational training).

For training on master’s degree programs foreign citizens should have the bachelor's degree or specialist's diploma with higher vocational training or specialist's diploma or the document of foreign state about education equivalent in Russia to the bachelor's degree or to the specialist's diploma with higher vocational training or a specialist's diploma.

For candidates to postgraduate programs it is also necessary to submit copies of a specialist diploma or a diploma of the master of science / arts and extracts from academic records or from the sheet of investigated subjects with evaluations (numbers), as well as the list of published scientific works (if there are such).

To the candidates arriving for improvement of professional skills it is preferable to have training visit (plan) program.

Pursuant to Resolution of the Government of Russia n.638 of August 25 2008 “On cooperation with foreign countries in education area” foreign students of federal state educational establishments of higher and secondary vocational training should receive state scholarship during all period of training, not depending on their progress. Besides foreign students should be supplied by the places in a hall on the same conditions as if they are the citizens of Russia trained at state-funded place. Foreign students are considered as both the citizens of foreign states and compatriots living abroad.

Particularities of admission to higher educational establishments of foreign nationals and stateless persons are declared by Order of the Ministry of Education and Science n.1147 of October 14 2015 “On acceptance for training on educational programs of higher education - bachelor degree programs, specialist degree programs, master degree programs”.

³⁰⁹⁰ *ibid*, para 21.2.

³⁰⁹¹ *ibid*, para 24.

Pursuant to the Order³⁰⁹² foreign nationals and stateless persons have the right to higher education at the expense of federal budgetary allocations with accordance to international contracts of Russia, federal laws or quota set by the Government of Russia (hereinafter quota for education of foreign citizens) as well as at the expense of natural persons and legal entities pursuant to contracts about rendering of paid educational services.

Foreign citizens and stateless persons being compatriots living abroad have the right to get higher education on the equal terms with the citizens of Russia by fulfilling the conditions of following requirements provided in art 17 of Federal law n.99-FZ of May 24 1999 “On state policy of Russia with regard to compatriots abroad” (hereinafter the Federal law n.99-FZ).

In the application for training a foreign national or a stateless person indicates the details of the document proving his or her identity, either document proving identity of a foreign citizen in Russia or a person without citizenship in Russia in accordance with art 10 of Federal law n.115-FZ of July 25 2002 “On legal status of foreign citizens in Russia” (hereinafter the document proving identity of foreign citizen). Pursuant to subparagraph 1 of part 68 of the “Order”, he or she is also required to submit a copy of the document proving identity, citizenship, or the document proving identity of a foreign citizen.

Admission of foreign nationals and stateless persons to training on educational programs containing national security information is implemented only within the limits of quota for education of foreign citizens following the requirements provided by the legislation of Russia on state secret.

Pursuant to part 5 of art 10 of Federal law n. 273-FZ of December 29 2012 “On education in Russia” the following levels of higher education are established:

- higher education - bachelor degree program;
- higher education - specialist degree program, master's degree program;
- higher education - top-qualification personnel training.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Russia is a participant of the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 since July 1 2000. Recognition in Russia of education and qualifications received in a foreign country is carried out on the basis of art 107 of the Federal Law "On Education in Russia" (the “**Federal Law on Education**”) of December 29 2012.

³⁰⁹² Order of the Ministry of Education and Science n.1147 of October 14 2015 “On acceptance for training on educational programs of higher education - bachelor degree programs, specialist degree programs, master degree programs”, para 132.

The recognition in Russia of a foreign education is understood as the official confirmation of significance (level) of education received in a foreign state with the granting of academic, professional and other rights to their holder.

Academic recognition allows to continue education in Russian educational institutions or scientific organizations. Professional recognition allows you to carry out professional activities in the territory of Russia.

Recognition of foreign education is carried out in accordance with the legislation of Russia and international treaties of Russia governing the recognition and establishment of the equivalence of foreign education³⁰⁹³.

Russia recognizes foreign education received in foreign educational organizations, the list of which is established by the Government of Russia (the “**List**”)³⁰⁹⁴. The criteria for inclusion of foreign educational organizations in this list were approved by Resolution of the Government of Russia n.660 of August 5 2013. The said criteria are as follows:

- a foreign educational organization is included into top 300 Universities of the Academic Ranking of World Universities, QS World University Rankings and the Times Higher Education World University Rankings at the same time;
- a foreign educational organization is not located in the territories of states with which Russia has concluded any international treaties regarding the regulation of the issues of recognition and establishment of equivalence of education received in a foreign country.

If a diploma from a foreign organisation is included in the List, the holder of such diploma has to translate it into the Russian language and legalize it (to provide an apostille or a consular legalization).³⁰⁹⁵

If an education is not subject to an international treaty or has not been received in an organization from the List it is not recognized in the territory of Russia without passing the recognition procedure.

In other cases there might be a special recognition procedure. A person has to apply to the special body on control and supervision in education (the “**Rosobrnadzor**”) for recognition of foreign education in writing or via the Internet. The Rosobrnadzor conducts an examination which assesses the level of education and determines the equivalence of academic and professional rights. By results of this examination the Rosobrnadzor decides on the recognition or refusal of it. For the issuance of the certificate of education recognition there set a state fee.

The holders of foreign education recognized in Russia are provided with the same academic and professional rights as for holders of relevant education received in Russia.

³⁰⁹³ Federal Law on Education Pursuant, part 1 art 107.

³⁰⁹⁴ *ibid*, part 3 art 107

³⁰⁹⁵ *ibid*, part 13 art 107

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

According to the Russian legislation there are following categories of existing in Russia:

- foreign citizens;
- foreign citizens permanently residing in Russia;
- migrants who have Russian citizenship and foreign state citizenship as well as the residential permit or other document certifying the right of the citizen of Russia to permanently reside in the territory of the foreign state.

Each category has got some restrictions in exercising their political rights in comparison with the Russian citizens.

General principle that defines legal status of foreign citizens in Russian Federation is the principle of national regime. According to that principle legal status of foreign citizens in Russia correlates with the legal status of Russian citizens. This principle was legislated in the Russian Constitution and confirmed in Federal Law n.115-FZ of July 25 2002 “On legal status of foreign citizens in Russia”. But there are a lot of exceptions from that rule. Most of them are doing with political rights of foreigners. Establishment of this kind of regulation is argued by potential possibility for negative influence on sovereignty. Nowadays a lot of representatives of Russian doctrine declare the regulation as archaic.

Constitution of Russia guarantees foreign citizens the right to association including the right to create trade unions for protection of his or her interests³⁰⁹⁶, the freedom of ideas and speech³⁰⁹⁷.

Foreign citizens permanently resident in Russia are allowed to participate narrowly in political life of the state: “under international treaties of Russia and in accordance with due legal procedure, foreign citizens who permanently reside in the territory of a relevant municipal formation shall have the right to elect and be elected to bodies of local self-government, be involved in other electoral activities in such elections and participate in a local referendum on the same conditions as citizens of Russia”.⁵ This right was confirmed in Federal Law n.131-FZ of October 6 2003 “On general principles of organization of local self-government in Russia”, Federal Law n.115-FZ of July 25 2002 “On legal status of foreign citizens in Russia”. Moreover, foreign citizens can conclude a contract for doing military service.³⁰⁹⁸

According to art 32 of the Constitution the second group of emigrants have the right to participate in managing state affairs both directly and through their representatives.³⁰⁹⁹ It includes the the right to elect, be elected to state bodies of power and local self-government bodies, to participate in referenda.

However, Federal Law n.67-FZ of July 12 2002 “On basic guarantees of electoral rights and the right of citizens of Russia to participate in the referendum” establishes higher than Constitution

³⁰⁹⁶ The Constitution, pt 1 art 30.

³⁰⁹⁷ *ibid*, pt 1 art 29.

³⁰⁹⁸ Federal Law n.53-FZ of March 28 1998 “On military duty and military service”, pt 1 art 34

³⁰⁹⁹ The Constitution, pt 1 art 32

restrictions. The Law deprives the citizens of Russia with the foreign state citizenship as well as the residential permit or other document certifying the right of the citizen of Russia to permanently reside in the territory of a foreign state of the right to be elected to state bodies of power and local self-government bodies.⁵ Nowadays Russia is the only state of Council of Europe that has this kind of restrictive regulation on political rights of its citizens.

Russian politician Kara Murza tried to defend his right to be elected after he was dismissed from election. For more details please refer to Question 5.

10.1. The Procedure of Participation of Migrants in Political Decisions

Foreign citizens in Russia do not have the right to elect and be elected to federal bodies of state power, bodies of state power of subject of the federation, and also participate in the referendum of Russia and referenda of the subjects of Russia. Foreign citizens permanently residing in Russia in cases and according to the procedure provided by federal laws have the right to elect and be elected to local self-government bodies, as well as to participate in a local referendum.³¹⁰⁰

These provisions are specified in paragraph 6 of art 3, paragraph 10 of art 4 of Federal Law n.67 of June 12 2002 “On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of Russia”, according to which foreign citizens (with the exception of foreign citizens, permanently residing in the territory of the respective municipal formation, and having the right to elect and be elected to local self-government bodies, participate in other electoral activities in the said elections, and also participate in local referendum on the same terms as the citizens of Russia), stateless persons, foreign organizations, international organizations and international public movements, noncommercial organizations performing the functions of a foreign agent, shall not have the right to carry out activities conducive to or obstructing the nomination of candidates, lists of candidates, electing registered candidates, bringing up an initiative to hold a referendum and holding a referendum, achieving a certain result in the elections, referendum, as well as other forms of participation in election campaigns, referendum campaigns. Participation in election campaigns, referendum campaigns of these individuals and representatives of these organizations as foreign (international) observers is regulated in accordance with federal law.

If on the basis of an international treaty of Russia foreign citizens have the right to participate in elections to local self-government bodies and a local referendum, foreign citizens, who have reached on the voting day the age of 18 years, permanently residing in the territory of the municipal formation in which the said elections or referendum are held and not falling under the provisions of paragraph 3 of Article 4 of the Federal Law n.67 of June 12 2002 “On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of Russia”, according to which «they do not have the right to elect, to be elected, to carry out other electoral actions, to participate in a referendum, citizens recognized by the court as incompetent or contained in prison by a court decision», are entered in the voting list, the list of participants of the referendum.

³¹⁰⁰ Federal Law on the Legal Status, art 12

It should be noted that, in addition to the above categories of persons, citizens of Russia, who have the citizenship of a foreign state or a residence permit or other document that confirms the right to permanent residence of a citizen of Russia in the territory of a foreign state, are not eligible to be elected. These citizens have the right to be elected to local self-government bodies, if it is required by an international treaty of Russia. This provision is specified in paragraph 5.1 of art 3 of Federal Law n.19 of January 10 2003 “On Elections of the President of Russia”, paragraph 7 of art 4 of the Federal Law n.20 of February 22 2014 “On Elections of Deputies of the State Duma of the Federal Assembly of Russia”.

Moreover, according to subparagraph «a» of paragraph 8 of art 29 of Federal Law n.67 of June 12 2002 “On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of Russia” in the event of the loss of the citizenship of Russia by a member of the commission, the acquisition by him or her of the citizenship of a foreign state or the receipt of a residence permit or other document confirming the right of permanent residence of a citizen of Russia in the territory of a foreign state, the powers of a member of the commission with a decisive vote shall be discontinued immediately.

This is also regulated by Federal Law n. 131 of October 06 2003 “On general principles of local self-government in Russia” which says that the powers of the head of the municipality; of the head of the local administration, carried out on the basis of contract ; of the deputy, member of the elected body of local self-government, an elected official of local self-government are discontinued early in the event of dismissal of Russian Federation citizenship, dismissal of citizenship of a foreign state, which is the party to the international treaty of Russia, according to which the foreign citizen has the right to be elected to the local self-government bodies, to acquire the citizenship of a foreign state or to obtain a residence permit or other document confirming the right to permanent residence of a citizen of Russia in the territory of the foreign state, that is not a party to an international treaty of Russia, in accordance with which the citizen of Russia, having the citizenship of a foreign state, has the right to be elected to the local self-government bodies.

Foreign citizens, stateless persons, foreign legal entities is also prohibited to conduct a campaign agitation, agitation on the referendum questions, to produce and distribute any campaign materials”, and foreign citizenship is prohibited to make donations to the election funds of candidates, registered candidates, electoral associations, referendum funds, with the exception of foreign citizens, permanently residing in the territory of the respective municipal formation, and having the right to elect and be elected to local self-government bodies, participate in other electoral activities in the said elections, and also participate in local referendum on the same terms as the citizens of Russia.

10.2. Migrants' Opportunity to Participate in Their Country of Residence the Same Way as in Their Country of Origin

The Constitutions of the EU-states include provisions providing the opportunity of the right to vote and to be elected in the municipal elections for EU-citizens in the place of residence, regardless of the nationality of the country.

There are similar rules in the legislation of Russia in some of the federal laws for the citizens who permanently reside in the territory of a relevant municipal formation. Part 2 of art 12 of Federal Law n.115-FZ of July 25 2002 “On the Legal Status of Foreign Citizens in Russia” establishes that foreign citizens who permanently reside in the territory of Russia have the right to elect and be elected to the local self-government and to participate in the local referendum in the cases and under the procedures specified by the federal laws.

The only case when a foreign citizen can vote and be elected in Russia is local government elections. Paragraph 10 of art 4 of Federal Law n.67-FZ of June 12 2002 “On Basic Guarantees of Electoral Rights and the Right of Citizens of Russia to Participate in a Referendum” establishes:

“Under international treaties of Russia and in accordance with due legal procedure, foreign citizens who permanently reside in the territory of a relevant municipal formation shall have the right to elect and be elected to bodies of local self-government, be involved in other electoral activities in such elections, and participate in a local referendum on the same conditions as citizens of Russia”.

Thus, it is not required to have the citizenship of Russia for the exercise of electoral rights in such case, but it is required confirmation of the permanently residence in the territory of a relevant municipal formation.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. How Can Migrants Acquire Citizenship in the Country?

According to art 6 of the Constitution the citizenship of Russia must be acquired and terminated according to federal law. The grounds for the acquisition of Russian Federation citizenship are established by article 11 of Federal Law n.62-FZ of May 31 2002 “On Russia Citizenship” (the “Law on Russian Citizenship”):

- by virtue of birth;
- as the result of being admitted for Russia citizenship;
- as the result of reinstatement of Russia citizenship;
- on other grounds set out in the present Federal Law or an international treaty of Russia (for instance, choosing citizenship in the case of a change of the State Border of Russia).

Migrants can acquire citizenship of Russia on general terms or through a simplified procedure. In accordance with general terms of admission into Russian Federation citizenship foreign citizens and stateless persons who have reached the age of 18 and have dispositive capacity are

entitled to file a naturalisation application asking for Russian Federation citizenship on the condition that the said citizens and persons:³¹⁰¹

- have been residing in the territory of Russia since the day when they received a residence permit and to the day when they file a naturalisation application asking for Russian Federation citizenship for five years without a break, except as provided in part 2 of Article 13 FZ “On Russian Federation Citizenship” – one year.
- undertake to observe the Constitution of Russia and the legislation of Russia;
- have a legal source of means of subsistence;
- have filed applications with the competent body of the foreign state whereby they waived their other citizenship. No waiver of foreign citizenship is required if this is envisaged by an international treaty of Russia or the present Federal Law or if the waiver of another citizenship is impossible due to reasons beyond the person's control;
- are in command of the Russian language.³¹⁰²
- When applying for Russia citizenship together with the application there are submitted the following documents:
 - residence permit, except for some cases listed in paragraph 10 of the Decree n.1325;
 - one of the documents confirming the existence of a legal source of means of subsistence (for example, a certificate of income of an individual);
 - a document confirming the application of the applicant of the waiver other citizenship or the impossibility of waiver other citizenship, or a copy of the applicant's application with a notarized signature of the applicant;
 - a document confirming the knowledge of Russian language at a level sufficient to communicate verbally and in writing in a language environment (for example, a document on education (not lower than the basic general education). From the provision of the said document are exempt men who have reached the age of 65 and women over the age of 60 years; incapacitated persons; invalids of the I group.

Persons for whom a period of residence in the territory of Russia is set at one year must submit together with said documents additional documents confirming their status (for example, a person, who recognized as a refugee in accordance with the legislation of Russia, must submit a document confirming his recognition as a refugee). A special list of documents is also provided for servicemen applying for Russia citizenship.

The exception from the general terms (this exception from the general terms is not a simplified procedure) is the one established in part 4 of art 13 for citizens of the states, which had formed a part of the USSR, serving at least three years in the Armed Forces of Russia and in other forces, military units or bodies on a contractual basis.

A simplified procedure of admission into Russian Federation citizenship is established for some foreign citizens and stateless persons, the categories of which are listed in Article 14 FZ “On

³¹⁰¹ The application form was approved by the Decree n.1325 of the President of the Russian Federation of November 14 2002 “On approval of the Regulations on the Procedure for Considering the Issues of the Citizenship of the Russian Federation” (hereinafter - Decree n.1325).

³¹⁰² The procedure for assessing the level of knowledge of the Russian language shall be established by regulations on the procedure for considering issues concerning Russian Federation citizenship.

Russian Federation Citizenship” (for instance, persons, who have at least one parent who is the Russian citizen and resides on Russian Federation territory; have had USSR citizenship, and having resided and residing in the states that had formed a part of the USSR, have not become citizens of these states and as a result remain stateless persons (part 1). It should be noted that the “Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and Russia on the simplified manner for acquiring citizenship” (signed in Moscow on February 26 1999) continues to operate.

11.2. Double Nationality

There is a possibility of double nationality in Russia. According to part 1 of art 62 of the Constitution a citizen of Russia may have the citizenship of a foreign State (dual citizenship) according to the federal law or an international agreement of Russia. Pt 2 art 62 of the Constitution establishes that the possession of a foreign citizenship by a citizen of Russia shall not derogate his rights and freedoms and shall not free him from the obligations stipulated by the Russian citizenship, unless otherwise provided for by the federal law or an international agreement of Russia. Importantly, a citizen of Russia may not be deprived of his or her citizenship or of the right to change it.³¹⁰³

According to the paragraph 1 of art 6 of the Federal Law on the Citizenship of Russia, a citizen of Russia who also possesses another citizenship shall be regarded by Russia as a citizen of Russia only, except for the cases specified in an internal treaty of Russia or federal law.

The acquisition of another citizenship by a citizen of Russia shall not entail termination of the citizenship of Russia.³¹⁰⁴ Said provisions cover the Russian citizens, who acquired the nationality of a foreign State. These rules are not applicable to the foreign citizens who want to acquire the nationality of Russia. There is a differentiated approach of the Russian legislator to the Russian and foreign citizens in the issue of double nationality.

As mentioned earlier, a citizen of Russia is able to acquire citizenship of a foreign state without losing her or his origin nationality. If a foreign citizen wants to acquire a citizenship of Russia he/she must apply to competent authority of foreign State for renunciation of current another citizenship. No waiver of foreign citizenship is required if this is envisaged by an international treaty of Russia or by the present Federal Law or if the waiver of another citizenship is impossible due to reasons beyond the person’s control.³¹⁰⁵

Thus, a citizen of Russia has an opportunity of double nationality. In the case of acquirement citizenship of Russia by a foreign citizen, he or she should renounce of current another citizenship.

³¹⁰³ The Constitution of the Russian Federation, pt 3 art 6

³¹⁰⁴ The Federal Law n.62-FZ of May 31 2002 “On the Citizenship of the Russian Federation”, pt 2 art 6

³¹⁰⁵ *ibid.*, para “d” art. 13

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

Russia is not a part to any of EU programmes and funding with regard to the integration of migrants. The main reason of it is that Russia is not a member state of the European Union.

However, Russia is a participant of the Eurasian Economic Union (EEU) which includes such countries as Armenia, Belarus, Kazakhstan, Kirgisia. The EEU have the programmes of integration of labor migrants. The main issues of these programmes are the rights of migrants to employment, social and pension security and medical care.

Conclusions

Here is the list of the main findings of each section of our report:

1. We have researched how the right to asylum is regulated in national law, as well as given a description of the procedure for granting asylum. The definitions of refugee status and temporary asylum concerning Russia have been given, and the difference between them has been estimated.
2. The difference in the regulation of immigration from EU member states and Non-EU member states has been established. According to the Russian legislation there is no difference between the immigration from either of these two groups of states, though there are some specific aspects concerning the immigration from previous USSR member states.
3. The authorities dealing with migrants, as well as the description of their framework have been observed. The research on the framework concerning migration law is followed throughout the report, and the modern statistics on the topic complements it.
4. We have researched the implementation of the decisions be the European Court of Human Rights concerning migrants, as well as the recommendations of the European Commission against Racism and Intolerance, and have come to the conclusion that the national legislation has more significance in Russia concerning migration law than the international legislation.
5. In regard to the migrants' right to access to healthcare, we have researched how it is regulated within the national legislation. The situation in this sphere is quite positive, since the right of everyone to healthcare is established in the Constitution of the Russian Federation.
6. We have observed the situation with the right to education of the migrants' children concerning different levels of education (i.e. primary and secondary education, secondary vocational education, higher education). In regard to this topic, we have also established if the foreign school and university diplomas are recognized in Russia.
7. The research on the migrants' rights would not be complete without the observation of their political rights, so we have established if the migrants are legally allowed to participate in political decisions, as well as the ways they can express their political positions. The procedure of participation of migrants in political decision is not always the same as the procedure for the citizens, though there are some similarities.

8. We have profoundly researched the topic of acquisition of the Russian citizenship by migrants and established the procedure for that, as well as found out if there is a possibility of double nationality. The last but not the least, we have observed the participation of the Russian Federation in programmes with regard to the integration of migrants.

Table of legislation

Provision in native language	Corresponding translation
<p>Конституция Российской Федерации, часть 1 статьи 63</p> <p>Российская Федерация предоставляет политическое убежище иностранным гражданам и лицам без гражданства в соответствии с общепризнанными нормами международного права.</p>	<p>Constitution of the Russian Federation, Article 63 (1)</p> <p>The Russian Federation shall grant political asylum to foreign citizens and stateless citizens in conformity with the commonly recognized norms of the international law.</p>
<p>Указ Президента РФ от 21 июля 1997 г. N 746 "Об утверждении Положения о порядке предоставления Российской Федерацией политического убежища", п. 4</p> <p>Лицо, которому предоставлено политическое убежище, пользуется на территории Российской Федерации правами и свободами и несет обязанности наравне с гражданами Российской Федерации, кроме случаев, установленных для иностранных граждан и лиц без гражданства федеральным законом или международным договором Российской Федерации.</p> <p>Предоставление политического убежища распространяется и на членов семьи лица, получившего политическое убежище, при условии их согласия с ходатайством. Согласие детей, не достигших 14-летнего возраста, не требуется.</p>	<p>The Presidential Decree of the Russian Federation of July 21 1997 No.746 "About approval of the regulations on the procedure for provision of the political asylum by the Russian Federation", Article 4</p> <p>A person who is granted political asylum enjoys rights and freedoms on the territory of the Russian Federation and bears duties on an equal footing with citizens of the Russian Federation, except for cases established for foreign citizens and stateless persons by a federal law or an international treaty of the Russian Federation.</p> <p>The granting of political asylum extends to the family members of a person who has received political asylum, provided they agree with the petition. The consent of children under the age of 14 years is not required.</p>
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 1.1</p> <p>Для целей настоящего Федерального закона применяются следующие</p>	<p>Federal Law No. 4528-I of February 19 1993 on Refugees, Article 1.1</p> <p>For the purposes of the present Federal Law, the following basic concepts shall be applied:</p>

ОСНОВНЫЕ ПОНЯТИЯ:

1) беженец - это лицо, которое не является гражданином Российской Федерации и которое в силу вполне обоснованных опасений стать жертвой преследований по признаку расы, вероисповедания, гражданства, национальности, принадлежности к определенной социальной группе или политических убеждений находится вне страны своей гражданской принадлежности и не может пользоваться защитой этой страны или не желает пользоваться такой защитой вследствие таких опасений; или, не имея определенного гражданства и находясь вне страны своего прежнего обычного местожительства в результате подобных событий, не может или не желает вернуться в нее вследствие таких опасений;

2) лицо, ходатайствующее о признании беженцем, - это лицо, которое не является гражданином Российской Федерации и заявляет о желании быть признанным беженцем по обстоятельствам, предусмотренным подпунктом 1 пункта 1 настоящей статьи, из числа:

иностранных граждан, прибывших или желающих прибыть на территорию Российской Федерации;

лиц без гражданства, прибывших или желающих прибыть на территорию Российской Федерации;

иностранных граждан и (или) лиц без гражданства, пребывающих на территории Российской Федерации на законном основании;

3) временное убежище - это возможность иностранного гражданина или лица без гражданства временно пребывать на

1) The refugee - a person who is not a citizen of the Russian Federation and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, ethnicity, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

2) the person applying for recognition as a refugee - a person who is not a citizen of the Russian Federation and states a desire to be recognized as a refugee under the circumstances provided for in subparagraph 1 of paragraph 1 of this Article, of the following: foreign nationals who came or who want to come to the territory of the Russian Federation; stateless persons who came or who want to come to the territory of the Russian Federation; foreign citizens and (or) stateless persons residing in the territory of the Russian Federation on legal grounds;

3) temporary asylum - an opportunity for a foreign citizen or stateless person to stay temporarily in the territory of the Russian Federation in accordance with Article 12 of this Federal Law, other federal laws and other normative legal acts of the Russian Federation;

4) the place of temporary confinement - the place of stay of the person applying for recognition as a refugee and members of his family near the border check point of the Russian Federation;

temporary accommodation center for people applying for recognition as a refugee - the place of stay of the persons applying for

<p>территории Российской Федерации в соответствии со статьей 12 настоящего Федерального закона, с другими федеральными законами и иными нормативными правовыми актами Российской Федерации;</p> <p>4) место временного содержания - это место пребывания лица, ходатайствующего о признании беженцем, и членов его семьи вблизи пункта пропуска через Государственную границу Российской Федерации; центр временного размещения лиц, ходатайствующих о признании беженцами, - это место пребывания лиц, ходатайствующих о признании беженцами или признанных беженцами, и членов их семей на территории Российской Федерации;</p> <p>фонд жилья для временного поселения лиц, признанных беженцами (далее - фонд жилья для временного поселения), - это совокупность жилых помещений, предоставляемых лицам, признанным беженцами, и членам их семей.</p>	<p>recognition as a refugee or recognized refugees and their families in the territory of the Russian Federation;</p> <p>housing stock for the temporary accommodation of persons recognized as refugees (hereinafter - the housing stock for temporary accommodation) - a set of living quarters provided to recognized refugees and their families.</p>
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 4.1</p> <p>Лицо, заявившее о желании быть признанным беженцем и достигшее возраста восемнадцати лет, обязано лично или через уполномоченного на то представителя обратиться с ходатайством в письменной форме:</p> <p>1) в дипломатическое представительство или консульское учреждение Российской Федерации вне государства своей гражданской принадлежности (своего прежнего обычного местожительства), если данное лицо еще не прибыло на</p>	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 4.1</p> <p>A person with a stated wish to be recognized as a refugee who has attained the age of eighteen years shall personally or through an authorized representative, apply in writing to:</p> <p>1) the diplomatic mission or consular office of the Russian Federation outside the country of their citizenship (sojourn), if the person has not yet entered the territory of the Russian Federation (hereinafter - the diplomatic mission or consular office);</p> <p>2) the border control unit of the federal executive body for border security of the</p>

<p>территорию Российской Федерации (далее - дипломатическое представительство или консульское учреждение);</p> <p>2) в пограничный орган федеральной службы безопасности (далее - пограничный орган) в пункте пропуска через Государственную границу Российской Федерации при пересечении данным лицом Государственной границы Российской Федерации в соответствии с законодательством Российской Федерации и международными договорами Российской Федерации.</p> <p>Если лицо по состоянию здоровья не может лично обратиться с ходатайством, оно подает ходатайство и соответствующий медицинский документ через уполномоченного на то представителя;</p> <p>3) в пограничный орган, или в территориальный орган федерального органа исполнительной власти по внутренним делам, или в территориальный орган федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, при вынужденном незаконном пересечении Государственной границы Российской Федерации в пункте пропуска либо вне пункта пропуска через Государственную границу Российской Федерации в течение суток со дня пересечения данным лицом Государственной границы Российской Федерации.</p> <p>При наличии обстоятельств, не зависящих от данного лица и препятствующих его своевременному обращению с ходатайством, срок</p>	<p>Russian Federation at the border checkpoint of the Russian Federation in accordance with the legislation of the Russian Federation and the international treaties to which the Russian Federation is a party.</p> <p>If the person, for health reasons, cannot personally make an application, they shall submit an application and the appropriate medical document through an authorized representative;</p> <p>3) the border control unit of the federal executive body for security issues or the territorial agency of the federal executive body for internal affairs, or the territorial agency of the federal executive body authorized to exercise the functions of control and supervision in the field of migration, in the event that the person illegally crosses the border of the Russian Federation, they must apply at the checkpoint or beyond the crossing point of the border of the Russian Federation within one day from the date of their crossing the border of the Russian Federation.</p> <p>If circumstances beyond the control of the person are preventing their timely submission of the application, the timeline may exceed one day, but not longer than the duration of the circumstances that have have arisen;</p> <p>4) the territorial body of the federal executive body, which is authorized to exercise the functions of control and supervision in the field of migration at the place of the person's lawful stay in the territory of the Russian Federation.</p>
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<p>обращения может превышать одни сутки, но не более чем на период действия возникших обстоятельств;</p> <p>4) в территориальный орган федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, по месту своего пребывания на законном основании на территории Российской Федерации.</p>	
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 4.2</p> <p>Сведения о прибывших вместе с лицом членах его семьи, не достигших возраста восемнадцати лет, заносятся в ходатайство одного из родителей, а при отсутствии родителей в ходатайство опекуна либо в ходатайство одного из членов семьи, достигшего возраста восемнадцати лет и добровольно взявшего на себя ответственность за поведение, воспитание и содержание членов семьи, не достигших возраста восемнадцати лет.</p>	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 4.2</p> <p>Information about a person who came along with members of his family who has not attained the age of eighteen years shall be entered in the application of one of the parents, and in the absence of parents or guardians, in the application of a family member who has attained the age of eighteen years and voluntarily taken over the responsibility for the behavior of, education and maintenance of family members under the age of eighteen.</p>
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 7.1</p> <p>Рассмотрение ходатайства по существу осуществляют:</p> <p>1) федеральный орган исполнительной власти, уполномоченный на осуществление функций по контролю и надзору в сфере миграции, в отношении лица, находящегося вне пределов территории Российской Федерации, в течение двух месяцев со дня принятия решения о выдаче свидетельства;</p> <p>2) территориальный орган федерального органа исполнительной власти,</p>	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 7.1</p> <p>Consideration of the application on its merits carried out by:</p> <p>1) The federal executive body authorized to exercise the functions of control and supervision in the field of migration, in relation to a person outside the territory of the Russian Federation, within two months from the date of the decision on the issuance of the certificate;</p> <p>2) The territorial agency of the federal executive body authorized to exercise the functions of control and supervision in the</p>

<p>уполномоченного на осуществление функций по контролю и надзору в сфере миграции, в отношении лица, находящегося в центре временного размещения или ином месте пребывания на территории Российской Федерации, в течение трех месяцев со дня принятия решения о выдаче свидетельства.</p> <p>Срок рассмотрения ходатайства по существу может быть продлен федеральным органом исполнительной власти, уполномоченным на осуществление функций по контролю и надзору в сфере миграции, либо его территориальным органом с согласия федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, но не более чем на три месяца.</p>	<p>field of migration, in relation to a person in the reception center or other place of stay on the territory of the Russian Federation within three months from the date of the decision to issue the certificate.</p> <p>The examination period may be substantially extended by the federal executive body authorized to exercise the functions of control and supervision in the field of migration or its territorial body with the consent of the federal executive body authorized to exercise the functions of control and supervision in the field of migration, but not more than three months</p>
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 4.5</p> <p>Предварительное рассмотрение ходатайства осуществляется в следующем порядке:</p> <ol style="list-style-type: none"> 1) ходатайство лица, находящегося вне пределов территории Российской Федерации, предварительно рассматривается дипломатическим представительством или консульским учреждением в течение одного месяца со дня поступления ходатайства; 2) ходатайство лица, находящегося в пункте пропуска через Государственную границу Российской Федерации или на территории Российской Федерации, предварительно рассматривается территориальным органом федерального органа исполнительной власти, уполномоченного на осуществление 	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 4.5</p> <p>A preliminary examination of the application shall be carried out in the following order:</p> <ol style="list-style-type: none"> 1) The application of a person, who is outside the territory of the Russian Federation, shall be considered by a diplomatic mission or consular office within one month from the date of receipt of the application; 2) The application of a person at a crossing point of the border of the Russian Federation or in the territory of the Russian Federation, shall be examined by the territorial agency of the federal executive body authorized to exercise the functions of control and supervision in the field of migration, within five working days of receipt of the application.

<p>функций по контролю и надзору в сфере миграции, в течение пяти рабочих дней со дня поступления ходатайства.</p>	
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 4.7</p> <p>При принятии решения о выдаче свидетельства территориальный орган федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, оформляет на лицо и членов его семьи личное дело и в течение суток со дня принятия решения вручает или направляет данному лицу свидетельство установленной формы.</p> <p>Свидетельство является документом, удостоверяющим личность лица, ходатайствующего о признании беженцем.</p> <p>Сведения о членах семьи лица, не достигших возраста восемнадцати лет, заносятся в свидетельство одного из родителей, а при отсутствии родителей в свидетельство опекуна либо в свидетельство одного из членов семьи, достигшего возраста восемнадцати лет и добровольно взявшего на себя ответственность за поведение, воспитание и содержание членов семьи, не достигших возраста восемнадцати лет.</p> <p>Лицу, ходатайствующему о признании беженцем, не достигшему возраста восемнадцати лет и прибывшему на территорию Российской Федерации без сопровождения родителей или опекунов, также вручается свидетельство, если данному лицу не определено иное правовое положение на территории Российской Федерации.</p> <p>Свидетельство является основанием для</p>	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 4.7</p> <p>In deciding whether to grant a certificate, the territorial body of the federal executive body authorized to exercise the functions of control and supervision in the field of migration, shall ascertain the personal information of the applicant and their family, and within one day after the decision presents or sends that person a certificate prescribed form .</p> <p>The certificate is a document certifying the identity of the person applying for refugee status.</p> <p>Information about family members who are under the age of eighteen years shall be entered in the certificate of one of the parents, and in the absence of parents or legal guardians, of the certificate of a family member who has attained the age of eighteen years and has voluntarily taken over responsibility for the conduct, education and maintenance of family members under the age of eighteen.</p> <p>An applicant for refugee status who is under eighteen years of age and arrived in the territory of the Russian Federation without their parents or guardians, is also awarded a certificate if the legal status of this person is not otherwise defined on the territory of the Russian Federation.</p> <p>The certificate is the basis for registration in the prescribed manner, of a person applying for refugee status and his family members at the territorial body of the federal executive body authorized to exercise the functions of control and supervision in the field of</p>

<p>регистрации в установленном порядке лица, ходатайствующего о признании беженцем, и членов его семьи в территориальном органе федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, на срок рассмотрения ходатайства по существу.</p> <p>Свидетельство является также основанием для получения лицом и членами его семьи направления в центр временного размещения.</p> <p>Форма бланка свидетельства, порядок его оформления, выдачи и обмена определяются уполномоченным федеральным органом исполнительной власти.</p>	<p>migration, for the period of examination on the merits.</p> <p>The certificate is also the basis for the person and his family members to receive shelter in a temporary accommodation center.</p> <p>The form of the certificate, the procedure of registration, issuance and exchange are determined by the authorized federal executive body.</p> <p>Testimony in the form of an electronic document is issued.</p>
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 6.1</p> <p>Лицо, получившее свидетельство, и прибывшие с ним члены его семьи имеют право на:</p> <ol style="list-style-type: none"> 1) получение услуг переводчика и получение информации о порядке признания беженцем, о своих правах и обязанностях, а также иной информации в соответствии с настоящей статьей; 2) получение содействия в обеспечении проезда и провоза багажа к месту пребывания в порядке, определяемом Правительством Российской Федерации; 3) получение единовременного денежного пособия на каждого члена семьи в порядке и в размерах, определяемых Правительством Российской Федерации, но не ниже 100 рублей; 4) получение направления территориального органа федерального 	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 6.1</p> <p>A person receiving a certificate, and his accompanying family members are entitled to:</p> <ol style="list-style-type: none"> 1) the provision interpreter services and the reception of information on the procedure for recognition as a refugee, their rights and duties, as well as other information in accordance with this article; 2) the provision of assistance in securing travel and luggage to the place of residence in the order determined by the Government of the Russian Federation; 3) a lump-sum cash benefit for each family member in the manner and to the extent determined by the Government of the Russian Federation, but not less than \$ 100; 4) get directions from the territorial body of the federal executive body authorized to exercise the functions of control and supervision in the field of migration to a temporary accommodation center;

<p>органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, в центр временного размещения;</p> <p>5) сопровождение представителями территориального органа федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, и (или) территориального органа федерального органа исполнительной власти по внутренним делам в центр временного размещения и на охрану представителями территориального органа федерального органа исполнительной власти по внутренним делам в центре временного размещения в целях обеспечения безопасности данных лиц;</p> <p>6) получение питания и пользование коммунальными услугами в месте временного содержания или центре временного размещения в порядке, определяемом Правительством Российской Федерации;</p> <p>7) медицинскую и лекарственную помощь в соответствии с настоящим Федеральным законом, другими федеральными законами и иными нормативными правовыми актами Российской Федерации;</p> <p>8) получение содействия в направлении на профессиональное обучение в центре временного размещения или в трудоустройстве в соответствии с настоящим Федеральным законом, другими федеральными законами и иными нормативными правовыми актами Российской Федерации;</p> <p>9) подачу заявления о прекращении</p>	<p>5) support of the representatives of the territorial body of the federal executive body authorized to exercise the functions of control and supervision in the field of migration and (or) the territorial authority of the federal executive body for internal affairs in a temporary accommodation center and the protection of the representatives of the territorial body of the federal executive body for Home Affairs at the temporary accommodation center to ensure the safety of such persons;</p> <p>6) food and the use of public services at the temporary accommodation center or temporary residence in the order determined by the Government of the Russian Federation;</p> <p>7) medical and medicinal aid in accordance with this Federal Law and other federal laws and other normative legal acts of the Russian Federation;</p> <p>8) receive assistance in the area of vocational training at the temporary accommodation or employment in accordance with this Federal Law and other federal laws and other normative legal acts of the Russian Federation;</p> <p>9) submission of an application to discontinue the examination of the application.</p>
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<p>рассмотрения ходатайства.</p>	
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 6.2.3</p> <p>Лицо, получившее свидетельство, и прибывшие с ним члены его семьи обязаны пройти обязательное медицинское освидетельствование в установленном объеме требований медицинского сертификата.</p> <p>В случае, если данные лица отказываются проходить обязательное медицинское освидетельствование в установленном объеме требований медицинского сертификата, их правовое положение и правоотношения с ними определяются в соответствии с федеральными законами и иными нормативными правовыми актами Российской Федерации.</p>	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 6.2.3</p> <p>A person receiving a certificate, and their accompanying family members must undergo a compulsory medical examination in order to fulfill the requirements of the medical certificate.</p> <p>If such persons refuse to undergo a compulsory medical examination in order to fulfill the requirements of the medical certificate, their legal status and legal relations with them are determined in accordance with federal laws and other normative legal acts of the Russian Federation.</p>
<p>Федеральный закон от 19 февраля 1993 г. N 4528-I "О беженцах", статья 3.3</p> <p>Решение о выдаче свидетельства или о признании беженцем либо решение об отказе в рассмотрении ходатайства по существу или об отказе в признании беженцем принимается по итогам анкетирования лица, оформления опросного листа на основе проведения индивидуальных собеседований, а также по результатам проверки достоверности полученных сведений о данном лице и прибывших с ним членах семьи, проверки обстоятельств их прибытия на территорию Российской Федерации и оснований для их нахождения на территории Российской Федерации, после всестороннего изучения причин и обстоятельств, изложенных в ходатайстве. В целях уточнения сообщенных лицом</p>	<p>Federal Law No. 4528-I of Feb. 19 1993 on Refugees, Article 3.3</p> <p>The decision to issue the certificate or on recognition as a refugee or a decision dismissing the petition on the merits or refusal of refugee status is accepted on the basis of questioning the person, the registration questionnaire on the basis of individual interviews, as well as on the results of testing the reliability of the information about the person and arrived their accompanying family members to ascertain the circumstances of their arrival in the territory of the Russian Federation and the reason for their presence on the territory of the Russian Federation, after a comprehensive study of the causes and circumstances described in the application. In order to clarify the facts reported by the person is allowed to do additional interviews. A person applying for refugee status who is</p>

<p>фактов допускается проведение дополнительных собеседований.</p> <p>Лицо, ходатайствующее о признании беженцем и находящееся на территории Российской Федерации, в соответствии с законодательством Российской Федерации проходит процедуру идентификации личности, включая обязательную государственную дактилоскопическую регистрацию, по месту подачи ходатайства.</p>	<p>on the territory of the Russian Federation in accordance with the legislation of the Russian Federation is in the process of identification, including a mandatory state fingerprint registration at the place of application.</p>
<p>Постановление Правительства Российской Федерации от 9 апреля 2001 г. N 274 "О предоставлении временного убежища на территории Российской Федерации", п. 2</p> <p>Решение о предоставлении временного убежища принимается территориальным органом Министерства внутренних дел Российской Федерации по месту подачи лицом письменного заявления о предоставлении ему и прибывшим с ним членам его семьи временного убежища в срок, не превышающий трех месяцев со дня подачи заявления. Форма заявления устанавливается Министерством внутренних дел Российской Федерации. В заявлении оказываются прибывшие с лицом члены его семьи.</p>	<p>Government of the Russian Federation Resolution No. 274 of April 9 2001, on the Granting of Temporary Asylum in the Territory of the Russian Federation, Article 2</p> <p>The decision to grant temporary asylum is taken territorial body of the Ministry of Internal Affairs of the Russian Federation. Federation at the place of filing by a person of a written application giving him and his / her family members temporary asylum within a period not exceeding three months from the date of filing statements. The application form is established by the Ministry of Internal Affairs Russian Federation. The application shall indicate the arrivals with a person members of his family.</p>
<p>Постановление Правительства Российской Федерации от 9 апреля 2001 г. N 274 "О предоставлении временного убежища на территории Российской Федерации", п. 3</p> <p>Лицо, подавшее заявление, и прибывшие с ним члены его семьи подлежат обязательной государственной дактилоскопической регистрации по месту подачи заявления.</p>	<p>Government of the Russian Federation Resolution No. 274 of April 9 2001, on the Granting of Temporary Asylum in the Territory of the Russian Federation, Article 3</p> <p>The person who submitted the application and the members of his family who arrived with him are subject to obligatory state fingerprinting registration at the place of application.</p>

<p>Постановление Правительства Российской Федерации от 9 апреля 2001 г. N 274 "О предоставлении временного убежища на территории Российской Федерации", п. 6</p> <p>Лицо, подавшее заявление, и прибывшие с ним члены его семьи должны пройти обязательное медицинское освидетельствование в соответствии с установленным порядком и получить медицинское заключение.</p>	<p>Government of the Russian Federation Resolution No. 274 of April 9 2001, on the Granting of Temporary Asylum in the Territory of the Russian Federation, Article 6</p> <p>The person who submitted the application and the members of his family who arrived with him must undergo mandatory medical examination in accordance with the established procedure and receive a medical report.</p>
<p>Федеральный закон от 15.08.1996 N 114-ФЗ (ред. от 29.07.2017) "О порядке выезда из Российской Федерации и въезда в Российскую Федерацию", статья 26</p> <p>Въезд в Российскую Федерацию иностранному гражданину или лицу без гражданства может быть не разрешен в случае, если иностранный гражданин или лицо без гражданства:</p> <ol style="list-style-type: none"> 1) в пункте пропуска через Государственную границу Российской Федерации нарушили правила пересечения Государственной границы Российской Федерации, таможенные правила, санитарные нормы, - до устранения нарушения; 2) сообщили заведомо ложные сведения о себе или о цели своего пребывания в Российской Федерации; 3) утратил силу. - Федеральный закон от 23.07.2013 N 224-ФЗ; 4) неоднократно (два и более раза) в течение трех лет привлекались к административной ответственности в соответствии с законодательством Российской Федерации за совершение административного правонарушения на 	<p>Federal Law No. 114-1 of Aug. 15, 1996 On the Procedure for Exit from the Russian Federation and Entry Into the Russian Federation, Article 26</p> <p>A foreign citizen or a stateless person may be refused permission to enter the Russian Federation if the foreign citizen or the stateless person:</p> <ol style="list-style-type: none"> 1) has violated the rules of crossing the State Border of the Russian Federation, customs rules, sanitary regulations at a checkpoint on the State Border of the Russian Federation - until the irregularity has been eliminated; 2) has used fake documents or has provided deliberately false information on himself/herself or on the purpose of his/her stay in the Russian Federation; 3) abrogated from July 23, 2013; 4) has been held accountable under the administrative law in compliance with the legislation of the Russian Federation two or more times in three years for an administrative offence in the territory of the Russian Federation; 5) abrogated from January 1, 2007; 6) abrogated from July 23, 2013; 7) abrogated from July 23, 2013; 8) during their previous stay in the Russian

<p>территории Российской Федерации, - в течение трех лет со дня вступления в силу последнего постановления о привлечении к административной ответственности;</p> <p>5) утратил силу с 1 января 2007 года. - Федеральный закон от 30.12.2006 N 266-ФЗ;</p> <p>6) утратил силу. - Федеральный закон от 23.07.2013 N 207-ФЗ;</p> <p>7) утратил силу. - Федеральный закон от 23.07.2013 N 224-ФЗ;</p> <p>8) в период своего предыдущего пребывания в Российской Федерации не выехали из Российской Федерации до истечения тридцати суток со дня окончания срока временного пребывания, за исключением случаев отсутствия возможности покинуть территорию Российской Федерации по обстоятельствам, связанным с необходимостью экстренного лечения, тяжелой болезнью или со смертью близкого родственника, проживающего в Российской Федерации, либо вследствие непреодолимой силы (чрезвычайных и непредотвратимых при данных условиях обстоятельств) или иных явлений стихийного характера, - в течение трех лет со дня выезда из Российской Федерации;</p> <p>9) участвует в деятельности иностранной или международной неправительственной организации, в отношении которой принято решение о признании нежелательной на территории Российской Федерации ее деятельности.</p>	<p>Federation did not leave the Russian Federation before the expiration of thirty days from the date of termination of the temporary stay, except for cases when there is no possibility to leave the territory of the Russian Federation due to circumstances related to the need for emergency treatment, a serious illness or with the death of a close relative residing in the Russian Federation, or due to force majeure (extraordinary and unavoidable circumstances under the circumstances) or other matters of natural character - a period of three years from the date of departure from the Russian Federation;</p> <p>9) participates in the activities of a foreign or international non-governmental organization in respect of which a decision has been taken to recognize its activities undesirable on the territory of the Russian Federation.</p>
<p>Федеральный закон от 15.08.1996 N 114-ФЗ (ред. от 29.07.2017) "О порядке выезда из Российской Федерации и въезда в Российскую Федерацию",</p>	<p>Federal Law No. 114-1 of Aug. 15, 1996 On the Procedure for Exit from the Russian Federation and Entry Into the Russian Federation, Article 27</p>

статья 27

Въезд в Российскую Федерацию иностранному гражданину или лицу без гражданства не разрешается в случае, если:

1) это необходимо в целях обеспечения обороноспособности или безопасности государства, либо общественного порядка, либо защиты здоровья населения, за исключением случаев, предусмотренных абзацем вторым пункта 3 статьи 11 Федерального закона от 30 марта 1995 года N 38-ФЗ "О предупреждении распространения в Российской Федерации заболевания, вызываемого вирусом иммунодефицита человека (ВИЧ-инфекции)";

2) в отношении иностранного гражданина или лица без гражданства вынесено решение об административном выдворении за пределы Российской Федерации, о депортации либо передаче Российской Федерацией иностранному государству в соответствии с международным договором Российской Федерации о реадмиссии, - в течение пяти лет со дня административного выдворения за пределы Российской Федерации, депортации либо передачи Российской Федерацией иностранному государству в соответствии с международным договором Российской Федерации о реадмиссии;

2.1) в отношении иностранного гражданина или лица без гражданства неоднократно (два и более раза) выносилось решение об административном выдворении за пределы Российской Федерации, о депортации либо передаче Российской

Entry into the Russian Federation to a foreign citizen or stateless person is not permitted if:

1) this is necessary to ensure the defense capability or security of the state, or public order, or protection of public health, except in cases stipulated by the second paragraph of paragraph 3 of Article 11 of the Federal Law of March 30, 1995, No. 38-FZ "On Preventing the Spread in the Russian Federation a disease caused by the human immunodeficiency virus (HIV infection)";

2) with respect to a foreign citizen or stateless person, a decision has been made on administrative expulsion from the Russian Federation, deportation or transfer by the Russian Federation to a foreign state in accordance with the international treaty of the Russian Federation on readmission, within five years from the date of administrative expulsion from the Russian Federation, deportation or transfer by the Russian Federation to a foreign state in accordance with the international treaty of the Russian Federation on readmission;

2.1) with respect to a foreign citizen or stateless person, a decision was made (two or more times) on administrative expulsion from the Russian Federation, on deportation or transfer by the Russian Federation to a foreign state in accordance with the international treaty of the Russian Federation on readmission - for ten years from the day of administrative expulsion from the Russian Federation, deportation or transfer by the Russian Federation to a foreign state in accordance with an international treaty of the Russian Federation on readmission;

2.2) during the previous stay in the Russian Federation with respect to a foreign citizen or stateless person, the readmission procedure

Федерацией иностранному государству в соответствии с международным договором Российской Федерации о реадмиссии, - в течение десяти лет со дня административного выдворения за пределы Российской Федерации, депортации либо передачи Российской Федерацией иностранному государству в соответствии с международным договором Российской Федерации о реадмиссии;

2.2) в период предыдущего пребывания в Российской Федерации в отношении иностранного гражданина или лица без гражданства была прекращена процедура реадмиссии в соответствии со статьей 32.5 Федерального закона "О правовом положении иностранных граждан в Российской Федерации", - в течение трех лет со дня выезда из Российской Федерации;

3) иностранный гражданин или лицо без гражданства имеют неснятую или непогашенную судимость за совершение умышленного преступления на территории Российской Федерации или за ее пределами, признаваемого таковым в соответствии с федеральным законом;

4) иностранный гражданин или лицо без гражданства не представили документы, необходимые для получения визы в соответствии с законодательством Российской Федерации, - до их представления;

5) иностранный гражданин или лицо без гражданства не представили полис медицинского страхования, действительный на территории Российской Федерации, - до его представления, за исключением (на основе взаимности) сотрудников

was terminated in accordance with Article 32.5 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" - within three years from the date of departure from the Russian Federation ;

3) a foreign citizen or stateless person has an unexpunged or outstanding conviction for committing an intentional crime in the territory of the Russian Federation or abroad, recognized as such in accordance with federal law;

4) a foreign citizen or a stateless person did not submit the documents required for obtaining a visa in accordance with the legislation of the Russian Federation - before their submission;

5) a foreign citizen or a stateless person did not submit a medical insurance policy valid in the territory of the Russian Federation - prior to its submission, except on the basis of reciprocity of employees of diplomatic missions and consular offices of foreign states, employees of international organizations, family members of said persons and other categories of foreign citizens;

6) when applying for a visa or at a checkpoint across the State Border of the Russian Federation, a foreign citizen or a stateless person could not confirm the availability of funds for residing in the territory of the Russian Federation and subsequent departure from the Russian Federation or present guarantees for the provision of such funds in accordance with the procedure established the authorized federal executive body;

7) in respect of a foreign citizen or stateless person, a decision was made on the undesirability of stay (residence) in the Russian Federation, including if this citizen is included in the list of citizens of the United

дипломатических представительств и консульских учреждений иностранных государств, сотрудников международных организаций, членов семей указанных лиц и других категорий иностранных граждан;

б) при обращении за визой либо в пункте пропуска через Государственную границу Российской Федерации иностранный гражданин или лицо без гражданства не смогли подтвердить наличие средств для проживания на территории Российской Федерации и последующего выезда из Российской Федерации или предъявить гарантии предоставления таких средств в соответствии с порядком, установленным уполномоченным федеральным органом исполнительной власти;

7) в отношении иностранного гражданина или лица без гражданства принято решение о нежелательности пребывания (проживания) в Российской Федерации, в том числе если этот гражданин включен в список граждан Соединенных Штатов Америки, которым запрещается въезд в Российскую Федерацию;

8) утратил силу. - Федеральный закон от 23.07.2013 N 224-ФЗ;

9) иностранный гражданин или лицо без гражданства использовали подложные документы;

10) иностранный гражданин или лицо без гражданства в период своего предыдущего пребывания в Российской Федерации уклонились от уплаты налога или административного штрафа либо не возместили расходы, связанные с административным выдворением за пределы Российской Федерации либо депортацией, - до осуществления

States of America who are prohibited from entering the Russian Federation;

8) abrogated from July 23, 2013;

9) a foreign citizen or stateless person used false documents;

10) a foreign citizen or stateless person during his previous stay in the Russian Federation evaded payment of a tax or an administrative fine or did not reimburse expenses related to administrative expulsion from the Russian Federation or deportation - until the relevant payments are made in full. The procedure for repayment by foreign citizens and stateless persons of such a debt is determined by the Government of the Russian Federation;

11) a foreign citizen or stateless person repeatedly (two or more times) within one year was brought to administrative responsibility for committing an administrative offense related to an infringement on public order and public safety or with violation of the regime of residence (residence) of foreign citizens or persons without citizenship in the Russian Federation or the procedure for their employment in the territory of the Russian Federation - within five years from the date of entry into force of the last its decisions on bringing to administrative responsibility;

12) a foreign citizen or stateless person during his previous stay in the Russian Federation exceeded the period of stay of ninety days in total during each period of one hundred and eighty days - within three years from the date of departure from the Russian Federation.

13) a foreign citizen or a stateless person during his previous stay in the Russian Federation did not leave the Russian Federation and stayed in the Russian Federation continuously for more than one hundred and eighty days, but not more than

соответствующих выплат в полном объеме. Порядок погашения иностранными гражданами и лицами без гражданства такой задолженности определяется Правительством Российской Федерации;

11) иностранный гражданин или лицо без гражданства неоднократно (два и более раз) в течение одного года привлекались к административной ответственности за совершение административного правонарушения, связанного с посягательством на общественный порядок и общественную безопасность либо с нарушением режима пребывания (проживания) иностранных граждан или лиц без гражданства в Российской Федерации или порядка осуществления ими трудовой деятельности на территории Российской Федерации, - в течение пяти лет со дня вступления в силу последнего постановления о привлечении к административной ответственности;

12) иностранный гражданин или лицо без гражданства в период своего предыдущего пребывания в Российской Федерации превысили срок пребывания в девяносто суток суммарно в течение каждого периода в сто восемьдесят суток, - в течение трех лет со дня выезда из Российской Федерации.

13) иностранный гражданин или лицо без гражданства в период своего предыдущего пребывания в Российской Федерации не выехали из Российской Федерации и находились в Российской Федерации непрерывно свыше ста восьмидесяти суток, но не более двухсот семидесяти суток со дня окончания предусмотренного федеральным законом

two hundred and seventy days from the date of termination of the period of temporary stay provided for in the federal law for temporary stay in the Russian Federation , - within five years from the date of departure from the Russian Federation;

14) a foreign citizen or a stateless person during his previous stay in the Russian Federation did not leave the Russian Federation and stayed in the Russian Federation continuously for more than two hundred and seventy days from the date of termination of the period of temporary stay provided for in the federal law for a temporary stay in the Russian Federation - within ten years from day of departure from the Russian Federation.

If the entry into the Russian Federation of a foreign citizen or stateless person is restricted on the grounds provided for by subparagraphs 2, 2.1, 2.2, 3 and 7 of part one of this article, the border guard agencies of the federal security service and the federal executive body in the field of internal affairs or its territorial body in cases, established by the Government of the Russian Federation, shall put a corresponding mark in the document certifying the identity of a foreign citizen or stateless person.

A foreign citizen or a stateless person who is not allowed to enter the Russian Federation on one of the grounds provided for in part one of this article shall be permitted to enter the territory of the Russian Federation if there is a written confirmation of the federal executive body in the field of internal affairs concerning the application of the said foreign citizen or a person without citizenship of the readmission procedure with indication of the date and the proposed border crossing point across the State Border of the Russian

срока временного пребывания в Российской Федерации, - в течение пяти лет со дня выезда из Российской Федерации;

14) иностранный гражданин или лицо без гражданства в период своего предыдущего пребывания в Российской Федерации не выехали из Российской Федерации и находились в Российской Федерации непрерывно свыше двухсот семидесяти суток со дня окончания предусмотренного федеральным законом срока временного пребывания в Российской Федерации, - в течение десяти лет со дня выезда из Российской Федерации.

Если въезд в Российскую Федерацию иностранного гражданина или лица без гражданства ограничен по основаниям, предусмотренным подпунктами 2, 2.1, 2.2, 3 и 7 части первой настоящей статьи, пограничные органы федеральной службы безопасности и федеральный орган исполнительной власти в сфере внутренних дел или его территориальный орган в случаях, установленных Правительством Российской Федерации, проставляет соответствующую отметку в документе, удостоверяющем личность иностранного гражданина или лица без гражданства.

Иностранному гражданину или лицу без гражданства, которым не разрешен въезд в Российскую Федерацию по одному из оснований, предусмотренных частью первой настоящей статьи, въезд на территорию Российской Федерации разрешается при наличии письменного подтверждения федерального органа исполнительной власти в сфере внутренних дел о применении в

Federation.

<p>отношении указанных иностранного гражданина или лица без гражданства процедуры реадмиссии с указанием даты и предполагаемого пункта пропуска через Государственную границу Российской Федерации.</p>	
<p>Федеральный закон от 15.08.1996 N 114-ФЗ (ред. от 29.07.2017) "О порядке выезда из Российской Федерации и въезда в Российскую Федерацию", статья 25</p> <p>Основаниями для выдачи иностранному гражданину визы, если иное не предусмотрено международным договором Российской Федерации, являются:</p> <p>1) приглашение на въезд в Российскую Федерацию, оформленное в соответствии с федеральным законом в порядке, установленном уполномоченным федеральным органом исполнительной власти.</p> <p>Приглашение на въезд в Российскую Федерацию выдается федеральным органом исполнительной власти, ведающим вопросами иностранных дел, по ходатайству:</p> <p>а) федеральных органов государственной власти;</p> <p>б) дипломатических представительств и консульских учреждений иностранных государств в Российской Федерации;</p> <p>в) международных организаций и их представительств в Российской Федерации, а также представительств иностранных государств при международных организациях, находящихся в Российской Федерации;</p> <p>г) органов государственной власти</p>	<p>Federal Law No. 114-1 of Aug. 15, 1996 On the Procedure for Exit from the Russian Federation and Entry Into the Russian Federation, Article 25</p> <p>The grounds for issuing a visa to a foreign citizen, unless otherwise provided for by an international treaty of the Russian Federation, are:</p> <p>1) an invitation to enter the Russian Federation, executed in accordance with federal law in the manner established by the authorized federal executive body.</p> <p>An invitation to enter the Russian Federation is issued by the federal executive body in charge of foreign affairs at the request of:</p> <p>a) federal bodies of state power;</p> <p>b) diplomatic missions and consular offices of foreign countries in the Russian Federation;</p> <p>c) international organizations and their representative offices in the Russian Federation, as well as representations of foreign states to international organizations located in the Russian Federation;</p> <p>d) public authorities of the subjects of the Russian Federation.</p> <p>An invitation to enter the Russian Federation is issued by the federal executive body in the field of internal affairs in cases established by federal law.</p> <p>An invitation to enter the Russian Federation is issued by the territorial body of the federal executive body in the sphere of internal affairs upon petition:</p> <p>a) local government bodies;</p>

субъектов Российской Федерации.

Приглашение на въезд в Российскую Федерацию выдается федеральным органом исполнительной власти в сфере внутренних дел в случаях, установленных федеральным законом.

Приглашение на въезд в Российскую Федерацию выдается территориальным органом федерального органа исполнительной власти в сфере внутренних дел по ходатайству:

- а) органов местного самоуправления;
- б) юридических лиц, в уведомительном порядке вставших на учет в федеральном органе исполнительной власти в сфере внутренних дел или его территориальном органе;
- в) граждан Российской Федерации и постоянно проживающих в Российской Федерации иностранных граждан;
- г) филиалов, представительств иностранных коммерческих организаций, аккредитованных в Российской Федерации в установленном порядке и в уведомительном порядке вставших на учет в федеральном органе исполнительной власти в сфере внутренних дел или его территориальном органе, в случае приглашения данными филиалами, представительствами иностранных граждан в целях осуществления трудовой деятельности в Российской Федерации;
- д) иностранных граждан, являющихся высококвалифицированными специалистами и осуществляющих трудовую деятельность в соответствии со статьей 13.2 Федерального закона от 25 июля 2002 года N 115-ФЗ "О правовом положении иностранных граждан в Российской Федерации" (далее -

b) legal entities that, in a notification procedure, registered with the federal executive authority in the field of internal affairs or its territorial body;

c) citizens of the Russian Federation and foreign citizens permanently residing in the Russian Federation;

d) branches, representations of foreign commercial organizations accredited in the Russian Federation in accordance with the established procedure and notified in writing by the federal executive body in the field of internal affairs or its territorial body, in case of invitation by these branches, representations of foreign citizens for the purpose of carrying out labor activities in the Russian Federation;

e) foreign citizens who are highly qualified specialists and carry out labor activity in accordance with Article 13.2 of Federal Law No. 115-FZ of July 25, 2002 "On the Legal Status of Foreign Citizens in the Russian Federation" (hereinafter - the Federal Law "On the Legal Status of Foreign Citizens in Russian Federation "), if they invite their family members specified in clause 1.1 of Article 13.2 of this Federal Law;

e) Representations of foreign commercial organizations that have registered with the federal executive body in the field of internal affairs or its territorial body in the notification procedure in case of invitation by these missions of foreign citizens sent for the purpose of carrying out work in the Russian Federation in accordance with Article 13.5 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation". For issuing an invitation to enter the Russian Federation, a state fee is paid in the amounts and in the order established by the legislation of the Russian Federation on taxes and fees;

Федеральный закон "О правовом положении иностранных граждан в Российской Федерации"), в случае приглашения ими членов своей семьи, определенных пунктом 1.1 статьи 13.2 указанного Федерального закона;

е) представительств иностранных коммерческих организаций, в уведомительном порядке вставших на учет в федеральном органе исполнительной власти в сфере внутренних дел или его территориальном органе, в случае приглашения этими представительствами иностранных граждан, направленных в целях осуществления трудовой деятельности в Российской Федерации в соответствии со статьей 13.5 Федерального закона "О правовом положении иностранных граждан в Российской Федерации".

За выдачу приглашения на въезд в Российскую Федерацию уплачивается государственная пошлина в размерах и порядке, которые установлены законодательством Российской Федерации о налогах и сборах;

2) решение, принятое федеральным органом исполнительной власти, ведающим вопросами иностранных дел, дипломатическим представительством или консульским учреждением Российской Федерации либо представительством федерального органа исполнительной власти, ведающего вопросами иностранных дел, находящимся в пределах приграничной территории, в том числе в пункте пропуска через Государственную границу Российской Федерации, по ходатайству находящегося за пределами Российской

2) a decision taken by a federal executive body in charge of foreign affairs, a diplomatic mission or consular office of the Russian Federation or a representative office of the federal executive authority in charge of foreign affairs located within the border area, including at the border crossing point of the Russian border The Federation, at the request of a foreign citizen who is outside the Russian Federation, filed in connection with the necessary awn enter the Russian Federation for the emergency treatment or because of severe illness or death of a close relative.

For the provision of a decision of the federal executive authority in charge of foreign affairs on the issue of an ordinary visa to be sent to a diplomatic mission or consular office of the Russian Federation, as well as for making changes to the issuance of an ordinary visa issued by the federal executive body in charge of foreign affairs matters a state fee is paid in the amount and in the order established by the legislation of the Russian Federation on taxes and fees;

3) the decision of the federal executive body in charge of foreign affairs to issue a visa to a foreign citizen sent to a diplomatic mission or consular post of the Russian Federation;

4) the decision of the head of the diplomatic mission or consular office of the Russian Federation on the issuance of a visa to a foreign citizen, accepted upon application in writing by a citizen of the Russian Federation on the joint entry of his family members (spouse, minor children, disabled adult children) into the Russian Federation) , who are foreign citizens, or taken in exceptional cases upon application in writing of a foreign citizen;

4.1) the decision to recognize a foreign citizen as a native speaker of the Russian language in

Федерации иностранного гражданина, поданному в связи с необходимостью въезда в Российскую Федерацию для экстренного лечения либо вследствие тяжелой болезни или смерти близкого родственника.

За предоставление решения федерального органа исполнительной власти, ведающего вопросами иностранных дел, о выдаче обыкновенной визы, направляемого в дипломатическое представительство или консульское учреждение Российской Федерации, а также за внесение изменений в выданное федеральным органом исполнительной власти, ведающим вопросами иностранных дел, решение о выдаче обыкновенной визы уплачивается государственная пошлина в размерах и порядке, которые установлены законодательством

Российской Федерации о налогах и сборах;

3) решение федерального органа исполнительной власти, ведающего вопросами иностранных дел, о выдаче иностранному гражданину визы, направленное в дипломатическое представительство или консульское учреждение Российской Федерации;

4) решение руководителя дипломатического представительства или консульского учреждения Российской Федерации о выдаче иностранному гражданину визы, принимаемое по заявлению в письменной форме гражданина Российской Федерации о совместном с ним въезде в Российскую Федерацию членов его семьи (супруга (супруги), несовершеннолетних детей, нетрудоспособных совершеннолетних

accordance with Article 33.1 of the Federal Law of May 31, 2002 N 62-FZ "On Citizenship of the Russian Federation";

5) the decision of the territorial body of the federal executive body in the sphere of internal affairs to issue a temporary residence permit to a foreign citizen in the Russian Federation;

6) confirmation of the admission of foreign tourists by the organization, information about which is contained in the single federal register of tour operators;

7) the decision of the federal executive body in the field of internal affairs or its territorial body on the recognition of a foreign citizen or stateless person as a refugee upon application submitted by a foreign citizen or stateless person to a diplomatic mission or consular post of the Russian Federation;

8) appeal of the federal executive body authorized by the Government of the Russian Federation to issue a visa to a foreign citizen who is a representative or employee of a large foreign company classified as such by the indicators of financial and economic activity established by the Government of the Russian Federation and investing in the territory of the Russian Federation, or a company involved in the implementation of projects to create an innovation center "Skolkovo" or an international financial institution Center in the Russian Federation, meets the criteria established by the Russian Government aimed at a diplomatic mission or consular office of the Russian Federation;

9) the decision of the federal executive body in charge of foreign affairs to issue a visa to a foreign citizen entering the Russian Federation through a checkpoint across the State Border of the Russian Federation located on the territory of the free port of

детей), являющихся иностранными гражданами, либо принимаемое в исключительных случаях по заявлению в письменной форме иностранного гражданина;

4.1) решение о признании иностранного гражданина носителем русского языка в соответствии со статьей 33.1 Федерального закона от 31 мая 2002 года N 62-ФЗ "О гражданстве Российской Федерации";

5) решение территориального органа федерального органа исполнительной власти в сфере внутренних дел о выдаче иностранному гражданину разрешения на временное проживание в Российской Федерации;

6) подтверждение о приеме иностранного туриста организацией, сведения о которой содержатся в едином федеральном реестре туроператоров;

7) решение федерального органа исполнительной власти в сфере внутренних дел или его территориального органа о признании иностранного гражданина или лица без гражданства беженцем по заявлению, поданному иностранным гражданином или лицом без гражданства в дипломатическое представительство или консульское учреждение Российской Федерации;

8) обращение федерального органа исполнительной власти, уполномоченного Правительством Российской Федерации, о выдаче визы иностранному гражданину, являющемуся представителем либо работником крупной иностранной компании, отнесенной к таковой по показателям финансово-

Vladivostok (hereinafter referred to as the free Vladivostok port), in accordance with Article 25.17 of this Federal Law.

The documents specified in the first part of this article that are the basis for issuing a visa to a foreign citizen may be submitted in the form of electronic documents, unless otherwise provided by federal law.

<p>экономической деятельности, устанавливаемым Правительством Российской Федерации, и осуществляющей инвестиции на территории Российской Федерации, или компании, участвующей в реализации проектов создания инновационного центра "Сколково" либо международного финансового центра в Российской Федерации, отвечающих критериям, установленным Правительством Российской Федерации, направленное в дипломатическое представительство или консульское учреждение Российской Федерации;</p> <p>9) решение федерального органа исполнительной власти, ведающего вопросами иностранных дел, о выдаче визы иностранному гражданину, въезжающему в Российскую Федерацию через пункт пропуска через Государственную границу Российской Федерации, расположенный на территории свободного порта Владивосток (далее - пункт пропуска свободного порта Владивосток), в соответствии со статьей 25.17 настоящего Федерального закона.</p> <p>Указанные в части первой настоящей статьи документы, являющиеся основаниями для выдачи иностранному гражданину визы, могут быть представлены в форме электронных документов, если иное не предусмотрено федеральным законом.</p>	
<p>Федеральный закон от 18.07.2006 N 109-ФЗ "О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации", статья 2.1.1</p>	<p>Federal Law No. 109-1 of July 18 2006 On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation, Article 2.1.1</p>

<p>Миграционный учет иностранных граждан и лиц без гражданства (далее - миграционный учет) - государственная деятельность по фиксации и обобщению предусмотренных настоящим Федеральным законом сведений об иностранных гражданах и о лицах без гражданства и о перемещениях иностранных граждан и лиц без гражданства.</p>	<p>Migration Registration of Foreign Citizens and Stateless Persons (hereinafter referred to as Migration Registration) is a state activity to fix and summarize information on foreign citizens and stateless persons provided for by this Federal Law and on the movements of foreign citizens and stateless persons.</p>
<p>Федеральный закон от 18.07.2006 N 109-ФЗ "О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации", часть 2 статьи 4</p> <p>Миграционный учет имеет уведомительный характер, за исключением случаев, предусмотренных федеральным конституционным законом или федеральным законом.</p>	<p>Federal Law No. 109-1 of July 18 2006 On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation, Article 4 (2)</p> <p>Migration accounts have a notification nature, except for cases provided for by federal constitutional law or federal law.</p>
<p>Федеральный конституционный закон от 21.07.1994 N 1-ФКЗ "О Конституционном Суде Российской Федерации", часть 3 статьи 3</p> <p>В целях защиты основ конституционного строя, основных прав и свобод человека и гражданина, обеспечения верховенства и прямого действия Конституции Российской Федерации на всей территории Российской Федерации Конституционный Суд Российской Федерации по жалобам на нарушение конституционных прав и свобод граждан проверяет конституционность закона, примененного в конкретном деле.</p>	<p>The Federal Constitutional Law n.1-FKZ of July 21 1994, Article 3 (3)</p> <p>In order to protect the foundations of the constitutional order, the fundamental rights and freedoms of the individual and citizen, ensure the supremacy and direct effect of the Constitution of the Russian Federation throughout the Russian Federation, the Constitutional Court of the Russian Federation verifies the constitutionality of the law applied in a concrete case on complaints of violations of constitutional rights and freedoms of citizens.</p>
<p>Конституция Российской Федерации, часть 1 статьи 30</p>	<p>The Constitution of the Russian Federation, Article 30 (1)</p>

<p>Каждый имеет право на объединение, включая право создавать профессиональные союзы для защиты своих интересов. Свобода деятельности общественных объединений гарантируется.</p>	<p>Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.</p>
<p>Конституция Российской Федерации, часть 1 статьи 29</p> <p>Каждому гарантируется свобода мысли и слова.</p>	<p>The Constitution of the Russian Federation, Article 29 (1)</p> <p>Everyone shall be guaranteed the freedom of ideas and speech.</p>
<p>Конституция Российской Федерации, часть 1 статьи 32</p> <p>Граждане Российской Федерации имеют право участвовать в управлении делами государства как непосредственно, так и через своих представителей.</p>	<p>The Constitution of the Russian Federation, Article 32 (1)</p> <p>Citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives.</p>
<p>Федеральный закон от 12.06.2002 N 67-ФЗ "Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации", часть 3 статьи 4</p> <p>Не имеют права избирать, быть избранными, осуществлять другие избирательные действия, участвовать в референдуме граждане, признанные судом недееспособными или содержащиеся в местах лишения свободы по приговору суда.</p>	<p>The Federal Law n.67-FZ of July 12 2002 "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in the referendum", Article 4 (3)</p> <p>They have no right to elect, to be elected, to carry out other electoral actions, to participate in a referendum, citizens recognized as incompetent by the court or held in places of deprivation of liberty on the verdict of the court.</p>
<p>Закон РФ от 25.06.1993 N 5242-1 "О праве граждан Российской Федерации на свободу передвижения, выбор места пребывания и жительства в пределах Российской Федерации", статья 3</p> <p>В целях обеспечения необходимых</p>	<p>The Federal Law n.5442-I of June 25 1993 "On the Right of Russian Citizens to Freedom of Movement, Freedom to Choose One's Place of Residence within the Territory of the Russian Federation", Article 3</p> <p>In order to ensure the necessary conditions for the citizen of the Russian Federation to</p>

условий для реализации гражданином Российской Федерации его прав и свобод, а также исполнения им обязанностей перед другими гражданами, государством и обществом вводится регистрационный учет граждан Российской Федерации по месту пребывания и по месту жительства в пределах Российской Федерации.

Об установлении места жительства гражданина при отсутствии регистрации см. Письмо Минтруда России от 18.11.2016 N 12-1/10/B-8544.

Граждане Российской Федерации обязаны регистрироваться по месту пребывания и по месту жительства в пределах Российской Федерации. Регистрация или отсутствие таковой не может служить основанием ограничения или условием реализации прав и свобод граждан, предусмотренных Конституцией Российской Федерации, федеральными законами, конституциями (уставами) и законами субъектов Российской Федерации.

При регистрации по месту пребывания и по месту жительства в пределах Российской Федерации граждане Российской Федерации представляют заявления по форме, установленной федеральным органом исполнительной власти, уполномоченным на осуществление функций по контролю и надзору в сфере миграции, и иные документы, предусмотренные настоящим Законом и правилами регистрации и снятия граждан Российской Федерации с регистрационного учета по месту пребывания и по месту жительства в пределах Российской Федерации.

Заявления и документы, указанные

exercise his rights and freedoms, as well as to fulfill his obligations to other citizens, the state and society, registration of citizens of the Russian Federation at the place of stay and at the place of residence within the Russian Federation is introduced.

On the establishment of the citizen's place of residence in the absence of registration, see Letter No. 12-1 / 10 / B-8544 of the Ministry of Labor of the Russian Federation of November 18, 2016.

Citizens of the Russian Federation are required to register at their place of residence and at their place of residence within the Russian Federation. Registration or lack thereof can not serve as a ground for restriction or a condition for the exercise of the rights and freedoms of citizens provided for by the Constitution of the Russian Federation, federal laws, constitutions (statutes) and laws of the subjects of the Russian Federation.

When registering at the place of residence and at the place of residence within the Russian Federation, the citizens of the Russian Federation submit applications in the form established by the federal executive body authorized to carry out functions of control and supervision in the field of migration and other documents provided for in this Law and the rules for registration and removal of citizens of the Russian Federation from the registration records at the place of stay and at the place of residence within the Russian Federation.

The applications and documents specified in part three of this article shall be submitted to the registration authorities within the time limits specified in Articles 5 and 6 of this Law. In case of failure to submit the specified documents to the registration authority for

в части третьей настоящей статьи, представляются в органы регистрационного учета в сроки, установленные статьями 5 и 6 настоящего Закона. В случае непредставления гражданином указанных документов в орган регистрационного учета для регистрации по месту пребывания или по месту жительства наниматель (собственник) жилого помещения, в котором проживает данный гражданин, по истечении установленного срока в течение трех рабочих дней уведомляет орган регистрационного учета о проживании данного гражданина в указанном жилом помещении. Форма и порядок такого уведомления устанавливаются правилами регистрации и снятия граждан Российской Федерации с регистрационного учета по месту пребывания и по месту жительства в пределах Российской Федерации. Регистрация граждан Российской Федерации по месту пребывания и регистрация граждан Российской Федерации по месту жительства в пределах Российской Федерации производятся бесплатно. Правила регистрации и снятия граждан Российской Федерации с регистрационного учета по месту пребывания и по месту жительства в пределах Российской Федерации и перечень лиц, ответственных за прием и передачу в органы регистрационного учета документов для регистрации и снятия с регистрационного учета граждан Российской Федерации по месту пребывания и по месту жительства в пределах Российской Федерации, утверждаются Правительством

registration at the place of residence or at the place of residence, the tenant (proprietor) of the dwelling in which the citizen lives, upon expiration of the established period within three working days, notifies the registration authority of the residence of the citizen in specified residential area. The form and procedure for such notification shall be established by the rules for registration and withdrawal of citizens of the Russian Federation from the registration records at the place of stay and at the place of residence within the Russian Federation.

Registration of citizens of the Russian Federation at the place of stay and registration of citizens of the Russian Federation at their place of residence within the Russian Federation are free of charge.

The rules for registration and withdrawal of citizens of the Russian Federation from registration at the place of stay and at the place of residence within the Russian Federation and the list of persons responsible for receiving and transferring to the registration authorities documents for registration and removal from the registration of citizens of the Russian Federation at the place of stay and place of residence within the Russian Federation shall be approved by the Government of the Russian Federation.

Control over the observance by citizens of the Russian Federation, tenants (owners) of living quarters, officials and persons responsible for receiving and transferring to the registration authorities documents for registration and removal from the register of citizens of the Russian Federation at the place of stay and at the place of residence within the Russian Federation, the rules for registration and withdrawal of citizens of the Russian Federation from the registration

Российской Федерации.

Контроль за соблюдением гражданами Российской Федерации, нанимателями (собственниками) жилых помещений, должностными лицами и лицами, ответственными за прием и передачу в органы регистрационного учета документов для регистрации и снятия с регистрационного учета граждан Российской Федерации по месту пребывания и по месту жительства в пределах Российской Федерации, правил регистрации и снятия граждан Российской Федерации с регистрационного учета по месту пребывания и по месту жительства в пределах Российской Федерации возлагается на федеральный орган исполнительной власти, уполномоченный на осуществление функций по контролю и надзору в сфере миграции, его территориальные органы и органы внутренних дел.

Федеральный орган исполнительной власти, уполномоченный на осуществление функций по контролю и надзору в сфере миграции, ведет базовый государственный информационный ресурс регистрационного учета граждан Российской Федерации по месту пребывания и по месту жительства в пределах Российской Федерации (далее - база данных), содержащий в себе информацию, полученную от граждан, федеральных органов исполнительной власти, исполнительных органов государственной власти субъектов Российской Федерации и иных полномочных органов, органов местного самоуправления, а также учреждений, осуществляющих в соответствии

records at the place of stay and at the place of residence within the Russian Federation are assigned to a federal executive body authorized to carry out functions of control and supervision in the sphere of migration, its territorial bodies and internal affairs bodies.

The federal executive body authorized to carry out the functions of control and supervision in the field of migration conducts the basic state information resource of registration of citizens of the Russian Federation at the place of stay and at the place of residence within the Russian Federation (hereinafter referred to as the database) received from citizens, federal executive bodies, executive bodies of state power of the subjects of the Russian Federation and other authorized bodies, local authorities of governments and institutions engaged in accordance with Article 5 of this Act registration and withdrawal of Russian citizens from the register at the place of residence.

The federal executive body authorized to carry out the functions of control and supervision in the field of migration and its territorial bodies have the right to process personal data contained in the database in accordance with the requirements of the legislation of the Russian Federation.

The information contained in the database is subject to protection in accordance with the legislation of the Russian Federation on information, information technologies and information protection, the legislation of the Russian Federation on state secrets, trade secrets and other secrets protected by law, as well as the legislation of the Russian Federation in the field of personal data.

The database contains the following information:

<p>со статьей 5 настоящего Закона регистрацию и снятие граждан Российской Федерации с регистрационного учета по месту пребывания. Федеральный орган исполнительной власти, уполномоченный на осуществление функций по контролю и надзору в сфере миграции, и его территориальные органы вправе осуществлять обработку персональных данных, содержащихся в базе данных, в соответствии с требованиями законодательства Российской Федерации. Информация, содержащаяся в базе данных, подлежит защите в соответствии с законодательством Российской Федерации об информации, информационных технологиях и о защите информации, законодательством Российской Федерации о государственной тайне, коммерческой тайне и иной охраняемой законом тайне, а также законодательством Российской Федерации в области персональных данных. В базе данных содержится следующая информация: фамилия, имя, отчество (последнее - при наличии); дата и место рождения; пол; адрес и дата регистрации (снятия с регистрационного учета) по месту жительства (месту пребывания); данные основного документа, удостоверяющего личность гражданина Российской Федерации на территории Российской Федерации (в отношении лиц, не достигших четырнадцатилетнего возраста, реквизиты свидетельства о рождении: серия, номер, дата выдачи и кем выдано); реквизиты свидетельства о</p>	<p>surname, name, patronymic (last - if available); Date and place of birth; floor; address and date of registration (removal from the register) at the place of residence (place of stay); data of the main document certifying the identity of a citizen of the Russian Federation on the territory of the Russian Federation (for persons under the age of fourteen, requisites for the birth certificate: series, number, date of issue and by whom issued); requisites of the death certificate (series, number, date of issue and by whom it was issued) - upon deletion of the deceased from the registration; the name and the date of the decision of the court that entered into legal force - upon removal from the registration record at the place of residence of a citizen of the Russian Federation recognized missing or evicted from the occupied premises or recognized as having lost the right to use the dwelling; insurance number of the individual personal account in the mandatory pension insurance system (if available). Citizens have the right to familiarize themselves with information about themselves contained in the database, to protect such information and to correct errors contained therein. In order to provide information on the registration of citizens of the Russian Federation at the place of stay and at the place of residence within the Russian Federation (hereinafter referred to as address and reference information), the federal executive body authorized to carry out functions of control and supervision in the field of migration organizes and maintains</p>
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смерти (серия, номер, дата выдачи и кем выдано) - при снятии с регистрационного учета умершего; наименование и дата решения суда, вступившего в законную силу, - при снятии с регистрационного учета по месту жительства гражданина Российской Федерации, признанного безвестно отсутствующим либо высленного из занимаемого жилого помещения или признанного утратившим право пользования жилым помещением; страховой номер индивидуального лицевого счета в системе обязательного пенсионного страхования (при наличии).

Граждане имеют право на ознакомление с информацией о себе, содержащейся в базе данных, на защиту такой информации и на исправление содержащихся в ней ошибок.

В целях предоставления информации о регистрации граждан Российской Федерации по месту пребывания и по месту жительства в пределах Российской Федерации (далее - адресно-справочная информация) федеральный орган исполнительной власти, уполномоченный на осуществление функций по контролю и надзору в сфере миграции, организует и ведет адресно-справочную работу.

Адресно-справочная информация предоставляется физическим и юридическим лицам по их запросам территориальным органом федерального органа исполнительной власти, уполномоченного на осуществление функций по контролю и надзору в сфере миграции, при наличии согласия лица, в отношении которого такая информация запрашивается. Порядок предоставления

address- reference work.

The address and reference information is provided to individuals and legal entities at their request by the territorial body of the federal executive body authorized to carry out functions of monitoring and supervision in the field of migration, subject to the consent of the person for whom such information is requested. The procedure for providing address and reference information and the procedure for organizing and maintaining address and reference work are established by the federal executive body authorized to exercise control and supervision functions in the field of migration.

The information contained in the database is also provided to state authorities and local authorities in cases when it is necessary to exercise their powers, including for the provision of state and municipal services.

The procedure for the formation, maintenance and use of the database is established by the Government of the Russian Federation.

<p>адресно-справочной информации и порядок организации и ведения адресно-справочной работы устанавливаются федеральным органом исполнительной власти, уполномоченным на осуществление функций по контролю и надзору в сфере миграции.</p> <p>Информация, содержащаяся в базе данных, также предоставляется органам государственной власти и органам местного самоуправления в случаях, когда это необходимо для осуществления ими своих полномочий, в том числе для предоставления государственных и муниципальных услуг.</p> <p>Порядок формирования, ведения и использования базы данных устанавливается Правительством Российской Федерации.</p>	
<p>Федеральный закон от 21.11.2011 N 323-ФЗ "Об основах охраны здоровья граждан в Российской Федерации", статья 19</p> <p>Каждый имеет право на медицинскую помощь.</p>	<p>The Federal Law n.323 of November 21 2011 "On the Fundamentals of Health Care of Citizens in the Russian Federation", Article 19</p> <p>Everyone has the right to medical assistance.</p>
<p>Федеральный закон от 21.11.2011 N 323-ФЗ "Об основах охраны здоровья граждан в Российской Федерации", статья 32</p> <p>Медицинская помощь оказывается медицинскими организациями и классифицируется по видам, условиям и форме оказания такой помощи.</p>	<p>The Federal Law n.323 of November 21 2011 "On the Fundamentals of Health Care of Citizens in the Russian Federation", Article 32</p> <p>Medical assistance is provided by medical organizations and is classified according to the types, conditions and form of such assistance.</p>
<p>Федеральный закон от 25.07.2002 N 115-ФЗ "О правовом положении иностранных граждан в Российской Федерации", статья 13</p>	<p>The Federal Law n.115 of July 25 2002 "On Legal Status of Foreign Citizens in the Russian Federation", Article 13</p>

<p>Иностранные граждане пользуются правом свободно распоряжаться своими способностями к труду, выбирать род деятельности и профессию, а также правом на свободное использование своих способностей и имущества для предпринимательской и иной не запрещенной законом экономической деятельности с учетом ограничений, предусмотренных федеральным законом.</p>	<p>Foreign citizens enjoy the right to freely dispose of their abilities to work, to choose the kind of activity and profession, as well as the right to freely use their abilities and property for entrepreneurial and other economic activities not prohibited by law, taking into account the restrictions provided for by federal law.</p>
<p>Конституция Российской Федерации, часть 2 статьи 43</p> <p>Гарантируются общедоступность и бесплатность дошкольного, основного общего и среднего профессионального образования в государственных или муниципальных образовательных учреждениях и на предприятиях.</p>	<p>The Constitution of the Russian Federation, Article 43 (2)</p> <p>Guarantees shall be provided for general access to and free pre-school, secondary and high vocational education in state or municipal educational establishments and at enterprises.</p>
<p>Конституция Российской Федерации, часть 3 статьи 43</p> <p>Каждый вправе на конкурсной основе бесплатно получить высшее образование в государственном или муниципальном образовательном учреждении и на предприятии.</p>	<p>The Constitution of the Russian Federation, Article 43 (3)</p> <p>Everyone shall have the right to receive on a competitive basis a free higher education in a state or municipal educational establishment and at an enterprise.</p>
<p>Федеральный закон от 29.12.2012 N 273-ФЗ "Об образовании в Российской Федерации" часть 2 статьи 5</p> <p>Право на образование в Российской Федерации гарантируется независимо от пола, расы, национальности, языка, происхождения, имущественного, социального и должностного положения, места жительства, отношения к религии, убеждений, принадлежности к общественным объединениям, а также других обстоятельств.</p>	<p>The Federal Law n. 273-FZ of December 29 2012 "On Education in the Russian Federation", Article 5 (2)</p> <p>The right to education in the Russian Federation is guaranteed irrespective of sex, race, nationality, language, origin, property, social and official status, place of residence, attitude to religion, beliefs, membership in public associations, and other circumstances.</p>

<p>Федеральный закон от 29.12.2012 N 273-ФЗ "Об образовании в Российской Федерации" часть 3 статьи 5</p> <p>В Российской Федерации гарантируются общедоступность и бесплатность в соответствии с федеральными государственными образовательными стандартами дошкольного, начального общего, основного общего и среднего общего образования, среднего профессионального образования, а также на конкурсной основе бесплатность высшего образования, если образование данного уровня гражданин получает впервые.</p>	<p>The Federal Law n. 273-FZ of December 29 2012 "On Education in the Russian Federation", Article 5 (3)</p> <p>In the Russian Federation, accessibility and free-of-charge are guaranteed in accordance with federal state educational standards of preschool, primary general, basic general and secondary general education, secondary vocational education, and free of charge higher education on a competitive basis if a citizen acquires an education of this level for the first time.</p>
<p>Федеральный закон от 29.12.2012 N 273-ФЗ "Об образовании в Российской Федерации" часть 2 статьи 10</p> <p>Образование подразделяется на общее образование, профессиональное образование, дополнительное образование и профессиональное обучение, обеспечивающие возможность реализации права на образование в течение всей жизни (непрерывное образование).</p>	<p>The Federal Law n. 273-FZ of December 29 2012 "On Education in the Russian Federation", Article 10 (2)</p> <p>Education is subdivided into general education, vocational education, additional education and vocational training, ensuring the possibility of realizing the right to lifelong education (continuous education).</p>
<p>Федеральный закон от 29.12.2012 N 273-ФЗ "Об образовании в Российской Федерации" часть 4 статьи 27</p> <p>Структурные подразделения образовательной организации, в том числе филиалы и представительства, не являются юридическими лицами и действуют на основании устава</p>	<p>The Federal Law n. 273-FZ of December 29 2012 "On Education in the Russian Federation", Article 27 (4)</p> <p>The structural subdivisions of the educational organization, including branches and representative offices, are not legal entities and act on the basis of the charter of the educational organization and regulations on the relevant structural subdivision approved</p>

<p>образовательной организации и положения о соответствующем структурном подразделении, утвержденного в порядке, установленном уставом образовательной организации. Осуществление образовательной деятельности в представительстве образовательной организации запрещается.</p>	<p>in accordance with the procedure established by the charter of the educational organization. Implementation of educational activities in the representation of the educational organization is prohibited.</p>
<p>Федеральный закон от 29.12.2012 N 273-ФЗ "Об образовании в Российской Федерации" часть 1 статьи 67</p> <p>Получение дошкольного образования в образовательных организациях может начинаться по достижении детьми возраста двух месяцев. Получение начального общего образования в образовательных организациях начинается по достижении детьми возраста шести лет и шести месяцев при отсутствии противопоказаний по состоянию здоровья, но не позже достижения ими возраста восьми лет. По заявлению родителей (законных представителей) детей учредитель образовательной организации вправе разрешить прием детей в образовательную организацию на обучение по образовательным программам начального общего образования в более раннем или более позднем возрасте.</p>	<p>The Federal Law n. 273-FZ of December 29 2012 "On Education in the Russian Federation", Article 67 (1)</p> <p>Getting preschool education in educational organizations can begin when children reach the age of two months. Getting primary general education in educational organizations begins when children reach the age of six years and six months in the absence of contraindications for health reasons, but not later than reaching the age of eight. Upon the application of the parents (legal representatives) of children, the founder of the educational organization has the right to allow the admission of children to the educational organization for training in educational programs of primary general education at an earlier or later age.</p>
<p>Федеральный закон от 29.12.2012 N 273-ФЗ "Об образовании в Российской Федерации" часть 3 статьи 67</p> <p>Правила приема в государственные и муниципальные образовательные</p>	<p>The Federal Law n. 273-FZ of December 29 2012 "On Education in the Russian Federation", Article 67 (3)</p> <p>Rules for admission to state and municipal educational organizations for training in basic general education programs should also</p>

<p>организации на обучение по основным общеобразовательным программам должны обеспечивать также прием в образовательную организацию граждан, имеющих право на получение общего образования соответствующего уровня и проживающих на территории, за которой закреплена указанная образовательная организация.</p>	<p>ensure admission to the educational organization of citizens entitled to receive general education at the appropriate level and residing in the territory for which this educational organization is assigned.</p>
<p>Конституция Российской Федерации, часть 3 статьи 6</p> <p>Гражданин Российской Федерации не может быть лишен своего гражданства или права изменить его.</p>	<p>The Constitution of the Russian Federation, Article 6 (3)</p> <p>A citizen of the Russian Federation may not be deprived of his or her citizenship or of the right to change it.</p>
<p>Федеральный закон от 31.05.2002 N 62-ФЗ "О гражданстве Российской Федерации", часть 2 статьи 6</p> <p>Приобретение гражданином Российской Федерации иного гражданства не влечет за собой прекращение гражданства Российской Федерации.</p>	<p>The Federal Law n.62-FZ of May 31 2002 "On the Citizenship of the Russian Federation", Article 6 (2)</p> <p>Acquisition of another citizenship by a citizen of the Russian Federation does not entail the termination of the citizenship of the Russian Federation.</p>
<p>Федеральный закон от 31.05.2002 N 62-ФЗ "О гражданстве Российской Федерации", статья 13</p> <p>1. Иностранцы граждане и лица без гражданства, достигшие возраста восемнадцати лет и обладающие дееспособностью, вправе обратиться с заявлениями о приеме в гражданство Российской Федерации в общем порядке при условии, если указанные граждане и лица:</p> <p>а) проживают на территории Российской Федерации со дня получения вида на жительство и до дня обращения с заявлениями о приеме в гражданство Российской Федерации в течение пяти лет непрерывно, за исключением случаев,</p>	<p>The Federal Law n.62-FZ of May 31 2002 "On the Citizenship of the Russian Federation", Article 13</p> <p>1. Foreign citizens and stateless persons who have attained the age of eighteen years and who have legal capacity shall be entitled to apply for admission to the citizenship of the Russian Federation in the general procedure provided that the said citizens and persons:</p> <p>a) reside in the territory of the Russian Federation from the date of receipt of the residence permit and up to the day of applying for admission to the citizenship of the Russian Federation for five years continuously, with the exception of cases provided for in part two of this article. The term of residence in the territory of the</p>

<p>предусмотренных частью второй настоящей статьи. Срок проживания на территории Российской Федерации считается непрерывным, если лицо выезжало за пределы Российской Федерации не более чем на три месяца в течение одного года. Срок проживания на территории Российской Федерации для лиц, прибывших в Российскую Федерацию до 1 июля 2002 года и не имеющих вида на жительство, исчисляется со дня регистрации по месту жительства;</p> <p>б) обязуются соблюдать Конституцию Российской Федерации и законодательство Российской Федерации;</p> <p>в) имеют законный источник средств к существованию;</p> <p>г) обратились в полномочный орган иностранного государства с заявлениями об отказе от имеющегося у них иного гражданства. Отказ от иного гражданства не требуется, если это предусмотрено международным договором Российской Федерации или настоящим Федеральным законом либо если отказ от иного гражданства невозможен в силу не зависящих от лица причин;</p> <p>д) владеют русским языком; порядок определения уровня знаний русского языка устанавливается положением о порядке рассмотрения вопросов гражданства Российской Федерации.</p> <p>2. Срок проживания на территории Российской Федерации, установленный пунктом "а" части первой настоящей статьи, сокращается до одного года при наличии хотя бы одного из следующих оснований:</p> <p>а) - в) исключены. - Федеральный закон от 11.11.2003 N 151-</p>	<p>Russian Federation shall be considered continuous if the person traveled outside the Russian Federation for not more than three months within one year. The term of residence in the territory of the Russian Federation for persons who arrived in the Russian Federation before July 1, 2002 and does not have a residence permit, is calculated from the date of registration at the place of residence;</p> <p>b) undertake to observe the Constitution of the Russian Federation and the legislation of the Russian Federation;</p> <p>c) have a legitimate source of livelihood;</p> <p>d) applied to the authorized body of the foreign state with applications to refuse from their other citizenship. Refusal of other citizenship is not required if this is provided for by an international treaty of the Russian Federation or this Federal Law, or if the refusal of other citizenship is impossible due to reasons beyond the control of the person;</p> <p>e) speak the Russian language; the procedure for determining the level of knowledge of the Russian language is established by the provision on the procedure for examining questions of citizenship of the Russian Federation.</p> <p>2. The period of residence in the territory of the Russian Federation, established by clause "a" of part one of this article, is reduced to one year if there is at least one of the following grounds:</p> <p>a) - c) are excluded. - Federal Law of 11.11.2003 N 151-FZ;</p> <p>a) the person has high achievements in science, technology and culture; possession of a person by profession or qualifications of interest to the Russian Federation;</p> <p>b) granting a person political asylum in the territory of the Russian Federation;</p>
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<p>ФЗ;</p> <p>а) наличие у лица высоких достижений в области науки, техники и культуры; обладание лицом профессией либо квалификацией, представляющими интерес для Российской Федерации;</p> <p>б) предоставление лицу политического убежища на территории Российской Федерации;</p> <p>в) признание лица беженцем в порядке, установленном федеральным законом.</p> <p>3. Лицо, имеющее особые заслуги перед Российской Федерацией, может быть принято в гражданство Российской Федерации без соблюдения условий, предусмотренных частью первой настоящей статьи.</p> <p>4. Граждане государств, входивших в состав СССР, проходящие не менее трех лет военную службу по контракту в Вооруженных Силах Российской Федерации, других войсках или воинских формированиях, вправе обратиться с заявлениями о приеме в гражданство Российской Федерации без соблюдения условий, предусмотренных пунктом "а" части первой настоящей статьи, и без представления вида на жительство.</p>	<p>с) recognition of a person as a refugee in the manner prescribed by federal law.</p> <p>3. A person having special merits before the Russian Federation may be accepted into the citizenship of the Russian Federation without observing the conditions provided for in part one of this article.</p> <p>4. Citizens of the states that were members of the USSR who have been under military service for at least three years on contract in the Armed Forces of the Russian Federation, other troops or military formations may apply for admission to the citizenship of the Russian Federation without observing the conditions stipulated in paragraph "a" of the first part of this article, and without the presentation of a residence permit.</p>
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Introduction

Republic of Slovenia is geographically located on the external border of the Schengen area, which is important in terms of the security and the aspect of monitoring migration flows that take place across its territory.

From historical perspective, migrants in Slovenia were linked to massive forced migrations as a consequence of warfare on the territory of the former Yugoslavia. In 1991, Slovenia and Croatia declared their independence forcing many individuals and large groups of people to flee and leave everything behind, as their lives were in great danger due to their ethnicity.

In the light of recent migration crisis, Slovenia was intensely monitoring the situation in the region and was in frequent contact with neighbour countries. By September 2015, more than 1500 migrants entered the country, the number was growing fast, as some countries closed their borders. To respond to high demands of accepting migrants, Slovenia built a 16-kilometer long fence on its border with Croatia, causing a severe response from the public. In months to come, we were faced with many challenges that led the country to limit the number of migrants – only those who were to continue their way towards Austria or Germany, and to impose quotas.

It is with our immense pleasure to be given the opportunity to present our national legislation in the area of migrations in this report.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Bodies/entities involved throughout the asylum granting process

Asylum seeker may express the intention to submit an asylum application to anybody, but the body responsible for the asylum procedure throughout the whole period is the Ministry of the Interior, the Department for International Protection. The police are in charge of identifying the person and determining the way of entering into the country. The police also deliver a person to an asylum centre. A state official issues a card, which also serves as a permit for a person to stay in a country.

1.2. Requirements for asylum

The Status of a Refugee is granted to a person, who has reasonable and credible evidence that he or she is endangered due to their race, religion, nationality, political beliefs or membership of a particular social group in their country of origin. The decision on the recognition of a refugee

status has upon notification an effect of a permanent residence permit in the Republic of Slovenia.³¹⁰⁶

The Subsidiary Protection is granted to a person that does not qualify for the refugee status but provides justifiable and authentic reasons that serious harm would be inflicted upon him or her, should he or she return to his or her country of origin (such as death penalty or execution, torture, or inhuman or degrading treatment). Subsidiary protection is also granted for serious and individual threats against life or freedom of the applicant due to arbitrary violence in situations of international or internal armed conflict in the country of origin. The decision on the recognition of subsidiary protection has upon notification an effect of a temporary residence permit in the Republic of Slovenia, for as long as the protection lasts.³¹⁰⁷

1.3. A general description of the procedure to grant humanitarian protection

Aliens shall as soon as possible after the entry in the Republic of Slovenia at any local or State body express an intention to file an application for international protection. Thereafter, the police investigate their identity and the way of entering the Republic of Slovenia, and deliver them to an asylum centre, where he or she is to file an application for international protection. Before filing the application, an alien is properly informed about the procedure and their rights in a language that they understand. The filing of the application also takes place in the presence of a translator or interpreter.³¹⁰⁸

After the application for international protection has been filed, the applicant is accommodated in an asylum centre, where they have the right to material reception conditions, which, in addition to accommodation, also includes food, clothing and footwear, and means of personal hygiene. The applicant can be, as necessary, also moved to appropriate institutions or to a private accommodation upon fulfilling the requirements, for which they can be in special circumstances granted financial assistance.³¹⁰⁹

The Rules on Rights of Applicants for International Protection further determine rights and obligations of applicants for international protection: the right to reside in Slovenia, the right to follow the procedure in a language that the applicant understands, the right to information, the right to material supply in case of accommodation in an asylum centre, the right to financial assistance in case of accommodation on a private address, the right to free legal assistance in procedures at the administrative and supreme court, the right to necessary healthcare, the right to education, the right of access to the labour market, the right to humanitarian aid, pocket money. Applicants for international protection³¹¹⁰ have the right to reside in the Republic of Slovenia from the day of filing their application until the final decision on their application. This right allows them to move freely on the territory of the Republic of Slovenia. Immediately after the application has been filed, a State official issues a card for applicants for international protection, which also serves as a permit to stay in the Republic of Slovenia until the enforceability of the

³¹⁰⁶ Act on International Protection, Article 2(2).

³¹⁰⁷ Ibid, Article 2(3).

³¹⁰⁸ Ibid, Article 30 and subsequent.

³¹⁰⁹ Act on International Protection, Article 30 and subsequent.

³¹¹⁰ Ibid.

decision on the international protection. With a valid card the applicant exercises his or her rights.³¹¹¹

In the course of taking a decision on the recognition of international protection at the Administrative and Supreme Court, the applicants have the right to free legal assistance, which is provided by refugee counsellors, nominated by the minister of justice. In case of a recognition of international protection, the applicant is granted the right to participation in integration measures, carried out by the Government Office for the Care and Integration of Migrants.

The application to grant humanitarian protection is filed in general.

The treatment of vulnerable persons with special needs is very generally described in the Decree on the Methods and Conditions for Ensuring the Rights of Persons with International Protection in Article 3. The ministry decides on whether the nature of specific needs calls for adjustment of the procedure, and provides the person with assistance of a relevant expert, who helps them take part in the proceedings of international protection, for example an interpreter for deaf persons.

Article 70 of the Act on International Protection determines that an appeal is possible to the administrative court: within 15 days against the decision, taken in general procedure, and within 8 days in fast procedure. The administrative court shall take decision in 30 days. According to Article 72, an appeal to the Constitutional Court is possible in 15 days since the issuance of the decision, in which an organ decides on a person's rights.

1.4. Grounds for exclusion of refugee protection

In the event of a negative decision, the alien is, in accordance with the Aliens Act, handed over to the police and the Aliens Centre in Postojna, which carries out the procedure of return to their country of origin.³¹¹²

Status of a refugee is, according to Paragraph 1 of Article 31 of the Act on International Protection, not granted: (i) to an applicant, who is already protected by an organ or an agency of the UN, except if it had ceased for any reason, (ii) in case of sufficient grounds to believe that an applicant committed a crime against peace, war crime or crime against humanity, (iii) in case of sufficient grounds to believe that an applicant had prior to entering the Republic of Slovenia committed a grave crime of non-political nature in another country, (iv) in case of sufficient grounds to believe that he or she committed acts that contravene the principles of the UN, (v) in case of sufficient grounds for handling an applicant as dangerous for the safety of the Republic of Slovenia, (vi) after the final judgment for a grave crime an applicant presents danger to the Republic of Slovenia.

1.5. Grounds for revocation of asylum status

Status of subsidiary protection is, according to Paragraph 2 of Article 31, not granted to an applicant, for whom there exist sufficient grounds to believe: (i) that he or she committed a crime against peace, war crime or crime against humanity, as defined in international documents,

³¹¹¹ Ibid.

³¹¹² Act on International Protection, Article 30 and subsequent.

(ii) that he or she committed a grave crime, (iii) that he or she committed crimes that contravene the principles of the UN, (iv) after the final judgment for a grave crime an applicant presents danger to the Republic of Slovenia.

Article 67 determines the conditions, under which the protection ceases: (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 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.

1.6. Return and expulsion of an alien

The Aliens Act generally determines the conditions for return and expulsion of an alien in Article 64 in cases of an illegal residency. According to Article 69, an alien is removed from the Republic of Slovenia by virtue of a decision on return, and is carried out by the police, who escorts them to the State border.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Definition of a migrant and description of general immigration process

An alien is, according to Aliens Act, every person that does not have citizenship of the Republic of Slovenia. Normally, an alien needs a valid identification document, if she or he wishes to enter through a Slovenian border – especially on the border with Croatia, which is an external border of the EU. Entry can be denied based on the Schengen Borders Code.

Article 5 determines that the government of the Republic of Slovenia has the power to decide quotas, how many residence permits can be issued each year for both citizens of EU and non-EU member States. The entry to the territory of the Republic of Slovenia at the outer border is permitted only at the determined border passages.³¹¹³ Within the inner borders of the EU, the passage is permitted with no border control. In case of bigger flows of immigrants, the government can act within its power determined in the newly adopted Articles 10a and 10b, described above. Citizens of non-EU member states that are going to reside in the Republic of Slovenia for 90 days and up to one year, need a visa for the time of the expected residency.³¹¹⁴ The visa for long-term residency can be issued to family members of the EU citizens and Slovenian citizens as a family reunion, to diplomats, to students and higher education professors, if there is commercial or cultural interest of the Republic of Slovenia, to athletes and coaches, to

³¹¹³ Article 6 of the Aliens Act.

³¹¹⁴ Article 19 *ibid.*

foreign reporters, and to priests and establishers of charity and humanitarian organisations.³¹¹⁵
The application is to be submitted by an alien maximum 3 months before the arrival.³¹¹⁶

2.2. Right to admission

The entry to the territory of the Republic of Slovenia at the outer border is permitted only at the determined border passages. Within the inner borders of the EU, the passage is permitted with no border control. In case of bigger flows of immigrants, the government can act within its power determined in the newly adopted Articles 10a and 10b, described above. Citizens of non-EU member States that are going to reside in the Republic of Slovenia for 90 days and up to one year, need a visa for the time of the expected residency. The visa for long-term residency can be issued to family members of the EU citizens and Slovenian citizens as a family reunion, to diplomats, to students and higher education professors, if there is commercial or cultural interest of the Republic of Slovenia, to athletes and coaches, to foreign reporters, and to priests and establishers of charity and humanitarian organisations. The application is to be submitted by an alien maximum 3 months before the arrival.

Articles 47a and 47b determine the right of family reunion of migrants that enjoy international protection in a form of asylum or subsidiary protection, given that they existed as a family already before the entry of a refugee on the territory of the Republic of Slovenia.

The above provisions are similarly used for citizens of EU member States. However, Article 118 tells that those persons need neither visa nor residence permit to enter and live in the Republic of Slovenia. They are on the other hand required to report their residency in the Republic of Slovenia, if they live on the territory for 90 days or more for the purpose of work, study, family reunion etc.³¹¹⁷ After 5 years, a person can be granted an unlimited permanent residence permit.³¹¹⁸

There are no specific rights defined in the act that legal residents would enjoy, hence they enjoy the same rights as citizens of the Republic of Slovenia and can move freely in and out of the country.

The Ministry of Interior financially supports the process of integration of aliens that are not EU citizens. Under Article 106 of the Aliens Act, they have the right to include in the programmes that enable them quick integration in cultural, commercial and social life in the Republic of Slovenia. Those include: learning the Slovene language (for free), getting familiar with the Slovenian history, culture and constitutional order, programmes of interactions with the Slovenes and information on their integration into the society.

2.3. Right to remain – grounds for exclusion of migration status

Under Paragraph 1, Article 57 of the Aliens Act, a temporary residence permit shall cease if: its validity expires or, if it is revoked, the alien is resigned, an alien in the Republic of Slovenia has

³¹¹⁵ Article 20 *ibid.*

³¹¹⁶ Article 22 of the Aliens Act.

³¹¹⁷ Article 119 *ibid.*

³¹¹⁸ Article 126 *ibid.*

been pronounced a final secondary sanction for the expulsion of an alien from the State, or if an alien has been expelled as a legal consequence of conviction under the provisions of the Penal Code (Official Gazette of the Republic of Slovenia, No. 55/08 and 50/12), or if the alien is the second an EU member State pronounced a final decision on expulsion, which would result in it being removed from the Republic of Slovenia, the alien renounces the permit, as from the date of the statement on the renunciation of the temporary residence permit, foreigner acquires citizenship of the Republic of Slovenia, the alien obtains a permanent residence permit, an extension of the temporary residence permit is issued to an alien prior to expiry of the license, issue a further temporary residence permit or certificate of registration of residence, an alien dies. Paragraph 2 declares that in addition to the grounds referred to in the preceding paragraph, the EU Blue Card and the temporary residence permit of a family member of the EU Blue Card holder shall cease to be valid if an alien in another EU member State acquires an EU Blue Card or a temporary residence permit for a family member of the EU Blue Card holder.

Under paragraph 3, a permanent residence permit shall cease to be valid if: the license has been revoked, the alien is resigned, an alien in the Republic of Slovenia has been pronounced a final secondary sanction for the expulsion of an alien from the State, or if an alien has been expelled as a legal consequence of conviction under the provisions of the Penal Code (Official Gazette of the Republic of Slovenia, No. 55/08 and 50/12), or if the alien is the second an EU member State pronounced a final decision on expulsion, which would result in it being removed from the Republic of Slovenia, the alien renounces the permit, as from the date of the statement of renunciation of the permit for permanent residence, foreigner acquires citizenship of the Republic of Slovenia, the alien is emigrating or if he remains outside the territory of the EU member States for a continuous period of one year or longer, unless he is sent for work, study or treatment, the alien is emigrating or staying outside the territory of the Republic of Slovenia for a continuous period of six years or more, with occasional, short-term returns to the Republic of Slovenia for a period of up to 90 days, not interrupting that period, an alien in another EU member State obtains a long-term resident status, an alien dies.

Paragraph 4 states that the EU Blue Card holder's permanent residence permit or the permanent residence permit issued to the family member of the EU Blue Card holder shall cease to be valid for all reasons referred to in the preceding paragraph, and in the case of the sixth indent of the preceding paragraph only if the alien is out of work or if he remains outside territory of the EU member States for two years or more.

Under Paragraph 5, a permanent residence permit issued to a refugee's family member shall cease to have effect if the refugee is terminated or is deprived of his status and for the reasons set forth in paragraph 3 of this Article, unless the refugee acquires the nationality of the Republic of Slovenia or dies.

2.4. Right to leave

In general, migrants can move freely given that they have legal residency in the Republic of Slovenia. However, there are certain requirements with regard to the length of their continuous stay, for example if they want to apply for citizenship (discussed below).

All aliens shall abide by the Slovenian Constitution, all laws in the Republic of Slovenia, and measures of State organs.³¹¹⁹

All aliens shall move freely within the inner borders of the Republic of Slovenia and EU, and only at the internationally recognised borders for going outside of the EU, for which they need to carry a passport or ID.³¹²⁰

2.5. Regulation of deportation and/or exclusion of migrants

Article 138 of the Aliens Act determines that, when an EU citizen or a family member, who refuses to leave Slovenia voluntarily, shall be deported from the country. Namely, when he or she has been convicted by the final secondary sanction of expulsion from the country, or if the alien is ordered expulsion as a legal consequence of a conviction under the provisions of the Penal Code; when their residence permit has been cancelled; when their residence permit is not granted or expired.

Cases of removal on the basis of illegal residency of an alien from the territory of the Republic of Slovenia are described in the section above (question 1).

2.6. Differences between EU nationals and non-EU nationals

The above provisions are similarly used for citizens of EU member States. However, Article 118 tells that those persons need neither visa nor residence permit to enter and live in the Republic of Slovenia. They are on the other hand required to report their residency in the Republic of Slovenia, if they live on the territory for 90 days or more for the purpose of work, study, family reunion etc.³¹²¹ After 5 years, a person can be granted an unlimited permanent residence permit.³¹²²

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The main authorities dealing with immigrants in the Republic of Slovenia are the Ministry of the Interior, Police and Government Office for the Care and Integration of Migrants.

The Government Office for the Care and Integration of Migrants was established by a decree, which was issued by the Government of the Republic of Slovenia. Within the scope of its competences, the aim of the Office is to monitor immigration and refugee issues, provide initiatives and proposals regarding accommodation and care as well as to ensure the financial, organizational, personnel and administrative-technical functioning of the Office.

³¹¹⁹ Article 4 of the Aliens Act.

³¹²⁰ Article 6 and 7 of the Aliens Act.

³¹²¹ Article 119 of the Aliens Act.

³¹²² Article 126 *ibid*.

The Police were established with the Police Act (the Act was later annulled and replaced by Police Tasks and Powers Act in January 2013). The aim of the Slovenian police is to ensure a constant and long-lasting effective safety of people in the Republic of Slovenia and to make people feel safe.

The Police are entrusted with conducting State border control, managing irregular migration and foreigner affairs. Police tasks are as follows: control of cross-border movement, State border protection, investigation of criminal offences and violations taking place at the State border and investigation of border incidents, prevention of irregular migration, performance of operational tasks related to immigrant/foreigner legislation, decisions related to crossing of the State border and coordination of activities of the Centre for Foreigners (migrant detention centre).

Control of the national border, of which one section also constitutes the external Schengen border, is carried out by police officers in line with the European and national regulations. In addition to the national legislation, Slovenia also has the duty to comply with international obligations arising from the Schengen Agreement and bilateral interstate agreements. For the execution of these tasks Slovenian police have been properly trained and equipped in accordance with the Schengen standards.³¹²³

The main task of the Office for the Care and Integration of Migrants is taking care of the accommodation and care of foreigners who are allowed to stay in Slovenia, displaced persons, persons with temporary protection, applicants for the international protection and persons with international protections. The Office also takes care of the integration of certain groups of migrants, covering all aspects of migrant integration into the society: housing, health care, integration into educational and work processes. An important task of the Office is also the organisation and management of capacities (asylum homes, integration houses and accommodation centres) for the accommodation and care of persons granted temporary protection, displaced persons, foreigners who are allowed to stay in Slovenia, applicants for international protection and persons with recognised international protections. The Office monitors immigration and refugee issues, provides initiatives and proposals on the organisation of accommodation and care and ensures the financial, organisational and administrative-technical functioning of the Office.

The Ministry of the Interior carries out tasks in the following fields of work: administrative internal affairs, area of migration and integration of aliens, tasks in the field of police and other security tasks, tasks of the Police as well as tasks of the Inspectorate of the Republic of Slovenia for the Interior.

The Slovenian police is a body within the Ministry of the Interior. The police perform their tasks at three levels: state, regional and local level. The police headquarters are in Ljubljana and are organised in three levels: general police management, police management and police stations.

Office for the Care and Integration of Migrants was established as a separate government service stemmed from the need for targeted and supervised action in the field of care for migrants

³¹²³Police Activities in connection with Current Migration Flows – available information, Tasks and duties of Slovenia's police related to illegal migrants (FAQs), <<http://www.policija.si/eng/index.php/component/content/article/13-news/1729-a-new-webpage-on-police-activities-re-current-migration-flows-set-up-available-informations>>, accessed 20 June 2017 [English].

entering the territory of the Republic of Slovenia. The office is run by a Director of the Office, who is responsible to the Secretary General of the Government.

The Government Office for the Care and Integration of Migrants is funded from the state budget. The estimated total financial plan of the Office for 2017 thus amounts to EUR 4,315,768.47, estimated for the period from the beginning of the Office's activities (1 June 2017).³¹²⁴

The Police and the Ministry for Interior are also funded from the state budget.

The Police is under full, systematic and planned supervision performed by the Ministry of Interior. The supervision shall determine the legality, professionalism and respect for human rights and fundamental freedoms in the exercise of police powers, the performance of the tasks of the police and the implementation of the minister's policies. Supervision can be carried out directly by inspecting documents or other material in police units, talking to police officers, other police officers or individuals, and by directly observing the performance of tasks at a particular site. Upon completion of the surveillance, a report on the findings, which may also contain proposals for the elimination of the identified deficiencies, shall be made.

Complaints against police officers are solved on two levels: in a conciliation procedure with the heads of the organisational units of the police or before the Senate of the Ministry for Interior.

In a conciliation procedure, the appeal is dealt with in a police unit whereby the act or omission of a police officer's act in violating the police orders occurred.

The senate is assembled by a three-member panel composed of a Minister's authorised representative (appointed by a Minister's decision) and two representatives of the public. A representative of the public shall be appointed by the Minister of Interior on the proposal of local communities or civil society organisations, professional public and non-governmental organisations.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

On the 25th of May 2017 there were 259 applicants for international protection in the Republic of Slovenia, residing in:

- Asylum Home – 147
- Branch office of Kotnikova – 51
- Branch office of Logatec – 18
- Student dormitory of Nova Gorica – 3
- Student dormitory of Postojna – 7
- Crisis centres for young people – 2
- Centre for aliens Veliki Otok – 4
- Displaced – 27

³¹²⁴ Urad za oskrbo in integracijo migrantov ustanovljen, <<http://www.sloga-platform.org/urad-za-oskrbo-in-integracijo-migrantov-ustanovljen/>>, accessed 15 June 2017 [Slovenian].

Slovenian Ministry of Justice.³¹³³ The main purpose was to establish a more efficient mechanism and better transparency in implementing the ECtHR judgments, and consequently a better protection of human rights, fundamental freedoms and the rule of law in Slovenia. It will require a better cooperation between State organs and is a big step forward.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

Conclusions on Slovenia³¹³⁴ (adopted on 23 June 2017) do not provide any information regarding the implementation of the ECRI recommendations from 2014.

In its third report³¹³⁵, ECRI strongly recommended that the Slovenian authorities ratify the Convention on the Participation of Foreigners in Public Life at Local Level and furthermore recommended ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

In Fourth report³¹³⁶ on Slovenia ECRI reiterated its recommendation that the Slovenian authorities sign and ratify 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.

In Fourth report on Slovenia, ECRI reiterated its recommendation that the Slovenian authorities: ensure that free legal aid is available to asylum seekers from the outset of the asylum proceedings, reinstate the full financial support for asylum seekers living outside the Asylum Home in private accommodation, take steps to speed up the asylum procedure, improve the treatment and accommodation of unaccompanied minors and ensure that good quality interpretation is provided in all cases where it is required by asylum seekers and that all persons residing lawfully in Slovenia, regardless of their citizenship, and including persons granted international protection, have access to social housing.

³¹³³Prvi koraki k sistemskemu izvrševanju sodb Evropskega sodišča za človekove pravice, <<http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/prvi-koraki-k-sistemskemu-izvrsevanju-sodb-evropskega-sodisce-za-clovekove-pravice/?cHash=5084def78a360e8bb62ec18244b6afa4>>, accessed 20 June 2017 [Slovenian].

³¹³⁴ ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF SLOVENIA SUBJECT TO INTERIM FOLLOW-UP <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovenia/SVN-IFU-IV-2017-039-ENG.pdf>>, accessed 30 September 2017 [English]

³¹³⁵ Third report on Slovenia <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovenia/SVN-CbC-III-2007-005-ENG.pdf>>, accessed 25 September 2017 [English]

³¹³⁶ ECRI report on Slovenia <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovenia/SVN-CbC-IV-2014-038-ENG.pdf>>, accessed 25 September 2017 [English]

The **Government Communication Office**³¹³⁷ conducts awareness activities for tolerance and communication of refugee issues. It designs communication models for various possible scenarios, participates in the preparation of key messages and the coordination of public relations advisors and a list of key speakers by sector, provides support to the operational group of government, monitors developments in the EU and documents related to communicating these topics through an informal group for crisis communication with the EU Presidency.

In addition, non-governmental organizations are providing different trainings on different topics connected to migrations, mutual tolerance and dialogue.

Ecological Cultural Society for a Better World organised workshops "It hurts the world, it hurts me too!" to contribute to the co-creation and promotion of an open society capable of social solidarity, mutual tolerance and intercultural dialogue. The Peace Institute conducted a series of workshops on hate speech, media and migration in secondary schools. Project Through the eyes of the refugee, carried out by the Society Humanitas, provided the experience of the uncertain and too often tragic journey of refugees for school children. The Terra Verra Society organized workshops for furniture design within the framework of the "Youth Refugee Project". Slovenian Philanthropy, in cooperation with organisation Key conducted two workshops on human trafficking for unaccompanied minors.³¹³⁸

The Human Rights Ombudsman of the Republic of Slovenia³¹³⁹ is a **constitutional category** that does not fall under the executive, judicial or legislative branch of authority. The Ombudsman is therefore not part of any mechanism of authority, but rather **acts as an overseer of authority** since as an institution it restricts its capricious encroachment of human rights and fundamental freedoms.

The Ombudsman is in his work not only limited to handling complaints on direct violations of human rights and freedoms defined in the constitution, moreover, it may act in any case whatsoever dealing with a **violation of any right of an individual arising from a holder of authority**.

He can also intervene in the case of unfair and poor state administration in relation to the individual. If the aforementioned is considered, it can have a significant **impact on the development and increase in legal and administrative culture** between holders of authority and the individual.

Human rights ombudsman is autonomous and independent agency in relation towards the State bodies.

In accordance with the law, the Human Rights Ombudsman regulates its organisation and work in rules and regulations and other general enactments. In the rules and regulations, the ombudsman has provided that a service of the Human Rights Ombudsman is organised within

³¹³⁷ Aktualni projekti, Urad Vlade za komuniciranje, Republika Slovenija <http://www.ukom.gov.si/si/komunikacijski_projekti/aktualni_projekti/>, accessed 30 September 2017 [Slovenian]

³¹³⁸ Arhiv projektov, Urad Vlade za komuniciranje, Republika Slovenija <http://www.ukom.gov.si/si/komunikacijski_projekti/arhiv_projektov/>, accessed 30 September 2017 [Slovenian]

³¹³⁹ O inštituciji Varuha človekovih pravic, Varuh človekovih pravic, Republika Slovenija <<http://www.varuh-rs.si/o-instituciji/o-instituciji-varuha-clovekovih-pravic-rs/>>, accessed 30 September 2017 [Slovenian]

the Office of the Human Rights Ombudsman, which is headed by the general secretary of the ombudsman.

Recommendations³¹⁴⁰ made by the Ombudsman described below were applicable in the time of the refugee crisis. Slovenia is no longer on the main migration route, there are currently 259 asylum seekers in Slovenia and almost all of them are in asylum homes.

Following different activities by the Ombudsman, several changes were introduced in Slovenia regarding entry of refugees/migrants; one new entry point and two exit points to the Republic of Austria were established, which enabled better organisation. Situation for refugees/migrants improved as centres had been heated, mobile sanitary containers, beds, blankets provided. In addition, hot meals, the possibility of replacing clothing and footwear, health care was provided. Cooperation between representatives of police and non-governmental organisations was improved, which offered, among other things, assistance in merging families. There was also a change in the fact that the entry centre was led by police representatives, and the exit centre was representatives of the Civil Protection, which greatly facilitated the organisation's work. In the framework of international cooperation, Slovenian police officers received help by police officers from other European countries (e.g. the Czech Republic, Hungary).

7. How is migrants' right to access to healthcare regulated within the national legislation?

Slovenian legislation divides persons with access to healthcare into two categories: migrants and persons asking for asylum or international protection.

With regard to migrants, subject to the new Aliens Act, access to healthcare depends on whether they have health insurance or not. Slovenian health care system determines two sorts of health insurances; compulsory and complementary, where the latter provides for additional coverage. Compulsory health insurance is subject to The Law of Healthcare and Health Insurance, while complementary is subject to both The Law of Healthcare and Health Insurance and The Law of Insurance. According to Article 15 of The Law of Healthcare and Health Insurance, the insured people are, among others, persons who are employed in the Republic of Slovenia, persons with permanent residency in Slovenia, recipients of financial assistance under the regulations on the protection of combatants, if they are not insured in any other State, and also citizens of the Republic of Slovenia and foreigners with permanent residence permits under the law that regulates the exercise of rights from public funds, granted the right to payment of contributions for compulsory insurance. If you want to be insured but are not employed or do not meet other requirements, you can also pay it by yourself. In all those cases, you have health insurance and you are entitled to healthcare treatment under the same conditions as other Slovenians.

³¹⁴⁰ Pri vključevanju begunskih otrok v lokalno okolje še veliko izzivov, Varuh človekovih pravic, Republika Slovenija <<http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/pri-vkljucevanju-begunskih-otrok-v-lokalno-okolje-se-veliko-izzivov/?cHash=81ed78324859fd8bf5e1c54b388aff30>>, accessed 30 September 2017 [Slovenian]

Additionally, together with the insured person, an employee's health insurance covers also family members.

For migrants seeking asylum or international protection, the right to access to healthcare in Slovenia is regulated with the International Protection Act. According to Article 86, applicants have the right to urgent treatment, which includes emergency medical treatment and emergency transportation, should the doctor decide so. According to that article, applicants also have the right to emergency dental assistance. Furthermore, they have the right to emergency medical treatment, which includes: preservation of vital functions, stopping major bleeding or prevent bleeding, prevent sudden deterioration of health, which could result in permanent damage to individual organs or vital functions, the treatment of shock, services for chronic diseases and conditions, the omission of which would directly and in a short time lead to disability and other permanent injuries or death, the treatment of febrile conditions and prevention of the spread of infection that could lead to a septic state, the treatment and prevention of poisoning, the treatment of bone fractures, sprains and other injuries, where emergency medical assistance is needed, substances with positive and intermediate sheets, in accordance with the list of interchangeable drugs that have a prescription for the treatment of those diseases and conditions. Health care for persons with recognised international protection is determined in Article 98 of International Protection Act. These persons have health insurance based on recognised international protection, if they are not insured on any other basis. Children that were granted international protection are entitled to health care to the same extent and subject to the same conditions as children that have a compulsory health insurance as family members. Same goes for children who attend school after age of 18, but only by the end of education or if they reach the age of 26 first.

Irregularly residing migrants do not themselves have access to free health services. The rule of equality with Slovenian citizens is not applicable to them, except for children who are entitled to free health services based on United Nations Convention on the Rights of the Child. They are also usually not secured, as they can not be if they are not employed, unless they have tourist insurance. In accordance with Article 24 of the United Nations Convention on the Rights of the Child and Article 12 of the United Nations Convention on the elimination of all forms of discrimination women should have the right to free pregnancies postpartum care and nursing during childbirth, while children are the same access to healthcare as citizens, including with vaccination.

Information on these services are provided by the Ministry of Healthcare and are available at the Asylum Centre of the Republic of Slovenia and at the Centre for Foreigners.

The healthcare of the asylum seeker shall comprise: the right to emergency medical assistance and emergency salvage transport following a doctor's decision and the right to emergency dental care; the right to emergency treatment following the decision of a treating physician, comprising: preserving vital functions, stopping major bleeding or preventing bleeding; the prevention of a sudden deterioration of the state of health which could lead to permanent damage to individual organs or life functions; treatment of shock; services in chronic diseases and conditions, the abandonment of which would lead, directly and in a shorter time, to disability, other permanent

health defects or death; treating haemorrhagic conditions and preventing the spread of an infection that could lead to septicaemia; treatment or prevention of poisoning; treatment of fractures of bones or wounds and other injuries in which medical intervention is necessary; medicinal products with positive lists prescribed by prescription for the treatment of those diseases and conditions; the right to health care for women: contraceptives, termination of pregnancy, medical care in pregnancy and childbirth.³¹⁴¹

If they have a basic health insurance, then they enjoy the same services as Slovenian citizens with basic health insurance. If they also have complementary insurance, then they enjoy the same access as Slovenian citizens, who have complementary insurance.

Article 86 of International Protection Act determines special healthcare rights for women, where contraception, abortion, health care during pregnancy and childbirth are included. If a person is vulnerable or has special needs, and under special circumstances also other applicants, he or she has the right to additional health services, where psychotherapeutic assistance, if it is approved and established by the Commission from the fourth paragraph of the said article, is included.

Minor applicants and applicants as unaccompanied minors are entitled to health to the same extent as children who have a compulsory health insurance as family members. Children, attending school after the age of 18, are entitled to health care in the same extent. They are entitled to health care up until they finish school, but only up to the age of 26.

In Slovenia, discrimination is prohibited by the Constitution. According to Article 14, every person has the same rights regardless of nationality, colour of skin, gender, etc. If discrimination occurs, Slovenia has a special body Human Rights Ombudsman, the Advocate of the Principle of Equality and Protection Against Discrimination Act.

The Ombudsman's influence is informal. It is an office without any responsibility for authoritative decision-making; therefore, its power rests on cooperation with the public. The Ombudsman does not use the argument of power, but the power of argument. These arguments, however, are presented through various methods of communication with the public. The employees in the Ombudsman's Office make it a priority to establish relations with various stakeholders. The Ombudsman's basic task is to address initiatives; therefore, initiators are among the most important target stakeholders.

When addressing initiatives and resolving systemic difficulties encountered during this exercise, the Ombudsman enters into relations with national bodies, local government bodies, and public authorities.

Civil society can serve as the Ombudsman's source of information on violations and/or a partner in proactive campaigns. It is also a source of potential initiators and therefore it is the central point to which awareness-raising and empowerment campaigns are directed.

Mass media are also a source of information that the Ombudsman's office can use for its own initiatives; because both mass media and the Ombudsman are engaged in monitoring the activities of public authorities, the media are a greatly appreciated partner in awareness-raising. In

³¹⁴¹ Article 24 of the Rules on the modalities and conditions for ensuring the rights of asylum seekers and aliens who have been granted a special form of protection

performing this role, the mass media hold up a mirror to the Ombudsman; however, they themselves are also potential violators of individuals' rights, particularly the right to privacy.

In cooperation with similar foreign institutions and international and intergovernmental organisations, the Ombudsman acquires information and know-how in protecting human rights and liberties, and transfers this know-how and experience to other stakeholders.³¹⁴²

The Advocate of the Principle of Equality³¹⁴³ is the Slovenian national Equality body and independent and autonomous state institution with a mandate to prevent and eliminate discrimination. Its main tasks are related to awareness raising and promotion of equality, support and assistance to victims of discrimination as well as non-binding decision-making with recommendation issuing regarding the reported cases of discrimination on various grounds. The Advocate of the Principle of Equality was established as an independent and autonomous national equality body in 2016 with the Protection against Discrimination Act. The new Advocate of the Principle of Equality (Head of equality body) was elected in October 2016, by the national parliament, upon the proposal of the President of the Republic, on the basis of the Protection against Discrimination Act.

Until 2016, the Advocate used to be a special post, not a legal entity and is nominated by the Government for a fixed period of 5 years. The Advocate's position and mandate is regulated by the Act. The Advocate first operated within the Office for Equal Opportunities (hereby and after OEO) which was established in February 2001 by the decision of the government (internal organisational act) as a successor of the former Office for Women's Policy (originally established in July 1992). OEO's duties were predominantly concerned with policy making in gender mainstreaming. OEO was abolished in April 2012 and its task are now performed by the Ministry of Labour, Family, Social Affairs and Equal Opportunities.³¹⁴⁴

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

The foundations for the right to education of migrant children were set up in 2007, when the Strategy for the Integration of Children, Students and Students of Migrants into the System of Education in the Republic of Slovenia was adopted, previously with the Roma Education and Training Strategy in the Republic of Slovenia (2004 and later with the Guidelines for the Education of Children of Foreigners in Kindergartens and Schools (2009), supplemented as the Guidelines for the Integration of Children of Immigrants in Kindergartens and Schools (2012) and the Code of Intercultural Dialogue for Adult Education (2010).³¹⁴⁵

³¹⁴² Human Rights Ombudsman, <<http://www.varuh-rs.si/index.php?id=1&L=6>>, accessed 13 August [English].

³¹⁴³ SLOVENIA: THE ADVOCATE OF THE PRINCIPLE OF EQUALITY , <<http://www.equineteurope.org/Advocate-of-the-Principle-of>>, accessed 15 September 2017 [English].

³¹⁴⁴ SLOVENIA: THE ADVOCATE OF THE PRINCIPLE OF EQUALITY , <<http://www.equineteurope.org/Advocate-of-the-Principle-of>>, accessed 15 September 2017 [English].

³¹⁴⁵ Republika Slovenija, Ministrstvo za izobraževanje, znanost in šport, VKLJUČEVANJE OTROK PRISELJENCEV V SLOVENSKI VZGOJNO-IZOBRAŽEVALNI SISTEM,

The strategy for involving children, pupils and students of migrants in the system of education in Slovenia, states that according to the provisions of the law on education, the children of foreign nationals residing in the Republic of Slovenia have the right to enrol in elementary and secondary schools under the same conditions as children of Slovenian citizens. Citizens of other EU Member States, Slovenes without Slovenian citizenship and refugees can be educated under the same conditions as Slovenian citizens, while other foreign nationals are on the principle of reciprocity (on the basis of international agreements, the Minister of Education determines the number of enrolment places for these students). In the law on kindergartens, children of foreign nationals are not specifically mentioned, but the law states that pre-school education is conducted according to the principles of equal opportunities for children and parents, taking into account the differences between children and the right to choose and different.

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. Nevertheless, in accordance with Article 28 of the United Nations Convention on the Rights of the Child free primary education should be guaranteed to all children.

Migrant pupils are entitled to be given information about different options and programmes, offered by Slovenian secondary education during their primary education or at the time of following their further education.

Their school curriculum is the same as for other national children, but they are given additional lessons in Slovenian language. In certain cases, they are allowed to listen to lessons in their mother tongue.

Within the framework of the guidelines and ideas for kindergartens, the concern for learning the Slovene language is envisaged, but without a detailed breakdown as it is written for primary / secondary schools and boarding schools. Consequently, additional technical assistance for teaching Slovene is provided only for schooling children.

The Ministry of Education, Science and Sport, provides the schools that have included migrant pupils in the first and second year of schooling with hours of additional professional help in learning Slovene. The current legislation (Article 81 of the Law on Organisation and Financing of Education and Training) provides a normative basis for the provision of funds from the state budget, both for the study of Slovene as well as for the teaching of the mother tongue for immigrant students and pupils involved in regular primary and secondary education.

Additional professional assistance is provided to immigrant pupils who are studying in the Republic of Slovenia for the first year, but since the school year 2010/2011 this kind of assistance is provided also to immigrant pupils in the second year of schooling. On the basis of the applications received from the schools for the approval of the hours for immigrant pupils, it is evident that in the first year about one thousand children are enrolled and in the second year of education there are 500 to 800 immigrant children with a trend of increasing this number.

<http://www.mizs.gov.si/si/vkljucevanje_priseljencev_v_sistem_vzgoje_in_izobrazevanja/splosno/>, accessed 29 June 2017 [Slovenian].

By providing means for learning Slovene, the Ministry also enables and supports the implementation of the teaching of mother tongues and cultures. For several years, some elementary schools for immigrant pupils have been teaching classes in Albanian, Bosnian, Finnish, Croatian, Macedonian, German, Dutch, Serbian, Russian and Ukrainian.

In 2008, the Rules on the Assessment of Knowledge and the Advancement of Primary School Students included a provision that allowed the possibility of adjusting the assessment for immigrant pupils. In accordance with the Rules on the Assessment of Knowledge and the Advancement of Primary School Students, students and pupils who are foreign citizens or stateless persons residing in the Republic of Slovenia may, in agreement with their parents, adapt the methods and deadlines for assessing knowledge, the number of grades and other. Knowledge of an immigrant pupil can be assessed according to his progress in achieving the objectives or standards of knowledge defined in the curriculum. Adjustments are decided by the teacher assembly. Adjustments for assessing knowledge take up to two school years. Pupils immigrants from other countries may not be assessed from individual subjects at the end of the school year in which they are enrolled in primary school in the Republic of Slovenia for the first time, and progress to the next grade. The teacher council chooses on the proposal of the teacher.

Pupils migrants from other countries whose mother tongue is not Slovene and are first to be enrolled in elementary school in the Republic of Slovenia in grades 6 and 9, carry out national checking of knowledge on a voluntary basis during the school year. The Rules on Norms and Standards for the Implementation of Educational Programs and Educational Programs in the Field of Secondary Education stipulate in Article 16 the obligation to organise a Slovenian language course for students who, due to ignorance or lack of knowledge of Slovene, need language and help with the language, taking into account professional assessments by the teacher on the level of their knowledge and understanding of the Slovene language. The criteria for forming groups is the number of students enrolled in the previous paragraph of this article and the expert's assessment of the level of their knowledge and understanding of the Slovenian language: up to 6 students, regardless of their language skills: mixed group - intensive 35-hours course; 7 to 12 students, regardless of their language skills: mixed group – 70-hours course; up to 16 students with the same (pre) knowledge of the language: homogeneous group – 70-hours course.

For pupils, the school organizes a course only for the first two years of their education in the Republic of Slovenia.

Concerning the discrimination of migrant children, Slovenia is bound by the Directive Implementing the Principle of Equal Treatment of Persons Irrespective of Racial or Ethnic Origin (2000/43 / EC), which establishes guidelines for combating discrimination based on racial or ethnic origin in various fields, including in education.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Slovenian law follows the ratified Convention on the Recognition of Qualifications concerning Higher Education in the Europe Region. Hence, Slovenia has established a body for the evaluation of education, called ENIC-NARIC centre, the jurisdiction of which is determined by the Recognition and Evaluation of Education Act.

In Slovenia, we have two different types of recognition; one is for different matters, and the other for continuing education in Slovenia.

According to Article 14 of the Recognition and Evaluation of Education Act, the second procedure starts with a submission of claim on the prescribed form. The form needs to be submitted to the educational institutions in the Republic of Slovenia, where the applicant wants to continue their education. Minister for Higher Education prescribes, which documents need to be submitted in addition to the prescribed form. In case there is doubt about the authenticity of the list of education, a verification from the original issuer or other competent authority of the country of origin of the certificate or diploma will be asked. During the procedure, also comparison of the criteria set out in Article 16 of this law verifies the placement of foreign education in the country of origin and determine eligibility for access to the desired educational program. In case where only a part of the education was completed, only this part will be inspected for the recognition for the purpose of continuing education in Slovenia. The educational institution shall issue a decision and hand it to the applicant within two months from the date that complete application was received. In case when foreign education was completed but substantial differences in the scope and level of completed educational program compared with the Slovenian educational program are shown, the applicant can get the opportunity to continue his/her education, as he would get recognition of a partly completed education.

The other procedure is an assessment of education. According to Article 7 of the Recognition and Evaluation of Education Act, ENIC-NARIC body will issue an opinion on the education if an application by an applicant has been submitted. Opinion shall be issued within two months from receiving the complete application or upon the expiry of the time limit for the supplementation of the document according to the second paragraph of this Article. Where the assessment of education referred to in the third or fourth paragraph of Article 5 is required to be made (i.e. education that is attested through the certificate of fully completed education at the tertiary education level shall not be subject to education assessment, if such education lasts less than one semester or half year, or is assessed with less than 30 credits according to the European Credit Transfer System (ECTS), or if education attested through supporting documents of completed language, computer and other courses, professional examinations, vocational qualifications and other vocational and professional training shall not be subject to education assessment), or in a case not involving education that is to be attested through a certificate of a

fully completed education, the ENIC-NARIC centre shall return the documentation and notify the applicant that such education is not the subject to assessment under this act.

In case where the request relates to the assessment of education to be attested through a certificate of education that had already been the subject of assessment, the ENIC-NARIC centre shall return the documentation and send a notification informing the applicant that the education is not the subject of assessment unless the applicant submits new information in the meaning of the third (information on the status of education institution and education program), fourth (information on education attained, field or discipline of education, and its level in the country of origin), fifth (information on the obtained name, title or designated level of education or education program in the country of origin) and sixth (information on the rights obtained on the basis of education in the country of origin) indents of Article 8 of this Act. All documents in the procedure for the assessment of education, including the opinion issued, will be sent to the applicant by registered mail with the notice of receipt. In case where it is established that the opinion contains an obvious error in writing or numbers, the ENIC-NARIC centre shall, *ex officio* or at the proposal of an applicant, rectify the error on its own by issuing a corrected, new opinion, which shall replace the preceding one.

ENIC-NARIS centre is a body for the evaluation of education, when an obvious error is made in writing or numbers, the ENIC-NARIC centre shall also replace the mistaken document. Educational institution is obligated to accept the submitted form and provide a decision within 2 months. Minister for Higher Education determines which documents need to be submitted with an application.

According to Article 18 the ministries responsible for primary, secondary, tertiary and higher education to provide expert support to ENIC-NARIC centre and educational institutions in the exercise of its functions under this Act.

Slovenia does not predict any special procedures for refugees/asylum seekers or other vulnerable migrants.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Migrants will have the possibility to participate and vote after they obtain the citizenship, obtaining the status of a person recognised under the custom or law as being a legal member of a sovereign State. The Slovenian legislation allows migrants to participate in elections to the municipal councils, but not for mayors. The law doesn't allow migrants to vote at National elections (presidential and parliamentary) and take part as regular members of political parties. Nevertheless, the EU nationals are allowed to vote at the European Parliament elections.

The exclusion of migrants from participating in political decisions in Slovenia is determined by law, in any case migrants have the rights to the People's initiative as Slovenia is a democratic republic³¹⁴⁶.

Procedures that may facilitate the participation of migrants in political decisions in their country of origin, depend on the country of origin.

There are no forms of redress if migrants cannot participate like citizens with citizenship in political decisions in their country of residence (considering Slovenia). It depends on the law of the country of origin.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

Migrants can acquire citizenship in Republic of Slovenia by naturalisation. According to Article 10 of the Citizenship of the Republic of Slovenia Act, the competent authority can, at its discretion, adopt the person applying for naturalisation to the citizenship of the Republic of Slovenia, if this is in accordance with national interests. Besides, the applicant must meet the following conditions: the age of at least 18 years of age, release from the current citizenship or if the applicant can prove that he/she will be, if he/she will get the citizenship of the Republic of Slovenia, the person has actually been living in Slovenia for 10 years, of which the last 5 years before submitting an application in Slovenia continuously, and has a lawful status of an alien, the person has a guaranteed permanent source of income in at least the amount that enables material and social security to him/her and to persons who he/she must support, the person has a command of the Slovene language for the purposes of everyday communication, which he/she shall prove with a certificate verifying that he/she passed a basic level exam in Slovenia, the person has not been sentenced to a prison sentence longer than three months, nor conditionally sentenced to prison sentence with probation longer than one year, the person's residence permit in the Republic of Slovenia has not been annulled, the person's naturalisation poses no threat to the public order, security or defence of the State, the person has settled all tax obligations, persons need to give an oath to respect the free democratic constitutional order according to the Constitution of the Republic of Slovenia.

Furthermore, Article 12 of the aforementioned Act prescribes adoption under facilitated circumstances. Thus, the competent authority may, if it is in accordance with the national interests, with discretion adopt the Slovenian emigrants and their descendants to the fourth generation in a straight line to the citizenship of the Republic of Slovenia, if they have actually lived in Slovenia for at least one year prior to submitting the application, and if they have lawful status of an alien together with meeting the requirements from 1 (he is 18 years old), 4 (the

³¹⁴⁶ Vpliv državljanov na sestavo in delovanje Državnega zbora, <https://www.dz-rs.si/wps/portal/Home/ODrzavnemZboru/Pristojnosti/VlogaDr%C5%BEavljanov/lut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfljo8zinfyCTD293Q0N_P0CXQwcDUyDLL2MjQ0N3Az0wwkpiAJKG-AAjgb6BbmhigDTZIG9/dz/d5/L2dBISEvZ0FBIS9nQSEh/>, accessed 5 September 2017 [Slovenian].

person has a guaranteed permanent source of income in at least the amount that enables material and social security to him/her and to persons who he/she must support), 5 (the person has a command of the Slovene language for the purposes of everyday communication, which he/she shall prove with a certificate verifying that he/she passed a basic level exam in Slovenia), 6 (the person has not been sentenced to a prison sentence longer than three months, nor conditionally sentenced to prison sentence with probation longer than one year), 7 (the person's residence permit in the Republic of Slovenia has not been annulled), 8 (the person's naturalisation poses no threat to the public order, security or defence of the State), 9 (the person has settled all tax obligations), and 10 (persons need to give an oath to respect the free democratic constitutional order according to the Constitution of the Republic of Slovenia) point of the first paragraph of Article 10 of the same Act. The competent authority may also, if it is in accordance with national interests, with discretion adopt to the citizenship of the Republic of Slovenia a person, who have been married to a citizen of the Republic of Slovenia for at least three years, if they actually lived in Slovenia uninterruptedly for at least one year prior to submitting the application, if the applicant has a lawful status of an alien and meets the requirements determined in 1 (he is 18 years old), 2 (release form the current citizenship or if the applicant can prove that he/she will be, if he/she will get the citizenship of the Republic of Slovenia), 3 (the person has actually been living in Slovenia for 10 years, of which the last 5 years before submitting an application in Slovenia continuously, and has a lawful status of an alien), 4 (the person has a guaranteed permanent source of income in at least the amount that enables material and social security to him/her and to persons who he/she must support), 5 (the person has a command of the Slovene language for the purposes of everyday communication, which he/she shall prove with a certificate verifying that he/she passed a basic level exam in Slovenia), 6 (the person has not been sentenced to a prison sentence longer than three months, nor conditionally sentenced to prison sentence with probation longer than one year), 7 (the person's residence permit in the Republic of Slovenia has not been annulled), 8 (the person's naturalisation poses no threat to the public order, security or defence of the State), 9 (the person has settled all tax obligations), and 10 (persons need to give an oath to respect the free democratic constitutional order according to the Constitution of the Republic of Slovenia) point of the first paragraph of Article 10 of this law. It is considered that the continued residence requirement is met even if the person has not been physically present in the territory of the Republic of Slovenia due to the reasons, which on their side or on side of the spouse do not count as a break of the stay. Circumstances under which, despite the fact that the applicant was absent for continued residence are fulfilled, are determined by the Government of the Republic of Slovenia.

The competent authority may also under discretion adopt the person to citizenship of the Republic of Slovenia, if it is in the national interest, an applicant with a refugee status recognised under the applicable law, if they had actually lived in Slovenia uninterruptedly for five years before submitting an application, and if he/she meets the conditions described in points 1 (is 18 years old), 4 (has a guaranteed permanent source of income in at least the amount that enables material and social security to him/her and to persons who he/she must support), 5 (has command of the Slovene language for the purposes of everyday communication, which he/she

shall prove with a certificate verifying that he/she passed a basic level exam in Slovenia), 6 (has not been sentenced to a prison sentence longer than three months, nor conditionally sentenced to prison sentence with probation longer than one year), 7 (the person's residence permit in the Republic of Slovenia has not been annulled), 8 (the person's naturalisation poses no threat to the public order, security or defence of the State), 9 (the person has settled all tax obligations), and 10 (they need to give an oath to respect the free democratic constitutional order according to the Constitution of the Republic of Slovenia) of the first paragraph of Article 10 of this law. Same goes for applicants without citizenship (stateless persons).

In certain circumstances it is allowed to have double citizenship, such as in the case of admission of a minor child into the citizenship of the Republic of Slovenia on the basis of Article 14 of the Citizenship of the Republic of Slovenia Act, Slovenia does not prescribe the condition that the child has a remission from previous citizenship. Legislation also does not foresee that such person should later renounce his previous citizenship or decide between Slovenian and foreign citizenship. Same applies when alien is accepting into the citizenship of the Republic of Slovenia in the context of extraordinary naturalization, the applicant is allowed to maintain the current citizenship. Furthermore, when acquiring citizenship by birth, it is possible to obtain dual citizenship in cases where the child is born in a mixed law, because citizenship is acquired according to this principle by parents. Thus, the child can acquire the citizenship of the Republic of Slovenia according to the parent who is a citizen of the Republic of Slovenia, and in accordance with the regulations of the state of which the parent is a citizen, he can acquire the citizenship of that country according to the other parent. Because when acquiring citizenship by birth, Slovenia has no influence on the prevention of dual citizenship. The emergence of dual citizenship is the result of the same or similar forms of citizenship in different countries.

Finally, Slovenian legislation does not prescribe an automatic loss of Slovenian citizenship in cases when a Slovenian citizen acquires the citizenship of a foreign country. No country can interfere with the sovereignty of another country, which is why Slovenia cannot recognize citizenship of a foreign country. It is up to the foreign country whether they will ask the applicant to give up her/his Slovenian citizenship in the procedure for acquiring its citizenship. For the avoidance of dual citizenship, most countries require that their citizenship is terminated either voluntarily or automatically.

The administrative unit is competent for the conduct of the procedure for the acquisition of Slovenian citizenship. The ministry responsible for internal affairs is the audit authority in these procedures.

The filing of an application is the basic condition for the initiation of the procedure for the admission to Slovenian citizenship. By signing the application, the applicant confirms that he or she has decided to obtain Slovenian citizenship out of his or her own free will.

The application can be filed with any administrative unit. The administrative unit in the area in which the applicant has registered permanent or temporary residence is competent for the conduct of the procedure and making a decision in this matter. A curriculum vitae and supporting documents on the fulfilment of the conditions laid down by law need to be enclosed in the application. The administrative body checks ex officio whether the following conditions

are met: the residence of the person in the Republic of Slovenia has not been annulled, the admission of the person to the citizenship of the Republic of Slovenia does not represent a threat to the public order, security or defence of the country, no criminal proceedings are in progress against the person in the Republic of Slovenia and the person was not convicted by final judgement for a criminal offence in the Republic of Slovenia, the person was issued a work permit for the Republic of Slovenia, the tax liabilities of the person are paid (in compliance with special consent from the person).

A positive decision of the administrative unit allowing a person to obtain citizenship of the Republic of Slovenia or an assurance that the administrative unit has decided that the person is to be admitted to the citizenship of the Republic of Slovenia, if he or she submits the decision on release from his or her current citizenship within two years, must be submitted to audit by the ministry responsible for internal affairs. If the ministry responsible for internal affairs gives its consent to the decision or assurance of the administrative unit, the decision forms the basis for the acquisition of citizenship, and the assurance forms the basis for the lodging of the application for release from the current citizenship. If the decision or assurance in the audit procedure is issued by the Ministry of the Interior of the Republic of Slovenia, an audit is not required.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

In performing its tasks in 2015 the Migration Office cooperated with responsible state bodies, locally responsible centres for social work, administrative units, and national as well as international organisations and non-governmental organisations.

The report puts an emphasis on the most important activities performed in 2015 by the Migration Office. These are the modifications of the legislation concerning aliens and international protection, preparation of a special national plan for a rapid response in case of an increased number of international protection applicants; preparation and implementation of the relocation plan for 587 persons; provision of statistics in the area of legal migration, international protection and integration; overview of programmes performed by resources from European Integration Fund (EIF) for third country nationals from 2007-2013 and the European Refugee Fund from 2008-2013 (ERF), as well as the preparation and monitoring of the programmes regarding the new financial perspective 2014-2020. Within its regular tasks the Migration Office actively participated also in the implementation of the yearly European Migration Network programme (EMN), European Asylum Support Office (EASO) and National Contact Point for Integration (NCPI).

In 2015, Slovenia began to draw on the European resources from a new financial perspective – European Asylum Migration and Integration Fund (AMIF). In 2014 Migration office participated in the preparation of the preparation of the AMIF National Programme approved on 18 March 2015 by the Slovenian Government. The projects defined in the plan are sorted by

contents, so called special objectives and each objective refers to a specific type of EU policies which is under the basic regulations financed through AMIF. It is envisaged to implement the measures concerning international protection, legal migration and return of third-country nationals that illegally reside in Slovenia. Drawing on AMIF resources is planned for the period 2015-2022 in the amount of EUR 22.632.669,00. Slovenia is supposed to contribute EUR 4.305.192,00.³¹⁴⁷

In 2015, Slovenia has started implementing the programmes for providing integration assistance to a larger group of aliens. For the performance of courses »Initial Integration of Immigrants« in the period of three years EUR 1.365.000,00 were allocated.

Performance of the programme Initial Integration of Immigrants and a programme adopted based on a publicity applicable programme of Slovenia as the second and foreign language.

For migrants Slovenia organise language courses, the name of the program is “Začetna integracija priseljencev or ZIP”. The program is focused to learn the Slovenian language, but during the lessons migrants come in touch with Slovenia history, culture and Slovenian Constitution. For those migrants, which are present at least 80 % of the programme (60+) or 120 or 180 hours, the Republic of Slovenia pays the participation of the examination for Slovenian language at first step.

The program ZIP is one of the base programmes, which Slovenia is offering to migrants to help them by the integration.

In 2016 Republic of Slovenia devoted to the ZIP programme EUR 748.863,19 (tax included). In that period 1.765 persons have taken part in the programme, 40,62% men and 59,38% women.

In the first six months in 2017 for the program ZIP were spent EUR 320.512,82 (tax included).

In that period 527 people take part at the program ZIP, 43,45 % men and 56,55 % women.

The program ZIP is organized by contract partners, normally by Human Universities and language schools.

The participation at the first examinations, in year 2016 Republic of Slovenia paid for 1,031 persons, with the cost of EUR 123.782,00 (tax included). In the first semester of 2017 the participation at the first examination was paid for 504 persons, with the cost of EUR 61.456,00 (tax included).

The second program, which does not directly argue migrants, started in July 2016 and will continue for 18 months. The purposed of the program is to help the communication between migrants and health workers. The prevision of the amount for this program was EUR 99.239,67 (tax included). The first year was created a multi-language manual for the communication in health, and it helps workers to communicate in seven languages. There were also organised trainings for health workers. The program is organized by the Philosophical faculty Ljubljana Universe with partners (one of them is also the Medical faculty).

The costs of the programmes are partially covered by the Republic of Slovenia and the rest from AMIF. Partners are chosen through public orders.

³¹⁴⁷ REPORT ON MIGRATION, INTERNATIONAL PROTECTION AND INTEGRATION IN 2015, <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 9 June 2017 [English].

Conclusions

In Republic of Slovenia, an asylum seeker shall express an intention to file an application for an asylum to anyone, but the body responsible for the asylum procedure is the Ministry of the Interior, specifically the Department for International Protection. They are assisted by other institutions, such as the police, which is in charge of identifying the person and determining the way of entering into the country. The police also deliver a person to an asylum centre. Afterwards, a State official issues a card, which also serves as a permit for a person to stay in the country.

Due to high numbers of asylum seekers entering the country, Slovenia has the power to decide quotas – how many residence permits can be issued annually to EU and non-EU citizens. Nevertheless, there are several institutions that provide that one's rights are respected, such as the Human Rights Ombudsman and the Office of the Government of the Republic of Slovenia for Equal Opportunities.

Position of migrants is subject to several acts, as prescribed above. Nevertheless, the European Court of Human Rights has not issued any judgment regarding migration and asylum in Slovenia. In the future, Slovenia has yet to follow the recommendations given by the European Commission against Racism and Intolerance as they did not provide any information regarding the process by 23 June 2017. Country has been advised to ratify the Convention on the Participation of Foreigners in Public Life at Local Level, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as free legal aid and full financial support for asylum seekers living in private accommodation.

Table of legislation

Zakon o mednarodni zaščiti	International Protection Act
Drugi odstavek 2. člena: ... »oseba, ki ji je priznana mednarodna zaščita«, je oseba, ki ji je priznan status begunca ali status subsidiarne zaščite.	Para. 2 Article 2: "person granted international protection" shall mean a person who has been granted refugee status or subsidiary protection status.
Tretji odstavek 2. člena: ... »begunec ali begunka (v nadaljnjem besedilu: begunec)« je državljan tretje države ali oseba brez državljanstva, ki ji je priznana zaščita iz drugega odstavka 20. člena tega zakona.	Para. 3: Article 2: "refugee" shall mean a third-country national or a stateless person who has been granted the protection referred to in paragraph two of Article 20 of this Act.
30. člen: (1) Utemeljen strah pred preganjanjem ali utemeljena nevarnost, da prosilec utрпи resno škodo, lahko temeljita na dogodkih in dejavnostih, ki so se zgodili oziroma pri katerih je sodeloval prosilec po zapustitvi izvorne države. To dejstvo je treba upoštevati zlasti, kadar se ugotovi, da so te dejavnosti izraz in nadaljevanje prepričanj ali usmeritev, ki jih je prosilec zagovarjal že v izvorni državi. (2) Če so imele dejavnosti prosilca od odhoda iz izvorne države izključni namen ustvarjanja potrebnih pogojev za priznanje mednarodne zaščite po tem zakonu, priznanje mednarodne zaščite ne more temeljiti samo na tako ustvarjenih pogojih.	Article 30: (1) A well-founded fear of persecution or a real risk of suffering serious harm may be based on events and activities that have taken place or in which the applicant engaged in since leaving his or her country of origin. This fact should be taken into account particularly if it is determined that such activities constitute an expression and continuation of convictions or orientations that the applicant held in the country of origin. (2) Where the applicant's activities after his or her departure from his or her country of origin were for the exclusive purpose of creating grounds for being granted international protection under this Act, the granting of international protection cannot be considered solely on the merits created in such a manner.
Prvi in drugi odstavek 31. člena: (1) Status begunca se prosilcu ne prizna, če: že uživa pomoč ali zaščito organov in agencij Združenih narodov, razen Visokega komisariata; kadar takšna zaščita ali pomoč preneha iz katerega koli razloga, ne da bi se položaj prosilca dokončno uredil skladno z ustreznimi resolucijami Generalne skupščine	Para. 1 and 2, Article 31:(1) An applicant shall not be granted refugee status where: the applicant already enjoys the assistance or protection of the bodies and agencies of the United Nations, except the High Commissioner; when such assistance or protection has ceased for any reason whatsoever without finally regulating the

Združenih narodov, je treba prošnjo prosilca obravnavati; obstaja utemeljen sum, da je storil kaznivo dejanje proti miru, vojni zločin ali zločin proti človeštvu, kot jih določajo mednarodni akti;

obstaja utemeljen sum, da je pred vstopom v Republiko Slovenijo storil hudo kaznivo dejanje nepolitične narave v drugi državi, tudi če je bilo storjeno zaradi domnevno političnih ciljev;

obstaja utemeljen sum, da je storil dejanja, ki nasprotujejo namenom in načelom Združenih narodov, določenim v Preambuli ter v 1. in 2. členu Ustanovne listine Združenih narodov; obstajajo utemeljeni razlogi, da se ga obravnava kot nevarnega za varnost Republike Slovenije, kar se kaže zlasti v ogrožanju varnosti ozemeljske celovitosti, suverenosti, izvrševanja mednarodnih obveznosti in ogrožanju varstva ustavne ureditve; po pravnomočni obsodbi za hudo kaznivo dejanje predstavlja nevarnost za Republiko Slovenijo.

(2): Status subsidiarne zaščite se ne prizna prosilcu, če obstaja utemeljen sum, da: je storil kaznivo dejanje proti miru, vojni zločin ali zločin proti človeštvu, kot so opredeljeni v mednarodnih pogodbah ali predpisih, ki določajo takšna kazniva dejanja; je storil hudo kaznivo dejanje; je storil dejanja, ki nasprotujejo namenom in načelom Združenih narodov, določenim v Preambuli ter v 1. in 2. členu Listine Združenih narodov; po pravnomočni obsodbi za hudo kaznivo dejanje predstavlja nevarnost za varnost Republike Slovenije.

status of the applicant in accordance with the relevant resolutions passed by the United Nations General Assembly, the application of such an applicant needs to be processed; a reasonable suspicion exists that he or she has committed a crime against peace, a war crime or crime against humanity as determined by international acts; a reasonable suspicion exists that he or she has committed a serious crime of a non-political nature in another country prior to entering the Republic of Slovenia, even though it was committed allegedly for political goals; a reasonable suspicion exists that he or she has committed acts contrary to the purpose and principles of the United Nations as per the Preamble and Articles 1 and 2 of the Charter of the United Nations;

reasonable grounds exist for the applicant to be considered a threat to the security of the Republic of Slovenia, which is especially reflected in a threat to territorial integrity, sovereignty, the fulfilment of international obligations or the protection of the constitutional system; he or she represents a threat to the Republic of Slovenia following a final conviction for a serious criminal offence.

(2) An applicant shall not be granted subsidiary protection status where a reasonable suspicion exists that: he or she has committed a crime against peace, a war crime or crime against humanity as defined in international treaties or regulations determining such crimes; he or she has committed a serious criminal offence; he or she has committed acts contrary to the purposes and principles of the United Nations as per the Preamble and Articles 1 and 2 of the Charter of the United Nations; he or she represents a threat to the security

	<p>of the Republic of Slovenia following a final conviction for a serious criminal offence.</p>
<p>67. člen: (1) Beguncu preneha status, če: prostovoljno sprejme zaščito države, katere državljan je, državljanstvo po njegovi izgubi prostovoljno ponovno pridobi, pridobi novo državljanstvo in uživa zaščito države, ki mu ga je podelila, se prostovoljno ponovno nastani v državi, ki jo je zapustil in v katero se ni vračal zaradi strahu pred preganjanjem, prenehajo okoliščine, zaradi katerih mu je bil priznan status begunca in ne more več zavračati zaščite države, katere državljan je, se kot oseba brez državljanstva zaradi prenehanja okoliščin, zaradi katerih mu je bil priznan status begunca, lahko vrne v prejšnjo državo običajnega prebivališča.</p> <p>(2) Osebi, ki ji je priznana subsidiarna zaščita, preneha status, kadar okoliščine, zaradi katerih ji je bila priznana subsidiarna zaščita, prenehajo ali se spremenijo do te mere, da taka zaščita ni več potrebna.</p> <p>(3) Če obstajajo okoliščine iz pete in šeste alineje prvega odstavka ter drugega odstavka tega člena, status ne preneha, če oseba navede utemeljene razloge, ki izhajajo iz preganjanja v preteklosti ali resne škode, povzročene v preteklosti, zaradi katerih noče izkoristiti zaščite države, katere državljan je, oziroma države prejšnjega običajnega prebivališča, če gre za osebo brez državljanstva.</p> <p>(4) Če oseba s priznano mednarodno zaščito umre, status preneha z dnem smrti osebe.</p> <p>(5) Status osebi z mednarodno zaščito preneha z dnem sprejema v državljanstvo Republike Slovenije.</p> <p>(6) Če se oseba s priznano mednarodno zaščito zaščiti nedvoumno odpove, ji mednarodna zaščita preneha z dnem pravnomočne odločbe o prenehanju statusa.</p>	<p>Article 67: (1) A refugee's status shall terminate where: he or she has voluntarily availed himself or herself of the protection of the country of which he or she is a citizen, he or she voluntarily re-acquires the citizenship that he or she lost, he or she acquires a new citizenship and enjoys the protection of the country of new citizenship; he or she voluntarily resettles himself or herself in the country which he or she left and to which he or she has not returned owing to fear of persecution, the circumstances in connection with which he or she has been granted refugee status have ceased to exist and he or she may no longer continue to refuse to avail himself or herself of the protection of the country of citizenship; being a stateless person, he or she is able to return to his or her former country of habitual residence, because the circumstances in connection with which he or she was granted refugee status have ceased to exist.</p> <p>(2) The status of a person under subsidiary protection shall terminate when the circumstances which led to the granting of subsidiary protection cease to exist or have changed to such a degree that protection is no longer required.</p> <p>(3) Where the circumstances pursuant to indents five and six of paragraph one and pursuant to paragraph two of this Act are established, the status shall continue to be valid provided that the person has cited compelling reasons arising out of previous persecution or harm for refusing to avail himself or herself of the protection of the country of citizenship or, being a stateless person, of his or her country of former</p>

	<p>habitual residence.</p> <p>(4) If a person under international protection dies, the status shall cease to be valid as of the day of death.</p> <p>(5) The status of a person under international protection shall cease to be valid on the day the person obtains citizenship of the Republic of Slovenia.</p> <p>(6) Where a person under international protection unequivocally relinquishes protection, international protection shall cease to be valid on the day when the decision terminating such status becomes final.</p>
<p>70. člen: (1) Zoper odločbo pristojnega organa je mogoče vložiti tožbo na upravno sodišče. Zoper odločbo, izdano v rednem postopku, je tožbo mogoče vložiti v 15 dneh, zoper odločbo, izdano v pospešenem postopku, pa v osmih delovnih dneh od vročitve.</p> <p>(2) Zoper vse sklepe, izdane na podlagi tega zakona, se tožba lahko vloži v osmih dneh od vročitve, razen sklepa iz 84. člena tega zakona, ko se tožba lahko vloži v treh dneh od vročitve.</p> <p>(3) Tožba zoper odločbo o zavrnitvi prošnje v rednem postopku, odločbo o zavrnitvi prošnje v pospešenem postopku, odločbo o zavrnitvi podaljšanja subsidiarne zaščite, odločbo, izdano na podlagi sedmega odstavka 69. člena tega zakona, odločbo o prenehanju statusa mednarodne zaščite zaradi razloga, navedenega v šestem odstavku 67. člena tega zakona, sklep o zavrženju prošnje na podlagi tretje alineje 51. člena in četrtega odstavka 65. člena tega zakona zadrži izvršitev odločbe oziroma sklepa. V primeru vseh drugih odločitev po tem zakonu tožba ne zadrži njihove izvršitve.</p>	<p>Article 70: (1) An action may be brought against a decision of the competent authority before the Administrative Court. An action may be brought against a decision issued in the regular procedure or in the accelerated procedure within 15 days or eight days, respectively.</p> <p>(2) An action may be brought against any order issued pursuant to this Act within eight days following service, except against the order referred to in Article 84 of this Act, with respect to which an action may be brought within three days of service.</p> <p>(3) The execution of a decision or order shall be stayed in the event of an action challenging a decision dismissing an application in the regular procedure, a decision dismissing an application in the accelerated procedure, a decision rejecting the extension of subsidiary protection, a decision issued on the basis of paragraph seven of Article 69 of this Act, a decision terminating international protection status for the reasons referred to in paragraph six of Article 67 of this Act, and an order rejecting an application pursuant to indent three of Article 51 and paragraph four of Article 65 of</p>

	<p>this Act. Actions challenging other decisions pursuant to this Act shall not stay their execution.</p>
<p>72. člen: Ustavna pritožba se lahko vloži v 15 dneh od dneva vročitve posamičnega akta na podlagi tega zakona, zoper katerega je na podlagi zakona, ki ureja postopek pred Ustavnim sodiščem Republike Slovenije, mogoča ustavna pritožba.</p>	<p>Article 72: A constitutional complaint may be lodged within 15 days from the date of service of an individual act pursuant to this Act against which a constitutional complaint is allowed in accordance with the Act governing procedures before the Constitutional Court of the Republic of Slovenia.</p>
<p>86. člen: (1) Nujno zdravljenje prisilcev obsega pravico do: 1. nujne medicinske pomoči in nujnega reševalnega prevoza po odločitvi zdravnika ter pravico do nujne zobozdravstvene pomoči; 2. nujnega zdravljenja po odločitvi lečečega zdravnika, ki obsega: ohranitev življenjsko pomembnih funkcij, zaustavljanje večjih krvavitev oziroma preprečitev izkrvavitve; preprečitev nenadnega poslabšanja zdravstvenega stanja, ki bi lahko povzročilo trajne okvare posameznih organov ali življenjskih funkcij; zdravljenje šoka; storitve pri kroničnih boleznih in stanjih, katerih opustitev bi neposredno in v krajšem času povzročila invalidnost, druge trajne okvare zdravja ali smrt; zdravljenje vročinskih stanj in preprečevanje širjenja infekcije, ki bi utegnila voditi do septičnega stanja; zdravljenje oziroma preprečevanje zastrupitev; zdravljenje zlomov kosti oziroma zvinov ter drugih poškodb, pri katerih je nujno posredovanje zdravnika; zdravila s pozitivne in vmesne liste v skladu s seznamom medsebojno zamenljivih zdravil, ki so predpisana na recept za zdravljenje navedenih bolezni in stanj; 3. zdravstvenega varstva žensk: kontracepcijskih sredstev, prekinitve nosečnosti, zdravstvene oskrbe v nosečnosti</p>	<p>Article 86: (1) The urgent treatment of applicants includes the right to: 1. emergency medical assistance and emergency salvage transport following a doctor's decision and the right to emergency dental care; 2. emergency treatment following the decision of a treating physician, comprising: preserving vital functions, stopping major bleeding or preventing bleeding; the prevention of a sudden deterioration of the state of health which could lead to permanent damage to individual organs or life functions; treatment of shock; services in chronic diseases and conditions, the abandonment of which would lead, directly and in a shorter time, to disability, other permanent health defects or death; treating hemorrhagic conditions and preventing the spread of an infection that could lead to septicemia; treatment or prevention of poisoning; treatment of fractures of bones or wounds and other injuries in which medical intervention is necessary; medicinal products from positive and intermediate lists in accordance with the list of interchangeable medicinal products prescribed on prescription for the treatment of those diseases and conditions; 3. health care for women: contraceptives, termination of pregnancy, medical care</p>

<p>in ob porodu.</p> <p>(2) Ranljiva oseba s posebnimi potrebami, izjemoma pa tudi drug prosilec, ima pravico do dodatnega obsega zdravstvenih storitev, vključno s psihoterapevtsko pomočjo, ki ga odobri in določi komisija iz četrtega odstavka 83. člena tega zakona.</p> <p>(3) Mladoletni prosilci in prosilci, ki so mladoletniki brez spremstva, so upravičeni do zdravstvenega varstva v enakem obsegu kot otroci, ki so obvezno zdravstveno zavarovani kot družinski člani. V enakem obsegu so do zdravstvenega varstva upravičeni tudi šolajoči otroci po 18. letu starosti, in sicer do konca šolanja, vendar največ do dopolnjenega 26. leta starosti.</p>	<p>during pregnancy and childbirth.</p> <p>(2) A vulnerable person with special needs and, exceptionally, another applicant, has the right to an additional amount of health services, including psychotherapeutic assistance, which is approved and determined by the commission referred to in the fourth paragraph of Article 83 of this Act.</p> <p>(3) Juvenile applicants and applicants who are unaccompanied minors are entitled to healthcare to the same extent as children who are compulsorily insured as family members. To the same extent, children under 18 years of age are entitled to health care, until the end of schooling, but up to the age of 26 years.</p>
<p>98. člen: (1) Osebe, ki jim je bila priznana mednarodna zaščita, se obvezno zdravstveno zavarujejo iz tega naslova, če niso obvezno zdravstveno zavarovane na drugi podlagi.</p> <p>(2) Otroci, ki imajo priznano mednarodno zaščito, so upravičeni do zdravstvenih storitev v enakem obsegu in pod enakimi pogoji kot otroci, ki so obvezno zdravstveno zavarovani kot družinski člani. V enakem obsegu so do zdravstvenega varstva upravičeni tudi šolajoči otroci po 18. letu starosti, in sicer do konca šolanja, vendar največ do dopolnjenega 26. leta starosti.</p>	<p>Article 98: (1) Persons granted international protection shall be provided mandatory health insurance on the basis of international protection unless they are insured on some other basis.</p> <p>(2) Children granted international protection are entitled to health-care services to the same extent and under the same conditions as children who are covered by mandatory health insurance as family members. School children aged 18 years or older are entitled to health care to the same extent until they leave school, but not after they reach the age of 26.</p>
<p>Ustava Republike Slovenije</p>	<p>Constitution of the Republic of Slovenia</p>
<p>14. člen: V Sloveniji so vsakomur zagotovljene enake človekove pravice in temeljne svoboščine, ne glede na narodnost, raso spol, jezik, vero, politično ali drugo prepričanje, gmotno stanje, rojstvo, izobrazbo, družbeni položaj, invalidnost ali katerokoli drugo osebno okoliščino.</p> <p>Vsi so pred zakonom enaki.</p>	<p>Article 14: In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political, or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance.</p> <p>All are equal before the law.</p>
<p>Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju</p>	<p>Health Care and Health Insurance Act</p>
<p>Prvi odstavek 15. člena: Zavarovanci po tem</p>	<p>Para. 1 Article 15: Under this Act, insured</p>

zakonu so: 1. osebe, ki so v delovnem razmerju v Republiki Sloveniji; 2. osebe v delovnem razmerju pri delodajalcu s sedežem v Republiki Sloveniji, poslane na delo ali na strokovno izpopolnjevanje v tujino, če niso obvezno zavarovane v državi, v katero so bile poslane; 3. osebe, zaposlene pri tujih in mednarodnih organizacijah in ustanovah, tujih konzularnih in diplomatskih predstavništvih s sedežem v Republiki Sloveniji, če ni z mednarodno pogodbo drugače določeno; 4. osebe s stalnim prebivališčem v Republiki Sloveniji, zaposlene pri tujem delodajalcu, ki niso zavarovane pri tujem nosilcu zdravstvenega zavarovanja; 5. osebe, ki na območju Republike Slovenije samostojno opravljajo gospodarsko ali poklicno dejavnost kot edini ali glavni poklic; 6. družbeniki osebnih družb, družbeniki družb z omejeno odgovornostjo in ustanovitelji zavodov, če so družbeniki družb oziroma ustanovitelji zavodov poslovodne osebe, ki opravljajo poslovodno funkcijo kot edini ali glavni poklic; 7. kmetje, člani njihovih gospodarstev in druge osebe, ki v Republiki Sloveniji opravljajo kmetijsko dejavnost kot edini ali glavni poklic; 8. vrhunski športniki in vrhunski šahisti - člani telesnokulturnih in šahovskih organizacij v Republiki Sloveniji, ki niso zavarovani iz drugega naslova; 9. brezposelne osebe, ki prejemajo pri zavodu za zaposlovanje denarno nadomestilo; 10. osebe s stalnim prebivališčem v Republiki Sloveniji, ki prejemajo pokojnino po predpisih Republike Slovenije oziroma preživnino po predpisih o preživninskem varstvu kmetov; 11. osebe s stalnim prebivališčem v Republiki Sloveniji, ki prejemajo pokojnino od tujega nosilca pokojninskega zavarovanja, če z

persons are: 1. persons who are employed in the Republic of Slovenia; 2. Persons in employment with an employer established in the Republic of Slovenia sent to work or to professional training abroad if they are not compulsorily insured in the country to which they were sent; 3. persons employed by foreign and international organizations and institutions, foreign consular and diplomatic missions with headquarters in the Republic of Slovenia, unless otherwise stipulated by an international treaty; 4. persons resident in the Republic of Slovenia employed by a foreign employer who are not insured with a foreign sickness insurance institution; 5. persons who independently perform an economic or professional activity in the territory of the Republic of Slovenia as the sole or main occupation; 6. partners of private companies, members of limited liability companies and founders of institutions, if they are shareholders of companies or founders of institutions are managers, who perform the management function as the sole or main occupation; 7. farmers, members of their holdings and other persons engaged in agricultural activity in the Republic of Slovenia as the sole or main occupation; 8. top athletes and top chess players - members of physical and chess organizations in the Republic of Slovenia who are not insured from another title; 9. unemployed persons receiving financial compensation from the Employment Service; 10. persons with permanent residence in the Republic of Slovenia who receive a pension according to the regulations of the Republic of Slovenia, or maintenance according to the regulations on maintenance of farmers; 11. persons with permanent residence in the Republic of Slovenia who receive a pension

mednarodno pogodbo ni drugače določeno; 12. osebe s stalnim prebivališčem v Republiki Sloveniji, zavarovane pri tujem nosilcu zdravstvenega zavarovanja, ki med bivanjem v Republiki Sloveniji ne morejo uporabljati pravic iz tega naslova; 13. družinski člani osebe, zavarovane pri tujem nosilcu zdravstvenega zavarovanja, ki imajo stalno prebivališče v Republiki Sloveniji in niso zavarovani kot družinski člani pri tujem nosilcu zdravstvenega zavarovanja; 14. tujci, ki se izobražujejo ali izpopolnjujejo v Republiki Sloveniji, ki niso zavarovani iz drugega naslova; 15. osebe s stalnim prebivališčem v Republiki Sloveniji, ki so uživalci invalidnin po predpisih o vojaških invalidih in civilnih invalidih vojne, pravic po predpisih o varstvu vojnih veteranov, žrtev vojnega nasilja in udeležencev drugih vojn ter uživalci republiških priznavalnin, če niso zavarovane iz drugega naslova; 16. osebe s stalnim prebivališčem v Republiki Sloveniji, ki prejemale nadomestilo po zakonu o družbenem varstvu duševno in telesno prizadetih odraslih oseb, če niso zavarovane iz drugega naslova; 17. osebe s stalnim prebivališčem v Republiki Sloveniji, ki prejemale trajno denarno socialno pomoč in osebe, ki jim je Republika Slovenija priznala status begunca ali subsidiarno zaščito v skladu s predpisi o mednarodni zaščiti, če niso zavarovane iz drugega naslova; 18. osebe s stalnim prebivališčem v Republiki Sloveniji, ki so uživalci priznavalnin po predpisih o varstvu udeležencev vojn, če niso zavarovane iz drugega naslova; 19. vojaški obvezniki s stalnim prebivališčem v Republiki Sloveniji, ki so v civilni službi kot nadomestilo vojaškega roka; 19.a vojaški obvezniki s stalnim prebivališčem v Republiki Sloveniji med

from a foreign pension insurance institution, unless otherwise specified by an international agreement; 12. persons with permanent residence in the Republic of Slovenia, insured with a foreign health insurance company who, while staying in the Republic of Slovenia, can not use the rights in this Title; 13. family members of a person insured with a foreign sickness insurance institution who are domiciled in the Republic of Slovenia and who are not insured as family members with a foreign sickness insurance institution; 14. Foreigners who are educated or advanced in the Republic of Slovenia who are not insured from another address; 15. persons with permanent residence in the Republic of Slovenia who are citizens of disability according to the regulations on disabled soldiers and civilian invalids of war, rights under the regulations on the protection of war veterans, victims of war violence and participants of other wars and users of national recognitions if they are not insured from another title ; 16. persons with permanent residence in the Republic of Slovenia who receive compensation under the law on social protection of mentally and physically disabled adults, if they are not insured from another address; 17. persons permanently resident in the Republic of Slovenia who receive permanent financial social assistance and persons who have been granted refugee status or subsidiary protection by the Republic of Slovenia in accordance with international protection regulations, if they are not insured from another address; 18. persons with permanent residence in the Republic of Slovenia who are recipients of recognition according to the regulations on the protection of participants in wars if they are not insured from another address;

služenjem vojaškega roka oziroma med usposabljanjem za rezervno sestavo policije;

20. osebe s stalnim prebivališčem v Republiki Sloveniji, če ne izpolnjujejo pogojev za zavarovanje po eni izmed točk iz tega odstavka in si same plačujejo prispevek;

21. državljani Republike Slovenije in tujci, ki imajo dovoljenje za stalno prebivanje, ki jim je po zakonu, ki ureja uveljavljanje pravic iz javnih sredstev, priznana pravica do plačila prispevka za obvezno zavarovanje;

22. priporniki, ki niso zavarovanci iz drugega naslova do trenutka nastopa pripora oziroma jim zavarovanje preneha v času pripora, obsojenci na prestajanju kazni zopora, mladoletniškega zopora, mladoletniki na prestajanju vzgojnega ukrepa oddaje v prevzgojni dom, osebe, ki jim je izrečen varnostni ukrep obveznega psihiatričnega zdravljenja in varstva v zdravstvenem zavodu ter obvezno zdravljenje odvisnosti od alkohola in drog. Pripornike v zavarovanje prijavi zavod za prestajanje kazni zopora, v katerem so priporniki na prestajanju pripora, druge osebe iz te točke pa zavod oziroma organizacija v kateri se te osebe nahajajo, najkasneje naslednji delovni dan po sprejemu teh oseb;

23. osebe, ki pridobijo pravico po zakonu, ki ureja starševsko varstvo in sicer: upravičenci do starševskih nadomestil, ki jim je prenehalo delovno razmerje v času trajanja starševskega dopusta, eden od staršev, ki si na podlagi svoje dejavnosti plačuje prispevke za socialno varnost za najmanj 20 ur tedensko ter neguje in varuje otroka do tretjega leta starosti, eden od staršev, ki zapusti trg dela zaradi nege in varstva štirih ali več otrok;

24. otroci do 18. leta starosti, ki se šolajo in niso zavarovani kot družinski člani, ker njihovi starši ne skrbijo za njih oziroma ker

19. military payers with permanent residence in the Republic of Slovenia who are in the civil service in lieu of military service;

19.a military payers with permanent residence in the Republic of Slovenia during military service or during police reserve training;

20. persons with permanent residence in the Republic of Slovenia, if they do not fulfill the conditions for insurance under one of the points referred to in this paragraph and pay the contribution themselves;

21. citizens of the Republic of Slovenia and foreigners who have a permanent residence permit, who according to the law governing the exercise of rights from public funds, are entitled to payment of the compulsory insurance contribution;

22. detainees who are not insured from another title until the time of their arrest or the termination of the insurance at the time of detention, sentenced prisoners, juvenile prison, minors on the transfer of the educational measure to the correctional facility, persons who have been imposed a security measure compulsory psychiatric treatment and care in a health institution, and mandatory treatment of alcohol and drug addiction. The detainees are registered with the institution for the execution of a prison sentence in which the detainees are at the time of their detention, while the other persons referred to in this point are the institution or organization in which they are located, no later than the next working day after the receipt of such persons;

23. persons who acquire the right under the act regulating parental protection, namely: beneficiaries of parental benefits that have terminated their employment relationship during the period of parental leave, one of the parents who, on the basis of his activity, pays

<p>starši ne izpolnjujejo pogojev za vključitev v obvezno zavarovanje; 25. družinski pomočniki po zakonu, ki ureja socialno varstvo.</p>	<p>social security contributions for at least 20 hours a week, nurtures and protects the child until the age of three, one of the parents</p>
<p>Zakon o državljanstvu Republike Slovenije</p>	<p>Citizenship of the Republic of Slovenia Act</p>
<p>Člen 10 (1): Pristojni organ lahko osebo, ki prosi za naturalizacijo, po prostem preudarku sprejme v državljanstvo Republike Slovenije, če je to v skladu z nacionalnim interesom. Pri tem mora oseba izpolnjevati naslednje pogoje: 1. da je dopolnila 18 let; 2. da ima odpust iz dosedanjega državljanstva ali da izkaže, da ga bo dobila, če bo sprejeta v državljanstvo Republike Slovenije; 3. da dejansko živi v Sloveniji 10 let, od tega neprekinjeno zadnjih 5 let pred vložitvijo prošnje in ima urejen status tujca; 4. da ima zagotovljena sredstva, ki njej in osebam, ki jih mora preživljati, zagotavljajo materialno in socialno varnost; 5. da obvlada slovenski jezik za potrebe vsakdanjega sporazumevanja, kar dokaže s spričevalom o uspešno opravljenem izpitu iz znanja slovenščine na osnovni ravni; 6. da ni bila pravnomočno obsojena na nepogojno zaporno kazen, daljšo od treh mesecev, ali da ji ni bila izrečena pogojna obsodba na zaporno kazen s preizkusno dobo, daljšo od enega leta; 7. da ji ni bila izrečena odpoved prebivanja v Republiki Sloveniji; 8. da njen sprejem v državljanstvo Republike Slovenije ne predstavlja nevarnosti za javni red, varnost ali obrambo države; 9. da ima poravnane davčne obveznosti; 10. da da prisego o spoštovanju svobodnega demokratičnega ustavnega reda, ki je utemeljen v Ustavi Republike Slovenije.</p>	<p>Para. 1 Article 10: The competent authority may within its discretion, grant citizenship of the Republic of Slovenia to a person requesting naturalisation if this is in accordance with the national interest. The person must fulfil the following conditions: 1. the person is 18 years of age; 2. the person has been released from his/her current citizenship or proves that he/she will obtain such release if he/she acquires citizenship of the Republic of Slovenia; 3. the person has actually been living in Slovenia for 10 years, of which the 5 years prior to the submission of the application were continuous, and he/she has the legal status of a foreigner; 4. he/she has guaranteed funds that ensure his/her material and social security and the material and social security of the persons he/she has to support; 5. the person has a command of the Slovenian language for the purposes of everyday communication, which he/she shall prove by a certificate verifying that he/she has successfully passed a basic level exam in Slovenian; 6. the person has not been sentenced by a final judgement to an unsuspended prison sentence longer than three months, or the person has not been sentenced to a suspended prison sentence with a term of suspension longer than one year; 7. the person's residence permit in the Republic of Slovenia has not been revoked; 8. the person's naturalisation poses no threat to the public order or the security or defence of the State; 9. the person has settled all tax obligations; 10. the person gives an oath to</p>

	<p>respect the free democratic constitutional order established by the Constitution of the Republic of Slovenia.</p>
<p>12. člen: (1) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije slovenskega izseljenca in njegovega potomca do četrtega kolena v ravni črti, če dejansko živi v Republiki Sloveniji vsaj eno leto pred vložitvijo prošnje, če ima urejen status tujca in če izpolnjuje pogoje iz 1., 4., 5., 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona.</p> <p>(2) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije osebo, ki je izgubila državljanstvo Republike Slovenije na podlagi odpusta ali odreka državljanstvu v skladu z določbami tega zakona ali v skladu s predpisi, ki so urejali državljanstvo na območju Republike Slovenije pred sprejemom tega zakona, če oseba dejansko živi v Sloveniji neprekinjeno šest mesecev pred vložitvijo prošnje, če ima urejen status tujca in če izpolnjuje pogoje iz 1., 4., 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona.</p> <p>(3) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije osebo, ki je že najmanj tri leti poročena z državljanom Republike Slovenije, če dejansko živi v Sloveniji neprekinjeno vsaj eno leto pred vložitvijo prošnje, če ima urejen status tujca in če izpolnjuje pogoje iz 1., 2., 4., 5., 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona. Šteje se, da je pogoj neprekinjenega prebivanja izpolnjen, tudi če oseba fizično ni prisotna na ozemlju Republike Slovenije zaradi razlogov, ki na njeni strani ali na strani zakonca ne štejejo za</p>	<p>Article 12: (1) If such is in accordance with the national interest, the competent authority may, at its own discretion, naturalise a Slovenian expatriate and his/her descendants to the fourth generation in direct descent if he/she has actually been living in the Republic of Slovenia for at least one year prior to submitting the application, if he/she has the legal status of a foreigner and if he/she fulfils the conditions referred to in points 1, 4, 5, 6, 7, 8, 9 and 10 of paragraph one of Article 10 of this Act.</p> <p>(2) If such is in accordance with the national interest, the competent authority may, at its own discretion, naturalise a person who terminated his/her Slovenian citizenship due to release or renunciation of citizenship in accordance with the provisions of this Act or in accordance with the regulations that governed citizenship in the territory of the Republic of Slovenia prior to the adoption of this Act, if the person has actually been living in Slovenia continuously for six months prior to submitting the application, if he/she has the legal status of a foreigner and if he/she fulfils the conditions referred to in points 1, 4, 6, 7, 8, 9 and 10 of paragraph one of Article 10 of this Act.</p> <p>(3) If such is in accordance with the national interest, the competent authority may, at its own discretion, naturalise a person who has been married to a citizen of the Republic of Slovenia for at least three years if he/she has actually been living in Slovenia continuously for at least one year prior to submitting the application, if he/she has the legal status of a foreigner and if he/she fulfils the conditions referred to in points 1, 2, 4, 5, 6, 7, 8, 9 and</p>

prekinitev bivanja. Okoliščine zaradi katerih je kljub odsotnosti prosilca za sprejem v državljanstvo Republike Slovenije izpolnjen pogoj neprekinjenega prebivanja, določi Vlada Republike Slovenije.

(4) Oseba iz prejšnjega odstavka lahko na posebno prošnjo izjemoma pridobi državljanstvo Republike Slovenije, čeprav ne izpolnjuje pogoja iz 2. točke 10. člena tega zakona in pogoja neprekinjenega prebivanja iz prejšnjega odstavka, če s tem soglaša Vlada Republike Slovenije.

(5) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije polnoletno osebo, rojeno na območju Republike Slovenije, če dejansko živi v Sloveniji od rojstva dalje in če izpolnjuje pogoje iz 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona.

Pri odločanju na podlagi prejšnjega odstavka lahko pristojni organ upošteva osebne, družinske, gospodarske, socialne in druge vezi, ki vežejo osebo na Republiko Slovenijo, ter posledice, ki bi jih povzročila zavrnitev prošnje za sprejem v državljanstvo Republike Slovenije.

(6) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije osebo s statusom begunca, priznanega po zakonu o azilu, če dejansko živi v Sloveniji neprekinjeno 5 let pred vložitvijo prošnje in če izpolnjuje pogoje iz 1., 4., 5., 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona.

(7) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije osebo brez državljanstva (apatrida), če dejansko živi v Sloveniji neprekinjeno 5 let

10 of paragraph one of Article 10 of this Act.

The condition of continuous residency shall also be fulfilled if the person is not physically present in the territory of the Republic of Slovenia for reasons that on his/her part or the part of his/her spouse are not regarded as the termination of residency. The circumstances under which the condition of continuous residency is fulfilled despite the applicant's absence shall be determined by the Government of the Republic of Slovenia.

(4) Subject to the consent of the Government of the Republic of Slovenia, a person referred to in the preceding paragraph may, by a special application, exceptionally acquire citizenship of the Republic of Slovenia even if he/she does not fulfil the condition referred to in point 2 of Article 10 of this Act and the condition of continuous residency referred to in the preceding paragraph.

(5) If such is in accordance with the national interest, the competent authority may, at its own discretion, naturalise a person of full age born in the territory of the Republic of Slovenia if he/she has actually been living in Slovenia since his/her birth and if he/she fulfils the conditions referred to in points 6, 7, 8, 9 and 10 of paragraph one of Article 10 of this Act.

(6) In making the decision referred to in the preceding paragraph, the competent authority may take into account personal, family, economic, social and other ties binding the person to the Republic of Slovenia, as well as consequences that rejection of the application for admission to citizenship of the Republic of Slovenia would cause.

(7) If such is in accordance with the national interest, the competent authority may, at its

<p>pred vložitevijo prošnje, če ima urejen status tujca in če izpolnjuje pogoje iz 1., 4., 5., 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona.</p> <p>(8) Pristojni organ lahko, če je to v skladu z nacionalnim interesom, po prostem preudarku sprejme v državljanstvo Republike Slovenije osebo, ki je v Republiki Sloveniji obiskovala in uspešno zaključila najmanj visokošolski program, če dejansko živi v Republiki Sloveniji najmanj sedem let, od tega neprekinjeno vsaj eno leto pred vložitevijo prošnje, če ima urejen status tujca ter izpolnjuje pogoje iz 2., 4., 6., 7., 8., 9. in 10. točke prvega odstavka 10. člena tega zakona.</p>	<p>own discretion, naturalise a person with refugee status granted pursuant to the Asylum Act if he/she has actually been living in Slovenia continuously for 5 years prior to submitting the application and if he/she fulfils the conditions referred to in points 1, 4, 5, 6, 7, 8, 9 and 10 of paragraph one of Article 10 of this Act.</p> <p>(8) If such is in accordance with the national interest, the competent authority may, at its own discretion, naturalise a person without citizenship (a stateless person) if he/she has actually been living in Slovenia continuously for 5 years prior to submitting the application, if he/she has the legal status of a foreigner and if he/she fulfils the conditions referred to in points 1, 4, 5, 6, 7, 8, 9 and 10 of paragraph one of Article 10 of this Act.</p> <p>(7) If such is in accordance with the national interest, the competent authority may, at its own discretion, naturalise a person who has attended and successfully completed at least a higher education programme in the Republic of Slovenia if he/she has actually been living in Slovenia for at least seven years, continuously for at least one year prior to submitting an application, if he/she has the legal status of a foreigner and if he/she fulfils the conditions referred to in points 2, 4, 6, 7, 8, 9 and 10 of paragraph one of Article 10 of this Act.</p>
<p>14. člen: (1) Če oče in mati pridobita državljanstvo Republike Slovenije z naturalizacijo, ga na njuno prošnjo pridobi tudi njun otrok, ki še ni star 18 let.</p> <p>(2) Če eden od staršev pridobi državljanstvo Republike Slovenije z naturalizacijo, ga pridobi tudi njegov otrok, ki še ni star 18 let, če ta roditelj za to zaprosi in če otrok živi z njim v Sloveniji neprekinjeno vsaj eno leto pred vložitevijo prošnje ter ima urejen status</p>	<p>Article 14: (1) A child under the age of 18 years shall acquire citizenship of the Republic of Slovenia if so requested by his/her father and mother who both have acquired citizenship of the Republic of Slovenia by naturalisation.</p> <p>(2) If one of the parents has acquired citizenship of the Republic of Slovenia by naturalisation, his/her child under the age of 18 years shall acquire citizenship of the</p>

tujca.

(3) Ne glede na določbo prejšnjega odstavka pridobi državljanstvo Republike Slovenije otrok, ki je rojen v Republiki Sloveniji in še ni dopolnil leto dni starosti, če za to zaprosi roditelj, ki pridobi državljanstvo Republike Slovenije z naturalizacijo.

(4) Če eden od staršev pridobi državljanstvo Republike Slovenije z naturalizacijo na podlagi 13. člena tega zakona iz nacionalnih razlogov, ga pridobi tudi njegov otrok, ki še ni star 18 let, če ta roditelj za to zaprosi.

(5) Otrok, ki nima staršev, ali čigar staršem je odvzeta roditeljska pravica ali poslovna sposobnost in od rojstva živi v Sloveniji, lahko pridobi državljanstvo Republike Slovenije na prošnjo skrbnika, ki je državljan Republike Slovenije in pri katerem otrok živi, če zaradi koristi otroka k njegovemu sprejemu v državljanstvo da soglasje ministrstvo, pristojno za družino in socialne zadeve.

(6) Če je otrok star več kot 14 let, se zahteva za pridobitev državljanstva po prejšnjih odstavkih tudi njegova privolitev.

(7) V primeru posvojitve, pri kateri med posvojitelji in posvojencem ne nastane enako razmerje kot med starši in otroki, lahko na prošnjo posvojiteljev, državljanov Republike Slovenije, pridobi državljanstvo Republike Slovenije njun posvojenec, ki še ni star 18 let, če s posvojiteljema stalno živi v Sloveniji.

Republic of Slovenia if this parent so requests and if the child has been living with him/her in Slovenia continuously for at least one year prior to submitting the application and has the legal status of a foreigner.

(3) Notwithstanding the provision under the preceding paragraph, a child born in the Republic of Slovenia who has not yet reached one year of age shall acquire citizenship of the Republic of Slovenia if so requested by a parent who has obtained citizenship of the Republic of Slovenia by naturalisation.

(4) If one parent has acquired citizenship of the Republic of Slovenia by naturalisation pursuant to Article 13 of this Act for national reasons, his/her child under the age of 18 years shall also acquire citizenship upon the request of such parent.

(5) Citizenship of the Republic of Slovenia may be granted to a child who does not have any parents or whose parents have lost their parental rights or legal capacity, and who has been living in Slovenia since his/her birth, upon the request of his/her guardian who is a citizen of the Republic of Slovenia and with whom the child resides, provided that consent is given by the ministry responsible for family and social affairs due to the acquisition of citizenship representing a benefit to the child.

(6) If the child is older than 14 years of age, his/her consent shall be necessary to acquire citizenship pursuant to the preceding paragraphs.

(7) In the case of adoption, where the relation between the adoptive parent and the adoptee has not been ascertained to be equivalent to that as between parents and children, an adoptee who has not reached the age of 18 years can acquire citizenship of the Republic of Slovenia upon the request of

	his/her adoptive parents who are citizens of the Republic of Slovenia if he/she resides permanently with his/her adoptive parents in Slovenia.
Zakon o tujcih	Aliens Act
<p>4. člen: (1) Tujcu, zoper katerega je uveden kazenski postopek ali postopek za prekršek in je v priporu oziroma je pridržan, mora organ, ki je odredil pripor oziroma pridržanje, na njegovo zahtevo omogočiti stik z diplomatskim predstavništvom ali konzulatom države, katere državljan je.</p> <p>(2) Tujec mora med bivanjem v Republiki Sloveniji spoštovati ustavo, zakone in druge splošne pravne akte v Republiki Sloveniji ter se podrejati ukrepom pristojnih državnih organov.</p>	<p>Article 4: (1) An alien against whom criminal proceedings or proceedings for a misdemeanor are imposed and is in detention or is detained shall be permitted by the authority which ordered the detention or retention to contact the diplomatic mission or consulate of the country of which he is a national.</p> <p>(2) During the stay in the Republic of Slovenia, an alien must respect the Constitution, laws and other general legal acts in the Republic of Slovenia and be subject to the measures of the competent state authorities.</p>
<p>5. člen: (1) Državni zbor Republike Slovenije na predlog Vlade Republike Slovenije sprejme resolucijo o migracijski politiki, s katero določi gospodarske, socialne in druge ukrepe ter dejavnosti, ki jih bo sprejela Republika Slovenija na tem področju, kakor tudi sodelovanje z drugimi državami in mednarodnimi organizacijami na tem področju.</p> <p>(2) Vlada Republike Slovenije lahko, v skladu z resolucijo iz prejšnjega odstavka, vsako leto določi število (kvoto) dovoljenj za prebivanje v Republiki Sloveniji, ki se jih lahko izda tujcem v tekočem letu. V kvoto se ne vštejejo dovoljenja za začasno prebivanje, izdana zaradi združevanja družine, dovoljenja za začasno prebivanje, izdana družinskim članom slovenskih državljanov ali državljanov EU, dovoljenja za začasno prebivanje, izdana akreditiranim novinarjem, dovoljenja za začasno prebivanje, izdana umetnikom, dovoljenja za začasno prebivanje, izdana</p>	<p>Article 5: (1) On the proposal of the Government of the Republic of Slovenia, the National Assembly of the Republic of Slovenia adopts a resolution on migration policy, defining economic, social and other measures and activities that will be adopted by the Republic of Slovenia in this field, as well as cooperation with other countries and international organizations in this area.</p> <p>(2) The Government of the Republic of Slovenia may, in accordance with the resolution referred to in the preceding paragraph, determine annually the number (quota) of residence permits in the Republic of Slovenia that may be issued to foreigners in the current year. The quota does not include a temporary residence permit issued for family reunion, a temporary residence permit issued to family members of Slovenian citizens or EU citizens, temporary residence permits issued to accredited journalists, temporary residence permits</p>

<p>zaradi opravljanja raziskovalnega dela, dovoljenja za začasno prebivanje, izdana zaradi visokokvalificirane zaposlitve, dovoljenja za začasno prebivanje, izdana žrtvam trgovine z ljudmi, dovoljenja za začasno prebivanje, izdana žrtvam nezakonitega zaposlovanja in dovoljenja za začasno prebivanje, izdana iz drugih utemeljenih razlogov in zaradi interesa Republike Slovenije.</p>	<p>issued to artists, temporary residence permits issued for the purpose of performing research work, temporary residence permits issued for the purposes of highly qualified employment, temporary residence permits issued to victims of trafficking in human beings, temporary residence permits issued to victims of illegal employment and temporary residence permit issued for other valid reasons and for reasons interest of the Republic of Slovenia.</p>
<p>6. člen: (1) Vstop v Republiko Slovenijo in zapustitev Republike Slovenije sta na zunanji meji dovoljena samo na za to določenih mejnih prehodih. (2) Vstop v Republiko Slovenijo in zapustitev Republike Slovenije na notranjih mejah je mogoč kjer koli brez mejne kontrole. (3) Vlada Republike Slovenije z uredbo določi izjeme glede prestopa državne meje za maloobmejni promet in za posebne kategorije pomorskega prometa, turističnega ladijskega prevoza in obalnega ribolova. (4) Zadrževanje tujca v letalskem tranzitnem prostoru na letališču in zadrževanje tujcev na ladji, ki je v pristanišču, ne pomeni vstopa v Republiko Slovenijo.</p>	<p>Article 6: (1) Entry into the Republic of Slovenia and leaving the Republic of Slovenia at the external border shall be permitted only at the specified border crossing points. (2) Entry into the Republic of Slovenia and leaving the Republic of Slovenia at internal borders is possible anywhere without border control. (3) The Government of the Republic of Slovenia determines by means of a decree the exceptions concerning the crossing of the state border for small-scale traffic and for special categories of maritime transport, tourist shipping and coastal fishing. (4) The detention of an alien in the air transit area at the airport and the retention of aliens on board a ship in the port does not constitute entry into the Republic of Slovenia.</p>
<p>7. člen: (1) Tujec mora za vstop, zapustitev in bivanje v Republiki Sloveniji imeti veljavno potno listino, razen če z zakonom ali mednarodno pogodbo ni drugače določeno. (2) Tujci, ki so dodatno vpisani v potno listino, lahko vstopajo v Republiko Slovenijo in zapuščajo Republiko Slovenijo samo skupaj z osebo, v potno listino katere so vpisani. (3) Tujci, ki imajo skupinski potni list, lahko vstopajo v Republiko Slovenijo in zapuščajo Republiko Slovenijo samo skupaj, pri tem pa</p>	<p>Article 7: (1) An alien must have a valid travel document for entering, leaving and staying in the Republic of Slovenia, unless otherwise provided by law or international agreement. (2) Foreigners who are additionally registered in the travel document may enter the Republic of Slovenia and leave the Republic of Slovenia only with the person in whose travel document they are entered. (3) Foreigners holding a group passport may enter the Republic of Slovenia and leave the</p>

<p>morajo imeti osebe, ki so vpisane v skupinski potni list, listino s fotografijo, na podlagi katere se lahko ugotovi njihova istovetnost. Vodja skupine mora imeti osebno potno listino.</p> <p>(4) Izjemoma se lahko dovoli zapustitev Republike Slovenije tudi posameznemu članu skupine, če je to nujno zaradi njegovih osebnih razlogov ali, če tako odredi pristojni organ.</p> <p>(5) Vlada Republike Slovenije lahko določi, da državljani določenih držav lahko vstopajo in zapuščajo Republiko Slovenijo tudi z osebno izkaznico ali drugo ustrezno listino, ki je v državi tujca predpisana in s katero lahko dokazuje svojo istovetnost.</p> <p>(6) Brez veljavne potne listine se dovoli vstop tujcem, ki jih je Republika Slovenija dolžna sprejeti na podlagi mednarodne pogodbe ali v skladu s sprejetimi mednarodnimi akti.</p> <p>(7) Brez veljavne potne listine se lahko, na podlagi mednarodne pogodbe, dovoli vstop tudi v primeru tranzita izgnanih tujcev, ki niso državljani države, s katero je sklenjena taka pogodba.</p>	<p>Republic of Slovenia only together, while persons registered in a collective passport must have a document of the photo on the basis of which their identity can be established . The group leader must have a personal travel document.</p> <p>(4) Exceptionally, the exit of the Republic of Slovenia may also be granted to an individual member of the group, if this is necessary for his personal reasons or, if so ordered by the competent authority.</p> <p>(5) The Government of the Republic of Slovenia may determine that nationals of certain States may enter and leave the Republic of Slovenia also by means of an identity card or other relevant document which is prescribed in the alien's country and which is capable of proving its identity.</p> <p>(6) Without a valid travel document, entry is allowed to aliens that the Republic of Slovenia is obliged to accept on the basis of an international treaty or in accordance with accepted international acts.</p> <p>(7) Without a valid travel document, an international treaty may also be admitted in the event of the transit of expelled aliens who are not nationals of the State with whom such a contract is concluded.</p>
<p>10. a člen: (1) Ministrstvo, pristojno za notranje zadeve, redno spremlja razmere na področju migracij, predvsem na podlagi informacij državnih organov, drugih držav članic Evropske unije in tretjih držav, institucij Evropske unije ter ustreznih mednarodnih in medvladnih organizacij.</p> <p>(2) Če ministrstvo, pristojno za notranje zadeve, na podlagi informacij organov in institucij iz prejšnjega odstavka oceni, da bi v Republiki Sloveniji lahko ali da so že nastale razmere, ko bi bila ali sta zaradi spremenjenih razmer na področju migracij, ogrožena javni</p>	<p>Article 10 a: (1) The Ministry of the Interior shall regularly monitor the situation in the field of migration, in particular on the basis of information from national authorities, other Member States of the European Union and third countries, the institutions of the European Union and relevant international and intergovernmental organizations.</p> <p>(2) If the ministry responsible for internal affairs, on the basis of information from the authorities and institutions referred to in the preceding paragraph, assesses that in the Republic of Slovenia, or if conditions have</p>

red ali notranja varnost Republike Slovenije, kar bi lahko otežilo delovanje osrednjih institucij države in zagotavljanje njenih vitalnih funkcij, predlaga Vladi Republike Slovenije, da predlaga Državnemu zboru Republike Slovenije, da upoštevajoč načelo sorazmernosti, odloči o uporabi 10.b člena tega zakona, in sicer najdlje za čas šestih mesecev, in določi območje izvajanja tega ukrepa. Državni zbor Republike Slovenije sprejme odločitev z večino glasov vseh poslancev. Državni zbor Republike Slovenije lahko na predlog Vlade Republike Slovenije po istem postopku podaljša uporabo 10.b člena tega zakona, vsakič za najdlje šest mesecev, če za to še vedno obstajajo razlogi. K predlogu za uporabo in podaljšanje uporabe 10.b člena tega zakona pred obravnavo na Vladi Republike Slovenije poda mnenje Svet za nacionalno varnost.

(3) V predlogu iz prejšnjega odstavka ministrstvo, pristojno za notranje zadeve, pripravi oceno možnih posledic spremenjenih razmer na področju migracij glede vpliva na javni red in notranjo varnost Republike Slovenije, kar bi lahko otežilo delovanje osrednjih institucij države in zagotavljanje njenih vitalnih funkcij. Pri oceni upošteva razmere v državah, iz katerih tujci nameravajo vstopiti ali so vstopili v Republiko Slovenijo, in stanje na področju migracij v državah v regiji, število nezakonito prebivajočih tujcev in tujcev z odločbo o dovolitvi zadrževanja v Republiki Sloveniji, število prosilcev za mednarodno zaščito in število oseb s priznano mednarodno zaščito v Republiki Sloveniji ter nastanitvene in integracijske zmožnosti Republike Slovenije za vse omenjene kategorije tujcev in možnost izvajanja zakona, ki ureja mednarodno zaščito, ter druge dejavnike, ki bi lahko

already arisen, when the situation in the field of migration is or has been, the public order or the internal security of the Republic of Slovenia, which could hinder the functioning of the central institutions of the state and the provision of its vital functions, proposes that the Government of the Republic of Slovenia propose to the National Assembly of the Republic of Slovenia, in accordance with the principle of proportionality, to decide on the application of Article 10b of this Act, for a period of six months, and determine the area of implementation of this measure. The National Assembly of the Republic of Slovenia shall take a decision by a majority vote of all Members. On the proposal of the Government of the Republic of Slovenia, the National Assembly of the Republic of Slovenia may extend the application of Article 10b of this Act, in the same procedure, for a maximum of six months if there are still reasons for this. Before the hearing on the Government of the Republic of Slovenia, the National Security Council shall give its opinion on the proposal for the application and extension of the application of Article 10.b of this Act.

(3) In the proposal from the previous paragraph, the ministry responsible for internal affairs shall prepare an assessment of the possible consequences of the changed situation in the field of migration with regard to the influence on the public order and internal security of the Republic of Slovenia, which could hinder the functioning of the central institutions of the state and the provision of its vital functions. The assessment takes into account the situation in countries from which foreigners intend to enter or have entered the Republic of Slovenia and the situation in the field of

vplivali na javni red in notranjo varnost.

(4) Vlada Republike Slovenije o izvajanju 10.b člena tega zakona mesečno poroča Državnemu zboru Republike Slovenije. Takoj, ko prenehajo razlogi iz drugega odstavka tega člena in izvajanje 10.b člena tega zakona ni več potrebno, ministrstvo, pristojno za notranje zadeve, predlaga Vladi Republike Slovenije, da Državnemu zboru Republike Slovenije predlaga, naj odloči o predčasnem prenehanju uporabe 10.b člena tega zakona. K predlogu poda mnenje Svet za nacionalno varnost. Državni zbor Republike Slovenije sprejme odločitev z večino glasov vseh poslancev.

(5) Odločitev iz prejšnjega odstavka lahko predlaga tudi najmanj deset poslancev Državnega zbora Republike Slovenije. K predlogu poda mnenje Svet za nacionalno varnost.

(6) O razlogih, uporabi in prenehanju uporabe 10.b člena tega zakona Vlada Republike Slovenije obvesti generalnega sekretarja Sveta Evrope, generalnega sekretarja Organizacije združenih narodov, Visokega komisarja Združenih narodov za begunce in Evropsko komisijo.

migration in the countries in the region, the number of illegally staying aliens and foreigners with a decision on the permission to stay in the Republic of Slovenia, the number of applicants for international protection and the number of persons with recognized international protection in the Republic of Slovenia and the accommodation and integration capacity of the Republic of Slovenia for all these categories of aliens and the possibility of implementing the law governing international protection and other factors that could affect public order and internal security.

(4) The Government of the Republic of Slovenia shall report monthly on the implementation of Article 10b of this Act to the National Assembly of the Republic of Slovenia. As soon as the reasons referred to in the second paragraph of this Article and the implementation of Article 10b of this Act cease to exist, the ministry responsible for internal affairs proposes to the Government of the Republic of Slovenia to propose to the National Assembly of the Republic of Slovenia to decide on the early termination of application of 10.b of this Act. The National Security Council gives its opinion. The National Assembly of the Republic of Slovenia shall take a decision by a majority vote of all Members.

(5) The decision referred to in the preceding paragraph may also be proposed by at least ten deputies of the National Assembly of the Republic of Slovenia. The National Security Council gives its opinion.

(6) The Government of the Republic of Slovenia shall notify the Secretary General of the Council of Europe, the Secretary-General of the United Nations, the United Nations High Commissioner for Refugees and the

	<p>European Commission about the reasons, the application and the termination of the application of Article 10.b of this Act.</p>
<p>10. b člen: (1) Če Državni zbor Republike Slovenije sprejme odločitev iz drugega odstavka prejšnjega člena, policija tujcu, ki ne izpolnjuje pogojev za vstop, ne dovoli vstopa, tujca, ki je po uveljavitvi te odločitve nezakonito vstopil v Republiko Slovenijo in se na območju, na katerem se izvaja ta člen, nahaja nezakonito, pa privede do državne meje in ga napoti v državo, iz katere je nezakonito vstopil.</p> <p>(2) Če tujec, ki poskuša nezakonito vstopiti na mejnem prehodu ali je že nezakonito vstopil na ozemlje Republike Slovenije iz sosednje države članice Evropske unije in se nahaja na območju, na katerem se ta člen izvaja, po uveljavitvi odločitve Državnega zbora Republike Slovenije iz drugega odstavka prejšnjega člena izrazi namero podati prošnjo za mednarodno zaščito, policija izvede identifikacijski postopek in ugotavlja identiteto tujca v skladu z zakonom, ki ureja naloge in pooblastila policije. Ne glede na določbe zakona, ki ureja mednarodno zaščito, policija to namero zavrže kot nedopustno, če v sosednji državi članici Evropske unije, iz katere je tujec vstopil, ni sistemskih pomanjkljivosti v zvezi z azilnim postopkom in pogoji za sprejem prosilcev, ki bi lahko povzročile nevarnost mučenja, nečloveškega ali poniževalnega ravnanja, in tujca napoti v to državo. Pritožba zoper sklep ne zadrži izvršitve. O pritožbi odloča ministrstvo, pristojno za notranje zadeve.</p> <p>(3) Prejšnji odstavek se ne uporablja, kadar bi zdravstveno stanje tujca očitno onemogočalo ukrepanje iz prejšnjega odstavka ali kadar je tujec družinski član tujca, pri katerem ukrepanje ni mogoče zaradi zdravstvenega</p>	<p>Article 10 b: (1) If the National Assembly of the Republic of Slovenia adopts a decision from the second paragraph of the preceding article, the police shall not allow an alien who does not fulfill the conditions for entry to enter an alien who illegally entered the Republic of Slovenia after the entry into force of this decision and in the area in which enforces this article, is located illegally, and leads to a state border and directs it to the country from which he illegally entered.</p> <p>(2) If an alien attempting to illegally enter the border crossing or illegally entered the territory of the Republic of Slovenia from a neighboring Member State of the European Union and is located in the area in which this article is implemented after the entry into force of the decision of the National Assembly of the Republic of Slovenia from the second paragraph of the previous article expresses the intention to submit an application for international protection, the police shall carry out the identification procedure and determine the identity of the alien in accordance with the law governing the tasks and powers of the police. Notwithstanding the provisions of the law governing international protection, the police shall reject this intention as inadmissible if there are no systemic deficiencies in the adjacent EU Member State from which the alien entered, and the conditions for accepting applicants that could cause the danger of torture, inhuman or degrading treatment, and the alien is sent to this country. An appeal against a decision shall not suspend the execution. The Ministry of Interior shall decide on the appeal.</p>

<p>stanja, ali kadar gre po videzu, obnašanju ali drugih okoliščinah za mladoletnika brez spremstva.</p>	<p>(3) The preceding paragraph shall not apply where the alien's state of health would obviously prevent the action referred to in the preceding paragraph or where the alien is a family member of an alien in which action is not possible due to the state of health or when it is in the appearance, behavior or other circumstances of the minor escorts.</p>
<p>19. člen: (1) Vizum za dolgoročno bivanje se izda za čas nameravanega bivanja tujca v Republiki Sloveniji, ki je daljše od 90 dni, vendar najdlje za eno leto. Vizum za dolgoročno bivanje mora tujec pridobiti pred vstopom v Republiko Slovenijo, razen če ta zakon ne določa drugače.</p> <p>(2) Vizum za dolgoročno bivanje tujcu dovoljuje vstop in bivanje v Republiki Sloveniji ves čas veljavnosti vizuma.</p>	<p>Article 19: (1) A long-stay visa shall be issued for the period of the intended stay of an alien in the Republic of Slovenia, which is longer than 90 days but not longer than one year. A foreigner must obtain a long-stay visa before joining the Republic of Slovenia, unless otherwise provided by this Act.</p> <p>(2) A long-term visa allows an alien to enter and stay in the Republic of Slovenia for the duration of the visa.</p>
<p>20. člen: (1) Vizum za dolgoročno bivanje se lahko izda tujcu: ki je družinski član državljana EU in tujcu, ki je družinski član slovenskega državljana in namerava v Republiki Sloveniji prebivati zaradi združitve družine z državljanom EU oziroma s slovenskim državljanom, če za vstop v Republiko Slovenijo potrebuje vizum; ki je imetnik diplomatskega ali službenega potnega lista in ki namerava v Republiki Sloveniji prebivati zaradi opravljanja mandata v diplomatskem predstavništvu ali konzulatu druge države oziroma mednarodni organizaciji, ki ima sedež v Republiki Sloveniji in njegovim družinskim članom, kot jih določa 47. člen tega zakona, če tujec in njegovi družinski člani za vstop v Republiko Slovenijo potrebujejo vizum; zaradi udeležbe ali sodelovanja na tečaju ali drugih podobnih oblikah izobraževanja ali izpopolnjevanja, zaradi katerih tujec ne potrebuje dovoljenja za prebivanje zaradi študija, če predloži potrdilo o sprejemu na tečaj ali druge podobne oblike</p>	<p>Article 20: (1) A long-stay visa may be issued to an alien: a family member of a citizen of the EU and an alien who is a family member of a Slovenian citizen and intends to reside in the Republic of Slovenia for the purpose of family reunification with the citizen of the EU or with a Slovenian citizen if he requires a visa to enter the Republic of Slovenia; who is the holder of a diplomatic or service passport and who intends to reside in the Republic of Slovenia for the purpose of exercising his mandate in a diplomatic mission or consulate of another state or an international organization established in the Republic of Slovenia and its family members as defined in Article 47 of this Act, if a foreigner and his family members need a visa to enter the Republic of Slovenia; for participation in or participation in a course or other similar forms of education or training which does not require a foreigner to obtain residence permits for study, provided that he offers a certificate of admission to a course</p>

izobraževanja ter potrdilo o plačilu, če so tečaj ali druge podobne oblike izobraževanja, plačljive; zaradi obstoja gospodarskega interesa za Republiko Slovenijo, ki ga tujec izkaže z mnenjem pristojnega ministrstva; ki je visokošolski učitelj, visokošolski sodelavec ali raziskovalec zaradi obstoja interesa Republike Slovenije na področju izobraževanja ali znanosti, ki ga tujec izkaže z mnenjem pristojnega ministrstva; ki je umetnik ali kulturni delavec, zaradi obstoja interesa Republike Slovenije na področju kulture, ki ga tujec izkaže z mnenjem pristojnega ministrstva; ki je športni trener, poklicni športnik ali zasebni športni delavec in ki ima sklenjeno pogodbo o treniranju, pogodbo o zaposlitvi ali pogodbo o delu s klubom ali športno organizacijo s sedežem v Republiki Sloveniji; je kot poročevalec za tuje medije ali kot tuj dopisnik akreditiran v Republiki Sloveniji; ki bo v Republiki Sloveniji opravljal duhovniški poklic ali redovniško dejavnost v okviru registrirane verske skupnosti in tujcu, ki bo organiziral oziroma vodil karitativno in humanitarno dejavnost v okviru priznane humanitarne organizacije ali registrirane verske skupnosti.

(2) Ne glede na prejšnji odstavek, se vizum za dolgoročno bivanje lahko izda tudi tujcu, ki že biva v Republiki Sloveniji in ki za vstop v Republiko Slovenijo ni potreboval vizuma, dovoljen čas bivanja v Republiki Sloveniji iz drugega odstavka 14. člena tega zakona pa mora podaljšati, zaradi: nujnega bolnišničnega zdravljenja; smrti ali hujše bolezni družinskega člana, ki prebiva v Republiki Sloveniji; naravne nesreče; nujnega podaljšanja poslovnega obiska, ki je posledica nepredvidljivih okoliščin, da se prepreči nastanek večje gospodarske škode ali da se preprečijo škodljive posledice za okolje; nujne

or other similar forms of education and a payment certificate if the course or other similar forms education, payable; due to the existence of an economic interest in the Republic of Slovenia, which the foreigner shows with the opinion of the competent ministry; who is a higher education teacher, a college student or researcher because of the existence of the interest of the Republic of Slovenia in the field of education or science, which the foreigner presents with the opinion of the competent ministry; who is an artist or cultural worker, because of the existence of the interest of the Republic of Slovenia in the field of culture, which the foreigner shows with the opinion of the competent ministry; who is a sports coach, professional athlete or a private sports worker and who has a contract of training, a contract of employment or a contract of work with a club or a sports organization established in the Republic of Slovenia; as a rapporteur for foreign media or as a foreign correspondent accredited in the Republic of Slovenia; who will perform in the Republic of Slovenia a priesthood or religious activity within a registered religious community and an alien who will organize or lead a charitable and humanitarian activity within a recognized humanitarian organization or a registered religious community.

(2) Notwithstanding the preceding paragraph, a long-stay visa may also be issued to an alien who already resides in the Republic of Slovenia and who did not require a visa to enter the Republic of Slovenia, the period of residence in the Republic of Slovenia permitted under the second paragraph of Article 14 of this Act it must be renewed due to: emergency hospital treatment; death or serious illness of a family member residing in

<p>udeležbe v postopku pred državnim organom Republike Slovenije.</p> <p>(3) Prošnja za izdajo vizuma za dolgoročno bivanje iz prejšnjega odstavka mora tujec vložiti pred potekom dovoljenega 90 dnevne bivanja v Republiki Sloveniji pri ministrstvu, pristojnemu za zunanje zadeve.</p> <p>(4) Minister, pristojen za gospodarski razvoj in tehnologijo, izda pravilnik, s katerim predpiše kriterije za ugotavljanje obstoja gospodarskega interesa iz četrte alineje prvega odstavka tega člena.</p>	<p>the Republic of Slovenia; natural disasters; the urgent extension of a business visit resulting from unforeseeable circumstances in order to prevent the occurrence of major economic damage or to prevent adverse effects on the environment; necessary participation in the procedure before the state body of the Republic of Slovenia.</p> <p>(3) An application for issuance of a long-stay visa referred to in the previous paragraph must be filed by an alien before the expiry of the 90-day residence permit in the Republic of Slovenia with the Ministry of Foreign Affairs.</p> <p>(4) The minister responsible for economic development and technology shall issue a regulation setting out the criteria for determining the existence of an economic interest referred to in the fourth indent of the first paragraph of this Article.</p>
<p>22. člen: (1) Vizum za dolgoročno bivanje se izda na prošnjo tujca. Prošnja se lahko vloži največ tri mesece pred nameravanim prihodom tujca v Republiko Slovenijo pri pristojnem organu iz 18. člena tega zakona. Obrazec prošnje za izdajo vizuma za dolgoročno bivanje določi minister, pristojen za zunanje zadeve.</p> <p>(2) Tujec, ki želi vstopiti in bivati v Republiki Sloveniji z vizumom za dolgoročno bivanje, mora imeti veljavno potno listino, katere veljavnost je najmanj tri mesece daljša od nameravanega bivanja v Republiki Sloveniji, potovalno zdravstveno zavarovanje, zadostna sredstva za preživljanje, in mora izkazati enega od namenov iz 20. člena tega zakona, zaradi katerih se vizum za dolgoročno bivanje lahko izda.</p> <p>(3) Vlagatelj mora prošnji za izdajo vizuma za dolgoročno bivanje priložiti veljavno potno listino in kopijo takšne listine ter druga</p>	<p>Article 22: (1) A long-stay visa shall be issued at the request of an alien. The application may be submitted no more than three months before the intended arrival of an alien to the Republic of Slovenia with the competent authority referred to in Article 18 of this Act. The application form for issuing a long-stay visa shall be determined by the minister responsible for foreign affairs.</p> <p>(2) An alien wishing to enter and stay in the Republic of Slovenia with a long-stay visa must have a valid travel document whose validity is at least three months longer than the intended stay in the Republic of Slovenia, travel health insurance, sufficient means of subsistence and must to prove one of the purposes referred to in Article 20 of this Act, for which a long-stay visa may be issued.</p> <p>(3) The applicant must enclose a valid travel document and a copy of such a document and other supporting documents and</p>

<p>dokazila in listine o izpolnjevanju pogojev iz prejšnjega odstavka in plačati upravno takso za izdajo vizuma za dolgoročno bivanje. Prošnja za izdajo vizuma za dolgoročno bivanje, za katero upravna taksa ni bila plačana, se s sklepom zavrže. Družinski član državljana EU in družinski član slovenskega državljana iz prve alineje prvega odstavka 20. člena tega zakona v postopku izdaje vizuma za dolgoročno bivanje ne plača upravne takse.</p> <p>(4) Ob sprejemu prošnje se v potno listino tujca odtisne žig, s katerim se označi, da je vložena prošnja za izdajo vizuma za dolgoročno bivanje. Vsebina in oblika žiga ustreza žigu, ki je določen v Prilogi III Vizumskega zakonika.</p> <p>(5) Izdani vizum za dolgoročno bivanje se vroči osebo tujcu pri pristojnem organu.</p> <p>(6) Odločba o zavrnitvi izdaje vizuma, sklep o ustavitvi postopka in sklep o zavrnjenju prošnje, izdan v postopku izdaje vizuma, se vroči tujcu osebno pri diplomatskem predstavništvu ali konzulatu ali po pošti v skladu s predpisi države, v kateri je diplomatsko predstavništvo ali konzulat Republike Slovenije, ki urejajo poštno storitve, in sicer na način, ki omogoča potrditev prejema. Če vročitve na takšen način ni mogoče opraviti, se odločba ali sklep objavi na oglasni deski diplomatskega predstavništva ali konzulata Republike Slovenije in na enotnem državnem portalu e-uprava v skladu z določbami zakona, ki ureja splošni upravni postopek.</p>	<p>documents on the fulfillment of the conditions referred to in the preceding paragraph and pay an administrative fee for issuing a long-stay visa for the long-stay visa application. An application for a long-stay visa for which an administrative fee has not been paid shall be rejected by resolution. A family member of the EU citizen and a family member of a Slovenian citizen referred to in the first indent of the first paragraph of Article 20 of this Act shall not pay an administrative fee in the procedure for issuing a long-stay visa.</p> <p>(4) Upon receipt of the application, a stamp shall be stamped in the travel document of an alien indicating that an application for a long-stay visa has been lodged. The content and form of the mark corresponds to the mark set out in Annex III of the Visa Code.</p> <p>(5) A long-stay visa issued shall be served on a personally alien to the competent authority.</p> <p>(6) The decision to refuse the issue of a visa, the decision to stop the procedure and the decision to reject the application issued in the visa issuing procedure shall be served on the alien in person with the diplomatic mission or consulate or by post, in accordance with the regulations of the country where the diplomatic mission or consulate is located Of the Republic of Slovenia regulating postal services, in a manner that enables the acknowledgment of receipt. If the service can not be effected in such a way, the decision or decision shall be published on the bulletin board of the diplomatic mission or consulate of the Republic of Slovenia and on the single national government portal in accordance with the provisions of the law governing the general administrative procedure.</p>
<p>47. a člen: (1) Pravica do združitve družine se prizna tujcu, ki mu je v Republiki Sloveniji</p>	<p>Article 47 a: (1) The right to family reunification shall be granted to an alien who</p>

priznan status begunca na podlagi zakona, ki ureja mednarodno zaščito (v nadaljnjem besedilu: begunec) pod pogojem, da je družina obstajala že pred vstopom begunca v Republiko Slovenijo.

(2) Za družinske člane begunca se po tem zakonu štejejo: zakonec, registrirani partner ali partner, s katerim begunec živi v dalj časa trajajoči življenjski skupnosti; mladoletni neporočeni otroci begunca; mladoletni neporočeni otroci zakonca, registriranega partnerja ali partnerja, s katerim begunec živi v dalj časa trajajoči življenjski skupnosti; polnoletni neporočeni otroci in starši begunca, zakonca, registriranega partnerja ali partnerja, s katerim begunec živi v dalj časa trajajoči življenjski skupnosti, če ga je begunec, zakonec, registrirani partner ali partner, s katerim begunec živi v dalj časa trajajoči življenjski skupnosti, po zakonu države, katere državljan je, dolžan preživljati; starši begunca, ki je mladoletnik brez spremstva.

(3) Dovoljenje za stalno prebivanje se družinskemu članu begunca izda na prošnjo begunca, ki mora prošnjo vložiti v roku 90 dni od priznanja statusa begunca pri ministrstvu, pristojnem za notranje zadeve. Begunec mora prošnji priložiti listinske dokaze, ki izkazujejo družinsko vez in istovetnost njegovih družinskih članov. Če begunec ne poseduje listinskih dokazov za izkazovanje družinskih vezi, mora v prošnji navesti vsa dejstva o družinskih članih, s katerimi se želi združiti, zlasti njihova osebna imena, datume in kraje rojstev, naslov prebivališča ter podatke o tem, kje v času vložitve prošnje bivajo. Prošnji mora priložiti tudi pisno soglasje, s katerim pristojnemu organu dovoljuje, da lahko za preverjanje družinskih vezi podatke o družinskih članih

has been granted refugee status in the Republic of Slovenia on the basis of the law governing international protection (hereinafter: refugee), provided that the family existed prior to the entry refugee to the Republic of Slovenia.

(2) For the refugee's family members under this Act shall be considered: spouse, registered partner or partner with whom the refugee is living in a long-term living relationship; minor unmarried children of refugees; minor unmarried children of the spouse, registered partner or partner with whom the refugee is living in a long-term living relationship;

adult unmarried children and parents of the refugee, spouse, registered partner or partner with whom the refugee is living in a long-standing living community, if the refugee, spouse, registered partner or partner with whom the refugee is living in a long-standing living community, by law the state of which he is a citizen is obliged to make a living; parents of a refugee who is an unaccompanied minor.

(3) A permit for permanent residence shall be issued to a refugee's family member at the request of a refugee who must lodge the application within 90 days of the recognition of refugee status with the ministry responsible for the interior. The refugee must enclose the documentary evidence showing the family bond and the identity of his family members. If a refugee does not possess documentary evidence for showing family ties, he must state in his application all the facts about the family members with whom he wishes to join, in particular their personal names, dates and places of birth, address of residence and information on where they live at the time of lodging the application . The

posreduje mednarodnim organizacijam, ki delujejo na področju migracij. Pred posredovanjem podatkov mednarodnim organizacijam, ki delujejo na področju migracij, pristojni organ pridobi pisno izjavo te organizacije, da bo podatke varovala pred organi izvirne države.

(4) Izjemoma lahko pristojni organ za družinskega člana šteje tudi drugega sorodnika begunca, če posebne okoliščine govoriyo v prid združitvi družine v Republiki Sloveniji. Posebne okoliščine so podane, kadar obstoji življenjska skupnost med drugimi sorodniki, ki je zaradi specifičnih dejanskih okoliščin v bistvenem podobna primarni družini oziroma ima enako funkcijo kot jo ima primarna družina, kar pomeni predvsem pristne družinske vezi med družinskimi člani, fizično skrb, varstvo, zaščito, čustveno podporo in finančno odvisnost.

(5) Pri preverjanju družinskih vezi ima begunec, ki ne razume slovenskega jezika, pravico do brezplačnega prevajanja in tolmačenja za jezik, ki ga razume. Sredstva za prevajanje in tolmačenje zagotavlja ministrstvo, pristojno za notranje zadeve.

(6) Dovoljenje za stalno prebivanje se družinskemu članu begunca, katerega istovetnost ni sporna, lahko izda, če ni razlogov za zavrnitev izdaje dovoljenja za prebivanje iz tretje, pete, šeste, sedme, desete ali enajste alineje prvega odstavka 55. člena tega zakona.

(7) Če begunec prošnje za izdajo dovoljenja za stalno prebivanje ne vloži v roku iz tretjega odstavka tega člena, se družinskemu članu, katerega istovetnost ni sporna, dovoljenje za stalno prebivanje lahko izda, če družinski član izpolnjuje pogoje, določene za izdajo dovoljenja iz tretjega odstavka 33. člena tega

application must also be accompanied by a written consent which allows the competent authority to forward information about family members to international organizations working in the field of migration in order to check family relationships. Before transmitting data to international organizations working in the field of migration, the competent authority shall obtain a written statement from that organization in order to protect the data from the authorities of the country of origin.

(4) Exceptionally, the competent authority for the family member may also consider another relative of a refugee if special circumstances speak in favor of family reunification in the Republic of Slovenia. Special circumstances are given when there is a living community among other relatives, which, due to specific factual circumstances, essentially resembles a primary family or has the same function as the primary family, which means in particular genuine family ties between family members, physical care, protection, protection, emotional support and financial dependence.

(5) When checking family ties, a refugee who does not understand the Slovene language has the right to free translation and interpretation for the language he understands. Funding for translation and interpretation is provided by the ministry responsible for internal affairs.

(6) A permit for permanent residence may be issued to a family member of a refugee whose identity is not disputed if there are no grounds for refusing to issue a residence permit from the third, fifth, sixth, seventh, tenth or eleventh indents of the first paragraph of Article 55 of this Act.

(7) If a refugee does not file an application

<p>zakona in če ni razlogov za zavrnitev izdaje dovoljenja za prebivanje iz tretje, pete, šeste, sedme, desete ali enajste alinee prvega odstavka 55. člena tega zakona.</p> <p>(8) V postopku izdaje in pri vročitvi dovoljenja za stalno prebivanje družinskemu članu begunca se osebni podatki begunca in njegovega družinskega člana varujejo pred organi njune izvorne države.</p> <p>(9) Izdano dovoljenje za stalno prebivanje, odločba o zavrnitvi izdaje dovoljenja, sklep o ustavitvi postopka in sklep o zavrnjenju prošnje, izdan v postopku izdaje dovoljenja za stalno prebivanje družinskemu članu begunca vroči diplomatsko predstavništvo ali konzulat Republike Slovenije v tujini ali ministrstvo, pristojno za notranje zadeve, če družinski član že biva v Republiki Sloveniji.</p> <p>(10) Za družinskega člana begunca, ki je to postal po vstopu begunca v Republiko Slovenijo, se glede izdaje dovoljenja za prebivanje zaradi združitve družine uporablja ureditev iz prejšnjega člena.</p> <p>(11) V primeru poligamne zakonske zveze se dovoljenje za stalno prebivanje zaradi združitve družine lahko izda le enemu zakoncu.</p>	<p>for a permanent residence permit within the time limit referred to in the third paragraph of this Article, a family member whose identity is not disputed may be issued a permanent residence permit if the family member fulfills the conditions laid down for granting the authorization from the third of Article 33 of this Act, and if there are no grounds for refusing to issue a residence permit from the third, fifth, sixth, seventh, tenth or eleventh indents of the first paragraph of Article 55 of this Act.</p> <p>(8) In the procedure for the issue and the notification of the permanent residence permit to the refugee's family member, the personal data of the refugee and his family member shall be protected from the authorities of their country of origin.</p> <p>(9) A permit for permanent residence, a decision to refuse the issue of a permit, a decision to stop the procedure and a decision rejecting an application issued in the procedure for issuing a permanent residence permit to a family member of a refugee shall be served by the diplomatic mission or consulate of the Republic of Slovenia abroad or the ministry responsible for internal affairs if a family member already resides in the Republic of Slovenia.</p> <p>(10) As regards the family member of a refugee who became a member after the refugee's entry into the Republic of Slovenia, the arrangement referred to in the preceding Article shall apply in respect of the issue of a residence permit for the purpose of family reunification.</p> <p>(11) In the case of a polygamous marriage, a permanent residence permit for family reunification may only be issued to one spouse.</p>
<p>47. b člen: (1) Tujcu, kateremu je v Republiki</p>	<p>Article 47 b: (1) An alien whose subsidiary</p>

Sloveniji priznana subsidiarna zaščita na podlagi zakona, ki ureja mednarodno zaščito (v nadaljnjem besedilu: oseba s priznano subsidiarno zaščito) za več kot eno leto, se prizna pravica do združitve družine z družinskimi člani, ki so tujci, pod pogojem, da je družina obstajala že pred vstopom osebe s priznano subsidiarno zaščito v Republiko Slovenijo. Osebi s subsidiarno zaščito, priznano za eno leto, se pravica do združitve družine prizna, ko ji je subsidiarna zaščita podaljšana skladno z zakonom, ki ureja mednarodno zaščito.

(2) Za družinske člane osebe s priznano subsidiarno zaščito se po tem zakonu štejejo: zakonec, registrirani partner ali partner, s katerim oseba s priznano subsidiarno zaščito živi v dalj časa trajajoči življenjski skupnosti; mladoletni neporočeni otroci osebe s priznano subsidiarno zaščito; mladoletni neporočeni otroci zakonca, registriranega partnerja ali partnerja, s katerim oseba s priznano subsidiarno zaščito živi v dalj časa trajajoči življenjski skupnosti; polnoletni neporočeni otroci in starši osebe s priznano subsidiarno zaščito, zakonca, registriranega partnerja ali partnerja, s katerim oseba s priznano subsidiarno zaščito živi v dalj časa trajajoči življenjski skupnosti, če ga je oseba s priznano subsidiarno zaščito, zakonec, registrirani partner ali partner, s katerim oseba s priznano subsidiarno zaščito živi v dalj časa trajajoči življenjski skupnosti, po zakonu države, katere državljan je, dolžan preživljati; starši osebe s priznano subsidiarno zaščito, ki je mladoletnik brez spremstva.

(3) Dovoljenje za začasno prebivanje se družinskemu članu osebe s priznano subsidiarno zaščito izda na prošnjo osebe s priznano subsidiarno zaščito, ki mora prošnjo

protection is recognized in the Republic of Slovenia on the basis of the law governing international protection (hereinafter: a person with recognized subsidiary protection) for more than one year shall be granted the right to family reunification with family members who are foreigners, provided that the family existed before the entry of a person with recognized subsidiary protection to the Republic of Slovenia. Persons with subsidiary protection, recognized for one year, the right to family reunification is recognized when subsidiary protection is extended in accordance with the law governing international protection.

(2) For the members of the family of a person with recognized subsidiary protection, according to this Act: a spouse, a registered partner or a partner with whom a person with recognized subsidiary protection lives in a long-standing life-form; minor unmarried children of a person with recognized subsidiary protection; juvenile unmarried children of a spouse, registered partner or partner with whom a person with recognized subsidiary protection lives in a long-term living relationship; adult unmarried children and parents of a person with recognized subsidiary protection, spouse, registered partner or partner with whom a person with recognized subsidiary protection resides in a long-term living relationship if the person is a recognized subsidiary protection, spouse, registered partner or partner with to whom a person with recognized subsidiary protection resides in a long-standing life-long community, under the law of the State of which he is a national, he is obliged to subsist; parents of a person with a recognized subsidiary protection who is an unaccompanied minor.

vložiti v roku 90 dni od priznanja statusa subsidiarne zaščite pri ministrstvu, pristojnem za notranje zadeve. Oseba s priznano subsidiarno zaščito mora prošnji priložiti listinske dokaze, ki izkazujejo družinsko vez in istovetnost njegovih družinskih članov. Če oseba s priznano subsidiarno zaščito ne poseduje listinskih dokazov za izkazovanje družinskih vezi, mora v prošnji navesti vsa dejstva o družinskih članih, s katerimi se želi združiti, zlasti njihova osebna imena, datume in kraje rojstev, naslov prebivališča ter podatke o tem, kje v času vložitve prošnje bivajo. Prošnji mora priložiti tudi pisno soglasje, s katerim pristojnemu organu dovoljuje, da lahko za preverjanje družinskih vezi podatke o družinskih članih posreduje mednarodnim organizacijam, ki delujejo na področju migracij. Pred posredovanjem podatkov mednarodnim organizacijam, ki delujejo na področju migracij, pristojni organ pridobi pisno izjavo te organizacije, da bo podatke varovala pred organi izvirne države.

(4) Izjemoma lahko pristojni organ za družinskega člana šteje tudi drugega sorodnika osebe s priznano subsidiarno zaščito, če posebne okoliščine govoriyo v prid združitvi družine v Republiki Sloveniji. Posebne okoliščine so podane, kadar obstoji življenjska skupnost med drugimi sorodniki, ki je zaradi specifičnih dejanskih okoliščin v bistvenem podobna primarni družini oziroma ima enako funkcijo kot jo ima primarna družina, kar pomeni predvsem pristne družinske vezi med družinskimi člani, fizično skrb, varstvo, zaščito, čustveno podporo in finančno odvisnost.

(5) Pri preverjanju družinskih vezi ima oseba s priznano subsidiarno zaščito, ki ne razume slovenskega jezika, pravico do brezplačnega prevajanja in tolmačenja za jezik, ki ga

(3) A temporary residence permit shall be issued to a family member of a person with recognized subsidiary protection at the request of a person with recognized subsidiary protection who must lodge the application within 90 days of the recognition of the status of subsidiary protection with the ministry in charge of internal affairs. A person with recognized subsidiary protection must attach to the application documentary evidence showing the family bond and the identity of his family members. If a person with recognized subsidiary protection does not possess documentary evidence of family ties, he must indicate in the application all the facts about the family members he or she wishes to join, in particular their personal names, dates and places of birth, address of residence and information on where in time of filing the application. The application must also be accompanied by a written consent which allows the competent authority to forward information about family members to international organizations working in the field of migration in order to check family relationships. Before transmitting data to international organizations working in the field of migration, the competent authority shall obtain a written statement from that organization in order to protect the data from the authorities of the country of origin.

(4) Exceptionally, the competent authority for the family member may also consider another relative of a person with recognized subsidiary protection if special circumstances speak in favor of family reunification in the Republic of Slovenia. Special circumstances are given when there is a living community among other relatives, which, due to specific factual circumstances, essentially resembles a

razume. Sredstva za prevajanje in tolmačenje zagotavlja ministrstvo, pristojno za notranje zadeve.

(6) Dovoljenje za začasno prebivanje se družinskemu članu osebe s priznano subsidiarno zaščito, katere istovetnost ni sporna, lahko izda, če ni razlogov za zavrnitev izdaje dovoljenja za prebivanje iz tretje, pete, šeste, sedme, desete ali enajste alinee prvega odstavka 55. člena tega zakona.

(7) Če oseba s priznano subsidiarno zaščito prošnje za izdajo dovoljenja za začasno prebivanje ne vloži v roku iz tretjega odstavka tega člena, se družinskemu članu, katerega istovetnost ni sporna, dovoljenje za začasno prebivanje lahko izda, če družinski član izpolnjuje pogoje, določene za izdajo dovoljenja iz tretjega odstavka 33. člena tega zakona in če ni razlogov za zavrnitev izdaje dovoljenja za prebivanje iz tretje, pete, šeste, sedme, desete ali enajste alinee prvega odstavka 55. člena tega zakona.

(8) V postopku izdaje in pri vročitvi dovoljenja za začasno prebivanje družinskemu članu osebe s priznano subsidiarno zaščito se osebni podatki osebe s priznano subsidiarno zaščito in njegovega družinskega člana varujejo pred organi njune izvorne države.

(9) Izdano dovoljenje za začasno prebivanje, odločba o zavrnitvi izdaje dovoljenja, sklep o ustavitvi postopka in sklep o zavrženju prošnje, izdan v postopku izdaje dovoljenja za stalno prebivanje družinskemu članu osebe s priznano subsidiarno zaščito vroči diplomatsko predstavništvo ali konzulat Republike Slovenije v tujini ali ministrstvo, pristojno za notranje zadeve, če družinski član že biva v Republiki Sloveniji.

(10) Za družinskega člana osebe s priznano subsidiarno zaščito, ki je to postal po vstopu

primary family or has the same function as the primary family, which means in particular genuine family ties between family members, physical care, protection, protection, emotional support and financial dependence.

(5) When checking family ties, a person with recognized subsidiary protection who does not understand the Slovene language has the right to free translation and interpretation for the language he understands. Funding for translation and interpretation is provided by the ministry responsible for internal affairs.

(6) A permit for temporary residence may be issued to a family member of a person with recognized sub-security protection whose identity is not in dispute if there are no grounds for refusing to issue a residence permit from the third, fifth, sixth, seventh, tenth or eleventh indents of the first paragraph 55. of this Act.

(7) If a person with recognized sub-frontal protection does not lodge an application for a temporary residence permit within the time limit referred to in the third paragraph of this Article, a family member whose identity is not disputed may be issued a temporary residence permit if the family member fulfills the conditions laid down for issue the permit referred to in the third paragraph of Article 33 of this Act and if there are no grounds for refusing to issue a residence permit from the third, fifth, sixth, seventh, tenth or eleventh indents of the first paragraph of Article 55 of this Act.

(8) In the procedure for the issue and for the service of a temporary residence permit to a family member of a person with recognized subsidiary protection, the personal data of a person with recognized subsidiary protection and his family member shall be protected from the authorities of their country of

<p>osebe s priznано subsidiarno zaščito v Republiko Slovenijo, se glede izdaje dovoljenja za prebivanje zaradi združitve družine uporablja ureditev iz 47. člena tega zakona.</p> <p>(11) V primeru poligamne zakonske zveze se dovoljenje za začasno prebivanje zaradi združitve družine lahko izda le enemu zakoncu.</p> <p>(12) Tujec, ki v Republiki Sloveniji prebiva na podlagi dovoljenja za začasno prebivanje kot družinski član osebe s priznано subsidiarno zaščito, je na področju zdravstvenega varstva, socialnega varstva, izobraževanja in zaposlovanja, izenačen z državljani Republike Slovenije.</p>	<p>origin.</p> <p>(9) A permit issued for temporary residence, a decision to refuse the issue of a permit, a decision to stop the procedure and a decision to reject the application issued in the procedure for issuing a permanent residence permit to a family member of a person with recognized subsidiary protection shall be served by the diplomatic mission or consulate of the Republic of Slovenia abroad or the ministry responsible for internal affairs, if the family member already resides in the Republic of Slovenia.</p> <p>(10) As regards the family member of a person with a recognized subsidiary protection who became subject to the entry of a person with recognized subsidiary protection to the Republic of Slovenia, the regulation referred to in Article 47 of this Act shall apply to the issue of a residence permit for the purpose of family reunification.</p> <p>(11) In the case of a polygamous marriage, a temporary residence permit for the purpose of family reunification can only be issued to one spouse.</p> <p>(12) An alien residing in the Republic of Slovenia on the basis of a temporary residence permit as a family member of a person with recognized subsidiary protection shall be treated equally with the citizens of the Republic of Slovenia in the field of health care, social protection, education and employment.</p>
<p>57. člen: (1) Dovoljenje za začasno prebivanje preneha, če: preteče njegova veljavnost ali, če je razveljavljeno; je tujcu odpovedano prebivanje; je tujcu v Republiki Sloveniji izrečena pravnomočna stranska sankcija izгона tujca iz države, ali če je tujcu izrečen izgon kot pravna posledica obsodbe po določbah Kazenskega zakonika (Uradni list</p>	<p>Article 57: (1) A temporary residence permit shall cease if: its validity expires or, if it is revoked; an alien is resigned; an alien in the Republic of Slovenia has been pronounced a legally valid secondary sanction for the expulsion of an alien from the state, or if an alien has been expelled as a legal consequence of a conviction pursuant to the</p>

RS, št. 55/08 in 50/12), ali če je tujcu druga država članica Evropske unije izrekla pravnomočno odločitev o izgonu, zaradi katerega bo odstranjen iz Republike Slovenije; se tujec odreče dovoljenju, in sicer z dnem podane izjave o odreku dovoljenju za začasno prebivanje; tujec pridobi državljanstvo Republike Slovenije;

tujec pridobi dovoljenje za stalno prebivanje; se tujcu pred pretekom veljavnosti dovoljenja podaljša dovoljenje za začasno prebivanje, izda nadaljnje dovoljenje za začasno prebivanje ali potrdilo o prijavi prebivanja; tujec umre.

(2) Modra karta EU in dovoljenje za začasno prebivanje družinskega člana imetnika modre karte EU, poleg razlogov iz prejšnjega odstavka, preneha veljati, če tujec v drugi državi članici EU pridobi modro karto EU oziroma dovoljenje za začasno prebivanje za družinskega člana imetnika modre karte EU.

(3) Dovoljenje za stalno prebivanje preneha veljati, če: je dovoljenje razveljavljeno; je tujcu odpovedano prebivanje; je tujcu v Republiki Sloveniji izrečena pravnomočna stranska sankcija izgonu tujca iz države, ali če je tujcu izrečen izgon kot pravna posledica obsodbe po določbah Kazenskega zakonika (Uradni list RS, št. 55/08 in 50/12), ali če je tujcu druga država članica Evropske unije izrekla pravnomočno odločitev o izgonu, zaradi katerega bo odstranjen iz Republike Slovenije; se tujec odreče dovoljenju, in sicer z dnem podane izjave o odreku dovoljenju za stalno prebivanje; tujec pridobi državljanstvo Republike Slovenije; se tujec izseli ali če ostane izven območja držav članic Evropske unije neprekinjeno eno leto ali dlje, razen v primeru, če je poslan na delo, študij ali zdravljenje; se tujec izseli ali ostane izven območja Republike Slovenije neprekinjeno

provisions of the Criminal Code (Official Gazette of the Republic of Slovenia, No. 55/08 and 50/12), or if an alien is another a member of the European Union has pronounced the final decision on expulsion, which would result in the removal from the Republic of Slovenia; the alien renounces the permit, as from the date of the declaration of renunciation of the temporary residence permit; alien acquires citizenship of the Republic of Slovenia;

alien obtains a permanent residence permit; the foreigner is granted a temporary residence permit before the expiry of the validity, he / she issues a further temporary residence permit or a residence registration certificate; the alien dies.

(2) In addition to the grounds referred to in the preceding paragraph, the EU Blue Card and the temporary residence permit of a family member of the EU Blue Card holder shall cease to apply if an alien in another EU Member State acquires an EU Blue Card or a temporary residence permit for a family member of the EU Blue Card holder .

(3) A permanent residence permit expires if: the permit is revoked; an alien is resigned; an alien in the Republic of Slovenia has been pronounced a legally valid secondary sanction for the expulsion of an alien from the state, or if an alien has been expelled as a legal consequence of a conviction pursuant to the provisions of the Criminal Code (Official Gazette of the Republic of Slovenia, No. 55/08 and 50/12), or if an alien is another a member of the European Union has pronounced the final decision on expulsion, which would result in the removal from the Republic of Slovenia; the alien renounces the permit, as from the date of the statement of renunciation of the permit for

<p>šest let ali dlje, pri čemer občasna, kratkotrajna vračanja v Republiko Slovenijo za čas do 90 dni ne prekinejo navedenega obdobja; tujec v drugi državi članici Evropske unije pridobi status rezidenta za daljši čas; tujec umre.</p> <p>(4) Dovoljenje za stalno prebivanje imetnika modre karte EU ali dovoljenje za stalno prebivanje izdano družinskemu članu imetnika modre karte EU preneha veljati iz vseh razlogov iz prejšnjega odstavka, v primeru šeste alineje prejšnjega odstavka pa samo, če se tujec izseli ali, če ostane izven območja držav članic Evropske unije neprekinjeno dve leti ali dlje.</p> <p>(5) Dovoljenje za stalno prebivanje, izdano družinskemu članu begunca, preneha veljati, če beguncu status begunca preneha ali se mu odvzame ter iz razlogov, določenih v tretjem odstavku tega člena, razen če begunec pridobi državljanstvo Republike Slovenije ali če umre.</p>	<p>permanent residence; alien acquires citizenship of the Republic of Slovenia; the alien is emigrating, or if he remains outside the territory of the Member States of the European Union for one year or more, unless he is sent for work, study or treatment; an alien is emigrating or staying outside the territory of the Republic of Slovenia for a continuous period of six years or longer, with occasional, short-term returns to the Republic of Slovenia for a period of up to 90 days, not interrupting that period; an alien in another Member State of the European Union obtains a long-term resident status; the alien dies.</p> <p>(4) The EU Blue Card holder's permanent residence permit or the permanent residence permit issued to the family member of the EU Blue Card holder shall cease to be valid for all reasons referred to in the preceding paragraph, and in the case of the sixth indent of the preceding paragraph only if the alien is out or, territory of the Member States of the European Union for two years or more.</p> <p>(5) A permanent residence permit issued to a refugee's family member shall cease to have effect if the refugee is terminated or is deprived of his status and for the reasons set forth in paragraph 3 of this Article, unless the refugee acquires the nationality of the Republic of Slovenia or dies.</p>
<p>64. člen: (1) Odločbo o vrnitvi policija izda tujcu, ki nezakonito prebiva v Republiki Sloveniji, razen v primerih, ko je tujec prijet pri nezakonitem prehajanju državne meje ali v povezavi z njim in po tem ni pridobil pravice do prebivanja, tujcu, ki je v postopku vračanja ali izročitve na podlagi mednarodne pogodbe o vračanju oseb in tujcu, ki mu je bila izrečena stranska sankcija izгона tujca iz države. Če je postopek vračanja po mednarodni pogodbi</p>	<p>Article 64: (1) The police shall issue a decision on return to an alien who illegally resides in the Republic of Slovenia, except in cases where the alien is apprehended in connection with or in connection with the illegal border crossing of the state border and has not acquired the right of residence after that, to an alien who is in the procedure return or extradition on the basis of an international treaty on the return of persons</p>

<p>končan tako, da tujec ni bil sprejet v državo pogodbenico ali če tujec, ki je v postopku vračanja ali izročitve na podlagi mednarodne pogodbe o vračanju, ni vrnjen v državo pogodbenico v roku 72 ur, se mu izda odločba o vrnitvi.</p> <p>(2) Tujec, ki nezakonito prebiva v Republiki Sloveniji in ima v drugi državi članici Evropske unije veljavno dovoljenje za prebivanje ali drugo dovoljenje, ki mu daje pravico do prebivanja, mora takoj zapustiti Republiko Slovenijo in oditi v to državo članico. Če tujec tega ne stori ali če mora tujec zapustiti Republiko Slovenijo nemudoma zaradi ogrožanja javnega reda in miru ali državne varnosti, se mu izda odločba o vrnitvi.</p> <p>(3) V postopku izdaje odločbe o vrnitvi ima tujec pravico do brezplačnega pravnega svetovanja, ki mu ga zagotavljajo drugi državni organi ter mednarodne ali nevladne organizacije in kadar je potrebno, pravico do prevajalske pomoči.</p> <p>(4) Zoper odločbo o vrnitvi, ki jo je izdala policija, se tujec lahko pritoži v roku treh dni od vročitve odločbe. O pritožbi odloči ministrstvo, pristojno za notranje zadeve, najkasneje v osmih dneh.</p> <p>(5) V postopkih pred sodišči v zvezi z odločitvijo ministrstva, pristojnega za notranje zadeve iz prejšnjega odstavka, ima tujec pravico do brezplačne pravne pomoči, kot jo ureja zakon, ki ureja brezplačno pravno pomoč.</p>	<p>and an alien who was sentenced to a secondary sanction for the expulsion of an alien from the country. If the return procedure under the international treaty is completed in such a way that the alien has not been admitted to a Contracting State or if an alien who is being returned or extradited under an international treaty on return is not returned to the State Party within 72 hours, about returning.</p> <p>(2) An alien who illegally resides in the Republic of Slovenia and has a valid residence permit or other permit entitling him to reside in another Member State of the European Union must immediately leave the Republic of Slovenia and go to that Member State. If the alien does not do so or if an alien must leave the Republic of Slovenia without delay due to threats to public order and peace or national security, he shall be issued a return decision.</p> <p>(3) In the procedure for issuing a return decision, an alien has the right to free legal advice provided by other state bodies and international or non-governmental organizations and, where necessary, the right to translation assistance.</p> <p>(4) An alien may appeal against a return decision issued by the police within three days of the notification of the decision. The Ministry of Interior shall decide on the appeal within eight days at the latest.</p> <p>(5) In proceedings before the courts in relation to a decision of the ministry responsible for internal affairs referred to in the preceding paragraph, the alien has the right to free legal aid, as regulated by the act governing free legal aid.</p>
<p>69. člen: (1) Policija tujca, ki države ni zapustil v roku, določenem za prostovoljno vrnitev, tujca, ki mu ni bil podaljšan rok za</p>	<p>Article 69: (1) An alien who has not left the state within the period set for the voluntary return of an alien who has not been granted a</p>

prostovoljno vrnitev na podlagi četrtega odstavka 67. člena tega zakona, tujca, ki mu je bila določena prepoved vstopa, in tujca, ki mu je bila izrečena stranska sankcija izгона tujca iz države, iz države odstrani.

(2) Tujec se lahko odstrani iz države samo, če je odločba o vrnitvi, na podlagi katere je dolžan zapustiti državo, izvršljiva.

(3) Tujca, ki se ga mora v skladu z zakonom odstraniti iz države, policija privede do državne meje in ga napoti čez mejo ali izroči organom te države.

(4) Policija privede do državne meje in napoti čez mejo ali izroči organom te države tudi tujca, ki se ga vrača na podlagi mednarodne pogodbe.

(5) Policija z izbrano nevladno organizacijo ali drugo neodvisno institucijo ali organom na podlagi javnega poziva sklene pisni dogovor o spremljanju odstranjevanja tujcev.

(6) Spremljanje odstranjevanja tujcev se izvaja s strani izbrane nevladne organizacije ali druge neodvisne institucije ali organa, ob vseh aktivnostih policije, z namenom odstranitve tujca iz države, vključno z obdobjem pred odhodom, v času leta oziroma drugega načina potovanja, postankom v tranzitu, prihodom in sprejemu tujca v državo vrnitve.

(7) Policija ugotovitve izbrane organizacije, institucije ali organa iz prejšnjega odstavka, ki bi izkazovale kršitve človekovih pravic in temeljnih svoboščin, obravnava v pritožbenem postopku, določenem v zakonu o nalogah in pooblastilih policije.

period for voluntary return pursuant to the fourth paragraph of Article 67 of this Act, an alien who was granted entry bans, and an alien who was sentenced by a foreign sanction for the expulsion of an alien from a state is removed from the country.

(2) An alien may be removed from the country only if the return decision on the basis of which he is obliged to leave the country is enforceable.

(3) An alien, who, according to law, must be removed from the country, the police shall bring him to the state border and send him across the border or extradite to the authorities of that country.

(4) The police shall lead to the state border and send them across the border or hand over to the authorities of this country an alien who is returned on the basis of an international treaty.

(5) A police agreement with a selected non-governmental organization or another independent institution or body shall conclude a written agreement on the monitoring of the removal of aliens.

(6) The monitoring of the removal of aliens is carried out by a selected non-governmental organization or other independent institution or body, with all activities of the police, with a view to removing an alien from the country, including the pre-departure period, during the flight or other way of travel, stopovers in transit, arrival and admission of an alien to the country of return.

(7) The police shall consider the findings of the selected organization, institution or body referred to in the preceding paragraph that would show violations of human rights and fundamental freedoms in the appeal procedure laid down in the law on police tasks and powers.

106. člen: (1) Tujci, ki niso državljani EU, so upravičeni do programov, ki zagotavljajo hitrejšo vključevanje v kulturno, gospodarsko in družbeno življenje Republike Slovenije, in sicer do: programov učenja slovenskega jezika in seznanjanja s slovensko zgodovino, kulturo in ustavno ureditvijo (v nadaljnjem besedilu: spoznavanje slovenske družbe), programov medsebojnega poznavanja in razumevanja s slovenskimi državljani, informiranja v zvezi z njihovim vključevanjem v slovensko družbo.

(2) Do brezplačne udeležbe v programih učenja slovenskega jezika in spoznavanja slovenske družbe so upravičeni tujci, ki niso državljani EU in ki: v Republiki Sloveniji prebivajo na podlagi dovoljenja za stalno prebivanje, ter njihovi družinski člani, ki imajo v Republiki Sloveniji dovoljenje za začasno prebivanje zaradi združitve družine, ne glede na dolžino prebivanja v Republiki Sloveniji in veljavnost dovoljenja; v Republiki Sloveniji prebivajo na podlagi dovoljenja za začasno prebivanje, izdanega z veljavnostjo najmanj enega leta; so družinski člani slovenskih državljanov ali državljanov EU, ki v Republiki Sloveniji prebivajo na podlagi dovoljenja za prebivanje za družinskega člana, ne glede na dolžino prebivanja in veljavnost dovoljenja.

(3) Do udeležbe v programu učenja slovenskega jezika niso upravičeni tujci, ki so končali šolanje na katerikoli stopnji v Republiki Sloveniji, so vključeni v redni izobraževalni program v Republiki Sloveniji, ki poteka v slovenskem jeziku, ali so že pridobili potrdilo o uspešno opravljenem izpitu iz znanja slovenskega jezika na vsaj osnovni ravni. Do programa spoznavanje slovenske družbe niso upravičeni tujci, ki so končali šolanje na katerikoli stopnji v Republiki Sloveniji.

Article 106: (1) Foreign nationals who are not EU citizens are entitled to programs that ensure faster integration into the cultural, economic and social life of the Republic of Slovenia, namely: programs of learning the Slovene language and acquainting with Slovenian history, culture and constitutional order (hereinafter referred to as "getting to know Slovene society"), programs of mutual knowledge and understanding with Slovene citizens, information about their involvement in a Slovenian society.

(2) Foreigners who are not EU citizens who are entitled to free participation in Slovene language learning programs and acquaintance with the Slovene company are entitled to: - reside in the Republic of Slovenia on the basis of a permanent residence permit, and their family members, who have a temporary residence permit in the Republic of Slovenia residence due to family reunification, irrespective of the length of stay in the Republic of Slovenia and the validity of the permit; they reside in the Republic of Slovenia on the basis of a temporary residence permit issued with a validity of at least one year; they are family members of Slovenian citizens or EU citizens who reside in the Republic of Slovenia on the basis of a residence permit for a family member irrespective of the length of stay and the validity of the permit.

(3) Foreign students who have completed their education at any level in the Republic of Slovenia are not eligible to participate in the program of learning the Slovene language, are included in the regular educational program in the Republic of Slovenia, which is in Slovenian language, or have already obtained a certificate of successful completion of the examination from the

<p>(4) Vlada Republike Slovenije z uredbo določi načine in obseg zagotavljanja programov pomoči pri vključevanju tujcev, ki niso državljani EU.</p>	<p>knowledge of the Slovene language at least at the basic level. Foreigners who have completed schooling at any level in the Republic of Slovenia are not entitled to get to know the Slovene society.</p> <p>(4) The Government of the Republic of Slovenia shall, by means of a decree, determine the modalities and scope for providing assistance programs for the integration of non-EU nationals.</p>
<p>118. člen: (1) Državljan EU za vstop v Republiko Slovenijo ne potrebuje dovoljenja za vstop, to je vizuma ali dovoljenja za prebivanje.</p> <p>(2) Državljan EU lahko vstopi v Republiko Slovenijo z veljavno osebno izkaznico ali veljavnim potnim listom ne glede na razlog oziroma namen, zaradi katerega želi vstopiti in prebivati v Republiki Sloveniji. Republiko Slovenijo lahko zapusti z veljavno osebno izkaznico ali veljavnim potnim listom.</p> <p>(3) Državljanu EU se vstop zavrne, če: nima veljavne osebne izkaznice ali veljavnega potnega lista; še ni potekel čas, za katerega mu je prepovedan vstop v državo; bi njegovo prebivanje v Republiki Sloveniji pomenilo nevarnost za javni red, varnost ali mednarodne odnose Republike Slovenije ali obstaja sum, da bo njegovo prebivanje v državi povezano z izvajanjem terorističnih ali drugih nasilnih dejanj, nezakonitimi obveščevalnimi dejavnostmi, proizvodnjo ali prometom z drogami ali izvrševanjem drugih kaznivih dejanj; kaže resne znake nalezljive bolezni z možnostjo epidemije, navedene v mednarodnih zdravstvenih pravilih Svetovne zdravstvene organizacije, oziroma resne znake druge nalezljive bolezni, ki bi lahko ogrozila zdravje ljudi in za katero je v skladu z zakonom, ki ureja nalezljive bolezni, treba sprejeti predpisane ukrepe.</p>	<p>Article 118: (1) A citizen of the EU does not require an entry permit, that is, a visa or residence permit for entry into the Republic of Slovenia.</p> <p>(2) An EU citizen may enter the Republic of Slovenia with a valid identity card or valid passport, regardless of the reason or purpose for which he wishes to enter and reside in the Republic of Slovenia. The Republic of Slovenia can leave with a valid identity card or valid passport.</p> <p>(3) An EU citizen shall be refused entry if: he does not have a valid identity card or valid passport; the time for which he has been denied entry into the country has not yet expired; his residence in the Republic of Slovenia would pose a threat to the public order, security or international relations of the Republic of Slovenia or is suspected that his stay in the country will be linked to the conduct of terrorist acts or other acts of violence, illegal intelligence activities, production or trafficking in drugs or the execution of other criminal offenses acts; shows serious signs of an infectious disease with the possibility of an epidemic listed in the World Health Organization's international health rules, or serious signs of another infectious disease that could endanger human health and for which it is necessary to take the prescribed measures in</p>

<p>(4) O zavrnitvi vstopa odloča organ mejne kontrole v skladu z navodilom, ki ga glede obstoja razlogov iz prejšnjega odstavka izda minister, pristojen za notranje zadeve.</p> <p>(5) Zoper zavrnitev vstopa se lahko državljan EU pritoži v osmih dneh. O pritožbi odloča ministrstvo, pristojno za notranje zadeve. Pritožba ne zadrži izvršitve.</p>	<p>accordance with the law governing infectious diseases.</p> <p>(4) The refusal of entry shall be decided by the border control body in accordance with the instructions issued by the minister responsible for internal affairs concerning the existence of the reasons referred to in the preceding paragraph.</p> <p>(5) An EU citizen may appeal against the refusal of entry within eight days. The Ministry of Interior shall decide on the appeal. The appeal shall not suspend the execution.</p>
<p>119. člen: (1) Državljan EU, ki pride v Republiko Slovenijo z veljavno osebno izkaznico ali veljavnim potnim listom, lahko prebiva na območju Republike Slovenije brez prijave prebivanja 90 dni od dneva vstopa v državo. Če želi na območju Republike Slovenije prebivati dlje kot 90 dni, mora pred pretekom 90 dnevnega dovoljenega prebivanja pri upravni enoti, na območju katere prebiva, prijaviti prebivanje.</p> <p>(2) O vloženi prošnji za izdajo potrdila o prijavi prebivanja upravna enota državljanu EU izda potrdilo, ki mu dovoljuje prebivanje do dokončne odločitve o prošnji.</p> <p>(3) Razlogi, zaradi katerih se državljanu EU lahko izda potrdilo o prijavi prebivanja, so: zaposlitev ali delo; samozaposlitev; izvajanje storitev; študij ali druge oblike izobraževanja; združitev družine in drugi razlogi.</p> <p>(4) Za izdajo potrdila o prijavi prebivanja je pristojna upravna enota, na območju katere državljan EU prebiva.</p>	<p>Article 119: (1) An EU citizen who comes to the Republic of Slovenia with a valid identity card or valid passport may reside in the territory of the Republic of Slovenia without a residence registration for 90 days from the date of entry into the country. If he wishes to reside in the territory of the Republic of Slovenia for more than 90 days, he must register his residence before the expiration of 90 days of residence permit at the administrative unit in whose territory he resides.</p> <p>(2) The administrative unit shall issue a certificate to the citizen of the EU for the application for the issue of a residence registration certificate, allowing him / her to stay until the final decision on the application is made.</p> <p>(3) The reasons for which an EU citizen can be issued a residence registration certificate is: employment or work; self-employment; provision of services; studies or other forms of education; family reunion and other reasons.</p> <p>(4) The administrative unit in the territory of which the EU citizen resides shall be responsible for issuing a residence registration certificate.</p>

126. člen: (1) Dovoljenje za stalno prebivanje se lahko izda državljanu EU, ki v Republiki Sloveniji zakonito prebiva neprekinjeno pet let na podlagi potrdila o prijavi prebivanja, potrdila o vloženi prošnji za izdajo oziroma obnovo potrdila o prijavi prebivanja ali veljavne osebne izkaznice oziroma veljavnega potnega lista, če ne obstaja utemeljen sum, da bi lahko njegovo prebivanje v Republiki Sloveniji pomenilo resno in dejansko nevarnost za javni red, varnost ali mednarodne odnose Republike Slovenije, ali ne obstaja sum, da bo njegovo prebivanje v državi povezano z izvajanjem terorističnih ali drugih nasilnih dejanj, nezakonitimi obveščevalnimi dejavnostmi, proizvodnjo ali prometom z drogami ali izvrševanjem drugih kaznivih dejanj. V času odločanja o prošnji za izdajo dovoljenja za stalno prebivanje mora državljan EU v Republiki Sloveniji prebivati na podlagi potrdila o prijavi prebivanja.

(2) Pogoji petletnega neprekinjenega zakonitega prebivanja iz prejšnjega odstavka je izpolnjen tudi, če je bil državljan EU v tem obdobju odsoten iz Republike Slovenije: za največ šest mesecev na leto; enkrat do največ dvanajst zaporednih mesecev iz pomembnih razlogov, kot so nosečnost, rojstvo otroka, resna bolezen, študij, poklicno usposabljanje, napotitev na delo v drugo državo; zaradi služenja vojaškega roka.

(3) Pred iztekom roka iz prvega odstavka tega člena se lahko dovoljenje za stalno prebivanje izda državljanu EU: ki je slovenskega rodu; katerega prebivanje v Republiki Sloveniji je v interesu Republike Slovenije, o čemer organ, pristojen za izdajo dovoljenja, odloči na podlagi mnenja pristojnega ministrstva; ki je kot zaposlena ali samozaposlena oseba v Republiki Sloveniji prenehal z delom in je po predpisih Republike Slovenije upravičen do

Article 126: (1) A permanent residence permit can be issued to a citizen of the EU who has been legally residing in the Republic of Slovenia for a continuous period of five years on the basis of a certificate of registration of residence, a certificate of lodged an application for the issue or renewal of a residence registration certificate or a valid identity card or valid passport, if there is no reasonable suspicion that his residence in the Republic of Slovenia could pose a serious and actual danger to the public order, security or international relations of the Republic of Slovenia, or there is no suspicion that his stay in the country will be connected with the conduct of terrorist acts or other violent acts, illegal intelligence activities, the production or trafficking of drugs, or the commission of other criminal offenses. At the time of deciding on the application for a permanent residence permit, a citizen of the EU must reside in the Republic of Slovenia on the basis of a residence registration certificate.

(2) The condition of five years of continuous legal residence referred to in the preceding paragraph shall also be fulfilled if the EU citizen was absent from the Republic of Slovenia during that period: for a maximum of six months per year; once up to a maximum of twelve consecutive months for important reasons, such as pregnancy, childbirth, serious illness, studies, vocational training, referral to another country; for serving a military term.

(3) Before expiry of the period referred to in the first paragraph of this Article, a permanent residence permit may be issued to an EU citizen: who is of Slovenian origin; whose residence in the Republic of Slovenia is in the interest of the Republic of Slovenia,

prejemanja starostne pokojnine, pod pogojem, da je bil v Republiki Sloveniji v zadnjih dvanajstih mesecih zaposlen in da v Republiki Sloveniji neprekinjeno zakonito prebiva več kot tri leta; ki je bil v Republiki Sloveniji zadnjih dvanajst mesecev zaposlen in se je predčasno upokojil, če v Republiki Sloveniji neprekinjeno zakonito prebiva več kot tri leta; v obdobje dvanajstmesečne zaposlitve se šteje tudi zaposlitev v drugi državi članici Evropske unije, v kateri je bil državljani EU zaposlen; ki je bil v Republiki Sloveniji ali drugi državi članici Evropske unije, v katero je dnevno ali tedensko prihajal na delo, zaposlen ali je opravljal dela kot samozaposlena oseba in je prenehal z delom zaradi trajne nezmožnosti za delo, če v Republiki Sloveniji neprekinjeno zakonito prebiva več kot dve leti, kadar pa je trajna nezmožnost za delo posledica nezgode pri delu ali poklicne bolezni in je v Republiki Sloveniji upravičen do invalidske pokojnine, dolžina prebivanja ni pogoj; ki se kot zaposlena ali samozaposlena oseba po treh letih nepretrgane zaposlitve ali opravljanja dela kot samozaposlena oseba in neprekinjenega zakonitega prebivanja v Republiki Sloveniji zaposli v drugi državi članici Evropske unije in se vsak dan ali vsaj enkrat tedensko vrača v Republiko Slovenijo; v triletno obdobje nepretrgane zaposlitve ali opravljanja dela se šteje tudi čas zaposlitve ali opravljanja dela v drugi državi članici Evropske unije, v kateri je državljani EU zaposlen ali dela; ki je družinski član državljan EU iz tretje, četrte, pete ali šeste alineje tega odstavka; ki je družinski član slovenskega državljan ali družinski član državljan EU ali tujca, ki ima v Republiki Sloveniji dovoljenje za stalno prebivanje, če v Republiki Sloveniji najmanj dve leti

upon which the competent authority for issuing the permit decides on the basis of the opinion of the competent ministry; who, as an employed or self-employed person, has terminated the work in the Republic of Slovenia and is entitled under the regulations of the Republic of Slovenia to receive an old-age pension, provided that he has been employed in the Republic of Slovenia in the last twelve months and that he continuously resides legally in the Republic of Slovenia for more than three years; who has been employed in the Republic of Slovenia for the last twelve months and who has retire early if he has been legally resident in the Republic of Slovenia for more than three years; a period of twelve months of employment is also considered to be employment in another Member State of the European Union where the EU citizen is employed; who was employed or worked as a self-employed person in the Republic of Slovenia or another Member State of the European Union to which he worked daily or weekly, and who ceased his work for permanent incapacity for work, if he / she continuously resides legally in the Republic of Slovenia as a two-year period, when a permanent incapacity for work is the result of an accident at work or an occupational disease and is entitled to an invalidity pension in the Republic of Slovenia, the length of residence is not a condition; who, as an employed or self-employed person, is employed in another Member State of the European Union after three years of continuous employment or work as a self-employed person and continuous legal residence in the Republic of Slovenia and returns to the Republic of Slovenia every day or at least once a week; the duration of employment or of

neprekinjeno zakonito prebiva.

V obdobje zaposlitve iz četrte, pete in šeste alinee tega odstavka se šteje tudi čas, ko je bil državljani EU brezposeln in prijavljen pri pristojnem organu za zaposlovanje v Republiki Sloveniji ali drugi državi članici Evropske unije, v katero je dnevno ali tedensko prihajal na delo, kot iskalec zaposlitve, in čas, v katerem delavec zaradi bolezni ali nezgode, dela ni mogel opravljati.

(4) Državljanu EU iz tretje, četrte in pete alinee prejšnjega odstavka, katerega zakonec, s katerim skupaj prebivata v Republiki Sloveniji, je imel državljanstvo Republike Slovenije, ki mu je prenehalo po sklenitvi zakonske zveze, se dovoljenje za stalno prebivanje lahko izda ne glede na dolžino prebivanja in zaposlitve v Republiki Sloveniji.

(5) Za sprejem prošnje in izdajo dovoljenja za stalno prebivanje državljanu EU je pristojna upravna enota, na območju katere državljani EU prebiva.

(6) Dovoljenje za stalno prebivanje se državljanu EU izda za neomejeno časovno obdobje.

employment in another Member State of the European Union where the EU citizen is employed or working is considered to be a continuous period of three years of continuous employment or work; who is a family member of an EU citizen referred to in the third, fourth, fifth or sixth indents of this paragraph; who is a family member of a Slovenian citizen or a family member of an EU citizen or a foreigner who has a permanent residence permit in the Republic of Slovenia if he resides in the Republic of Slovenia for a continuous period of at least two years.

The period of employment referred to in the fourth, fifth and sixth indents of this paragraph shall also be considered as the time when the EU citizen was unemployed and registered with the competent employment authority in the Republic of Slovenia or another Member State of the European Union to which he or she came on a daily or weekly basis, as a job seeker, and the time during which the worker was unable to perform the work due to illness or accident.

(4) A citizen of the EU referred to in the third, fourth and fifth indents of the preceding paragraph, whose spouse with whom he or she resides together in the Republic of Slovenia, had the nationality of the Republic of Slovenia which terminated after his marriage, a permanent residence permit may be issued irrespective of on the length of stay and employment in the Republic of Slovenia.

(5) In order to receive an application and issue a permanent residence permit to an EU citizen, the administrative unit in which the EU citizen resides is competent.

(6) A permit for permanent residence shall be

	issued to an EU citizen for an unlimited period of time.
<p>138. člen: (1) Državljan EU in družinski član, ki ne zapusti Republike Slovenije prostovoljno, se iz države odstrani, če: mu je bila izrečena pravnomočna stranska sankcija izгона tujca iz države ali če je tujcu izrečen izgon kot pravna posledica obsodbe po določbah Kazenskega zakonika (Uradni list RS, št. 55/08 in 50/12); mu je odpovedano prebivanje; mu je zavrnjena izdaja potrdila o prijavi prebivanja ali dovoljenja za prebivanje, mu je potrdilo o prijavi prebivanja prenehalo ali mu je bilo dovoljenje za prebivanje razveljavljeno zaradi resne in dejanske nevarnosti za javni red, varnost države ali mednarodne odnose Republike Slovenije ali obstoja suma, da bo njegovo prebivanje v državi povezano z izvajanjem terorističnih ali drugih nasilnih dejanj, nezakonitimi obveščevalnimi dejavnostmi, proizvodnjo ali prometom z drogami ali izvrševanjem drugih kaznivih dejanj; mu je zavrnjena izdaja prvega potrdila o prijavi prebivanja ali prvega dovoljenja za začasno prebivanje zaradi nevarnosti za javno zdravje iz tretje alineje prvega odstavka 124. člena tega zakona.</p> <p>(2) Razen v izjemnih primerih, rok za zapustitev države ne sme biti krajši od enega meseca.</p> <p>(3) Glede postopka odstranitve se smiselno uporablja določba tretjega odstavka 69. člena tega zakona.</p> <p>(4) V kolikor državljan EU ali družinski član iz Republike Slovenije ni odstranjen v roku dveh let od dokončnosti odločbe o odpovedi, razveljavitvi oziroma zavrnitvi izdaje potrdila o prijavi prebivanja ali dovoljenja za prebivanje, mora upravna enota, ki je izdala odločbo, preveriti ali državljan EU oziroma družinski član še vedno predstavlja resno in</p>	<p>Article 138 (1) An EU citizen and a family member who does not leave the Republic of Slovenia on a voluntary basis shall be removed from the country if: a final verdict has been issued for the expulsion of an alien from the country or if an alien is expelled as a legal consequence of a conviction under the provisions Of the Penal Code (Official Gazette of the Republic of Slovenia, No. 55/08 and 50/12); his resignation was canceled; he has been denied the issue of a residence registration or residence permit certificate; his residence registration certificate has expired or his residence permit has been revoked due to a serious and actual threat to public order, the security of the state or the international relations of the Republic of Slovenia, or the existence of a suspicion that his residence in the country is connected with the conduct of terrorist or other acts of violence, illegal intelligence activities, production or trafficking in drugs, or the commission of other criminal offenses; he has been refused the issuance of the first certificate of registration of residence or first temporary residence permit due to the danger to public health referred to in the third indent of the first paragraph of Article 124 of this Act.</p> <p>(2) Except in exceptional cases, the deadline for leaving the country shall not be less than one month.</p> <p>(3) The provision of the third paragraph of Article 69 of this Act shall apply mutatis mutandis to the removal procedure.</p> <p>(4) If an EU citizen or a family member from the Republic of Slovenia is not removed within two years from the completion of the decision on cancellation, revocation or</p>

<p>dejansko nevarnost za javni red, varnost države ali mednarodne odnose Republike Slovenije ali obstoja suma, da bo njegovo prebivanje v državi povezano z izvajanjem terorističnih ali drugih nasilnih dejanj, nezakonitimi obveščevalnimi dejavnostmi, proizvodnjo ali prometom z drogami ali izvrševanjem drugih kaznivih dejanj. V primeru ugotovljene resne in dejanske nevarnosti ali obstoja suma iz prejšnjega stavka, se postopek odstranitve državljana EU ali družinskega člana iz države nadaljuje, v nasprotnem primeru pa upravna enota odločbo o odpovedi, razveljavitvi oziroma zavrnitvi izdaje potrdila o prijavi prebivanja ali dovoljenja za prebivanje z odločbo odpravi.</p>	<p>refusal to issue a certificate of registration of residence or residence permit, the administrative unit that issued the decision must verify whether the citizen The EU or family member still poses a serious and actual threat to public order, the security of the state or the international relations of the Republic of Slovenia, or the existence of a suspicion that his stay in the country will be linked to the conduct of terrorist acts or other acts of violence, illegal intelligence activities, production or trafficking in drugs or the commission of other criminal offenses. In the event of a serious and actual danger or the existence of a suspicion from the preceding sentence, the procedure for the removal of an EU citizen or family member from the country continues, otherwise the administrative unit shall issue a decision on the cancellation, annulment or rejection of the issue of a residence or residence permit remove it.</p>
<p>Zakon o vrednotenju in priznavanju izobraževanja</p>	<p>The Recognition and Evaluation of Education Act</p>
<p>7. člen: (1) Za izdajo mnenja iz prejšnjega člena tega zakona lahko pri ENIC-NARIC centru zaprosi prosilec oziroma prosilka (v nadaljnjem besedilu: prosilec), ki je lahko imetnik listine o izobraževanju ali fizična ali pravna oseba, ki predloži soglasje imetnika listine o izobraževanju. (2) Dokumentacijo, ki jo je treba priložiti vlogi, določi minister oziroma ministrica (v nadaljnjem besedilu: minister), pristojen za visoko šolstvo. (3) Če ENIC-NARIC center na podlagi vloge in priložene dokumentacije ter drugih virov informacij ne more izdati mnenja z vsemi elementi, določenimi v 8. členu tega zakona, pozove prosilca k dopolnitvi vloge in določi rok za dopolnitev. Če prosilec</p>	<p>Article 7: (1) An applicant or applicant (hereinafter: the applicant) who may be the holder of an educational document or a natural or legal person who submits the consent of the holder of the charter of education shall apply to the issuing of the opinion referred to in the preceding Article of this Act at ENIC-NARIC Center. (2) The documentation to be attached to the application shall be determined by the minister or minister (hereinafter: the minister) responsible for higher education. (3) If the ENIC-NARIC Center can not issue an opinion with all the elements specified in Article 8 of this Act on the basis of the application and the attached documentation and other sources of information, it invites</p>

<p>vloge ne dopolni oziroma je ne dopolni v celoti, ENIC-NARIC center izda mnenje o tistih elementih izobraževanja, ki so razvidni iz vloge in dokumentacije.</p> <p>(4) ENIC-NARIC center izda mnenje prosilcu v dveh mesecih od prejema popolne vloge ali od izteka roka za dopolnitev iz prejšnjega odstavka.</p> <p>(5) Kadar se zahteva vrednotenje izobraževanja iz tretjega in četrtega odstavka 5. člena ali ko ne gre za izobraževanje, ki se izkazuje z listino o v celoti opravljenem izobraževanju, ENIC-NARIC center vrne dokumentacijo in prosilca z obvestilom seznanj, da tovrstno izobraževanje ni predmet vrednotenja v skladu s tem zakonom.</p> <p>(6) Kadar se zahteva vrednotenje izobraževanja, ki se izkazuje z listino o izobraževanju, ki je že bilo predmet vrednotenja, ENIC-NARIC center prosilca z obvestilom seznanj, da izobraževanje ni predmet vrednotenja, razen v primeru, ko prosilec predloži nove informacije v smislu tretje, četrte, pete in šeste alineje 8. člena tega zakona.</p> <p>(7) Vsi dokumenti v postopku vrednotenja izobraževanja, vključno z izdanim mnenjem, se vročajo prosilcu priporočeno s povratnico.</p> <p>(8) Kadar se v mnenju ugotovi očitna pisna ali številčna napaka ali pomota, ENIC-NARIC center po uradni dolžnosti ali na predlog prosilca sam ustrezno popravi napako, tako da izda popravljeno, novo mnenje, s katerim nadomesti prejšnje.</p>	<p>the applicant to complete the application and set a deadline for completion. If the applicant does not complete or completes the application, the ENIC-NARIC Center issues an opinion on those elements of education that are evident from the application and documentation.</p> <p>(4) ENIC-NARIC Center issues an opinion to the applicant within two months of receiving a complete application or expiration of the deadline for the amendment referred to in the preceding paragraph.</p> <p>(5) When the evaluation of education referred to in the third and fourth paragraphs of Article 5 is required, or when education is not covered by a charter fully completed, the ENIC-NARIC Center returns the documentation and informs the applicant of the notification that such education is not subject evaluation in accordance with this Act.</p> <p>(6) When an evaluation of education is required, which is reflected in an education document that has already been subject to evaluation, the ENIC-NARIC Center informs the applicant of the notification that education is not subject to evaluation, unless the applicant submits new information within the meaning of third, fourth, fifth and sixth indents of Article 8 of this Act.</p> <p>(7) All documents in the evaluation process of education, including the issued opinion, shall be served to the applicant with a return receipt.</p> <p>(8) When the opinion establishes an obvious written or numerical error or error, the ENIC-NARIC Center shall, on its own initiative or at the request of the applicant, correct the error accordingly by issuing a revised new opinion replacing the previous one.</p>
<p>8. člen: Mnenje ENIC-NARIC centra</p>	<p>Article 8: The opinion of the ENIC-NARIC</p>

<p>vsebuje naslednje: osebno ime imetnika listine o izobraževanju, informacije o listini o izobraževanju, informacije o statusu izobraževalne institucije in izobraževalnega programa, informacije o opravljenem izobraževanju, o področju oziroma smeri izobraževanja in o njegovi umeščenosti v državi izvora, informacije o pridobljenem naslovu, nazivu oziroma poimenovanju stopnje izobraževanja ali izobraževalnega programa v državi izvora, informacije o pravicah, ki iz izobraževanja izhajajo v državi izvora, kratek opis sistema izobraževanja v državi izvora in informacije o primerljivosti izobraževanja, ki se dokazuje s tujimi listinami o izobraževanju, s slovenskim izobraževanjem, ki se opravi na podlagi primerjave informacij o tujem izobraževanju iz tega odstavka in informacij o izobraževalnem sistemu v Republiki Sloveniji, ali o primerljivosti izobraževanja, ki se dokazuje z listinami iz druge in tretje alineje prvega odstavka 5. člena tega zakona, z izobraževanjem, ki poteka v skladu z veljavno zakonodajo v Republiki Sloveniji glede na vrsto izobraževanja.</p> <p>(2) Če določenih informacij o posameznih elementih iz prejšnjega odstavka ni mogoče ugotoviti, ENIC-NARIC center v mnenju navede, katerih od zgoraj navedenih elementov ni mogoče podati.</p>	<p>Center shall include the following: the personal name of the holder of the Charter on Education, information on the Charter of Education, information on the status of the educational institution and educational program, information on completed education, the field or direction of education and its location in the country of origin; the title, name or designation of the level of education or education program in the country of origin, information on the rights arising from education in the country of origin, a brief description of the education system in the country of origin and information on the comparability of education as evidenced by foreign educational documents; Slovenian education conducted on the basis of the comparison of information on foreign education referred to in this paragraph and information on the education system in the Republic of Slovenia or on the comparability of education, which is proved by the documents referred to in the second and third indents of the first paragraph of Article 5 of this law she, with education, which is conducted in accordance with the applicable legislation in the Republic of Slovenia in relation to the type of education.</p> <p>(2) If certain information about the individual elements referred to in the preceding paragraph can not be determined, ENIC-NARIC Center shall indicate in the opinion which of the above elements can not be given.</p>
<p>14. člen: (1) Postopek priznavanja izobraževanja se začne na zahtevo vlagatelja, ki jo vloži na predpisanem obrazcu pri izobraževalni instituciji v Republiki Sloveniji, na kateri želi nadaljevati izobraževanje.</p> <p>(2) Obrazec in dokumentacijo, ki jo mora vlagatelj priložiti v postopku priznavanja izobraževanja, določi minister, pristojen za</p>	<p>Article 14: (1) The procedure for recognizing education starts at the request of the applicant, who lodges it on a prescribed form with an educational institution in the Republic of Slovenia where he wishes to continue his education.</p> <p>(2) The form and documentation that the applicant must enclose in the process of</p>

<p>visoko šolstvo.</p> <p>(3) Če se v postopku priznavanja izobraževanja dvomi o izvirnosti listine o izobraževanju, se preveri izvirnost pri izdajatelju listine o izobraževanju oziroma pristojnem organu države izvora listine o izobraževanju.</p> <p>(4) V postopku priznavanja izobraževanja se z vsebinsko primerjavo meril iz 16. člena tega zakona preveri umeščenost tujega izobraževanja v državi izvora in ugotovi izpolnjevanje pogojev za dostop do želenega izobraževalnega programa.</p> <p>(5) Če gre za deloma opravljeno izobraževanje, se ugotovi opravljeni del izobraževalnega programa, v katerem želi vlagatelj nadaljevati izobraževanje v Republiki Sloveniji.</p> <p>(6) Izobraževalna institucija izda odločbo in jo vroči vlagatelju najpozneje v dveh mesecih od dneva prejema popolne vloge.</p> <p>(7) Če tuji v celoti opravljen izobraževalni program izkazuje v primerjavi s slovenskim izobraževalnim programom bistvene razlike v obsegu in stopnji zaključenega izobraževalnega programa, se lahko vlagatelju omogoči nadaljevanje izobraževanja, kot da bi imel listino o deloma opravljenem izobraževanju.</p>	<p>recognition of education shall be determined by the Minister in charge of higher education.</p> <p>(3) If, in the process of recognition of education, there is a doubt about the originality of the Charter of Education, the originality of the issuer of the Charter of Education or the competent authority of the country of origin of the Charter of Education shall be verified.</p> <p>(4) In the process of recognition of education, the content of the criteria referred to in Article 16 of this Act shall check the placement of foreign education in the country of origin and determine the fulfillment of the conditions for access to the desired education program.</p> <p>(5) In the case of partly completed education, the completed part of the educational program in which the applicant wishes to continue education in the Republic of Slovenia is determined.</p> <p>(6) The educational institution shall issue a decision and deliver it to the applicant no later than two months from the date of receipt of the complete application.</p> <p>(7) If a fully completed educational program shows, in comparison with the Slovenian educational program, significant differences in the extent and level of the completed education program, the applicant may be allowed to continue education as if he had a certificate of partly completed education.</p>
<p>16. člen: (1) V postopku priznavanja izobraževanja v skladu s tem zakonom se poleg mednarodnih načel na tem področju smiselno uporabljajo naslednja merila: sistem šolanja, izobraževalni program, predmetnik oziroma učni načrt, učni dosežki, trajanje izobraževanja, pravice, ki iz izobraževanja izhajajo.</p> <p>(2) Organ priznavanja izobraževanja lahko</p>	<p>Article 16: (1) In the process of recognizing education in accordance with this Act, in addition to international principles in this field, the following criteria shall apply mutatis mutandis: education system, educational program, curriculum or curriculum, learning achievements, duration of education, rights deriving from education.</p>

<p>glede na vrsto izobraževanja pri odločanju upošteva tudi druge okoliščine, pomembne za priznavanje, kot so na primer: starost imetnika listine o izobraževanju, znanje jezika, število doseženih kreditnih točk, umestitev izobraževanja v državi izvora, izjemni dosežki s področja izobraževanja.</p>	<p>(2) In recognition of the type of education, the body of recognition of education may also take into account other circumstances relevant to recognition, such as: the age of the holder of the Charter on education, language proficiency, the number of credits achieved, the placement of education in the country of origin, outstanding achievements areas of education.</p>
<p>18. člen: Ministrstvi, pristojni za osnovno, srednje, višješolsko in visokošolsko izobraževanje zagotavljata strokovno podporo ENIC-NARIC centru in izobraževalnim institucijam pri izvajanju nalog iz tega zakona.</p>	<p>Article 18: Ministries responsible for primary, secondary, tertiary and higher education provide professional support to ENIC-NARIC Center and educational institutions in carrying out tasks under this Act.</p>
<p>Pravilnik o načinih in pogojih zagotavljanja pravic prosilcem za azil in tujcem, ki jim je bila priznana posebna oblika zaščite</p>	<p>List of Rules on the modalities and conditions for ensuring the rights of asylum seekers and aliens who have been granted a special form of protection</p>
<p>24. člen: Zdravstveno varstvo prosilca za azil obsega:</p> <ol style="list-style-type: none"> 1. pravico do nujne medicinske pomoči in nujnega reševalnega prevoza po odločitvi zdravnika ter pravico do nujne zobozdravstvene pomoči; 2. pravico do nujnega zdravljenja po odločitvi lečečega zdravnika, ki obsega: ohranitev življenjsko pomembnih funkcij, zaustavljanje večjih krvavitev oziroma preprečitev izkrvavitve; preprečitev nenadnega poslabšanja zdravstvenega stanja, ki bi lahko povzročilo trajne okvare posameznih organov ali življenjskih funkcij; zdravljenje šoka; storitve pri kroničnih boleznih in stanjih, katerih opustitev bi neposredno in v krajšem času povzročila invalidnost, druge trajne okvare zdravja ali smrt; zdravljenje vročinskih stanj in preprečevanje širjenja infekcije, ki bi utegnila voditi do septičnega stanja; zdravljenje oziroma preprečevanje zastrupitev; 	<p>Article 24: The healthcare of the asylum seeker shall comprise:</p> <ol style="list-style-type: none"> 1. the right to emergency medical assistance and emergency salvage transport following a doctor's decision and the right to emergency dental care; 2. the right to emergency treatment following the decision of a treating physician, comprising: preserving vital functions, stopping major bleeding or preventing bleeding; the prevention of a sudden deterioration of the state of health which could lead to permanent damage to individual organs or life functions; treatment of shock; services in chronic diseases and conditions, the abandonment of which would lead, directly and in a shorter time, to disability, other permanent health defects or death; treating hemorrhagic conditions and preventing the spread of an infection that could lead to septicemia; treatment or prevention of poisoning; treatment of

<p>zdravljenje zlomov kosti oziroma zvinov ter drugih poškodb, pri katerih je nujno posredovanje zdravnika; zdravila s pozitivne liste, ki so predpisana na recept za zdravljenje navedenih bolezni in stanj;</p> <p>3. pravico do zdravstvenega varstva žensk: kontracepcijska sredstva, prekinitve nosečnosti, zdravstvena oskrba v nosečnosti in ob porodu.</p>	<p>fractures of bones or wounds and other injuries in which medical intervention is necessary; medicinal products with positive lists prescribed by prescription for the treatment of those diseases and conditions;</p> <p>3. the right to the health care of women: contraceptives, termination of pregnancy, medical care during pregnancy and childbirth.</p>
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Introduction

The following work is an investigation carried out by young researchers belonging to the legal research group of ELSA Spain in relation to migration law and the questions raised by its regulation in Spanish law.

Today, the troubled geopolitical circumstances in some countries of the Middle East, such as Syria and Afghanistan, have triggered a migration flow as Europe has not seen since the Second World War. European countries face waves of migration and the management of these issues requires strong and rational regulation to prevent defenselessness, abuse or human rights violations of these people. Spain also has a relevant history regarding migration, as it has alternated the roles of sending and receiving country throughout its history. But this time the Spanish legislator is facing a much more complex situation, mainly due to the backgrounds of the refugees and the great diversity that exists among them all.

The Spanish constitution, which is relatively recent in comparison with the constitutions of other Council of Europe member countries, refers to the right of asylum, but delegates its development to laws. For this reason, information is provided on Spanish legal texts as well as judgments and norms with legal status. With this paper, we aim to provide an answer to the main problems raised by the development of Spanish migration law and to analyze the most important problems it faces. For this reason, information is provided on Spanish legal texts as well as judgments and norms with legal status.

We hope it will be as enlightening and enriching for you as it has been for us.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Give a description of the national regulations governing asylum.

The **right to asylum** in Spain is set forth under Article 13.4 of the Constitution, which provides the terms under which citizens from other countries and stateless persons may enjoy the right to asylum in Spain will be determined by law. In 1978, Spain signed the 1951 Geneva Convention and the 1967 New York Protocol. Law 5/1984 of March 26th was passed as mandated by the Constitution, governing the right to asylum and refugee status. Said standard of law was amended by Law 9/1994 of May 19th. Subsequently, Law 12/2009 of October 30th was enacted, governing the right to asylum and subsidiary protection (LRASP), which entered effect on November 20, 2009³¹⁴⁸. LRASP was amended by Law 2/2014 of March 25th, which has added a

³¹⁴⁸ The delay in the transposition of the second-mentioned was grounds for the Court of Justice of the European Union having rendered judgment against Spain in Court of Justice of the European Union Decision of July 9, 2009.

paragraph to Article 40.1 for fully incorporating Article 2.j) of Directive 2011/95/EU of December 13th³¹⁴⁹.

The LRASP provides three types of international protection: conventional asylum for refugees, subsidiary protection, and exceptional protection for humanitarian reasons³¹⁵⁰.

Under the LRASP a refugee is an individual from a non-EU country with a well-founded fear of being persecuted in his or her country for reasons of race, religion, nationality, political opinion, membership of a certain social group, gender, or sexual orientation, who is outside his or her country of nationality and, because of such fears, may not or does not want to return to his or her country. The status of refugee may also be granted to a stateless individual who is away from his or her country of habitual residence for the same fears, and may not or does not want to return to that country³¹⁵¹.

The LRASP provides that foreigners who do not qualify as refugees may obtain subsidiary protection if there are reasons to believe that if they return to their country they would be exposed to a genuine risk of suffering any of the following³¹⁵²:

- a death sentence
- torture or inhuman or degrading treatment, or
- serious threats against their life or integrity because of indiscriminate violence.

In addition to conventional refugee status and subsidiary protection, the LRASP provides an additional international exceptional protection for humanitarian reasons to those that do not meet the requirements of the two previous categories. Exceptional protection may be granted to those who are in a vulnerable situation, such as minors; unaccompanied minors; the disabled or elderly; pregnant women; single parents with minors; individuals who have been tortured, raped, or subjected to any other serious forms of psychological or physical violence; and victims of human trafficking. In these cases, the government may grant authorization to remain in the country under the general immigration rules³¹⁵³.

1.2. What is the procedure for granting asylum and who is responsible?

Access to the asylum procedure on the part of all those persons who may need international protection is one of the greatest challenges facing the Spanish and European system. Law 12/2009 makes no mention as to the locations at which the applications for international protection can be lodged. Royal Decree 203/1995 of February 10th, in force regarding all that

³¹⁴⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:ES:PDF> , Page 5. Spain's External Action and Foreign Service Law 2/2014 of March 25th. Spanish Official Gazette (*BOE*) No. 74 of March 26, 2014 (Link consulted on October 10, 2017)

³¹⁵⁰ Loc.gov. (2016). Refugee Law and Policy: Spain. [online] Available at: <https://www.loc.gov/law/help/refugee-law/spain.php#Eligibility> [Accessed 10 Oct. 2017]

³¹⁵¹ LRASP art. 3, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>

³¹⁵² LRASP arts. 4 and 10, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>

³¹⁵³ LRASP art. 46.1, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>

which does not contravene the aforesaid law, states that application can be lodged at the OAR (Office of Asylum and Refuge), border control posts for entry into the national territory, alien affairs offices, provincial police stations or district police stations which are stipulated by means of an Order from the Ministry for Justice and the ³¹⁵⁴Interior³¹⁵⁵.

1.2.1. Application Procedure on Spanish Territory

First, any applications which do not correspond to Spain but to another EU country are not admitted, as are those which are repetitions of previous applications, or those submitted by nationals of other Member States.

If the person is on Spanish territory, he or she must apply for international protection within a period of one month from his entry into Spain or from the moment the events justifying his request began. Moreover, he must submit the application in person. If he cannot do this for physical or legal reasons, he may authorize another person to do it on his behalf.

Secondly, this individual will have to attend an interview in which he must answer a series of questions regarding his personal data, and in which he must explain all the reasons for which he is applying for international protection and how he arrived in Spain. The interview will be conducted by a manager who will tell him what to do and help him to complete it to establish all the relevant facts.

Finally, this person will be notified within one month as to whether his application has been admitted or not and, if admitted, if an urgent procedure will be applied. If his application is not admitted for processing, he must leave Spain, unless he is authorized to stay. In addition, in case his application is not admitted, he may appeal to the courts.

1.2.2. Application Procedure at the Spanish Border

If the person has submitted his application at the Spanish Border, he must remain there until a decision has been made regarding his application. The authorities must decide within four days. If his application is admitted, he may enter Spain. If his application is not admitted or is rejected, he may request a re-examination of his case (called a case review) within two days from the moment he is informed of the non-admittance. The authorities will have two days to respond. If the appeal is rejected, he must leave Spain.

1.2.3. Who decides over international protection applications?

All applications, regardless of who submits them, are examined by the Office of Asylum and Refuge. In addition, the decisions are made by the Ministry of the Interior. For decisions on

³¹⁵⁴ Anon, (2016). [online] Available at: <https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asylum-in-Spain.pdf> [Accessed 10 Oct. 2017]

³¹⁵⁵ Article 4. Royal Decree 203/1995 of 10th February issued in passage of the Regulation applicable to Law 5/1984 of March 26th governing the right of asylum and refugee status amended by Law 9/1994 of May 19th.

applications admitted for processing, the Ministry of the Interior decides at the proposal of the Interministerial Commission for Asylum and Refuge³¹⁵⁶.

The OAR (Office of Asylum and Refuge) may reject any application for international protection if Spain does not have jurisdiction to process the petition in accordance with international agreements; when the application does not meet the legal requirements for its processing; when the applicant already has refugee status in another state; when the applicant comes from a safe third country; when the application is a resubmission of a previous one already denied; and when the applicant is a national of another EU country³¹⁵⁷.

2. How does your national law regulate immigration from EU member states and non-EU states?

For the last 15 years, the political, sociological and legal context of the immigration has radically changed. The general rights and freedoms of migrants in Spain are regulated in the first title of the “LO 4/2000”. This law introduced decisive changes to the former existing law axed around the immigrant integration, by widening the rights of the regulars’ immigrants and recognizing a respectable number of rights to the immigrants without documents.

The direct reference to migration contained in the Spanish Constitution of 1978 is scarce. This mention is limited to its Article 13.1 CE ‘Migrants in Spain will enjoy the same public freedoms that are guaranteed in this Title, in the terms that Treaties and Laws stipulate’. The legislator is by this means submitted to interpret and configure migrant’s rights and freedoms in accordance with the contents of International Treaties like the European Agreement on Human Rights. In this sense, the Spanish Constitutional Court wanted to clarify the protection that Migrants’ rights are provided with under Spanish legislation: Although all migrants’ rights and freedoms are configured by Law, they are still constitutional rights and in consequence, shall be provided with constitutional protection.

2.1. Right to admission

All legal provisions regarding the issue of non-European migrant’s right to admission and the general immigration process in the country of Spain are stated in the Ley Orgánica 4/2000. Its Article 25 LOE establishes the different requirements that shall be fulfilled by all migrants trying to enter the country. As a special procedure for vulnerable persons, those requirements will not be applied to migrants that request to be protected by the right of asylum at the time of their entrance into the country.

³¹⁵⁶ Interior.gob.es. (2017). *Citar un sitio web - Cite This For Me*. [online] Available at: http://www.interior.gob.es/documents/642317/1201485/Informacion_solicitantes_Asilo_Ingles_126160099.pdf/c2097f86-ebc6-4e7b-aeda-d9a64782c457 [Accessed 10 Oct. 2017].

³¹⁵⁷ LRASP art. 20.1, B.O.E., Oct. 31, 2009, <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>

The enumeration of the requirements is developed as follows: All migrants that claim to enter Spain shall do it through the authorized access points; and they must enter with a passport or any other travel document that confirms their identity and that is considered valid according to the international agreements subscribed by Spain (Article 25.1 LOE). Additionally, migrants must provide all the documents that are legally stipulated as necessary to justify the aim and reason of the stay in the country, and also give credit to having or being able to obtain a sufficient mean of profit to sustain themselves. This same article establishes an exception to this general rule: when exceptional circumstances recommend doing so, it will be possible to authorize the entrance of migrants that do not fulfill the necessary requirements.

Diverse types of visas are sued by the Spanish Institutions. Article 25 bis LOE lists the typology of visas that will allow the entrance and stay in the country: a) Transit visa; b) Stay visa: authorizes a continued stay or consecutive stays of a maximum total period of months per semester; c) Residence visa: allows to reside but does not authorize migrants to work or practice any profession; d) Residence and work visa: allows the entrance and stay for a maximum period of 3 months. Before the end of that period, migrants under this type of visa must have started the labor or professional activity they were previously authorized to perform. It will also be necessary that the worker be assigned a social security number before the end of that period of 3 months; e) Studies visa: allows to stay in Spain with the purpose of carrying out courses, studies, investigation programmes, exchange programmes, volunteering programmes or non-remunerated internships; f) Investigation visa: allows the migrant to stay in Spain to develop an investigation programme as long as an agreement has previously been signed with an investigation institution.

Regarding the regulation of the expedition of the visas to enter Spain, Article 27.1 LOE states that the visas 'will be requested and issued in the Diplomatic Missions and Consular Offices of Spain, except in the case that any other provision establishes otherwise'. However, requesting a visa following the applicable administrative requirements does not necessary result in the solicitor being granted the authorization to enter the country. The issue of the visa might be rejected under specific circumstances, but the rejection to issue certain visas (as stay visas or transit visas) must state the grounds on which it stands (Article 27 LOE).

Lastly, entrance in the country can be denied on the Article 26 grounds. It might seem obvious that migrants that have been banished from the country are not able to enter back in Spain until the end of the prohibition, but all those other migrants that do not fulfill the requirements stated in Article 25 will be denied the entrance as well. In this last case migrants will be informed of the available appeals and will be provided with legal assistance if it was needed (Article 26.2).

2.2. Right to remain in the country

Upon admission in the country all migrants are entitled to the Constitutional protection of their rights under the terms that Article 13.1 CE sets. According to Article 29 LOE, migrants can remain in Spain in the situation of stay or residency. It is important to differentiate between those two terms because both situations authorize migrants to remain in the country for a

different amount of time, and might grant migrants a different legal status or involve work permissions.

The condition of “Stay” allows migrants to remain in Spanish territory for a period of time that shall not be longer than 90 days (3 months). When that period expires, in order to remain in the country, it will be necessary to obtain a residency permission or a “Stay term” extent (Article 30.1,2 LOE). International students and migrants undertaking exchange or volunteering programmes will be subject to this condition of “Stay”.

In the other hand, under the condition of “Residence”, those migrants who are residency permission holders, shall be considered legal residents of Spain (Article 30 bis). Residence can be either temporary or permanent. Article 31 states that temporary residence “allows to remain in Spain for a period that might vary between a minimum of 90 days and a maximum period of 5 years”. This type of authorization does not involve a permission to work. Migrants must prove that they have enough income or resources to sustain themselves. Long-term residency allows migrants to reside and work in Spain for an indefinite term, in ‘*equal conditions with Spanish nationals*’ (Article 32.1). Those migrants who have had temporary residence in Spain –or any other Member State- for 5 continued years have the right to obtain a long-term residency permission (Article 32.2). Spanish legislation also recognizes a migrant’s right to obtain a long-term residency permission in Spain even when migrants been issued a long-term residency permission in another Member State.

2.3. Right to leave the country

The right to leave the country is regulated under Article 28, which declares that ‘the exit from Spanish territory will be free with the exception of what is stated in the Criminal Code and other circumstances that could be regulated in this Law. Only when public health or national security is at risk will the Minister of Interior have the legal authority to dictate prohibitions of exit. These prohibitions must always be individually dictated. Apart from this, no obligations need be complied with if immigrants voluntarily wish to leave the country.

Next section, Article 28.3, adds that the exit from Spanish territory will be mandatory when: ‘a) a court order commands the exit from the country, in accordance with the Criminal Code; b) an expulsion or return order has been issued by an administrative resolution, in accordance to this Law; c) working migrants agree to return to their countries within a certain period, and that timeline has expired’³¹⁵⁸.

The last situation, the expulsion of migrants, implies the prohibition to enter Spanish territory and every other country that has signed an agreement with Spain on this matter. In addition to this, the EU has a set of rules and policies that cover this issue. The Charter of Fundamental Rights prohibit collective expulsion and the removal of individuals if there is a risk to their life or of other serious harm³¹⁵⁹.

³¹⁵⁸ Gobierno de España, Ministerio del Interior. “Cómo efectuar la salida” <<http://www.interior.gob.es/web/servicios-al-ciudadano/extranjeria/regimen-general/salidas-voluntarias-y-prohibiciones-de-salida>>. Accessed 11 september 2015.

³¹⁵⁹ Charter of Fundamental Rights of the European Union (2000/C 364/01)

2.4. Differences between EU members and non-EU members.

In 2015, while 2,7 million immigrants from third countries came into the EU only 1,9 million of European Union residents migrated to a different EU State³¹⁶⁰. This unevenness clashes with the real situation that third countries migrants face when they enter the European Union. The rights of third-country nationals entering or staying the EU are often not respected. This is sometimes because of insufficient implementation of legislation, poor knowledge of fundamental rights, or inadequately trained civil servants, and sometimes simply due to discrimination and xenophobia³¹⁶¹.

Specific Migration regulation will be applicable to all nationals from the Member States and from every State that is a party to the EES Agreement. These provisions have been implemented in Spain under the '*Real Decreto 240/2007*'³¹⁶².

While most provisions of the general migration regulation are directed to every particular migrant, the '*Real Decreto 240/2007*' shall also be applicable, in equal conditions, to the family members of European citizens regarding of their own nationality, with the only requirement that the purpose of their entry is to reunite or join their European family members (Article 1.2).

European citizens will not need to use a passport nor a visa to enter Spanish territory, since Article 4 establishes that a national identity document will be enough³¹⁶³. All citizens subject to this regulation have a right to exit Spain and enter a different Member State (Article 5). Every time an Exit request is rejected, such resolution must state the reasons behind it (Article 5.3).

Finally, the grounds for rejection of the European Citizens Migration rights are much more reduced than in the general legislation. These grounds might be: public security, public health, and other provisions of the Criminal Code (Article 15). The lack of the requested documentation will not be a reason for such rejection, since Article 4.4 states the obligation of the public authorities to provide European citizens with helpful information to obtain the lacking documentation they will need to enter the country.

³¹⁶⁰ EUROSTAT Statistics Explained, "Estadísticas de migración y población migrante". (More information of Eurostat: Principal Tables and Database. Data collected in march 2017). <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics/es > accessed 11 september 2017.

³¹⁶¹ FRA "Current migration situation in the EU: Community policing" (June 2017) <http://fra.europa.eu/en/publication/2017/current-migration-situation-eu-community-policing> accessed 11 september 2017.

³¹⁶² *Real Decreto 240/2007*, 16th of February, on "Entry, Freedom of Movement and Residency in Spain of Citizens of the Member States and other States which are Parties to the European Economic Space Agreement".

³¹⁶³ *Gobierno de España* (Spain's Government), Minister of Interior "Normativa reguladora" <<http://www.interior.gob.es/web/servicios-al-ciudadano/extranjeria/ciudadanos-de-la-union-europea/normativa-basica-reguladora>> accessed 11 september 2017 [Spanish].

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

As for this subject, the Spanish Government has its own General Secretary for Immigration and Emigration, which is integrated inside the framework of the Employment and Social Security Ministry³¹⁶⁴.

Therefore, starting with the Employment and Social Security Ministry, it is the one in charge of the proposal and execution of the Government's politics in matter of employment and social security, as well as the migration politics. Its organization chart consists, as disposed in Article 8 of the Royal Decree 424/2016³¹⁶⁵, November 11th, of:

- The Minister. Main organ of the Ministry. Its main functions are those also assigned to the Ministry previously stated.
- The Minister's Cabinet. Its functions are the immediate assistance to the Minister in the development of its own functions.
- Secretary of State of Employment. The functions assigned consist in developing the government's politics regarding labor relations and employment
- Secretary of State of Social Security. Its main functions are those consisting in the direction of the Government's politics regarding social security, as well as the control of the collaborator entities of the Social Security.
- General Secretary of Immigration and Emigration. In charge of developing the Government's politics regarding migration.
- Sub secretary of Employment and Social Security. It takes charge of the ordinary representation of the Ministry and the direction of its services.

As we can see, the functions of the Ministry are wide and diverse, but since our focus is the one in charge of the Migration policy, we'll be focusing now in the General Secretary of Immigration and Emigration.

We'll be focusing again in the organization chart and main functions of the General Secretary, but, now, we'll have a deeper look at it.

As for the organization chart, established in the Royal Decree 703/2017³¹⁶⁶, July 7th, it goes as it follows:

- The General Secretary
- A Technical Office
- The General Direction of Migrations, in which are included:
 - Permanent Observatory of Immigration
 - General Subdirection of Immigration
 - General Subdirection of Immigrants Integration
 - General Subdirection of Emigration

³¹⁶⁴ <http://www.empleo.gob.es/es/organizacion/inmigracion/index.htm>

³¹⁶⁵ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-10459

³¹⁶⁶ <https://www.boe.es/buscar/act.php?id=BOE-A-2017-7979#dd>

- The Spanish Observatory of Racism and Xenophobia
- Two more General Subdirections dependant of the General Secretary:
 - General Subdirection of Planification and Economic Management
 - General Subdirection of Legal Regime

Focusing now on the functions of each of these organisms, these are also explicated in the aforementioned Royal Decree 703/2017, July 7th, and they are:

- General Secretary: Developing the Government's politic regarding immigration and emigration
- Technical Office: Supporting and assisting the General Secretary of Migration
- General Direction of Migrations and the General Subdirections dependant of it: major functions related to the coordination of policies application regarding both immigration and emigration, as well as budgetary and economic matters and integration of migrants' concerns.
- Spanish Observatory of Racism and Xenophobia: its main functions are those related to the recompilation and analysis of all the available information related to racism and xenophobia, in order to recognize the situation and its possible evolution, in order to fight them, as well as the promotion of principle of no discrimination.
- General Subdirection of Planification and Economic Management: mainly, it focuses on the planification of the actuations of economic content, as well as the elaboration of budgetary preliminary projects.
- General Subdirection of Legal Regime: elaboration of legal projects and reports of subjects related to immigration and emigration, as well as the production of legal proposals related with the elaboration, approval, transposition and aplication of European or International rules of migration

All in all, this was a brief exposition of both the main organisms dealing with migration and its main functions. As well as in every other aspect regarding the Public Administration, a well-coordinated organization chart, in which each organism develops its functions properly and responsibly. This aspect becomes even more important in such a delicated matter as the migration is. Specially, focusing on a proper integration and well-being of the immigrants becomes key in the migration policy, so the proper coordination becomes even more important than it would be in other fields.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Current national situation

According to the last population figures, presented by the National Statistics Institute (INE), there were 46,440,099 residents in Spain on 1st of January 2016 and 4,417,517 immigrants among them, representing 9.51% of the total population.

The European Union is the origin of almost half of the foreign residents. There are 1.9 million nationals of other member states living in Spain (44,78% of the total immigration). Among them Rumanians are the most important group, being 15.73% of the total immigrant population and the biggest foreign community in Spain. Nationals from other states of the European Union are also remarkable, mainly British (6.7%), Italians (4.33%), Germans (3.22%), Bulgarians (2.9%), Portuguese (2.31%) and French (2.28%).

Outside the European Union, Latin America and Africa are the regions where most immigrants come from, with almost equivalent significance. There are roughly 950,000 Latin Americans living in Spain, which correspond to a 21.45% of the total immigrant population. On the other hand, there are 929,258 African nationals (21.04% of the immigrants).

Many Latin American countries have an important quantity of nationals in Spain. The main ones being Ecuador (3.60%), Colombia (3.08%), Bolivia (2.03%), Argentina (1.61%), Dominican Republic (1.41%), Peru (1.39%) and Brazil (1.3%).

Morocco is by far the African country with more nationals dwelling in Spain. Reaching 15.4 % of the total immigrants, Moroccans are the second biggest foreign nationality in Spain. Immigration from other countries in Africa is less significant, e.g. Argelia (1.23%), Senegal (1.1%) or Nigeria (0.79%).

The biggest group from other parts of the world is the Chinese (3.9%). Ukrainians, Russians and Pakistanis are also noticeable.

The overall sex distribution of immigrants is roughly balanced between men and women. However, there are huge differences depending on the origin of the immigrants.

The proportion of women is higher for Latin American immigrants. Among them, female immigrants are 57% and the percentage is higher than 70% in countries like Nicaragua, Honduras or Paraguay. On the contrary, most of the immigrants coming from Africa are men (57% of African immigrants). The proportion of male immigrants from countries like Mali, Senegal or Gambia is more than 70%.

Sex distribution among immigrants from the EU and from China is quite balanced, with no more than 3% percental variation between sexes. As for Russian immigrants, 66% of them are women.

Considering the age, the distribution of immigrant population is quite different to what can be observed in Spanish nationals.

A quarter the immigrant population is aged between 30-39. The subsequent more numerous ranges of age are those being 40 to 49 and 20 to 29. About 20% of immigrants are under 19 years old. It can also be noted that in 2016 there were 46,193 foreigners authorised to stay in Spain for studying, roughly half of them being Latin American nationals.

Only 5% are older than 69, however, there are important differences depending of the origin of the immigrants. In this period of life, only immigrants from the European Union are a significant group, being 75% of the oldest immigrants.

4.2. Trends in Migratory Flows

During the 20th century immigration was not very significant, with only 1.86% of immigrant population in 1999. Flows began to grow very fast in the late 90s, reaching a peak in 2008, when 750,000 immigrants moved to the country.

In the context of economic crisis, the flow of immigrants coming to Spain has been notably reduced in the last years and the number of those leaving has increased. Therefore, from 2010 to 2015 immigrant population in Spain was decreasing. By the end of this period there were 1,017,452 immigrants less.

On the other hand, emigration of Spanish nationals has increased during the last years. The peak was reached in 2015 when 94,645 Spaniards moved abroad. In 2016, 86,112 Spaniards emigrated. About half of them went to other countries of the European Union, mainly the United Kingdom, France and Germany. Approximately 30,000 people emigrated to Latin America, the principal destinations being Ecuador, Colombia, Mexico and Argentina. The number of Spanish emigrants coming back does not compensate the number of emigrants and, therefore, the net migration rate of Spanish nationals has remained negative since 2008, reaching -23,540 in 2016.

This Spanish emigration, together with the depart of immigrants resulted in a global negative net migration rate from 2008 to 2015. The lowest rate was reached in 2013, when the difference between immigrants and emigrants was -251,531. In 2015 the rate was still negative but almost insignificant, with a rate of -1,761. The situation changed in 2016, when the net migration rate was 89,126.

4.3. Regional situation

Immigrants are not equally distributed along the territory. Catalonia is the community with the biggest number of immigrants, more than a million, equivalent to 13.6% of the population. After Catalonia, the places which receive more immigration are Madrid, Valencian Community, Andalusia, Canary Island and Murcia. It is remarkable that Balearic Islands is the region with the highest proportion of foreigners, who are 17% of the total population.

The regions where there are less immigrants are Cantabria, Extremadura, La Rioja and Asturias. Therefore, most of the immigrant population (81%) is concentrated in the Mediterranean coast, Madrid and the Islands.

4.4. Asylum

The number of asylum applications in Spain increased rapidly in the last years, specially in 2015, but it remains relatively low if compared to other countries of the European Union. In 2016, 15,755 applications were submitted to the Spanish authorities and there were 20,365 people with a pending application by the end of 2016. During that year 6,855 applications were decided positively on first instance

4.5. Acquisition of Spanish Nationality

It must be noted that immigrant population partially decreased because of the acquisition of Spanish Nationality of the foreigners. In fact, almost 2 million people among current Spanish nationals were born abroad.

In 2016, 92,783 people were granted the Spanish nationality. Those with previous Moroccan population were the most important group, followed by Bolivians, Ecuadorians and Colombians.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Being a frontier country is not easy. States should find a balance between security and the legitimate right of people to seek another future, away from extreme poverty, political persecution, wars, or climate change. Part of the society would be pleased with a welcome policy, but some sectors may see migrants as “the others” This thinking sometimes is the result of the fear policy that in some periods of history has been spread out like a highly contagious virus. Why are people afraid of them? Are “the others” different to us? Could “the others” also be afraid? They could be afraid, for example, of living in their home countries. In one way or another, that discussion is taking place every day in Spain. Its proximity to Africa, even with two cities on that continent, has made Spain an important player in the implementation of the decisions of the ECHR.

The analysis of the implementation of the decisions of the ECHR would be focused on two decisions in which Spain, as respondent State, has been condemned for a violation of the Convention. When a violation is produced, the entire system is tested³¹⁶⁷. Is Spain able to fix a violation of the Convention properly? It could be said that nowadays, a full implementation of the ECHR decisions is closer. In 2015, an important amendment was introduced in the Civil Procedure Law (LEC)³¹⁶⁸ and on the Court Law (LOPJ)³¹⁶⁹: article 510.2 of LEC and article 5. BIS of LOPJ due to the case *Del Río Prada v. Spain*³¹⁷⁰. These amendments allow that if no other measure can be taken to rectify the declared violation by the ECHR, a procedure of revision of firm judgments may be requested before the Spanish Supreme Court³¹⁷¹.

The first case to analyse deals with alyssum seekers of Sahrawi origin, *AC and Others v. Spain*³¹⁷² (*application no 6528/11*). The applicants were thirty international protection seekers who had arrived on makeshift boats on the coast of the Canary Islands between January 2011 and August 2012. They lodged applications for international protection and after being considered and reconsidered, they were rejected. The applicants applied for judicial review and asked for a stay of execution orders to their deportations, at least until their judicial reviews were solved.

³¹⁶⁷ This was the structure of analysis established by Luis López Guerra, judge of the ECHR, in the book: Alcácer Guirao, R., Beladiez Rojo, M. and Sánchez Tomás, J. (2013). *Conflicto y diálogo con Europa. Las condenas a España del Tribunal Europeo de Derechos Humanos*. Cizur Menor (Navarra): Thomson Reuters, pp.28-36.

³¹⁶⁸ Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil.

³¹⁶⁹ Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial.

³¹⁷⁰ *Del Río Prada v Spain* [2013]42750/09 (ECHR).

³¹⁷¹ When there is no other possible measure to finish with the effects of the violation, the Supreme Court (Tribunal Supremo) has the competence to reopen the case. By now, it is only an article because since its introduction there has not been successfully used.

³¹⁷² *AC and Other v Spain* [2014] 6528/11 (ECHR)

Audiencia Nacional³¹⁷³, after a first provisional suspension of the removal procedure, rejected the applications for a stay of execution. All the applicants petitioned the ECHR for interim measures under Rule 39 of the Rules of the Court³¹⁷⁴, alleging ill treatment by the Moroccan authorities and that they felt threatened, not only on grounds of physical assault on themselves but also on their family members by way of reprisals. The Court decided that the applicants should not be removed for the duration of the proceedings; Spain should permit the applicants to remain within its territory.³¹⁷⁵

The court found that the article 13 (right to an effective remedy) had been breached. The concept of an effective remedy requires the possibility of suspending the implementation of a removal order. Otherwise, the hypothetical acceptance of their protection orders would have no effects. The applicants' fears as to violations of their human rights in their country of origin did not appear irrational to the judges³¹⁷⁶.

The action report submitted by the Kingdom of Spain explaining the measures adopted after this procedure was a proof a correct execution³¹⁷⁷. The individual implementation consisted of ensuring legal the applicants' residence in Spain, and furnishing them ad hoc ID documents with a specific note on the police database not to expel them in any event until the final decisions were adopted. Some of the applicants appealed before the Supreme Court and their administrative acts were declared null and void due to procedural shortcomings, so they had a new asylum procedure from the initial stage.

Beyond that individual implementation, there was a general implementation measure: a change in the jurisprudence applied to asylum seekers. According to the national legislation,³¹⁷⁸ there were three possibilities once an asylum protection order is submitted: non-admission, denegation - when it is inconsistent or when there is no enough evidence- or the ordinary procedure - if the claim meets the minimum formal requirements. In *AC and other vs Spain* the migrants' petitions have been classified under the denegation form, thus they got deportation orders, even their procedure had not finished since that specific procedure means stayed expulsion until there is a judicial review or an interim measure.

The Supreme Court, using well established case law, stated that the denegation procedure should only be used under a strict interpretation of its requirements, as ordinary procedure must be the general rule. Through this new argumentation, other cases have been successfully revised.³¹⁷⁹

But, what could happen if the asylum seekers had no chance to make a claim for an international protection order because they were directly expelled? That situation is examined in the *ND and*

³¹⁷³ Audiencia Nacional is national court that has between other competences, the one for revising government decisions regarding asylum seekers.

³¹⁷⁴ Rules of the Court (2014) Available at: http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

³¹⁷⁵ The Spanish authorities should have suspended the procedure for removal of international protection seekers until their allegations about the risks they faced in their country of origin had been thoroughly examined. (2014). [online] Available at: [http://hudoc.echr.coe.int/eng#{"itemid":\["003-4738974-5760369"\]}](http://hudoc.echr.coe.int/eng#{) [Accessed 24 Jul. 2017].

³¹⁷⁶ Ibid.

³¹⁷⁷ Secretariat of the Committee of Ministers. (2017). *Communications from Spain concerning the case of AC and others against Spain (Application No 6528/11)*. Council of Europe, pp.1-7.

³¹⁷⁸ Law no 12/2009 of 30th October, on the right of Asylum and Humanitarian protection.

³¹⁷⁹ *OGS and DML vs Spain* [2015] 62799/11 and 62808/11 (ECHR)

NT vs Spain.³¹⁸⁰ On the 13th August 2014, ND and NT, both Ivorian migrants, tried to cross the frontier in Melilla, one of the African cities of Spain. The frontier there consists of three fences. The two applicants managed to pass the first two fences, but they were intercepted on the third one. The Spanish police arrested and expelled them to Morocco within a group of 75 migrants. They were not granted any procedure, nor any lawyer or translator. On the 2nd December 2014, both applicants managed to enter to Melilla. When the case was examined before the ECHR, in July 2015, the first migrant had already been expelled to Mali, and the other was under a deportation process.

Since 1st April 2015, there has been a law amendment made on Organic Law 4/2000 about the rights and freedoms of migrants in Spain that allow an especial procedure for aliens on the frontiers in Ceuta and Melilla. In brief, it states that migrants at these frontiers, if they are intercepted while crossing all the fences, they could be expelled in order to prevent their irregular entrance in Spain.³¹⁸¹

The ECHR mentions the reports from the Committee for prevention of Torture and ACNUR that point out the situation of automatic expulsions in that frontier. The decision of the court was that it did not have enough information to make a final decision, so it postponed the examination of Protocol 4 in relation with article 4 and 13 until the Kingdom of Spain provides more information.³¹⁸²

Even there is no final decision into this judgement, it has an important relevance because of its probable outcome. The institution of the Ombudsman³¹⁸³ has recognized that there is a new procedure only in the cities of Ceuta and Melilla and recommended the government the developed the law amendment introduced, ensuring that the necessity of international protection is fulfilled. The government rejected these recommendations, arguing that its aim is to protect the Police working on that frontier and reach a balance between its right and duty to guarantee the national security, and the International Law. Some previous cases examined before the ECHR like *Conka vs Belgium* (2002), *Gebremedhing vs France* (2007), *Hirsi Jamaa and others vs Italy* (2012) or *De Souza Ribeiro vs France* (2012) can anticipate the result of ND and NT vs Spain.³¹⁸⁴ As it could be expected, on the 3rd October 2017, during the writing of this article, the Court concluded that there had been a violation of Article 13 of the Convention taken together with Article 4 of Protocol No. 4 to the Convention and that Spain was to pay each of the applicants 5,000 euros. The Spanish Government announced the appeal before the Grand Chamber.³¹⁸⁵

³¹⁸⁰ N.D. contre l'Espagne et N.T. contre l'Espagne [2015] 8675/15 et 8697/15 Available at: <http://hudoc.echr.coe.int/eng?i=001-156743>

³¹⁸¹ Disposición Adicional Décima on the Organic Law 4/2000: Special Regime of Ceuta and Melilla.

³¹⁸² There is no any more information available in relation with this case.

³¹⁸³ The name of the institution is Defensor del Pueblo.

³¹⁸⁴ Enériz Olaechea, J. (2017). El rechazo de extranjeros en las fronteras de Ceuta y Melilla. Alcance de la Disposición Adicional Décima de la Ley Orgánica de Extranjería. *Revista Aranzadi Doctrinal*, 3(Parte Estudios), pp.8-11.

³¹⁸⁵ The immediate return to Morocco of sub-Saharan migrants who were attempting to enter Spanish territory in Melilla amounted to a collective expulsion of foreign nationals, in breach of the Convention [2017] ECHR 291 Press Release. Available at: <http://hudoc.echr.coe.int/eng-press?i=003-5860634-7471863>

In the first case, we see an example of an adequate implementation for the applicants, but also how a general remedy was established. In the second one, at issue is that Spain has likely legislated against well established and clear rights and principles recognized by the ECHR. Now the Grand Chamber would have the last word, but in the meanwhile, many migrant's rights may be breached.

6. How is migrants' right to access to healthcare regulated within the national legislation?

In Spain, the access to healthcare used to be universal³¹⁸⁶. The country was traditionally considered one of the world's most inclusive health systems before the financial crisis, but in 2012 a Royal-Decree law significantly limited access to care for the uninsured and undocumented migrants, an increasing number of patients are unable to pay for treatment³¹⁸⁷.

Prior to the entry into force of this provision and its regulatory development, foreigners registered in the register of the municipality in which they had their habitual domicile, regardless of their administrative status, were entitled to Social Security healthcare with the same extent, content and regime as that provided for in the *Régimen General de la Seguridad Social* (General Scheme of Social Security), i.e. free of charge in cases where foreigners lack sufficient economic resources³¹⁸⁸. However, **Royal Decree-law n. 16, passed on April 20 2012**³¹⁸⁹ (urgent measures to insure the sustainability of the National Health System and improve the quality and security) [Medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones] constituted a turning point in that process. This law, that entry into force September 1 2012³¹⁹⁰ dictates the withdrawal of medical cards for undocumented immigrants older than 18 (with the only three exceptions: pregnant women, those affected by infectious diseases and those in need of emergency care). The context of economic crisis facilitated the adoption of a series of reforms in the healthcare sector in the country, among which we can include the Royal-Decree law, passed by the central government, and which should limit the range of coverage of the 17 *Servicios de Salud dependientes de las comunidades autónomas* (Regional Healthcare Services)³¹⁹¹.

³¹⁸⁶ 'Barometer report Monitoring the implementation of the (at least) 20% of the European Social Fund that should be devoted to the fight against Poverty during the period 2014-2020' (European anti-poverty network, March 2016), 38 <<http://www.eapn.eu/wp-content/uploads/2016/04/2016-Barometer-Report.pdf>> accessed 15 July 2017.

³¹⁸⁷ 'International Network 2016 Observatory Report' (Doctors of the World, November 2016), 10-11 <https://mdmeuroblog.files.wordpress.com/2016/11/observatory-report2016_en-mdm-international.pdf> accessed 15 July 2017.

³¹⁸⁸ 'Legal report on access to healthcare in 12 countries' (Doctors of the World, 8 June 2015), 90-99 <<https://mdmeuroblog.files.wordpress.com/2014/05/mdm-legal-report-on-access-to-healthcare-in-12-countries-3rd-june-20151.pdf>> accessed 15 July 2017.

³¹⁸⁹ *Boletín Oficial del Estado* (Official State Gazette)-A-2012-5403 [Spanish].

³¹⁹⁰ *Boletín Oficial del Estado* (Official State Gazette)-A-2012-1047 [Spanish].

³¹⁹¹ 'Regulation Policies of Access to Healthcare by Undocumented Immigrants in Spain (PRASINIE)' (Instituto de Políticas y Bienes Públicos, 2014), <<http://ipp.csic.es/en/research-project/regulation-policies-access-healthcare-undocumented-immigrants-spain-prasinie>> accessed 15 July 2017 [Spanish].

The **Royal Decree n. 1192, passed on August 3 2012** (condition of insured and beneficiary for the purposes of healthcare in Spain, charged to public funds, through the National Health System) [Condición de asegurado y de beneficiario a efectos de la asistencia sanitaria en España, con cargo a fondos públicos, a través del Sistema Nacional de Salud], more clearly defined the new rules to establish eligibility to the National Health System:

- “insured persons” (workers, pensioners, unemployed persons receiving benefits, and job seekers)
- “beneficiaries” (spouses and siblings - younger than 26- of “insured” persons).
- A series of groups were thus officially excluded from the National Health System, including, but not limited to, undocumented migrants older than 18 (with the exception of pregnant women). At this issue, it is necessary to point out the particular situation of the subjects that have the status of refugees. Since the very first moment they apply requesting for international protection, they are integrated into the public health system and receive benefits under the same conditions as all Spaniards³¹⁹². This is because as it is disposed in additional disposition n.4 Royal Decree n. 1192, passed on August 3 2012, the applicants for international protection whose stay in Spain has been authorized for this reason will receive, as long as they remain in this situation, the necessary health care that will include emergency care and basic treatment of diseases³¹⁹³.

In October 2012, *Consejo Interterritorial del Sistema Nacional de Salud* (Interterritorial Council of the Spanish Healthcare System) approved the government proposal to establish an insurance scheme so that those excluded from the National Health System could buy their way into the system for an annual premium of 710 € (1,864 € if older than 65)³¹⁹⁴.

These regulations should have meant the exclusion of undocumented migrants from the 17 Regional Healthcare Services³¹⁹⁵, but the complex articulation of the multilevel structure that characterizes the Spanish state supposed, however, an extremely uneven application of this measure: explicitly ignored by some, partly implemented by others, literally applied by a third group of regional governments³¹⁹⁶. Nowadays, several autonomous regions have implemented regulations to improve the access to healthcare for undocumented migrants³¹⁹⁷. It was: explicitly ignored by Andalusia and Asturias; partly implemented by Aragon, Basque

³¹⁹² ‘¿Reciben los refugiados sirios una asistencia sanitaria plena en España?’ <<https://consalud.es/pacientes/reciben-los-refugiados-sirios-una-asistencia-sanitaria-plena-en-espana-25586>> accessed 15 July 2017 [Spanish].

³¹⁹³ Leopoldo J. Gómez Zamora, ‘La asistencia sanitaria en España. Especial referencia a la prestación sanitaria a los extranjeros en situación irregular después de la modificación operada por el Real Decreto-Ley 16/2012’ [2016] *Revista Gabilex* número 5, 98-100 <http://www.castillalamancha.es/sites/default/files/documentos/pdf/20160427/revista_no_5_marzo_2016_ultima_version.pdf> accessed 15 July 2017 [Spanish].

³¹⁹⁴ Ana Arriba González de Durana and Francisco Javier Moreno-Fuentes, ‘Undocumented migrants in Spain to regain access to healthcare?’ (ESPN Flash Report 2016/39, July 2016), 1 <<http://ec.europa.eu/social/BlobServlet?docId=16003&langId=en>> accessed 15 July 2017.

³¹⁹⁵ *ibid* 1.

³¹⁹⁶ ‘Regulation Policies of Access to Healthcare by Undocumented Immigrants in Spain (PRASINIE)’.

³¹⁹⁷ ‘International Network 2016 Observatory Report Doctor of the World’, (2016), 10-11; Ana Arriba González de Durana and Francisco Javier Moreno-Fuentes; ‘Undocumented migrants in Spain to regain access to healthcare?’, 1.

Country, Canary Islands, Cantabria, Catalonia, Extremadura, Galicia, Navarre and Valencia; applied with certain exceptions by Madrid, Balearic islands, Castile-Leon, Murcia and Rioja; and strictly enforced by Castile-La Mancha³¹⁹⁸.

It is also relevant that this decree was challenged by the *Parlamento de la Comunidad Foral de Navarra* (Parliament of the Chartered Community of Navarre) in the Constitutional Court appeal on the grounds of unconstitutionality n. 4123 July 24 2012. However, this appeal was rejected in the judgement of the Constitutional Court n. 139 of July 21 2016³¹⁹⁹, restricting access to free health care for undocumented migrants including primary healthcare, was constitutional. According to statistics, this reform has taken away the health care cards from 748,835 migrants, removing or seriously limiting their access to the health system³²⁰⁰.

Different non-governmental organizations (NGOs) such as Amnesty International or Doctors of the World, affirm that the judgment of the Constitutional Court "consolidates" the exclusion of free healthcare for migrants in an irregular administrative situation, while "ignoring" the international human rights treaties signed by Spain. These organizations recall that more than a dozen mechanisms of the United Nations and the Council of Europe have described health reform as a "regrettable novelty" or "contrary to the principle of non-discrimination" and have urged Spain to re-establish the universality of the right to health³²⁰¹.

Less than three years after this legislation was passed, the national government reconsidered its effectiveness, partly as a result of certain high-profile cases of lack of adequate medical treatment to undocumented migrants, the wide variety in the practices of the *Servicios de Salud dependientes de las comunidades autónomas* (Regional Healthcare Services), and the recognition that no savings could be directly attributed to it³²⁰². Since September 2 2015 there has been a proposal from the *Consejo Interterritorial del Sistema Nacional de Salud* (Interterritorial Council of the Spanish Healthcare System) to extend primary care to undocumented migrants. The proposed agreement refers specifically to the minimum criteria for inclusion in social and healthcare programmes of the autonomous communities of foreigners not registered or authorized as residents in Spain who lack economic resources. This people who would benefit from these programmes, in addition to identifying themselves, have to provide³²⁰³:

³¹⁹⁸ 'Dos años de reforma sanitaria: más vidas humanas en riesgo', 13-15 (Médicos del Mundo, abril 2014) <http://www.vientosur.info/IMG/pdf/Dos_anos_de_reforma_sanitaria_mas_vidas_humanas_en_riesgo.pdf> accessed 15 July 2017 [Spanish].

³¹⁹⁹ *Boletín Oficial del Estado* (Official State Gazette)-A-2016-7904 [Spanish].

³²⁰⁰ 'Amnesty International report 2016/17: The State of the world's human right', 338 (Amnesty International, 22 February 2017) <<https://www.amnesty.org/en/documents/pol10/4800/2017/en/>> accessed 15 July 2017; *International Network 2016 Observatory Report Doctor of the World*, 1.

³²⁰¹ 'La sentencia sobre la exclusión sanitaria del Constitucional "ignora" los tratados de derechos humanos' (Abogacía Española, 4 August 2016) <<http://www.abogacia.es/2016/08/04/la-sentencia-del-constitucional-sobre-exclusion-sanitaria-ignora-los-tratados-de-derechos-humanos/>> accessed 15 July 2017 [Spanish]; *Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013* (Council of Europe, 9 October 2013) <<https://rm.coe.int/16806db80a>> accessed 15 July 2017

³²⁰² Ana Arriba González de Durana and Francisco Javier Moreno-Fuentes, 'Undocumented migrants in Spain to regain access to healthcare?', 1.

³²⁰³ 'El MSSSI presenta a la Comisión de Prestaciones, Aseguramiento y Financiación del Consejo Interterritorial el Acuerdo para armonizar la atención social y sanitaria a los extranjeros en situación irregular que acrediten una residencia de seis meses' (Ministerio de Sanidad, Servicios Sociales e Igualdad, 2 September 2015) <<http://www.msc.es/gabinete/notasPrensa.do?id=3748>> accessed 15 July 2017 [Spanish].

- a justification of not having sufficient resources;
- statement responsible for not having health coverage by any other means;
- document that does not proceed the export of the right to health care.

This proposal currently is stand-by and no decision has been taken respect to date³²⁰⁴.

7. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

The process of recognition of foreign school and university diplomas in Spain is foreseen in national law and national administrative norms. This regulation is coherent with the international law ratified by Spain like the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997³²⁰⁵, and European Union law, particularly Directives 2005/36/EC and 2013/55/EU, on the recognition of professional qualification.

7.1. Recognition of foreign university diplomas

Foreign university diplomas might be object of two different processes of recognition in Spain³²⁰⁶. The recognition for academic purposes, *equivalencia*, declares the equivalence of the foreign diplomas to those which could be obtained in Spanish universities in all aspects, except for the professional qualification to exercise regulated professions which the diploma might entail. On the other hand, a professional recognition, *homologación*, is needed to practice certain regulated professions, like doctors, lawyers, engineers, architects and vets, among others. Partial recognition is also possible, after a process of *convalidación*, which recognises successfully passed some courses of a certain degree.

The procedure is started by the applicant³²⁰⁷. A report will be drafted within three months by the National Agency for Quality Assessment and Accreditation (ANECA)³²⁰⁸. Criteria like the equivalence of the level of studies, duration or competences acquired, among others, will be

³²⁰⁴ Ana Arriba González de Durana and Francisco Javier Moreno-Fuentes, 'Undocumented migrants in Spain to regain access to healthcare?', 1.

³²⁰⁵ After signature and ratification of this convention, it entered into force in Spain on 1st of December 2009.

³²⁰⁶ Art. 5 Royal Decree n.967 (por el que se establecen los requisitos y el procedimiento para la homologación y declaración de equivalencia a titulación y a nivel académico universitario oficial y para la convalidación de estudios extranjeros de educación superior, y el procedimiento para determinar la correspondencia a los niveles del marco español de cualificaciones para la educación superior de los títulos oficiales de Arquitecto, Ingeniero, Licenciado, Arquitecto Técnico, Ingeniero Técnico y Diplomado). 2014.

³²⁰⁷ The request is started before the Ministry of Education, Science and Sport. It can also be handed out in any other administration, public registry or post office, which will send the documents to the competent authorities. The content of the solicitude varies depending of the kind of diploma to be recognised. In any case, it must include the official title which is to be recognised, an academic certificate and some proof of identity. All documents must be official, legalised under The Hague Convention (except for EEE countries) and translated to Spanish.

³²⁰⁸ Art. 11 Royal Decree n.967 2014

taken into consideration³²⁰⁹. This report can be favourable to the recognition, conditionally favourable asking for some extra requirements, or unfavourable. Considering the report, the *Subdirección General de Títulos, Convalidaciones y Hologaciones*, an organ of the Spanish Ministry of Education, will resolve the issue. It can either reject or declare the recognition with can be subject to some conditions in the case of professional recognition³²¹⁰.

The term of the procedure is 6 months, however when the report is not send after three months the term is suspended³²¹¹. For the recognition, a fee will be requested³²¹².

There is no special procedure for refugees recognising their diplomas. However, when the refugee status has been officially declared the documents required for the recognition do not need to be legalised.

7.1.1. Recognition for academic purposes

The Recognition for academic purposes declares the equivalence of foreign titles of Bachelor's Degree or Master's degree to a Spanish qualification. The foreign title will have the same effects as a national one except for the professional qualification in regulated profession, for which the professional recognition *homologación* of the title is needed.

7.1.2. Recognition for professional purposes

The recognition of a foreign title for professional purposes is declared after a process of *homologación* in the case of regulated professions, which are those for which a certain university diploma is required. Some of the regulated professions in Spain are doctors, vets, nurses, dentists, engineers, architects, teachers or lawyers. Special requirements are established for each regulated profession by administrative norms (royal decrees or orders).

The recognition can be conditional and further requirements might be needed when certain lacks are detected in the foreign title compared to the Spanish one. This condition might be a test of attitude, an internship, a project or the attendance of certain courses. The time to achieve these requirements is 6 years after the resolution.

There is a special procedure for the recognition of European Union members' diplomas for the exercise of a profession *-reconocimiento para el ejercicio de profesiones-*, under Directive 2005/36/EC and Directive 2013/55/EU. These European norms harmonise certain aspects of the degrees to ease the movement of persons and services within the European Union.

7.1.3. Recognition of PHD diplomas

The recognition of a PHD title is attributed to the universities, under the procedures foreseen in their internal norms³²¹³. This recognition does not imply the recognition of any other diplomas. Therefore, if needed, the Bachelor's or Master's degree would be recognised under the normal procedures.

³²⁰⁹ Art.10 Royal Decree n.967 2014

³²¹⁰ Art. 13 Royal Decree n.967 2014

³²¹¹ Art. 14 Royal Decree n.967 2014

³²¹² In 2017 the fee, under model 790, was 161.60 euros.

³²¹³ Disposición adicional quinta Royal Decree n.967 2014

7.2. Recognition of foreign school diplomas

The main procedures for recognition of non-university education are included in the Royal Decree 104/1988. There are other administrative regulations concerning certain issues like the competent authorities dealing with the processes, the requirements and standards of recognition, establishing specialities for certain countries, etc.

The extent of the recognition may vary. It can be complete or partial. The complete recognition declares the equivalence of a foreign titles to one obtained in a Spanish school, after a process of *homologación*. If the conditions for an *homologación* are not met, a partial recognition or *convalidación* might be granted. In this case, some subjects or modules needed for the diplomas to be obtained will be recognised and the student will be able to continue studying to complete the rest of the modules.

No recognition is needed to continue primary or secondary compulsory education (ESO³²¹⁴) in Spain after having studied in a foreign country. Neither is there necessity of recognition to join courses for which the secondary education is not required.

Foreign school titles subjected to recognition include secondary education, Baccalaureate, vocational or technical diplomas, artistic or sports diplomas...

The process is started³²¹⁵ by the applicant asking for the recognition. To initiate the procedure a fee must be paid³²¹⁶. The procedure shall finish within the next three months³²¹⁷. The competent authorities to solve the request are the areas of *Alta Inspección de Educación*³²¹⁸, which are organs of the autonomous communities, or in some cases the *Subdirección General de Títulos, Convalidaciones y Hologaciones*, which is an organ of the Spanish Ministry of Education, Culture and Sport³²¹⁹. Furthermore, for residents in Galicia³²²⁰, Catalonia³²²¹ and Vasque Country³²²² the regional administration fully oversees these procedures.

³²¹⁴ Secondary Compulsory Education (*Educación Secundaria Obligatoria*, ESO) is composed of four academic years (1st to 4th), usually covering ages teenagers from 12 to 16 years old. The completion of the ESO period allows the student to join a vocational course or the two-year *Bachillerato*.

³²¹⁵ The request can be started before the competent authority for the procedure or handed out in any other administration, public registry or post office, which will send the documents to the competent authorities. The content of the solicitude varies depending of the kind of title to be recognised. In any case, it must include the official title which is to be recognised, the qualifications and some prove of identity and nationality. All documents must be official, legalised under The Hague Convention (except for EEE countries) and translated to Spanish.

³²¹⁶ The recognition of secondary education is free of charge. The recognition of other diplomas of non-university levels requires the payment of a fee of 48.30 euros.

³²¹⁷ The procedure might be extended if the documents handed out by the applicant are not sufficient and new documents are requested outside Spain. Art. 11 Royal Decree 10 (sobre homologación y convalidación de títulos y estudios extranjeros de educación no universitaria) 1988.

³²¹⁸ Art. 9.2 Royal Decree 10 (sobre homologación y convalidación de títulos y estudios extranjeros de educación no universitaria) 1988.

³²¹⁹ Art. 4 Royal Decree 10 (sobre homologación y convalidación de títulos y estudios extranjeros de educación no universitaria) 1988.

³²²⁰ Royal Decree 1319 (sobre ampliación de funciones y servicios traspasados a la Comunidad Autónoma de Galicia por Real Decreto 1763/1982, de 24 de julio, en materia de Educación: Homologación y convalidación de títulos y estudios extranjeros en enseñanzas no universitarias) 2008

³²²¹ Royal Decree 1388 (sobre ampliación de funciones y servicios traspasados a la Generalitat de Cataluña por el Real Decreto 2809/1980, de 3 de octubre, en materia de enseñanza: homologación y convalidación de títulos y estudios extranjeros en enseñanzas no universitarias) 2008

There are different criteria to grant or deny the request. First, international treaties and conventions must be taken into consideration. Secondly, if there are none of the previous, the Ministry tables of equivalence should be analysed³²²³. These tables foresee the correspondence to the Spanish system of foreign titles from many different countries. They are created considering not only the similarity of contents or duration of the courses but also the treatment granted to Spanish diplomas in the foreign country. In the unlikely case that the foreign titles are not included in any of the two previous sources, an *ad hoc* Commission will be formed³²²⁴. In this case, the national *Subdirección General* will draft a resolution.

8. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Political participation of migrants in their host country facilitates their social inclusion in society. Awareness of the socio-structural facets of migration has made inclusion of migrants become something more than a rhetorical part of political discourse in Spain³²²⁵. It has often been argued that social inclusion should be a basic dimension of immigration policy, but it was not since recently that evidence emerged showing that the process of joint construction implied by social inclusion policy does not only have cultural or socioeconomic dimensions but also a political one³²²⁶.

Research focusing on how migrants are made part of Spanish political processes is currently scarce. In the past, the majority of studies on the political behaviour of migrants revealed that, in general, they find themselves at a disadvantage when it comes to defending their interests within the public sphere. Reasons that were found to give rise to such challenges included reduced access to valuable socioeconomic resources, difficult social mobility, spatial segregation and discrimination in comparison with the majority society³²²⁷.

It is convenient to first describe what is meant by 'political participation', as the term allows for an array of different definitions. For the purpose of this report, it refers to the actions established by the law to allow citizens to take part in the political process and its results. In any

³²²² Royal Decree 893 (sobre ampliación de funciones y servicios traspasados a la Comunidad Autónoma del País Vasco por el Real Decreto 2808/1980, de 26 de septiembre, en materia de enseñanza (homologación y convalidación de títulos y estudios extranjeros en enseñanzas no universitarias) 2011

³²²³ Art. 5 Royal Decree 10 (sobre homologación y convalidación de títulos y estudios extranjeros de educación no universitaria) 1988.

³²²⁴ Art. 10 Royal Decree 10 (sobre homologación y convalidación de títulos y estudios extranjeros de educación no universitaria) 1988.

³²²⁵ 'La participación política de las personas inmigrantes'. Informe anual sobre la situación de la integración social de los inmigrantes y refugiados. (2011). Ministerio de trabajo e inmigración: Foro para la integración social de los inmigrantes.

³²²⁶ Durán Muñoz, R.; Martín Martínez, M.; Rodríguez, Á. (2007). 'La participación política de los extranjeros: estado de la cuestión', Fundación Centro de Estudios Andaluces.

³²²⁷ Moya Malapeira, D.; Viñas Ferrer, A. (2010). Sufragio y participación política de los extranjeros extracomunitarios en Europa, Institut de Dret Públic.

case, political participation requires an action undertaken in a public or collective sphere by each individual. Therefore, many different actions can be included in this definition.

8.1. European framework

8.1.1. Convention on the participation of foreigners in public life

This Convention regulates rights connected to political participation of foreigners on a European level. It departs from three basic premises: first, migration movements in Europe are generalized social facts; second, it refers to residents, that is, to foreigners legally living in a different country with permanent residence status. Third, it recognizes the challenges related to the inclusion of foreigners in their host society, especially within their local community. Furthermore, the Convention is based on the principles of equality and non-discrimination, of equal assumption of rights and duties in the community.

Party states agreed on the need to improve the social inclusion of foreigners in the local community, especially through increasing their possibilities to participate in local public affairs. In this regard, they committed to eliminating any obstacles that could challenge the creation of consultative bodies representing foreigners³²²⁸. Thus, three types of measures should be adopted: to ensure the connection between local authorities and foreign residents; to offer a forum of discussion and formulation of opinions of foreigners in local political life and to promote their integration in collective life.

Following the Convention, each party state commits to granting the right to vote and to be elected in local elections to all residents as long as they comply with the conditions applied to nationals and they have legally resided in the concerned state during the five years preceding the elections. States may make an exception regarding the right to be elected to allow foreigners to run for election. Furthermore, they can authorize the right to vote and to be elected to foreigners who have been living in the country for less than five years and decide in which local elections foreigners will participate, as they all have different local governance structures.

8.1.2. European Convention on Human Rights

The European Convention on Human Rights does not make any reference to the rights of migrants. However, it establishes that party states are entitled to impose restrictions to the political participation of foreigners³²²⁹. Furthermore, it states the commitment of party states to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature³²³⁰. This stipulation seems to circumscribe the right to free, periodic and secret elections to nationals (“the people”). The European Court of Human Rights has stated on different occasions that the configuration of the right to elect and to be elected in local elections is to be regulated by the national law. Therefore, each party state has full freedom to decide whether foreigners will be entitled to vote and/or to run for election.

³²²⁸ Convention on the Participation of Foreigners in Public Life 1992, s 5

³²²⁹ European Human Rights Convention 1953, s 16

³²³⁰ European Human Rights Convention 1953, s 3

8.1.3. Treaty on European Union

The Treaty on European Union gives European citizenship to every national of a member state³²³¹. The European citizenship carries rights which are added to those attached to each country's national citizenship. Two of them are closely linked to political participation: the right to elect and to be elected in the municipal elections of the state in which a European citizen lives³²³² and to vote in the elections to the European Parliament³²³³. Materializing these rights demanded their development through community secondary legislation, apart from member states adopting legislative measures of transposition.

8.1.4. Directives

The modalities for exercising the right to vote and the right to run for election in the European parliamentary elections for European citizens living in a member state of which they are not nationals are regulated by the Directive 93/109/CE, which establishes the conditions required to be a holder of those rights (i.e. to be a European citizen, to live in the member state where he or she is going to vote or run for election and to comply with the same conditions required to nationals of his or hers country of residence), the freedom regarding the member state in which the right can be exercised (i.e. either the state of which they are a national or the state in which they live) but forbidding double votes and the duty to register on the electoral roll.

Participation of immigrants in municipal elections is regulated by Directive 96/30/CE. This Directive did not intend to harmonize the different electoral systems present in member states, but to unify the conditions required for exercising the right to vote and to run for election in local elections. With this purpose, it regulates the proceeding for inscription in the electoral roll of the member state of which the subject is a resident, although, in contrast with what was established for the European parliamentary elections, this time double votes and double candidatures are allowed in the member state of residence and origin except for the generic incompatibilities which already existed beforehand.

8.2. The Spanish national context

8.2.1. The Spanish Constitution of 1978

8.2.1.1. Impact of 'national sovereignty'

The political participation of immigrants in Spain is limited by national sovereignty. As stated by the Spanish Constitution: "national sovereignty resides in the Spanish people"³²³⁴. In this regard, the Constitutional Court stated in its resolution of 1st of July 1992, that the municipal elections do not imply an exercise of national sovereignty, as municipalities do not have competencies granted by the Spanish Constitution or by the Autonomic Statutes, which are the bearers of

³²³¹ Treaty on the European Union 2007, s 19

³²³² Ibid, s 19(1)

³²³³ Ibid, s 19(2)

³²³⁴ Constitución Española 1978, s 1(2)

national sovereignty³²³⁵. The stipulation thus refers to the legislative power and therefore would exclude foreigners from elections to the Congress and the Senate, as well as from those for Legislative Assemblies of the regions. However, regions and municipalities distribute the competences related to political participation³²³⁶. Therefore, regions can adapt the regulations for participation of foreigners in their elections. Moreover, the Spanish Constitution enables for an exception to be made if three requirements are fulfilled: first, that it only concerns the right to vote and to be elected in local elections; second, that it is established by the ordinary law or by a treaty and lastly, that it follows the criteria of reciprocity.

8.2.1.2. The constitutional rights to vote and to run for election

The rights to vote and to run for election are regulated by the Spanish Constitution of 1978, which states that only Spanish citizens will hold the rights [...], unless, based on reciprocity criteria, the rights to vote and to be elected in local elections could be granted by the law or a treaty³²³⁷.

A distinction shall be made between the rights to political participation of migrants from the European Union and non-EU migrants in Spain, as the exercise of the rights to vote and to run for election is different in each case. European citizens hold the right to run for local elections, as established by Directive 94/80/CE. As for the right to vote, they must comply with the following requirements: a) to be registered in the municipality where they intend to cast their vote; b) to be registered in the electoral roll; c) to declare their will to vote in the local elections through a formal declaration for which they can apply at the relevant town hall; d) to be older than 18 years of age on the voting date and to have full capacity to vote. In contrast, non-EU citizens do not hold the right to run for election. However, they will hold the right to vote if there is a valid reciprocity treaty between their country of origin and Spain³²³⁸.

8.3. Reciprocity treaties

Foreigners living in Spain can hold the right to vote and to be elected in local elections according to the conditions established in the Spanish Constitution, in international treaties and in the law³²³⁹. Therefore, both the Spanish Constitution and the national Electoral law allow nationals of non-member states to take part in local elections as long as their participation is authorized through an international treaty or through the Law. Up to date, Spain has signed reciprocity treaties with South Korea, Trinidad and Tobago, Bolivia, Colombia, Chile, Ecuador, Paraguay, Peru, Iceland, Norway, Cape Verde and New Zealand³²⁴⁰. The conditions required to nationals of each state are established by each treaty. Immigrants usually must a) hold a valid Spanish

³²³⁵ Sentencia del Tribunal Constitucional de 1 de julio de 1992

³²³⁶ Constitución Española 1978, s 149.1 (1, 2)

³²³⁷ Constitución Española 1978, s 13(2)

³²³⁸ Constitución Española 1978, s 13

³²³⁹ Ley Orgánica 4/2000, de 11 de enero, sobre Derechos y Libertades de los Extranjeros en España y su integración social, s 6

³²⁴⁰ López Serrano, A. (2015). 'Integración política de los inmigrante en España: el caso latinoamericano', Madrid: Universidad Complutense de Madrid.

residence permit; b) have lived in Spain legally and uninterruptedly for at least the five previous years before being registered in the electoral roll and c) exercise the right to vote in the municipality where they have registered. Furthermore, being registered in the electoral roll for foreign residents in Spain is a compulsory requirement. Such registration will be made upon application and within the period established in each election.

9 How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

9.1. Citizenship under Spanish legislation.

Nationality is the most intense legal link between a person and the state community, and comprises more than a mere authorization of work and residency. It is the legal link between a person and the State, and constitutes both a Fundamental right and the basis of the personal statute of every individual. Article 15 of the Universal Declaration of Human Rights establishes that “everyone has the right to a nationality” and that “no one shall ever be deprived of his nationality not denied the right to change his nationality”.

On the grounds of this relation, individuals feature a series of rights that can be demanded to the State they are citizens from. In return, the State shall impose the observance of certain duties and obligations. Citizenship plays a chief role as the necessary condition to access to the diplomatic protection of a national of a State when he or she is abroad. All nationals of a State have a right to receive advice and protection when in a foreign country.

The laws that regulate the way citizenship can be acquired or lost are subject to public law (*ius cogens*). Private individuals can not decree how or when they shall be entitled to become a citizen of a different country. Although under Spanish legislation the acquisition of nationality in origin is imposed to the citizen, in line with the aforementioned provision, nationality can be modified. According to the Article 11.2 of the Spanish Constitution, Spanish citizens by origin cannot lose their Spanish nationality unless it is by free will. On top of these issues, the national law comprises situations of acquisition of nationality by foreign citizens, loss of nationality under certain circumstances and the requirements for both conserving the acquired nationality and recovering it after it was lost (Article 11.1 of the Spanish Constitution).

9.2. Ways to acquire citizenship.

Spanish nationality is acquired, conserved and, under certain conditions, even lost in accordance to what law stipulates. The different ways to acquire citizenship are listed in the Civil Code of Spain (CC hereinafter).

9.2.1. Citizenship by origin.

According to the Article 17 C.C. the following persons shall be considered citizens by origin: those who are born from a Spanish mother or father; those born from foreign parents if, at least

one of them was born in Spain; those born in Spain from foreign parents, only if both parents are stateless, or if neither of their national legislations attribute citizenship to the child; those born in Spain whose parents are unknown; all underage children who are adopted by a Spanish citizen.

9.2.2. Citizenship “de facto”; “Posesión de estado”.

Every person who has continuously possessed and utilised the Spanish nationality for at least 10 years, in good faith (without having knowledge of the error), and on the grounds of a registered title.

Nevertheless, the same article sets certain requirements that must be met in order to obtain citizenship this way. The solicitor must have maintained an active behavior in such possession and utilization. He must have acted accordingly to his duties as a Spanish citizen, and must have enjoyed his rights as such.

9.2.3. Citizenship by residence.

One of the ways to acquire Spanish nationality is based on residence. This way request at least 10 years of continuous and legal residence in the country immediately prior to the formal request (Article 22.1 CC). In certain cases, the required residence period will be reduced:

- (Article 22.1 CC) 5 years: “for those who have obtained the condition of refugee”.
- (Article 22.1 CC) 2 years: “for citizens of Ibero-American countries, Andorra, the Philippines, Equatorial Guinea, Portugal. Also, for people of Sephardi origins.
- (Article 22.2 CC) 1 year: for those born in Spanish territory.

For those who did not exercise their right to obtain the Spanish nationality by option.

For those who have been subject to tutelage, foster care, or custody by a Spanish citizen or institution for 2 consecutive years.

For the widow or widower of a Spanish citizen, as long as at the time of decease their divorce or separation was not clear.

For those born outside of the country, but from parents or grandparents who were Spanish in origin”.

Those who formally request to acquire Spanish citizenship must give credit to their civilised behaviour and sufficient integration in the Spanish society (Article 22.4 CC).

9.2.4. Citizenship by Letter “Carta de naturaleza”.

This way of acquiring nationality is granted ex-gratia. Only the Government, after valuing exceptional circumstances in each case, has the legal authority to grant it by “Real Decreto” (Article 21.1 CC). Like every other case of nationality acquisition, a formal request of the applicant will be necessary. The request is only a formal requirement, since it will only the Government who shall decide if the “exceptional circumstances” are fulfilled.

9.2.5. Citizenship by option or choice.

Citizenship by option is a benefit that our legislation offers to migrants under certain conditions, as a faster way to acquire Spanish citizenship. The migrants that have the right to obtain citizenship this way are (Article 20 CC): “those who are or have been subject to PATRIA POTESTAD of a Spanish citizen; those whose mother or father was Spanish and born in Spain; those whose FILIACION was established as an adult, with a timeline of 2 years since that FILIACION took place; those whose adoption by a Spanish citizen took place as an adult, in this case there is also a timeline of 2 years and the solicitant will obtain citizenship by origin”.

9.2.6. General requirements.

All acquisitions following the methods of option, letter, or residence, need to fulfill extraordinary requirements in order to be considered valid (Article 23 CC). Every solicitant older than 14 years old, must swear fidelity to the King and the Constitution. All solicitants –except those who can choose to have a double nationality- must RENUNCIAR their previous nationality. Lastly, all acquisitions must be registered in the Spanish Civil Register.

9.2.7. Double nationality under Spanish legislation.

The national law recognizes certain situations of double nationality, based on “special and particular links or community relations certain countries have or used to have with Spain” (Article 11.3 of the Spanish Constitution). This article also establishes that even if those same countries do not recognize a reciprocal right, Spanish citizens will be able to naturalize in that foreign country and not lose their origin nationality.

Double nationality will result in the existence of a double legal link. That person will be a citizen to both countries, enjoying the legal condition of citizenship in equal conditions to all citizens.

People under double citizenship are not simultaneously subject to both countries legislations. Spanish law has articulated methods to establish which legislation will be applied. In this sense, most double-nationality Agreements articulate the legal address as the reference to establish the legislation that shall be applicable. Citizens with double-nationality will only be subject to one legislation at a time: the legislation of the country where they have established their legal address at.

Currently, the countries that have signed such Agreements with Spain are: all ibero-American countries, Andorra, the Philipines, Ecuatorial Guinea and Portugal. The ibero-American countries are those where the Spanish or Portuguese are the official languages. In this sense, Puerto Rico is considered an Ibero-American country, but Haiti, Jamaica, Trinidad and Tobago, and Guyana are not.

10. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

There are different European programmes regarding the integration of migrant. The most relevant that affects to Spain are:

10.1. Asylum, Migration and Integration Fund (AMIF)

The Asylum, Migration and Integration Fund promotes efficient management of migration flows and the implementation, strengthening and development of a common EU approach to asylum and integration. It is dedicated to the highest level of solidarity and responsibility-sharing between Member States, with a particular focus on those most affected by migration. All European Union States except Denmark participate in the implementation of this Fund³²⁴¹. This General Programme consisted of four instruments: External Borders Fund (EBF), European Return Fund (RF), European Refugee Fund (ERF) and European Fund for the Integration of third-country nationals (EIF)³²⁴².

In absolute terms, Spain according to the AMIF allocation by Member State funding period 2014-2020³²⁴³, is the five European Union country with receives more funds³²⁴⁴, with the basic allocation for Spain under this fund is more than 257 million of euros³²⁴⁵. One of the main topics in our country will be favour the integration, raising awareness of the risks of female genital mutilation with a view to preventing this practice, particularly within sub-Saharan immigrant communities³²⁴⁶.

The first version of the National AMIF Program for the 2014-20 period, was approved by the Commission Decision of July 31 2015. From the information furnished by the Ministry for Employment and Social Security, it follows that the AMIF co-finances the projects up to 75 %

³²⁴¹ Laura García-Juan, *La política de integración de inmigrantes en el nuevo Fondo de Asilo, Migración e Integración de la Unión Europea. El caso español en el punto de mira.* (2016) <<https://revistas.upb.edu.co/index.php/derecho/article/view/6939/6346>> accessed 17 July 2017 [Spanish]; *How The EU Budget Is Spent: AMIF, The EU Fund Devoted To Asylum And Migration Issues* <<https://epthinktank.eu/2015/03/12/amif-the-eu-fund-devoted-to-asylum-and-migration-issues/>> accessed 17 July 2017; Spanish Ombudsman Institution, *A study of Asylum in Spain: International Protection and Reception System Resources* (2016) 95 <https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2016/12/Asylum_in_Spain.pdf> accessed 17 July 2017; Centre for Strategy & Evaluation Service LLP, *Regulatory Framework on Employment and Funding for Migration and Integration Policies in the EU* (2016) 180 <<http://cor.europa.eu/en/documentation/studies/Documents/Migration%20and%20Integration.pdf>> accessed 17 July 2017; *The Guide to EU Funding on Migration and Asylum* <http://gef.eu/wp-content/uploads/2017/01/The_Guide_to_EU_Funding_on_Migration_and_Asylum.pdf> accessed 17 July 2017.

³²⁴² *Asylum, Migration, Integration* <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders_en> accessed 15 July 2017.

³²⁴³ Established in the Regulation (EU) N. 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 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0516>> accessed 17 July 2017.

³²⁴⁴ Centre for Strategy & Evaluation Service LLP, *Regulatory Framework on Employment and Funding for Migration and Integration Policies in the EU*, 180.

³²⁴⁵ Fondo de Asilo, Migración e Integración (FAMI) <http://extranjeros.empleo.gob.es/es/Fondos_comunitarios/fami/index.html> accessed 17 July 2017 [Spanish].

³²⁴⁶ *Regulatory Framework on Employment and Funding for Migration and Integration Policies in the EU*, 183.

of their total cost³²⁴⁷. The Spanish government has a 372 million euros budget allocated by AMIF to host refugees between 2015 and 2020. For the first year of implementation, the country received 26 million euros of the 55 it had budgeted. This money was intended to mainly fund the refugee reception programme centrally managed by the Spanish government but almost half of it was spent on expulsions and detention centres of foreigners, which is also one of the AMIF objectives in Spain. No data have been made available for 2016 yet³²⁴⁸.

10.2. European Social Fund

The European Social Fund promotes elevated levels of employment and job quality while combating poverty, enhancing social inclusion and promoting gender equality, non-discrimination and equal opportunities. The ESF will be of particular benefit to disadvantaged people, such as migrants, ethnic minorities and marginalized communities³²⁴⁹. During the last operational programme period “Fight Against Discrimination”, that runs between 2007-2013, a total of 218 million of euros from this fund were been directed towards the integration of migrants in Spain³²⁵⁰. The ESF contribution against discrimination in Spain embraced a variety of actions: training of professionals dealing with migrants or awareness raising and delivery of seminars about immigration, Roma and integration³²⁵¹. Building on the good experiences and results from the 2007-2013 programme, the new ESF programme that includes investments on migrants and refugee-related issues for the 2014-2020 period³²⁵² is set up to help the groups of the population furthest away from the labor market and most at risk of discrimination³²⁵³.

10.3. European Regional Development Fund (ERDF)

The ERDF provides financial support for the reduction of economic, social and territorial disparities and thus strengthens cohesion in the EU. Social integration of migrants can be subsumed under the social inclusion and poverty reduction pillar. During the last programme

³²⁴⁷ Spanish Ombudsman Institution, *A study of Asylum in Spain: International Protection and Reception System Resources*, 96.

³²⁴⁸ *Spain: How was the 2015 AMIF budget spent?* <<https://ec.europa.eu/migrant-integration/news/spain-how-was-the-2015-amif-budget-spent>>_accessed 17 July 2017; Josep Casulleras Nualart, *El govern espanyol destina fons europeus per a refugiats a les expulsions i als CIE* (Vilaweb, 15 February 2017)<<http://www.vilaweb.cat/noticies/el-govern-espanyol-destina-fons-europeus-per-a-refugiats-a-expulsions-i-cies/>>_accessed 17 July 2017 [Catalan].

³²⁴⁹ *European Social Fund* <[http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/051002/04A_FT\(2013\)051002_EN.html](http://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/051002/04A_FT(2013)051002_EN.html)> accessed 17 July 2017.

³²⁵⁰ *European Cohesion Policy in Spain*, 2 <http://ec.europa.eu/regional_policy/sources/docgener/informat/country2009/es_en.pdf> accessed 17 July 2017.

³²⁵¹ *The European Social Fund and migrants and minorities*, 8 <http://ec.europa.eu/employment_social/esf/docs/sf_migrants_minorities_en.pdf> accessed 17 July 2017.

³²⁵² *Cohesion policy and the integration of migrants in urban areas* (October 2016) <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589818/EPRS_BRI\(2016\)589818_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589818/EPRS_BRI(2016)589818_EN.pdf)> accessed 15 July 2017; *Barometer report Monitoring the implementation of the (at least) 20% of the European Social Fund that should be devoted to the fight against Poverty during the period 2014-2020* (European anti-poverty network, March 2016), 8 and 32 <<http://www.eapn.eu/wp-content/uploads/2016/04/2016-Barometer-Report.pdf>> accessed 17 July 2017.

³²⁵³ *Social inclusion and social economy – ESF* <http://ec.europa.eu/regional_policy/opempl/detail.cfm?cci=2014ES05SFOP012&lan=en> accessed 17 July 2017.

period (2007-2013), for example, the ERDF promoted coexistence in a multicultural neighbourhood in Terrasa, a village near Barcelona³²⁵⁴. At this moment, the programme in progress, that will run between 2014-2020, doesn't consider the integration of migrants a key topic.

Conclusions

During this magnificent project, we have been able to observe the reality of immigration and its derivatives in our legal system. Whether as ways to acquire nationality, the right to asylum

The main news, the most up-to-date statistics about: i.e. asylum-seekers, immigrants, transit-migrants, trends in migratory flows.

We have been able to observe that the migration that looks at Europe and within it is found with a series of regulations, whether at the national, community, ECHR, CSE and other international obligations that are contracted by the member states. of the European Union.

Beginning with the asylum application is explained by articles 18 of the charter of fundamental rights and article 78 of the treaty of operation of the European Union that the right to asylum is envisaged to be requested, fulfilling the obligations that states have imposed since the 1951 Geneva Convention.

Beginning with the Geneva Convention itself, which in Article 33 guarantees the protection of the application of the articles that regulate fundamental rights, they are considered basic in their compliance, after this there are certain turns to Article 18, explaining that no means are provided to facilitate the arrival of asylum seekers.

In many cases it is sometimes necessary to request the right to asylum when they have entered irregularly into the states in which they are going to apply.

From there we went to the request for obtaining health care, circulation, education and recognition of it in our country and community legislation:

-sanity: article 13 of the cse regulates the right to medical assistance, this right is applicable to migrants in an irregular situation. The charter of fundamental rights does not include the right to health, but the right to protection of health, regulates access to health care for various categories of nationals of other countries and requires some national laws to apply for health insurance to be granted a certain condition, etc.

-education: examining article 2 of the first cedh protocol, we find the existence of the right to education and discrimination based on reasons of national origin is totally prohibited. The right to primary and secondary education is guaranteed, in principle. Article 17 of the cse exposes, together with articles 18 and 19, the right to education.

The Charter of Fundamental Rights states in article 14 that everyone has the right to education and has the possibility of receiving compulsory education free of charge. All children who are

³²⁵⁴ *Promoting coexistence in a multicultural neighbourhood* <<http://www.acidl.eu/en/projects/territorial-development/urban-development/urban-projects/promoting-coexistence-in-a-multicultural-neighbourhood.html>> accessed 17 July 2017.

from third countries in the European Union except those who are only for a short period of time have this right. The refugee convention (and the acquis of the European Union) in its article 22.1 sets out the right to education of children who apply for asylum or those who have been granted refugee or subsidiary protected status.

We conclude that there is a great variety of national, community and international norms and laws regarding this issue and we must focus on helping as much as possible to end this type of situation or at least improve as much as possible so that these people You have to leave aside your places of residence obtain rights to live in a dignified way.

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- Sentencia del Tribunal Constitucional de 1 de julio de 1992
- Treaty on the European Union 2007

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Introduction

Sweden has long been known for its solidarity with the world's refugees and for being a country with respect of human rights. This has been reflected in the country's migration policy which has been perceived as particularly generous and is one of the reasons why people fleeing political oppression in Chile, Argentina and Iran chose to come to Sweden in the 1970s and 1980s. Following the Balkan conflict during the 1990s, people also fled to Sweden in order to seek protection from persecution. As a result of Sweden's accession to the European Union in 1995, this policy has become increasingly restrictive due to the harmonization procedure of the Member States national legislations regulating asylum and migration.³²⁵⁵

Regardless of this development, Sweden's core objectives behind its migration policy remained the same, based primarily on national considerations and values. Sweden has repeatedly chosen to legislate above the minimum level required by EU law. For example, Sweden expanded the group of people that qualify for obtaining a residence permit and broadened the possibility for family reunification. The right to asylum has continuously enjoyed high protection in Sweden due to similar opinions of its importance on the political arena where the two main parties, the Social Democrats [Socialdemokraterna] and the Conservative Party [Moderaterna], held practically the same views on how Sweden should regulate migration. This political reality paved the way for the comprehensive reform of the Aliens Act 2005:716 [Utlänningslag] conducted in 2005.³²⁵⁶

In 2010, the right-wing party Sweden Democrats [Sverigedemokraterna], made their way into the Swedish Parliament. Their populist agenda mainly focus on limiting migration to Sweden, since it is claimed to be the reason of everything that is wrong with the Swedish Society.³²⁵⁷

A lot has happened since the election of 2010 and the "migration crisis" has made an impact on Sweden's migration policy. In 2016, a temporary law that limits the possibility to obtain a residence permit in Sweden was introduced. The Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden 2016:752 [Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige] is applicable until summer of 2019 and the incentives behind the legislation was the high number of refugees that came to Sweden in 2015 and the implications it had on the functioning of the Swedish Society.³²⁵⁸ In addition to this, Sweden reinstated border controls in the end of 2015 as a necessary measure due to the serious threat to public order and national security caused by the increased immigration to Sweden.³²⁵⁹

³²⁵⁵ Rebecca Stern, "Our Refugee policy is Generous": Reflections on the importance of a state's self-image' [2014] Refugee Survey Quarterly 25.

³²⁵⁶ *ibid.*

³²⁵⁷ Sweden Democrats 'Ansvarsfull invandringspolitik: Mindre splittring – mer gemenskap' <<https://sd.se/var-politik/invandringspolitik/>> accessed 9 July 2017 [Swedish].

³²⁵⁸ Government Bill 2015/16:174 (Temporary Restrictions of the Possibility of being granted a Residence Permit in Sweden) 2016, pp. 1-2 [Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige].

³²⁵⁹ Regeringskansliet (Government Offices of Sweden), 'Regeringen beslutar att tillfälligt återinföra gränskontroll vid inre gräns' (12 November 2015) <<http://www.regeringen.se/artiklar/2015/11/regeringen-beslutar-att-tillfalligt-aterinföra-gränskontroll-vid-inre-gräns/>>, accessed 20 July 2017 [Swedish]; European Commission, 'Temporary

It remains to be seen what will happen when the Temporary Act cease to apply but the growing support of the Sweden Democrats and the increase of preference for a more restrictive migration policy in general public opinion indicates an unclear future for Sweden's previously generous migration and asylum policy.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Swedish Regulations Governing Asylum

1.1.1. The Aliens Act

The Aliens Act of 2005 is the main legislative instrument regulating migration in Sweden. It contains definitions, general provisions and conditions concerning aliens' right to enter, reside and work in Sweden and regulates, *inter alia*, the right to asylum.³²⁶⁰ The Act was reformed in 2010 due to the Qualification Directive³²⁶¹ to reflect the Directive's regulation of status. In this reform, Sweden also chose to divide the complementary protection into two separate groups, persons in need of subsidiary protection and persons otherwise in need of protection where the former originates from the Qualification Directive and the latter from previous Swedish migration law.³²⁶²

The definition of a refugee, as stated in ch 4 art 1 of the Aliens Act, originates from Article 1A2 of the 1951 Refugee Convention³²⁶³ and the Qualification Directive. It only differs in terms of Sweden's addition of gender and sexual orientation as grounds of protection. The Article reads as follows:

In this Act 'refugee' means an alien who

- is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and
- is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.

Reintroduction of Border Control' (20 June 2017) https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en, accessed 20 July 2017.

³²⁶⁰ Alexandra Wilton Wahren, *Prövning av migrationsärenden: Bevis 8*, (2nd edition, Norstedts Juridik 2012) p. 19 [Swedish].

³²⁶¹ 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).

³²⁶² Alexandra Segenstedt och Rebecca Stern, *Vad krävs för att få skydd?* (Svenska Röda korset 2011) p. 9 [Swedish].

³²⁶³ Convention relating to the Status of Refugees.

The definition of people in need of subsidiary protection, as stated in ch 4 art 2 of the Aliens Act, is based on the Qualification Directive.

Sweden has, as previously mentioned, chosen to protect another group of people besides refugees and persons in need of subsidiary protection, namely persons otherwise in need of protection. The definition of this group can be found in ch 4 art 2 a of the Aliens Act. This definition encompasses 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. The term 'other severe conflicts' can for example refer to situations of political instability where the rule of law and the people's human rights can not be guaranteed. The conflict can be between different sections of the population as well as a class of the population against the government. In addition, there needs to be causation between the abuse that the alien risk being subjected to and the severe conflict in question.³²⁶⁴ The number of people being granted a residence permit based on this provision is very low. During 2015, it was only 229 persons, which is mostly due to the fact that it overlaps with the provision on subsidiary protection.³²⁶⁵

Asylum is defined in ch 1 art 3 of the Aliens Act, as a residence permit granted to someone who qualify as a refugee or a person in need of subsidiary protection. In ch 1 art 12, it is stated that an application based on the protected group of persons otherwise in need of protection should be regarded as an application for asylum. Refugees, persons in need of subsidiary protection and persons otherwise in need of protection have the right to a residence permit and asylum, according to ch 5 art 1 of the Aliens Act. It is also stated there that, as a general rule, residence permits should be permanent.

Even if it would not be possible to establish a belonging to a protected group, it is still possible to be granted a residence permit if an overall assessment concludes that there are extraordinary distressing circumstances which should allow the alien to stay in Sweden, as stated in ch 5 art 6 of the Aliens Act. In the assessment, the alien's health condition, acclimatisation to Sweden and the situation in the country of origin is to be considered. The requirements are less strict if a child is involved, as the circumstances then have to be particularly distressing. The Migration Court of Appeal stated in MIG 2007:17 that it should be applied restrictive since it is a derogating provision. In MIG 2010:23, the Migration Court of Appeal granted a person a permanent residence permit due to extraordinary distressing circumstances. She was suffering from blood cancer which would, if not treated, change into acute leukemia. The medical treatment was not available through official channels in her country of origin while it was available in Sweden. In MIG 2009:9, an unaccompanied child was granted a permanent residence permit due to the risk of seriously harming his psychosocial development if he would be returned to his country of origin.

³²⁶⁴ Government Bill prop. 2004/05:170 (New Court Hierarchy and Rules of Judicial Procedure in Asylum cases), 2005, p. 274 [Ny instans- och processordning i utlännings- och medborgarskapsärenden].

³²⁶⁵ Government Bill prop. 2015/16:174 (Temporary Restrictions of the Possibility of being granted a Residence Permit in Sweden) 2016, p. 25 [Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige].

A person who qualifies for any of the abovementioned protection grounds can be excluded from protection if there is serious reason to believe that he or she has committed any of the acts mentioned in ch 4 art 2 b-c of the Aliens Act. Article 2 b originates from the 1951 Refugee Convention and the Qualification Directive and Article 2 c originates only from the latter. They were both implemented into Swedish legislation in the year of 2009. The grounds for exclusion for a refugee are crimes against peace, war crimes, crimes against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes, serious non-political crimes outside the country of refugee prior to his or her admission to that country or acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations, as stated in ch 4 art 2 b of the Aliens Act. The grounds for exclusion of a person in need of subsidiary protection or a person otherwise in need of protection is stated in ch 4 art 2 c of the Aliens Act and are basically the same as for refugees except when it comes to 'serious non-political crimes'. For this category of asylum seekers, it is sufficient that there is serious reason to believe that the person has committed a serious crime, irrespective of location and classification. It is also possible to exclude a person on the basis of danger to national security.

A person can lose its protection status through revocation if it is clear that he or she should not be considered a refugee, a person in need of subsidiary protection or a person otherwise in need of protection, pursuant to ch 5 art 5 b of the Aliens Act. The circumstances which granted a person protection must be outdated or changed in a substantial and permanent manner, in order for revocation to be relevant. If a person in some way show that he or she intends to use the country of origin's protection again, for example by obtaining a new national passport or by requesting to get an old one back from the Migration Agency, it can lead to a revocation process.³²⁶⁶

1.1.2. Act on Temporary Restricting the Possibility of Being Granted a Residence Permit in Sweden

The Aliens Act has, as mentioned in the introduction, been temporarily replaced by the Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden which is applicable until the summer of 2019. The act constitutes a restriction of the possibility of being granted a residence permit in Sweden and ensures that Swedish asylum legislations reflects the minimum level required by EU law and international law. The main changes introduced by this legislation will be explained below.

Firstly, residence permits will only be granted refugees and persons in need of subsidiary protection hence excluding the third group, persons otherwise in need of protection, which is stated in art 4 of the act. This is primarily explained by referring to EU law, which does not require Member States to protect this specific group. It is therefore a legitimate measure to ensure that Swedish asylum legislation reflects the minimum level required by EU law and

³²⁶⁶ Migrationsverket [Swedish Migration Agency] 'Skyddsstatus' <<https://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Efter-beslut/Om-du-far-stanna/Skyddsstatus.html>>, accessed 24 September 2017 [Swedish].

international conventions.³²⁶⁷ Article 5 specifies that granted residence permits shall be temporary and expire within three years if a person qualify as a refugee, unless national security or public order require that the period of validity must be shorter. If a renewal has been granted, it shall last for 13 months. A residence permit for a person in need of subsidiary protection shall last for 13 months and a renewal shall last for two years, unless national security and public order requires the period to be shorter. The renewal will only be granted if the grounds for protection still remains. The negative consequences of not granting permanent residence permits, as brought up by several consultation bodies, are discussed in the government bill but the general outcome is that it is necessary for Sweden to restrict its asylum legislation temporarily to cope with the large amount of people fleeing to Sweden.³²⁶⁸

A permanent residence permit may be granted when a temporary permit expires, provided the person can support themselves. If the person is under the age of 25, he or she needs to have finished upper secondary education or equivalent, as stated in art 17. A permanent residence permit may also, in accordance with art 18, be granted to a child if, after an overall assessment, there is such extraordinary distressing circumstances related to a permanent health issue that it is absolutely necessary to grant a permanent permit.

The right to a residence permit due to exceptionally or particularly distressing circumstances has been limited to cases when a refusal of entry or expelling of that person would contravene a Swedish commitment under a convention, which is stated in art 11 of the act. Besides these restrictions, the temporary act contains provisions that limit the right to family reunification, tougher maintenance requirements and other general limitations to the Swedish asylum legislations.³²⁶⁹

1.1.3. The Aliens Ordinance

The Swedish Parliament has delegated its legislative authority to the government in several matters concerning migration which has resulted in ordinances such as the Aliens Ordinance 2006:97 [Utlänningsförordningen]. It contains both procedural and material provisions that regulates the area of migration in Sweden.³²⁷⁰

1.2. What is the Procedure for Granting Asylum and Who is Responsible?

1.2.1. Asylum Procedures Directive

At EU level, the procedure for granting asylum is governed by the Asylum Procedures Directive³²⁷¹ with provisions concerning minimum standards on procedures in Member States in

³²⁶⁷ Government Bill prop. 2015/16:174 (Temporary Restrictions of the Possibility of being granted a Residence Permit in Sweden) 2016, pp. 24-26 [Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige].

³²⁶⁸ Ibid p. 29.

³²⁶⁹ Regeringskansliet [Government Offices of Sweden], *Proposal to temporarily restrict the possibility of being granted a residence permit in Sweden* (press release, 3 May 2016) <<http://www.government.se/press-releases/2016/05/proposal-to-temporarily-restrict-the-possibility-of-being-granted-a-residence-permit-in-sweden/>> accessed 10 July 2017.

³²⁷⁰ Alexandra Wilton Wahren, *Prövning av migrationsärenden: Bevis 8*, (2nd edition, Norstedts Juridik 2012) p. 19 [Swedish].

³²⁷¹ 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.

cases of granting and withdrawal of refugee status. The first version was incorporated into Swedish legislation through the reform in 2010. The recast version of the Directive has recently been incorporated, which required changes in several Swedish laws.³²⁷²

1.2.2. The Swedish Migration Agency

The main decision-making authority in migration procedures is the Swedish Migration Agency [Migrationsverket], who receives all applications for residence permit from aliens currently residing in Sweden according to ch 3 art 20 of the Aliens Ordinance. The Migration Agency also, pursuant to ch 5 art 20 of the Aliens Act, decides on the granting of residence permits to asylum seekers who completed their asylum investigation, where the applicant state their reasons for seeking asylum.

In asylum cases involving children, the Migration Agency needs to specifically consider the child's best interest, as stated in ch 1 art 10 of the Aliens Act. They also need to take the child's health condition and maturity into account and adjust the procedure thereafter. Children also have the right to be heard, as long as it is not inappropriate, pursuant to ch 1 art 11 of the Aliens Act. A child's reasons for seeking asylum should be examined independently from their parents.³²⁷³

The asylum procedure is regulated by the Administrative Procedure Act 1986:223 [Förvaltningslag], as well as chapter 13 of the Aliens Act. The first instance for reviewing asylum applications is the Migration Agency, or in some cases the Swedish Police Authorities [Polismyndigheten], who must be presented with all relevant circumstances and claimed documents. Both authorities are responsible in guaranteeing that they have sufficient information to make a well-founded decision, due to their enquiry responsibility.³²⁷⁴ When the Swedish Migration Agency has examined the case, a written notice explaining the decision and the reasons for that decision must be delivered, pursuant to ch 13 art 10 of the Aliens Act.

If an application for asylum has been rejected and the Migration Agency has decided on a refusal of entry with immediate effect, the applicant needs to leave Sweden immediately, even if he or she has appealed the decision. However, if the Migration Agency has decided upon removal by expulsion the applicant is allowed to remain in Sweden during the appeal process. A decision on refusal of entry with immediate effect can only be made within 3 months from when the first asylum application was done in Sweden, in accordance with ch 8 art 5 of the Aliens Act. The competent authority is the Swedish Migration Agency but it is possible for the Swedish Police Authorities to give a decision on refusal of entry with immediate effect, as long as the case do not concern an alien who is applying for asylum here, or an alien with a close relative who is applying for asylum here and a few other cases, as stated in ch 8 art 17 of the Aliens Act.

³²⁷² Regeringskansliet [Government Offices of Sweden], *'Nu genomförs EU:s omarbetade asylprocedurdirektiv'* (press release, 6 Oktober 2016) <<http://www.regeringen.se/pressmeddelanden/2016/10/nu-genomfors-eus-omarbetade-asylprocedurdirektiv/>> accessed 10 July 2017 [Swedish].

³²⁷³ Migrationsverket [Swedish Migration Agency] *'Asylum regulations'* <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Applying-for-asylum/Asylum-regulations.html>>, accessed 11 September 2017 [Swedish].

³²⁷⁴ Alexandra Wilton Wahren, *Prövning av migrationsärenden: Bevis 8*, (2nd edition, Norstedts Juridik 2012) 95 [Swedish].

1.2.3. The Migration Courts and the Migration Court of Appeal

The Swedish Migration Agency's decision of expulsion or deportation, rejection of an application or revocation of a residence permit may be appealed to a Migration Court, as stated in ch 14 art 3 of the Aliens Act. The Migration Court informs the Swedish Migration Agency for them to reconsider their decision. If they choose to uphold the original decision, the Migration Court will examine the case.

The judgement of the Migration Court may be appealed to the Migration Court of Appeal according to ch 16 art 9 of the Aliens Act. For a case to be examined by the highest court it needs to receive a review permit which will only be granted if it is vital to the application of law that the Migration Court of Appeal decides the case at issue or if there is some special reason to adjudicate the appeal in accordance with ch 16 art 12 of the Aliens Act. If a request for a review permit are rejected, the ruling of the Migration Court will be upheld and it is not possible to appeal further. If a request for a review permit is granted the Migration Court of Appeal will examine the case and its judgment will be precedent and guiding for future asylum cases. A judgement by the highest instance cannot be appealed domestically.³²⁷⁵ The proceedings before the Migration Courts and the Migration Court of Appeal are regulated by the Administrative Court Procedure Act 1971:291 [Förvaltningsprocesslag] and chapter 16 of the Aliens Act.

When a decision on refusal of entry with immediate effect or expulsion has come into force and there is no possibility to appeal further, the applicant must leave Sweden. In the decision, there shall be a set time limit in which the applicant needs to leave Sweden voluntarily. The time limit is two weeks for a decision on refusal of entry and four weeks if it is a decision on expulsion, pursuant to ch 8 art 21 of the Aliens Act. After this time, the applicant will no longer have the right to financial support or a place to live. The Migration Agency have the power to forward a case to the police if they feel that the enforcement of a decision needs their assistance. If an applicant is not available, the police have the right to track that person down and to use force.³²⁷⁶ This may also lead to a re-entry ban, issued by the Migration Agency. This means that the person cannot travel to the Schengen area for a certain amount of time with a maximum of five years. This period can be extended if the alien constitutes a threat to public order and security, in accordance with ch 8 art 24 of the Aliens Act. It is also possible that the decision on refusal of entry with immediate effect or expulsion is combined with a re-entry ban from the beginning. This would be the case if the prerequisites for issuing a time limit, when the alien can return voluntarily, is not fulfilled, pursuant to ch 8 art 23 of the Aliens Act. For example, if there is a risk that the person will depart or if he or she constitutes a threat to public order and national security, as stated in ch 8 art 21 of the Aliens Act.

³²⁷⁵ Sveriges Domstolar [Sweden's Courts], 'Migration' (6 April 2017). <<http://www.domstol.se/Myndighetsbeslut/Migration/>> accessed 12 July 2017 [Swedish].

³²⁷⁶ Migrationsverket [Swedish Migration Agency] 'If you do not cooperate with your return' <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/When-you-have-received-a-decision-on-your-asylum-application/If-your-application-is-refused/If-you-do-not-cooperate-with-your-return.html>>, accessed 24 September 2017.

2. How does your national law regulate immigration from EU member states and non-EU states?

Immigration from EU member states and non-EU states is regulated under the Aliens Act and under the Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden. The above-mentioned acts are the main legislation in this field and will be the focus of this section.³²⁷⁷

2.1. The Right of Residence

The right of residence means that citizens from the EU and their family members may stay in Sweden for more than three months without a residence permit.³²⁷⁸ The provisions of this right are based on the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.³²⁷⁹ According to ch 3a art 3 of the Aliens Act, EU-citizens have the right of residence if they are employed, self-employed, students or have sufficient means to support themselves. EU-citizens which have come to Sweden to apply for a job and have a real chance to get an employment also have the right of residence. EU citizens require a valid passport or ID card showing their citizenship when entering Sweden, but they do not need to apply for any permit when moving to Sweden.³²⁸⁰

Family members of EU-citizens who themselves have a citizenship within the EU are also entitled to live and work in Sweden without a residence permit.³²⁸¹ The right of residence for family members is dependent on whether the EU-citizen has a right of residence according to ch 3a art 3 of the Aliens Act. According to ch 3a art 2a of the Aliens Act, a family member to an EU-citizen is someone with a family relation established through cohabitation, marriage or parenthood, but may also include other relatives in need of financial or medical support.

2.2. Residence Permit

According to ch 5 of the Aliens Act, there are four grounds for granting a residence permit. A residence permit may be granted due to a need for protection, ties to Sweden, exceptionally distressing circumstances or work, study and similar activities. These will be explained individually below.

³²⁷⁷ Alexandra Wilton Wahren, *Prövning av migrationsärenden: Bevis 8*, (2nd edition, Norstedts Juridik 2012) p. 19 [Swedish]; Government Bill prop. 2015/16:174 (Temporary restrictions of the possibility of being granted a residence permit in Sweden) 2016, pp. 1-2 [Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige].

³²⁷⁸ Aliens Act 2005:716 ch 3a art 1.

³²⁷⁹ Alexandra Wilton Wahren, *Prövning av migrationsärenden: Bevis 8*, (2nd edition, Norstedts Juridik 2012) 66 [Swedish].

³²⁸⁰ Migrationsverket [Swedish Migration Agency] 'EU citizens working, studying or living in Sweden' <<https://www.migrationsverket.se/English/Private-individuals/EU-citizens-and-long-term-residents/Work-study-or-live-in-Sweden-for-EU-citizens.html>>, accessed 22 July 2017 [Swedish].

³²⁸¹ Aliens Act 2005:716 ch 3a art 4.

2.2.1. Persons Who are Entitled to a Residence Permit for Reasons of Protection

There are three groups of persons in need of protection in the Aliens Act: refugees, persons in need of subsidiary protection and those in need of other protection.³²⁸² The first two groups are mentioned in the 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. Consequently, these two grounds are common to all the EU member states. The third group, persons in need for other protection, is only included in Swedish legislation.³²⁸³ In accordance with ch 5 art 1 of the Aliens Act, refugees and persons otherwise in need of protection who are in Sweden are entitled to a residence permit.

In ch 4 art 1 of the Aliens Act, a refugee is defined as an alien who is outside their country of origin due to a well-founded fear of persecution due to personal characteristics or affiliation to particular groups or due to an unwillingness to avail themselves to the protection of that country. This applies both when the authorities in the country themselves are responsible for the persecution and when the authorities are unable or unwilling to offer protection against persecution from other individuals or groups. A person who is considered as a refugee will be granted a refugee status declaration, an internationally recognised status based on the UN Refugee Convention and the EU regulations and directives.³²⁸⁴ In accordance with art 5 para 2 of the Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden, a residence permit with a limit of three years is currently granted to those with refugee status.

According to ch 4 art 2 of the Aliens Act, a person deemed in need of subsidiary protection is one who feels a well-founded fear of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment. Those who need protection due to being unable to return to their country of origin because of internal or external armed conflict, other severe conflicts or environmental disasters occurring, as well as those having a well-founded fear of being subjected to serious abuses are included under this definition.³²⁸⁵ An alien will be granted a subsidiary protection status declaration, if he or she is assessed as in need of subsidiary protection.³²⁸⁶ According to art 5 para 3 of the Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden, persons with a protection status declaration are normally given a residence permit for 13 months.

Asylum seekers may be granted a residence permit even if they do not need protection from persecution, in exceptional cases. This requires extraordinary circumstances that are directly

³²⁸² Aliens Act 2005:716 ch 5 art 1.

³²⁸³ Alexandra Wilton Wahren, *Prövning av migrationsärenden: Bevis 8*, (2nd edition, Norstedts Juridik 2012) 33 [Swedish].

³²⁸⁴ Migrationsverket [Swedish Migration Agency] 'Asylum regulations' <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Applying-for-asylum/Asylum-regulations.html>>, accessed 22 July 2017.

³²⁸⁵ Aliens Act 2005:716 ch 4 art 2.

³²⁸⁶ Migrationsverket (Swedish Migration Agency) 'Asylum regulations' <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Applying-for-asylum/Asylum-regulations.html>>, accessed 22 July 2017.

linked to their personal situation, (for example, people with very serious health issues or people subjected to human trafficking) indicating that a decision to deny residence permit would conflict with Sweden's international obligations.³²⁸⁷ Nonetheless, this provision is not currently applicable according to art 5 para 1 of the Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden.

2.2.2. Residence Permit on the Grounds of Ties to Sweden

A citizen of a non-EU country that wants to move to a family member in Sweden is required to have a residence permit.³²⁸⁸ According to chap 5 art 3 para 1 of the Aliens Act, a citizen of a non-EU country is entitled to receive a residence permit if he or she is married to, has entered a registered partnership, or is the cohabiting partner of someone who lives in Sweden. Additionally, the family member in Sweden must be a Swedish citizen or have a permanent residence permit or a residence permit for at least one year and have well-founded prospects to be granted a permanent residence permit.³²⁸⁹ The marriage or the partnership should be registered at the Swedish Tax Agency.³²⁹⁰ Apart from this, a person wishing to move in with a relative in Sweden must fulfill the maintenance requirement. The person that the applicant is going to live with in Sweden must be able to support both. When the applicant moves to Sweden, the receiving partner must also have a home of a sufficient size and standard for both to live in.³²⁹¹

According to ch 5 art 3a para 1 a non-EU citizen can be granted a residence permit if he or she is planning to marry or become the cohabiting partner of someone living in Sweden. The relationship should consider being serious. The maintenance requirement mentioned above is applicable in this situation as well.

2.2.3. Residence Permit on Grounds of Work, Studies or Other Means of Support

In accordance with ch 5 art 5 of the Aliens Act, an alien may be granted a permanent residence permit if he or she for the past five years held a residence permit for work in a total of four years. An alien may also be granted a residence permit if having other means of support than employment, such as business activities, as long as the alien is able to conduct the activities in question.³²⁹²

³²⁸⁷ *ibid.*

³²⁸⁸ Migrationsverket [Swedish Migration Agency] '*Residence permit to move to a spouse, registered partner or cohabiting partner in Sweden*' <<https://www.migrationsverket.se/English/Private-individuals/Moving-to-someone-in-Sweden/Spouse-registered-partner-or-cohabiting-partner.html>>, accessed 22 July 2017.

³²⁸⁹ *Ibid*; Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

³²⁹⁰ Migrationsverket [Swedish Migration Agency] '*Residence permit to move to a spouse, registered partner or cohabiting partner in Sweden*' <<https://www.migrationsverket.se/English/Private-individuals/Moving-to-someone-in-Sweden/Spouse-registered-partner-or-cohabiting-partner.html>>, accessed 22 July 2017.

³²⁹¹ Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden 2016:752 art 9.

³²⁹² Aliens Act ch 5 art 5.

2.2.4. Residence Permit on Grounds of Exceptionally Distressing Circumstances

If an alien cannot be granted a residence permit on other grounds, a permit may be granted to an alien if an overall assessment of the situation discovers exceptionally distressing circumstances which should allow the alien to stay in Sweden. When making this assessment, one shall pay particular attention to the alien's state of health, his or her adaptation to Sweden and his or her situation in the country of origin.³²⁹³

2.3. Work Permit (Arbetsstillstånd)

In accordance with ch 2 art 7 of the Aliens Act, a work permit is a permit to work in Sweden. In order to work in Sweden for reasons of employment here or abroad, an alien must have a work permit. A work permit shall be granted for a certain period, it may refer to a certain profession and other necessary conditions can be attached.³²⁹⁴ A work permit may be granted to an alien if he or she has an offer of employment in Sweden. The employment must enable the alien to support himself or herself and the terms of employment such as the pay, insurance and other terms shall not be worse than the terms that follow from Swedish collective agreements or practice within the profession or sector.³²⁹⁵

According to ch 6 art 2a para 1 of the Aliens Act, a work permit cannot be granted for a longer period than two years. Nor can it be granted for a longer period than the period of employment. The first work permit of two years shall be linked to a particular employer and refer to a certain profession. After the first two years, the permit shall only be linked to a particular profession.³²⁹⁶ In accordance with ch 6 art 4, if an alien wants to have a work permit, he or she must apply and be granted such a permit before entering the country.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. The Swedish Migration Agency

In Sweden, the Migration Agency³²⁹⁷ is the central administrative authority in the area of asylum.³²⁹⁸ Legal provisions and instructions governing the Migration Agency's work are mainly found in the Alien's Act of 2005³²⁹⁹ and the 2006 Ordinance³³⁰⁰. The Migration Agency is the only authority responsible for registering asylum applications. Hence, it has the main task of

³²⁹³ *ibid.* ch 5 art 6.

³²⁹⁴ Aliens Act ch 6 art 1.

³²⁹⁵ *ibid.* ch 6 art 2.

³²⁹⁶ *ibid.* ch 6 art 2a para 3.

³²⁹⁷ Hereinafter "the Agency".

³²⁹⁸ www.migrationsverket.se.

³²⁹⁹ Aliens Act 2005:716 [Utlänningslag].

³³⁰⁰ Aliens Ordinance 2006:97 [Utlänningsförfordning].

considering applications concerning a foreigner's right to stay in Sweden, such as asylum, visa or the right to get a Swedish citizenship. Consequently, the Agency's tasks in the field of migration vary. It has special units for different types of applications, for example reception, work permits, family reunification and asylum.

The parliament and the government set the asylum policy.³³⁰¹ The Agency is under the Ministry of Justice, it reports to and cooperates with the Ministry of Justice. According to the Swedish constitution, the Agency is independent of the parliament and the government, both of which are prohibited to affect individual decisions of the Agency.³³⁰² The Migration Agency's funding is derived from the State budget. The State funding for migration also covers costs for legal representatives in asylum-matters, judicial review and the expedition of the rejected and expelled asylum-seekers.³³⁰³

One of the Agency's main responsibilities is to ensure an effective and individual case management in accordance with the Swedish Alien and Citizenship Act. Furthermore, the Agency provides asylum-seekers with housing and maintenance support during the asylum process. Once an asylum-seeker's application is rejected, the Agency takes an active part in the process of the asylum-seeker's repatriation.³³⁰⁴ Thus, the Aliens Act together with the Law on Reception of Asylum Seekers and Others³³⁰⁵ are the main legislative acts relevant to asylum procedures, reception conditions and detention.

The Aliens Act was reformed in 2006, introducing a new institutional system where the Migration Agency takes first instance decisions and appeals are considered at two levels in the administrative courts. Previously, an appeal was made before the appeal committee, being the last instance. One of the main purposes behind the abolishment of the committee of appeal was to increase legal certainty. Now, if an asylum-seeker's application is rejected by the Migration Agency, he or she may lodge an appeal before one of Sweden's four Migration Courts.³³⁰⁶ The appeal has suspensive effect under the regular procedure, unless the case is manifestly unfounded. The Migration Courts are special divisions of the County Administrative Courts in Stockholm, Gothenburg, Luleå and Malmö. If the asylum-seeker is not satisfied with the Migration Court's determination, he or she is given the possibility to lodge an appeal before the Migration Court of Appeal.³³⁰⁷ The procedure differs from the Migration Courts, as a leave to appeal has to be requested in order for the Migration Court of Appeal to consider the case.³³⁰⁸

The Migration Court of Appeal is the final instance and its decisions play a powerful role for the

³³⁰¹ The Migration Agency, "*history*", <https://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Facts-on-migration/History.html>, accessed 26 June 2017.

³³⁰² The Instrument of Government 1974:152 [Regeringsformen], ch 12, art. 2.

³³⁰³ The Swedish government offices, "*Government budget 2017 in figures, expenditure area 8, migration*", <http://www.regeringen.se/artiklar/2017/04/statens-budget-2017-i-siffror-utgiftsomrade-8-migration/>, accessed 27 June 2017 [Swedish].

³³⁰⁴ The Swedish Migration Agency, "*the mission of the Migration Agency*", <https://www.migrationsverket.se/English/About-the-Migration-Agency/Our-mission.html> accessed 26 June 2017.

³³⁰⁵ Law on Reception of Asylum Seekers and Others 1994:137 [lag om mottagande av asylsökande m.fl.].

³³⁰⁶ *Ibid*, ch 14, art. 3.

³³⁰⁷ Aliens Act 2005, ch 16, art. 9.

³³⁰⁸ *Ibid*, ch 16, art. 11.

legal guidance in decisions of the Migration Agency and Migration Courts in similar matters. It is the main source of precedent in the Swedish asylum system.³³⁰⁹

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

4.1. Migration Statistics in Sweden

Sweden has ever since the 50's and 60's been an immigration country with refugees from Germany, the Nordic countries and the Baltics. After the end of World War II and at the end of the 60s, Sweden became the host country for labour immigration. The 80's was the decade of asylum-seekers, mainly from Iraq, Iran, Libya and Turkey, while the 90's was the decade of asylum-seekers from the Balkans. The refugee crisis in 2015 led to 162 877 asylum-seekers in Sweden, with a Syrians being the vast majority.³³¹⁰

During the last six months, the total amount of asylum-seekers in Sweden has reached 11 423, of which 6 888 are men, 4 535 are women and 593 are unaccompanied minors. During April, the number of asylum-seekers was as low as 1584 while it increased to 2 350 in June. The largest groups of asylum-seekers are Syrians, Iraqis and Afghans.³³¹¹ There is a clear reduction in the number of asylum applications, in particular compared with the year of 2015 when the refugee crisis reached its peak, and the number of asylum-seekers reached 162 877.³³¹² A decrease in the number of asylum applications was already noticeable in the year of 2016, when the Migration Agency received totally 28 939 asylum applications.³³¹³ To date, a total amount of 27 826 decisions were taken by the Migration Agency during the year of 2017, whereof 40 percent granted a residence permit.³³¹⁴ Furthermore, a total of 49 085 persons were granted residence permit by extension in 2016, compared with 43 414 in 2015, of which 34 percent were relatives to Swedish citizens.³³¹⁵

³³⁰⁹ Swedish courts, "Migration Courts", <http://www.domstol.se/Funktioner/English/The-Swedish-courts/County-administrative-courts/Migration-Courts/>, accessed 29 June 2017.

³³¹⁰ Migrationsverket [Swedish Migration Agency], 'History', <<https://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Facts-on-migration/History.html>>, accessed 29 June 2017.

³³¹¹ Migrationsverket [Swedish Migration Agency], 'Applications for asylum received, 2017', <<https://www.migrationsverket.se/download/18.4100dc0b159d67dc6146d7/1499075268106/Inkomna+ansokningar+om+asyl+2017+-+Applications+for+asylum+received+2017.pdf>> accessed 1 July 2017.

³³¹² Migrationsverket [Swedish Migration Agency], 'Applications for asylum received, 2015' <<https://www.migrationsverket.se/download/18.7c00d8e6143101d166d1aab/1485556214938/Inkomna+ansokningar+om+asyl+2015+-+Applications+for+asylum+received+2015.pdf>>, accessed 1 July 2017.

³³¹³ Migrationsverket [Swedish Migration Agency], 'Applications for asylum received, 2016', <<https://www.migrationsverket.se/download/18.2d998ffc151ac3871592560/1485556054299/Inkomna+ansokningar+om+asyl+2016+-+Applications+for+asylum+received+2016.pdf>>, accessed 1 July 2017.

³³¹⁴ Migrationsverket [Swedish Migration Agency], 'Asylum decisions, Swedish Migration Agency, 2017', <<https://www.migrationsverket.se/download/18.4100dc0b159d67dc6146d7/1499075268025/Avgjorda+asylarendomen+2017+-+Asylum+decisions+2017.pdf>>, accessed 5 July 2017.

³³¹⁵ Migrationsinfo, 'Family reunion', <<https://www.migrationsinfo.se/migration/sverige/anhoriginvandring/>>, accessed 5 July 2017, [Swedish].

As for stateless persons, according to estimates from 2010 there are between 10 000 to 35 000 stateless persons living in Sweden, of which 3 000 are children.³³¹⁶

In 2013, a total of 27 000 work permits were granted. The largest categories of non-EU/EEA citizens who were granted work permits were citizens from Thailand, India, China and Syria. One of the most common occupational categories of migrant workers in 2013 was computer specialists and in 2014, 5 percent of Sweden's computer specialists consisted of migrant workers.³³¹⁷

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. The Convention and Swedish Migration Law

The European Convention on Human Rights and Fundamental Freedoms³³¹⁸ was incorporated into Swedish law 1994, a law which came into force 1995.³³¹⁹ Before 1995 the legal status of the Convention was debated and uncertain since Sweden is considered a dualist state.³³²⁰ It was argued that Swedish courts and administrative agencies were under no direct obligation to follow the Convention before it had been incorporated into national law.³³²¹ The Swedish parliament was under the impression that an incorporation was unnecessary since Swedish law already fulfilled the requirements of the Convention.³³²² In the 1980's the European Court of Human Rights³³²³ found Sweden to be in breach of the Convention in several judgements.³³²⁴ Those judgements in combination with other factors, such as Sweden's application of membership to the EU and other Nordic states incorporating the Convention, contributed to the legislator incorporating the Convention and therefore clarifying its legal status.³³²⁵ Between 1959 and 2016 Sweden was the respondent state in 149 judgements, whereof 60 were judgements finding at least one violation.³³²⁶

³³¹⁶ Migrationsinfo, 'Stateless persons', <<https://www.migrationsinfo.se/migration/sverige/papperslosa/>>, accessed 6 July 2017, [Swedish].

³³¹⁷ Migrationsinfo, "labour migration", <<https://www.migrationsinfo.se/arbetsmarknad/arbetskraftsinvandring/>>, accessed 6 July 2017, [Swedish].

³³¹⁸ Hereinafter "the Convention".

³³¹⁹ The Convention was incorporated in Swedish Law through the Act Concerning the European Convention on Human Rights and Fundamental Freedoms 1994:1219 [lag om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna].

³³²⁰ Regarding Sweden being a dualist state, see Iain Cameron and Thomas Bull, 'Chapter 7 - Sweden' in Janneke Gerards and Joseph Fleuren (eds), *Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in National Case-law: a Comparative Analysis* (Intersentia, Cambridge 2014) pp. 266-270.

³³²¹ See for example NJA 1973 s 423 [1973] Swedish Supreme Court, Nytt Juridiskt Arkiv [1973] 423 [Swedish].

³³²² Iain Cameron, *An Introduction to the European Convention on Human Rights* (7th edn., Iustus 2014) pp. 190-195.

³³²³ Hereinafter "the ECtHR".

³³²⁴ *McGoff v Sweden* App no 9017/80 (ECtHR, October 26 1984); *Sporrong and Lönnroth v Sweden* App no 7151/75 and 7152/75 (ECtHR, December 18 1984); *Pudas v Sweden* App no 10426/83 (ECtHR, March 13 1986).

³³²⁵ Cameron and Bull pp. 274-276; See also Cameron pp. 190-195.

³³²⁶ European Court of Human Rights, 'Overview 1959-2016 ECtHR' (March 2017) <http://www.echr.coe.int/Documents/Overview_19592016_ENG.pdf> accessed 21 July 2017.

In July 20 2016, the Act on Temporary Restricting the Possibility of being granted a Residence Permit in Sweden came into force.³³²⁷ Its purpose was to reduce the number of asylum seekers in Sweden by adapting the Swedish regulations to the minimum requirements of EU-law and international conventions.³³²⁸

To avoid violating international conventions, the law contains a prerequisite which states that residence permits based on exceptionally or particularly distressing circumstances may only be granted if refusing entry to or expelling the person would contravene a Swedish commitment under a convention. This also applies to family reunification of asylum seekers deemed eligible for subsidiary protection.³³²⁹ The convention commitment primarily considered in this case is the European Convention on Human Rights and Fundamental Freedoms.³³³⁰

This prerequisite means that the Convention and the decisions of the ECHR has become even more important to those deemed eligible for subsidiary protection seeking residence permit on the grounds of right to family reunification and those seeking it on the grounds of exceptional or particularly distressing circumstances, since a contravention of the Convention or other Swedish commitments is the only possibility of being granted residence permits. Since the temporary law was enforced quite recently, there are not many precedents or established practices on how it should be applied.³³³¹

5.2. ECtHR Decisions Implemented through National Court Practice

Many ECtHR decisions regarding migration law are related to article 3 (prohibition of torture and non-refoulement) and article 8 (right to respect for private and family life) of the Convention. These are some of the recent decisions from the ECtHR regarding article 3 and 8 that has had an impact on migration law in Sweden and has been implemented through its national court practice. In the cases referred below the national courts was taking the ECtHR's reasoning into account when adjudicating similar cases at a national level.

5.2.1. Court Practice Regarding Article 8 - Right to Respect for Private and Family Life

Article 8 is often relevant in court practice since deportation of a person, or rejection of an application for residence permit may constitute an infringement of the article if the person has a private and/or family life in Sweden.

In MIG 2012:13, the question was whether an adult man who had been in Sweden for nine years, whereof four illegally, suffered from exceptionally or particularly distressing circumstances that could have granted him a residence permit according to the Swedish Aliens Act, ch 5, art

³³²⁷ Act on Temporary Restricting the Possibility of Being Granted a Residence Permit in Sweden 2016:752 [lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige].

³³²⁸ Government Bill prop. 2015/16:174, Temporary Restrictions of the Possibility of Being Granted a Residence Permit in Sweden, p. 1 [Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige].

³³²⁹ Act on Temporary Restricting the Possibility of Being Granted a Residence Permit in Sweden, arts 11 and 13.

³³³⁰ Government Bill prop. 2015/16:174, Temporary Restrictions of the Possibility of being granted a Residence Permit in Sweden, pp. 51-52.

³³³¹ See for example recent cases from lower instance Case nr UM 828-16, UM 3992-16, UM 10276-16 [May 10 2017] Migration Court of Sweden [Swedish] regarding article 8 of the convention; Case nr 8551-16 [June 19 2017] Migration Court of Sweden [Swedish] regarding article 3 of the Convention. In this case residence was granted on principles set out in *Paposhvili v Belgium* App no 41738/10 (ECtHR, December 13 2016).

6.³³³² The Migration Court of Appeal had previously stated that when granting residence on the grounds of particularly distressing circumstances due to adaptation to Sweden according to the Aliens Act, ch 5, art 6, only periods of legal stay would be considered for adults.³³³³ But in MIG 2012:13 the court established a new practice. The possibility of granting residence according to the Aliens Act, ch 5, art 6, due to long periods of residence was very limited in previous court practice.³³³⁴ However, the court stated that article 8 of the Convention and its interpretation by the ECtHR must be considered when assessing the Aliens Act. The Migration Court of Appeal thereafter stated that also illegal periods of residence should be considered when assessing if a foreigner has established a private or family life by referring to ECtHR decision *A.A. v UK*, stating that the ECtHR does not seem to make any difference between legal and illegal periods of residence in this case.³³³⁵

Since the Act on Temporary Restricting the Possibility of Being Granted a Residence Permit in Sweden came into force, a residence permit based on exceptionally or particularly distressing circumstances according to the Aliens Act ch 5, art 6, can only be granted if not doing so would contravene a Swedish commitment under a convention. Therefore, when a foreigner applies for a residence permit on the grounds of a relationship to family members, the ECtHR court practice is relevant to assess which kinds of relationships constitutes a family life according to article 8 of the Convention. The case of *Senchishak v Finland* is about an elderly woman who wanted to reunite with her adult daughter living in Finland.³³³⁶ The ECtHR decision confirms the court practice that there is no family life between elderly parents and their adult children if there are no additional factors of independence other than normal emotional ties.³³³⁷ This decision has been implemented into national court practice by MIG 2015:12.³³³⁸ The Migration Court of Appeal based their argumentation on whether denying reunification would constitute a violation of article 8 on the court practice criteria established in *Senchishak v Finland* mentioned above.

5.2.2. Court Practice Regarding Article 3 - Prohibition of Torture

The case referred to below is about Swedish courts and authorities executing an ECtHR judgment which found Sweden in breach of a right enshrined in the Convention. Sweden was the respondent state in *R.C. v Sweden*, which concerned an Iranian citizen who applied for refugee status since he had been subjected to torture because of his political activities.³³³⁹ R.C. provided a medical certificate from a general doctor, supporting his claims of torture. The Swedish Migration Agency did not consider that the certificate proved that R.C. had been subjected to torture in Iran, therefore it would not be a violation of article 3 to reject his application for asylum. According to the Swedish authorities, R.C. had to provide an expert opinion. The ECtHR states that there is a general principle that national authorities are the most suitable to

³³³² MIG 2012:13 [2012] Swedish Migration Court of Appeal [Swedish].

³³³³ MIG 2007:15 [2007] Swedish Migration Court of Appeal [Swedish].

³³³⁴ Ibid.

³³³⁵ *A.A. v UK* App no 8000/08 (ECtHR, September 20 2011), para 61.

³³³⁶ *Senchishak v Finland* App no 5049/12 (ECtHR, November 18 2014).

³³³⁷ Ibid para 55; See also *Slivenko v Latvia* App no 48321/99 (ECtHR, October 9 2003), para 97.

³³³⁸ MIG 2015:12 [2015] Swedish Migration Court of Appeal [Swedish].

³³³⁹ *R.C. v Sweden* App no 41827/07 (ECtHR, March 9 2010).

assess questions about facts and credibility. But in this case, the ECtHR disagrees with the Swedish authorities' assessment of R.C.'s credibility when it comes to the claims of torture. Since the medical certificate provided by R.C. was a rather strong indication that the cause of his injuries might have been torture, the authorities were seen as responsible in obtaining an expert opinion, according to the general principle of the benefit of the doubt.³³⁴⁰ The applicant made no claim for pecuniary or non-pecuniary damages and the ECtHR decision has been implemented through court practice.³³⁴¹ The case has also been referred in the Swedish Migration Agency's legal opinion [*rättsliga ställningstagande*], which is a legal document providing legal guidance for the Migration Agency on how to assess reliability and credibility.³³⁴²

5.3. Summary of the Implementation of Decisions by the ECtHR at National Level

In Sweden, implementation of ECtHR decisions can be made through courts reinterpreting national law on appeal, reopening of cases, awarding damages and interim injunctions [*inhibition*] in cases involving deportation.³³⁴³ In general, and as shown by the cases referred above, Swedish courts frequently refers to ECtHR decisions in their judgements. In cases where Sweden is the respondent state, as in *R.C. v Sweden*, courts are particularly careful in implementing the judgements of the ECtHR and decisions are always followed by national courts either by making new legal assessments or interpretations of national law. To summarize, since the incorporation of the Convention, national courts have consistently been implementing decisions by the ECtHR.³³⁴⁴ References to ECtHR decisions are common, also when they concern other states than Sweden, such as *A.A. v UK* mentioned above. In future court practice such references will probably increase within the field of migration law because of the new temporary law which makes a possible contravention of the Convention the only possibility of being granting residence permits for many asylum seekers.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

In the following chapter, it is explained how Sweden has implemented recommendations to make the integration of migrants into society easier. Firstly, it is explained how language and other similar challenges have been handled in Sweden to make integration efficient. Secondly, it

³³⁴⁰ Ibid para 50 and 53.

³³⁴¹ See MIG 2012:2 [2012] Swedish Migration Court of Appeal [Swedish]; Case nr UM 9002-12 [January 18 2013] Migration Court of Appeal [Swedish].

³³⁴² Swedish Migration Agency [June 10 2013] Legal Opinion Regarding Method of Reviewing Reliability and Credibility RCI 09/2013 [Rättsligt ställningstagande angående metod för prövning av tillförlitlighet och trovärdighet] [Swedish].

³³⁴³ Cameron and Bull pp. 283-285.

³³⁴⁴ Ibid pp. 276-278.

is explained which ways there are for migrants to participate in society, find their place and integrate.

6.1. Language

Language is an important factor when someone is integrating into a society. Learning Swedish gives migrants a better possibility to find a job and makes it easier for them to study at different levels of education in Sweden. There are programs that help migrants learn Swedish, for example Swedish for migrants [Svenska för invandrare] (SFI). In SFI, migrants are also taught about Swedish culture, society and working in Sweden. SFI courses have different levels depending on previous Swedish skills. The main objective of SFI is to help migrants learn Swedish, leading to integration into the society as fast as possible. Knowledge of Swedish is important, as it is almost exclusively used in all areas of work and education in Sweden.

6.1.1. Right to Information

Public authorities mainly use Swedish, but are recommended to translate documents to a language that the private person understands, in case the individual does not understand Swedish. According to the Administrative Procedure Act Sec 8 there should be arrangements for an interpreter, if necessary.

6.2. Participation

The possibility to participate in different aspects of society is assured by constitutional and other laws. The following chapter explains how Sweden has ensured the participation in education and through employment. These measures prevent segregation and gives migrants the means to integrate into society faster.

6.2.1. Constitutional Laws

The Instrument of Government 1974:152 [Regeringsformen] is a constitutional law which guarantees equal rights to individuals and prohibits authorities to exercise discrimination when they are fulfilling their responsibilities.³³⁴⁵ Other rights expressed within the Instrument of Government are freedom of speech, right to information, freedom of assembly, freedom of demonstration, right to form associations and freedom of religion.³³⁴⁶ Some of the constitutional rights may be limited, but that can only be done in accordance with law.³³⁴⁷ Also, the European Convention on Human Rights (ECHR) has been fully implemented into Swedish law, leading to a stronger protection of human rights for persons in Sweden.

The Freedom of the Press Act 1949:105 [Tryckfrihetsförordningen] gives every Swedish citizen the right to spread and receive information in printed text without obstruction from

³³⁴⁵ The Instrument of Government Ch 1 Sec 9.

³³⁴⁶ Ibid. Ch 2 Sec 1 Pt 1.

³³⁴⁷ Ibid. Ch 2 Sec 20.

authorities.³³⁴⁸ In the Freedom of the Press Act, no differences are made between foreigners and Swedish citizens unless an exception is made in another law or ordinance.³³⁴⁹

The Fundamental Law on Freedom of Expression 1991:1469 [Yttrandefrihetsgrundlagen] gives every Swedish citizen the right to spread information, thoughts and feelings in radio, television, databases etc. This is done to ensure a free debate.³³⁵⁰ Similar to the Freedom of the Press Act, no differences are made in the Fundamental Law on Freedom of Expression between foreigners and Swedish citizens, unless another law or ordinance makes an exception.³³⁵¹

6.2.2. Education

According to the Education Act 2010:800 [Skollagen] every child living in Sweden has the right to attend school, which is also compulsory.³³⁵² This obligation includes all children between seven and eighteen years old or those who completed ninth grade of elementary school.³³⁵³ The responsibility to ensure that the obligation is fulfilled is held by guardians and the municipality of residence.³³⁵⁴ Children of minority groups are not placed in separate classes. Pupils with difficulties in speaking Swedish can get support from a person who speaks the same foreign language as the pupil, as well as Swedish. Everyone may continue to upper secondary school and university after completing the compulsory ninth grade. Racism is not allowed in schools and schools should actively prevent racism. Teachers and staff are responsible for reporting insulting behaviour to headmasters. The headmaster, in turn, is responsible for reporting this to the chief who must create a plan to prevent similar incidents in the future.³³⁵⁵ If a school fails to prevent racism, the school can become obliged to pay damages.³³⁵⁶

6.2.3. Employment

It is not allowed to discriminate job applicants, trainees or workers because of their nationality, language, gender, religion, disability, sexual orientation or age.³³⁵⁷ According to the Discrimination Act 2008:567 [Diskrimineringslagen] Ch 2 Sec 2, it is allowed to set requirements that are necessary to be fulfilled in order to be able to do the work. These exceptions always require an objectively legitimate purpose. Both direct and indirect discrimination are prohibited.³³⁵⁸ According to the Penal Code 1962:700 [Brottsbalken] an enterpriser is not allowed to discriminate anyone by applying different terms for different nationalities, religions, ethnicities or races.

³³⁴⁸ The Freedom of the Press Act Ch 1 Sec 1.

³³⁴⁹ Ibid. Ch 8 Sec 12.

³³⁵⁰ The Fundamental Law on Freedom of Expression Ch 1 Sec 1.

³³⁵¹ Ibid. Ch 11 Sec 1.

³³⁵² Education Act Ch 7 Sec 2.

³³⁵³ Ibid. 7 Sec 12, Ch 7 Sec 13.

³³⁵⁴ Ibid. Ch 7 Sec 20, Ch 7 Sec 21, Ch 7 Sec 22.

³³⁵⁵ Ibid. Ch 6 Sec 1–11.

³³⁵⁶ Ibid. Ch 6 Sec 12.

³³⁵⁷ Discrimination Act Ch 1 Sec 4, Ch 1 Sec 5, Ch 2 Sec 1.

³³⁵⁸ Ibid. Ch 1 Sec 4.

6.2.4. Combating Hate Speech

Hate speech is prohibited, with penalties varying from fines and up to two years in prison. Aggravated forms of hate speech may be punished with a prison sentence, from six months up to four years.³³⁵⁹ When featuring in other crimes, racist motives are considered aggravating circumstances and may affect whether a crime is considered to be normal or aggravated.³³⁶⁰ If aggravated form of crime is not sentenced because of racist motive, it will then affect length of penalty inside penalty scale for normal form of crime.³³⁶¹

6.2.5. Policing

Racial profiling is prohibited according to Police Data Act 2010:361 [Polisdatalagen] Ch 2 Sec 10 which states that gathering information about a person only based on race, ethnicity, political opinions, religion, membership of workers' union, health or sexuality is not allowed. If information about a person is collected for other purposes, it is allowed to use even this kind of information for completion, as long as it is absolutely necessary for the purpose.

6.3. Implementation of ECRI Recommendations

Sweden has only partially implemented recommendations to adopt a plan of action to address residential segregation in Sweden as a matter of urgency. There is still no overall national Action Plan to address the issue. Sweden has provided support for cooperation between several public service agencies and municipalities. The government has allocated 100,000,000 SEK for urban development initiatives in 2013 and additional 100,000,000 SEK in 2014. The Equality Ombudsman has been asked to relocate the agency offices to vulnerable areas. Several local government offices are preparing to relocate to these areas in order to support local businesses.³³⁶²

Sweden has implemented recommendation to give free medical care to children, pregnant women and persons with acute conditions or suffering from serious infectious diseases who does not have residence permit or who have not applied asylum. The Act on Health and Medical Care for Certain Aliens Residing in Sweden without the Necessary Permits (2013:407) gives these people same right to medical care as asylum seekers. Asylum-seeking children get the same health and medical care as children who are resident in the country.³³⁶³

Recommendation to implement measures to resolve all family reunification problems arising due to difficulties in obtaining identity papers in the country of origin has been implemented partially. Steps towards resolving family reunification problems have been taken and some positive results have been achieved. These measures are currently not regulated by law and that is why ECRI considers this recommendation implemented only partially.³³⁶⁴

³³⁵⁹ Penal Code Ch 16 Sec 8.

³³⁶⁰ Ibid. 29 Sec 1.

³³⁶¹ Ibid. Ch 29 Sec 2 Pt 2.

³³⁶² ECRI Conclusions on the Implementation of the Recommendations in Respect of Sweden Subject to Interim Follow-up (adopted on 19 March 2015) page 5.

³³⁶³ Ibid.

³³⁶⁴ Ibid. page 6.

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. The General Provisions for Swedish Healthcare

The Swedish central government, county councils and municipalities share the responsibility for health and medical care in the country. While the central government sets the general principles through legislations, the healthcare is decentralized and thus the main responsibility of the county councils.³³⁶⁵ The legislation that specifically regulates how healthcare should be organised and run is the Health and Medical Services Act 2017:30 [Hälso- och sjukvårdslag], while the Patient Safety Act 2010:659 [Patientsäkerhetslag] regulates the responsibilities of healthcare providers. According to ch 3 art 1 of the Health and Medical Services Act, the fundamental goal of Swedish healthcare is that everyone in Sweden receives good and safe healthcare on equal terms. The care shall be given with equality and respect for the individual's dignity, and those with the greatest need for treatment shall be prioritised. The possibility of receiving healthcare should thus not be affected by factors such as age, sex, ability of initiative, education, ability to pay, nationality or cultural differences.³³⁶⁶ The extent of healthcare that a county is obliged to provide depends on the individual's residence or migrant status, and is divided into three levels; complete essential healthcare, healthcare that cannot wait and emergency healthcare.³³⁶⁷ In the following paragraphs these three types of healthcare and their addressees will be presented in detail.

7.1.1. Permanent Residents in Sweden

According to ch 8 art 1 and 4 of the Health and Medical Services Act, a county administration is obliged to provide complete essential healthcare to permanent residents of the county, while only outpatient care, i.e. care that does not require an overnight stay at a hospital, must be provided to permanent residents of another county in Sweden. Migrants who are granted residence permits lasting longer than 12 months will be registered in the Swedish Population Register and thus considered permanent residents in the county where they live.³³⁶⁸ They have the same right to complete essential healthcare as other residents under the non-discrimination principle in ch 3 art 1. The healthcare is subsidized through taxes, but the county councils may set certain patient's fees.

³³⁶⁵ Sweden.se, 'Health care in Sweden' (16 May 2016) <<https://sweden.se/society/health-care-in-sweden/>> accessed 13 July 2017.

³³⁶⁶ Lotta Vahlne Westerhäll, comment on Karnov database regarding Health and Medical Services Act ch 3 art 1, <<https://www.karnovgroup.se/>> accessed on July 13 2017.

³³⁶⁷ Government Bill prop. 2012/13:109, Health and Medical care for persons who stay in Sweden without permit, p. 16, [Hälso- och sjukvård till personer som vistas i Sverige utan tillstånd].

³³⁶⁸ Population Register Act 1991:481 [Folkbokföringslag], art 3 and 4.

7.1.2. EU-citizens

As a member of the EU, Sweden is part of the common coordination of social security implemented through Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. Citizens of the EU, the EEA and Switzerland, who are insured for healthcare benefits in their home country but stay temporarily in Sweden, are entitled to the same sickness benefits as permanent residents of Sweden according to article 17. Furthermore, article 4 of the regulation grants these persons a right to equality of treatment, which thereby prohibits Swedish healthcare providers from any kind of discrimination in providing these healthcare benefits. In national legislation, ch 8 act 2 of the Health and Medical Services Act grants the right to complete essential healthcare to those who are entitled to sickness benefits by the regulation, in case of illness or motherhood. The healthcare in question shall be provided in the county where the person in question is working or where he or she is registered as job-seeker.³³⁶⁹

7.1.3. Persons who stay within a county without being residents

Those who fall ill but are not permanent residents in the county council where the emergency occurs, have the right to receive essential emergency healthcare, ch 8 art 4 of the Health and Medical Services Act. This means that both those who live in another county, or don't live in Sweden at all, are granted this basic level of healthcare. Anyone who travels to Sweden and reside here temporarily, for example as a tourist or for business, is thereby granted this level of basic healthcare. Healthcare received under this right is not subsidized and the patients must pay the total cost of the medical treatment. However, healthcare personnel is not allowed to deny emergency healthcare even if the patients are, or seem to be, unable to pay.³³⁷⁰ Although this law sets the minimum level and right to receive emergency healthcare when visiting a county in Sweden where you do not live, certain groups of migrants have separate legislations which regulate their right to healthcare access.

7.1.4. Non-discrimination

In the Discrimination Act 2008:567 [Diskrimineringslagen], it is explicitly stated in Ch 2 Art 13 that discrimination is prohibited within the health care system. Although asylum status is not a ground for discrimination, the legislation prohibits discrimination based on sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. If a migrant has been discriminated in the health care system on one of these grounds, he or she can file a report with the Equality Ombudsman, which works on behalf on the government to combat discrimination, ch 4 art 1. Furthermore, patients who believe they have been sustained an injury after receiving or being denied health care, for example due to discriminatory treatment, can file a report with the Health and Social Care Inspectorate according to ch 7 art 10

³³⁶⁹ Health and Medical Services Act, ch 8 art 2.

³³⁷⁰ Government Bill prop. 2012/13:109, Health and Medical care for persons who stay in Sweden without permit, p. 16, [Hälso- och sjukvård till personer som vistas i Sverige utan tillstånd].

of the Patient Safety Act. The inspection can result in criticism and proposals to the health care provider according to ch 7 art 24, or even suspension of a license to practice, ch 8 art 3.

7.2. Special Regulations for Migrants

7.2.1. Asylum Seekers

The right to healthcare for asylum seekers in Sweden is regulated through the Health and Medical Care for Asylum Seekers and Others Act 2008:344 [Lagen om hälso- och sjukvård åt asylsökande m.fl.]. Art 6 of this law grants asylum seekers the right to “healthcare that cannot wait”, as well as maternity and childbirth care, contraceptive advice and abortion. “Healthcare that cannot wait” is a term specific to Swedish legislation that encompasses a wider scope of treatment than emergency healthcare, and will be discussed further in section 7.2.3. According to art 4, the same scope of treatment is also granted those who have been notified a decision of rejection of asylum or deportation but not yet left the country. However, this does not apply if the affected person stays hidden to prevent the decision from being enforced.³³⁷¹ Contrary to adult asylum seekers, those under 18 are entitled to the same range of healthcare granted permanent residents of the county in accordance to the Health and Medical Services Act.³³⁷² As previously described, this means that they are guaranteed complete essential healthcare.

The healthcare that asylum seekers receive is subsidized by taxes, but the patients are charged with patient’s fees just like permanent residents. The fees for asylum seekers are generally lower than the ordinary fees.³³⁷³ If children who are permanent residents of the county are exempt from patient’s fees, then children who have applied for asylum are exempt from these fees as well.³³⁷⁴

7.2.2. Irregular Migrants

Before 2013, the healthcare of irregular immigrants, i.e. those who stay in Sweden without applying for the necessary residence permits or who have been denied residence permit and stay hidden to avoid expulsion, remained unregulated by law. Each county council could develop their own set of guidelines. As a consequence, different principles and guidelines were in place in different parts of the country, resulting in varying access to healthcare for those who stayed in the country without the necessary permits.³³⁷⁵ On July 1 2013, the Health Care for Certain Foreigners Who Stay in Sweden Without the Necessary Permits Act 2013:407 [Lag om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd] came into force. This meant that irregular migrants became entitled to the same extent of healthcare as asylum seekers. Irregular migrants are thus entitled to “healthcare that cannot wait” as well as maternity

³³⁷¹ Health and Medical Care for Asylum and Others Act, art 4 section 2.

³³⁷² Ibid, art 5.

³³⁷³ Regulation 1994: 362, Patient’s fees, etc. for certain foreigners, arts 2-3, [Förordning om vårdavgifter m.m. för vissa utlänningar].

³³⁷⁴ Government bill prop. 2007/08:105, Health and Medical Care for Asylum and Others Act, 18, [Lag om hälso- och sjukvård åt asylsökande m.fl.].

³³⁷⁵ Government bill prop. 2012/13:109, Health and Medical care for persons who stay in Sweden without permit, 33f, [Hälso- och sjukvård till personer som vistas i Sverige utan tillstånd].

and childbirth care, contraceptive advice and abortion.³³⁷⁶ County councils may however offer healthcare beyond this minimum level.³³⁷⁷ Children under 18 without permits are entitled to complete essential healthcare.³³⁷⁸ Patient's fees remain on the same levels as those of asylum seekers.³³⁷⁹

7.2.3. The Scope of Entitlement – Healthcare that Cannot Wait

The meaning of “healthcare that cannot wait” is discussed in the legislative history of the law and is defined as treatments to illness and injuries which can cause severe consequences if they go untreated even for a moderate period of time.³³⁸⁰ The term encompasses a wider scope of treatment than emergency care, and covers both somatic, psychiatric and dental care.³³⁸¹ Despite this definition, the term remains imprecise and the legislator has left it to the health professional to determine if healthcare should be provided in each respective case. As a consequence, many within the profession have expressed concern and criticism towards the vague legal term, claiming it can cause both discretionary and unequal treatment.³³⁸² The National Board of Health and Welfare has attempted to clarify the term and the scope of entitlement, but concluded in a comprehensive report in 2014 that although the vagueness of the term could jeopardize patient security, it would not be ethically or medically possible to specify the term with an exact list of which illnesses or injuries are covered. The scope of entitlement of asylum seekers and irregular migrants thereby remains a decision for the caregiver in each specific case.³³⁸³

7.2.4. Health Assessment

Member states of the EU may require a medical screening for asylum seekers on public health grounds according to article 13 of 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. This provision has not been incorporated into the Swedish legislation. However, the county councils are obliged to offer both asylum seekers and irregular migrants a voluntary health assessment.³³⁸⁴ According to the National Board of Health and Welfare, the assessment is offered to identify possible ill health and need for contraception measures, but also in order to inform the asylum seeker about his or her right to healthcare.³³⁸⁵ The healthcare

³³⁷⁶ Health Care for Certain Foreigners Who Stay in Sweden Without the Necessary Permits Act, art 7.

³³⁷⁷ Ibid, art 8.

³³⁷⁸ Ibid, art 6.

³³⁷⁹ Regulation 2013:412, Patient's fees, etc. for foreigners staying in Sweden without the necessary permission, arts 3-4, [Förordning om vårdavgifter m.m. för utlänningar som vistas i Sverige utan nödvändiga tillstånd].

³³⁸⁰ Government bill prop. 2007/08:105, Health and Medical Care for Asylum and Others Act, 20, [Lag om hälso- och sjukvård åt asylsökande m.fl.].

³³⁸¹ Ibid, p. 16.

³³⁸² Ibid, pp. 30–.

³³⁸³ Swedish National Board of Health and Welfare, *Vård för papperslösa* (Care for Undocumented People, February 2014) <<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/19381/2014-2-28.pdf>> accessed 13 July 2017 [Swedish].

³³⁸⁴ Health and Medical Care for Asylum and Others Act, art 7; Health Care for Certain Foreigners Who Stay in Sweden Without the Necessary Permits Act, art 10.

³³⁸⁵ Swedish National Board of Health and Welfare's Regulation and General Guidelines Regarding Health Assessments of Asylum Seekers et al SOSFS 2011:11, [Socialstyrelsens föreskrifter och allmänna råd om hälsoundersökning av asylsökande m.fl.].

workers are bound by professional confidentiality according to the Patient Safety Act and the result of a health assessment does not affect a migrant's application for asylum.³³⁸⁶

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Children staying in Sweden have the right to education according to 7 chapter 2 art. and 29 chapter 2 art. 2 paragraph School Act 2010:800 [Skollagen]. The group entitled to claim this right includes both registered³³⁸⁷ and unregistered³³⁸⁸ children, as well as children waiting for granted asylum. Even children whose application for asylum has been rejected have the right to education.³³⁸⁹ This group of children will in the following text be referred to as migrant children. Thus, almost all children living in Sweden has the right to education under the national legislation.³³⁹⁰ This, partly, complies with the right to education in article 2 of Protocol no. 1 in the ECHR due to the regulations that denies children staying in Sweden on a residence permit shorter than a year schooling.

Several researches have shown the importance of schooling.³³⁹¹ Despite this, several studies indicate a lower participation of asylum-seeking and unauthorized children, as well as children staying on a residence permit, than medium values for the country as a whole.³³⁹²³³⁹³

8.1. The Number of Migrant Children and the Right to Education

Sweden has a municipally governed school system, where individual municipalities are responsible for providing education to those living in their territory. However, subjects and learning goals are decided by the Swedish National Agency for Education.

What separates migrant children from children who are registered in the public system is that migrant children do not have compulsory schooling. All migrant children do, however, have the right to participate in both primary and secondary education if the child or his or her parents so wish. As a consequence, the number of asylum-seeking children staying in a municipality does

³³⁸⁶ Swedish Migration Agency, 'Health care for asylum seekers' (6 April 2017) <<https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/While-you-are-waiting-for-a-decision/Health-care.html>> accessed 14 July 2017.

³³⁸⁷ Registered children are all the children who either are Swedish citizens, asylum or residence permit seekers. At the beginning of 2013 around 14 000 asylum-seeking children stayed in Sweden. See Swedish School Inspectorate, 'Asylum-Seeking Children's Rights to Education', p. 5.

³³⁸⁸ Unauthorized children are children who never applied for an asylum or a residence permit and whom the authorities therefore have no register of. In 2013 approximately 2000-3000 unauthorised children stayed in Sweden.

³³⁸⁹ In 2013 around 1 500 children whose application got denied stayed in Sweden.

³³⁹⁰ The ones that do not have the right to go to school are the ones staying in Sweden on a residence permit shorter than a year.

³³⁹¹ For example, SOU 2010:5, 'Schooling for all Children' and SOU 2007:34, 'Schooling for Children to be Rejected or Expelled'.

³³⁹² Swedish School Inspectorate 2013, 2014, 2009, Swedish National Agency for Education 2014a, Department for education, 2013.

³³⁹³ Swedish National Agency for Education, 2008.

not necessarily coincide with the number of children participating in education.³³⁹⁴ The question of how many migrant children there are in a municipality appears to be very complex. The fact that municipalities do not always have the opportunity to know which children are staying in the municipality makes it difficult to offer education to them.³³⁹⁵

The municipality where a migrant child lives is obliged to offer schooling within a month from the day the child arrived at the municipality, chapter 4 art. 1a School Ordinance 2011:185 [Skolförordningen]. Here is also stated that the child is entitled to an education which complies with the provisions of the regulation. Amongst other things, this means that the child has the right to an education with the same content and scope and the same special support that Swedish citizens receive. These rights apply even if the child is given a decision of rejection or expulsion, and are valid until the child leaves the country, according to chapter 29 art. 4 School Act.

Access to education is of great importance to the child, whether he or she can stay in Sweden or not.³³⁹⁶ If the children are to receive the education they are entitled to, their prior knowledge must be charted and assessed. The school is also responsible for ensuring that all pupils receive an individually adapted education, planning their pupil's development and supervise it throughout the school period. For migrant children, it means that they will, for example, be offered education and study in their mother-tongue and a customised study program, if necessary. As with everyone else, it is of great importance that the child will get the guidance and stimulus necessary for their learning and personal development, to develop as far as possible according to their educational goals, chapter 3 art. 3 School Act.³³⁹⁷

The Swedish Migration Board is the authority responsible for examining applications from immigrants in Sweden. Despite this, The Swedish Migration Board is not obligated to notify municipalities, and the lack of legal obligation to do so prohibit the Migration Board from sending personal data regarding asylum seekers to a municipality without consent from the individuals themselves. The Swedish Migration Board does offer asylum seeking families assistance in communicating information about their children to the municipality, which is mandatory when offering education.

This means that the municipalities currently do not automatically get to know about all migrant children that are staying in their territory. Migrant children are not required to attend school and therefore do not need to make themselves known. As a consequence, there may be children who remain unknown, especially if the municipality is lacking central coordination. To respond to the law's requirement to offer migrant children education within one month, it is important that the municipalities become aware of the fact that those children are staying in the municipality.

³³⁹⁴ In a study from 2015 the Swedish Migration Agency stated that between 20-32 % more children lived in the municipalities than the number of children than were enrolled in school at the same time. The variation in numbers depended on the municipalities. Swedish School Inspectorate, 2015.

³³⁹⁵ Swedish School Inspectorate, Education for Asylum-Seeking Children and Children Staying in the Country Without Permission' 2015, p. 12.

³³⁹⁶ SOU 2007:34, Schooling for Children to be Rejected or Expelled.

³³⁹⁷ The Swedish Research Council, 2010, Swedish Association of Local Authorities and Regions, 2010.

8.1.1. Individual Assessment of the Need for Education

Identifying and assessing the prior knowledge of migrant children is a prerequisite for the pupils to receive the education they are entitled to under the school regulations. How children become aware of the fact that they have a right to education varies.³³⁹⁸ Most municipalities seek out the migrant children in some way, which may be done by other parties than the committee of education.³³⁹⁹

It is common for municipalities to survey the children's previous schooling and knowledge. Some do it at a first meeting, such as an enrolment call, while others do so when the student has arrived at the school.³⁴⁰⁰ The assessment of whether a migrant child should start at a national program or in an opening program is rarely reported before the child is enrolled in school. Nearly all of the municipalities with migrant children in upper secondary education state that they initially invite them to commence studies in a language introduction program. Afterward, they can switch to another introductory program or a national program³⁴⁰¹.

8.1.2. Time, Content and Special Support

The municipalities do some form of individual assessment of what a migrant child needs from education. This is the right of the individual child, and the starting point at the primary school should always be that the child will be taught in all subjects. Not even half of the municipalities offer such education today. Instead, some form of customised education is offered. There is also a significantly higher number of this group that have customised studies than for the country's students overall. The situation is often worse for the migrant children participating in upper secondary school than for those participating in primary school. It should also be noted that compared to those involved in primary school, there may be a significant reduction in participation in education, fewer subject to full-time studies and fewer municipalities offering mother tongue education to asylum seekers in upper secondary school.³⁴⁰²

Some migrant children participate in education where only other migrant children participate, for example at a school that has been started only for migrant children. At least 11 percent of the children in elementary school and at least 4 percent in the upper secondary school participate in this kind of education³⁴⁰³. Also, most municipalities state that the migrant children do not move to another class or school, which means that their education does not change and they continue to participate in schooling with other new arrivals.³⁴⁰⁴ It is apparent that a higher proportion of children in elementary school are offered the amount of education stated in regulations than what is the case with children in upper secondary school.³⁴⁰⁵ The offer of hours per day varies

³³⁹⁸ Swedish School Inspectorate, *Education for Asylum-Seeking Children and Children Staying in the Country Without Permission* 2015, p. 16.

³³⁹⁹ *Ibid.* p. 21.

³⁴⁰⁰ Swedish School Inspectorate, *Asylum-Seeking Children's Rights to Education*, p. 13.

³⁴⁰¹ However, statistics show that language introduction has the highest drop-out rate, as high as 23%, Swedish National Agency for Education, 2013.

³⁴⁰² Swedish School Inspectorate, *Asylum-Seeking Children's Rights to Education*, 2013, p. 21.

³⁴⁰³ *Ibid.* 2013 see table 4 appendix 1.

³⁴⁰⁴ *Ibid.* see table 5 appendix 1.

³⁴⁰⁵ *Ibid.* see table 9.

according to the age of the children. Most municipalities offer teaching hours by the school regulations, but some municipalities deviate. At least, some children are offered education for one hour a day at primary school³⁴⁰⁶. This is motivated by individually adapted studies to suit the student's needs.³⁴⁰⁷

In the upper secondary school, 28 municipalities do not offer the regulated full time on a national program³⁴⁰⁸. The municipalities who do not offer full-time education indicate that there is no staff available as the main reasons. Some primary school's municipalities state that they had been acting according to the principle of prioritizing the best interest of the child and that the children could not initially study full-time.³⁴⁰⁹

It is also far from all migrant children who are offered a primary education covering all subjects. 44 percent of municipalities offer the regulated amount of hours and offer migrant children the same education as children who are registered; this covers just under 40 percent of the children concerned. This means that more than half do not receive education in all subjects.³⁴¹⁰

For the migrant children involved in language introduction, it is most common for the municipality to find individual solutions. This means that they can read both the elementary school subjects and upper secondary school courses based on the level of education they have participated in before coming to Sweden. It is also apparent that a greater proportion of the migrant children study elementary school subjects and single high school courses. 40 municipalities state that the migrant children only read the subjects of the elementary school.³⁴¹¹

Many municipalities claim that they are cautious about offering migrant children education in special school, and often state that the reason is that it is hard to carry out the investigations required to ensure what could be special needs of the child. When an investigation is deemed to be necessary, it is made when the child has attended school for a while, and then in initial contact with the child. However, some migrant children participate in special education. Based on information provided by the Swedish School Inspectorate [Skolverket], 1 percent of the students in primary school participate in special education, while 2 percent of the pupils in upper secondary school do so.³⁴¹²

8.2. Education in the Student's Mother Tongue

Education in the child's mother-tongue is not a compulsory subject, but should be offered to the students entitled to it under the regulation, 14-15 art. Language Act 2009:600 [Språklagen] and chapter 10 art. 4 and art. 7, chapter 11 art. 6 and art. 10, chapter 15 art. 19 School Act, provided that the municipality can get a suitable teacher and that the school has at least five students with the same language as a mother tongue. This applies to both primary and secondary schools.

³⁴⁰⁶ Swedish School Inspectorate, *Asylum-Seeking Children's Rights to Education*, 2013, p. 15.

³⁴⁰⁷ Swedish School Inspectorate, *Education for Asylum-Seeking Children and Children Staying in the Country Without Permission* 2015, p. 23.

³⁴⁰⁸ It should however be noted that most of these student participate in language introduction, which is not time-regulated in the same way.

³⁴⁰⁹ Swedish School Inspectorate, *Asylum-Seeking Children's Rights to Education*, 2013, p 16.

³⁴¹⁰ Ibid.

³⁴¹¹ Ibid. p 17.

³⁴¹² Swedish School Inspectorate, *Asylum-Seeking Children's Rights to Education*, 2013 see table 4 appendix 1.

Most municipalities state that they always offer migrant children mother tongue education, or that they offer according to the school regulation and the upper secondary school regulation. However, not all migrant children are offered mother tongue education. Fewer municipalities provide mother-tongue education at upper secondary school than at elementary school.³⁴¹³

8.2.1. Access to Special Support in the Student's Mother Tongue

Special support should be offered to migrants in the same way as it is to other children who are attending a school in the municipality. The problem seems to be greater in secondary school than primary school. It is also apparent that there is a higher proportion of municipalities who indicate that they do not offer or do not know if they offer special support for migrant children in upper secondary school than there are those that offer the services at primary school.³⁴¹⁴

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. Recognition Through National Law

9.1.1. The Act on Recognition of Professional Qualifications

The Directive on Recognition of Professional Qualifications (2005/36/EC) establishes rules of automatic recognition of professional qualifications obtained in another member state. The recognition allows the holder of such qualifications to pursue the same profession in other EEA states. The directive has been transposed in Swedish national law by Act on the Recognition of Professional Qualifications 2016:145 [lag om erkännande av yrkeskvalifikationer]. As stated in art. 1, this act also incorporates Directive 2013/55/EU amending directive 2005/26/EC on the recognition of professional qualifications into Swedish legislation.

Recognition of professional qualifications is vital because it gives workers access to regulated professions in Sweden, if they have the right qualifications for that profession from another member state. A worker with recognised professional qualifications gains the right to practice a regulated profession in Sweden under the same conditions as if the qualification were acquired in Sweden. Art. 8 states that the recognition is made by a decision of recognition or by issuing a European Professional Card (EPC). At the moment, the EPC is only available for a few professions.³⁴¹⁵ Furthermore, the act states in art. 15 and 16 that a person's qualifications will be

³⁴¹³ Ibid. see table 13.

³⁴¹⁴ Ibid. p 18.

³⁴¹⁵ 'European Professional Card (EPC)' (Europa.eu, April 18 2017). The available professions are nurse responsible for general care, pharmacist, mountain guide, physiotherapist and real estate agent. <http://europa.eu/youreurope/citizens/work/professional-qualifications/european-professional-card/index_en.htm> Accessed 6 July 2017.

recognised automatically, if the person possesses the certificate of proficiency needed or another proof of their qualifications that are required in another state within the EEA or in Switzerland, if the competence is applicable to a common training framework or a common training test. As stated in art. 5 p. 10, automatic recognition means that no evaluation or comparison of a person's qualifications is needed.

The act has especially made it easier for people with healthcare qualifications to work in other EEA countries and Switzerland.³⁴¹⁶ However, qualifications obtained outside the EEA or Switzerland who has not yet been recognised by another state within this area are not covered by the act.³⁴¹⁷

9.1.2. The Higher Education Ordinance

Sweden is a member of the Council of Europe, and thus Sweden is also bound by the Lisbon Recognition Convention. In contrast to the Directive on recognition of professional qualifications, the convention is applicable to member states of the council of Europe, member states of the UNESCO Europe region as well as other states outside these regions, with the condition that the state in question has been invited to be entrusted with the adoption of the convention.³⁴¹⁸ The Recognition Convention has been incorporated into the Higher Education Ordinance 1993:100 [Högskoleförordningen] since 2001.³⁴¹⁹ The core of the convention is that qualifications shall be recognised unless they are significantly different from the national equivalent. This means that if the differences are so great that it would create a hindrance for continued studies or work in the receiving country, it is not a requirement to recognise the qualifications.³⁴²⁰ It is this core that has been implemented by the act. The act is only of help to those who has completed their education in Scandinavia, Finland, Iceland or in states that have signed the convention.³⁴²¹ As a result, most asylum seekers in Sweden do not benefit from these advantages, as their country of origin has not ratified the convention. Nonetheless, the people who miss out on the legal effects of the convention may still have the opportunity to receive a recognition statement from the Council for Higher Education, see 9.2.2 below.

9.2. Practical procedures

9.2.1. Regulated Professions

Some professions are regulated by law to have certain requirements, so qualifications obtained in another nation must be formally recognised before they can be used to legally practice such professions in Sweden. According to the Act on the Recognition of Professional Qualifications art. 4, the act is not applicable on professions that are specifically regulated in other acts, if these

³⁴¹⁶ Act on the Recognition of Professional Qualifications 2016:145 [Lag om erkännande av yrkeskvalifikationer] Para 13-14.

³⁴¹⁷ Ibid Para 10.

³⁴¹⁸ Ibid Article XI.1.

³⁴¹⁹ Public Investigation SOU 2014:19, The Directive on Professional Qualifications – a Complete Implementation p. 171 [Yrkeskvalifikationsdirektivet – Ett samlat genomförande].

³⁴²⁰ Convention on the Recognition of Qualifications concerning Higher Education in the European Region. Lisbon, 11.IV.1997 Article IV.1.

³⁴²¹ The Higher Education Ordinance, 1993:100 [Högskoleförordningen] Ch 6 Para 6.

acts are based on other EU legal documents than the Directive on Recognition of Professional Qualifications.³⁴²² If neither the Higher Education Ordinance nor the Act on Recognition of Professional Qualifications are applicable, a profession is regulated by Swedish law and it is specifically legislated that a certain degree, identification or another formal authorization is needed for that profession, it is the competent authority that is tasked with evaluating foreign qualifications, see 9.2.2 below.³⁴²³

9.2.2. Competent Authority Applications

To work or study in Sweden, a recognition statement can always aid the applicant. This statement is a document that shows that a person's qualifications are equivalent to the qualifications needed in Sweden.³⁴²⁴ The Council for Higher Education (UHR) is generally responsible for evaluating qualifications from a higher education, post-secondary vocational education or upper secondary education that have been obtained abroad and comparing them to the Swedish education system. The statement briefly describes which Swedish degree is the equivalent to the applicant's qualifications, or what level of post-secondary vocational education it corresponds to. The applicant can use the statement when applying for work in Sweden. Even if the statement is not mandatory, with some exceptions, it can be of great help because it shows future employers what the Swedish equivalent of the applicant's degree is. Evaluations are based on mutual regulations regarding the recognition of the qualifications. The time required to issue the statement is approximately five to eight months for higher education and post-secondary vocational education and two to four months for upper-secondary education.³⁴²⁵ The evaluation is mostly based on the applicant's personal diplomas and curriculums. Only documents from a recognised centre of learning³⁴²⁶ can be considered, and the documents validity is ensured before a statement can be issued.³⁴²⁷

For professions that are regulated by law however, it is the competent authority that has the task of evaluating the applicant's qualifications. In Sweden, there are 88 regulated professions. To practice a regulated profession, an applicant must contact the authority who is responsible for overseeing that profession. This means that if a person for example wants a teacher certification in Sweden, he or she must contact the Swedish National Agency for Education, not UHR, to have his or hers qualifications evaluated.³⁴²⁸ Which authority is responsible for what professions

³⁴²² For example, the professional title 'lawyer' is regulated by The Swedish Code of Judicial Procedure 1942:740 [Rättegångsbalken] Ch 8 Para 2. This is allowed due to the Establishment Directive 98/5/EC and Council Directive 77/249/EEC to Facilitate the Effective Exercise by Lawyers of Freedom to Provide Services.

³⁴²³ Ibid.

³⁴²⁴ Swedish Council for Higher Education, 'Read this before you apply for evaluation', (March 29 2017) <<https://www.uhr.se/en/start/recognition-of-foreign-qualifications/before-you-apply/>> Accessed June 17 2017.

³⁴²⁵ Swedish Council for Higher Education 'Evaluations of foreign qualifications' <<https://utbildningsbedomning-en.uhr.se/Web/AboutEID.aspx>> Accessed July 7 2017.

³⁴²⁶ Recognised by the country it is located in.

³⁴²⁷ Swedish Council for Higher Education Report on the Usefulness of Recognising Qualifications, Rapport 2012:20 R, 8 [Bedömning av utländsk utbildning – gör det nytta?] [Swedish].

³⁴²⁸ 'Evaluation of foreign qualifications' (UHR, Swedish Council for Higher Education.) <https://www.uhr.se/globalassets/_uhr.se/english/recognition/informationsblad/engelska.pdf> Accessed June 8 2017.

is laid down in laws regarding that specific line of work.³⁴²⁹ To get a recognition statement, the applicant must be an EU/EEA citizen or an asylum seeker.³⁴³⁰ In 2016, a total of 27 372 people applied for recognition of their qualifications.³⁴³¹ UHR predicts that the number of applicants will increase in correlation to the number of asylum seekers.³⁴³²

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. The Swedish Parliament (Riksdag)

According to chapter 3 article 2 of the Swedish Instrument of Government 1974:152 [Regeringsformen], every Swedish citizen who is above eighteen years of age is eligible to vote, regardless whether he or she lives in Sweden or not, as long as the person is in an electoral roll. If the citizen is not in Sweden at the time for the election, he or she may vote abroad at one of the embassies or consulates, or through post.³⁴³³ Conversely, this means that a migrant who is not a Swedish citizen cannot vote in elections for the Swedish Parliament.³⁴³⁴

10.2. Regional and Municipal Elections

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.³⁴³⁵ Aliens were banned from partaking in political activities until the middle of the 1950s. In 1975, Sweden was the first Western European country which allowed foreign nationals to vote in municipal and regional elections.³⁴³⁶ During the three first elections in Sweden, a lot of surveys were done to research the demographics of voting immigrants. It was found that the voters were well-informed, and often well settled into the

³⁴²⁹ UHR Report on the Usefulness of Recognising Qualifications, Rapport 2012:20 R, 8 [Bedömning av utländsk utbildning – gör det nytta?] [Swedish].

³⁴³⁰ Swedish Council for Higher Education, *To those who work with new arrivals*, [För dig som jobbar med nyanlända], Swedish Council for Higher Education, (UHR, Swedish Council for Higher Education June 28 2017). <<https://www.uhr.se/bedomning-av-utlandsk-utbildning/for-dig-som-arbetar-med-nyanlanda/>> Accessed September 18 2017.

³⁴³¹ Swedish Council for Higher Education, *Reports and statistics*, <<https://www.uhr.se/en/start/recognition-of-foreign-qualifications/reports-and-statistics/>> Accessed 3 July 2017.

³⁴³² Swedish Council for Higher Education, *One step on the road to the labour market*, <https://www.uhr.se/globalassets/_uhr.se/english/recognition/evaluation-of-foreign-qualifications-web.pdf>, accessed July 3 2017.

³⁴³³ Swedish Election Authority 'Rösta Utomlands' <http://www.val.se/val/val2014/rostmottagning/utlandsmyndighet/index.html>, 21 July 2017, [Swedish].

³⁴³⁴ Public Investigation SOU 2005:112 (Democracy in Swedish? About structural discrimination and participation) [Demokrati på svenska? Om strukturell diskriminering och politiskt deltagande].

³⁴³⁵ Ch. 2 art 1, the Local Government Act.

³⁴³⁶ 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.

society on a socio-economic level, which the researchers found was not unique due to the tendency that political participation often is connected to being well-integrated in the society.³⁴³⁷ The right to vote in regional and municipal elections is regulated in the Local Government Act 1991:900 [Kommunallagen]. The right to vote is regulated in ch 2 art 2. You do not have to be a Swedish citizen to be eligible to vote in the elections for the regional and local municipalities. Citizens of Iceland, Norway or from a country within the EU as well as long-term registered residents in Sweden without a Swedish citizenship may vote in such elections. You may register in Sweden as an alien if you fulfil the criteria of the Population Registration Act 1991:481 [Folkbokföringslagen], regardless of whether you have right of residence based on that you are a refugee or have obtained the right of residence through other forms of migration.

10.3. Elections to the European Parliament

The first criteria for being allowed to vote in elections to the European Parliament, is that you have to be above 18 years of age on the day of the election to the European Parliament. The second criteria is that you have to be either a Swedish citizen who is or has been registered in Sweden, or an EU citizen who is registered in Sweden. If you are an EU citizen, you have to notify the regional authorities to be in the electoral roll.³⁴³⁸ This means that if you are a refugee or a migrant with a residence permit based on for example studies or family ties, but from a third country outside the EU, you cannot vote in the elections to the European Parliament even if you reside within the EU and the politics affect you and your daily life on a personal level.

10.4. Eligibility to be Elected

In order to be able to be elected to the Swedish governments, the requirements regarding citizenship and residence that corresponds to the rules on suffrage³⁴³⁹, and according to Chapter 2 art 20 of the Elections Act 2005:837 [Vallagen], explicit consent regarding the candidacy has to be given.³⁴⁴⁰ This means that you cannot be elected to the Swedish parliament if you aren't a Swedish citizen. In order to represent Sweden in the European Parliament you have to be an EU citizen, 18 years old and be registered in Sweden.³⁴⁴¹

³⁴³⁷ Ibid. p 455.

³⁴³⁸ EU-Upplysning, 'Val till Europaparlamentet', <<http://www.eu-upplysningen.se/Sverige-i-EU/Val-till-Europaparlamentet/>> 21 July 2017 [Swedish].

³⁴³⁹ Swedish Election Authority, 'Vanliga Frågor', <http://www.val.se/det_svenska_valsystemet/vanliga_fragor/index.html> accessed 21 July 17 [Swedish].

³⁴⁴⁰ Chap 2 art 20, the Elections Act.

³⁴⁴¹ Swedish Election Authority 'Valbarhet', <http://www.val.se/det_svenska_valsystemet/rostratt/valbarhet/index.html> accessed 21 July 2017 [Swedish].

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. National Legislation

In Sweden, the possibility to acquire citizenship is regulated in the Swedish Citizenship Act 2001:82 [lag om svenskt medborgarskap]³⁴⁴², where it is stated that: ‘This law regulates how a person becomes and ceases to be a Swedish citizen’.³⁴⁴³

11.1.1. Citizenship for Adults

According to the Citizenship Act para 11, migrants have the possibility to apply for and be granted citizenship, to become naturalised, if certain conditions are fulfilled. Firstly, he or she must provide proof of his or her identity. As a main rule the assessment of the identity includes an assessment of name, age and citizenship.³⁴⁴⁴ It may occasionally be difficult to determine the citizenship of the applicant due to circumstances beyond his or her control. When assessing the identity of an applicant, the main issues to investigate is however whether he or she can prove his or her identity in an acceptable manner³⁴⁴⁵ and can provide the authorities with photocopied documents. Therefore, several insufficient documents can be evaluated as sufficient evidence of the applicant's identity in a collective assessment.³⁴⁴⁶ Secondly, the applicant must have reached the age of eighteen.

Thirdly, the applicant must have a permanent Swedish residence permit, with exception for citizens in other Scandinavian countries. For applicants from Scandinavian countries it is sufficient if they have been domiciled in Sweden for at least two years. Citizens in the EEA with a time-restricted Swedish residence permit of at least five years' length are considered equivalent to holders of a permanent residence permit.³⁴⁴⁷ Stateless persons or refugees, must have been domiciled in Sweden at least the previous four years, while other aliens must have been domiciled at least the previous five years.³⁴⁴⁸ The concept of residence means an actual and permanent domicile with a residence permit, which indicates that the stay in Sweden is and has been legal.³⁴⁴⁹ It is not required that the applicant must have been within the borders of Sweden for the entire residence period: shorter family visits, holidays etc. is not considered to break the required period of residence in Sweden.³⁴⁵⁰

³⁴⁴² Hereinafter ‘the Citizenship Act’.

³⁴⁴³ Swedish Citizenship Act para 1:2.

³⁴⁴⁴ Government Bill prop. 1997/98:178, Citizenship and identity, [Medborgarskap och identitet] p. 8.

³⁴⁴⁵ There is no specific definition of what constitute an acceptable manner, but as a main rule the photocopied documents should be trusted and issued reliably from the point of view of identity.

³⁴⁴⁶ Government Bill prop. 1997/98:178, Citizenship and identity, [Medborgarskap och identitet] p. 8.

³⁴⁴⁷ Citizenship Act para 20.

³⁴⁴⁸ Citizenship Act para 11.

³⁴⁴⁹ Government Bill prop. 1999/2000:147, Law on Swedish citizenship, [Lag om svenskt medborgarskap] pp. 46-48.

³⁴⁵⁰ Ibid. p. 47.

Lastly, it is required that the applicant has led and can be expected to lead a respectable life. The assessment of a respectable life mainly concerns an evaluation of a criminal past, which can lead to a time extension before an applicant can be granted a Swedish citizenship.³⁴⁵¹

If the conditions set out above are not fulfilled, there is still a possibility for an applicant to be naturalised. An applicant may be naturalised if he or she formerly held Swedish citizenship, is married or living in conditions resembling marriage with a Swedish citizen or if there are special reasons for granting citizenship.³⁴⁵² One example of such special reason is that Sweden can benefit from the fact that the applicant is granted Swedish citizenship, for example if the applicant is a scholar, he or she can be viewed as contributing to Swedish research and therefore Sweden can benefit from granting him or her Swedish citizenship.³⁴⁵³

11.1.2. Citizenship for Children

The general rule in Sweden is that Swedish citizenship is based on the principle of *jus sanguinis*, which means that a child acquires Swedish citizenship through birth if the parent of the child is a Swedish citizen or if a deceased parent was a Swedish citizen.³⁴⁵⁴ Therefore, children born in Sweden to foreign parents do not acquire Swedish citizenship at birth. However, they can become Swedish citizens later if certain conditions are fulfilled. A child can acquire Swedish citizenship by notification made by the guardian or guardians if the following conditions are fulfilled.³⁴⁵⁵ Firstly, the child must hold a permanent Swedish residence permit. Secondly, the child must have been domiciled in Sweden for at least five years. For stateless children, this time limit is reduced to at least three years. Thirdly, a notification must be made before the child reaches the age of eighteen. If the child has reached the age of twelve and already holds a foreign citizenship, it is required that the child gives its consent to hold the Swedish citizenship, unless the child is prevented to do so because of long-term impediment.³⁴⁵⁶ A child born in Sweden who is considered stateless can acquire Swedish citizenship by notification of guardian or guardians if the child holds permanent residence permit and is domiciled in Sweden.³⁴⁵⁷ Through the possibility to acquire citizenship for stateless children, Sweden fulfil its international obligations under the UN Convention on the Rights of the Child.³⁴⁵⁸

11.2. Double Nationality

In 1997, the Swedish government decided to attend a parliamentary committee with the main task to review and investigate certain issues concerning the Citizenship Act.³⁴⁵⁹ Previously, the cornerstone of the Swedish legislation concerning citizenship was that double nationalities

³⁴⁵¹ Government Bill prop. 1994/95:179, Amendments to the Aliens Act, [Ändringar i utlänningslagen] pp. 58-61.

³⁴⁵² Citizenship Act para 12.

³⁴⁵³ Government Bill prop. 1999/2000:147, Law on Swedish citizenship, [Lag om svenskt medborgarskap] p. 49.

³⁴⁵⁴ Citizen Act para 2.

³⁴⁵⁵ Citizenship Act para 7.

³⁴⁵⁶ Citizenship Act para 7.

³⁴⁵⁷ Citizenship Act para 6.

³⁴⁵⁸ Se UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations Treaty Series, vol. 1577, art. 7.

³⁴⁵⁹ Government Bill prop. 1999/2000:147, Law on Swedish citizenship, [Lag om svenskt medborgarskap] p. 15.

should be avoided, therefore the purpose of several provisions in the act was to limit the possibility of holding dual nationalities. When drafting the proposition bill to a new updated Citizenship Act, Sweden also decided to quit the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality³⁴⁶⁰, which also limited the possibility to retain the previous nationality when entering citizenship in another contracting state.³⁴⁶¹ The new, updated Citizenship Act entered into force on the 1 July 2001 without the previous limitations. Since then, Swedish law allows the holding of double nationalities, provided that the other country does not forbid its citizens to have double nationalities.³⁴⁶²

11.3. The procedure to obtain citizenship

In order to apply for Swedish citizenship the applicant needs to send an application to the Swedish Migration Agency. The application document is available online. The applicant can fill in the document online or access it online and fill it in by hand. The application document includes questions about personal data, about family situation, work etc.³⁴⁶³ Once the application document is completed the applicant needs to sign it and send it in by post.³⁴⁶⁴ The majority of applications also include a fee of 1500 Swedish crowns; the fee needs to be paid in advance and a receipt of the payment needs to be attached to the application in order for the Agency to process the application.³⁴⁶⁵ In addition, documents such as the original homeland passport, travel documents, alien passport and previously issued passports, need to be attached in the application. If the applicant lacks such documents, he or she needs to attach other original identity documents from the home country. If there exist several such documents it is important to number them in the matching order stated in the application document. Finally, documents that certify the applicant's age, whether the applicant has a permanent Swedish residence permit, the time of the residence in Sweden as well as any proof that the applicants has led a respectable life in Sweden are necessary so that the Migration Agency can assess whether the requirements for citizenship stated above are fulfilled. Once the Agency made a decision concerning the application it will be sent to the registered address of the applicant. If the applicant is granted Swedish citizenship the Agency contact the Swedish Tax Agency. If the applicant is denied Swedish citizenship he or she can appeal against it within three weeks from the date they

³⁴⁶⁰ Council of Europe, Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, 18 March 1968, ETS no.043.

³⁴⁶¹ Government Bill prop. 1999/2000:147, Law on Swedish citizenship, [Lag om svenskt medborgarskap] p. 15-18.

³⁴⁶² See the Citizenship Act.

³⁴⁶³ Swedish Migration Agency, 'Application for Swedish citizenship for adults', <https://www.migrationsverket.se/download/18.2bbf7de914c17a2ed26f1f/1485556224621/mbl_316011_sv.pdf> accessed 30 August 2017.

³⁴⁶⁴ Swedish Migration Agency, 'How to apply for Swedish citizenship' <<https://www.migrationsverket.se/English/Private-individuals/Becoming-a-Swedish-citizen/Citizenship-for-adults/How-to-apply.html>> accessed 30 August 2017.

³⁴⁶⁵ Swedish Migration Agency, 'Application for Swedish citizenship for adults', <https://www.migrationsverket.se/download/18.2bbf7de914c17a2ed26f1f/1485556224621/mbl_316011_sv.pdf> accessed 30 August 2017.

received the decision.³⁴⁶⁶ The appeal needs to be in writing and is examined by the Migration Court however the applicant needs to send the appeal to the Agency.³⁴⁶⁷ If the applicant has a public counsel he or she can help the applicant during the process of the appeal.³⁴⁶⁸

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. Persons from Third Countries

The funding by the EU is divided depending on where the migrant is originally from. The funding and programmes are more focused on migrated persons from so-called third countries, countries which are not a member state in the EU. Since 2014, a relatively new funding, the Asylum, Migration and Integration Fund (AMIF), created by the EU is giving funding to projects that help persons from third countries to integrate in the society they are living in. 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.³⁴⁶⁹ AMIF are co-financing projects within the fields of asylum, integration and legal migration and returns. The target group are persons from third countries and the co-financing is up to 75 %.³⁴⁷⁰ There are two regulations issued by the European Commission and the Council that regulate this funding, Regulation No. 514/2014 which is laying down the general provisions on the AMIF and on the instrument on financial support for police cooperation, preventing and combating crimes and crisis management. In Regulation No. 514/2014, it is established how to define an “action” and that it is the responsible authority of the national programme that will be the authority to approve if the action (or project) has accomplished the requirements to apply for the funding.³⁴⁷¹ In the Regulation, there are also provisions for the Member States on how to act and the goals to achieve when using the funding. Regulation No. 516/2014 is establishing the Asylum, Migration and Integration Fund. There is also a regulation that was put into force in Sweden, SFS 2014/538, regulating the administration of AMIF. It is a supplementary regulation for the national administrative authorities.

There is also a national program in Sweden regulating how the funding from AMIF can be used in Sweden. The program is called the Sweden’s National Program for AMIF. In this program, it

³⁴⁶⁶ Swedish Migration Agency, ‘How to apply for Swedish citizenship’ <<https://www.migrationsverket.se/English/Private-individuals/Becoming-a-Swedish-citizen/Citizenship-for-adults/How-to-apply.html> > accessed 30 August 2017.

³⁴⁶⁷ The Administrative Procedure Act 1986:223 [Förvaltningslag] para 23.

³⁴⁶⁸ Swedish Migration Agency, ‘How to apply for Swedish citizenship’ <<https://www.migrationsverket.se/English/Private-individuals/Becoming-a-Swedish-citizen/Citizenship-for-adults/How-to-apply.html> > accessed 30 August 2017.

³⁴⁶⁹ Migrationsverket, ‘AMIF på en minut’, <<https://www.migrationsverket.se/download/18.27485d6514fa83199cf604/1485556070260/AMIF+på+en+minut.t.pdf> > accessed 24 July 2017.

³⁴⁷⁰ Migrationsverket, ‘Om asyl- migrations- och integrationsfonden’ <<https://www.migrationsverket.se/Andra-aktorer/EU-fonder/Om-Asyl--migrations--och-integrationsfonden-AMIF.html> > accessed 24 July 2017

³⁴⁷¹ Regulation No. 514/2014, article 2 (c).

states that the Swedish Migration Agency is the responsible authority for the funding, which means that they will be the authority that grant projects access to the Fund. The department that works with AMIF has an independent position within the Migration Agency and is separated from all other departments in the Agency.³⁴⁷² In the summary of the national program, the national goals for Sweden are mentioned. These goals are to improve the migration process and put more efforts into developing integration. To succeed with this, they want to maintain a high flexibility during the whole program period.³⁴⁷³ The funding from AMIF is divided as follows: 42 % to projects regarding asylum, 46 % to projects regarding integration and legal migration and 12 % for returnees.³⁴⁷⁴ Organisations which may apply for the funding include national and regional authorities, independent organisations, companies, educational and research institutes as well as employer and employee organisations. Private persons are not eligible for AMIF funding.³⁴⁷⁵

12.2. Persons from Within the European Union

Projects concerning persons from the EU may receive funding similar to AMIF through the Swedish European Social Council. It is a national authority administering all types of EU funding which organisations in Sweden may apply to for funding of their projects.³⁴⁷⁶ The European Social Fund supports projects of different social type and focus, such as integration, equality and non-discrimination. The goals for the projects can be e.g. sustainable employment, social participation and education.³⁴⁷⁷ The target group does not have to be persons from third countries, which means that projects regarding people who migrated from another EU member state may also apply to the European Social Fund through the Swedish European Social Council.

12.3. The Fundings

The Integration Fund (2007-2013) that was the forerunner to AMIF, had a budget of EUR 825 million. The Fund was mainly implemented in EU countries by shared management but 7% of the Funding's money went to community actions.³⁴⁷⁸ AMIF has a budget of EUR 3.137 billion³⁴⁷⁹. Sweden has benefitted from both these funds by getting projects funded by the Funds. Some examples of projects that has received money from AMIF is Lobben, that will work with education and leader management within the world of Sports. It's an opportunity for people that

³⁴⁷² 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>> p. 1. accessed 24 July 2017.

³⁴⁷³ Ibid, p 2.

³⁴⁷⁴ Ibid, p 2.

³⁴⁷⁵ Migrationsverket, 'Frågor och svar om AMIF' <<https://www.migrationsverket.se/Andra-aktorer/EU-fonder/Fragor-och-svar.html>> accessed 24 July 2017.

³⁴⁷⁶ Svenska ESF-rådet, 'Om ESF-rådet' <<http://www.esf.se/sv/Om-ESF-radet/Organisation/>> accessed 24 July 2017.

³⁴⁷⁷ Svenska ESF-rådet, 'ESI-fonderna' <<http://www.esf.se/sv/Om-ESF-radet/Organisation/ESI-fonderna/Fondsamordning/>> accessed 24 July 2017.

³⁴⁷⁸ Council of Europe <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund_en> accessed 25 September 2017.

³⁴⁷⁹ Ibid.

are waiting for their decision from the Migration Board and also for persons that already have gotten a decision to get a way into the Swedish society, meet Swedish people, learn the language faster etc. The project has been approved to be co-financed by the AMIF with around EUR 4,5 million.³⁴⁸⁰

Conclusions

Traditionally, Sweden has been an immigration country for refugees from Germany, the Nordic Country and the Baltics following the world wars. In the 60's, labour immigration was the main reason for people coming to Sweden, while asylum seekers were more common in the 80's and 90's. During to the refugee crisis in 2015, a total of 162 877 persons applied for asylum in Sweden.

The Swedish Aliens Act of 2005 was reformed to conform with the Qualification Directive in 2010. The Aliens Act regulates immigration from both EU member states and EU non-member states. Anyone from a state which is not an EU member may apply for a residence permit on the grounds of protection. If a person is not granted the status of refugee or a person in need of subsidiary protection, there is a possibility for him/her to be granted protection on the grounds of being a person otherwise in need of protection if there is e.g. an armed conflict, natural disaster or political conflict in his/her country of origin. Anyone qualifying as one of these three categories is granted a residence permit. There is also a possibility of receiving a residence permit if there are extraordinary distressing circumstances, e.g. health issues which should allow the alien to stay in Sweden.

Following the refugee crisis, the Act on Temporary Restricting the Possibility of Being Granted a Residence Permit in Sweden has temporarily replaced the Aliens Act and will be in force until 2019. The purpose of the Act is to reduce the number of asylum seekers. This temporary legislation reflects the minimum level required by EU law and international law. One result of this is that persons otherwise in need of protection may no longer be granted a residence permit. Another result is that residence permits are only granted for a period of three years. A permanent residence permit may be granted after the temporary one expires, if the person is able to support themselves.

Immigrants have access to school and work in similar ways as the native population. According to the Education Act, every child living in Sweden is entitled to attend school, which is also compulsory. The municipality in charge of the school should also offer migrant children education in their mother-tongue. Employers are not allowed to discriminate job applicants, trainees or workers because of their nationality, according to the Discrimination Act.

Citizens of the EU are entitled to the same health care benefits in Sweden as they are in their country of origin. Persons who are not residents in Sweden or the EU are granted a basic level of

³⁴⁸⁰ Migrationsverket 'EU funding' <<https://www.migrationsverket.se/Andra-aktorer/EU-fonder/Beviljade-projekt/Flikar/Asyl/Lobben---Utbildning-och-ledarskap.html>> accessed 25 September 2017.

emergency health care. Asylum seekers are granted health care that cannot wait and pay the same amount as a Swedish citizen would.

To receive a Swedish citizenship, the alien must have legally resided in Sweden for four or five years, be eighteen years old and have led and be expected to lead a respectable life. Another way of receiving a citizenship is through marriage or domestic partnership with a Swedish citizen. It is also possible to obtain a double citizenship.

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Introduction

Migration has a dual nature of being a question of both domestic and international concern.³⁴⁸¹ The great variety of applicable norms reflect the multifaceted dimensions of migration³⁴⁸² in the international context. On the other hand, all sovereign states choose to regulate the entry of citizens of other countries.³⁴⁸³ When we look at the domestic dimension, Turkey is not only a migrant-sending country, but it is also a country with migrant-receiving and transit country characteristics.³⁴⁸⁴ The recent official statistics, which will be presented in the Report with details, highlight that Turkish Migration Law is significantly important due to the high concentration of migrants in the country.

Even though there are certain attempts to develop a more structured legislation in migration law in the recent years, with a new Law on Foreigners and International Protection and its derivative regulations, there is still a considerable need for further changes not only in the legislation but also in practice in the field of migration law. The elasticity and speed in line with the international standards are of vital needs of the current legal framework of Turkish Migration Law.

On the basis of these international standards, there lies human rights law especially at the point where migration law touches refugee law. In this context, the role of European Court of Human Rights (ECHR) is highly critical in shaping the current legal system with decisions to be discussed in the Report.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Description on the National Law Governing Asylum

In addition to legal documents of the 1951 Convention and its 1967 Protocol by United Nations High Commissioner for Refugees (UNCHR)³⁴⁸⁵, which are considered as a part of the national legal system according to Article 90 of the Turkish Constitution, the main regulation on the right

³⁴⁸¹ Vincent Chetail and Celine Bauloz *Research Handbook on International Law and Migration* (Edward Elgar Publishing Limited, 2014) 7.

³⁴⁸² *ibid*

³⁴⁸³ Aspects of Britain *Immigration and Nationality* (HMSO Books, London, 1993) 1.

³⁴⁸⁴ Türkan Lagrand *Immigration Law and Policy: The EU Acquis and Its Impact on the Turkish Legal Order* (Wolf Legal Publishers, 2010) 2.

³⁴⁸⁵ The 1951 Convention Relating to the Status of Refugees <<http://www.unhcr.org/3b66c2aa10>> accessed July 18 2017; The 1967 Protocol Relating to the Status of Refugees <<http://www.unhcr.org/3b66c2aa10>> accessed July 18 2017

to asylum is found in the Law on the Foreigners and International Protection³⁴⁸⁶, entered into force on April 11 2014.

The main principles of the Law on the Foreigners and International Protection are: (1) The Principle of *Non-Refoulement*, (2) Waiver of reciprocity principle for stateless persons and foreigners under international protection and (3) The rights provided for the asylum-seekers not exceeding the rights of the Turkish citizens.³⁴⁸⁷

The prescribed law outlines 3 distinct status for asylum-seekers as refugees, conditional refugees and subsidiary protection under international protection.³⁴⁸⁸ However, the mass movements, especially after Iran – Iraq War, Yugoslavian and lastly Syrian Civil Wars³⁴⁸⁹, requiring a different status for the effective protection of asylum-seekers under the principle of *Non-Refoulement* is regulated separately under Article 91 of the Law n. 6458.

This **temporary protection status**, in line with the UNCHR Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations³⁴⁹⁰, that is applied to millions of refugees in Turkey (more accurate statistics will be analysed below under the 4th question) is 'provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection'³⁴⁹¹.

In the temporary protection status, authorities are responsible for the asylum-seekers' basic needs as social services, translation services, IDs, travel documents, access to primary and secondary education and work permits.³⁴⁹² Asylum-seekers under temporary protection can be obliged to live in a certain center or other location aiming to prevent the economic and social costs of the crowd in Istanbul, Ankara and Izmir, which was already a governmental policy for the citizens.

The first status provided under right to asylum, as necessary for the Article 3 of the European Convention on Human Rights (ECHR), other than the temporary protection is **refugee status**: A person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual

³⁴⁸⁶ Law n. 6458 (Law on the Foreigners and International Protection) 2013 [Yabancılar ve Uluslararası Koruma Kanunu].

³⁴⁸⁷ Nuray Ekşi, *Yabancılar ve Uluslararası Koruma Hukuku* (2nd edn, Beta 2014) 66

³⁴⁸⁸ Law on the Foreigners and International Protection 2013, s 1.

³⁴⁸⁹ Sarp Ergüven and Beyza Özturanlı, '*Uluslararası Mülteci Hukuku ve Türkiye*' [2013] Ankara Üniversitesi Hukuk Fakültesi Dergisi 1007 [Turkish].

³⁴⁹⁰ UNCHR Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations < <http://www.unhcr.org/excom/exconc/41751fd82/conclusion-international-cooperation-burden-responsibility-sharing-mass.html>> accessed July 19 2017.

³⁴⁹¹ Law on the Foreigners and International Protection 2013, art 91.

³⁴⁹² Library of Congress, '*Refugee Law and Policy: Turkey*', <<https://www.loc.gov/law/help/refugee-law/turkey.php>> accessed September 22 2017.

residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it shall be recognized as a refugee.³⁴⁹³

Even though the geographical restriction of the responsibilities regarding the international protection of refugees seen above in Article 61 is legitimate under 1951 Convention and its 1967 Protocol, because of its non-realistic assumptions, caused another status of **conditional refugee**³⁴⁹⁴, which is provided for people who satisfy all the conditions in Article 61 excluding the geographical origin.

The last status, **subsidiary protection**, is for foreigners or stateless persons who do not qualify for the other 2 international protection statuses but would (1) be sentenced to death penalty, (2) face torture, and lastly, (3) face serious threat because of indiscriminate violence in armed conflict.³⁴⁹⁵

1.2. What is the Procedure for Granting Asylum and Who is Responsible?

The administrative authority responsible for granting asylum is regulated under the Law on the Foreigners and International Protection as Directorate General of the Migration Management,³⁴⁹⁶ which is the national migration foundation under the Ministry of Interior.

Humanitarian protection, regulated differently in the Law No. 6458³⁴⁹⁷, is provided by humanitarian residence permit, with a maximum duration of one year, for which renewal is possible.³⁴⁹⁸ In order to get a humanitarian residence permit, one of the situations described as *numerus clausus* in art. 46 of Law n. 6458 should be an issue. Besides, approval of Ministry of Interior is required and any other conditions for other types of residence permits are not necessary. Foreigners should be registered in the pre-established centers with the address based registration system in 20 days after the issuance.³⁴⁹⁹

The special program designed for the vulnerable groups with a protection different than humanitarian protection is temporary protection and in order for asylum-seekers, especially Syrians, to get international or temporary protection, the admission procedures in Turkey described by UNCHR is generally as follows³⁵⁰⁰:

- Pre-registration by the Alien's Police.
- Registration to the Directorate General in the provenance they want to register in. (There are centers in almost every city)
- In case of having no documents, the registration will be based on the testimony.
- Approaching the Provincial Directorate in 30 days (might be extended) to receive the Temporary Protection Identification Document (TPID).

³⁴⁹³ Law on the Foreigners and International Protection 2013, art 61 para 1.

³⁴⁹⁴ *ibid*, art 62 para 1.

³⁴⁹⁵ *ibid*, art 63.

³⁴⁹⁶ *ibid*, p 5 s 1; Directorate General of Migration Management, 'The Institution', <http://www.goc.gov.tr/icerik/about-us_912_956> accessed July 19 2017.

³⁴⁹⁷ *ibid*, art 30.

³⁴⁹⁸ Law n. 6458, art 46.

³⁴⁹⁹ *ibid*, art 46.

³⁵⁰⁰ UNCHR, 'Frequently Asked Questions for Syrians' <[http://www.unhcr.org/turkey/uploads/root/eng\(69\).pdf](http://www.unhcr.org/turkey/uploads/root/eng(69).pdf)> accessed July 19 2017.

According to the art. 64 of Law n. 6458, **exclusion from international protection** will take place if (1) the applicant also receives protection or assistance from UN (excluding UNHCR), (2) country of former residence has rights and obligations, and (3) there is a strong evidence to believe that applicants are guilty of offences specified in para 1 art 1 of the Convention. Directorate General shall issue the decision of exclusion from international protection, in any types, on an individual basis.

Besides, **the grounds of refusal of granting asylum** is regulated in the art. 72 of Law n. 6458 as: (1) repetition of the same application without providing a different reason, (2) application without presenting a well-founded reason or, after the refusal of the application without presenting any different reason, (3) arrival from a country where the possibility to enjoy sufficient and effective protection including protection against refoulement, and lastly (4) arrival from a safe third country in which it would have been possible to lodge an international protection claim that could have resulted in the granting of appropriate protection in compliance with the Convention.

On the other hand, **a granted protection can be revoked** as art. 85 of Law n. 6458 shows. The grounds for this is regulated under the assumption that the person is no longer in need of the protection. It would be possible, therefore, to revoke the protection status if the separately regulated reasons for different protections are disappeared. For example, if a stateless person starts to enjoy the protection of her/his country of residence, the protection provided under Law n. 6458 is revoked.

The refusal or exclusion decisions are subject to administrative review and judicial appeal. "The concerned person, his/her legal representative or lawyer may appeal to the International Protection Assessment Commission within ten days as of the notifications."³⁵⁰¹ Besides, since every administrative decision can be challenged in the courts according to the Turkish Constitution³⁵⁰², actions against the decisions of Directorate of Migration Management can also be brought and all the rights to appeal is also regulated under Turkish Civil Procedural Law³⁵⁰³.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Definition of Migrant Under Turkish Law

Under Turkish Law, there are two aspects of the term migrant. Even though one dimension of the term has a broader sense as it is understood in international law, the other dimension, with a narrower sense defines migrant differently.

The concept of migration in its narrower sense is defined in the Settlement Law, which states: "Migrant: People who come from Turkish lineage or bounded by the Turkish culture, came

³⁵⁰¹ Law n. 6458, art 80.

³⁵⁰² Turkish Constitution 1982, art 125

³⁵⁰³ Law n. 6100 (Hukuk Muhakemeleri Kanunu) 2011 [Civil Procedure Law] s 2

personally or collectively to Turkey with the aim of settlement and accepted under this law.” Based on this regulation, it can be clearly seen that in order to be a migrant in Turkish law, a person must be Turkish or related to Turkish culture. Therefore, in order to avoid any confusions, it should be stated that the term migrant should be understood as it is in international migration law.

Although there is no certain definition of the term “migrant” in international extent, under Turkish Law, it is regulated.³⁵⁰⁴ However, still, it cannot be claimed that there is a certain regulation about the concept of migration since it is only regulated in the Settlement Law, not under the Law on Foreigners and International Protection. In other words, it can be stated that a migrant differs from a refugee since the migrant is completely self-enforced without any coercion to move into Turkey. At this point, there is no difference between EU citizens and others. All of them are bounded by the same regulation.

However, as explained above, due to the geographical restrictions Turkey put in the 1951 Geneva Convention and its 1967 Protocol, a person can get the status of a “refugee” only if she comes from one of the EU member states. Therefore, there is a certain difference in terms of one of the aspects of the term migrant. Since refugee problem is regarded as one of the most problematic issues in international community for the recent years, this restriction, is highly criticized in Turkish Migration Law doctrine.

2.2. General Immigration Process in Turkish Law

In the Law on Foreigners and International Protection, it is regulated that: “The purpose of this Law is to regulate the principles and procedures with regard to foreigners’ entry into, stay in and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners who seek protection from Turkey, and the establishment, duties, mandate and responsibilities of the Directorate General of Migration Management under the Ministry of Interior.” In the same law, it is also defined that the term of migration as “regular migration whereby foreigners’ legally enter into, stay in or exit from Turkey as well as irregular migration whereby foreigners enter into, stay in or exit from Turkey through illegal channels and work in Turkey without a permit; as well as international protection.” As a consequence, this law also defines foreigner; “a person who does not have citizenship bond with the Republic of Turkey”. Undoubtedly, the law-maker do not provide any difference between the EU citizens and others. Generally, as the first step of immigration, “foreigners who would stay in Turkey beyond the duration of a visa or a visa exemption or, [in any case] longer than ninety days should obtain a residence permit.”³⁵⁰⁵ A residence permit can be for short or long term.

2.3. Right to Admission

In the Article 7 Law on Foreigners and International Protection it is stated;

³⁵⁰⁴ Ergin Ergül *Uluslararası Hukuk ve Türk Mevzuatında Yabancı Kavramı ve Türleri* [2012] <<http://www.tid.gov.tr/Makaleler/Uluslararası%C4%B1%20Hukuk%20ve%20T%C3%BCrk%20Mevzuat%C4%B1nda%20Yabanc%C4%B1%20Kavram%C4%B1%20ve%20T%C3%BCrleri.pdf>> accessed August 24 2017 [Turkish].

³⁵⁰⁵ *ibid.*

- Foreigners who shall be refused to enter into Turkey and turned are those:
 - who do not hold a passport, a travel document, a visa or, a residence or a work permit or, such documents or permits has been obtained deceptively or, such documents or permits are false;
 - whose passport or travel document expires sixty days prior to the expiry date of the visa, visa exemption or the residence permit;
 - without prejudice to paragraph two of Article 15, foreigners listed in paragraph one of Article 15 even if they are exempted from a visa.
- Actions in connection with this Article shall be notified to foreigners who are refused entry. This notification shall also include information on how foreigners would effectively exercise their right of appeal against the decision as well as other legal rights and obligations applicable to the process.

2.4. Right to Stay

“According to Turkish law, if you are unable to return to your home country, because of a fear of

- being persecuted on account of your race, your religion, your political opinion, your nationality or your membership to a particular social group,
- or indiscriminate violence arising from a situation of international or domestic armed conflict,
- or being subjected to death penalty or torture or inhuman or degrading treatment or punishment, you have the right to stay in Turkey on the basis of an “international protection status” which will be granted to you by the Government of Turkey”³⁵⁰⁶

Therefore, if you are an immigrant in Turkey, there must be a reason to make you stay. It is possible to get a residence permit, or being protected by a different status (international protection status).

2.5. Right to Leave

As the Article 2 of Protocol No. 4 to the ECHR declares that “everyone shall be free to leave any country, including his own”³⁵⁰⁷. Although right to leave is not absolute, since “No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” This is also one of the borders of the freedom in every aspect. To sum up, in Turkish Law, this general principle of the international law is accepted in terms of Migration Law.

³⁵⁰⁶ Refugee Rights Turkey *‘International Protection Procedure in Turkey: Rights and Obligations’* (2016) <http://mhd.org.tr/assets/ip_booklet_eng.pdf> accessed August 30 2017.

³⁵⁰⁷ EU Immigration and Asylum Law and Policy *‘The EU-Turkey Agreement on Migration and Asylum’*(2016)<<http://eumigrationlawblog.eu/the-eu-turkey-agreement-on-migration-and-asylum-false-pretences-or-a-fools-bargain/>>

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Legislation Until Ratification of the Law on Foreigners and International Protection in 2013

Until the ratification of The Law on Foreigners and International Protection (LFIP) by Turkish Parliament on April 4 2013, Turkish migration law's keystone acts were Settlement Law of June 14 1934, Passport Law, Law Related to Residence and Travel of Foreigners in Turkey of 1950 and 1994 Regulation. Following the population inflow to Turkey during Iran – Iraq war between 1988 – 1991 and Gulf War between 1990 – 1991 paved the way to the preparation of 1994 Regulation on Procedures and Principles Applicable to Foreigners Seeking Asylum in Turkey or Foreigners Claiming Residence from Turkey to Seek Asylum in Another Country and Collective Refuge for Asylum in Turkey or Possible Population Movements.³⁵⁰⁸ Nevertheless, these acts were not enough to manage population movements in and out of Turkey and this caused an increase in a number of ECHR decisions against Turkey.³⁵⁰⁹

During mentioned time frame, migration management in Turkey had been done by several governmental bodies taking different roles in the management process. Most significant ones were the Ministry of Interior's Directorate General of Security Affairs, Foreigners' Department of the Directorate General of Security Affairs and governorates. Monitoring foreigners entering to and going out from Turkey, controlling illegal entries to the country and handling deportation process if necessary were among the duties of the mentioned agencies.³⁵¹⁰

3.2. Law of Foreigners and International Protection, Migration Policies Board and Directorate General of Migration Management

As the number of foreigners entering Turkey for reasons such as seeking asylum, obtaining a long-term residence permit or work permit etc. increase through the years, Turkey gradually turned into a target country from a transit country in terms of migration. Hence the legislation became outdated and could not answer both Turkey's and foreigner's needs. In addition, Turkey's accession process to the European Union required conditions regarding migration and human rights. Several European Court of Human Rights decisions, most importantly *Jabari v. Turkey*, played a role in the drafting process of the LFIP.³⁵¹¹ Also, lacking a public authority solely

³⁵⁰⁸ Nasih Sarp Ergüven and Beyza Özturanlı, *International Refugee Law and Turkey* (2013) 62 Ankara University Journal of Law 1007.

³⁵⁰⁹ Republic of Turkey Ministry of Interior Directorate General of Migration Management "Turkey and Migration" online booklet <http://www.goc.gov.tr/files/files/goc_tasar%C4%B1m_icler.pdf> accessed July 3 2017.

³⁵¹⁰ Yılmaz Demirhan and Seyfettin Aslan "Turkey's Transfrontier Migration Policies and Management" (2015) 5 Birey ve Toplum Journal 23.

³⁵¹¹ *Jabari v. Turkey* App no 40035/98 ECHR July 11 2000

working on migration management was considered as a setback for Turkey.³⁵¹² For the reasons stated, two new bodies established under Ministry of Interior; Migration Policies Board and Directorate General of Migration Management.

3.2.1. Migration Policies Board

One of the two institutions established with the Law of Foreigners and International Protection's fifth part is the Migration Policies Board. The Board convenes at least once a year upon the call of the chairman, the Minister of Interior, and consists of undersecretaries of the Ministry of Family and Social Policies, Ministry for European Union, Ministry of Labour and Social Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Culture and Tourism, Ministry of Finance, Ministry of National Education, Ministry of Health, and Ministry of Transport, Maritime and Communications as well as the President of the Presidency of the Turks Abroad and Related Communities and the Director General for Migration Management. The board bears duties such as determination of the migration policies of Turkey and supervision their implementation, development of measures and methods to implement in case of a mass population influx, determination of principles and procedures concerning foreigners to be admitted *en masse* to Turkey on humanitarian grounds and the entry into and stay of such foreigners in Turkey, making decisions about the foreign workforce needed in Turkey and determining the conditions of the long-term residence permits to be issued to foreigners.³⁵¹³

3.2.2. Directorate General of Migration Management

Directorate General of Migration Management (DGMM) is the main government agency dealing with migrants in Turkey. It is established under the Ministry of Interior and aims to implement migration policies and strategies and coordinate other migration-related agencies and organizations. DGMM handles the process related to the entry into, stay in and exit from of foreigners in Turkey as well as their removal, international protection, temporary protection and the protection of victims of human trafficking.³⁵¹⁴ DGMM is organized on three levels; central, provincial and overseas.³⁵¹⁵ Directorate General has departments listed under article 108. Those are; Foreigners Department, International Protection Department, Department of Victims of Human Trafficking, Migration Policies and Projects Department, Harmonization and Communications Department, Information Technologies Department, International Affairs Department, Strategy Development Department, Human Resources Department, Support Services Department, Training Department and Legal Counsellor.

³⁵¹² Reasons stated in the paragraph are taken from the General Justification of the LFIP: Turkish Grand National Assembly 'Proposal on the Law for Foreigners and Internal Protection and the Reports of the Human Rights Review Commission, the European Union Harmonization Commission and the Interior Affairs Commission' (2012) <<https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss310.pdf> > accessed June 30 2017.

³⁵¹³ Law n. 6458, art. 105.

³⁵¹⁴ *ibid* Art 103

³⁵¹⁵ *ibid* Art 106

3.2.2.1. *Duties and Mandate of the Directorate General*

The duties and mandate of the Directorate General are listed under the article 104 of LFIP. those duties are:

- Developing legislative and administrative capacity, developing policies and strategies about migration and implementing them
- provide secretariat services for the Migration Policies Board and follow up on the implementation of the decisions of the Board
- Carrying out activities and actions related to migration – This includes monitoring the population flow to Turkey and prepare necessary documents and identity cards described in the directive on the application of LFIP and keeping migration-related statistics.³⁵¹⁶
- Carrying out duties assigned to the Ministry pursuant to the Settlement Law
- Carrying out activities and actions for the protection of victims of human trafficking – in order to prevent and fight human trafficking, to identify the human trafficking victims and to protect them, and conduct their returns, DGMM can work in cooperation with ministries, municipalities, non-governmental or intergovernmental organizations and higher education bodies. DGMM carries out the residence permit procedures of human trafficking victims as well as providing shelter for them. In addition, DGMM runs a call line (157), especially for human trafficking victims.³⁵¹⁷
- Determining stateless persons in Turkey and carry-out activities and actions related to such persons – DGMM determines whether a person is stateless or not by obtaining necessary documents from the country which stateless person was once a citizen if applicable and coordinates with governorates in the stateless person identity card providing process.
- Carrying out activities and actions related to harmonization – Harmonization mentioned in article 104 can be interpreted as integration. In order to achieve integration goals, DGMM runs a variety of activities with the cooperation of local institutions in different cities e.g. meeting with women and children.³⁵¹⁸³⁵¹⁹ Also, DGMM has an integration programme just for children called ‘MUYU’.³⁵²⁰
- Carrying out activities and actions related to temporary protection – DGMM controls the whole process from identifying the foreigner to giving them a temporary protection.³⁵²¹

³⁵¹⁶ Directive on the Application of Law on Foreigners and International Protection <http://www.goc.gov.tr/files/_dokuman5.pdf> accessed July 23 2017.

³⁵¹⁷ Directive on the Preventing Human Trafficking and Protection of Human Trafficking Victims <<http://www.resmigazete.gov.tr/eskiler/2016/03/20160317-9.htm>> at July 20 2017

³⁵¹⁸ ‘Syrian Women Talked About Their Problems’ Milliyet article March 8 2017 <http://www.milliyet.com.tr/suriyeli-kadinlar-sorunlarini-anlatti-mersin-yerelhaber-1892009/>

³⁵¹⁹ ‘Children Reflected Peace and Brotherhood Through Paintings’ Milliyet article April 21 2017 <http://www.milliyet.com.tr/cocuklar-baris-ve-kardesligi-resimlere-ankara-yerelhaber-1991964/>

³⁵²⁰ DGMM’s website for children integration <http://www.uyumcocuk.gov.tr/>

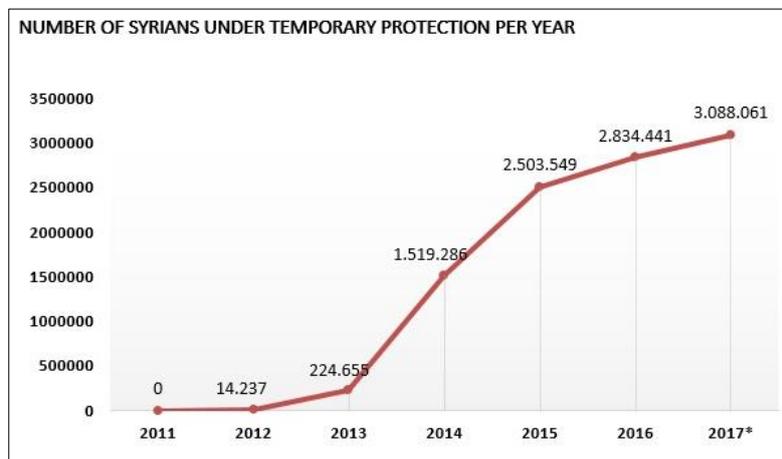
³⁵²¹ Directive on the Application of Law on Foreigners and International Protection reached on <http://www.goc.gov.tr/files/_dokuman5.pdf> accessed July 23 2017.

- ensure coordination among law enforcement units and relevant public institutions and agencies, develop measures, and follow up on the implementation of such measures to combat irregular migration
- assist public institutions and agencies in scheduling and developing projects related to migration, evaluate and approve projects, monitor the work and on-going projects, support the implementation of such work and projects to ensure their compliance with international standards

Duties stated above are as listed in LFIP article 104 but as the 104/i article indicates that DGMM's duties are not limited to those and may increase with other laws, directives and regulations. Hence it can be said that DGMM is the main body that deals with all aspects of migration to Turkey.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

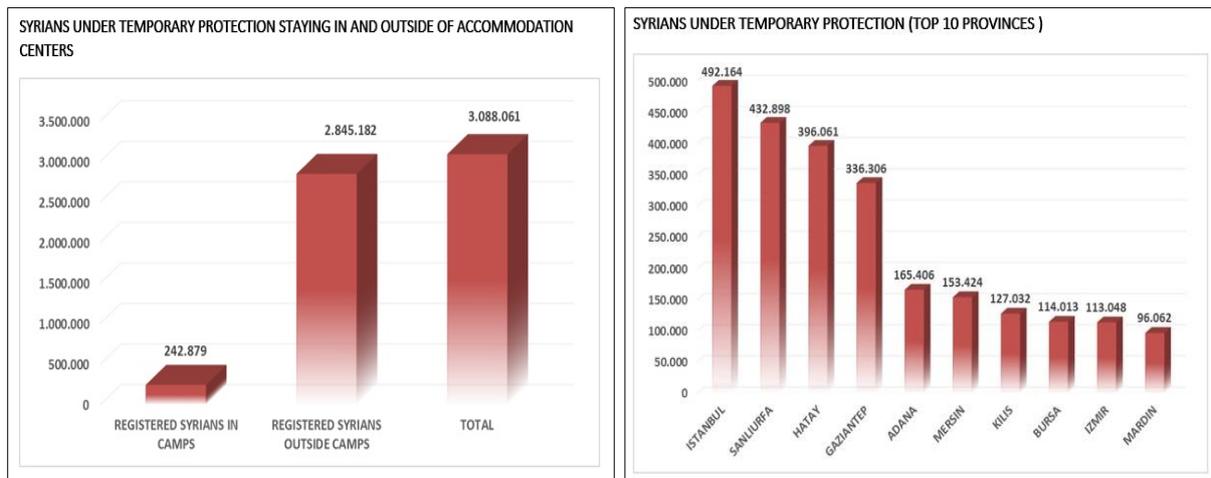
According to United Nations High Commissioner for Refugees António Guterres “ Turkey has now become the biggest refugee-hosting country in the world.”.³⁵²² The recent statistics are regarding migrants in Turkey illustrates that 4,61 % of population of Turkey which is 3.6 million people are refugees in total. It can be seen from the graph that there has been a significant increase in the population over Syrians with temporary protection status since 2011 to 2017. ³⁵²³



³⁵²² António Guterres, ‘UN High Commissioner for Refugees Antonio Guterres - Written text of speech to the UN Security Council’ (26 February 2015) < <http://www.unhcr.org/news/press/2015/2/54ef66796/un-high-commissioner-refugees-antonio-guterres-written-text-speech-un-security.html>> accessed 20 July 2017

³⁵²³ Directorate General for Migration Management, < http://www.goc.gov.tr/icerik6/gecici-koruma_0_378_4713_icerik> accessed 01 July 2017

4.1. Statistics Regarding Temporary Protection



Temporary protection, regulated as a status in the Article 91 of the Law on the Foreigners and International Protection³⁵²⁴, means ‘A procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons (...) immediate and temporary protection to such persons’³⁵²⁵

The most important status provided for asylum seekers is temporary status because there are 3.088.061 Syrians (constituting the contemporary mass influx of displaced persons) under temporary protection in Turkey as of 13 July 2017 as can be seen in the figure above left³⁵²⁶.

One of the main problems about temporary protection that can be seen thorough the statistical data presented by the government is the accommodation of Syrians. As can be seen in figure above right³⁵²⁷, Syrian asylum seekers who are registered to the Directorate General for Migration Management in accommodation centers are only 7.87%. Even though a planned management of the difficulties regarding temporary protection requires the accommodation centers to be more prioritized, 92,13% of Syrian refugees are outside the centers and distributed in the country in a way that is illustrated above in figure above right.³⁵²⁸

³⁵²⁴ Law on the Foreigners and International Protection 2013, art 91.

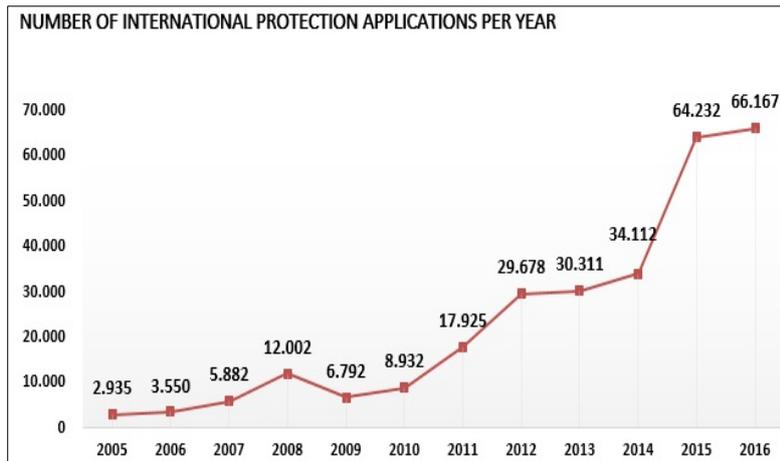
³⁵²⁵ European Council Directive, ‘On minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof’ (2001/55/EC of 20 July 2001)

<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>> accessed 20 July 2017

³⁵²⁶ Directorate General for Migration Management, < http://www.goc.gov.tr/icerik6/gecici-koruma_0_378_4713_icerik> accessed 01 July 2017.

³⁵²⁷ *ibid*

³⁵²⁸ *ibid*



As shown above, Syrians accommodating outside the centers and in Istanbul is 492,154 constituting the 15,1 % of all. This is mainly problematic since İstanbul is already hosting a population of 14,8 million³⁵²⁹ with serious infrastructural problems trying to meet the needs of the crowd even without any parameters

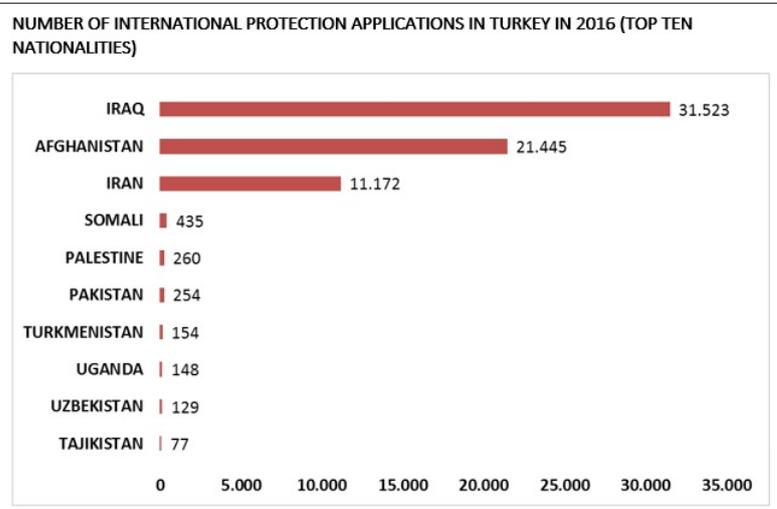
regarding migration.

Other than the statistics regarding migrants in terms of temporary protection, there are also people who are applying for international protection for the statuses of migrant, conditional migrant and subsidiary protection.³⁵³⁰

Figure above³⁵³¹, presenting number of international protection applications per year also shows an increase in recent years, especially starting from 2014. In the last data on 2016, number of applicants is 66.167. When compared to temporary protection data above, it is possible to state that temporary protection holds the most important role in Turkey in terms of the recent movements.

Other statistics about international protection shows that Iraq with 31.523, Afghanistan with 21.445 and Iran with 11.172³⁵³² is the top three nationalities for the number of international protection applications in Turkey as shown figure right³⁵³³.

What is more problematic is irregular migrants under



international protection which is recorded as 174.466³⁵³⁴. This irregular migration movement does not only aggravate the secure registrations through and out the borders but also causes social problems both for the foreigners and Turkish citizens with a dramatic dimension of the subject matter.

³⁵²⁹ Turkish Statistics Institution, < <http://www.tuik.gov.tr/UstMenu.do?metod=temelist>> accessed 20 July 2017.

³⁵³⁰ Law on the Foreigners and International Protection 2013, part 3, s 1.

³⁵³¹ Directorate General for Migration Management, < http://www.goc.gov.tr/icerik6/gecici-koruma_0_378_4713_icerik> accessed 01 July 2017.

³⁵³² *ibid*

³⁵³³ *ibid*

³⁵³⁴ *ibid*

Statistics in the same governmental source expresses the number of human trafficking victims in

MIGRATION PROJECT

	PROJECT		TOTAL
	TOTAL (CURRENT PROJECTS)	EU	17
BILATERAL OF COOPERATION		11	
COMPLETED	EU, BILATERAL OF COOPERATION, NATIONAL BUDGET		34
ONGOING	EU, BILATERAL OF COOPERATION		9
			10
IPA/SEI/ESEI PROJECTS TO BEGIN	EU		8
	BILATERAL OF COOPERATION		1

2017 as 123, in 2016 as 181 and in 2015 as 108 showing a sharp increase since 2014.³⁵³⁵ Even though the data for 2017 seems to resemble a decline, in fact the data for 2017 is as of 13 July 2017, meaning the data is only for half the year and there is an unfortunate possibility for increase in the number.

Besides, another important point to mention about the migration statistics is shown in figure above visualizing migration projects developed by EU and bilateral corporation and whether they are completed or in an ongoing or preparatory status. Even though the most important aspect of migration statistics is constituted by Syrian refugees and the explanations regarding them is made in correlation under this, the statistics are formal migration statistics including educationally-purposed or economic migrants.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

5.1. Binding of Court's Decisions

The decisions of the court are binding on the States; but they are not self-executing in the domestic law. The States are monitored by The Committee of Ministers of the Council of Europe³⁵³⁶ and the binding is fulfilled by the monitoring. However, there is not any obligation to execute the court decisions except that the Council's political sanctions to obey the rules even at last the expulsion from The Council.

5.2. Interim Measures

The Court could make an interim measure decision, particularly for migrants against expulsion orders. At first times, some various opinions are whether interim measure decisions are binding

³⁵³⁵ *ibid*

³⁵³⁶ European Convention of Human Rights, Article 46.

the States or not, because the decision-making authority about interim measures decisions are arranged in the Rules of Court³⁵³⁷, not in Convention. First-time in *Mamatkulov and Askarov v. Turkey case*, The Court make a decision that the interim measures decisions are binding the States:

93. In its judgment of 6 February 2003, the Chamber found as follows:

- “110. ... any State Party to the Convention to which interim measures have been indicated in order to avoid irreparable harm being caused to the victim of an alleged violation must comply with those measures and refrain from any act or omission that will undermine the authority and effectiveness of the final judgment.
- 111. Consequently, by failing to comply with the interim measures indicated by the Court under Rule 39 of the Rules of Court, Turkey is in breach of its obligations under Article 34 of the Convention.”³⁵³⁸

5.3. Just Satisfaction

According to ECHR³⁵³⁹ and The Rules of Court³⁵⁴⁰, The Court could award the amount of compensation for the damages in the violation. The State is obliged to ensure payment of the amounts and The Committee of Ministers of the Council of Europe is monitoring this process. To obtain an award of just satisfaction, applicant must make a specific claim to that effect.³⁵⁴¹ This is an important condition for trials.

In the cases about the migrants³⁵⁴², The Court award the compensations when the violation has occurred.

5.4. Effect on the Turkish Domestic Law

Beyond The Court's compensation and interim measures for immigrants, it has also made decisions that open the door to some regulations in the Turkish legal system. If the non-self-execution situation of the Court's decisions is taken into account, it is evident that these effects are encouraging. At this point, some decisions are considerable to worth making.

5.4.1. Jabari v. Turkey ³⁵⁴³

The applicant, Jabari, is an Iranian. She was arrested in Iran in 1997 because was in a relationship with a married man. She was released a few days later and entered Turkey illegally. After unsuccessfully trying to reach Canada via France, where she was apprehended, she was arrested in Turkey in February 1998.³⁵⁴⁴

³⁵³⁷ Rules of Court, Article 39.

³⁵³⁸ *Mamatkulov and Askarov v. Turkey*, App No: 46951, (Grand Chamber, 04.02.2005) par. 93.

³⁵³⁹ ECHR Article 41.

³⁵⁴⁰ Rules of Court, Article 60.

³⁵⁴¹ Rules of Court, Article 60/1

³⁵⁴² Look at the examples: *Jabari v. Turkey*, App No: 40035/98, (11.10.2000); *Abdolkhani and Karimnia v. Turkey* (No. 2), App No: 50213/08, (27.07.2010); *Z.N.S. v. Turkey*, App No: 21896/08, (19.01.2010); *Charabili v. Turkey*, App No: 46605/07, (13.04.2010); *Keshmiri v. Turkey*, App No: 36370/08, (13.04.2010); *Ranjbar and Others v. Turkey* App No. 37040/07, (13.04.2010); *Tehrani and Others v. Turkey* App Nos. 32940/08, 41626/08 and 43616/08, (13.04.2010); *D.B. v. Turkey*, App No: 33526/08, (13.07.2010); *Dbouba v. Turkey* App No. 15916/09, (13.07.2010).

³⁵⁴³ *Jabari v. Turkey*, App No: 40035/98, (11.10.2000).

³⁵⁴⁴ ECHR, Reports of Judgments and Decisions 2000-VIII, p. 151.

She made an application for asylum, but it was rejected because of the five-day time-limit. In detention, United Nations High Commissioner for Refugees (UNHCR) granted a refugee status to her out of the fear of persecution, death penalty after a possible deportation to Iran.

The court assessed that a short time limit for submitting an application for asylum is against the protection of the fundamental value embodied in Article 3.³⁵⁴⁵ After this decision, The Turkish government has changed the five-day time-limit in domestic law legislation³⁵⁴⁶ as ten day time limit. Afterwards, the Administrative Courts has waived the time-limit and accept the applications. Finally, in 2006, the legislation has changed as “apply without delay”. Today, the applications usually don’t get rejected thereby time-limit.

5.4.2. Mamatkulov and Askarov v. Turkey³⁵⁴⁷

The applicants are two Uzbek nationals. Under international arrest warrant, Turkish police arrested the men and the government decided to deport them because of request of the Uzbek government. At this time, The Court make an interim measure decision to prevent the implementation of the deportation decisions of the Turkish government. However, two men has deported by Turkish government providing that the two men will never expose to inhuman treatment and death penalty by Uzbekistan. However, the two men were sentenced to long-time prison.

The court assessed that an interim measure decision of The Court is binding the state. Even though there is a bilateral agreement on extradition, the state is responsible to The Court. Besides according to Article 1 of ECHR:

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

In the circumstances, Turkey has two sides conflict as both convention and bilateral agreement terms, because of inadequacy in the domestic law. In the bilateral agreement on extradition between Turkey and Uzbekistan, there were not any condition like never be exposed to inhuman treatment and death penalty.

Also, there were not any legislation to prevent inhuman treatment and death penalty on extradition in the Turkish Criminal Law. However, in 2005, Turkey changed³⁵⁴⁸ the Criminal Law and added the legislation prevent inhuman treatment and death penalty on extraditions.

As a result, ECHR is an optional mechanism to prevent the human rights violations. As long as Turkey take the Court decisions into consideration, it might inspire more solution to prevent human rights violations, especially for migrants.

European Court of Human Rights decisions concerning migrants are implemented as interim measures and compensation for damages. They are highly important because European Court of Human Rights is the interpreter of European Convention on Human Rights which is protected

³⁵⁴⁵ *ibid.* 151-152.

³⁵⁴⁶ Regulation On the Procedures and Principles to Be Applied to Individual Foreigners Who Are Seeking Asylum to Turkey or Claiming Residence Permit from Turkey to Seek Asylum from A Third Country, and to Collective Foreigners Who Come to Our Borders for Collective Asylum, And to Possible Population Movements, (Effective Date: 30.11.1994, Amendment Date: 27.01.2006),

³⁵⁴⁷ *Mamatkulov and Askarov v. Turkey*, App Nos: 46827/99, 46951/99, (04.02.2005).

³⁵⁴⁸ Turkish Criminal Code, (12.10.2004)

under the Article 90 of the Turkish Constitution as an international agreement to be applied before a national law if there is any conflict of laws.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

Migrants actively contribute to the economic, social and cultural development of European societies. Their successful integration into society in the host country is the key to maximizing the opportunities of legal migration and making the most of the contributions that immigration can make to EU development. Although Member States are primarily responsible for integration, the EU is supporting national and local policies with policy coordination, exchange of knowledge and financial resources. The distinct climate of intolerance and racism in Europe is having a negative impact on the integration process of migrants.³⁵⁴⁹

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialized in questions relating to racism and intolerance.³⁵⁵⁰ It is composed of independent and impartial members appointed on the basis of their moral authority and recognized expertise in dealing with racism, xenophobia, antisemitism and intolerance. In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

What is also clear is that some policies of European states undermine integration, while many policies in place to promote it are not being effectively implemented. There are many countries in Europe that where migrants are marginalized - through negative media reporting, political antipathy, insecure legal status, a lack of educational and employment opportunities, and/or hostility from local communities - there is less integration. Those who feel threatened or excluded from the host society, instead of striving to belong, may seek to emphasize their difference through isolating themselves in their own communities and may also be more open to radical influences.

The European Commission against Racism and Intolerance (ECRI) prepares reports that shows us the situation in countries that they gave recommendation before. In Turkey the need for comprehensive integration policies has increased in recent years, as it has not only evolved from a country of emigration to a country of immigration, but has also become the country hosting the largest number of refugees in the world. The recent report indicates that;

Not only non-nationals, but also linguistic, religious and ethnic minority groups are in need of integration policies in Turkey. As such policies cannot be drawn up without reliable estimates of the size of these groups, the authorities should build up reliable data in this field.³⁵⁵¹

³⁵⁴⁹ ECRE The Way Forward Towards the Integration of Refugees in Europe 2005

³⁵⁵⁰ ECRI Report on Turkey (5th Monitoring Cycle) p7

³⁵⁵¹ *ibid* 26

By adopting the Law on Foreigners and International Protection (LFIP) in 2013³⁵⁵², Turkey has established a new framework for the integration of migrants and refugees and implemented an interim follow-up recommendation from ECRI's fourth report. The law regulates entry into, stay in and exit from Turkey and contains rules on foreign nationals and international protection. The importance of enrolling children with migration backgrounds in preschool in order to ensure that they learn the language of instruction and acquire sufficient knowledge about the country before entering the school system is also very important for Turkey. So Turkish authorities tried to enrol as many as they can but they are so many children that still needs enrolling.³⁵⁵³

The new authority responsible for the integration of migrants is tasked with preventing xenophobia and hate speech. But it is difficult to assess the impact of existing integration policies, as Turkey has no system of integration indicators. The authorities should swiftly complete the development of a strategy and action plans on integration, develop a set of integration indicators and mobilize all possible resources to ensure the strategy's implementation, in particular with regard to the schooling of children.

ECRI recommends that the Turkish authorities develop, while strictly respecting the principles of confidentiality and voluntary self-identification, statistical data and a set of indicators to evaluate and improve the integration and living conditions of the beneficiary³⁵⁵⁴ as of integration policies in core areas such as education, employment, health and housing

Turkish Red Crescent, as well as national human rights bodies, carries out humanitarian aid activities for all foreigners registered in the borders of our country without any language, religion or race discrimination. Besides, there are certain attempts in this respect trying to facilitate educational services.³⁵⁵⁵

Turkish Red Crescent Directorate for Migration and Refugees Services; The Ministry of Interior works in cooperation and coordination with the General Directorate of Migration Administration, AFAD, Ministry of Family and Social Policy, International Federation of Red Cross and Red Crescent Societies (IFRC) and United Nations agencies. In this context, we are responsible for the provision of services for integration and integration, as well as the provision of cash and cash assistance, projects and programs for all foreigners registered in our country and living in need of assistance. *Kızılay Kart* (smart cards distributed for the same and cash aid purposes), child protection / child-friendly areas (psychosocial support and skill development activities for 4-18 age group), community centers (vocational and language courses for adult and child population outside the camp) services provided in the centers of acceptance, accommodation and return (as well as psychosocial support, protection, referral and advocacy activities) and border assistance activities (sending from the border points of humanitarian aid donated for delivery to Syria), as well as services provided by the Turkish Red Crescent Migration and Refugee Services Directorate.

³⁵⁵² *ibid* 27

³⁵⁵³ ECRE <https://www.ecre.org/wp-content/uploads/2016/07/ECRE-The-Way-Forward-Towards-the-Integration-of-Refugees-in-Europe_July-2005.pdf> accessed July 23 2017.

³⁵⁵⁴ ECRE <https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration_en > accessed July 23 2017.

³⁵⁵⁵ Türk Kızılay <<http://www.kizilay.org.tr/Kurumsal>> accessed November 14 2017.

7. How is migrants' right to access to healthcare regulated within the national legislation?

The right of health is described as a social right and protected by the constitution of Turkish Republic. The government should provide healthcare services to the community if its financial sources are available.¹ In the meantime, people who want to benefit from health opportunities should pay the required charge regularly. After that, they will be under the protection of general insurance system.

According to the Law of Social Security and General Health Insurance n. 5510 Art. 123, asylum seekers and refugees can benefit from the general health care system. Due to Turkey's limiting classification regime on statutes, refugee means migrants who are coming from European Countries.² For this reason, only refugees in this category can benefit from the healthcare system free of charge.

As it is mentioned in Law of Foreigners and International Protection n. 6458 in the Article 89/3/c, all migrants are liable to the Law of Social Security and General Health Insurance n. 5510 which remarks that insurance charges and expenses will be covered by Turkish government.² Not only the owners of the protection are stated in the statute n. 6458, but also the applicants can be protected in this way.³⁵⁵⁶

Nevertheless, all applicants of international protection can benefit from general health insurance of the government freely. The protection starts instantly in the 'application date'. As a principle, applications should have been made to the governorships in the provinces. In some cases, the applications can be made to police offices in the country border; these applications should have been transported to governorships immediately.² (Law of Foreigners and International Protection n. 6458 Art. 65)

As a result, people who are coming from European countries or others can benefit from general health insurance system in Turkey as if they are Turkish citizens. An application made to the relevant centres for political asylum or immigration is the only provision for the aforesaid protection.

In some cases, migrants are treated as tourists in healthcare organizations.² This is an illegal implementation of the national legislation. For that reason, the health care organizations should provide the healthcare opportunities to all of them. All foreigners have **access to specific information about the services which includes healthcare services** in Turkey as well. They can reach via phone from Turkey or abroad to the 'Foreigners Communication Centers' which provides Turkish, English, Arabic, Russian, Persian and German language services 7 days and 24 hours.

Syrians, who are named as "owner of temporary protection" can reach medical support and care free of charge in the institutions of the Ministry of Health Department of Turkey. Moreover,

³⁵⁵⁶ İbrahim Şahbaz, 'Bir Sosyal Hak Olarak Sağlık Hakkı,' (The Right of Health as a Social Right) 2009 s 405-408 [Turkish]

health care services for emergency situations are provided to everyone who lives or stays in Turkey. Apart from being referred as a patient to another medical institution or in case of emergency situations, getting service from private hospitals is not possible. In some provinces, a few paramedics can speak Arabic in the Migrant Healthcare Centers. UNHCR and its partners provide consultancy and aid services to people with serious health problems.² The aspects of medical and health support for the owners of temporary protection are defined in Temporary Protection Regulations Art. 27.

For the migrants who entered the country illegally and didn't or couldn't apply for international protection of Turkish government can face with issues while they are reaching the healthcare system.³⁵⁵⁷ However, irregular migrants can still benefit from healthcare services even though they are found to be irregularly entered or residing in Turkey. These migrants have been sent to the Repatriation Centers. People who are located on the Repatriation Centers can apply to police offices near to them to benefit from the healthcare system. However, the government has to provide emergency and basic healthcare services in these centers for free for those who can't provide financial opportunity. (Law on Foreigners and International Protection n. 6458 Art. 59)

Turkey guaranteed protecting the people's right to live, physical and mental health during their 'stay' in the country due to international agreements. For this reason, this order can't be changed by national legislation.² Therefore, people who didn't or couldn't apply for protection from the government should be able to reach the healthcare system even though there is no regulation in national law.

Either the international agreements that Turkey is a part of or the national legislation system in Turkey provides access to the healthcare system for the refugees, conditional refugees, owners of primary protection and secondary protection and asylum seekers. They have the right to reach all primary and emergency healthcare system as they are Turkish citizens.

The Turkish legal system has **non-discrimination laws** and judicial decisions due to the increased number of refugees who entered the country to prohibit discriminatory behaviours against migrants in Turkey. Foreigners' and migrants' rights are protected by the '**Human Rights and Equality Law n.6701**' through the Human Rights and Equality Foundation.

Turkish Criminal Law Art. 122 prohibits discrimination strictly. Additionally, the **Turkish Constitution Art. 10** forbids whole sorts of discrimination. Generally, to prove the discrimination is not an easy process for the victims. Therefore, the protection Turkish law requires may not be succeeded at the end of the lawsuit process.¹⁰ There are plenty of **non-governmental organizations** which provide free psychological support and services to the migrants who need help.

³⁵⁵⁷ Onur Şahinkaya, 'Göçmenlerin Türkiye'de Sağlık Hakları' (Migrants Rights of Health in Turkey) 2015 [Turkish]

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

Before directly elaborating on the given question, it would be beneficial to examine the definitions of the terms 'child' and 'education' under the Turkish legislation, in order to set the frame of the outputs.

Article 90 of the Constitution provides the basis of international law in national law, by stating that ratified international agreements have the force of law, and in case of a conflict between an international agreement concerning fundamental rights and freedoms, and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.³⁵⁵⁸

In accordance with that, Convention on the Rights of the Child, which has the effect of law due to the ratification law numbered 4058; defines the child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."³⁵⁵⁹ The same perspective is remained under the Criminal Code is defining a minor, "any person not attained the age of eighteen."³⁵⁶⁰ Even not maintaining an explicit definition, Civil Code and Labour Law use the similar references to describe child as the ones below the age of eighteen.³⁵⁶¹

Right to education is a social right enshrined on the constitutional level and regulated under various national and international mechanisms, the most prominent one being the Article 2 of Protocol No.1 of the European Convention on Human Rights and the relevant case-law. From the perspective of the European Court of Human Rights, the right to education concerns elementary schooling, secondary education, higher education and specialized courses as well.³⁵⁶² Also, it must be noted that the right guaranteed in Article 2 of Protocol No.1 are children, but also adults or indeed any person wishing to benefit from the right to education.³⁵⁶³ Under the Article 42 of the Constitution, titled "Right and duty of education" such right is enshrined without distinction on the basis of nationality or migration status.³⁵⁶⁴

Turkish national legislation guarantees the right to receive primary and secondary education free of charge, not depending on the migration status of the child in question. According to the Communiqué numbered 2014/21 on foreigners' access to education issued by the Ministry of National Education; foreigners under the Temporary Protection are subjected to deliver education in state schools or temporary education centres, which are determined by the provincial education directorate.³⁵⁶⁵ Procedure for enrolment is regulated by each province on the placement of the child and the grade determination. Grade determination is mainly based on

³⁵⁵⁸ Constitution of the Republic of Turkey, Article 90.

³⁵⁵⁹ Convention on the Rights of the Child, Article 1, 1989.

³⁵⁶⁰ Law n.5237, (Turkish Criminal Code) Article 6/b, 2004.

³⁵⁶¹ Law n.4857 (Turkish Labour Law) Article 71, 73, 2003.

³⁵⁶² ECHR – Guide on Article 2 of Protocol.1 to the European Convention on Human Rights – Right to Education < http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf > accessed on 20 September 2017

³⁵⁶³ *Ibid.*

³⁵⁶⁴ Constitution of the Republic of Turkey, Article 42.

³⁵⁶⁵ Communiqué n.2014/21, 2014.

the documentation of the child from his/her country of origin, but is also open to identify via an interview or a short written assessment.³⁵⁶⁶

Temporary education centres are exclusively created for Syrian children and are placed usually near to the camps and urban areas. 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.³⁵⁶⁷ 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.³⁵⁶⁸ It must be further noted that, according to the general notice of the Ministry of Education issued to the 23 large cities of Turkey, at the end of the year of 2017, temporary education centres are planned to be closed and replaced entirely by the state schools.³⁵⁶⁹

According to the Law on Foreigners and International Protection numbered 6458, a residence permit, (*ikamet*) a temporary protection identification document, or Foreigners Identification Card is needed for the registration procedure to the educational institutions.³⁵⁷⁰ In the case of the completed entry of an application that has not been resulted yet, families are able to enrol their children on status of 'guest students' which is open for an amendment after the results.

Migrants and refugees in Turkey have the opportunity to apply to higher education as long as they met the academic and linguistic criterion tested by the Foreign Student Examination.³⁵⁷¹ (*Yabancı Öğrenci Sınavı*) Foreign Student Examination is hold exclusively by each university and charged from the student. It is also possible to acquire a bursary, student loan and/or dormitory by an application to the Higher Education Credit and Hostels Institution, even if none of them are guaranteed due to the competitive applications.³⁵⁷²

Apart from the formal education, persons may attend to free of charge courses, hold by Public Education Centres (*Halk Eğitim Merkezleri*) on Turkish language courses, skills, hobby and vocational courses. A temporary protection identity document is required at minimum to register, and based on local demand, new courses may open on different subjects.³⁵⁷³

Syrian refugees may attend Turkish language courses and skills, hobby and vocational courses offered by Public Education Centres (*Halk Eğitim*) free of charge.³⁵⁷⁴ A temporary protection identity document is required in order to be registered for courses offered by *Halk Eğitim*. Each *Halk Eğitim* may determine which courses it offers and may open new courses based on local

³⁵⁶⁶ *Ibid.*

³⁵⁶⁷ UNHCR – Frequently Asked Questions – Syrian Refugees in Turkey <unhcr.org/turkey/uploads/root/frequently_asked_questions.pdf> accessed on 24 September 2017.

³⁵⁶⁸ *Ibid.*

³⁵⁶⁹ Cumhuriyet.com.tr. (2017). *MEB'den Suriyeliler için açılan eğitim merkezlerine kapatma kararı*. <http://www.cumhuriyet.com.tr/haber/egitim/708584/MEB_den_Suriyeliler_icin_acilan_egitim_merkezlerine_kapatma_karari.html> accessed 24 Sep. 2017.

³⁵⁷⁰ Law n.6458 (Law on the Foreigners and International Protection) Article 19 ff, 2013.

³⁵⁷¹ UNHCR – Frequently Asked Questions – Syrian Refugees in Turkey <unhcr.org/turkey/uploads/root/frequently_asked_questions.pdf> accessed on 24 September 2017.

³⁵⁷² *Ibid.*

³⁵⁷³ *Ibid.*

³⁵⁷⁴ *Ibid.*

demand. The Ministry of Labour and Social Security has indicated that persons under Temporary Protection may participate in skills training programmes offered by Turkish Labour Agency (ISKUR). It is expected that more information will be available in the coming months as to which courses and programmes will be open to Syrian refugees.

The law numbered 6458 also bifurcates on the different variations of residence permit, *ikamet*, into 6 different types, which is determinative for the education opportunities of the foreigners.³⁵⁷⁵ Directly related to the topic, family residence permit, *aile ikamet izni*, provides primary and secondary education for the migrant children free of charge, and without further ado.³⁵⁷⁶ For the ones above the age of 18, it is required to acquire a student residence permit, *öğrenci ikamet izni*, to benefit from all levels of educational system, given for each year.³⁵⁷⁷ For the irregular migrants, it is exclusively stated that Ministry of Education shall take appropriate measures for the education services³⁵⁷⁸; however it would be safe to state that the informative system of the provision is not functioning to its very best.

Discrimination on the basis of migration status is covered under the racial discrimination provision before the Courts, and is open for administrative courts to determine whether there is a practice against the equality provision, Article 10 of the Constitution³⁵⁷⁹. Regardless of the migration status of the person, parents or their guardians are capable to bring a case before the first instance administrative courts.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

Right to education is one of the fundamental rights of people which is regulated in Turkish Constitution under the social and economic rights. Article 42 paragraph 1 of the Turkish constitution states that; “No one shall be deprived of the right of education.” This means that not only Turkish citizens, but everyone else has the right to education under Turkish law.

Turkey is a party to some international agreements concerning the recognition procedure and it should be noted that according to the Turkish constitution, agreements governing the fundamental rights shall prevail Turkish national law.

In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws; due to differences in provisions on the same matter, the provisions of international agreements shall prevail. (Turkish Constitution, Art. 90 para 5)

³⁵⁷⁵ Law n.6458 (Law on the Foreigners and International Protection) Article 30, 2013.

³⁵⁷⁶ *Ibid*, Article 34/4.

³⁵⁷⁷ *Ibid*, Article 38.

³⁵⁷⁸ *Ibid*, Article 59/d.

³⁵⁷⁹ Constitution of the Republic of Turkey, Article 10.

One of the international agreements that Turkey is a party of is the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Agreement). The Lisbon Agreement was ratified on 18/10/2006 published in the Turkish official gazette dated December 17 2006.

And to implement the Lisbon agreement, the council of Europe and UNESCO have established the ENIC (European Network of National Information Centers on academic recognition and mobility) and the NARIC (National Academic Recognition Information Centers) network. Since then, the ENIC / NARIC Centre of Turkey has started to cooperate with The Council of Higher Education Accreditation Unit.

Lisbon Agreement sets some of the basic principles for qualification such as good faith, transparency, reliability, compliance, providing adequate and clear information. Parties shall recognize the qualification unless there is a substantial difference sought about general requirements of qualifications.

Under Lisbon convention, it is binding that states cannot discriminate between applicants for the reasons of nationality, religion, gender etc. If a person is a refugee, or in a refugee-like situation, the concerned party shall take all the necessary steps within conformity of its national law and regulations even if the qualifications of the person cannot be proven through documentary evidence. The Council of Higher Education offers a qualification test named Level and Competence placement system (SYBS) for the ones who wants to get their diploma recognition. These tests might be done by the Council of Higher Education itself, or the concerned university/school by their standards. The Council of Higher Education also created a new policy; there are designated universities which will have extra quota for Syrian refugees.

Foreign school and university diploma recognition procedure is conducted by The Council of Higher Education in Republic of Turkey. There are three different types of Associate's, Bachelor's and Master's Degrees recognition which are accreditation, recognition and equivalence.

Accreditation is a general system which targets to establish national and international higher education system standards (quality, efficiency, etc.)³⁵⁸⁰ This system aims to help facilitate and accelerate the process of mutual recognition between higher education institutions and compare diplomas and titles easier, according to its standards.

Article 3 of Regulation on the Recognition of Foreign Higher Education Diplomas in Turkey states that recognition means 'Acceptance of the diploma by the higher education institution and program as authorized by the competent authorities of the country in which it operates or by the quality assurance and accreditation bodies authorized by these institutions and by the Higher Education Council as an institution and program authorized to award academic degrees'. The presidency of The Council of Higher Education holds the right not to recognize foreign higher education institutions while considering; Institution in question must be recognized by the competent authority by the country of its registration and the institution has to be the authorized to issue diplomas. It needs to be accredited by certified quality assurance agencies and it has to be recognized by the Council of Higher Education.

³⁵⁸⁰ The Council of Higher Education <<http://www.yok.gov.tr/web/denklikbirimi>>

Equivalence is the determination of diplomatic compatibility between a higher education institution in Turkey and a foreign higher education institution recognized by the Higher Education Council.

Equivalence procedure of foreign diplomas is based on Recognition and Equivalence Regulation for Diplomas of Overseas Higher Education, The Lisbon Convention and Higher Education Execution and General Assembly Decisions. The Regulation of Turkish Qualifications Framework was published in the official gazette dated 19.11.2015 (Under Coordination of Vocational Qualifications Authority- VQA).

The national credits and / or the total number of ECTS required for graduation should be equivalent to the Turkish higher education program in terms of knowledge, skills and competence to be acquired. If not, whether it is or is not “equivalent to Turkish higher education” in terms of education level is examined.

Citizens of the Republic of Turkey who graduated from associate, undergraduate or graduate programs of universities abroad or Foreign nationals who graduated from associate, undergraduate or graduate programs of universities abroad can may apply to the application process. Foreign nationals who are to apply for a master's degree or doctoral degree do not need to apply for equivalency except in medicine related fields. They can apply for a post-graduate education application by taking the Recognition Written by Higher Education Institutions from the Establishment of Interest.³⁵⁸¹

Regulations on Recognition and equivalence of foreign higher education diplomas, states the necessary documents under part 2 (original, translated and notarized school diploma/certificate, petition which explains the reasons of recognition etc.) for recognition and evaluation process. All the documents stated necessary, according to this regulation, must be submitted completely to the authorized board of Council of Higher Education. This submission needs to be handed over to the Board in person or in the case of submitting a power of attorney issued by the notary public. Based on the country of registry of the applicant, required documents may vary.

After the submission process, there is a preliminary examination process of the documents. In this step, the board will decide whether the documents are complete, and if not, the board will ask to the applicant to complete the necessary documents. Also, the board may ask additional paperwork if necessary. After that, documents will be evaluated by equivalence commission. Then the execution board will make the final decision and will notice the applicant.

Currently, there is no special recognition procedure for refugees/asylum-seekers. They have to go through as the same procedure as migrants. But the³⁵⁸² United Nations High Commissioner for Refugees (UNHCR) recently announced that European Union, the Government of Turkey, UNHCR and the Presidency for Turks Abroad and Related Communities (YTB) will work together to help refugees along the way to university education, recognition and help to increase access to quality higher education for refugees.

³⁵⁸¹ The Council of Higher Education <<http://www.yok.gov.tr/web/denklikbirimi>> accessed July 24 2017

³⁵⁸² UNCHR <<http://www.unhcr.org/tr/en/press-releases-and-statements>> accessed August 25 2017

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Regulations in National Legislation

The main legislation in regard to migrants is the Law No. 6458 on Foreigners and International Protection. Section 3 of the Law, with the headline “Rights and Obligations”, regulates foreigners’ rights such as access to assistance and services and access to labour market.³⁵⁸³ Unfortunately, political rights of foreigners are not regulated neither in this nor any other legislation. It is implicitly indicated through Article 68 of the Constitution of Republic Turkey that **only Turkish citizens** may take part in political decisions: “Citizens have the right to form political parties and duly join and withdraw from them.³⁵⁸⁴ One must be over eighteen years of age to become a member of a party.” The aforementioned provision is reinforced in Article 5 of the Law No. 2820 on Political Parties which mentions that citizens have rights to form political parties.³⁵⁸⁵

10.2. Integration Process

Settling in another country for a migrant is the beginning of the processes of getting into a new life. Yet, regardless of time and place, one shall be fully adapted to the environment and feel accepted by the society as well. Therefore, as a migrant settle in a country, **integration process** begins. The term integration does not have a universal definition, yet it is a matter of the utmost importance and be roughly defined as the process in which a migrant is accepted by the society where political participation is one of main parts.

The constitution and the Law No. 2820 mention citizens’ political rights, however, it does not cove migrant’ political rights neither in these legislations nor in the Law on Foreigners and International Protection. Hence, it may be concluded that migrants in Turkey are not allowed to take part in political decision therefore, they “cannot join political parties and cannot have their own associations or media unless one of the directors is a Turkish national.”³⁵⁸⁶ Migrant Integration Policy Index published a comparative table listing political participation of migrants according to countries:

³⁵⁸³ Law n. 6458 (On Foreigners and International Protection) 2012 (Yabancılar ve Uluslararası Koruma Kanunu)

³⁵⁸⁴ Law No. 2709 (Constitution of the Republic of Turkey) 1982 (Türkiye Cumhuriyeti Anayasası)

³⁵⁸⁵ Law n. 2820 (Political Parties) 1983 (Siyasi Partiler Kanunu)

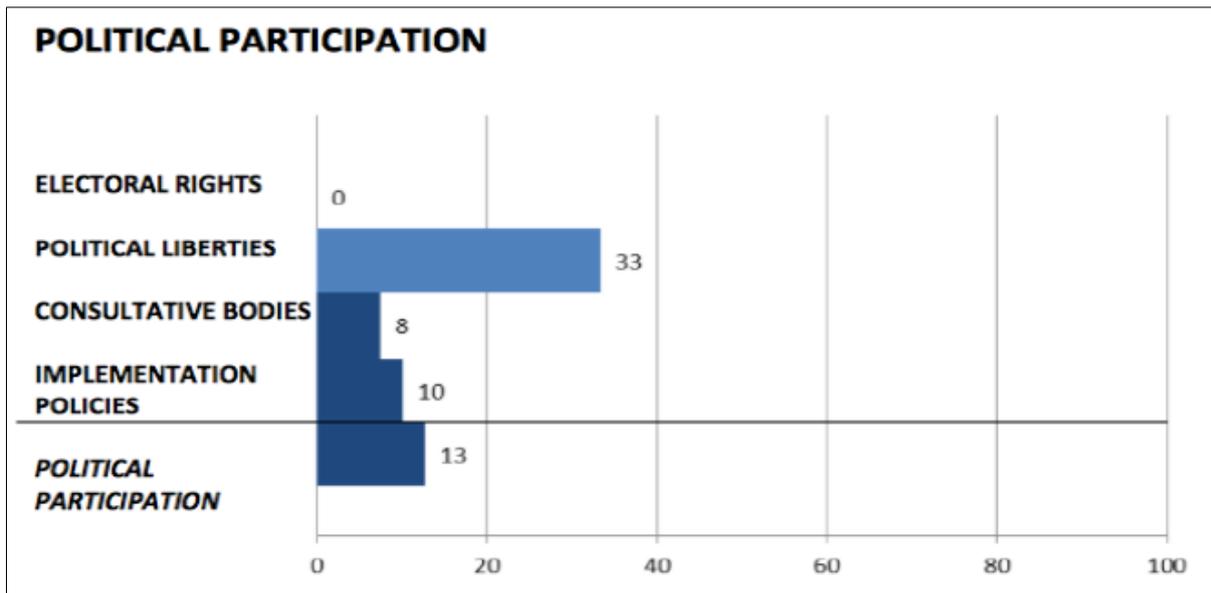
³⁵⁸⁶ Migration Policy Group, ‘*Turkey: A Integration Policy Index assessment*’ (Office for Democratic Institutions and Human Rights, October 2013) <<http://www.osce.org/odihr/118158?download=true>> accessed 22 July 2017 (English).

POLITICAL PARTICIPATION TABLE					
	Voting rights at local, *regional or **all level(s) (#65-67)	Right to stand as candidate (#68)	Allowed to join political parties (#70)	Name of national consultative body (#71)	Name of consultative body in capital (#72)
TU	None	None	None	None	Foreign Citizens' Council (Alanya)

(Migrant Policy Index)

Table 1 clearly shows country's lacking support on migrants' political participation. Although there is a council where migrants are represented, Migrant Policy Group's report on Turkey's national policy on migrants' indicates that "Foreign Citizens' Councils are underdeveloped and weak" because it "exists at the initiative of the mayor, without its own legal basis."³⁵⁸⁷ Furthermore, according to MIPEX's index which compares countries scores in regard to political rights provided to migrants, Turkey ranked 36 out 38 countries, with a score of 11. Below is a chart that was obtained from Migration Policy Group's Report, showing Turkey's scores regarding its national policy for migrants' political participation:

³⁵⁸⁷ Migration Policy Group, 'Turkey: A Integration Policy Index assessment' (Office for Democratic Institutions and Human Rights, October 2013) <<http://www.osce.org/odihr/118158?download=true>> accessed 22 July 2017 (English).



Within the scope of data collected, it could be concluded that integration process of immigrants in Turkey remains incomplete. Although the Law No. 6458 protects immigrants' civic rights, a huge part of the integration process is completely ignored.

Despite the limited political rights granted to them, foreigners are obliged to pay attention to the political order of the country and to avoid behaviours that may disrupt public order.³⁵⁸⁸ Article 54 of Law on Foreigners and International Protection stipulates cases where foreigners might be deported. Accordingly, foreigners who exhibit behaviour which potentially threatens public order can be deported from the country.³⁵⁸⁹ Therefore, it should be stated that the obligations imposed on foreigners are far more comprehensive compared to the political rights granted to them.

10.3. Closing Comments

Excluding migrants from political participation would indeed have several outcomes. Firstly, as stated above, **half-integration** of migrants into society is in question and is remarkably a serious issue. This, of course, means reduced standard of living for migrants as they are not adapted to or completely integrated into the society. One of findings gathered in Workshop on Migration and Integration which is conducted by the government shows that migrants **want to have a say** in political decisions. From a broader perspective, they justifiably want to have electoral rights supported by the government.³⁵⁹⁰ The said Workshop report also expresses that EU citizens will be given electoral rights when Turkey becomes a member of EU. Despite this positive report of the workshop, it is still doubtful whether Turkey is in favour of giving the EU citizens the right to be elected and elected. Such that Turkey has not signed the Convention on the Participation of Foreigners in Public Life at Local Level. The agreement provided broad rights for immigrants in order for them to be active in public life. In fact, Article 6 of the Convention obliged each

³⁵⁸⁸ Gülgören Tekinalp, *Türk Yabancılar Hukuku* 33.

³⁵⁸⁹ Law No. 6458 (Law on Foreigners and International Protection) 2012 (Yabancılar ve Uluslararası Koruma Kanunu)

³⁵⁹⁰ İ. Sudaş and C. Balkir, *Points Featured in Workshop on Migration and Integration* <http://www.goc.gov.tr/files/files/_dokuman30.pdf> accessed 22 July 2017 (Turkish).

party “to grant to every foreign resident the right to vote and to stand for election in the local authority elections”.³⁵⁹¹ Turkey has refused to be a party to the Convention and has proved that it is not intended to grant EU citizens the right to vote and to stand for election.

On December 2015, UN conducted a research in regard to countries’ international migrant stock, where total population of countries and percentage of international migrants of the total population were estimated.³⁵⁹² Statistics have shown that 3.8% of Turkey’s total population consists of migrants. Therefore, it must be emphasized that such large proportion of Turkey’s population is prohibited to have electoral rights and have substantially restricted political involvement.

Dr. Werner Bauer touched on the importance of the matter in a panel which was held by Friedrich Ebert Foundation and concerned “Political Participation of Migrant in Germany”, expressed that excluding migrants from political participation would affect as an explosive substance.³⁵⁹³

To conclude, migrants in Turkey do not have electoral rights and thus their political participation is roughly supported and protected. Workshop on Migration and Integration promises migrants’ to have their electoral rights once Turkey’s accession to EU materializes. However, participating in politics of their country of residence is a substantive right for migrants and thus it shall be independent from Turkey’s international policies. Integration process will remain to be incomplete and insufficient, unless Turkey further develops its national policy regarding migrants’ political participation.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. The Concept of Turkish Citizenship

The concept of ‘Turkish citizenship’ is a much debated and sensitive notion in the fields of Turkish constitutional law and Turkish nationality law. It is inclusively formed in Turkish constitution because of its extensive judicial, political and sociological backgrounds. According to Turkish Constitution Article 66/1, ‘Each person that has the citizenship bond is Turkish’. In the same article, it is guaranteed in the constitutional level by stating that fulfilling the conditions is enough to acquire citizenship. It basically depends on understanding of subjective nationality which gives priority to how the person feels instead of religious, linguistic or racial characteristics.³⁵⁹⁴

³⁵⁹¹ Convention on the Participation of Foreigners in Public Life at Local Level (1992), Article 6.

³⁵⁹² United Nations, *Trends in International Migrant Stock: The 2015 Revision* (Department of Economic and Social Affairs, 2015)
<<http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>> accessed 22 July 2017 (English).

³⁵⁹³ Basak Ozay, ‘Migrants’ Political Participation is being Discussed’ (DW Academy, 19 February 2008)
<<http://www.dw.com/tr/göçmenlerin-siyasete-katılımı-tartışılıyor/a-3136520>> accessed 22 July 2017 (Turkish).

³⁵⁹⁴ Bahadır Erdem, *Turkish Nationality Law*, 2016 p.46 (Turkish); Renan Ernst *Qu’est –ce qu’une nation* 1882 (French).

Besides, in the general preamble of 5901 numbered Turkish Citizenship Act, it is determined as 'legal bond between the person and the government'³⁵⁹⁵. This preamble based on the concept of 'nationality' in the European Convention on Nationality³⁵⁹⁶. Although, Republic of Turkey has not signed this convention yet, in the preamble it is clearly seen that Republic of Turkey has turned its face to European Union and western democracies in the 21st century and aims to be an important state in the globalizing world.³⁵⁹⁷ As a result of globalization, it is a fact that applications for acquisition of Turkish citizenship is dramatically increased in parallel with increasing transportation facilities. It is highly important that acquisition for the migrants who contributes to economic and social life as the developed countries.

³⁵⁹⁵ The Grand National Assembly of Turkey, <<https://www.tbmm.gov.tr/sirasayi/donem23/yil01/ss90.pdf>> accessed on June 25 2017 [Turkish].

³⁵⁹⁶ European Convention on Nationality 1997, art 2.

³⁵⁹⁷ Bahadır Erdem, *Turkish Nationality Law* (2016) p 36 [Turkish].

11.2. Acquisition of Turkish Citizenship

In Turkish Citizenship Act, there is not any direct regulation of acquisition of Turkish citizenship for migrants. From this point, it can be confirmed that competent authority, adoption and right of choice are the ways of acquisition of Turkish citizenship for foreigners as for migrants³⁵⁹⁸. Most of them are by the way of competent authority and it can be general or exceptional. A person who demands for citizenship from competent authority by general way has to fulfil the conditions in article 11 and to apply to the authority. These conditions are being adult and examinant according to his legislations, continuous residing 5 years in Turkey until the application moment, having intentional behaviours, not having a serious health problem, having moral values, speaking Turkish adequately, having enough salary or job for himself and those who has to earn them keep and not having an impeding condition for national security and public order.³⁵⁹⁹ Competent authority, which is Ministry of Interior, has the power of discretion.³⁶⁰⁰

Furthermore, without owing the conditions that stand in article 11, they can acquire citizenship exceptionally. They are stated as the persons who bring industrial plant to Turkey, contributes to scientific, technological, economic, social, sportive, cultural or artistic fields or expectation of contribution and have reasoned request by the related ministries, the persons who have the residence permit according to 6458 numbered Foreigners and International Protection Act article 31/1(j) and the migrants that have turquoise card, their wives, not examinant children or conjunctive foreign children, the persons who is considered necessary and the persons who accepted as “*göçmen*”. And they must not have any impeding conditions for national security and public order. They can only acquire citizenship with request of ministry and confirmation of Council of Ministers.³⁶⁰¹

11.3. Double Nationality

In European Convention on Nationality, it is made point that each person has the right of nationality³⁶⁰². Concordantly, acquiring an another citizenship is made possible in Turkish legislation and it has not an impact on Turkish citizenship.³⁶⁰³ Turkish law is enforced for a person who have more than one citizenship and one of his/her citizenships is Turkish. This rights can be accepted also for migrants.³⁶⁰⁴ Additionally, there have been no need to have an permission from competent authority to have double citizenship since the new legislation. There is an another point that must be highlighted is that there can be one more condition for gaining Turkish citizenship. This condition is leaving the previous citizenship and it is left to authority to decide.³⁶⁰⁵ It means it is not an obligatory condition for those who fulfil the other

³⁵⁹⁸ Vahit Doğan, *Turkish Citizenship Law* (2016) p 59 [Turkish]; Law n. 5901 Turkish Nationality Act, art 9.

³⁵⁹⁹ Turkish Nationality Act 2009, art 11.

³⁶⁰⁰ *ibid*, art 10.

³⁶⁰¹ *ibid*, art 12.

³⁶⁰² European Convention on Nationality 1997, art 4.

³⁶⁰³ *ibid* art 44.

³⁶⁰⁴ Law n. 5718 of International Private Law art 4 para 1(b).

³⁶⁰⁵ *ibid* art 11 para 2.

conditions. And power of discretion does not mean looking for a condition which does not take part in the act.³⁶⁰⁶ Although the competent authority have the power of discretion, this power must be used in the context of constitutional guarantee and the principle of the state of law. According to Turkish Constitution Article 66/3, there is nothing demanded for acquisition of citizenship except for the conditions which take part in the Act. Additionally, it should not be forgotten that this power is used for the citizens of the states which looks for leaving Turkish citizenship to acquire their citizenship as 'equal treatment in return'.³⁶⁰⁷

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

"The current refugee crisis is a challenge of global dimensions. We have to work hand in hand with our partners and neighbouring countries beyond EU borders which are most affected."
Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations

12.1. Background

In 1950, the United Nations High Commissioner for Refugees (UNHCR) undertook the task of protecting the rights and well-being of refugees to protect refugees and solve refugee problems worldwide by directing and coordinating international activities. United Nations agency has been trying to use everyone's right to seek asylum and the right to secure asylum in another country with option that voluntarily return home, integrate locally, or settle in a third country. However, due to the complexity of today's global refugee crisis, original interventions, aid effectiveness principles and mechanisms are no longer sufficient to provide lasting solutions. At the same time, as long as many countries have their borders closed to refugees, they perceive the large waves of immigrants as a threat to national security and stability, especially with the rise of growing Jihad terrorism, in general, the chances of resettlement of a refugee become less likely.³⁶⁰⁸ The political and social crisis that started in Syria in 2011 turned into a civil war. Several armed groups are fighting with the government of Syrian and each other and which leads one of the biggest humanitarian crises in the world. More than 400,000 people died and 11 million were forced out of their homes.³⁶⁰⁹ With the escalation of the war in Syria, EU countries have begun to close their borders to prevent refugees from transitioning to their own countries. Syrian refugees in Lebanon, Turkey and Jordan are increased more likely to stay there. In this case, the economic and social conditions of those countries were affected from the crisis, and in many cases costs increased due to limited resources. Although the international community has

³⁶⁰⁶ Vahit Doğan, *Turkish Citizenship Law* (2016) p 74.

³⁶⁰⁷ Bahadır Erdem, *Turkish Citizenship Law* (2016) p 135-136.

³⁶⁰⁸ Dogus Şimsek and Metin Çorabatur, 'Challenges and Opportunities of Refugee Integration in Turkey' (Research Centre on Asylum and Migration, December 2016) <<http://www.igamder.org/wp-content/uploads/2017/01/Challengesandopportunitiesof-refugeeintegrationinturkey.pdf>>

³⁶⁰⁹ Sawssan Abou-Zahr, 'A Home Away from Home Supporting Syrian Refugees in Turkey' (collaboration with Peace Directs, January 2017) <http://ec.europa.eu/dgs/fpi/documents/eu-showcase-syria_final.pdf>

promised to help, the fact that the sources do not address the long term, the situation of many refugees settling in and surviving their lives becomes more difficult than ever.³⁶¹⁰

12.2. Turkey's Approach

Turkey's The geographical location of the Turkey provides a rescue and transit country for many refugees. There are refugees living in Turkey outside the Syrians and Iraqis, Afghanistan, Iran, Somalia and other nations, making it the world's largest refugee host.

As a result of an unprecedented migration from the civil war in Syria, Turkey hosts more than 3 million immigrants in the world. So many immigrant receiving and lived in Turkey with 2.8 million registered immigrants while 10% are living in the camps established by the government and 90% live in urban and rural areas outside of the camps.³⁶¹¹ These camps are generally located in South East Anatolian Region of country. Refugees in the camps where 260,000 people live, activities on health education are carried out by Disaster and Emergency Management Presidency(AFAD). Though the state has no responsibility for the refugees living outside the camps, they can easily access to the education and health services. However, for many, access to these basic facilities is often limited to a variety of reasons, such as problems with registration in local authorities and language disability.³⁶¹²

12.3. How was the Financial Aid Initially Implemented?

In 2015, the European Union and its Member States decided to revise their political and financial activities to support Turkey, which is in the effort to host in terms of refugees. Then, with the conscious of common responsibility, only cooperation based on referrals between the European Union and Turkey was decided within the framework of 29 November 2015 EU-Turkey Declaration. In addition to this development, in the summit which was held on the same day the EU-Turkey Joint Action Plan (JAP) has been engaged which deals with the outcome of the Syrian conflict with Turkey and intended to address that the current crisis of migration in two ways: (1) assisting Syrians and supporting the Turkish hosting communities, and (2) strengthening co-operation to prevent irregular migration.³⁶¹³ In 2015, additional financing was needed to support the refugees in Turkey, the Council of Europe was actively engaged and the European Union Organization for Multiculturalism was established. But The EU Facility for Refugees, which supports the EU in many ways, is a coordinating establishment operating in the amount of € 3 billion for the years of the 2016-2017 to ensure the need of the refugees and the states hosting them. 3 billion euros is composing of 1 billion euros from the EU budget and € 2

³⁶¹⁰ Dogus Şimsek and Metin Çorabatır, 'Challenges and Opportunities of Refugee Integration in Turkey' (Research Centre on Asylum and Migration, December 2016) <<http://www.igamder.org/wp-content/uploads/2017/01/Challengesandopportunitiesof-refugeeintegrationinturkey.pdf>>

³⁶¹¹ European Commission, 'First Annual Report on the Facility for Refugees in Turkey' (Brussels, 2.3.2017) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_>

³⁶¹² European Commission, 'Turkey: Refugee Crisis' (ECHO Factsheet, July 2017) <http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf>

³⁶¹³ European Commission, 'First Annual Report on the Facility for Refugees in Turkey' (Brussels, 2.3.2017) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_>

billion from the EU Member States. Thanks to the funds that it provides, it focuses on many areas such as education, health and socio-economic. As of June 2017, 48 projects have been signed between Turkey and the EU and € 811 million has been paid. Within the scope of Turkish Refugees Center Facility, the total amount allocated for humanitarian and non-humanitarian activities is € 2.9 billion. All the Member States have submitted € 2 billion of contribution margin as that they promised. Up to now, more than € 1.5 billion of contracts have been executed to 46 projects, of which € 777 million has been paid. Total amount reserved for Refugee Opportunities in Turkey on humanitarian and nonhuman activities is currently € 2.2 billion.³⁶¹⁴

The European Commission signed a grant agreement worth €600 million in September 2016. The half of the agreement is for education and the other half is for health. Through this agreement may be provided nearly half a million Syrian children have access to education. As a result of the establishment of more than 500 health facilities, more than 2 million people are able to receive health services. In addition, rehabilitation mental health services are offered to a million people. There are a total of € 200 million in agreements for the construction of 70 new schools that 50.000 Syrian children can take advantage of. Another important project that ends in August 2017 is the "social integration of refugees through vocational training". The asylum seekers in the risk group were given the opportunity to reach continuous vocational trainings, these trainings were increased in the process and Turkish language education was given to all of them. As a result of these trainings, employers and asylum seekers trained were matched. Integration of asylum seekers has also accelerated with this project.

A 3 billion-euro package, which is part of the action plan negotiated with the EU, which will help build a sustainable future for the refugees in the country, can help relieve the situation of refugees in the country. Although there are very few documents on how to use this fund, the EU has accepted to pay this alliance fund package, which is accepted on the negotiating framework. There is still a set of disputes as to who will control the package of benefits and how it will be under surveillance. This grant in aid should not only be used to strengthen the boundaries, but also something must be done on behalf of more human and developmental. In addition to the uncertainties, it is not exactly predictable what will happen when the aid is over. As long as there are no sustainable and long-term solutions to the needs of refugees so that just to help with the money, it will not remove this big problem.³⁶¹⁵

12.4. What should the EU do?

The EU and all member states must show solidarity with refugees. This solidarity should not only be give lip-service but should be increased with more projects and assistance. First, we need to adopt more alternative policies responsively to human rights for save people in difficult

³⁶¹⁴ *Facility for Refugees in Turkey: Commission proposes additional € 1.4 billion in support'*

(European Commission- Press Release, Brussels, 30 June 2016)

<http://europa.eu/rapid/press-release_IP-16-2370_en.htm>

³⁶¹⁵ *'Türkiye'deki Mülteciler için AB Mali Yardım Programı: birinci yıllık raporu somut sonuçlara işaret ediyor'* (European Commission-Press Release, Brussels, 2 March 2017) <<http://www.avrupa.info.tr/tr/pr/turkiyedeki-multeciler-icin-ab-mali-yardim-programi-birinci-yillik-raporu-somut-sonuclara-isaret>>

situations from a dangerous area on a safe under the coordinated approach. The capacities of states that open their doors to many refugees, such as Turkey, should be contributed to their development in every sense. By taking into account that human life is important to everything, the political crises between the states themselves should never be a threat to the trimming of funding assistance on the refugee issue. The governments of EU must be fair in the midst of an international crisis and wherever the refugees are they should be under their responsibility to live in peace.³⁶¹⁶

Conclusions

In the Turkish Migration Law, especially after Iran – Iraq War, Yugoslavian and lastly Syrian Civil Wars, mass movements hold the most important place in legal doctrine and require a different status for the effective protection of asylum-seekers under the principle of Non-Refoulement, which is provided by temporary protection status rather than the other the statuses in international protection. Even though the geographical restriction of the responsibilities regarding the international protection of refugees is legitimate under 1951 Convention and its 1967 Protocol it is highly criticized of being non-realistic in assumptions.

After the ratification of the Law on Foreigners and International Protection (LFIP) in 2013, which is the main legislation for migration law in Turkey, Directorate General of Migration Management (DGMM) is established and since then, it is the main institution to oversee the processes related to migration and migrants. Directorate General's duties are determined in the fourth section of LFIP and varies from granting secondary protection to dealing with stateless persons, from keeping statistics to conduct integration programmes.

The recent statistics by the DGMM are regarding migrants in Turkey illustrates that 4,61 % of population of Turkey which is 3.6 million people are only refugees with temporary protection status in total. Number of Syrians who has been status as temporary protection has increased from 14.237 to 3.088.061 since 2012, right after Arabian spring begin. Apart from them, it can be demonstrated in graphs that international protection shows Iraq with 31.523, Afghanistan with 21.445 and Iran with 11.172 is the top three nationalities for the number of international protection applications in Turkey. Therefore, it would be accurate to state that impact of Turkish Migration Law to the total migrants is significantly high even though it requires certain changes in terms of protection of migrant rights, as discussed in the report as citizenship, economic, social and political rights.

Though Turkish Domestic Law, made an important progress after the decisions European Court of Human Rights concerning migrants, which are implemented as interim measures and compensation for damages for especially right to fair trial, and prohibition of torture, the general result of the Turkey Report demonstrates that further improvements are vitally required.

³⁶¹⁶ *Q&A: The EU- Turkey Deal on Migration and Refugees'* (Human Rights Watch, 3 March 2016) <<https://www.hrw.org/news/2016/03/03/qa-eu-turkey-deal-migration-and-refugees>>

Table of legislation

Provisions in Native Language	Corresponding Translation
<p>Türkiye Cumhuriyeti Anayasası, Madde 10:</p> <p>Herkes, dil, ırk, renk, cinsiyet, siyasi düşünce, felsefi inanç, din, mezhep ve benzeri sebeplerle ayırım gözetilmeksizin kanun önünde eşittir. (Ek fıkra: 7/5/2004-5170/1 md.) Kadınlar ve erkekler eşit haklara sahiptir. Devlet, bu eşitliğin yaşama geçmesini sağlamakla yükümlüdür. (Ek cümle: 7/5/2010-5982/1 md.) Bu maksatla alınacak tedbirler eşitlik ilkesine aykırı olarak yorumlanamaz. (Ek fıkra: 7/5/2010-5982/1 md.) Çocuklar, yaşlılar, özürllüler, harp ve vazife şehitlerinin dul ve yetimleri ile malul ve gaziler için alınacak tedbirler eşitlik ilkesine aykırı sayılmaz. Hiçbir kişiye, aileye, zümreye veya sınıfa imtiyaz tanınamaz. Devlet organları ve idare makamları bütün işlemlerinde (...) (2) kanun önünde eşitlik ilkesine uygun olarak hareket etmek zorundadırlar.</p>	<p>Constitution of Republic of Turkey, Article 10:</p> <p>Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. (Paragraph added on May 7, 2004; Act No. 5170) Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice. (Sentence added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality. (Paragraph added on September 12, 2010; Act No. 5982) Measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality. 5 No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings</p>

**Türkiye Cumhuriyeti Anayasası, Madde
42:**

Kimse, eğitim ve öğrenim hakkından yoksun bırakılamaz. Öğrenim hakkının kapsamı kanunla tespit edilir ve düzenlenir. Eğitim ve öğretim, Atatürk ilkeleri ve inkılapları doğrultusunda, çağdaş bilim ve eğitim esaslarına göre, Devletin gözetim ve denetimi altında yapılır. Bu esaslara aykırı eğitim ve öğretim yerleri açılmaz. Eğitim ve öğretim hürriyeti, Anayasaya sadakat borcunu ortadan kaldırmaz. İlköğretim kız ve erkek bütün vatandaşlar için zorunludur ve Devlet okullarında parasızdır. Özel ilk ve orta dereceli okulların bağlı olduğu esaslar, Devlet okulları ile erişilmek istenen seviyeye uygun olarak, kanunla düzenlenir. (Ek fıkra: 9/2/2008-5735/2 md.; İptal: Anayasa Mahkemesinin 5/6/2008 tarihli ve E.: 2008/16, K.: 2008/116 sayılı Kararı ile.) Devlet, maddi imkanlardan yoksun başarılı öğrencilerin, öğrenimlerini sürdürebilmeleri amacı ile burslar ve başka yollarla gerekli yardımları yapar. Devlet, durumları sebebiyle özel eğitime ihtiyacı olanları topluma yararlı kılacak tedbirleri alır. Eğitim ve öğretim kurumlarında sadece eğitim, öğretim, araştırma ve inceleme ile ilgili faaliyetler yürütülür. Bu faaliyetler her ne suretle olursa olsun engellenemez. Türkçeden başka hiçbir dil, eğitim ve öğretim kurumlarında Türk vatandaşlarına ana dilleri olarak okutulamaz ve öğretilmez. Eğitim ve öğretim kurumlarında okutulacak yabancı diller ile yabancı dille eğitim ve öğretim yapan okulların tabi olacağı esaslar kanunla düzenlenir. Milletlerarası andlaşma hükümleri saklıdır.

**Constitution of Republic of Turkey,
Article 42:**

No one shall be deprived of the right of education. The scope of the right to education shall be defined and regulated by law. Education shall be conducted along the lines of the principles and reforms of Atatürk, based on contemporary scientific and educational principles, under the supervision and control of the State. Educational institutions contravening these principles shall not be established. The freedom of education does not relieve the individual from loyalty to the Constitution. Primary education is compulsory for all citizens of both sexes and is free of charge in state schools. The principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for the state schools. (Paragraph added on February 2, 2008; Act No. 5735, and annulled by the decision of the Constitutional Court dated June 5, 2008 numbered E. 2008/16, K. 2008/116) The State shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. The State shall take necessary measures to rehabilitate those in need of special education so as to render such people useful to society. Training, education, research, and study are the only activities that shall be pursued at institutions of education. These activities shall not be obstructed in any way. No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of education. Foreign languages to be taught in institutions of education and the rules to be followed by

	<p>schools conducting education in a foreign language shall be determined by law. The provisions of international treaties are reserved.</p>
<p>Türkiye Cumhuriyeti Anayasası, Madde 66/1:</p> <p>Devlet harp ve vazife şehitlerinin dul ve yetimleriyle, malül ve gazileri korur ve toplumda kendilerine yaraşır bir hayat seviyesi sağlar. Devlet, sakatların korunmalarını ve toplum hayatına intibaklarını sağlayıcı tedbirleri alır. Yaşlılar, Devletçe korunur, Yaşlılara Devlet yardımı ve sağlanacak diğer haklar ve kolaylıklar kanunla düzenlenir. Devlet, korunmaya muhtaç çocukların topluma kazandırılması için her türlü tedbiri alır. Bu amaçlarla gerekli teşkilat ve tesisleri kurar veya kurdurur.</p>	<p>Constitution of Republic of Turkey, Article 66/1:</p> <p>The State shall protect the widows and orphans of martyrs of war and duty, together with invalid and war veterans, and ensure that they enjoy a decent standard of living. The State shall take measures to protect the disabled and secure their integration into community life. The aged shall be protected by the State. State assistance to, and other rights and benefits of the aged shall be regulated by law. The State shall take all kinds of measures for social resettlement of children in need of protection. To achieve these aims the State shall establish the necessary organizations or facilities, or arrange for their establishment.</p>
<p>Türkiye Cumhuriyeti Anayasası, Madde 68:</p> <p>Vatandaşlar, siyasi parti kurma ve usulüne göre partilere girme ve partilerden ayrılma hakkına sahiptir. Parti üyesi olabilmek için onsekiz yaşını doldurmuş olmak gerekir. Siyasi partiler, demokratik siyasi hayatın vazgeçilmez unsurlarıdır. Siyasi partiler önceden izin almadan kurulurlar ve Anayasa ve kanun hükümleri içerisinde faaliyetlerini sürdürürler. Siyasi partilerin tüzük ve programları ile eylemleri, Devletin bağımsızlığına, ülkesi ve milletiyle bölünmez bütünlüğüne, insan haklarına, eşitlik ve hukuk devleti ilkelerine, millet egemenliğine, demokratik ve</p>	<p>Constitution of Republic of Turkey, Article 68:</p> <p>Citizens have the right to form political parties and duly join and withdraw from them. One must be over eighteen years of age to become a member of a party. Political parties are indispensable elements of democratic political life. Political parties shall be formed without prior permission, and shall pursue their activities in accordance with the provisions set forth in the Constitution and laws. The statutes and programs, as well as the activities of political parties shall not be contrary to the independence of the State, its indivisible integrity with its territory and nation, human</p>

<p>laik Cumhuriyet ilkelerine aykırı olamaz; sınıf veya zümre diktatörlüğünü veya herhangi bir tür diktatörlüğü savunmayı ve yerleştirmeyi amaçlayamaz; suç işlenmesini teşvik edemez. Hakimler ve savcılar, Sayıştay dahil yüksek yargı organları mensupları, kamu kurum ve kuruluşlarının memur statüsündeki görevlileri, yaptıkları hizmet bakımından işçi niteliği taşımayan diğer kamu görevlileri, Silahlı Kuvvetler mensupları ile yükseköğretim öncesi öğrencileri siyasi partilere üye olamazlar. Yüksek öğretim elemanlarının siyasi partilere üye olmaları ancak kanunla düzenlenebilir. Kanun bu elemanların, siyasi partilerin merkez organları dışında kalan parti görevi almalarına cevaz veremez ve parti üyesi yüksek öğretim elemanlarının yüksek öğretim kurumlarında uyacakları esasları belirler. Yüksek öğretim öğrencilerinin siyasi partilere üye olabilmelerine ilişkin esaslar kanunla düzenlenir. Siyasi partilere, Devlet, yeterli düzeyde ve hakça mali yardım yapar. Partilere yapılacak yardımın, alacakları üye aidatının ve bağışların tabi olduğu esaslar kanunla düzenlenir.</p>	<p>rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to promote or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime. Judges and prosecutors, members of higher judicial organs including those of the Court of Accounts, civil servants in public institutions and organizations, other public servants who are not considered to be labourers by virtue of the services they perform, members of the armed forces and students who are not yet in higher education, shall not become members of political parties. The membership of the teaching staff at higher education to political parties is regulated by law. This law shall not allow those members to assume responsibilities outside the central organs of the political parties and it also sets forth the regulations which the teaching staff at higher education institutions shall observe as members of political parties in the higher education institutions. The principles concerning the membership of students at higher education to political parties are regulated by law. The State shall provide the political parties with adequate financial means in an equitable manner. The principles regarding aid to political parties, as well as collection of dues and donations are regulated by law.</p>
<p>Türkiye Cumhuriyeti Anayasası, Madde 90:</p>	<p>Constitution of Republic of Turkey, Article 90:</p>
<p>Türkiye Cumhuriyeti adına yabancı devletlerle</p>	<p>The ratification of treaties concluded with</p>

ve milletlerarası kuruluşlarla yapılacak andlaşmaların onaylanması, Türkiye Büyük Millet Meclisinin onaylamayı bir kanunla uygun bulmasına bağlıdır. Ekonomik, ticari veya teknik ilişkileri düzenleyen ve süresi bir yılı aşmayan andlaşmalar, Devlet Maliyesi bakımından bir yüklenme getirmemek, kişi hallerine ve Türklerin yabancı memleketlerdeki mülkiyet haklarına dokunmamak şartıyla, yayımlanma ile yürürlüğe konabilir. Bu takdirde bu andlaşmalar, yayımlarından başlayarak iki ay içinde Türkiye Büyük Millet Meclisinin bilgisine sunulur. Milletlerarası bir andlaşmaya dayanan uygulama andlaşmaları ile kanunun verdiği yetkiye dayanılarak yapılan ekonomik, ticari, teknik veya idari andlaşmaların Türkiye Büyük Millet Meclisince uygun bulunması zorunluğu yoktur; ancak, bu fıkraya göre yapılan ekonomik, ticari veya özel kişilerin haklarını ilgilendiren andlaşmalar, yayımlanmadan yürürlüğe konulamaz. Türk kanunlarına değişiklik getiren her türlü andlaşmaların yapılmasında birinci fıkra hükmü uygulanır. Usulüne göre yürürlüğe konulmuş Milletlerarası andlaşmalar kanun hükmündedir. Bunlar hakkında Anayasaya aykırılık iddiası ile Anayasa Mahkemesine başvurulamaz. (Ek cümle: 7/5/2004-5170/7 md.) Usulüne göre yürürlüğe konulmuş temel hak ve özgürlüklere ilişkin milletlerarası andlaşmalarla kanunların aynı konuda farklı hükümler içermesi nedeniyle çıkabilecek uyuşmazlıklarda milletlerarası andlaşma hükümleri esas alınır.

foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification. Agreements regulating economic, commercial or technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the State, and provided they do not 42 interfere with the status of individuals or with the property rights of Turks abroad. In such cases, these agreements shall be brought to the knowledge of the Grand National Assembly of Turkey within two months of their promulgation. Implementation agreements based on an international treaty, and economic, commercial, technical, or administrative agreements, which are concluded depending on the authorization as stated in the law, shall not require approval of the Grand National Assembly of Turkey. However, economic, commercial agreements or agreements relating to the rights of individuals concluded under the provision of this paragraph shall not be put into effect unless promulgated. Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph. International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. (Sentence added on May 7, 2004; Act No. 5170) In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions

	of international agreements shall prevail.
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 7:</p> <p>(1) Aşağıdaki yabancılar, Türkiye'ye girişlerine izin verilmeyerek geri çevrilir: a) Pasaportu, pasaport yerine geçen belgesi, vizesi veya ikamet ya da çalışma izni olmayanlar ile bu belgeleri veya izinleri hileli yollarla edindiği veya sahte olduğu anlaşılanlar b) Vize, vize muafiyeti veya ikamet izin süresinin bitiminden itibaren en az altmış gün süreli pasaport veya pasaport yerine geçen belgesi olmayanlar c) 15 inci maddenin ikinci fıkrası saklı kalmak kaydıyla, vize muafiyeti kapsamında olsalar dahi, 15 inci maddenin birinci fıkrasında sayılan yabancılar (2) Bu maddeyle ilgili olarak yapılan işlemler, geri çevrilen yabancılar tebliğ edilir. Tebligatta, yabancıların karara karşı itiraz haklarını etkin şekilde nasıl kullanabilecekleri ve bu süreçteki diğer yasal hak ve yükümlülükleri de yer alır.</p>	<p>Law on Foreigners and International Protection, Article 7:</p> <p>(1) Foreigners who shall be refused to enter into Turkey and turned are those: a) who do not hold a passport, a travel document, a visa or, a residence or a work permit or, such documents or permits has been obtained deceptively or, such documents or permits are false; b) whose passport or travel document expires sixty days prior to the expiry date of the visa, visa exemption or the residence permit; c) without prejudice to paragraph two of Article 15, foreigners listed in paragraph one of Article 15 even if they are exempted from a visa. (2) Actions in connection with this Article shall be notified to foreigners who are refused entry. This notification shall also include information on how foreigners would effectively exercise their right of appeal against the decision as well as other legal rights and obligations applicable in the process. Implementation regarding international protection claims</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 15:</p> <p>1) Aşağıda belirtilen yabancılar vize verilmez:</p> <p>a) Talep ettikleri vize süresinden en az altmış gün daha uzun süreli pasaport ya da pasaport yerine geçen belgesi olmayanlar</p> <p>b) Türkiye'ye girişleri yasaklı olanlar</p> <p>c) Kamu düzeni veya kamu güvenliği açısından sakıncalı görülenler</p> <p>ç) Kamu sağlığına tehdit olarak nitelendirilen hastalıklardan birini taşıyanlar</p> <p>d) Türkiye Cumhuriyeti'nin taraf olduğu</p>	<p>Law on Foreigners and International Protection, Article 15:</p> <p>(1) Visa shall be refused for those foreigners whose/</p> <p>who:</p> <p>a) passport or travel document is not valid at least sixty days beyond the expiry date of the visa requested;</p> <p>b) are banned from entering Turkey;</p> <p>c) are considered undesirable for reasons of public order or public security;</p> <p>ç) are identified to have a disease posing</p>

<p>anlaşmalar uyarınca, suçluların geri verilmesine esas olan suç veya suçlardan sanık olanlar ya da hükümlü bulunanlar</p> <p>e) Kalacağı süreyi kapsayan geçerli sağlık sigortası bulunmayanlar</p> <p>f) Türkiye'ye giriş, Türkiye'den geçiş veya Türkiye'de kalış amacını haklı nedenlere dayandıramayanlar</p> <p>g) Kalacağı sürede, yeterli ve düzenli maddi imkâna sahip olmayanlar</p> <p>ğ) Vize ihlalden veya önceki ikamet izninden doğan ya da 21/7/1953 tarihli ve 6183 sayılı Amme Alacaklarının Tahsil Usulü Hakkında Kanuna göre takip ve tahsil edilmesi gereken alacakları ödemeyi kabul etmeyenler veya 26/9/2004 tarihli ve 5237 sayılı Türk Ceza Kanununa göre takip edilen borç ve cezalarını ödemeyi kabul etmeyenler</p> <p>(2) Bu madde kapsamında olmasına rağmen vize verilmesinde yarar görülenlere Bakanın onayıyla vize verilebilir.</p>	<p>public health threat;</p> <p>d) are suspects of or, are convicted of, a crime(s) that are subject to extradition pursuant to agreements to which the Republic of Turkey is a party to;</p> <p>e) are not covered with a valid medical insurance for the duration of their stay;</p> <p>f) fail to supply proof of the reason for their purpose of entry into, transit from or stay in Turkey;</p> <p>g) do not possess sufficient and sustainable resources [for the duration of their stay]</p> <p>ğ) would refuse to pay receivables, originating from overstaying the duration of visa or a previous residence permit duration or, that should be enforced and collected pursuant to the Law on the Procedure of Collection of Public Receivables No 6183 of 21/07/1953 or, debts and fines enforced pursuant to the Turkish Penal Code No 5237 of 26/09/2004.</p> <p>(2) Nevertheless if it is deemed to be of interest to issue a visa to such a foreigner who falls within the scope of this article, a visa may be granted subject to the Minister's approval.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 19:</p> <p>Türkiye'de, vizenin veya vize muafiyetinin tanıdığı süreden ya da doksan günden fazla kalacak yabancıların ikamet izni almaları zorunludur. İkamet izni, altı ay içinde kullanılmaya başlanmadığında geçerliliğini kaybeder.</p>	<p>Law on Foreigners and International Protection, Article 19:</p> <p>Foreigners who would stay in Turkey beyond the duration of a visa or a visa exemption or, [in any case] longer than ninety days should obtain a residence permit. The residence permit shall become invalid if not used within six months.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 30:</p>	<p>Law on Foreigners and International Protection, Article 30:</p>

<p>1) İkamet izni çeşitleri şunlardır:</p> <p>a) Kısa dönem ikamet izni</p> <p>b) Aile ikamet izni</p> <p>c) Öğrenci ikamet izni</p> <p>ç) Uzun dönem ikamet izni</p> <p>d) İnsani ikamet izni</p> <p>e) İnsan ticareti mağduru ikamet izni</p>	<p>Types of residence permits are the listed below:</p> <p>a) short-term residence permit;</p> <p>b) family residence permit;</p> <p>c) student residence permit;</p> <p>ç) long-term residence permit;</p> <p>d) humanitarian residence permit;</p> <p>e) victim of human trafficking residence permit</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 31/3:</p> <p>(3) Birinci fıkranın (h) bendi kapsamında verilen ikamet izinleri en fazla iki defa verilebilir.</p>	<p>Law on Foreigners and International Protection, Article 31/3:</p> <p>Residence permits within the scope of subparagraph (h) of the first paragraph shall only be issued twice.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 34/4:</p> <p>Aile ikamet izinleri, on sekiz yaşına kadar, öğrenci ikamet izni almadan ilk ve ortaöğretim kurumlarında eğitim hakkı sağlar.</p>	<p>Law on Foreigners and International Protection, Article 34/4:</p> <p>Family residence permits shall entitle the holder right of education in primary and secondary educational institutions until the age of 18 the without obtaining a student residence permit.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 38:</p> <p>Türkiye’de bir yükseköğretim kurumunda ön lisans, lisans, yüksek lisans ya da doktora öğrenimi görecek yabancılara öğrenci ikamet izni verilir.</p> <p>(2) Bakımı ve masrafları gerçek veya tüzel kişi tarafından üstlenilen ilk ve orta derecede öğrenim görecek yabancılara, velilerinin veya</p>	<p>Law on Foreigners and International Protection, Article 38:</p> <p>(1) A student residence permit shall be granted to foreigners who shall attend an associate, undergraduate, graduate or postgraduate programme in a higher education institution in Turkey.</p> <p>(2) To foreigners who shall receive primary and secondary</p>

<p>yasal temsilcilerinin muvafakatiyle öğrenimleri süresince birer yıllık sürelerle öğrenci ikamet izni verilebilir ve uzatılabilir.</p> <p>(3) Öğrenci ikamet izni, öğrencinin anne ve babası ile diğer yakınlarına, ikamet izni alma konusunda hiçbir hak sağlamaz.</p> <p>(4) Öğrenim süresi bir yıldan kısa ise öğrenci ikamet izni süresi öğrenim süresini aşamaz.</p> <p>(5) (Ek: 28/7/2016-6735/27 md.) Kamu kurum ve kuruluşları aracılığıyla gelerek Türkiye’de öğrenim görecek yabancılara, öğrenim süresince ikamet izni verilebilir.</p>	<p>education and whose care and expenses shall be covered by a natural or legal person, subject to</p> <p>46 Law on Foreigners and International Protection</p> <p>the consent of their parents or legal guardian</p> <p>a one</p> <p>year student residence permit shall be granted and</p> <p>renewed throughout the course of their study.</p> <p>(3) The student residence permit shall not entitle the</p> <p>parents as well as more distant family members of</p> <p>the foreigner the right of obtaining residence permit.</p> <p>(4) In cases where the period of study is less than one</p> <p>year, the duration of the residence permit shall not</p> <p>exceed the period of study.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 54:</p> <p>(1) Aşağıda sayılan yabancılar hakkında sınır dışı etme kararı alınır:</p> <p>a) 5237 sayılı Kanununun 59 uncu maddesi kapsamında sınır dışı edilmesi gerektiği değerlendirilenler</p> <p>b) Terör örgütü yöneticisi, üyesi, destekleyicisi veya çıkar amaçlı suç örgütü yöneticisi, üyesi veya destekleyicisi olanlar</p> <p>c) Türkiye’ye giriş, vize ve ikamet izinleri için yapılan işlemlerde gerçek dışı bilgi ve sahte belge kullananlar</p> <p>ç) Türkiye’de bulunduğu süre zarfında geçimini meşru olmayan yollardan sağlayanlar</p> <p>d) Kamu düzeni veya kamu güvenliği ya da</p>	<p>Law on Foreigners and International Protection, Article 54:</p> <p>(1) A removal decision shall be issued in respect of those foreigners listed below who/whose:</p> <p>a) are deemed to be removed pursuant to Article 59 of the Turkish Penal Code № 5237;</p> <p>b) are leaders, members or supporters of a terrorist organisation or a benefit oriented criminal organisation;</p> <p>c) submit untrue information and false documents during the entry, visa and residence permit actions;</p> <p>ç) made their living from illegitimate means during their stay in Turkey;</p>

kamu sağlığı açısından tehdit oluşturanlar
e) Vize veya vize muafiyeti süresini on günden fazla aşanlar veya vizesi iptal edilenler
f) İkamet izinleri iptal edilenler
g) İkamet izni bulunup da süresinin sona ermesinden itibaren kabul edilebilir gerekçesi olmadan ikamet izni süresini on günden fazla ihlal edenler
ğ) Çalışma izni olmadan çalıştığı tespit edilenler
h) Türkiye'ye yasal giriş veya Türkiye'den yasal çıkış hükümlerini ihlal edenler
ı) Hakkında Türkiye'ye giriş yasağı bulunmasına rağmen Türkiye'ye geldiği tespit edilenler
i) Uluslararası koruma başvurusu reddedilen, uluslararası korumadan hariçte tutulan, başvurusu kabul edilemez olarak değerlendirilen, başvurusunu geri çeken, başvurusu geri çekilmiş sayılan, uluslararası koruma statüleri sona eren veya iptal edilenlerden haklarında verilen son karardan sonra bu Kanunun diğer hükümlerine göre Türkiye'de kalma hakkı bulunmayanlar
j) İkamet izni uzatma başvuruları reddedilenlerden, on gün içinde Türkiye'den çıkış yapmayanlar
k) (Ek: 3/10/2016-KHK-676/36 md.) Uluslararası kurum ve kuruluşlar tarafından tanımlanan terör örgütleriyle ilişkili olduğu değerlendirilenler.
(2) (Değişik: 3/10/2016-KHK-676/36 md.) Bu maddenin birinci fıkrasının (b), (d) ve (k) bentleri kapsamında oldukları değerlendirilen uluslararası koruma başvuru sahibi veya uluslararası koruma statüsü sahibi kişiler hakkında uluslararası koruma işlemlerinin her aşamasında sınır dışı etme kararı alınabilir.

d) pose a public order or public security or public health threat;
e) has overstayed their visa or the visa exemption period for more than ten days or, whose visas are cancelled;
f) residence permits are cancelled;
g) overstayed the expiry date of the duration of their residence permit for more ten days without an acceptable reason;
ğ) are determined to be working without a work permit;
h) breach the terms and conditions for legal entry into or exit from Turkey;
ı) are determined to have entered into Turkey despite an entry ban to Turkey;
i) international protection claim has been refused; are excluded from international protection; application is considered inadmissible; has withdrawn the application or the application is considered withdrawn; international protection status has ended or has been cancelled, provided that pursuant to the other provisions set out in this Law they no longer have the right of stay in Turkey after the final decision.
j) fail to leave Turkey within ten days in cases where their residence permit renewal application has been refused.
(2) A removal decision may be issued in respect of applicants or international protection beneficiaries solely when there are serious reasons to believe that they pose a threat to national security of the Turkey or if they have been convicted upon a final decision for an offence constituting a public order threat.

<p style="text-align: center;">Yabancılar ve Uluslararası Koruma Kanunu, Madde 59:</p> <p>(1) Geri gönderme merkezlerinde;</p> <p>a) Yabancı tarafından bedeli karşılanamayan acil ve temel sağlık hizmetleri ücretsiz verilir,</p> <p>b) Yabancıya; yakınlarına, notere, yasal temsilciye ve avukata erişme ve bunlarla görüşme yapabilme, ayrıca telefon hizmetlerine erişme imkânı sağlanır,</p> <p>c) Yabancıya; ziyaretçileri, vatandaşı olduğu ülke konsolosluk yetkilisi, Birleşmiş Milletler Mülteciler Yüksek Komiserliği görevlisiyle görüşebilme imkânı sağlanır,</p> <p>ç) Çocukların yüksek yararları gözetilir, aileler ve refakatsiz çocuklar ayrı yerlerde barındırılır,</p> <p>d) Çocukların eğitim ve öğretimden yararlandırılmaları hususunda, Millî Eğitim Bakanlığınca gerekli tedbirler alınır.</p> <p>(2) Göç alanında uzmanlığı bulunan ilgili sivil toplum kuruluşu temsilcileri, Genel Müdürlüğün izniyle geri gönderme merkezlerini ziyaret edebilirler.</p>	<p style="text-align: center;">Law on Foreigners and International Protection, Article 59:</p> <p>(1) In the removal centres:</p> <p>a) emergency and primary healthcare services of which the foreigner is unable to cover the cost shall be provided free of charge;</p> <p>b) the foreigner shall be allowed access to and given the opportunity to meet with their relatives, the notary public, his/her legal representative and the lawyer, as well as access to telephone services;</p> <p>c) the foreigner shall be given the opportunity to meet with the visitors, consular official of their country of citizenship, and officials of the United Nations High Commissioner for Refugees;</p> <p>ç) the best interest of the child shall be considered, and families and unaccompanied minors shall be accommodated in separate areas;</p> <p>d) the Ministry of National Education shall take the necessary measures to ensure that children have access to education.</p> <p>(2) Representatives of the relevant non-governmental organisations with expertise in the field of migration may visit the removal centres</p>
<p style="text-align: center;">Yabancılar ve Uluslararası Koruma Kanunu, Madde 61:</p> <p>Avrupa ülkelerinde meydana gelen olaylar nedeniyle; ırkı, dini, tabiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasi düşüncelerinden dolayı zulme uğrayacağından haklı sebeplerle korktuğu için vatandaşı olduğu ülkenin dışında bulunan ve bu ülkenin korumasından yararlanamayan ya da söz</p>	<p style="text-align: center;">Law on Foreigners and International Protection, Article 61:</p> <p>A person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to</p>

<p>konusu korku nedeniyle yararlanmak istemeyen yabancıya veya bu tür olaylar sonucu önceden yaşadığı ikamet ülkesinin dışında bulunan, oraya dönemeyen veya söz konusu korku nedeniyle dönmek istemeyen vatansız kişiye statü belirleme işlemleri sonrasında mülteci statüsü verilir.</p>	<p>avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 62:</p> <p>Avrupa ülkeleri dışında meydana gelen olaylar sebebiyle; ırkı, dini, tabiiyeti, belli bir toplumsal gruba mensubiyeti veya siyasi düşüncelerinden dolayı zulme uğrayacağından haklı sebeplerle korktuğu için vatandaşı olduğu ülkenin dışında bulunan ve bu ülkenin korumasından yararlanamayan, ya da söz konusu korku nedeniyle yararlanmak istemeyen yabancıya veya bu tür olaylar sonucu önceden yaşadığı ikamet ülkesinin dışında bulunan, oraya dönemeyen veya söz konusu korku nedeniyle dönmek istemeyen vatansız kişiye statü belirleme işlemleri sonrasında şartlı mülteci statüsü verilir. Üçüncü ülkeye yerleştirilinceye kadar, şartlı mültecinin Türkiye’de kalmasına izin verilir.</p>	<p>Law on Foreigners and International Protection, Article 62:</p> <p>A person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 63:</p> <p>1) Mülteci veya şartlı mülteci olarak nitelendirilemeyen, ancak menşe ülkesine veya ikamet ülkesine geri gönderildiği takdirde; a) Ölüm cezasına mahkûm olacak veya ölüm cezası infaz edilecek,</p>	<p>Law on Foreigners and International Protection, Article 63:</p> <p>(1) A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the</p>

<p>b) İşkenceye, insanlık dışı ya da onur kırıcı ceza veya muameleye maruz kalacak,</p> <p>c) Uluslararası veya ülke genelindeki silahlı çatışma durumlarında, ayırım gözetmeyen şiddet hareketleri nedeniyle şahsına yönelik ciddi tehditle karşılaşacak, olması nedeniyle menşe ülkesinin veya ikamet ülkesinin korumasından yararlanamayan veya söz konusu tehdit nedeniyle yararlanmak istemeyen yabancı ya da vatansız kişiye, statü belirleme işlemleri sonrasında ikincil koruma statüsü verilir.</p>	<p>country of origin or country of [former] habitual residence would:</p> <p>a) be sentenced to death or face the execution of the death penalty;</p> <p>b) face torture or inhuman or degrading treatment or punishment;</p> <p>c) face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict; and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 65:</p> <p>1) Uluslararası koruma başvuruları valiliklere bizzat yapılır.</p> <p>(2) Başvuruların ülke içinde veya sınır kapılarında kolluk birimlerine yapılması hâlinde, bu başvurular derhâl valiliğe bildirilir. Başvuruyla ilgili işlemler valilikçe yürütülür.</p> <p>(3) Her yabancı veya vatansız kişi kendi adına başvuru yapabilir. Başvuru sahibi, başvuruları aynı gerekçeye dayanan ve kendisiyle birlikte gelen aile üyeleri adına başvuru yapabilir. Bu durumda, ergin aile üyelerinin, kendi adlarına başvuruda bulunulmasına yönelik muvafakati alınır.</p> <p>(4) Makul bir süre içinde valiliklere kendiliğinden uluslararası koruma başvurusunda bulunanlar hakkında; yasa dışı girişlerinin veya kalışlarının geçerli nedenlerini açıklamak kaydıyla, Türkiye'ye yasal giriş şartlarını ihlal etmek veya Türkiye'de yasal şekilde bulunmaktan dolayı cezai işlem yapılmaz.</p>	<p>Law on Foreigners and International Protection, Article 65:</p> <p>(1) International protection applications shall be lodged with the governorates in person.</p> <p>(2) In cases where an application is lodged with law enforcement units within the country or at the border gates, the application shall immediately be reported to the governorates. The governorates shall carry-out the actions related to the application.</p> <p>(3) Every foreigner or stateless person is entitled to apply on their own behalf. Applicant may apply on behalf of accompanying family members whose applications are on the same grounds. In such cases, consent of the adult family members shall be required for applications made on their behalf.</p> <p>(4) Persons who apply to the governorates for international protection within a reasonable period of time on their own accord shall not be subjected to</p>

<p>(5) Hürriyeti kısıtlanan kişilerin uluslararası koruma başvuruları, valiliğe derhâl bildirilir. Başvuruların alınması ve değerlendirilmesi, diğer adli ve idari işlemlerin ya da tedbir ve yaptırımların uygulanmasını engellemez.</p>	<p>criminal action for breaching the terms and conditions of legal entry into Turkey or illegally staying in Turkey, provided that they shall provide acceptable reasons for such illegal entry or presence.</p> <p>(5) International protection application lodged by persons whose freedom has been restricted shall immediately be reported to the governorates. The receipt and assessment of applications shall not prevent the enforcement of other judicial or administrative actions, measures, and sanctions.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 89/3:</p> <p>(3) Başvuru sahibi veya uluslararası koruma statüsü sahibi kişilerden;</p> <p>a) Herhangi bir sağlık güvencesi olmayan ve ödeme gücü bulunmayanlar, 31/5/2006 tarihli ve 5510 sayılı Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu hükümlerine tabidir. Genel sağlık sigortasından faydalanacak kişilerin primlerinin ödenmesi için Genel Müdürlük bütçesine ödenek konulur. Primleri Genel Müdürlük tarafından ödenenlerden ödeme güçlerine göre primin tamamı veya belli bir oranı talep edilir.</p> <p>b) Sağlık güvencesi veya ödeme gücünün bulunduğu veya başvurunun sadece tıbbi tedavi görmek amacıyla yapıldığı sonradan anlaşılanlar, genel sağlık sigortalılıklarının sona erdirilmesi için en geç on gün içinde Sosyal Güvenlik Kurumuna bildirilir ve yapılan tedavi ve ilaç masrafları ilgililerden geri alınır.</p>	<p>Law on Foreigners and International Protection, Article 89/3:</p> <p>(3) For those applicants or international protection beneficiaries who:</p> <p>a) are not covered with any medical insurance and do not have financial means [to afford medical services] provisions of the Social Security and Universal Medical Insurance Law № 5510 of 31/05/2006 shall apply. For the payment of the premiums on behalf of persons to benefit from the universal medical insurance, funds shall be allocated to the budget of the Directorate General. Persons, whose premiums are paid by the Directorate General, shall be asked to contribute fully or partially in proportion to their financial means.</p> <p>b) those who at a later date would be found to already have had medical insurance coverage or the financial means or, to have applied [for asylum]</p>

	<p>for the sole purpose of receiving medical treatment shall be reported to the Social Security Authority within ten days at the latest for termination of their universal health insurance</p> <p>and the expenditures related to the treatment and medication shall be reimbursed from them.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 91:</p> <p>(1) Ülkesinden ayrılmaya zorlanmış, ayrıldığı ülkeye geri dönemeyen, acil ve geçici koruma bulmak amacıyla kitlesel olarak sınırlarımıza gelen veya sınırlarımızı geçen yabancılara geçici koruma sağlanabilir. (2) Bu kişilerin Türkiye'ye kabulü, Türkiye'de kalışı, hak ve yükümlülükleri, Türkiye'den çıkışlarında yapılacak işlemler, kitlesel hareketlere karşı alınacak tedbirlerle ulusal ve uluslararası kurum ve kuruluşlar arasındaki iş birliği ve koordinasyon, merkez ve taşrada görev alacak kurum ve kuruluşların görev ve yetkilerinin belirlenmesi, Bakanlar Kurulu tarafından çıkarılacak yönetmelikle düzenlenir</p>	<p>Law on Foreigners and International Protection, Article 91:</p> <p>(1) Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection. (2) The actions to be carried out for the reception of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations shall be stipulated in a Directive to be issued by the Council of Ministers.</p>

<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 103</p> <p>Göç alanına ilişkin politika ve stratejileri uygulamak, bu konularla ilgili kurum ve kuruluşlar arasında koordinasyonu sağlamak, yabancıların Türkiye'ye giriş ve Türkiye'de kalışları, Türkiye'den çıkışları ve sınır dışı edilmeleri, uluslararası koruma, geçici koruma ve insan ticareti mağdurlarının korunmasıyla ilgili iş ve işlemleri yürütmek üzere İçişleri Bakanlığına bağlı Göç İdaresi Genel Müdürlüğü kurulmuştur.</p>	<p>Law on Foreigners and International Protection, Article 103</p> <p>The Directorate General of Migration Management has been established under the Ministry of Interior in order to implement migration policies and strategies, ensure coordination among relevant agencies and organisations, and carry-out functions and actions related to the entry into, stay in and exit from of foreigners in Turkey as well as their removal, international protection, temporary protection and the protection of victims of human trafficking.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 104</p> <p>Genel Müdürlüğün görev ve yetkileri şunlardır:</p> <p>a) Göç alanına ilişkin, mevzuatın ve idari kapasitenin geliştirilmesi, politika ve stratejilerin belirlenmesi konularında çalışmalar yürütmek ve Bakanlar Kurulunca belirlenen politika ve stratejilerin uygulanmasını izlemek ve koordine etmek</p> <p>b) Göç Politikaları Kurulunun sekretarya hizmetlerini yürütmek, Kurul kararlarının uygulanmasını takip etmek</p> <p>c) Göçle ilgili iş ve işlemleri yürütmek</p> <p>ç) 19/9/2006 tarihli ve 5543 sayılı İskân Kanununda Bakanlığa verilen görevleri yürütmek</p> <p>d) İnsan ticareti mağdurlarının korunmasına ilişkin iş ve işlemleri yürütmek</p> <p>e) Türkiye'de bulunan vatansız kişileri tespit etmek ve bu kişilerle ilgili iş ve işlemleri</p>	<p>Law on Foreigners and International Protection, Article 104</p> <p>The duties and mandate of the Directorate General of Migration Management are to:</p> <p>a) develop legislation and administrative capacity and carry-out work on developing policies and strategies in the field of migration as well as monitor and coordinate the implementation of policies and strategies determined by the Council of Ministers;</p> <p>b) provide secretariat services for the Migration Policies Board and follow up on the implementation of the decisions of the Board;</p> <p>c) carry-out activities and actions related to migration;</p> <p>ç) carry-out duties assigned to the Ministry pursuant to the Settlement Law № 5543 of 19/09/2006;</p> <p>d) carry-out activities and actions for the</p>

<p>yürütmek</p> <p>f) Uyum süreçlerine ilişkin iş ve işlemleri yürütmek</p> <p>g) Geçici korumaya ilişkin iş ve işlemleri yürütmek</p> <p>ğ) Düzensiz göçle mücadele edilebilmesi amacıyla kolluk birimleri ve ilgili kamu kurum ve kuruluşları arasında koordinasyonu sağlamak, tedbirler geliştirmek, alınan tedbirlerin uygulanmasını takip etmek</p> <p>h) Kamu kurum ve kuruluşlarının göç alanına yönelik faaliyetlerinin programlanmasına ve projelendirilmesine yardımcı olmak, proje tekliflerini değerlendirmek ve onaylamak, yürütülen çalışma ve projeleri izlemek, bu çalışma ve projelerin uluslararası standartlara uygun şekilde yürütülmesine destek vermek</p> <p>ı) Mevzuatla verilen diğer görevleri yürütmek</p> <p>(2) Genel Müdürlük, görevleriyle ilgili konularda kamu kurum ve kuruluşları, üniversiteler, yerel yönetimler, sivil toplum kuruluşları, özel sektör ve uluslararası kuruluşlarla iş birliği ve koordinasyonu sağlamakla yetkilidir.</p> <p>(3) Genel Müdürlüğün bu Kanun kapsamındaki her tür bilgi ve belge talebi, ilgili kurum ve kuruluşlar tarafından geciktirilmeden yerine getirilir.</p>	<p>protection</p> <p>of victims of human trafficking;</p> <p>e) determine stateless persons in Turkey and carry-out activities and actions related to such persons;</p> <p>f) carry-out activities and actions related to harmonization;</p> <p>g) carry-out activities and actions related to temporary protection;</p> <p>ğ) ensure coordination among law enforcement units and relevant public institutions and agencies, develop measures, and follow up on the implementation of such measures to combat irregular migration;</p> <p>h) assist public institutions and agencies in scheduling and developing projects related to migration, evaluate and approve project proposals, monitor the work and on-going projects, support the implementation of such work and projects to ensure their compliance with international standards; and,</p> <p>ı) carry-out other duties assigned through legislation.</p> <p>(2) The Directorate General is authorised to ensure cooperation and coordination with public institutions and agencies, universities, local governments, non-governmental organisations, and private and international organisations in relation to its duties.</p> <p>(3) The relevant agencies and organisations shall, without delay, respond to the requests to provide any information and documents by the Directorate General pursuant to this Law.</p>
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**Yabancılar ve Uluslararası Koruma
Kanunu, Madde 105:**

(1) Göç Politikaları Kurulu, İçişleri Bakanının başkanlığında, Aile ve Sosyal Politikalar, Avrupa Birliği, Çalışma ve Sosyal Güvenlik, Dışişleri, İçişleri, Kültür ve Turizm, Maliye, Millî Eğitim, Sağlık ve Ulaştırma, Denizcilik ve Haberleşme bakanlıkları müsteşarları ile Yurtdışı Türkler ve Akraba Topluluklar Başkanı ve Göç İdaresi Genel Müdüründen oluşur. Toplantı gündemine göre, konuyla ilgili bakanlık, ulusal veya uluslararası diğer kurum ve kuruluşlar ile sivil toplum kuruluşlarının temsilcileri toplantıya davet edilebilir.

(2) Kurul, Kurul Başkanının çağrısı üzerine her yıl en az bir kez toplanır. Gerekli görüldüğü hâllerde Kurul Başkanının çağrısıyla olağanüstü toplanabilir. Toplantı gündemi, üyelerin görüşü alınarak Başkan tarafından belirlenir. Kurulun sekretarya hizmetleri, Genel Müdürlük tarafından yerine getirilir.

(3) Kurulun görevleri şunlardır:

- a) Türkiye'nin göç politika ve stratejilerini belirlemek, uygulanmasını takip etmek
- b) Göç alanında strateji belgeleri ile program ve uygulama belgelerini hazırlamak
- c) Kitleli akın durumunda uygulanacak yöntem ve tedbirleri belirlemek
- ç) İnsani mülahazalarla toplu hâlde Türkiye'ye kabul edilecek yabancılar ile bu yabancıların ülkeye giriş ve ülkede kalışlarıyla ilgili usul ve esasları belirlemek
- d) Çalışma ve Sosyal Güvenlik Bakanlığının önerileri çerçevesinde, Türkiye'nin ihtiyaç duyduğu yabancı iş gücü ile Gıda, Tarım ve Hayvancılık Bakanlığının da görüşleri doğrultusunda tarım alanlarındaki mevsimlik işler için gelecek yabancılarla ilişkin esasları

**Law on Foreigners and International
Protection, Article 105:**

(1) The Migration Policies Board operates under the chairmanship of the Minister and is comprised of the undersecretaries of the Ministry of Family and Social Policies, Ministry for European Union, Ministry of Labour and Social Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Culture and Tourism, Ministry of Finance, Ministry of National Education, Ministry of Health, and Ministry of Transport, Mari- Part Five Directorate General Of Migration Management 105 time and Communications as well as the President of the Presidency of the Turks Abroad and Related Communities and the Director General for Migration Management. Depending on the agenda of the meeting, representatives from the relevant ministries, other national or international agencies and organisations, and non-governmental organisations may be invited to the meetings. (2) The Board shall convene at least once a year upon the call of the Chairman. In cases when considered necessary, the Board may convene extraordinarily upon the call of the Chairman. The Chairman shall determine the agenda of the meeting in consultation with the members. The Directorate General shall serve as the secretariat of the Board. (3) The Board shall: a) determine Turkey's migration policies and strategies and follow up on their implementation; b) develop strategy documents as well as programme and implementation documents on migration; c) identify methods and measures to be employed in case of a mass influx; ç) determine principles and procedures concerning foreigners to be admitted en mass

<p>belirlemek</p> <p>e) Yabancılara verilecek uzun dönem ikamet iznine ilişkin şartları belirlemek</p> <p>f) Göç alanında yabancı ülkeler ve uluslararası kuruluşlarla etkin iş birliği ve bu alandaki çalışmaların çerçevesini belirlemek</p> <p>g) Göç alanında görev yapan kamu kurum ve kuruluşları arasında koordinasyonun sağlanmasına yönelik kararlar almak</p>	<p>to Turkey on humanitarian grounds, as well as the entry into and stay of such foreigners in Turkey; d) determine principles concerning the foreign labour force needed in Turkey, in line with the 106 Law on Foreigners and International Protection suggestions of the Ministry of Labour and Social Security, as well as the foreign seasonal workers to be employed in agriculture, pursuant to views of the Ministry of Food, Agriculture and Livestock; e) determine conditions of the long-term residence permits to be issued to foreigners; f) determine framework for effective cooperation in the field of migration with foreign countries and international organisations and the relevant studies in this field; g) make decisions to ensure coordination among public institutions and agencies working in the field of migration.</p>
<p>Yabancılar ve Uluslararası Koruma Kanunu, Madde 106</p> <p>1) Genel Müdürlük, merkez, taşra ve yurt dışı teşkilatından oluşur.</p> <p>(2) Genel Müdürlük merkez teşkilatı ekli (I) sayılı cetvelde gösterilmiştir.</p>	<p>Law on Foreigners and International Protection, Article 106</p> <p>1) The Directorate General is comprised of the central, provincial and overseas organisations.</p> <p>(2) The central organisation of the Directorate General is provided in annex Table (I).</p>
<p>Siyasi Partiler Kanunu, Madde 5</p> <p>Vatandaşlar siyasî parti kurma hakkına sahiptirler. Siyasî partiler Anayasa ve kanunlar çerçevesinde, önceden izin almaksızın serbestçe kurulurlar.</p>	<p>Political Parties Act, Article 5</p> <p>Citizens have the right to form a political party. Political parties are freely established within the framework of the Constitution and laws without prior permission.</p>

<p>Türk Vatandaşlığı Kanunu, Madde 10</p> <p>Türk vatandaşlığını kazanmak isteyen bir yabancı, bu Kanunda belirtilen şartları taşıması halinde yetkili makam kararı ile Türk vatandaşlığını kazanabilir. Ancak, aranan şartları taşımak vatandaşlığın kazanılmasında kişiye mutlak bir hak sağlamaz.</p>	<p>Turkish Citizenship Law, Article 10</p> <p>A foreigner who is seeking to acquire Turkish citizenship may acquire Turkish citizenship with the decision of the competent authority. However, the fulfillment of the requirements citizenship does not give the person an absolute right to acquire citizenship.</p>
<p>Türk Vatandaşlığı Kanunu, Madde 11</p> <p>Türk vatandaşlığını kazanmak isteyen yabancılarda; a) Kendi millî kanununa, vatansız ise Türk kanunlarına göre ergin ve ayırt etme gücüne sahip olmak, b) Başvuru tarihinden geriye doğru Türkiye'de kesintisiz beş yıl ikamet etmek, c) Türkiye'de yerleşmeye karar verdiğini davranışları ile teyit etmek, ç) Genel sağlık bakımından tehlike teşkil eden bir hastalığı bulunmamak, d) İyi ahlak sahibi olmak, e) Yeteri kadar Türkçe konuşabilmek, f) Türkiye'de kendisinin ve bakmakla yükümlü olduğu kimselerin geçimini sağlayacak gelire veya mesleğe sahip olmak, g) Millî güvenlik ve kamu düzeni bakımından engel teşkil edecek bir hali bulunmamak, şartları aranır. (2) Türk vatandaşlığını kazanmak isteyen yabancılarda, yukarıda sayılan şartlarla birlikte, taşıdıkları devlet vatandaşlığından çıkma şartı da aranabilir. Bu takdirin kullanılmasına ilişkin esasların tespiti Bakanlar Kurulunun yetkisindedir.</p>	<p>Turkish Citizenship Law, Article 11</p> <p>Foreigners who want to acquire Turkish citizenship;</p> <p>a) To have mature and distinctive power according to Turkish law if it is stateless for its national law,</p> <p>b) To reside in Turkey for five consecutive years backwards from the date of the application,</p> <p>c) To confirm with his / her behavior that he / she decided to settle in Turkey,</p> <p>ç) Not having a disease that constitutes a general health hazard,</p> <p>d) Having good morals,</p> <p>e) Ability to speak Turkish on a sufficient level</p> <p>f) Having an income or a profession to support oneself and the ones that are dependent</p> <p>g) Not to be in a position to be an obstacle in terms of national security and public order, conditions are sought.</p> <p>(2) Foreigners seeking to acquire Turkish citizenship, together with the above conditions, the condition of leaving the first citizenship</p>

	<p>may also be sought. Determination of the basis for the exercise of this discretion Ministers Authority of the board.</p>
<p>Türk Vatandaşlığı Kanunu, Madde 12</p> <p>Millî güvenlik ve kamu düzeni bakımından engel teşkil edecek bir hali bulunmamak şartıyla Bakanlığın teklifi, Bakanlar Kurulunun kararı ile aşağıda belirtilen yabancılar Türk vatandaşlığını kazanabilirler. a) Türkiye'ye sanayi tesisleri getiren veya bilimsel, teknolojik, ekonomik, sosyal, sportif, kültürel, sanatsal alanlarda olağanüstü hizmeti geçen ya da geçeceği düşünülen ve ilgili bakanlıklarca haklarında gerekçeli teklifte bulunulan kişiler. b) (Ek: 28/7/2016–6735/27 md.) 4/4/2013 tarihli ve 6458 sayılı Yabancılar ve Uluslararası Koruma Kanununun 31 inci maddesinin birinci fıkrasının (j) bendi uyarınca ikamet izni alanlar ile Turkuaz Kart sahibi yabancılar ve bunların yabancı eşi, kendisinin ve eşinin ergin olmayan veya bağımlı yabancı çocuğu. (1) c) Vatandaşlığa alınması zaruri görülen kişiler. d) Göçmen olarak kabul edilen kişiler.</p>	<p>Turkish Citizenship Law, Article 12</p> <p>With the condition of not to being an obstacle in terms of national security and public order the ones stated below can acquire Turkish citizenship with the proposal of the Ministry, the decision of the Council of Ministers</p> <p>a) The ones who bring industrial facilities to Turkey or provide extraordinary service in scientific, technological, economic, social, sportive, cultural, artistic areas, with the report of relevant ministries</p> <p>b) (Annex: 28/7 / 2016-6735 / Article 27) Foreigners and International Protection No: 6458 of 4/4/2013</p> <p>According to paragraph (j) of the first paragraph of Article 31 of the Law, the residence permits and the Turkuaz Card holder foreigners and their foreign wife, foreigner or minor child of his or her partner.</p> <p>c) Persons who are deemed necessary to be taken into citizenship.</p> <p>d) Persons who are considered as immigrants.</p>

<p style="text-align: center;">Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun Madde 4</p> <p>(1) Bu Kanun hükümleri uyarınca yetkili olan hukukun vatandaşlık esasına göre tayin edildiği hâllerde, bu Kanunda aksi öngörülmedikçe;</p> <p>a) Vatansızlar ve mülteciler hakkında yerleşim yeri, bulunmadığı hâllerde mutad mesken, o da yok ise dava tarihinde bulunduğu ülke hukuku,</p> <p>b) Birden fazla devlet vatandaşlığına sahip olanlar hakkında, bunların aynı zamanda Türk vatandaşı olmaları hâlinde Türk hukuku,</p> <p>c) Birden fazla devlet vatandaşlığına sahip olup, aynı zamanda Türk vatandaşı olmayanlar hakkında, daha sıkı ilişki hâlinde buldukları devlet hukuku, uygulanır.</p>	<p style="text-align: center;">Act on Private International and Procedural Law Article 4</p> <p>(1) If the applicable law is designated pursuant to nationality under this Act, unless otherwise provided in this Act, the following laws shall be applied: a) With respect to a stateless person, the law of the place of his/her domicile, in the absence thereof, place of his/her habitual residence, and in the absence thereof, the state where he/she is residing on the date of the lawsuit, b) With respect to a person of multiple citizenship where he/she is also a Turkish citizen, the Turkish law, c) With respect to a person of multiple citizenship where he/she is not a Turkish citizen, the law of the state with which he/she is most closely connected.</p>
<p style="text-align: center;">Türk Ceza Kanunu Madde 122</p> <p>Dil, ırk, milliyet, renk, cinsiyet, engellilik, siyasi düşünce, felsefi inanç, din veya mezhep farklılığından kaynaklanan nefret nedeniyle; a) Bir kişiye kamuya arz edilmiş olan bir taşınır veya taşınmaz malın satılmasını, devrini veya kiraya verilmesini, b) Bir kişinin kamuya arz edilmiş belli bir hizmetten yararlanmasını, c) Bir kişinin işe alınmasını, d) Bir kişinin olağan bir ekonomik etkinlikte bulunmasını, engelleyen kimse, bir yıldan üç yıla kadar hapis cezası ile cezalandırılır.</p>	<p style="text-align: center;">Turkish Criminal Code Article 122</p> <p>Any person who makes discrimination between individuals because of their racial, lingual, religious, sexual, political, philosophical belief or opinion, or for being supporters of different sects and therefore; a) Prevents sale, transfer of movable or immovable property, or performance of a service, or benefiting from a service, or bounds employment or unemployment of a person to above listed reasons, b) Refuses to deliver nutriments or to render a public service, c) Prevents a person to perform an ordinary economic activity, is sentenced to</p>

	imprisonment from six months to one year or imposed punitive fine.
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Introduction

The total number of international migrants today is estimated by both the United Nations 2015 Migration Report and the Pew Research Center at 244 million, or roughly three percent of global population — the highest number of people on the move ever recorded, and a 41% increase compared to the year 2000 .

As we can see in the text Nowadays, migration became an important part in the life of society. It is linked to global issues including economic growth, poverty, and human rights. Migration can have many social and economic benefits but also presents different challenges. It involves not only right to asylum but education, immigration to another country and social life at all.

Under the international acts and national legislation, in this report we highlighted the basic requirements for granting an asylum; the process of applying for citizenship and getting it; the main rights which foreigners and stateless persons have being in the territory of Ukraine; and which national authorities are responsible for such activities.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Give a description of the national regulations governing asylum.

Under the Article 26 of Constitution of Ukraine, the general principle is to set out that ‘foreigners and stateless persons may be granted asylum by law established procedure’³⁶¹⁷. According to the provisions of the Constitution, it is incumbent upon President of Ukraine to adopt decisions on the granting of asylum.³⁶¹⁸ Constitution of Ukraine is the supreme law in Ukraine and has a direct effect. Laws and other legal acts need to comply with it.

Having regard to the national statutory acts, it should be noted that the legal status of asylum seekers is mostly regulated by following laws:

- the Law of Ukraine ‘On Refugees and Persons in Need of Complementary and Temporary Protection’³⁶¹⁹ (hereafter: the Refugee Law);
- the Law of Ukraine ‘On the Legal Status of Foreigners and Stateless Persons’³⁶²⁰ (hereafter: the Foreigners and Stateless Persons Law).

The Refugee Law is the principal legislation governing refugee matters in Ukraine. It brought about remarkable changes in the regulation of procedure of obtaining the refugee status and, for

³⁶¹⁷ Law n. 254к/96-ВР (Constitution of Ukraine) 1996 [Конституція України] Art. 26.

³⁶¹⁸ *ibid* Art. 106.

³⁶¹⁹ Law n. 3671-VI (On Refugees and Persons in Need of Complementary and Temporary Protection) 2011 [Про біженців та осіб, які потребують додаткового або тимчасового захисту].

³⁶²⁰ Law n. 3773-VI (On the Legal Status of Foreigners and Stateless Persons) 2011 [Про правовий статус іноземців та осіб без громадянства].

the first time, fixed the status of persons in need of protection in Ukrainian legislation. This statutory act includes a definition of the term 'refugee' and 'person in need of complementary protection' (Art. 1) that is in compliance with provisions of the 1951 Convention relating to the Status of Refugees (hereafter: the 1951 Convention). Moreover, the Refugee Law regulates procedure of applying for recognition as a refugee or a person in need of complementary protection (Art. 5), cessation and withdrawal of the refugee status or the status of a person in need of complementary protection and cancellation of decision on recognition as a person with above mentioned status (Art. 11), rights of a person who is recognised as a refugee or a person in need of complementary protection (Art. 15). It also includes the principle of family unity (Art. 4) and a safe third country definition (Art. 1).

The Foreigners and Stateless Persons Law set forth auxiliary provisions concerning the right to asylum. There we may find grounds for stay of stateless persons recognised as refugees in Ukraine or granted asylum in Ukraine (Art. 4), the right to recognition of a foreigner or a stateless person as refugee – a person who requires complimentary protection, and provision of temporary protection (Art. 6). Besides, it includes provisions on voluntary return of foreigners and stateless persons who received notice of refusal to recognize them as refugees or persons requiring additional protection (Art. 25).

Apart from the national legislation, Ukraine also is a signatory to the 1951 Convention³⁶²¹ and its 1967 Protocol. Ukraine ratified the Convention and the Protocol without reservations on 10 January 2002. The Law of Ukraine 'On International Agreements' n. 1906-IV of 29 June 2004 requires that international treaties, which require ratification, to be adopted in the form of a law with text of this international treaty as an integral part. It is worth noting that the authorities are often reluctant to apply international law directly, but prefer to wait for ratification relevant legislation.

1.2. What is the procedure for granting asylum and who is responsible?

Under Decree n. 360 of Cabinet of Ministers of Ukraine 'Regulation on the State Migration Service of Ukraine'³⁶²² (hereafter: the Regulation) has been set forth. According to the Regulation, the State Migration Service of Ukraine (hereafter: the SMS) is a central body of executive power, whose activity is directed and coordinated by the Cabinet of Ministers of Ukraine via the Minister of Internal Affairs of Ukraine.

Pursuant to paragraph 4 of the Regulation, the SMS makes decisions on granting, loss, deprivation and withdrawal of refugee status and other forms of protection in Ukraine. In addition, it is within the scope of the SMS's authority to address complaints on decisions to refuse an acceptance of application with respect to recognition of a person as a refugee; on refusal to process documents for solving the issue of recognition as a refugee or as a person in need of complementary protection; on cancellation of above mentioned decisions if such decisions are adopted with violation of the relevant legislation.

³⁶²¹ The Convention Relating to the Status of Refugees 1951 <http://www.unhcr.org/4ca34be29.pdf>.

³⁶²² Decree n. 360 of Cabinet of Ministers of Ukraine (Regulation on the State Migration Service of Ukraine) 2014 [Положення про Державну міграційну службу України].

As it is evident from the analysis provided above, a person ought to apply to the SMS if he (she) wishes to be recognised as a refugee or a person in need of complementary protection. It is the only institution that is authorised to grant legal rights to stay in Ukraine. If the SMS recognises an individual as a refugee or a person in need of complementary protection, he (she) will receive a legal status and protection in Ukraine.

The procedure for granting asylum is prescribed in the Refugee Law. A person who, intending to be recognised as a refugee in Ukraine or a person in need of complementary protection, crossed the Ukrainian state border in compliance with procedures set by the legislation of Ukraine, must apply to the respective migration service authority for recognition as a refugee or a person in need of complementary protection, within five working days (Art. 5, para. 1).

If such person is legally entering Ukraine with an intention to seek asylum, he (she) should indicate his (her) intention to the State Border Guard Service as the purpose of his (her) travel to Ukraine. The official will explain him (her) where and how this person should apply for asylum in Ukraine. The SMS may refuse his (her) application if it is filed late. However, the individual can also explain the reasons why he (her) is applying late, such as if he (she) was seeking legal advice or was ill.

On the other hand, an individual who, intending to be recognised as a refugee in Ukraine or a person in need of complementary protection, illegally crossed the state border when entering Ukraine, must immediately apply to the respective migration service authority for recognition as a refugee or a person in need of complementary protection (Art. 5, pt. 1). If such person submitted the above mentioned application to an officer of the Border Guard Service of Ukraine during the illegal crossing of the border, he (she) is obliged to explain to the officer reasons of the illegal crossing of the state border of Ukraine.

If such person has no identity documents, or if such documents are false, he (she) must specify this fact in an explanation and give an account of reasons for the said situation. If a person giving such explanation does not speak Ukrainian or Russian, the State Border Guard Service authority must provide an interpreter from the language, which such person can speak. After explanations are given, the State Border Guard Service of Ukraine's officers transfer the person who applied for recognition as a refugee or a person in need of complementary protection to a representative of the migration service authority within 24 hours (Art. 5, pt. 2).

Processing documents for solving the issue of recognising as a refugee or a person in need of complementary protection is executed on the ground of the application for recognition as a refugee or a person in need of complementary protection.

Such application must be submitted personally by a foreigner or a stateless person or by his (her) legal representative to the migration service authority in the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol according to the place of applicant's temporary stay (Art. 7, para. 1).

It should be noted that Ukrainian legislation does not provide criteria to consider for asylum. The Refugee Law has provisions which are not allowed a person an opportunity to become a

refugee. Under the Article 6 a person cannot be recognized as a refugee or a person in needs of complementary protection in such cases³⁶²³:

- if he (she) committed a crime against peace, a war crime or a crime against humanity as defined in international law;
- if he (she) committed a non-political crime outside Ukraine before arriving in Ukraine for the purpose of being recognized as a refugee or a person who needs of complementary protection if such act, by the Criminal Code of Ukraine, is serious or particularly serious crimes;
- if he (she) is found guilty of acts contrary to the principles of the United Nations;
- if he (she) recognizing as a refugee or a person in need of complementary protection in another country;
- if he (she) was in a third safe country and arrived in Ukraine with the intent recognizing as a refugee or a person in need of complementary protection.

Subsequently, the migration service authority, that took a foreigner's or stateless person's application for recognition as a refugee or a person in need of complementary protection into consideration, issues to the applicant a certificate on an application for protection in Ukraine and register the applicant.

Within fifteen working days after the registration of the application day, the migration service authority shall conduct an interview with the applicant, check information indicated in the application and other documents, ask for complementary information and decide upon processing documents for solving the issue of recognition as a refugee or a person in need of complementary protection, or refusal to process documents for solving the above-mentioned issue (Art. 8, para. 1).

It is necessary to note that the application for recognition as a refugee or a person in need of complementary protection is considered by the migration service authorities in the Autonomous Republic of Crimea, oblasts, and cities of Kyiv and Sevastopol within two months following the day of decision on processing the documents solving the issue of recognition as a refugee or a person in need of complementary protection. The Head of the migration service authority may extend the consideration period based on substantiated request of the officer, who consider the application, but for the period not exceeding three months (Art. 9, para. 1).

The applicant should mention infant children who stay with him (her) in the territory of Ukraine (applicant's family members or those under the applicant's care or in guardianship) in application form, as well as whose recognition as refugees or persons in need of complementary protection is agreed by the applicant in writing in the application.

Finally, decisions on the application for recognition as a refugee or a person in need of complementary protection is made by the specially authorised central executive migration authority within one month following the receipt of the applicant's personal file and written conclusion of migration service authority that considered the application. The head of the specially authorized central executive migration authority may extend the decision-making period for three months at most (Art. 10, para. 1).

³⁶²³ Ibid Art.6

Moreover, there is also a possibility to appeal against decisions on refugee status or complementary protection. Such decisions of the SMS on refusal to accept the application on recognition as a refugee or as a person in need of complementary protection; on refusal to process documents for solving the issue of recognition as a refugee or a person in need of complementary protection may be appealed against at the specially authorised central executive migration authority within five working days following the receipt of a notification of refusal, as well as to court (Art. 12, para. 1).

In conclusion, it is necessary to mention grounds of losing and deprivation of refugee status and complementary protection and the abolition of a decision to recognize a person as a refugee or a person who needs of complementary protection. Under the Article 11 of the Refugee Law refugee status and complementary protection are lost if the person is³⁶²⁴:

- voluntarily again used the protection of the country of citizenship;
- has acquired the citizenship of Ukraine or has voluntarily acquired the citizenship which he (she) had before or acquired the citizenship of another state and enjoys its protection;
- voluntarily returned to the country he (she) left or outside of which he (she) was the victim of persecution due to justified fears;
- being a stateless person can return to the country of his earlier permanent residence, since the circumstances in which he (she) recognising as a refugee or a person in need of complementary protection no longer exists;
- has received a shelter or permission to permanently live in another country;
- cannot refuse to use the country's protection of its civic affairs, since the circumstances on the basis of which the person was recognized as a refugee or a person in need of complementary protection no longer exists.

In case if a person engaging in activities that constitute a threat to national security, public order, and the health of the population of Ukraine, he (she) is deprived of refugee status or complementary protection as well as. Such status can be also cancelled if a person has submitted false information, has submitted false documents that have become grounds for a person recognising as a refugee or a person who needs complementary protection.

The procedure for cancelling this status is quite difficult. Firstly, authorized officials of a central executive body implementing a state policy in the field of refugees and persons requiring complementary or temporary protection shall submit to the central executive authority a submission about the loss or deprivation of refugee status or complementary protection or the abolition of a decision to recognize a person as a refugee, or a person who needs complementary protection on his or her own initiative.

In the submission on the loss or deprivation of refugee status or complementary protection or the revocation of a decision to recognize a person as a refugee or a person who needs complementary protection, the circumstances and attached documents confirming the existence of grounds for the loss or deprivation of refugee status or complementary protection or for the

³⁶²⁴ *ibid* Art.11

cancelling a decision to recognize a person as a refugee or a person in need of complementary protection.

The second step is that decision on the loss or deprivation of refugee status or complementary protection or the revocation of a decision to recognize a person as a refugee or a person who needs complementary protection is taken by the central executive body implementing the state policy in the field of refugees and persons requiring complementary or temporary protection upon filing authorized officials of the central executive body within a month from the date of receipt of the submission and his personal affairs. The term of the decision may be extended by the head of the central executive authority, which implements the state policy in the field of refugees and persons requiring complementary or temporary protection, but not more than three months.

On the basis of the comprehensive study and appraisal of documents and materials, the central executive authority, implementing the state policy in the field of refugees and persons needs complementary or temporary protection, decides on the loss or deprivation of refugee status or complementary protection, as well as the revocation of the recognition decision a person who is a refugee or a person who needs complementary protection or a lack of grounds for the loss or deprivation of refugee status or complementary protection or the abolition of a decision to recognize a person as a refugee or a person who needs complementary protection.

2. How does your national law regulate immigration from EU member states and non-EU states?

Ukraine does not have any special legal acts which regulate separately immigration from EU member states and non-EU states. The main legal act that establishes a procedure for immigration to Ukraine for foreigners is the Law of Ukraine 'On immigration'. Current act concerns to all foreign states.

According to the Ukrainian legislation, foreigners should have the specific grounds to immigrate to Ukraine. These grounds are listed in the Article 4 of the Law of Ukraine 'On immigration'³⁶²⁵. Cabinet of Ministers of Ukraine determined an immigration quote every year in conformity with Resolution of the Cabinet of Ministers of Ukraine 'On Approval of the Procedure for the Formation of the Immigration Quota, Procedure for Submission of Applications for the Grant of Immigration Permits and Applications for its Abolition and Compliance' n. 1983 of 26 December 2002.

Based on the Article 4 of this act, quote is given to the following categories of immigrants:

- scientists and cultural workers whose immigration corresponds to the interests of Ukraine;
- highly qualified specialists and workers who are needed badly for the Ukrainian economy;

³⁶²⁵ Law n. 2491-III (On immigration) 2001 [Про імміграцію].

- persons who made an investment into the Ukrainian economy by foreign currency on the amount not less than 100 000 USD. Such an investment should be duly registered in accordance with the prescribed procedure;
- persons who are either brother or sister, grandfather or grandmother, or grandchild of the Ukrainian national;
- persons who previously possessed the Ukrainian citizenship;
- parents / spouse of the immigrant and his/her minor children;
- persons who continuously resided in Ukraine during three years from the day when the status of refugee or asylum were granted to them;
- persons who served in the Armed Forces of Ukraine three and more years³⁶²⁶.

In 2016 government decided to shorten number of quotes. In 2015 the maximum number of quotes was 6215 for all categories combined, but in 2016 the maximum number was just 4583³⁶²⁷.

Furthermore, the act has a category of persons who do not fall under the quote. This means that the legislation does not set a clear figure. The category includes:

- one of the spouses if another spouse is the Ukrainian national and marriage between them was registered more than two years ago, children and parents of the Ukrainian nationals;
- persons who are guardians or trustees of the Ukrainian nationals or are under the guardianship of the Ukrainian nationals;
- persons who have the right to become a citizen of Ukraine on the basis of territorial origin;
- persons whose immigration is a state interest for Ukraine;
- foreign Ukrainians, the spouse of such foreign Ukrainians, their children if they stay jointly in Ukraine.

Article 9 of the Law 'On Immigration' provides that applications for immigration permit should be submitted:

- by the persons who permanently reside abroad – to the Ukrainian diplomatic and consular missions at the place of permanent residence;
- by the persons who stay in Ukraine on legal grounds – to the authorized authorities (State Migration Service) at the place of residence.

Applicant should submit an application for immigration permit personally to the respective state authority. In the case of reasonable excuse (sickness of the applicant etc.) the application can be sent by post or submitted by another person with notary attested authorization letter for this purpose.

Minors and incapable persons cannot submit an application by themselves. In this case the application for immigration permit can be submitted by their legal representatives (parents, guardian and custodian).

³⁶²⁶ *ibid* Art. 4.

³⁶²⁷ Taras Doronyuk, 'Імміграційні квоти в Україні' (31 March 2016) <https://cedos.org.ua/uk/migration/immihratsiini-kvoty-v-ukraini> [Ukrainian].

Under Ukrainian legislation there is some features related to parents with minor children. If one of the parents immigrates with minor, he (she) should provide a notary attested statement from his spouse stating that this spouse has no objection against immigration of children with the second parent. If such consent could not be given, the parent should obtain an official order from the concerned authorities allowing children to stay with this parent. Such an order should be legalized by consular post of Ukraine unless other is prescribed by the international Treaty of Ukraine.

Applicant need to add the following documents with an application (Art. 9):

- three photos;
- copy of identification document;
- document containing information on place of residence;
- information on family composition (copies of birth certificate, marriage certificate, adoption or guardianship documents etc.);
- medical document confirming that the person does not suffer from chronic alcoholism, toxicomania, narcomania or infection disease list of which is defined by concerned central body on health issues.

All documents issued by the competent authorities of the foreign states must be legalised unless otherwise is prescribed by the international treaties of Ukraine. Copies of such documents and written confirmation of consent for immigration should be notary attested. The documents which data can be changed should be submitted within 6 months from the date of issuance.

In case of envisaged any fees by the Ukrainian legislation for the purposes of granting an immigration permit, the document confirming payment should be attached to the application for immigration permit.

In the event if any of the mentioned documents in not submitted by the applicant, an application for immigration permit cannot be accepted.

The processing time for application shall not exceed 1 year from the date when such application was submitted.

In addition to this it is worth saying about reasons, because of which person cannot receive immigration permit. The following reasons (Art. 10):

- persons sentenced to imprisonment for more than one year for the commission of actions that, according to the laws of Ukraine, are recognized as a crime, if the conviction is not extinguished and not removed;
- persons who have committed a crime against peace, a war crime or a crime against humanity as defined in international law, or are being sought in connection with the commission of an act that is recognized as a serious crime in accordance with the laws of Ukraine or has been notified of suspicion of commission a criminal offense, the pre-trial investigation of which has not been completed;
- persons who suffer from chronic alcoholism, toxicomania, narcomania or infection disease list of which is defined by concerned central body on health issues in Ukraine;
- persons who has consciously submitted untruthful information;

- persons who are prohibited from entering the territory of Ukraine on the basis of the law;
- in other cases established by the laws of Ukraine.

In accordance with the Article 11 of the Law of Ukraine 'On Immigration' diplomatic or consular mission of Ukraine issues long term visa to person who permanently resides abroad and got immigration permission.

After arriving to Ukraine the immigrant should submit an application for obtaining Permanent Residence Certificate (document which confirms the right of the foreigner or stateless person to permanently reside in Ukraine) to the concerned regional migration authorities at the place of immigrant's residence. A copy of applicant's passport containing immigration visa and a copy of immigration permit should be attached.

Permanent Residence Certificate shall be issued within 1 week from the date of receiving the application by concerned immigration authorities.

Finally, some words about cancelling the immigration permit. The main reasons, because of which an immigrant may lose permission for immigration, are he (she) has been sentenced to imprisonment for at least one year in Ukraine and the verdict has come to legal effect, the actions of the immigrant constitute a threat to the national security and public order in Ukraine and if it is necessary for health protection, protection of rights and legitimate interests of citizens of Ukraine (Art. 12).

As we can observe in connection with the stated text, it is not a difficult thing for foreigners to move to Ukraine for permanent residence.

It should be noted how foreigners can leave the territory of Ukraine and conditions they need to follow. Ukrainian legislation includes specific provisions which do not allow foreigners to leave the country.

Paragraph 2 of the Article 22 of Law of Ukraine 'On the Legal Status of Foreigners and Stateless Persons' has such provisions as: a) foreigner is informed of a suspicion of a criminal offense or a criminal case is considered by a court - before the end of criminal proceedings; b) foreigner is convicted of a criminal offense - to serve a sentence or release from punishment; c) if the departure of foreigner contradicts the interests of ensuring the national security of Ukraine - until the termination of circumstances which preventing departure.

Over the Paragraph 3, the departure of a foreigner may be suspended temporarily by a decision of the court. It means that he (she) needs to fulfil his property obligations to individuals or legal entities in Ukraine³⁶²⁸.

In other cases, foreigners can leave the country freely and they have not got any obligations according to this.

Also Law of Ukraine 'On the Legal Status of Foreigners and Stateless Persons' regulates both of deportation and expulsion.

According to the Article 26 foreigner or stateless person can be deported to the country of origin in case of violation of the legislation on the legal status of foreigners and stateless persons or if

³⁶²⁸ *ibid* art.22

their actions run counter to the interests of ensuring the national security of Ukraine or the protection of public order.³⁶²⁹

Such decisions are made by the central executive authority which provides state's politics in migration area. Foreigner or stateless person must leave the country in term determined in the decision. Under the Paragraph 1, the term cannot exceed 30 days from the day when the decision was made. Also it may be accompanied by a ban on further entry into Ukraine for a term of three years. Foreigner or stateless person is required to leave the territory on his (her) own.

Nevertheless, there are two exceptions to the rule: a) it does not apply to foreigners and stateless persons under the age of 18; b) it does not apply to foreigners and stateless persons who are covered by the Foreigners and Stateless Persons Law³⁶³⁰.

The Article 30 establishes an expulsion of foreigners. The central executive authority can expel a foreigner or stateless person in case if he (she) does not leave the state in term prescribed by the authority decision.³⁶³¹

The central authority brings an action to the administrative court and after that, the court passes a resolution to expel the foreigner or stateless person. Such persons are banned from further entry into Ukraine for a term of five years.

Like in the previous Article, this rule does not apply to foreigners and stateless persons who are covered by Refugee Law too.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

3.1. Is there a ministry, government agency or other public authority specifically dealing with migrants?

Ukraine has government agency specifically dealing with migrants which called State Migration Service of Ukraine (the SMS). This agency is central body of executive power which activity is directed and coordinated by Cabinet of Ministers of Ukraine via the Minister of Internal Affairs. The main activities of the SMS related to the state policy in migration area (immigration and emigration), and also counteracting illegal migration, citizenship, asylum seekers and other categories of migrants defined by the legislation (pt. 1 of the Regulations).

The structure of State Migration Service of Ukraine divided into four blocks³⁶³². Each of them work in the special area and have different responsibilities.

The first bloc is Apparatus of DMC Ukraine. It consists of (1) Leadership, (2) Department of Organizational Support, (3) Department of Informatization, Telecommunications and

³⁶²⁹ *ibid* art.26

³⁶³⁰ *ibid*.

³⁶³¹ *ibid* art.30

³⁶³² State Migration Service of Ukraine (Official website) <https://dmsu.gov.ua/pro-dms/struktura-ta-kontakti.html>.

Information Security, (4) Department of Citizenship, Certification and Registration, (5) Department dealing with Foreigners and Stateless Persons, (6) Department of International Relations, (7) Personnel Management, (8) Management of Legal Support, (9) Management of Financial Support and Accounting Service, (10) Department of Resource and Economic Provision and Capital Construction, (11) Press service (on behalf of the department), (12) Department for the Prevention and Detection of Corruption, (13) Internal Audit Department, (14) Regime and Secret Sector, (15) Chief Specialist in Mobilization Work and (16) Chief Specialist on Personal Data Protection.

The second bloc is made up of territorial bodies such as Head Departments of DMS in Kyiv and big regions and Departments in different regions throughout Ukraine.

The third and fourth blocks represent Posts of temporary stay of foreigners and stateless persons and Posts of temporary placement of refugees, respectively. These Posts are state institutions which intended to temporarily hold foreigners, stateless persons and refugees.

There is one special state enterprise called "Document". The main purpose of the enterprise is introduction new services and standards for the provision of migratory and passport services, as well as attracting funds for the creation of modern conditions for servicing related to resolving issues in the migration field.

3.2. If so, please provide a description of the framework this authority works under.

The performance of State Migration Service of Ukraine is based on such legal acts (pt. 2):

- Constitution of Ukraine;
- Laws of Ukraine;
- Decrees of President of Ukraine;
- Decrees of Ukrainian Parliament (Verkhovna Rada of Ukraine);
- Acts of Cabinet of Ministers of Ukraine.

Like the central body of executive power in migration area, the SMS has a lot of tasks and responsibilities which are established by the Regulation on the State Migration Service of Ukraine. The list of main tasks (pt. 3, 4):

- realization of the state policy related to immigration and emigration, counteracting illegal migration, citizenship, asylum seekers and other categories of migrants defined by the legislation;
- makes proposals to the Minister of Internal Affairs for ensuring the formation of the state policy in migration area (immigration and emigration), counteraction illegal migration, citizenship, asylum seekers and other categories of migrants defined by the legislation;
- makes analysis of migration situation in Ukraine, develops current and long-term forecasts migrants' issues;
- adopts the decision on the establishment of membership in the citizenship of Ukraine, registration of the acquisition of citizenship of Ukraine and their cancellation in accordance with the current legislation;

- makes proposals related to immigration quotas;
- makes decisions on the issuance of an immigration permit, refusal to issue it and cancellation of such permission;
- to participate in solving labour migration issues and issues related to the education of foreigners and stateless persons in Ukraine;
- takes measures to promote the rights of refugees and other categories of migrants;
- carries out registration and issuance of a refugee certificate, a person's identity card, which was granted additional protection in Ukraine, as well as other documents stipulated by the legislation for these categories of persons;
- ensures functioning of Posts of temporary placement for refugees and Posts of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine;
- to participate in realization of the state policy in volunteers activities in providing refugee assistance;
- provides creation, improvement, development, support and functioning of the Unified State Demographic Register, the National System for Biometric Verification and the Identification of Citizens of Ukraine, Foreigners and Stateless Persons, which is managed by the DMS Ukraine, and also takes measures to protect information in them;
- carries out international cooperation with other countries;
- carries out other powers determined by the law.

Besides this, the State Migration Service of Ukraine also has the rights to fulfil the tasks assigned to it (pt. 6):

- to involve scientists and specialists, employees of central and local executive authorities, local authorities, as well as enterprises, institutions and organizations to perform different works;
- to receive from the state bodies and local self-government bodies, enterprises, institutions and organizations, as well as from citizens and different associations, information, documents and materials which are necessary to perform tasks assigned to the Service;
- to use relevant information databases of state bodies, the state system of government communications and other technical means.

In according to the legislation, the State Migration Service of Ukraine carries out its powers directly and through its territorial bodies and subdivisions.

While the SMS performing the assigned tasks, it interacts with other state bodies, subsidiary bodies and services created by the President of Ukraine, temporary consultative, advisory and other subsidiary bodies established by the Cabinet of Ministers of Ukraine, local self-government bodies, citizens' associations, trade unions and employers' organizations, relevant bodies of foreign states and international organizations, as well as enterprises, institutions and organizations.

Monitoring of service quality delivered making the Association of Ukrainian Human Rights Monitors on Law Enforcement (hereafter – the Association UMDPL). The monitoring carries out using the following methods by the Association UMDPL:

- analysis of media materials on the activity of the SMS of Ukraine;
- visiting of office premises of the migration service with a free access regime;
- conducting conversations with employees of the SMS and citizens who received administrative services;
- reception of reports of violations of their rights from citizens as recipients of administrative services and providing an appropriate legal assessment of the actions of staff of the migration service;
- visual observation of the actions of the SMS workers during the public execution of their duties and reception of citizens;
- fixing the conditions and procedure for providing administrative services in the bodies of the SMS through video and photography³⁶³³.

As we can see, the State Migration Service of Ukraine is doing immense work in the area of migration (immigration and emigration), also counteracting illegal migration, which contributes to the country's security and the normal life of citizens.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

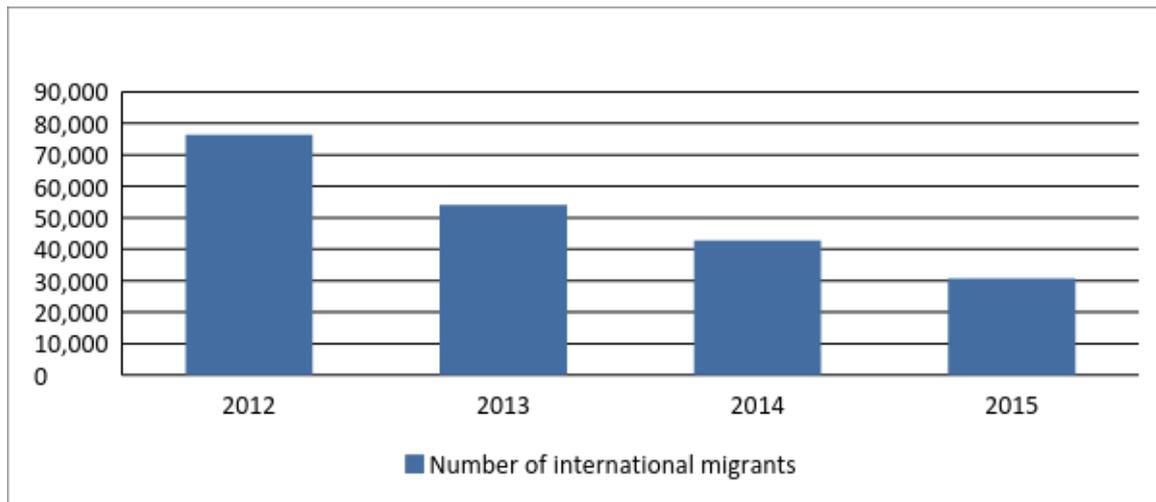
The main agency which is responsible for keeping statistics and presenting statistical data in Ukraine is State Statistics Service of Ukraine. Activities of the agency are regulated by Cabinet of Ministers of Ukraine via Minister of Economic Development and Trade of Ukraine³⁶³⁴. State Migration Service of Ukraine process information about migration and migrants on the territory of the state and transfer it to the Statistics Service.

According to the latest data of State Statistics Service of Ukraine during the period from 2012 to 2015 number of migrants decreased and this process has not stopped. It depends on events in 2013-2014, which called Euromaidan, included different demonstrations and protests all over the country, and hostilities on the East of Ukraine. All these reasons led to economic crisis and decline in living standards, that is why foreigners do not interested in immigration to Ukraine³⁶³⁵. Table below shows data of migrants in the last few years.

³⁶³³ The Association of Ukrainian Human Rights Monitors on Law Enforcement, *Звіт за результатами всеукраїнського громадського моніторингу якості надання адміністративних послуг Державною міграційною службою України* (2014) <http://umdpl.info/wp-content/uploads/2016/08/Zvit-za-rezultatamy-monitoryngovoyi-kampaniyi-DMS.pdf> [Ukrainian], 2.

³⁶³⁴ Decree of President of Ukraine n. 396/2011 (On State Statistics Service of Ukraine) 2011 [Про Державну службу статистики України].

³⁶³⁵ International Organization for Migration, *Міграція в Україні: факти та цифри* (2016) http://iom.org.ua/sites/default/files/ff_ukr_21_10_press.pdf [Ukrainian], 21.



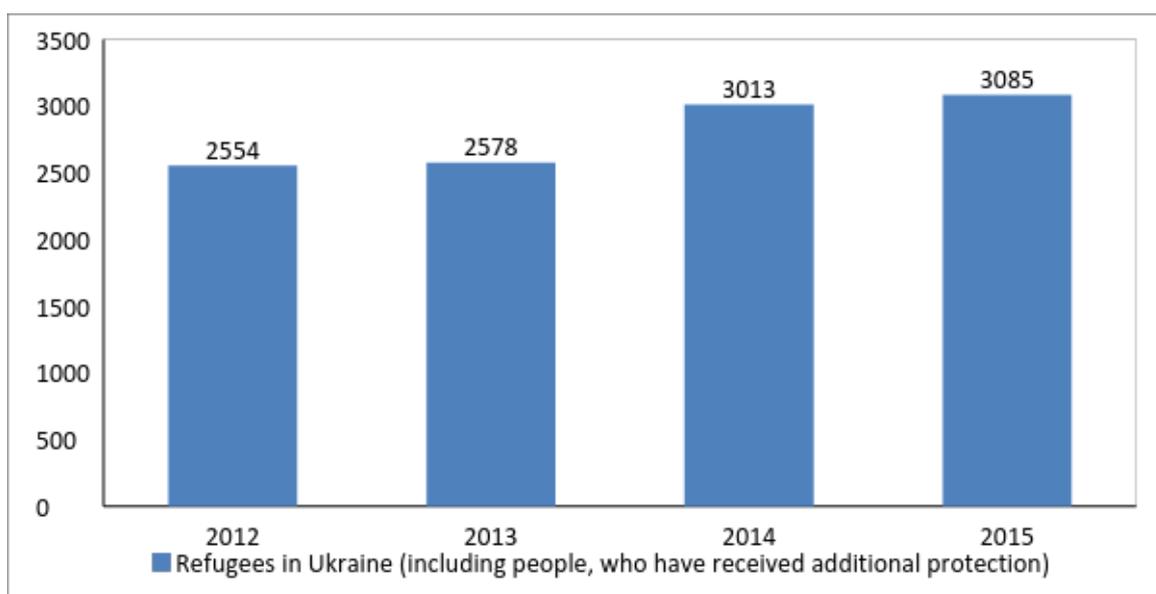
Concerning to border crossings by foreigners, its number decrease in last years too. In 2013 was 26 million border crossings but in 2015 was only half of that encountered, about 13 million.

The situation about immigrants – foreigners who live with a permanent residence permit – is not satisfying too. Just 250 thousands immigrants live in Ukraine, which is less than 1 percent of the population.

It should be noted that the largest number of immigrants are citizens of the post-Soviet states. Over half of them received permits for permanent residence in the country on the basis of close family ties with Ukrainian citizens.

A separate group of foreigners in Ukraine is refugees and people, who have received complementary protection. Implementation of complementary protection in 2011, tense situation in Afghanistan and war in Syria have caused a certain increase in the number of refugees and users of complementary protection in 2012-2015. These circumstances led to increasing the number of applications for entry into the shelter. Mostly, asylum seekers came to Ukraine from Afghanistan and Syria. However, the number of refugees in Ukraine remains low

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³⁶³⁶ *ibid* 24.

In conclusion a few words about trends in migratory flows. It would be more legitimate to assume that as a result of the deterioration of the economic situation in Ukraine, triggered by the military conflict, and of a devaluation of income to the EU. One should bear in mind that Ukraine closed 2014 with the 7% GDP drop. In the first and the second quarter of 2015, a drop in GDP was recorded of 17% and 14%. All this has contributed to a major decline in the level of real income earned by Ukrainian citizens. This stimulated labour migration, which in the late 1990's became a mass phenomenon and a source of income for many families.

Labour migration reduces tensions in the labour market. If there were no employment opportunities abroad, the number of the unemployed would have more than doubled.

According to various surveys, the wages of migrant workers abroad are three to four times higher than the average wage in Ukraine. The funds earned by labour migrants are mainly used for consumption, which improves life quality of families of migrants, reduces poverty and stimulates economic development. According to the study of migrant monetary flows to Ukraine and their impact on the country's development conducted by IOM in 2014-2015, migrants' remittances to Ukraine accounted for nearly half of the budget of households with long-term migrant workers, and 60% of the budget of households with short-term migrant workers³⁶³⁷.

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in 1997. In this way, it undertook to comply with all the provisions of the Convention on the territory of the country and to prevent violations of these provisions, as well as to grant it the status of part of the national legislation and began the process of implementation of this international treaty into the national legal order.

The Convention is governed by the Law of Ukraine "On Implementation of the Judgments and Practice of the European Court of Human Rights". In particular, the Article 2 provides a reference to the Article 46 of the Convention, which states that the obligation of the State is to comply with the decisions of the European Court of Human Rights³⁶³⁸. This norm was introduced with the necessity to cut the causes of Ukraine's violation of the Convention and the protocols thereto, as well as the introduction of European human rights standards in Ukrainian law and administrative practice, with the creation of prerequisites for reducing the number of applications to the European Court of Human Rights against Ukraine.

Consequently, the decisions of the European Court should form an ideological and legal basis for the administration of justice in Ukraine.

³⁶³⁷ Marta Jaroszewicz, *The migration of Ukrainians in times of crisis* (2015) <https://www.osw.waw.pl/en/publikacje/osw-commentary/2015-10-19/migration-ukrainians-times-crisis>.

³⁶³⁸ Law n. 3477-15 (On Implementation of the Judgments and Practice of the European Court of Human Rights) 2006 [Про виконання рішень та застосування практики Європейського суду з прав людини].

According to the above, the courts of Ukraine should rely on the ECHR's judgments on migrants and make amendments. However, it does not happen in practice.

According to Ukrainian legislation and ECHR, decisions of European Court of Human Rights are binding for Ukraine. At the same time, the Ukrainian government has not done any special steps to make sure the compliance with ECHR practice in respect to migrant's issues.

For example, Ukrainian legislation has non-complaint rules of seeking protection in Ukraine due to strong bureaucratization and absence of affective procedural guarantees of protection of the applicants' rights which should be considered as non-compliance with *Hirsi Jamaa and Others v. Italy*. Also Ukrainian legislation doesn't have a good regulation of the assessment of the applications mentioned above which cause a negligence in respect to evidence about human rights situation in the country of the applicant's origin, ignorance of the burden of proof and principle of the benefit of the doubt in such cases contrary to *Signh and Others v. Belgium and R.C. v. Sweden*. And this is just a few examples of the discrepancy between court decisions and Ukrainian legislation.

Everything else, Ukraine is not very popular among foreigners. This situation has resulted from a number of factors, including the war in the East, the annexation of the Crimea and the unstable economic situation. All of this pushes foreign citizens to immigrate to Ukraine, and the practice of applying the judgments of the European Court on migrants is very poorly demonstrated.

Nowadays, Ukraine cannot meet European standards for the international treaties application and properly protect the rights and freedoms of people and citizens.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

European Commission against Racism and Intolerance (ECRI) is independent human rights monitoring body specialised in combating racism, discrimination, xenophobia, antisemitism and intolerance. It publishes recommendations and reports on Council of Europe's member states. Ukraine is included in this list of member states, thus ECRI recommendations concern it too.

In the last few years, development of migration policy of Ukraine is definitely accelerated. Based in this and according to international obligations, Ukraine should provide the protection of newcomers' rights and guarantee the equality of the citizens of Ukraine. Because of a number of reasons, including lack of language and culture knowledge, foreigners are too vulnerable to violating their rights and the possibility of their protection. That is why ECRI gave recommendations related to the integration of migrants in Ukrainian society³⁶³⁹.

The first recommendation related to the defined body that will in future be responsible for coordinating the authorities' work on combating racism and racial discrimination and ensures that their staffs have strong expertise in the anti-discrimination field.

³⁶³⁹ Olena Malynovska, *Міграційна політика в Україні: формування, зміст, відповідність сучасним вимогам* (2014) http://www.ier.com.ua/files/publications/Policy_Briefing_Series/PB_01_migration_2013_ukr.pdf [Ukrainian].

According to outlined above, in June 2014, the Ukrainian Cabinet set up a Council for Inter-Ethnic Cohesion, intended to act as an advisory body to the Ukrainian Cabinet. Also in June 2014 the Ukrainian Cabinet created the post of Government Agent on Ethno-National Policy Issues, whose role is to promote the protection of the rights of national minorities and indigenous populations and the preservation of the cohesion and unity of Ukrainian society³⁶⁴⁰. The Government Agent is responsible, inter alia, for submitting proposals to the Council for Inter-Ethnic Cohesion on improving ethno-national policies, on improving the work of governmental bodies and the interaction between them and the Ukrainian Cabinet, and on measures to promote tolerance.

Finally, in September 2014, the Ukrainian Cabinet approved by decree the remit of the Ministry of Culture. The Ministry is, in particular, responsible for taking measures to promote tolerance within Ukrainian society and preventing incitement to hatred and to ethnic discrimination.³⁶⁴¹

ECRI noted that the Parliamentary Commissioner for Human Rights has qualified staff with training in issues pertaining to racism and racial discrimination and has organised numerous training sessions on the prevention and combating of discrimination for various groups, including legal experts, judges, representatives of the law enforcement agencies and representatives of NGOs.

As to the Council for inter-ethnic cohesion, ECRI notes that that body – comprising representatives of various ministries, experts, scientists, the Government Agent on Ethno-National Policy Issues and representatives of the various ethnic minorities – is first and foremost a body that facilitates relations between the government and those minorities³⁶⁴².

The second recommendation was implied to urge the Ukrainian authorities to ensure that a fair and effective refugee status determination procedure is in place at all times and that the final structure intended to exercise these functions is established as soon as possible. In accordance with this, decree No. 405/2011 of the President of Ukraine, issued in April 2011 and approving the Regulation on the State Migration Service (SMS), the SMS has become the executive's main body responsible for migration issues, under the supervision of the Ministry of the Interior and the State Committee for Nationalities and Religion. Furthermore, a new law on refugees and persons needing complementary or temporary protection in Ukraine came into force in September 2011.

That law introduces protection for persons under threat of the death penalty, torture or inhuman or degrading treatment in their country of origin. Nevertheless, ECRI considers that the placing of the State Migration Service under the supervision of the Ministry of the Interior cannot provide a guarantee of fair application of the refugee status determination procedure required by its recommendation, as tends to be shown by the fact that, at central level, the team responsible for these matters is also responsible for other duties, such as those connected with the reception

³⁶⁴⁰ European Commission against Racism and Intolerance, 'ECRI Report on Ukraine (fifth monitoring cycle)' (2017) <https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/ukraine/UKR-CbC-V-2017-038-ENG.pdf>

³⁶⁴¹ *ibid.*

³⁶⁴² European Commission against Racism and Intolerance, 'ECRI Conclusions on the Implementation of the Recommendations in Respect of Ukraine Subject to Interim Follow-up' (9 June 2015) <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/ukraine/UKR-IFU-IV-2015-025-ENG.pdf>, 5.

of refugees at open centres and the detention of migrants in an unlawful situation at the centres provided for that purpose³⁶⁴³.

And the last one related to establish an independent body empowered to receive complaints against police officers; it refers to its General Policy Recommendation No. 11, which contains a number of specific guidelines in this respect. In this case, Ukrainian authorities told that “internal security units” responsible, inter alia, for monitoring compliance with the law by representatives of law enforcement agencies. In this context, those units were required to deal with complaints lodged by citizens. They collected information about the cases submitted to them and sent relevant evidence to the prosecution service or the Security Service of Ukraine.

ECRI takes due note of these initiatives, but considers that they are insufficient in the light of its recommendation. Firstly, the remit of those units confers on them the role of monitoring compliance with the law: the protection of human rights and the fight against racism and racial discrimination are not explicitly included. ECRI also considers that the placing of those units under the supervision of a ministry cannot guarantee the independence that such a body must enjoy in order to be able to carry out its duties impartially.

For these reasons, ECRI concludes that its recommendation has been partially implemented³⁶⁴⁴.

Unfortunately, nothing has changed since that time. Moreover, the 5th cycle of monitoring of ECRI mentioned that the Action Plan for Integration of Migrants into Ukrainian Society for 2011-2015 have not been updated to cover the period after 2015, although the State Migration Service has been working for several years on a new migration policy up to 2025³⁶⁴⁵.

Migrants still face numerous problems in Ukraine such as residence registration, as landlords are often reluctant to register foreigners renting their property, and this hinders access to education, healthcare, and administrative services. The above-mentioned study also indicates that foreigners frequently pay higher rent than Ukrainian nationals. And no public housing assistance is available to immigrants.

The integration in the area of communication is not good too. Over two-thirds attended language courses and have certificates, although the current network of facilities that offer Ukrainian language courses is described as inadequate. Further, 80% of immigrants are employed, but only 40% work legally, mostly in trade, services, and construction.

Over a quarter of the participants in the survey reported experiencing problems accessing health care, mainly because migrants are required to pay for services, including emergency medical assistance. Only about 40% reported having medical insurance cover.

Furthermore, migrants also suffer from negative attitude towards foreigners and discrimination and xenophobia on the part of public officials have been reported.

In view of the fact that Ukraine has a growing migrant population due to its strategic location between the European Union and the Russian Federation, ECRI considers that steps should be taken to address the concerns raised above.

³⁶⁴³ *ibid* 6.

³⁶⁴⁴ *ibid* 7.

³⁶⁴⁵ *ibid* 8.

7. How is migrants' right to access to healthcare regulated within the national legislation?

Migrants' right to access to healthcare is regulated by following legal acts:

- the Law of Ukraine n. 2801-XII 'Bases of the legislation of Ukraine on health care' (1992);
- the Law of Ukraine n. 3773-VI 'On the Legal Status of Foreigners and Stateless Persons' (2011);
- Resolution of Cabinet of Ministers of Ukraine n. 121 'Procedure for providing medical assistance to foreigners and stateless persons [...] ' (2014).

According to the Article 3 of Law of Ukraine 'On the Legal Status of Foreigners and Stateless Persons' foreigners and stateless persons make use of the same rights, freedoms and responsibilities as Ukrainian citizens (pt. 1) and have the right to recognize their legal personality and fundamental human rights and freedoms (pt. 2)³⁶⁴⁶. In addition to this, the Article 11 of the Law 'Bases of the legislation of Ukraine on health care' establishes that foreigners and stateless persons have the same rights and responsibilities in healthcare area like citizens of Ukraine³⁶⁴⁷.

Main act which regulate the procedure for providing medical assistance is Resolution of Cabinet of Ministers of Ukraine 'Procedure for providing medical assistance to foreigners and stateless people [...]'. This act contains provisions on how the non-citizens of Ukraine can receive necessary medical aid.

In the begging, we should start with the necessary rule. Under the Article 33 of Law of Ukraine 'Bases of the legislation of Ukraine on health care' medical aid providing by the medical indications by professionally trained medical staff who are in labour relations with healthcare institutions, providing medical help according to the license obtained by the law³⁶⁴⁸. No other person can offer the medical aid.

According to the Article 39 of this law, a patient who has reached adulthood has the right to receive correct and complete information about his (her) health, including access to relevant medical documents on his (her) health. The medical officer is obliged to give the patient in accessible form with information about his state of health, the purpose of conducting the proposed research and medical measures, the forecast of the possible development of the disease, including the risk to life and health as well as³⁶⁴⁹.

In this regard, medical and emergency aid for foreigners and stateless persons, who are temporarily located on the territory of Ukraine, is provided for a fee, if Constitution of Ukraine or International Acts are not providing otherwise. The fee of medical aid is determined by the healthcare institution that provided it, in the order established by the Ministry of Health (pt. 2).

³⁶⁴⁶ Law n. 3773-VI (On the Legal Status of Foreigners and Stateless Persons) 2011 [Про правовий статус іноземців та осіб без громадянства].

³⁶⁴⁷ Law n. 2801-XII (Bases of the legislation of Ukraine on health care) 1992 [Основи законодавства України про охорону здоров'я].

³⁶⁴⁸ *ibid* Art.33

³⁶⁴⁹ *ibid* Art.39

The fee can be carried out in cashless form (for example, credit card) or in cash in national currency³⁶⁵⁰.

Exception from this rule makes up foreigners and stateless person who permanently reside in the territory of Ukraine. That is why they can receive aid at the expense of budget funds provided for this purpose in the state and local budgets (pt. 3)³⁶⁵¹. Furthermore, medical examination of foreigners and stateless persons, who have applied for recognition of refugee, or a person, who needs additional protection, foreigners and stateless persons, in respect of whom a decision has been made to issue documents for resolving the issue of recognition as a refugee, or a person in need of additional protection, and provision of emergency medical care is carried out free of charge, at the expense of budget funds provided in the state and local budgets too.

Under the Ukrainian legislation framework foreigners and stateless persons, who are temporarily staying on the territory of Ukraine, should to have health insurance policy, which guarantees the payment of medical care (insurance contract). If foreigner wants to receive a certificate for temporary residence in Ukraine specified document is necessary too.

Insurance contract may be entered into with insurer-resident or non-resident insurer. In case of conclusion agreement on mutual recognition of insurance contracts between insurer-resident and non-resident insurer, the guarantee of payment of required medical care shall be carried out by the resident insurer in the presence of insurance contract. Also payment of medical aid may be provided by companies coordinating the provision of medical care in Ukraine, which specified in the insurance contract.

In the event of absence of insurance for a foreigner or stateless person, as well as inability to confirm the right to receive free medical care in Ukraine, the payment of provided medical aid is carried out by foreigner or stateless person on his (her) own. If the cost of health care exceeds the sum insured, the foreigner or stateless person pays the difference to the health care institution.

It is useful to note that every case of medical assistance to foreigners and stateless persons must be registered in the health care institution that provided needed medical care.

Another law that is worth mentioning is the Law of Ukraine 'On Emergency Medical Aid'. Especially the Article 3 suggests free, available, timely and high quality emergency medical aid to citizens of Ukraine and any other person. Foreigners and stateless persons, as well as individuals who have been taken into custody or who have been sentenced in the form of deprivation of

³⁶⁵⁰ Decree n. 121 of Cabinet of Ministers of Ukraine (Procedure for the provision of medical aid to foreigners and stateless persons who are permanent residents or temporary in Ukraine, who have applied for recognition as a refugee or a person who needs additional protection in respect of which a decision was made to issue documents for resolving the issue of recognition as a refugee or a person who needs complementary protection and who is recognized as a refugee or a person in need of additional protection) 2014 [Порядок надання медичної допомоги іноземцям та особам без громадянства, які постійно проживають або тимчасово перебувають на території України, які звернулися із заявою про визнання біженцем або особою, яка потребує додаткового захисту, стосовно яких прийнято рішення про оформлення документів для вирішення питання щодо визнання біженцем або особою, яка потребує додаткового захисту, та яких визнано біженцями або особами, які потребують додаткового захисту], pt. 2.

³⁶⁵¹ *ibid* pt.3.

liberty, are provided with emergency medical aid in accordance with the procedure established by the Cabinet of Ministers of Ukraine (pt. 1)³⁶⁵².

Part 2 of this Article provides with the rights every citizen of Ukraine and any other person have. They are:

- to make emergency medical aid calls;
- apply for emergency medical assistance to the nearest emergency department or other health care institution that can provide such assistance;
- notify the treating physician or the nearest healthcare provider, regardless of the form of ownership and subordination of his (her) urgent condition or the urgent condition of another person.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

In regard to this issue, it is essential to take into consideration two aspects: right to education of external migrants and right to education of internal migrants (internally displaced people due to war in Eastern Ukraine and annexation of Crimea).

8.1. Right to education of external migrants

Under the Article 26 of the Constitution of Ukraine, foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with³⁶⁵³ the exceptions established by the Constitution, laws or international treaties of Ukraine.

Constitution of Ukraine guarantees the right to education to everyone. According to the Article 53, the State ensures accessible and free pre-school, complete general secondary, vocational and higher education in state and communal educational establishments; the development of pre-school, complete general secondary, extra-curricular, vocational, higher and post-graduate education, various forms of instruction; the provision of state scholarships and privileges to pupils and students³⁶⁵⁴.

In respect to foreigners and stateless persons, Ukrainian legislation covers all the guarantees stated above except the free higher education in in state and communal educational establishments.³⁶⁵⁵

According to the Article 15 of the Law of Ukraine on Refugees and Persons in need of Complementary or Temporary Protection in Ukraine, a person who has been recognized as a

³⁶⁵² Law n. 5081-VI (On Emergency Medical Aid) 2012 [Про екстрену медичну допомогу].

³⁶⁵³ Law n. 254к/96-ВР (Constitution of Ukraine) 1996 [Конституція України] Art. 26.

³⁶⁵⁴ *ibid* Art. 53.

³⁶⁵⁵ V.Y. Tatsii, *Scientific and practical commentary to the Constitution of Ukraine* (2nd edn, Pravo 2011) [Ukrainian].

refugee or as a person in need of complementary protection shall enjoy, on a par with the Ukrainian citizens, the rights to education.³⁶⁵⁶

In addition, the Article 20 of the Law states that a minor who has been granted temporary protection shall have the right to upbringing and education at the public and community pre-school, secondary and vocational institutions in accordance with the procedure established by the specially authorized central executive educational authority.

According to the Ministry of Foreign Affairs of Ukraine, International students have opportunity to study in more than 240 universities in Ukraine and gain the specialization in different scientific fields. The main languages of instructions in Ukrainian Higher Educational Institutions (HEIs) are Ukrainian, Russian or English. Every year higher educational establishments welcome students from more than 150 countries.³⁶⁵⁷

According to the research, one of the most important problem that migrants face (including children) is a lack of Ukrainian language courses which is an obstacle of effective integration.³⁶⁵⁸

8.2. Right to education of internally displaced persons

Article 7 of the Law of Ukraine On guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine covers ensuring the rights of citizens residing on the temporarily occupied territory or persons resettled from it for employment, pensions, mandatory state social security and social services, and education.

Under the law, foreigners and stateless persons who permanently live in Ukraine, refugees or persons in need of complementary protection who legally stay in Ukraine and live on the temporarily occupied territory of Ukraine, has the right to continue their studies on the territory of other regions in order, established under the Law of Ukraine «On higher education». At the same time, the categories of people mentioned above has the right to pre-school, out-of-school, complete general secondary, vocational and higher education.³⁶⁵⁹

³⁶⁵⁶ Law n. 3671-VI (On Refugees and Persons in Need of Complementary and Temporary Protection) 2011 [Про біженців та осіб, які потребують додаткового або тимчасового захисту].

³⁶⁵⁷ Ministry of Foreign Affairs of Ukraine, 'Освіта в Україні для іноземних громадян' <http://mfa.gov.ua/ua/page/open/id/4898> [Ukrainian].

³⁶⁵⁸ MIGRECO, 'Дослідження з питань інтеграції, злочинів на ґрунті ненависті та дискримінації різних категорій мігрантів' (2014) http://www.iom.org.ua/sites/default/files/study_0.pdf [Ukrainian].

³⁶⁵⁹ Law n. 1207-VII (On guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine) 2014 [Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України].

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. How are foreign school and university diplomas recognised in your country?

Procedure of recognising foreign school and university diplomas called nostrification. It aims to provide citizens' rights and rights of foreigners, who gained education abroad, related to continuing education and professional activities in Ukraine³⁶⁶⁰.

Decree of Ministry of Education and Science of Ukraine n. 504 'The Order of recognising degrees of higher education gained in foreign higher educational institutions'³⁶⁶¹ (2015) is a principle legal act in Ukraine which regulates the procedure of recognising educational document.

This procedure is performed by higher educational institution (in case of enrolment for continue studying or to a post of scientific and pedagogical worker to specific higher educational institution) and the Ministry of Education and Science of Ukraine (for the purpose of employment or continuing education in the territory of Ukraine).

The procedure of recognising includes: authentication of documents, confirmation of the status of educational institution and educational programme, appraisal of qualifications, and the establishment of equivalence to educational degrees in Ukraine, academic and professional rights. As a result, the holder of foreign educational documents receives a certificate which confirms the right to continue education or employment on a specialty in a higher educational institution of Ukraine. The issuance of such a certificate is carried out on the basis of a decision of the competent authority - a higher educational institution or the Ministry of Education and Science of Ukraine.

In 1999 Ukraine ratified the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (hereafter: 'The Lisbon Recognition Convention')³⁶⁶², that is why the procedure of recognising foreign educational documents became easier. Due to this reason, foreign students have more opportunities to study in Ukraine.

According to the provisions of The Lisbon Recognition Convention holders of qualifications awarded by one party have appropriate access to the assessment of these qualifications, which is carried out by the relevant authority at their request. In this connection, any discrimination against the applicant is prohibited (Art. 3)³⁶⁶³.

³⁶⁶⁰ Ministry of Education and Science of Ukraine (Official website) <http://mon.gov.ua/activity/poslugi/viznannya-dokumentiv/viznannya.html>.

³⁶⁶¹ 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.

³⁶⁶² The Convention on the Recognition of Qualifications concerning Higher Education in the European Region 1997 <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f2c7>.

³⁶⁶³ *ibid* Art. 3.

9.2. What are the practical procedures?

First of all, recognition begins with the application of the person submitted to the competent authority (it can be higher educational institute or the Ministry of Education and Science)³⁶⁶⁴.

Applicant should to submit the following documents:

- certified copy of the Document and its translation into Ukrainian in accordance with the procedure established by law;
- certified copy of the annex to the Document and its translation into Ukrainian and other necessary documents in accordance with the procedure established by law.
- All of these documents should be certified in the country of origin (e.g. stamping "Apostille").
- copies of documents on the previous education (if necessary);
- copies of documents certifying the identity of the applicant;
- an application;
- the consent of the owner of the Document for the processing of his personal data in accordance with the Law of Ukraine 'On Protection of Personal Data'.

Moreover, this procedure became easier now and the applicant has the right to file non-certified documents, as well as to file the documents in electronic form in digital format. It gives more opportunities to foreign students.

The procedure of recognising the Document for the purpose of continuing education is carried out by the competent authority – higher educational institution³⁶⁶⁵.

This procedure includes such stages as:

- authentication of the Document and its annex;
- confirmation of the status of the educational institution and the Program;
- qualifications assessment or assessment of period of educating specified in the Document, equivalence to educational degrees in Ukraine, academic and professional rights.

Authentication of the document may be done in one of the following ways:

- check the presence of an "Apostille" stamp if it confirms the authenticity of the document in the country of origin, and verifies the details of the Apostille in the relevant register;
- verification in the educational documents register, if such register is introduced by the country of origin of the document or educational institution that issued it;
- sending a request for additional information about the authenticity of the documents to relevant official bodies and educational institutions of other states.

It is necessary to check the statues of the educational institution and the Programme. Checking is held in (1) national official sources like registries of accreditation bodies, ministries of education,

³⁶⁶⁴ 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], Para. 4.

³⁶⁶⁵ *ibid* Para. 5.

associations of education quality assurance agencies, official national publications; (2) international official sources; (3) sending a request to the relevant competent authorities.

Also, higher educational institutions provides comparative analysis which should take into account the degree attributed to the Document and its place in the national education system; the content and scope of the Program (expected results of studying in an academic programme, the number of credits or academic hours); the quality of the Programme or the educational institution that provided the qualification; the profile of the Programme or the educational institution that provided the qualification; academic and professional rights that are provided by the Document.

In the most cases, the Document becomes valid on the territory of Ukraine. Many foreign students have already gone through this procedure and study in Ukrainian higher education institutions.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

Answering this question, it should be noted that all Ukrainian citizens have certain political rights. The list of these rights is provided by Constitution of Ukraine:

- citizens have the right to take part in the management of public affairs, national and local referendums, the right to elect and be elected to representative bodies of state power and local self-government (art. 38)³⁶⁶⁶;
- citizens have the right to gather peacefully, without weapons and to hold meetings, rallies, campaigns and demonstrations, about which bodies of executive power or local self-government are notified (art. 39)³⁶⁶⁷;
- citizens have the right to freedom of association in political parties and public organizations for the exercise and protection of their rights and freedoms, and for the satisfaction of political, economic, social, cultural and other interests. Citizens have the right to participate in trade unions in order to protect their labour and socio-economic rights and interests (art. 36)³⁶⁶⁸;

Checking each right, the structure may be divided into different elements which closely related to each other.

The main of all is the right to take part in the management of public affairs. Constituent elements of this Constitutional right are: a) the right to take part in the management of public affairs; b) the right to take part in the national and local referendums; c) the right to elect and be elected to representative bodies of state power and local self-government.

³⁶⁶⁶ *ibid* Art. 38

³⁶⁶⁷ *ibid* Art. 39

³⁶⁶⁸ *ibid* Art. 36

The legislation establishes that only citizens of Ukraine, who have reached the age of 18 and who are not recognized as incapacitated by the court, can fulfil mentioned rights.

Describing the right to hold meetings, rallies, campaigns and demonstrations, it is worth paying attention to the provisions of Article 39 of the Constitution of Ukraine. Paragraph 1 states that citizens have the right to assemble peacefully without weapons and to hold meetings, rallies, campaigns and demonstrations, about which advance bodies of executive power or local self-government are informed about in advance. Although this provision does not clearly talk about foreigners and stateless persons they allow taking part in such events.

And the last Constitutional right is taking part in political parties and public organizations. The main provisions follow:

- citizens of Ukraine have the right to freedom of association in political parties and public organizations for the realization and protection of their rights and freedoms and the satisfaction of political, economic, social, cultural and other interests;
 - political parties in Ukraine contribute to the formation and expression of political will of citizens, participate in elections;
- only citizens of Ukraine can be members of political parties;
- citizens have the right to participate in trade unions in order to protect their labour and socio-economic rights and interests.

Such situation is fully justified. It depends on the fact that migrants are citizens of another country and do not have a direct political and legal relationship with our state, therefore, they cannot interfere in the activities of this sphere of public life. These provisions regard stateless persons as well as.

As a result, we can see that migrants have no right to participate in political life in our country as in the country of their origin.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. How can migrants acquire citizenship in the country?

The acquisition of Ukrainian citizenship is mainly regulated by two normative acts:

- The Law of Ukraine n. 2235-III 'On Ukrainian Citizenship' (2001);
- Decree of the President of Ukraine n. 215 'Procedure for the processing of applications for citizenship and implementation of decision taken' (2001).

To be eligible for the citizenship of Ukraine a migrant must satisfy six requirements listed in Article 9 of the Law 'On Ukrainian Citizenship':³⁶⁶⁹

³⁶⁶⁹ Law n. 2235-III (On Ukrainian Citizenship) 2001 [Про громадянство України], Art 9.

№	Requirements	Exceptions
1	Recognition and observance of the Ukrainian Constitution and the laws of Ukraine	
2	Filing of a declaration of absence of foreign citizenship (for stateless persons) or an obligation to renunciate foreign citizenship (for foreigners). Foreigners have to fulfil this obligation within two years from the date of Ukrainian citizenship registration	citizens of countries whose legislation envisages automatic termination of citizenship once a foreign citizenship is acquired, or when international treaties with Ukraine stipulate such simultaneous termination; foreigners granted refugee status or asylum in Ukraine shall file a declaration of renunciation of foreign citizenship.
3	Continuous lawful residence in the territory of Ukraine for the past 5 years	foreigners or stateless persons married to Ukrainian citizens for over 2 years; foreigners or stateless persons, who were married to a citizen of Ukraine over two years in case of marriage termination due to the death of the spouse; persons granted refugee status or asylum in Ukraine – 3 years of residence from the date of granting the status; persons who entered Ukraine as stateless persons – 3 years from the date of entry to Ukraine; foreigners or stateless persons who are undergoing contractual military service in the armed forces of Ukraine – 3 years from the date a contract entered into force.
4	Receipt of a permit for immigration	persons granted refugee status or asylum in Ukraine; foreigners or stateless persons undergoing contractual military service in the armed forces of Ukraine; foreigners and stateless persons if they have arrived in Ukraine for permanent residence before the effective date of the Law of Ukraine 'On Immigration' and are in possession of former Soviet passports in 1974 format with entries to the effect that they have a permanent or temporary registration in the

		territory of Ukraine or were issued a permanent residence permit certificate; persons with outstanding merits before Ukraine; foreigners or stateless persons undergoing military service in the armed forces of Ukraine and granted state award; persons whose admission to the citizenship of Ukraine is of a national interest to Ukraine.
5	Command of the official language or understanding it to a degree sufficient for adequate communication	physically handicapped individuals (blind, deaf, mute); persons with outstanding merits before Ukraine; foreigners or stateless persons undergoing military service in the armed forces of Ukraine and granted state award; persons whose admission to the citizenship of Ukraine is of a national interest to Ukraine.
6	Presence of legitimate sources of subsistence	persons granted refugee status or asylum in Ukraine; persons with outstanding merits before Ukraine; foreigners or stateless persons undergoing military service in the armed forces of Ukraine and granted state award; persons whose admission to the citizenship of Ukraine is of a national interest to Ukraine.

Additionally, pursuant to Article 9 of the Law 'On Ukrainian Citizenship' a person shall not be admitted to the citizenship of Ukraine, if this person:

- has committed a crime against humanity or an act of genocide;
- is sentenced to confinement in Ukraine for commitment of serious or grave crime (until serving the term or when acquitted) taking into account the level of threat to national security of the state;
- has perpetrated acts outside Ukraine qualified as serious or grave criminal offences under Ukraine's legislation.

Provided that a person satisfies eligibility conditions, he (she) should submit an application with necessary supporting documents to the territorial department of the State Migration Service at the place of his (her) residence.

The list of documents is prescribed the 'Procedure for the processing of applications for citizenship and implementation of decision taken' and depends on particular circumstances of each person.³⁶⁷⁰ The most common set of documents include:

- three photos (sized 35 x 45 mm);
- declaration of absence of foreign citizenship (for stateless persons) or an obligation to renunciate foreign citizenship (for foreigners);
- document confirming continuous lawful residence in the territory of Ukraine for the past 5 years;
- copy of document certifying the receipt of a permit for immigration;
- document confirming the knowledge of Ukrainian language issued in Ukraine by the head of educational institution, local government or executive body of local council;
- document confirming the presence of legitimate sources of subsistence during six months preceding the application. In alternative, a person can submit a document confirming the availability of financial savings on a bank account, which has to be not less than the amount of 12-times subsistence minimum for one person.³⁶⁷¹

The competent authorities are obliged to take a final decision within a year from the date of application.³⁶⁷²

11.2. Is there a possibility of double nationality?

Article 4 of the Ukrainian Constitution unequivocally stipulates that there shall be a single form of citizenship in Ukraine.³⁶⁷³ However, the Law 'On Ukrainian Citizenship' defines this principle as follows:

Single citizenship – is the citizenship of Ukraine that excludes a possibility of citizenship of any territorial units of Ukraine. If a citizen of Ukraine has acquired the citizenship of another state or more than one other state, such person shall be treated only as a citizen of Ukraine in legal relations with Ukraine. If a foreigner has acquired the citizenship of Ukraine, he (she) shall be treated only as a citizen of Ukraine in legal relations with Ukraine.³⁶⁷⁴

Thus, the interpretation of single citizenship principle by Ukrainian legislation creates a possibility of double nationality.

On the other hand, Article 19 of the Law 'On Ukrainian Citizenship' provides for the loss of Ukrainian citizenship if a citizen of Ukraine, after coming of legal age, voluntarily acquires foreign citizenship. The Law further explains that voluntary acquisition of citizenship shall be understood as all cases when a citizen of Ukraine submits an application for the citizenship of another state in accordance with procedure, established by the national legislation of the relevant

³⁶⁷⁰ Decree of the President of Ukraine n. 215 (Procedure for the Processing of Applications for Citizenship and Implementation of Decision Taken) 2001 [Порядок провадження за заявами та поданнями з питань громадянства України та виконання прийнятих рішень], Art. 45-51.

³⁶⁷¹ As of July 2017, the required amount equals UAH 20,208 (1,684*12).

³⁶⁷² Decree of the President of Ukraine n. 215 (Procedure for the Processing of Applications for Citizenship and Implementation of Decision Taken) 2001 [Порядок провадження за заявами та поданнями з питань громадянства України та виконання прийнятих рішень], Art. 112.

³⁶⁷³ Law n. 254k/96-VR (Constitution of Ukraine) 1996 [Конституція України], Art. 4.

³⁶⁷⁴ Law n. 2235-III (On Ukrainian Citizenship) 2001 [Про громадянство України], Art 2.

state.³⁶⁷⁵ This excludes, for example, instances of children simultaneously becoming citizens of Ukraine and of another country at birth or automatic acquirement of foreign citizenship after marrying a foreigner. Therefore, the double nationality of Ukrainian citizen is in conformity with the legislation of Ukraine, unless the nationality of another state was acquired voluntarily.

Moreover, the laws of Ukraine do not contain sanctions for those who are in possession of several citizenships. Even when Ukrainian citizen acquires another nationality, the loss of Ukrainian one is not automatic. It is only effective after the President of Ukraine has issued a decree.³⁶⁷⁶ Since there is no procedure established by law to determine persons with another citizenship, the instances of the loss of Ukrainian citizenship on the ground of double nationality are virtually non-existent. The only known case is the loss of citizenship³⁶⁷⁷ by Andrii Artemenko³⁶⁷⁸ and Olexandr Borovik.³⁶⁷⁹ There are strong allegations that this decision was politically-motivated.³⁶⁸⁰

In conclusion, despite the unconditional constitutional principle of single citizenship, its interpretation in Ukrainian legislation deviates from the wording of Constitution and allows the possibility of double nationality.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

One of the EU's requirements within the framework of Visa Liberalisation Action Plan was the introduction of integration policy for migrants.³⁶⁸¹ For these purposes, Ukrainian authorities prepared the 'Action Plan on Integration of Migrants in Ukraine and the Reintegration of Ukrainian Migrants'.³⁶⁸²

³⁶⁷⁵ *ibid* Art 19 (pt. 1).

³⁶⁷⁶ *ibid* Art 19 (pt. 4).

³⁶⁷⁷ Decree of the President of Ukraine n. 119 (On suspension of Ukrainian citizenship of Artemenko A.V., Borovik O., Novgorodskiy D.V. and other persons) 2017 [Про припинення громадянства України Артеменка А.В., Боровика О., Новгородського Д.В. та інших осіб].

³⁶⁷⁸ Member of Ukrainian parliament.

³⁶⁷⁹ Former advisor to Mikheil Saakashvili, the then governor of Odessa region in Ukraine.

³⁶⁸⁰ Halya Coynash, *Is President Poroshenko turning to selective stripping of Ukrainian citizenship?* (Information website of the Kharkiv Human Rights Protection Group, 6 May 2017) <http://khpg.org/en/index.php?id=1494036216> accessed 31 July 2017; Natasha Bertrand, *Report: Lawmaker who held secret 'peace plan' meeting with Trump's lawyer has been stripped of his Ukrainian citizenship* (Business Insider, 5 May 2017) <http://www.businessinsider.com/andrey-artemenko-michael-cohen-trump-ukraine-2017-5> accessed 31 July 2017; Christopher Miller *'Peace Plan' Lawmaker Stripped Of Ukrainian Citizenship By Presidential Decree* (RFERL, 5 May 2017) <https://www.rferl.org/a/ukraine-artmenko-stripped-citizenship-peace-plan/28469976.html> accessed 31 July 2017.

³⁶⁸¹ Kateryna Kulchytska, Iryna Sushko, Andriy Solodko, *'Policy Brief: Ukrainian Migration Policy Reform: Paving the Way for the EU-Ukraine Cooperation'* (CEDOS think tank, NGO 'Europe without barriers', 4 July 2016) <http://english.europeweb.org.ua/wp-content/uploads/2017/02/Ukrainian-Migration-Policy-Reform.pdf> accessed 1 August 2017.

³⁶⁸² SEC 1076 (First progress report of the implementation by the Ukraine of the Action Plan on Visa Liberalisation) 2011, 6.

The conflict in eastern Ukraine, which urged around 2.8 million people to flee the affected areas,³⁶⁸³ created a wave of internal migration. Since 2014, the EU has given over EUR 399 million in humanitarian and early recovery aid to help persons affected by the conflict.³⁶⁸⁴ Apart from that, the EU supports initiatives to facilitate the integration of internally displaced persons (IDPs) into local communities. As a part of its programme 'Support to Ukraine's Regional Development Policy' (2013-2016) the EU provided financial support to local authorities in the form of grants between EUR 200 000 and EUR 2 million (the total allocation was EUR 17 million).³⁶⁸⁵ As a result, 18 projects were funded in 14 regions of Ukraine; within these initiatives, IDPs were provided with work and education, medical and psychological support.³⁶⁸⁶

Conclusions

The original motivation for this research was a desire to show how migration is regulated by national legislation of Ukraine and to highlight the main features of moving to Ukraine.

In conclusion of this research, it can be mentioned that Ukrainian legislation should be improved to respond to the international legal acts, which exist now. Although national legislation provides opportunities and quite easy process for foreigners and stateless persons to stay in the territory of Ukraine, it still contains difficulties in the implementation of this process.

One of the main difficulties is that the information of migration needs to be more accessible for non-Ukrainian people. It means the legal acts should be officially translated into other common languages and be updated with last amendments.

The second main difficulty is related to the terms. In practice, the migration processes regarding foreigners and stateless persons take much more time processing necessary documents. It causes that the number of foreigners do not undergo through all of these and illegally stay in Ukraine.

It should be noted that court practice is poor to deal with foreigners and stateless persons. Courts need to pay more attention to this and implement present international practice to raise their knowledge in this area.

Finally, Ukrainian government and legislation bodies need to reconsider national policy towards migrants and make it easier to exercise.

³⁶⁸³ Press release, 'EU announces €18 million in humanitarian aid for Ukraine' (European Commission, 20 February 2017) http://europa.eu/rapid/press-release_IP-17-288_en.htm accessed 1 August 2017.

³⁶⁸⁴ 'Factsheet – Ukraine' (European Civil Protection and Humanitarian Aid Operations, June 2017) http://ec.europa.eu/echo/files/aid/countries/factsheets/ukraine_en.pdf accessed 1 August 2017.

³⁶⁸⁵ 'Projects to support Internally Displaced People' (Support to Ukraine's Regional Development Policy) <http://surdp.eu/en/EU-assistance-for-IDPs> accessed 1 August 2017.

³⁶⁸⁶ *ibid.*

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Introduction

Migration law in the United Kingdom ('UK') can be perceived through various lenses. From a global perspective, the UK is a responsible international law actor, having ratified key international treaties such as the 1951 UN Convention Relating to the Status of Refugees and the 1950 European Convention on Human Rights. Due to its dualist legal system, however, such agreements are not effective in domestic law unless and until approved by Parliament. From the perspective of the European Union ('EU'), the UK is a Member State subject to the EU doctrine of direct effect, with a duty to implement EU instruments such as the Procedures Directive 2005/85/EC on minimum standards for granting and withdrawing refugee status. Nevertheless, in view of Brexit, the status of EU law in the UK is now uncertain. Significantly, from an individual perspective, migrants may find that their rights vary according to their status as either an EU/EEA national, a Commonwealth citizen, or a third country national; although domestic legislation such as the Equality Act 2010 and the Human Rights Act 1998 permeate these varying regimes.

What is clear is that this area of law is rapidly changing, which is perhaps a reflection of ongoing domestic issues. The drive for development can be seen as a response to the contention surrounding certain policies, such as access to public healthcare, which is contingent on immigration status, and the 'deport first appeal later' policy, regulated by Section 94B of the Nationality, Immigration and Asylum Act 2002. That said, as will be seen, the UK has also been commended for pioneering projects such as the Syrian Vulnerable Persons Resettlement Programme, launched in 2014 as a response to the Syrian Refugee Crisis, and the European Qualifications Passport for Refugees, launched as a pilot scheme in 2017 in collaboration with Norway. In this context, a considered appreciation of the abovementioned perspectives facilitates a greater understanding of the multiplicity of issues faced in the UK, and how its law has been and may yet be shaped as a result thereof.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Regulation of Asylum in the UK

As a common-law jurisdiction, the UK regulates immigration through a mixture of conventions, statutes, rules, guidance and case law. The UK comprises of four countries— England, Scotland, Wales and Northern Ireland. Following devolution, the latter three have been granted legislative

rights in a number of areas. Immigration control, however, remains a 'reserved matter' and as such is the responsibility of the UK Parliament in Westminster.³⁶⁸⁷

The UK is signatory to the 1951 United Nations' Convention Relating to the Status of Refugees ('Geneva Convention') and its 1967 Protocol, and has ratified both. UK national laws are also, and remain, subject to the European Convention on Human Rights ('ECHR'). Leaving the EU will not, therefore, relieve the UK from its obligations under international law and regional human rights law, although the applicability of the latter largely depends on any potential withdrawal from the ECHR.³⁶⁸⁸ Furthermore, the fear remains that the experience of applying for asylum in Britain may significantly deteriorate following Brexit.³⁶⁸⁹

The statutory regime governing the asylum determination system in the UK is predominantly contained in the UK Immigration Rules.³⁶⁹⁰ The Rules are divided into different sections with Part 11 governing the right to asylum. Due to the changing nature of asylum politics and policies, the Rules are updated on regular basis and the latest substantial amendments were made in December 2016.

1.1.1. Bodies Responsible for Asylum

The Secretary of State for the Home Department ('SSHHD'), along with her ministerial department, the Home Office, is responsible for matters such as asylum, nationality and border control laws, amongst many others including policing, crime and counter-terrorism. Of the various departments within the Home Office, UK Visas and Immigration ('UKVI') is responsible for processing asylum applications and making decisions on behalf of the SSHHD. When deciding an outcome of the asylum application, the UKVI caseworkers must follow the Asylum Policy Instructions issued by the SSHHD.³⁶⁹¹

1.1.2. Eligibility for Asylum

Part 11 of the Immigration Rules, in paragraph 334, sets out the requirements in order to be considered for asylum. First, and foremost, one must be claiming asylum as a refugee.³⁶⁹² A refugee is any person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling

³⁶⁸⁷ Library of Congress, 'Refugee Law and Policy: United Kingdom' (21 June 2016), <https://www.loc.gov/law/help/refugee-law/unitedkingdom.php#_ftn1> accessed on 13 July 2017.

³⁶⁸⁸ Lucy Mayblin, 'What will Brexit Mean for Asylum in the UK?' (*Open Democracy*, 6 December 2016) <<https://www.opendemocracy.net/lucy-mayblin/what-will-brexite-mean-for-asylum-in-uk>> accessed 11 June 2017.

³⁶⁸⁹ *ibid.*

³⁶⁹⁰ Home Office, *UK Immigration Rules* (Rules, 29 February 2016) <<https://www.gov.uk/guidance/immigration-rules>> accessed 5 June 2017.

³⁶⁹¹ Home Office, *Assessing credibility and refugee status* (Asylum Policy Instruction, 6 January 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf> accessed 11 June 2017.

³⁶⁹² Home Office, *UK Immigration Rules*, pt 11 para 334(ii).

to return to it.³⁶⁹³ Prosecution on the basis of sexual orientation and/or gender identity has been recognised as part of the ground of ‘membership of a particular social group’.³⁶⁹⁴

Second, a person claiming asylum in the UK must do so either at port of entry (such as an airport) or ‘in-country’ (at an asylum screening unit³⁶⁹⁵).³⁶⁹⁶ The UK does not, as a rule, consider an asylum application made from abroad. This was clarified in 2011: ‘the UK’s international obligations under the [1951 Geneva] Convention do not extend to the consideration of asylum applications lodged abroad and there is no provision in our Immigration Rules for someone abroad to be given permission to travel to the UK to seek asylum. [...] No applications will be considered by a UK visa-issuing post or by the UK Border Agency pending a review of the policy and guidance.’³⁶⁹⁷

Third, the recent changes to the Immigration Rules taking effect in November 2015 introduced a presumption that asylum claims by EU nationals are inadmissible and will not be considered unless exceptional circumstances are shown.³⁶⁹⁸

Finally, in addition to the above, the SSHD will grant asylum if she is satisfied that the asylum seeker is—

- There are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;
- Having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- Refusing his application would result in him being required to go in breach of the 1951 Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.³⁶⁹⁹

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its immigration and asylum functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK.³⁷⁰⁰ In addition, case law makes it clear that children’s welfare must be a primary consideration.³⁷⁰¹ Children over the age of 12 are a subject to an interview (with a responsible adult present) and can only be removed if adequate

³⁶⁹³ Convention Relating to the Status of Refugees 1951, art 1A, as amended by the 1967 Protocol. In the UK, this definition has been ratified by The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, reg 2. ‘Refugee’ status is subject to certain exclusions, for which see: 1.2.4.

³⁶⁹⁴ *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31.

³⁶⁹⁵ There is currently only one immigration screening unit in the UK, in Croydon near London.

³⁶⁹⁶ Home Office, *UK Immigration Rules*, pt 11 para 334(i).

³⁶⁹⁷ UK Border Agency, ‘Applications from Abroad’ (20 September 2011) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257377/applicationsfromabroad.pdf> accessed 11 June 2017.

³⁶⁹⁸ Home Office, *EU/EEA Asylum Claims* (Asylum Policy Instruction, 9 December 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483462/EEA_EU_Asylum_Claims_v3_0_EXT.pdf> accessed 11 June 2017.

³⁶⁹⁹ Home Office, *UK Immigration Rules*, pt 11 para 334(iii)-(v).

³⁷⁰⁰ For more information, see: Home Office, *Child Matters - Change for Children* (Guidance, November 2009) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf> accessed 20 June 2017.

³⁷⁰¹ *ZH (Tanzania) v SSHD* [2011] UKSC; *R (on the application of AA (Sudan)) v SSHD* [2017] EWCA Civ 138; *R (on the application of T) v London Borough of Enfield* [2004] EWHC 2297 (Admin).

care is in place in their country of return. If no such arrangement is possible they are given leave to remain until they are 17 and a half years old. Persons under the age of 18 are placed in the care of a local authority.³⁷⁰²

1.2. Procedure for Granting Asylum or Humanitarian Protection

Regardless of whether a person claims asylum at a designated place in country or at a port of entry, he/she will be subject to a screening interview where his/her fingerprints will be taken. Following a screening interview, a decision is taken whether to detain the applicant or admit them on temporary admission. The majority of asylum applicants who are not detained at that point are placed into an initial accommodation centre before longer-term living arrangements are made, and being assigned an appointment for their asylum interview. Following this initial interview, the case will be referred to the UKVI where every claim is considered 'on an individual, objective and impartial basis'.³⁷⁰³

If the application is either clearly unfounded, or the applicant passed through a safe third country en route, the application will be denied and the applicant will either face removal or be subject to humanitarian protection. A safe country is one in which the life or freedom of the asylum applicant would not be threatened (within the meaning of Article 33(1)(A) of the 1951 Geneva Convention which prohibits *refoulement*, prohibits states from returning individuals to countries in which they are at risk of certain forms of harm) and the government of which would not send the applicant elsewhere in the manner contrary to the principles of the Convention.³⁷⁰⁴

The central, binding EU instrument for the implementation of the 'safe country' concept is the 2003 Convention determining the State responsible for examining applications for asylum lodged in one of the Member State by a third-country national, also known as the Dublin Convention. The Dublin Convention established that the responsibility for hearing and accommodating the needs of an asylum seeker lies with the first Member State with which the asylum applicant established contact.³⁷⁰⁵ In 2003, the Dublin Convention was replaced by the Dublin II Regulation,³⁷⁰⁶ replaced a second time in 2013 by the Dublin III Regulation³⁷⁰⁷ which has been in force since January 1 2014. The EU has recognised that countries such as Italy and Greece cannot cope with the number of asylum seekers reaching their coasts, not to mention the number of them being returned and as such the EU is working on a reform of the Dublin Convention.³⁷⁰⁸ As an island State on the periphery of the EU, the UK is a net beneficiary of the Dublin III Regulation and has so far expressed an interest in continuing to participate in it.

³⁷⁰² Children Act 1989, s 20.

³⁷⁰³ Home Office, *UK Immigration Rules*, pt 11 para 339J.

³⁷⁰⁴ Dirk Vanheule, 'United Kingdom', in Jean-Yves Carlier, Dirk Vanheule, Klaus Hullman and Carlos Pena Galiano (eds), *Who is a Refugee? A Comparative Case Law Study* (Kluwer Law International 1997) 565.

³⁷⁰⁵ Nadine El-Enany 'The "New Europe" and the "European Refugee": The Subversion of the European Union's Refugee Law by its Migration Policy', in Satvinder S. Juss (ed), *The Ashgate Research Companion to Migration Law, Theory and Policy* (Ashgate 2013) 14.

³⁷⁰⁶ Council Regulation (EC) No 343/2003.

³⁷⁰⁷ Regulation (EU) No 604/2013.

³⁷⁰⁸ Jennifer Rankin, 'EU unveils plans to reform asylum rules to help frontline members' (*The Guardian*, 6 April 2016) <<https://www.theguardian.com/world/2016/apr/06/eu-unveils-plans-reform-asylum-rules-refugee-migrant>> accessed 13 July 2017.

Schedule 3 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 gives the domestic framework for making third country decisions. All constituent countries of the European Economic Area ('EEA') and Switzerland are deemed as safe based on three factors—

- The applicant will not face persecution contrary to the 1951 Geneva Convention in that country;
- The country will not send the applicant to another country where there is risk of such persecution; and
- The country will not send the applicant to another country if the removal would give rise to the risk of a human rights violation.

The SSHD is also obliged to certify that a human rights appeal against removal to the 'safe country' will be unfounded. In other words, if the SSHD believes that the applicant has no claim under Article 8 ECHR (right to family and/or private life) or Article 3 ECHR (degrading treatment), for example, she will make a decision to remove such an individual. The only judicial forum in which the certificate may be challenged is the judicial review.³⁷¹⁰

Following a screening interview an asylum applicant will be invited to an asylum interview (if he/she is not deemed to have passed a 'safe country'). The asylum interview is the opportunity for the applicant to present the reasons for why he/she should be granted refugee protection. In order to ascertain the nature of the claim, a case worker will look at all the material factors surrounding the claim: the facts relating to the country of origin,³⁷¹¹ personal circumstances and background of the applicants, any documents provided by them, their behaviour since leaving the country of origin and their eligibility to receive asylum in a different country.³⁷¹²

The grant of asylum or of humanitarian protection gives the individual a permission to stay in the UK for five years; this is known as 'leave to remain'. After the five years, a refugee is eligible to apply to settle in the UK.³⁷¹³ Refugee status will not be granted to those ineligible or those whose application has not been adequately substantiated. In addition, it may not be granted if the applicant failed to disclose all the material facts of his/her case; failed to report to an immigration officer for an interview; or left the UK without previous authorisation.³⁷¹⁴

1.2.1. Humanitarian Protection

Those who do not meet the above criteria may still be entitled to humanitarian protection.³⁷¹⁵ Humanitarian protection is offered to those individuals who may be at risk of serious harm if

³⁷⁰⁹ Dr Francesco Maiani, *The Reform of the Dublin III Regulation* (European Parliament Study for the Libe Committee, June 2016)

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL_STU\(2016\)571360_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL_STU(2016)571360_EN.pdf)> accessed 13 July 2017.

³⁷¹⁰ Gina Clayton, *Textbook on Immigration and Asylum Law* (7th edn, Oxford University Press 2016) 408.

³⁷¹¹ The Home Office has issued Country Guidance on a vast number of countries and uses them when asserting the credibility of a claim: *Country Policy and Information Notes* (9 December 2016) <<https://www.gov.uk/government/collections/country-policy-and-information-notes>> accessed 13 June 2017.

³⁷¹² Home Office, *UK Immigration Rules*, pt 11 para 339J.

³⁷¹³ UK Government, 'Settlement: Refugee or Humanitarian Protection' <<https://www.gov.uk/settlement-refugee-or-humanitarian-protection/eligibility>> accessed 12 July 2017.

³⁷¹⁴ Home Office, *UK Immigration Rules*, pt 11 para 333C.

³⁷¹⁵ If neither of those are applicable, a person seeking to stay in the UK may apply for leave outside the rules ('LOTR'). These applications are often based on human rights claims: UK Government, 'Application to extend stay

they are returned to their country of origin but they are not recognised as refugees because the risk is not of persecution for a reason covered by the Geneva Convention as incorporated in national legislation. The EU's Procedures Directive 2005/85/EC sets minimum standards for Member States for granting and withdrawing refugee status. It has been transposed into UK law through the Asylum (Procedures) Regulations 2007 and Paragraph 327 of the Immigration Rules. The relevant article is Article 2(b) which requires Member States to consider any application for international protection as an asylum application, even if it falls outside of the Geneva Convention's scope.

1.2.2. Syrian Vulnerable Persons Resettlement Programme ('VPRP')

The VPRP was first established in early 2014 in order to provide a route for selected Syrians to come to the UK. It was considerably extended following a pledge made by the then-Prime Minister, David Cameron, to accept 20,000 Syrian refugees by 2020.³⁷¹⁶ The eligibility criteria were extended to include all those recognised as vulnerable such as the elderly, the disabled and victims of sexual violence and torture. This scheme resettles refugees who have fled from the conflict to the countries bordering Syria. 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 July 1 2017, all those admitted to the UK under the VPRP will be granted refugee status. Of course, it is also possible for Syrians to claim asylum upon or after arrival to the UK outside the VPRP.

1.2.3. Refusal of Asylum and the Appeal Process³⁷¹⁷

In recent years, the right to an in-country appeal following the refusal of a claim has been significantly curtailed by measures contained in the Immigration Acts 2014 and 2016. It is no longer possible, in many circumstances regarding human right claims, to appeal the Home Office decision while in the UK. Rather than appeal the decision, an applicant who does not want to leave will now have to seek an administrative review or a judicial review, both of which can be very expensive.³⁷¹⁸

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

in the UK' <<https://www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-flrhro>> accessed on 12 July 2017.

³⁷¹⁶ 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.

³⁷¹⁷ UK Government, 'Visa or Immigration Decision Appeal Procedure' <<https://www.gov.uk/immigration-asylum-tribunal>> accessed 18 June 2017.

³⁷¹⁸ 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.

Tribunal (Immigration and Asylum Chamber) if they think that there is a **legal mistake** with the tribunal's decision.³⁷¹⁹

1.2.4. Exclusion from the Refugee Protection

'Refugee' status is not available where a person is currently in receipt of protection of assistance from organs or agencies of the United Nations ('UN') other than the UN High Commissioner for Refugees ('UNHCR'), or is recognised by national authorities as having the rights and obligations which are attached to the possession of the nationality.³⁷²⁰ The SSHD also has powers to exclude a person from accessing refugee protection in certain circumstances, namely where the person has committed crimes against peace, war crimes and crimes against humanity.³⁷²¹ Similarly, Article 12 of the European Council Directive 2004/83/EC sets out the circumstances in which Member States will exclude a third country national from being a refugee. The Directive has been transposed into UK law through The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and the Immigration Rules.

1.2.5. Revocation of Asylum Status

Refugee status may be revoked for one or more of the reasons set out in the Immigration Rules. If more than one of the following situations arise, then revocation on all grounds must be considered and addressed as part of the decision—

- i) Geneva Convention ceases to apply (Paragraph 339A(i)-(vi));
- ii) Exclusion from the Geneva Convention (Paragraph 339AA);
- iii) Misrepresentation of facts decisive to the grant of refugee status (Paragraph 339AB); or
- iv) Danger to the UK (Paragraph 339AC(i)-(ii)).

The SSHD has a duty to notify a person in writing that his/her status is being reconsidered and the reasons for it. The individual will then have an opportunity to submit a written statement highlighting why his/her refugee status should not be revoked.³⁷²²

1.2.6. Removal from and Re-entry to the UK

Individuals whose claims have been refused and who are in the UK illegally may be subject to a removal. In instances concerning criminal behaviour or when an individual's removal is conducive to the public good a deportation order will be made.³⁷²³ This law is governed by the Immigration Act 1971 as amended in 2016. The Border Force is responsible for removing the individuals who do not have legal status in the UK. An individual may subject themselves to a voluntary removal or they may be detained and removed forcibly to the country of origin or a country of their citizenship.

³⁷¹⁹ UK Government, 'Visa or Immigration Decision Appeal Procedure'.

³⁷²⁰ Convention Relating to the Status of Refugees 1951, arts 1D-1E, as amended by the 1967 Protocol. These exclusions are ratified by The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, reg 7.

³⁷²¹ Convention Relating to the Status of Refugees, art 1F, as amended by the 1967 Protocol. This exclusion is ratified by The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, reg 7.

³⁷²² Home Office, *UK Immigration Rules*, pt 11 para 339BA.

³⁷²³ Home Office, *UK Immigration Rules*, pt 13 paras A362-400.

The SSHD can impose re-entry bans to those who have previously breached immigration law and have been consequently removed or deported from the UK. Bans can last one, two, five or ten years. The law governing entry bans is contained in paragraphs A320 and 320(7B) of Part 13 of the Immigration Rules. There is no ban imposed on those who have overstayed for 30 days or less **but** have left the UK voluntarily at no expense to the Home Office. A one year ban is imposed on those who have entered illegally, overstayed, breached the condition(s) attached to their leave or used deception in the UK **but** have left the UK voluntarily at no expense to the Home Office. If they left at the expense of the Home Office (within 6 months of the removal notice) then a two-year ban will be imposed. A five-year ban will be inflicted on those who have taken more than six months to leave voluntarily and those who have been foreremoved from the UK as a condition of a caution. A ten-year ban will be enforced if one was removed involuntarily. In deportation cases, re-entry to the UK will be refused if a person was convicted of an offence and sentenced to more than four years' imprisonment. If the sentence was less than four years, but more than 12 months, then a five-year ban is imposed. For sentences of less than 12 months, re-entry will be refused unless more than five years have passed since the end of the sentence.

2. How does your national law regulate immigration from EU member states and non-EU states?

2.1. Immigration

The foundation of immigration law in the UK is the Immigration Act 1971 which governs the rights to enter and remain in the country, the appeals process, and immigration-related criminal proceedings. Several statutory instruments complement to this statute, such as the British Nationality Act 1981, the Asylum and Immigration Act 1996 and the Immigration Act 2016. These statutes, together with a series of procedural rules and guidance issued by the Home Office, regulate immigration in the UK.

2.1.1. EU/EEA Nationals

The Immigration (European Economic Area) Regulations 2016 ('Immigration Regulations') are a separate set of rules encompassed within the Immigration Act 2016, which, in compliance with the Citizens' Rights Directive 2004/38/EC, recognises the right of EU citizens and nationals from Liechtenstein, Iceland, Norway and Switzerland to move and reside freely within the UK. These citizens do not need a document to confirm their residence status in the UK as they are entitled to the right of admission (Section 11), the right of residence (Sections 14-16), a registration certificate (Sections 17-22), and access to family permits (Section 12). According to this Act, EU/EEA nationals have the right to reside in the UK for as long as the person remains

as 'qualified person', namely a 'person who is an EEA national and in the United Kingdom as a job seeker, worker, self-employed person, self-sufficient person or student'.³⁷²⁴

For any EU/EEA national interested in acquiring British nationality, the applicant must be in possession of a permanent residence certificate or card.³⁷²⁵ For this purpose, he/she is required to have permanent residence, which can be obtained if the person concerned 'has resided in the United Kingdom in accordance with domestic Regulations for a continuous period of five years'.³⁷²⁶

2.1.2. Non-EU Nationals

2.1.2.1 *Commonwealth Nationals*

The right of abode is a statutory right that exempts from immigration controls any Commonwealth nationals that meet the conditions established in the Immigration Act 1971. According to Section 2(1)(b), the right applies to those who 'immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen [...] and has not ceased to be a Commonwealth citizen in the meanwhile'. As an exception to this rule, 'if a married woman lost her Commonwealth citizen status on independence, she may still have a claim to the right of abode under section 2(2) of the Act if, as a Commonwealth citizen, she has at any time been married to a person who, at the time of the marriage, had the right of abode'.³⁷²⁷ The Immigration Act 1971 was amended by the British Nationality Act 1981 which included a list of the Commonwealth countries.³⁷²⁸ Therefore, following the re-admission of Pakistan and South Africa into the Commonwealth in 1989 and 1994 respectively, their citizens did not acquire the right of abode.³⁷²⁹ By contrast, Zimbabwe and The Gambia have withdrawn politically from the Commonwealth, but these two countries are included in the BNA Commonwealth countries list and their nationals can continue to enjoy the right of abode in the UK as Commonwealth citizens.³⁷³⁰

2.1.2.2. *Other Non-EU/EEA Nationals*

Nationals from outside the EU/EEA and Commonwealth countries are subject to immigration controls. An example of these controls is the entry clearance procedure used to check whether a person qualifies under the Immigration Rules for entry into the UK before his/her arrival.³⁷³¹

³⁷²⁴ Immigration (European Economic Area) Regulations 2016, s 6(1).

³⁷²⁵ See: British Nationality (General) (Amendment No. 3) Regulations 2015.

³⁷²⁶ Immigration (European Economic Area) Regulations 2016, s 15.

³⁷²⁷ 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.

³⁷²⁸ British Nationality Act 1981, sch 3.

³⁷²⁹ Home Office, *Right of Abode*.

³⁷³⁰ *ibid*.

³⁷³¹ Home Office, *Entry Clearance Basics* (Guidance, 18 December 2013) <<https://www.gov.uk/government/collections/entry-clearance-basics-entry-clearance-guidance>> accessed 14 June 2017.

Although this procedure is not mandatory³⁷³² in all cases, the immigration officer at the port of entry has the final authority to give or deny the entrance of someone into UK territory.³⁷³³

As stated in the Immigration Rules, immigrants who do not have the right of abode, and who are not entitled to enter or remain in the UK as stated in the provisions of the EEA Regulations, require 'leave to enter' the UK.³⁷³⁴ According to Sections 3 and 4 of the Immigration Act 1971, some immigrants may receive leave to enter for a limited period under certain specific conditions, such as a restriction of work/occupation or studies in the UK or a requirement to maintain and accommodate him/herself, and any dependants, without recourse to public funds.

For those wishing to enter the UK for work, study or investment-related reasons, the points-based five tier visa classification is the common route to access. Under this scheme, visas are divided into five tiers depending on the reasons underlying the applicant's claim—

- Tier 1 visas are for 'high-value migrants', namely entrepreneurs, investors, and migrants who fall within the scope of the 'exceptional talent' visa;
- Tier 2 visas are for those who have been offered a skilled job in the UK;
- Tier 3 visas are for low-skilled workers during periods of labour shortage (currently suspended);
- Tier 4 visas are for students over the age of 16; and
- Tier 5 visas are for temporary workers, a category which is divided into six sub-tiers for creative and sports workers, charity workers, religious workers, and workers within the youth mobility scheme open to young people from other countries that have reciprocal arrangements with the UK.

Visas will be granted to those that fulfil the requirements set out by the Home Office. Even though visas are granted for a finite period, visa holders may be able to apply for 'Further Leave to Remain' to extend their stay.³⁷³⁵ It is possible for these migrants to obtain British nationality, the most common way being through naturalisation.³⁷³⁶ Leave to enter or remain will be rejected for those who provide false documents or do not provide the required documents; those who are subject to a deportation order; and those who have been convicted of an offence or have previously breached immigration laws. Rejection may also be justified on the grounds that there is a material change in the circumstances of the request or the SSHD considers deportation to be conducive to the public good.³⁷³⁷

2.2. Enforced Departure

According to the UK Immigration Rules, there are three categories of enforced departure: deportation, administrative removal, and voluntary departure.

³⁷³² Home Office, *UK Immigration Rules*, pt 6A.

³⁷³³ *ibid.*

³⁷³⁴ Home Office, *UK Immigration Rules*, pt 1.

³⁷³⁵ Home Office, *Further Leave to Remain* (Guidance, 24 April 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/609882/flr_ir_guidance_note_revised_24_04_17.pdf> accessed 15 June 2017.

³⁷³⁶ British Nationality Act 1981, s 6 and sch 1; UK Government, 'Become a British citizen' <<https://www.gov.uk/becoming-a-british-citizen>> accessed 14 June 2017.

³⁷³⁷ Home Office, *UK Immigration Rules*, pt 9.

2.2.1. EU/EEA Nationals

EU/EEA nationals may be deprived of their right of residence and subject to deportation if the SSHD considers the measure justified on the grounds of public policy, public security, or public health.³⁷³⁸ EU/EEA nationals and any family members may be detained whilst a decision to deport is pending criminal casework.³⁷³⁹ Once a deportation order enters into force, and notification has been given to the person(s), free movement rights are restricted and exit is required.³⁷⁴⁰ EU/EEA nationals have one month to leave voluntarily, or the removal will be enforced by the Home Office. Individuals subject to a deportation order will not be allowed to enter the territory of the UK until the relevant order has been revoked.³⁷⁴¹ A deportation order is subject to appeal under the terms of the Immigration Regulations.³⁷⁴²

EU/EEA citizens may also be subject to administrative removal where deportation is not a suitable measure.³⁷⁴³ Administrative removal applies when a person has no right to reside because he/she failed to exercise Treaty rights as required, ceased to be a member of a family of EU/EEA nationals, or gained his/her rights on the basis of a marriage of convenience. It also arises in the case of a misuse of a right to reside, engaging in conduct contrary to a qualified person, sleeping rough, or attempting to enter the UK within 12 months of previously being removed. It is not possible to detain EU/EEA nationals and any family members whilst a decision to remove in this manner is pending.³⁷⁴⁴

Voluntary departure is also available before removal, whereby the person concerned has to contact the Voluntary Returns Service and provide the required personal information and travel details.³⁷⁴⁵ No assisted voluntary return is available for EU/EEA nationals or Swiss nationals unless the person has a letter from UKVI confirming that he/she is a victim of trafficking.³⁷⁴⁶

2.2.2. Non-EU/EEA Nationals

Non-EU/EEA nationals will be subject to deportation in several situations—

- The SSHD considers the measure conducive to the public order;
- The person is the spouse/civil partner or child (under the age of 18) of a person subject to a deportation order; or

³⁷³⁸ Home Office, *UK Immigration Rules*, pt 9 s 23 and sch 1.

³⁷³⁹ Home Office, *UK Immigration Rules*, pt 9 s 23(6)(b).

³⁷⁴⁰ Home Office, *EEA decisions on grounds of public policy and public security* (Guidance, 1 February 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588969/EEA-Decisions-taken-on-grounds-of-public-policy.pdf> accessed 30 August 2017.

³⁷⁴¹ Immigration (European Economic Area) Regulations 2016, s 23 (2).

³⁷⁴² Immigration (European Economic Area) Regulations 2016, ss 36-39 and sch 2.

³⁷⁴³ Home Office, *Removals and revocations of European Economic Area (EEA) nationals* (Guidance, 1 February 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588551/Removals-and-revocations-of-EEA-nationalsv2_0EXT.pdf> accessed 30 August 2017.

³⁷⁴⁴ *ibid*.

³⁷⁴⁵ *ibid*; See also: UK Government, 'Return home if you're in the UK illegally or have claimed asylum' <<https://www.gov.uk/return-home-voluntarily>> accessed 28 August 2017.

³⁷⁴⁶ Immigration (European Economic Area) Regulations 2016, s 23 and sch 1.

– A court has recommended the measure for a person over the age of 17 who has been convicted of an offence punishable with imprisonment.³⁷⁴⁷

The deportation order prohibits the person concerned from re-entering the UK for as long as it is in force, invalidating any leave to enter or remain in the country. The person concerned will receive a notice informing him/her of the deportation decision, and the SSHD may authorise detention or another restriction (residence, employment or police report) pending the execution of the order. The person will be returned to the country of which he/she is a national, or to the country that has most recently provided him/her with a travel document, unless there is evidence that another country is willing to receive him/her. Deportation orders will not be imposed where the measure would be contrary to the UK's obligations under the Geneva Convention and the ECHR, for immigrants that qualify for 'restricted leave',³⁷⁴⁸ or where there are exceptional circumstances such that the public interest in deportation is outweighed.

Administrative removal may be invoked against immigrants who require, but are not in possession of, leave to enter or remain; this includes illegal entrants,³⁷⁴⁹ those refused leave at a port of entry, and over-stayers. Administrative removal is also enforceable against those who are found to be breaching a restriction or condition of their visa to enter or remain, those who seek or obtain leave by deception, and those who or are family members of a person already being removed.³⁷⁵⁰ Notification of removal is not required. Rather the person concerned must be informed (by 'RED notices'³⁷⁵¹) of his/her liability to be removed, the country to which he/she will be removed, and the consequences of illegal immigration.³⁷⁵² The decision can be appealed only if the SSHD refuses a human-rights claim or refuses to recognise refugee or humanitarian protection or status.³⁷⁵³

Illegal immigrants can opt to leave by applying for voluntary departure or assisted voluntary return. As abovementioned, the Voluntary Returns Service helps those willing to voluntary leave the UK once they provide the required personal information and travel details. For those who are eligible for financial help and wish to apply for assisted return, there is an assisted return application form which may be supplemented with additional information to support the application at the request of the Home Office.³⁷⁵⁴ The person concerned must leave the country within three months of the approval date of the application for voluntary assisted return, and he/she must sign a 'declaration of withdrawal' for his/her application for asylum in the UK.

Commonwealth citizens may be deprived of this right 'if the Secretary of State considers it would be conducive to the public good for the person to be excluded or removed from the United

³⁷⁴⁷ Home Office, *UK Immigration Rules*, pt 13.

³⁷⁴⁸ Home Office, *Restricted Leave* (Guidance, 7 December 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575522/Restricted-leave-v2.pdf> accessed 30 August 2017.

³⁷⁴⁹ Immigration Act 1971, sch 2.

³⁷⁵⁰ Immigration and Asylum Act 1999, s 10, as amended by the Immigration Act 2014; Home Office, *Liability to administrative removal (non-EEA): consideration and notification* (Guidance, 6 April 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606982/GI-Non-EEA-admin-removal-v3.pdf> accessed 30 August 2017.

³⁷⁵¹ Home Office, *Liability to administrative removal (non-EEA)*.

³⁷⁵² *ibid*.

³⁷⁵³ Immigration Act 2014, pt 2; Home Office, *UK Immigration Rules*, pt 9.

³⁷⁵⁴ Home Office, *UK Immigration Rules*, pt 9.

Kingdom'.³⁷⁵⁵ The person affected by a deprivation order has the right to appeal to the First-tier Tribunal (Immigration and Asylum Chamber) or to the Special Immigration Appeals Commission in case of sensitive information that might otherwise be disclosed during the proceedings.³⁷⁵⁶

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

The Home Office is an important department of the UK Government responsible for immigration, drugs policy, crime, police and counter-terrorism. As such its five main stated objectives are to prevent terrorism, cut crime, promote growth, control immigration and deliver its services efficiently.³⁷⁵⁷

Prior to 2012, the immigration-related powers were enjoyed by the UK Border Agency, a single executive agency responsible for dealing with immigration and customs detection force at the borders³⁷⁵⁸. However, following an independent review of the work carried out by the Agency, the Border Force was separated and became a directorate of the Home Office.³⁷⁵⁹ Moreover, the structure was changed again drastically in 2013 when the SSHD decided to end the executive agency status of the UK Border Agency and 'reintegrate its functions into the Home Office'.³⁷⁶⁰ As a result of these major changes, all the immigration-related functions are again carried out by the Home Office, which delegates its powers directly to a number of bodies including the Border Force, the Immigration Enforcement and the UK Visas and Immigration.

The Border Force is a law enforcement authority which works at the external frontiers to protect UK borders by preventing unlawful immigrants and unlawful goods, mainly drugs, from entering the UK. A clear example of this can be seen when looking at the work that the Border Force carries out in UK airports. Here, the Border Force has the responsibility both to check

³⁷⁵⁵ Immigration Act 1971, s 2, as amended by the Immigration Asylum and Nationality Act 2006, s 57.

³⁷⁵⁶ Home Office, *Right of Abode*.

³⁷⁵⁷ Home Office, 'Single Departmental Plan: 2015 to 2020' (19 February 2016) <<https://www.gov.uk/government/publications/home-office-single-departmental-plan-2015-to-2020/single-departmental-plan-2015-to-2020>> accessed 17 June 2017.

³⁷⁵⁸ UK Border Agency, *Annual Report and Accounts: 2009-2010* (Report, 26 July 2010) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/247674/0234.pdf> accessed 17 June 2017.

³⁷⁵⁹ UK Border Agency, *Annual Report and Accounts: 2011-2012* (Report, 12 July 2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229255/0344.pdf> accessed 17 June 2017.

³⁷⁶⁰ UK Border Agency, *Annual Report and Accounts: 2012-2013* (Report, 4 July 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257143/annual-report-12-13.pdf> accessed 17 June 2017.

passengers' passports but also to monitor the so called 'customs channels' to prevent any prohibited goods from entering the UK.³⁷⁶¹

The Immigration Enforcement monitors migrants within the UK territory to make sure immigration law is complied with. Immigration officers have a number of powers including examining, arresting and detaining unlawful immigrants for the purpose of removal.³⁷⁶² These powers were further extended in 2016³⁷⁶³ and officers now have the authority to search and seize evidence where 'there are reasonable grounds to believe it has been obtained through, or is evidence of, a crime and where it is necessary to prevent it being concealed, damaged or destroyed'.³⁷⁶⁴

UK Visas and Immigration is the public body which deals with migrants in the UK. This body plays a central role in regulating legal migration by administering the nationwide visa service for foreign nationals, dealing with British citizenship applications for migrants who wish to settle, managing the nationwide asylum service, running the appeal system for unsuccessful applications, and deciding which employers are entitled to register as sponsors of migrant workers.

On a local level, since 2004,³⁷⁶⁵ the Home Office has been funding 'Migrant Help', a charity based in England to provide holistic advice and support to people seeking asylum in the UK and to victims of human trafficking. The organisation offers independent and impartial guidance on a wide range of issues including how to claim asylum, financial support, finding legal representation, accessing health care, and accommodation support.³⁷⁶⁶ The Refugee Council is another leading charity which receives funding from the UK Government as well as the EU to act in localised areas. The Council focuses on societal integration by providing refugees with essential resources, namely settled housing, healthcare, access to training and employment, and financial stability.³⁷⁶⁷

³⁷⁶¹ Independent Chief Inspector of Borders and Immigration, *An Inspection of the Border Force Operations at Stansted Airport* (Report, May 2013) <<http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-Border-Force-Operations-at-Stansted-Airport.pdf>> accessed 8 July 2017.

³⁷⁶² Home Office, 'Immigration Act 2016 Factsheet: Enforcement Officers Powers' (Factsheet, July 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537231/Immigration_Act_-_Part_3_-_Enforcement.pdf> accessed 8 July 2017.

³⁷⁶³ Immigration Act 2016, ss 46-58 and 62.

³⁷⁶⁴ Home Office, 'Immigration Act 2016 Factsheet: Enforcement Officers Powers', 1.

³⁷⁶⁵ UK Visas and Immigration, 'Advice services for asylum seekers and refugees: contract change' (28 February 2014) <<https://www.gov.uk/government/news/advice-services-for-asylum-seekers-and-refugees-contract-change>> accessed 1 September 2017.

³⁷⁶⁶ Migrant Help, 'Advice and Guidance to asylum seekers' <<http://www.migranthelpuk.org/about-us/what-we-do/advice-and-guidance-to-asylum-seekers/>> accessed 1 September 2017.

³⁷⁶⁷ Refugee Council, 'Refugee Services' <<https://www.refugeecouncil.org.uk/what-we-do/refugee-services/>> accessed 1 September 2017.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

Net immigration, or the difference between the number of people moving into a country and those moving out of that country, was estimated to be +248,000 in 2016 with a total of 588,000 migrants entering the UK.³⁷⁶⁸ The main reasons why migrants enter the UK are work, study, family and asylum.³⁷⁶⁹

Work³⁷⁷⁰ accounted for 47% of the total immigration (275,000 persons), the lowest figure recorded since 2014.³⁷⁷¹ Most of the immigrants entering the UK for work-related reasons had already secured a job (65%, 180,000), while the number of those seeking a job at the time of arriving decreased to 95,000 people in 2016 against 130,000 people in 2015. According to International Passenger Survey (IPS) data, this decrement was due to a decrease in EU citizens' arrivals, with 55,000 EU arrivals in 2016 compared to 77,000 in 2015. On the origin of migrants, 61% were EU citizens (of which 34% arrived while still looking for a job), whilst 25% were non-EU citizens (of which 27% arrived seeking for a job). The remaining 14% were British citizens. In 2016, there were 163,882 visas granted for work related reasons (-1% than in 2015 with 165,900 visas granted). The number of sponsored visas applications for skilled work positions was 56,058 in 2016. The top five sectors, accounting for 87% of the applications, were: Information and Communications (23,358); Professional, Scientific and Technical Activities (6,676); Education (2,834); and Health and Social Work (1,748). The majority of the applications were submitted by citizens from India (30,556), followed by the USA (5,809), Australia (2,434), the Philippines (2,147), and Japan (1,728).

Immigration for study³⁷⁷² is the second most common reason for coming to the UK. Long term immigration saw a significant decrease of 30,000 compared to 2015, over a total of 163,000 immigrants (including EU citizens, non-EU citizens and British nationals). The majority were non-EU citizens (73% of the total).³⁷⁷³ As for the number of immigrants entering the UK for short-term study reasons (6 months, or 11 months for English Courses), there were 295,000 admissions in the year ending June 2016.³⁷⁷⁴ According to the Home Office data, there were 207,200 study-related visas granted in 2016 (including those of dependants), with just five non-

³⁷⁶⁸ Office for National Statistics, *Migration Statistics Quarterly Report: May 2017* (Report, 25 May 2017) <<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/may2017#why-do-people-move-to-the-uk>> accessed 10 July 2017.

³⁷⁶⁹ *ibid*, table 6.

³⁷⁷⁰ Home Office, *National Statistics 2016: Work* (Report, 23 February 2017) <<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/work>> accessed 10 July 2017.

³⁷⁷¹ *ibid*.

³⁷⁷² Home Office, *National Statistics 2016: Study* (Report, 23 February 2017) <<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/study>> accessed 10 July 2017.

³⁷⁷³ Office for National Statistics, *Migration Statistics: December 2016* (Report, 1 December 2016) <<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/dec2016>> accessed 11 June 2017.

³⁷⁷⁴ Home Office, *National Statistics 2016: Study*.

EU countries accounting for most of them.³⁷⁷⁵ The top five countries were China (37%, 76,636), the USA (6,8%, 14,143), India (5,3%, 11,160), Saudi Arabia (4,5%, 9,360), and Hong Kong (4,3%, 9,041).³⁷⁷⁶ The type of study-related visas that can be granted are: short-term visas, issued for a period of 6 months or 11 months for students attending English Courses (87,197); long-term study visas, issued for 12 months or more (141,248); sponsored visas (200,849); and extended visas (42,032).³⁷⁷⁷

The third most common reason why people immigrate to the UK is to accompany or join other members of the family.³⁷⁷⁸ In 2016, a total of 135,144 visas were granted, including family-related visas, EEA family permits, and visas granted to dependants of other visa holders. There were 38,119 family related visas granted in 2016 (and 61,258 grants of extensions), of which 29,090 were granted to partners, 2,661 to minors and 6,368 to other dependants. The top five nationalities obtaining a visa for family related reasons were nationals from Pakistan (6,051), India (3,031), Syria (2,113), the USA (2,067), and Nepal (1,738). Regarding permits granted to EEA relatives, there was an increase of 9% since 2015 with a total of 33,118 permits.

According to official data provided by the Home Office, the UK had the sixth highest number of asylum applications within the EU in 2016, with a total of 39,000 applications.³⁷⁷⁹ Compared to 2015, asylum applications decreased by 7%, with 30,603 people expressing their intent to apply for asylum, of which 3,175 (10% of the total asylum applications) were unaccompanied minors. Most intentions were expressed by nationals from Iran (13.69%, 4,192), Pakistan (9.33%, 2,857), Iraq (8.71%, 2,666), Afghanistan (7.64%, 2,341), Bangladesh (6.33%, 1,939), Albania (4.86%, 1,488), and India (4.86%, 1,488).³⁷⁸⁰ In 2016 there were 24,984 decisions taken at first instance, of which 7,136 applicants were granted refugee status, 189 applicants were granted humanitarian protection, and 16,518 applications were rejected.³⁷⁸¹ At the end of 2016, 24,903 applications were pending a decision; this is 6% less than the 26,409 applications pending at the end of 2015. There was an increase of 143% in the number of applications awaiting an initial decision for more than six months (from 3,626 in 2015 to 8,825 in 2016) while those pending further review decreased by 59% (3,428). As of the end of March 2017, 6,516 people have expressed their intent to apply for asylum in the UK. Most of the intentions were expressed by nationals from Iran (664), Pakistan (663), Iraq (602), Bangladesh (480), and India (389).³⁷⁸²

In addition to asylum seekers who applied in the UK in 2016, 4,369 people were resettled under the VPRP. Resettlement schemes are offered to asylum seekers who have been referred to the

³⁷⁷⁵ *ibid.*

³⁷⁷⁶ *ibid.*, table 2.

³⁷⁷⁷ *ibid.*; Office for National Statistics, *Migration Statistics: May 2017*.

³⁷⁷⁸ Home Office, *National Statistics 2016: Family* (Report, 23 February 2017) <<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/family>> accessed 14 June 2017

³⁷⁷⁹ Home Office, *National Statistics 2016: Asylum* (Report, 23 February 2017) <<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/asylum>> accessed 10 July 2017.

³⁷⁸⁰ *ibid.*

³⁷⁸¹ Home Office, *Immigration Statistics: 2017 Q1* (Report, 25 May 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615150/asylum1-jan-mar-2017-tables.ods> accessed 10 July 2017.

³⁷⁸² *ibid.*

Home Office by the UNHCR. 50% of those resettled were minors (2,180) and 47% were women (2,072).³⁷⁸³

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

The Human Rights Act 1998 took the body of substantive rights enshrined in the ECHR and transposed them into English law.³⁷⁸⁴ The UK had been a party to the ECHR previous to this, but the bringing into force of the Act means that ECHR rights are directly enforceable in the UK. It also means that public authorities must ensure that their decisions comply with ECHR rights.³⁷⁸⁵ Courts, when determining a question concerning ECHR Rights, must have account of any relevant jurisprudence of the European Court of Human Rights ('ECtHR').³⁷⁸⁶ Furthermore, new laws have to be examined to see if they are ECHR compliant.³⁷⁸⁷ Due to the range of obligations contained in the Human Rights Act and the range of ways that human rights can be engaged in migration issues, there are a number of channels for ECtHR jurisprudence to be implemented into UK migration law. The main mechanisms that have been used are legislation, Supreme Court decisions and secondary legislation, such as the Immigration Rules.

Deportation is a key area where UK migration law has been shaped by ECHR rights and ECtHR jurisprudence on the scope of these rights. A persistent problem for the UK Government has been the ability to deport foreign nationals who have committed crimes whilst living in the UK. This was particularly the case after 2006 when the Home Secretary was dismissed following the release of 1,000 foreign national prisoners, without being considered for deportation.³⁷⁸⁸ An individual may raise a claim that deportation would breach one or more of their ECHR rights if deportation were to be approved. The three main rights that an individual may claim will be breached by their deportation are the right to life (Article 2), the prevention of torture (Article 3) and the right to family and private life (Article 8). There are extensive bodies of case law on all three of these rights which have had to be implemented into UK migration law to render it ECHR compliant. For example, the ECtHR has affirmed that Article 3 can be engaged in a deporting State even where the individual alleges that treatment which would reach the threshold of torture or inhuman treatment would occur in the territory of another State.³⁷⁸⁹ The test for engaging Article 3 in deportation decisions, as decided in *Soering v UK*, is whether substantial

³⁷⁸³ Home Office, *National Statistics 2016: Asylum*.

³⁷⁸⁴ Human Rights Act 1998, s 1.

³⁷⁸⁵ *ibid*, s 6.

³⁷⁸⁶ *ibid*, s 3.

³⁷⁸⁷ *ibid*, s 19.

³⁷⁸⁸ Sheona York, 'Deportation of Foreign Offenders: A Critical Look at the Consequences of Maaouia and whether Recourse to Common-Law Principles might offer a Solution' [2017] *Journal of Immigration Asylum and Nationality Law* 31(1) 8.

³⁷⁸⁹ *Soering v UK* [1989] ECtHR 14, para 88.

grounds for evidencing that the individual will face a real risk of treatment contrary to Article 3 have been advanced.³⁷⁹⁰

Of vital importance to migrants is Article 8 of the ECHR which enshrines the right to family life. As mentioned above, jurisprudence delimitating the scope and extent of obligations flowing from this right has been a source of tension regarding its implementation into UK migration law. In 2010, there was public and political outrage following the case of *SSHD v Respondent*³⁷⁹¹ wherein the designated immigration judge was held not to have erred in considering Article 8 concerns overriding when deciding whether it was in the public interest to deport a Turkish asylum seeker guilty of killing a 12 year-old girl in a hit and run.³⁷⁹² Article 8 provides that everyone has the right to respect for his/her private and family life. This ECHR standard has been developed by jurisprudence of the ECtHR to include two limbs concerning migrants and the notion of family reunification. The first is that, under limited circumstances, families of migrants should be granted entry into a Council of Europe Member State. the second is that Article 8 can be engaged to prevent deportation where a migrant is already in a Council of Europe Member State.³⁷⁹³ Jurisprudence from the ECtHR on this area has defined the test as rendering deportation an infringement of Article 8 if it would cause ‘insurmountable obstacles’ to enjoyment of the right to family life.³⁷⁹⁴

Implementation of these ECtHR standards on deportation into UK migration law has happened through different mechanisms. Section 94B of the Nationality, Immigration and Asylum Act 2002, amended by the Immigration Act 2016, contains a power to certify all human rights claims made by individuals from within the UK. This power allows the Secretary of State for the Home Department (SSHD) to certify that a decision requiring an individual to leave the UK, despite the appeals process neither being begun nor exhausted, would neither be a breach of Section 6 of the Human Rights Act, nor result in a real risk of serious irreversible harm where requiring the individual to leave. This power was in direct reaction to concerns over the inability to deport foreign nationals where the Government considers it in the public interest to do so, but would be unable to due to a successful claim under Article 8, for example.³⁷⁹⁵ This mechanism corresponded to the ‘deport first appeal later’ policy of UK migration law. This policy aimed to remove foreign nationals, in particular foreign criminals, before their appeal, believing that would be in the public interest to do so, in order to prevent reoffending by the individual.³⁷⁹⁶ However, as explored below, the legality of this policy has been challenged by the Supreme Court in 2017.

³⁷⁹⁰ *ibid*, para 91.

³⁷⁹¹ [2010] UKUT B1.

³⁷⁹² Geoffrey Bindman, ‘Aso Mohammed Ibrahim case sparks another misguided attack on the Human Rights Act’ (*The Guardian*, 28 December 2010) <<https://www.theguardian.com/law/libertycentral/2010/dec/28/human-rights-act-aso-mohammed-ibrahim>> accessed 10 June 2017.

³⁷⁹³ Yanks Ktistakis, *Protecting Migrants under the European Convention on Human Rights and the European Social Charter: A Handbook for Legal Practitioners* (Council of Europe 2013).

³⁷⁹⁴ *Gül v Switzerland* [1996] ECtHR 5; *Benamar and Others v the Netherlands* [2005] ECtHR; *Baj Sultanov v Austria* [2012] ECtHR 989.

³⁷⁹⁵ Home Office, *Certification under section 94B of the Nationality, Immigration and Asylum Act 2002* (Guidance, 20 January 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584856/Certification-under-section-94B-v8.pdf> accessed 10 June 2017.

³⁷⁹⁶ *Kiaire and Byndloss v SSHD* [2017] UKSC 42, 35.

In June 2017, the ‘deport first, appeal later’ policy was challenged before the Supreme Court in *Kiaire and Byndloss v SSHD*.³⁷⁹⁷ This case looked directly at the legality of two such certifications pursuant to Section 94B of the Nationality, Immigration and Asylum Act 2002. The test of ‘serious irreversible harm’ was also analysed and explained in *Kiaire*. The test is cemented in Section 94(3) and is considered to be directly drawn ‘from practice of the ECtHR’.³⁷⁹⁸ The Supreme Court considered the test parallel to situations where the ECtHR has decided whether or not to indicate interim measures under Rule 39 of the Rules of Court. The case of *Mamatkulov v Turkey* was referred to, wherein the ECtHR considered whether the individual would face ‘an imminent risk of irreparable damage’ if deported or extradited.³⁷⁹⁹ Under this test, the individual must advance evidence to satisfy the serious irreversible harm test. The Court in *Kiaire* considered the quality of relationship with any child, partner or other family member in the UK, and the extent to which any relationship with family members might be reasonably sustained even after deportation, whether by joining them abroad or otherwise.³⁸⁰⁰ These examples echo Article 8 and the test established by the ECtHR concerning deportation that there must be ‘insurmountable obstacles’ to the enjoyment of family life.

The majority of the Supreme Court in *Kiaire* allowed the appeal of the applicants, as it considered that the policy of ‘deport first, appeal later’ did not meet the requirements of Article 8, together with the UK’s obligation under Article 13 to provide an effective remedy. The Supreme Court took account of the jurisprudence of the ECtHR which has found States in breach of Article 8 in conjunction with Article 13 where individuals have been deported without the opportunity to challenge the decision.³⁸⁰¹ In light of the above, the Supreme Court decision in *Kiaire* is a good example of how the jurisprudence of ECtHR can be implemented into UK migration law through various mechanisms. The case serves as an especially good example of how, in order to render migration law ECHR compliant, legislation alone may not be enough and may require the scrutiny of the Courts.

The decision in *Kiaire* demonstrates that implementation of ECtHR jurisprudence into UK migration law does not start and end with legislation. Due to the variety of obligations contained in the Human Rights Act, parliamentary, judicial and government officials all have the responsibility to ensure that, as migration law evolves, it remains ECHR compliant. The Immigration Act 2016 itself constitutes part of the latest evolution of the UK Government’s migration law policy. Already the Act has been challenged by the Supreme Court for compliance with the Convention and ECtHR standards. The main point of challenge in the case was that an individual, subject to the ‘deport first appeal later’ policy would have their ability to appeal significantly weakened,³⁸⁰² meaning that the ECHR requirement to have an effective appeals mechanism was not met. With this in mind, it is interesting to note the 2016 report from the

³⁷⁹⁷ *ibid.*

³⁷⁹⁸ *ibid.*, 36.

³⁷⁹⁹ *ibid.*; *Mamatkulov v Turkey* [2005] ECtHR 64, para 104.

³⁸⁰⁰ *Kiaire and Byndloss v SSHD*, 55(b) (c).

³⁸⁰¹ *De Souza Ribeiro v France* [2014] ECtHR 2066.

³⁸⁰² *Kiaire and Byndloss*, 59.

Council of Europe Commissioner on Human Rights.³⁸⁰³ This report applauded the UK for its approach to the Syrian Refugee Crisis, but also warned against the possibility of the Government's policy conflicting with ECHR standards. In particular, the report urged the Government to overhaul family reunification rules which are 'overly restrictive in nature'.³⁸⁰⁴

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. Implementation in the UK

From the outset, it is important to note the vital distinction between migrants and refugees when considering integration policies; the UNHCR emphasises the fundamental difference between migrants and refugees, namely the involuntary nature of migration for the latter category, as a ground not to conflate the two terms.³⁸⁰⁵ In the UK, a significant proportion of migrants have naturalised, with only 7.4% of foreign-born persons having not yet secured UK nationality.³⁸⁰⁶ As a result, a majority of the recommendations of the European Commission against Racism and Intolerance ('ECRI') on migrant integration are encompassed in the 'black and ethnic minorities' group.³⁸⁰⁷ In addition, the ECRI has issued a number of general recommendations relating to integration. By comparison, the Equality and Human Rights Commission ('EHRC'), as the UK's core human rights body, has not made any recommendations on the integration of migrants in particular. Rather the EHRC has issued general recommendations on discrimination and diversity that inherently encompass the integration of migrants. The relevant recommendations and implementing policies fall into three main categories: general; black and ethnic minorities; and refugees and asylum seekers.

6.2. General Recommendations

The ECRI has consistently emphasized the important role access to citizenship has in the integration of migrants. It therefore recommends that the process of naturalisation serves to 'assist and not to hinder' the acquisition of British nationality.³⁸⁰⁸ The 'Earned Citizenship' policy was a new system of naturalisation introduced in the Borders, Citizenship and Immigration Act 2009 in which citizenship would have been acquired through a new three stage process, including

³⁸⁰³ Commissioner for Human Rights, 'Memorandum on the Human Rights of Asylum Seekers and Immigrants in the UK' [2017] CommDH 17.

³⁸⁰⁴ *ibid*, para 60.

³⁸⁰⁵ UN Refugee Agency, *Emergency Handbook* (4th edn, 2015) <<https://emergency.unhcr.org/entry/44938/migrant-definition>> accessed 7 July 2017.

³⁸⁰⁶ ECRI Report on the United Kingdom: Fifth Monitoring Cycle (4 October 2016), s 117 (hereinafter 'ECRI 5th Report').

³⁸⁰⁷ *ibid*, s 117.

³⁸⁰⁸ *ibid*, s 118; ECRI Report on the United Kingdom: Fourth Monitoring Cycle (2 March 2010), s 19 (hereinafter 'ECRI 4th Report').

a 'probationary citizenship' period and a demonstration that the migrants had 'earned' the right to citizenship.³⁸⁰⁹ The ECRI noted in an earlier report that the Earned Citizenship policy would have the effect of slowing down and increasing the difficulty of acquiring citizenship.³⁸¹⁰ Thus, the decision of the UK Government not to pursue the Earned Citizenship policy facilitates the implementation of this recommendation.³⁸¹¹

Another recommendation consistently raised by the ECRI and the EHRC is the need to increase the protection and preventative measures against discrimination.³⁸¹² Discrimination has been recognized as a hindrance to integration by the Council of Europe's Commissioner for Human Rights. Thus the recommendation to decrease discrimination is an important policy objective in facilitating the integration of migrants.³⁸¹³ This recommendation is being implemented in the UK through a number of country-specific policies. These include—

- The British 2010 Equality Strategy: Building a Fairer Britain, complemented by the 2012 Strategy on 'Creating the Conditions for Integration';
- The Northern Irish Race Equality Strategy;
- The Scottish Race Equality Framework; and
- The Welsh 'Getting on Together' Project.³⁸¹⁴

In Britain, the 2010 Equality Strategy: Building a Fairer Britain (Equality Strategy) is part of the implementation of Equality Act 2010. The Act replaced previous anti-discrimination laws with a single legal framework and is aimed at protecting people from discrimination in the workplace and wider society.³⁸¹⁵ More specifically, the Equality Strategy is based on the principles of equal treatment and equal opportunity through the establishment of a framework focusing on the areas on education, the labour market, public services access, and cultural attitudes.³⁸¹⁶ The 2012 Strategy on 'Creating the Conditions for Integration' outlines the Government's approach in England, although it is recognized that the issues raised may also have a relevance across the UK. It is aimed at ensuring that everyone is able to fully participate and contribute to national and local life. It is complementary to the broader commitments made by the government in the Equality Act 2010 and focuses on five key factors to facilitate integration: tackling extremism and intolerance, common ground (the commonalities and shared values of society), responsibility, participation, and social mobility.³⁸¹⁷ While the strategy maintains that integration is a concern best tackled at the local level, it outlines specific steps taken at the national level in order to

³⁸⁰⁹ ECRI 4th Report, s 17.

³⁸¹⁰ *ibid*, s 19.

³⁸¹¹ ECRI 5th Report, s 118.

³⁸¹² *ibid*.

³⁸¹³ Nils Muižnieks, Council of Europe's Commissioner for Human Rights, *Anti-Muslim Prejudice Hinders Integration* (Report, 24 July 2012) <<https://www.coe.int/en/web/commissioner/-/anti-muslim-prejudice-hinders-integrati-1>> accessed 14 July 2017.

³⁸¹⁴ ECRI 5th Report, ss 72-73.

³⁸¹⁵ Government Equalities Office and Equality and Human Rights Commission, *Equality Act 2010* (Statutory Guidance, 16 June 2015) <<https://www.gov.uk/guidance/equality-act-2010-guidance>> accessed 20 June 2017.

³⁸¹⁶ UK Government, *The Equality Strategy - Building a Fairer Britain* (Report, 22 May 2012) <<https://www.gov.uk/government/publications/the-equality-strategy-building-a-fairer-britain-progress-report>> accessed 20 June 2017, 2.

³⁸¹⁷ UK Government, *Creating the Conditions for Integration* (Guidance, February 2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7504/2092103.pdf> accessed 20 June 2017, 3-5.

contribute to integration. While both the 2010 Equality Strategy and the 2012 Strategy have been highlighted as welcome progress in the integration of migrants, the ECRI notes the failure of both of these programmes to focus specifically on racial inequalities as a factor in the hindrance of integration of some migrant communities.³⁸¹⁸

For Northern Ireland, the Equality Commission for Northern Ireland ('ECNI') has recommended a consolidation of racial equality legislation based on the Equality Act 2010 in order to bridge the gap in protections against racial discrimination currently present between Northern Ireland and Great Britain.³⁸¹⁹ The main mechanism through which these recommendations is being implemented in Northern Ireland is the Racial Equality Strategy 2015-2025, a framework policy aimed at tackling racial inequalities, eradicating racism and discrimination, and promoting good race.³⁸²⁰ The strategy is based on an 'intercultural' society, which is distinguished from a 'multicultural' society in which many cultures live in the same area but have limited contact with one another.³⁸²¹ 'Intercultural' societies allow individuals to be proud of their own identities while also having the ability to relate to and learn from people of different cultural identities.³⁸²² A number of specific actions are outlined in the strategy ranging from shared open community spaces to educational reform.³⁸²³ The gap between protections offered in Northern Ireland and Great Britain is acknowledged in the strategy and a commitment is made to review the current Race Relations (Northern Ireland) Order 1997 in order to reform or introduce new legislation that will eradicate the protection gap.³⁸²⁴

In Scotland, the Race Equality Framework describes the Scottish approach to ensuring equality amongst all communities. It is a long-term approach based on the priorities and experiences in particular of ethnic minorities in addition to the consultation of the public and voluntary sectors and academia to ensure the practicality and effectiveness of the framework.³⁸²⁵ Specifically, through policy and planning, the framework aims to provide a foundation for promoting race equality and building up the capacity of all society's involved sectors.³⁸²⁶ The framework sets out five key goals–

- Establishment of an accountable approach to support and drive forward implementation;
- Improvement of Scotland's public sector in terms of race inequality through more effective practices;

³⁸¹⁸ ECRI Report, s 72.

³⁸¹⁹ Equality Commission for Northern Ireland, *Race Equality Law Reform: Strengthening Legal Protection* (Briefing, August 2014) <<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/RaceLawReform-KeyPointBriefing.pdf>> accessed 14 July 2017, 1.

³⁸²⁰ Office of the First Minister and Deputy First Minister of Northern Ireland, *Racial Equality Strategy 2015-2025* (Report, 10 December 2015) <<https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm/racial-equality-strategy-2015-2025.pdf>> accessed 21 June 2017, 6.

³⁸²¹ *ibid*, 7.

³⁸²² *ibid*.

³⁸²³ *ibid*.

³⁸²⁴ *ibid*, 26.

³⁸²⁵ Scottish Government, *'Racial Equality Framework for Scotland'* (May 2016) <<http://www.gov.scot/Resource/0049/00497601.pdf>> accessed 21 June 2017, 57.

³⁸²⁶ *ibid*.

- Building up of the public sector's capacity to tackle race inequality and meet the needs of minority ethnic people;
- Evidence-based analysis and assessment of policy processes; and
- Strengthening of the minority ethnic voluntary sector.³⁸²⁷

In Wales, the 'Getting on Together' Project is a 'bottom up' programme originating from communities to address specific needs in order to promote tolerance, understanding, and respect of all.³⁸²⁸ It facilitates social cohesion through five areas with significant impact on community relations: housing, learning, communication, promotion of equality and social inclusion, and prevention of violent extremism strengthening social cohesion.³⁸²⁹ The project directly refers to increase of migration in the UK and the anxiety surrounding the integration of these newer populations. It also recognises the link between poverty and decreased integration.³⁸³⁰ The project aims to address the factors of decreased integration through a number of policies aimed at increasing inclusion and full social participation. The Welsh Government commits to tackling hate crime, promoting equal opportunities, supporting the integration of marginalised groups, and identifying and spreading best practices.³⁸³¹ It also improves mainstream cohesion across the Welsh Assembly by engaging with departments across the Welsh Government, identifying and acting on issues of joint concern, and by maintain a specialist fora to ensure more effective approaches are taken to govern communities.³⁸³²

Overall, the EHRC recommended that the government develop a comprehensive race strategy in its 2016 report on race in the UK.³⁸³³ The recommendation for a comprehensive race strategy was reiterated in 2017, illustrating the current lack of measures taken by the Government in its implementation.³⁸³⁴

6.3. Recommendations for Black and Ethnic Minorities

The majority of the integration policies for migrants are contained in the 'black and ethnic minorities' group recommendations of the ECRI. The main policies recommendations relate to improving the opportunities of black and ethnic minorities and combatting Islamophobia. Specifically, the ECRI recommends an increase in representation of black and ethnic minorities in teaching and police force positions and the establishment of effective dialogue with Muslim

³⁸²⁷ *ibid.*

³⁸²⁸ Barrie Phillips, Sheikh Mohamed Abdi Dahir, Abdalla Yassin Mohamed, 'Background and Context to the GOT (Getting on Together) Project' (June 2010) <<http://www.got.uk.net/index.php/what-is-got>> accessed 22 June 2017.

³⁸²⁹ Welsh Assembly Government, *Getting on Together: A Community Cohesion Strategy for Wales* (Guidance, November 2009) <<http://gov.wales/docs/dsjlg/publications/commsafety/091130ccstratenv1.pdf>> accessed 14 July 2017, 3.

³⁸³⁰ Welsh Government, *Getting on Together: A Community Cohesion Strategy for Wales*, 33-34.

³⁸³¹ *ibid.*, 38-39.

³⁸³² Welsh Government, 'Action Plan – Getting On Together' (27 April 2012) <<http://gov.wales/docs/dsjlg/publications/commsafety/091130ccactionen.pdf>> accessed 22 June 2017.

³⁸³³ Equality and Human Rights Commission, *Healing a divided Britain: the need for a comprehensive race equality strategy* (Report, 18 August 2013) <https://www.equalityhumanrights.com/sites/default/files/healing_a_divided_britain_-_the_need_for_a_comprehensive_race_equality_strategy_final.pdf> accessed 31 August 2017.

³⁸³⁴ Equality and Human Rights Commission, 'Our priorities' <<https://www.equalityhumanrights.com/en/advice-and-guidance>> accessed 31 August 2017.

communities.³⁸³⁵ The recommendation to increase the representation of black and ethnic minorities is being implemented by the BME Progression 2018. This programme is aimed improving the 'recruitment, development, profession and retention of [black and ethnic minority] officers and staff'.³⁸³⁶ The programme includes research, evaluation, and propagation of best practices.³⁸³⁷ There were no specific policies highlighted by the ECRI report that addressed the recommendation to increase representation of black and ethnic minorities in teaching position. Instead, a description of the situation for black and ethnic minority teachers revealed the continued discrimination and underrepresentation of the group in the teaching field.³⁸³⁸

The recommendation to combat Islamophobia has been implemented to a limited extent through government funding of the 'Tell MAMA' (Measuring Anti-Muslim Attacks) project, which aims to record, report and analyse anti-Muslim incidents, and provide support to the victims of such acts. The project works with the police with the aim of increasing access to justice for the victims of anti-Muslim acts.³⁸³⁹ Further initiatives aimed at combatting Islamophobia reviewed by ECRI, such as the cross-Government Working Group on Anti-Muslim Hatred, are reported to have had limited effect.³⁸⁴⁰ In addition, certain UK policies were identified as indirect contributors to Islamophobia. An example is the Prevent Strategy which tasks people in public agencies, including schools, hospitals, and local authorities, with reporting 'at-risk' children and adults to the government anti-radicalisation programme.³⁸⁴¹ This programme has been identified as contributing to the further stereotyping of Muslims.³⁸⁴²

6.4. Recommendations for Refugees and Asylum Seekers

The main recommendation for refugees and asylum seekers by the ECRI is to develop a refugee integration strategy and to take positive steps to prevent refugees from falling into destitution.³⁸⁴³ Prevention of refugees falling into destitution could be accomplished through an extension of the financial support received by asylum seekers after they have been granted refugee status.³⁸⁴⁴ This recommendation is not being implemented as the period of support continues to be insufficient to bridge the gap between receiving refugee status and accessing welfare benefits.³⁸⁴⁵ Furthermore, there is currently no refugee integration strategy in England and Northern Ireland.³⁸⁴⁶ By contrast, there has been a refugee integration strategy in Scotland since 2014

³⁸³⁵ ECRI 5th Report, ss 127, 180 and 188.

³⁸³⁶ House of Commons Home Affairs Committee, *'Police Diversity First Report of Session 2016-17'* (18 May 2016) <<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/27/27.pdf>> accessed 14 July 2017, 11.

³⁸³⁷ *ibid.*

³⁸³⁸ ECRI 5th Report, s 79.

³⁸³⁹ *ibid.*, s 87.

³⁸⁴⁰ *ibid.*

³⁸⁴¹ *ibid.*, s 86.

³⁸⁴² *ibid.*

³⁸⁴³ *ibid.*, s 114.

³⁸⁴⁴ Upon approval of refugee status, refugees have a 28 day 'move on period' in which they continue to receive financial support; however, the application to receive welfare benefits generally takes longer than 28 days leaving many refugees without access to financial or welfare benefits: see ECRI 5th Report, s 114.

³⁸⁴⁵ Josephine Basedow and Lisa Doyle, *England's Forgotten Refugees: Out of the Fire and into the Frying Pan* (Report, May 2016) <https://www.refugeecouncil.org.uk/assets/0003/7935/England_s_Forgotten_Refugees_final.pdf> accessed 14 July 2017, 21.

³⁸⁴⁶ ECRI 5th Report, s 116.

which aims at enabling refugees in becoming active members of the community and successfully resettled. An updated strategy will be published by the Scottish government in 2017.³⁸⁴⁷

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. Right to Access to Healthcare in the UK

Primary healthcare in the UK is delivered by General Practitioner ('GP') Clinics, National Health Service ('NHS') walk-in centres, dentists, pharmacists and optometrists.³⁸⁴⁸ The qualifying factor for free recourse to the UK's public healthcare system is based on ordinary residence, meaning a person must be lawfully in the country and able to demonstrate that they are 'settled'.³⁸⁴⁹ The NHS is the publicly-funded healthcare system of England, Scotland, Wales and Northern Ireland.³⁸⁵⁰ Established in 1948 to provide comprehensive, universal health coverage, it functions on the basis of need rather than capacity to pay and previously delivered free primary healthcare to all people requiring medical assistance, regardless of their immigration status.³⁸⁵¹

Whilst basic health services classified as 'immediately necessary'³⁸⁵² and emergency treatment (up until the person is an inpatient)³⁸⁵³ are available to undocumented migrants in the UK, administrative and practical barriers often prevent those most vulnerable from seeking medical treatment. The definition of 'immediately necessary' is unclear and, as it hinges upon the clinical judgement of health professionals, notoriously difficult to implement. This dilemma is further complicated by the fact that national health matters fall under the devolved powers of England, Scotland, Wales and Northern Ireland, meaning that slightly different rules may apply depending on which UK country the patient resides in.³⁸⁵⁴

³⁸⁴⁷ Scottish Government, *New Scots: Integrating Refugees in Scotland's Communities 2014-2017* (Report, 24 March 2017) <<http://www.gov.scot/newscotsfinalreport>> accessed 14 July 2017.

³⁸⁴⁸ Islington Council, 'NHS Healthcare for Migrants with NRPF (England)' (*No Recourse of Public Funds Network*, 6 April 2016) <<http://www.nrpfnetwork.org.uk/Documents/NHS-healthcare.pdf>> accessed 11 June 2017.

³⁸⁴⁹ Department of Health, 'Determining if a person is properly settled in the UK in order to establish if they are ordinarily resident' <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430967/OR_Tool_1.pdf> accessed 21 June 2017.

³⁸⁵⁰ Guidance on how to access and use services within the NHS is available in a number of languages online, although it appears that the information is rather outdated and overly simplistic. See: Public Health England, *NHS Entitlements: Migrant Health Guide* (Guidance, 31 July 2014) <<https://www.gov.uk/guidance/nhs-entitlements-migrant-health-guide>> accessed 1 September 2017.

³⁸⁵¹ Elahm Rafighi, Shoba Poduval, Helena Legido-Quigley, Natasha Howard, 'National Health Service Principles as Experienced by Vulnerable London Migrants in "Austerity Britain": A Qualitative Study of Rights, Entitlements, and Civil-Society Advocacy' [2016] *International Journal Health Policy Management* 5(10) 589.

³⁸⁵² National Health Service (General Medical Services Contracts) Regulations 2004, reg 15 (6)-(7).

³⁸⁵³ National Health Service (Charges to Overseas Visitors) Regulations 2015, eg 9.

³⁸⁵⁴ *ibid.*

7.2. Non-EU/EEA Nationals

Non-EU/EEA migrants' recourse to healthcare is primarily regulated through the National Health Service (Charges to Overseas Visitors) Regulations 2015. The Regulation forms part of a parcel of immigration-centred legislative acts, including Section 38 of the Immigration Act 2014 and the Immigration (Health Charge) Order 2015, which introduced significant changes to the provision of healthcare for non-EU/EEA nationals. The Immigration Act 2014 requires non-EU/EEA nationals to possess indefinite leave to remain before being able to access free secondary NHS care.³⁸⁵⁵

Whilst the Act ended free primary care for migrants who do not possess leave to enter or remain,³⁸⁵⁶ GP practices are granted discretion as to whether they request proof of identity or immigration status from patients seeking to register with a GP practice.³⁸⁵⁷ Following the enforcement of the Regulation in April 2015, migrants seeking leave to enter or remain in the UK are required to pay a pre-emptive charge called a 'health charge'.³⁸⁵⁸ The Health Charge Order requires non-EU/EEA nationals to pay a charge of £200 per year (non-tier 4 or non-tier 5 visas), or £150 per year for students on a tier 4 or young people on a tier 5 visa. If the charge is not timely and fully paid, visa applications may be refused or delayed. Those who cannot pay will have their visas automatically rejected.³⁸⁵⁹

Previously, everyone ordinarily and lawfully resident in the UK for 12 months or more would be exempt from a charge.³⁸⁶⁰ However, under the new rules, anyone not possessing indefinite leave to remain is not entitled to free NHS care and may thus be liable under the charging framework (unless they fall within the purview of the specified exemptions).³⁸⁶¹ These exemptions include refugees (who have been granted leave to remain), asylum seekers (who possess leave to remain whilst they try to prove their claim), and 'failed asylum seekers' (whose claims have been refused but may still be seeking to appeal this decision).³⁸⁶² Whereas the first category of persons is entitled to free NHS treatment owing to their residency status, access to healthcare for the latter two categories is more controversial.

³⁸⁵⁵ Immigration Act 2014, s 39.

³⁸⁵⁶ *ibid.*

³⁸⁵⁷ Public Health England, *NHS Entitlement: Migrant Health Guide*.

³⁸⁵⁸ Jane Crinnion, 'Is the Healthcare of Migrants at Risk?' (LexisPSL, 24 March 2015) <<https://www.lexisnexis.com/uk/lexispsl/localgovernment/document/412012/5FKD-J251-DYW7-W1FM-00000-00/Is-the-healthcare-of-migrants-at-risk%3F>> accessed 11 June 2017.

³⁸⁵⁹ Immigration (Health Charge) Order 2015, sch 1 art 4.

³⁸⁶⁰ *Shah v Barnet London Borough Council and other appeals* [1983] 1 All ER 226 (HL).

³⁸⁶¹ These exemptions include: enforceable EU rights (and family members); social security coordination agreements (and family members); reciprocal health care agreements (depending on the agreement, these may cover residents and/or nationals); refugees, humanitarian or temporary protection recipients under the Immigration Rules; asylum seekers (including failed asylum seekers under the National Assistance Act 1948, s 21); children in the care of a local authority; victims of human trafficking/modern slavery (and family members); prisoners; people detained in a clinical institution or under a court order for treatment; detainees under the immigration laws; members of the regular or armed forces/NATO/war pensioners and armed forces compensation scheme payment recipients (and their family members)/individuals in Crown service or similar governmental employment; employees on a UK registered vessel; and individuals facing exceptional humanitarian reasons at the discretion of the Secretary of State.

³⁸⁶² Rachel Sabates-Wheeler and Rayah Feldman, *Migration and Social Protection: Claiming Social Rights Beyond Borders* (Springer 2011) 152-153.

Asylum seekers and 'failed asylum seekers' may be detained in removal centres according to immigration laws throughout the application procedure or once their application has been refused, meaning that healthcare is provided free of charge but not by the NHS. The quality of the healthcare available in such centres has been sharply criticised. A recent report issued by HM Chief Inspector of Prisons for Yarl's Wood, one of the UK's largest immigration detention centres, noted that 'healthcare provision did not ensure that patients received care and treatment comparable to that provided in the wider community. They were not assured of access to support, care and treatment for low level mental health needs, chronic diseases or sexual health; national screening programmes; [or] health promotion.'³⁸⁶³

7.3. EU/EEA Nationals

EU/EEA nationals are not subject to the Health Charge Order. If they possess a valid European Health Insurance Card ('EHIC') or Provisional Replacement Document ('PRC'), they will be exempt from being charged for the provision of 'medically necessary treatment' in the UK.³⁸⁶⁴ If overseas visitors or indeed patients ordinarily resident in the UK can present evidence that they are nationals, citizens or lawful residents of an EU/EEA country, they are exempted from medical charges by virtue of Regulation 12 of the National Health Service (Charges to Overseas Visitors) Regulation 2015.³⁸⁶⁵ Once the issuing Member State of the EHIC is identified, the NHS can recover the costs of medical treatment provided in the UK, which depending on the insuring Member State may include a mutual waiver, a fixed payment formula or actual cost recovery.³⁸⁶⁶ In addition, a person deemed to be ordinarily resident in the UK, meaning that 'residence is lawful, adopted voluntarily, and for settled purposes as part of the regular order of their life for the time being whether of short or long duration',³⁸⁶⁷ may not be charged for treatment obtained through the NHS. In relation to EU/EEA nationals, this interpretation comprises of anyone possessing an extended 'right to reside' under Directive 2004/38/EC including workers, self-employed persons, students and job seekers (up to 91 days), as well as carers of EU/EEA nationals (such as a dependent child) and non-EEA family members of EU/EEA nationals.³⁸⁶⁸ Thus, EU/EEA nationals who comply with the conditions of ordinary residence are entitled to register with the NHS and qualify for free medical treatment.³⁸⁶⁹

³⁸⁶³ 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/hmiprison/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>> accessed 21 June 2017, 83.

³⁸⁶⁴ Department of Health, *Implementing the Overseas Visitor Hospital Charging Regulations 2015* (Guidance, January 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496951/Overseas_visitor_hospital_charging_accs.pdf> accessed 21 June 2017, 4.

³⁸⁶⁵ *ibid*, 14.

³⁸⁶⁶ *ibid*, 4.

³⁸⁶⁷ Department of Health, *Implementing the Overseas Visitor Hospital Charging Regulations 2015: Ways in which People can be Lawfully Resident in the UK* (Guidance, February 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496967/lawfully-resident-uk.pdf> accessed 21 June 2017, 5.

³⁸⁶⁸ Department of Health, *Implementing the Overseas Visitor Hospital Charging Regulations 2015: Ways in which People can be Lawfully Resident in the UK*, 6.

³⁸⁶⁹ Gareth Davies, 'The UK and Sickness Insurance for Mobile Citizens: An Inequitable Mess for Brexit Negotiators to Address' (*European Law Blog*, 17 March 2017) <<http://europeanlawblog.eu/2017/03/17/the-uk-and->

7.4. Irregularly Residing Migrants

Although there is no specific programme which regulates the provision of healthcare for vulnerable migrants, free secondary healthcare is available on non-discriminate terms to refugees who have been granted leave to remain (such as victims of trafficking or modern slavery), and to asylum seekers who are awaiting a decision and who have not been detained in removal centres. Irregularly residing migrants are not considered to be lawfully resident in the UK and do not possess indefinite leave to remain, thus in principle they are not entitled to free healthcare under the NHS unless they fall under any of the above-mentioned exemptions.

The UK is the only EU Member State in which the provision of healthcare is directly linked to immigration status, meaning that irregular undocumented migrants who seek to regularise their status but who lack the means to pay the annual surcharge of £200 or £150 (depending on the type of visa) may be barred from applying for an extension to their leave.³⁸⁷⁰ Accordingly, the Home Office is empowered under the Health and Social Care Act 2012 to request access to patient records in order to 'crackdown' on immigration offenders, a measure which has been taken with increasing regularity.³⁸⁷¹ More recently, these policies have been criticised for being 'short-sighted', as irregular migrants might avoid seeking pre-emptive medical treatment and wait until they require emergency medical services which tend to be costlier. Such expenses are rarely recouped by the NHS from patients who are unable to pay.

That said, patients who wish to register with a GP are not required to disclose their immigration status as refusing to register them on such grounds could amount to unlawful discrimination under the Equality Act 2010. Discrimination will be deemed unlawful if a person experiences unfair treatment on the grounds of certain protected characteristics, a list which includes race among others.³⁸⁷² Refusing to register a patient on the basis of their nationality could therefore amount to direct discrimination rendered unlawful under the Act.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

8.1. Right to Education in the UK

The right to education in the UK is provided for in the Human Rights Act 1998: 'no person shall be denied the right to education'.³⁸⁷³ In addition to that, Section 7 of the Education Act 1996 places a legal duty on the parent or guardian of a child aged 5 to 16 years (known as compulsory school age), to ensure that the child attends and receives full-time education. Local authorities

[sickness-insurance-for-mobile-citizens-an-inequitable-mess-for-brex-it-negotiators-to-address/>](#) accessed 14 June 2017.

³⁸⁷⁰ 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).

³⁸⁷¹ Health and Social Care Act 2012, s 261(5)(d)-(e).

³⁸⁷² Equality Act 2010, s 9.

³⁸⁷³ Human Rights Act 1998, sch 1 first protocol art 2.

have a duty to provide suitable full-time education for all children of compulsory school age resident in that local authority, irrespective of their immigration status and appropriate to their age, ability and any special educational needs they may have.³⁸⁷⁴ However, a report published by the Coram Children's Legal Centre in 2013³⁸⁷⁵ made reference to a series of cases which cast doubt on this requirement. In one case, a four-year-old pupil, born in the UK, who had attended a British nursery and was subsequently enrolled in reception class, had his place at primary school revoked after his father was found to be working illegally. Although immigration-related documentation is not required for registration at a school, some schools appear to be reluctant to accept migrant children (especially the children of undocumented migrants) owing to issues over funding arrangements or potential impacts on reaching government targets.³⁸⁷⁶

In the UK, until the age of 18, children must also pursue further full-time education, an apprenticeship or a traineeship, or spend at least 20 hours volunteering per week.³⁸⁷⁷ Given that many migrant children do not have permission to work in the UK, continuation of education will often be the most viable option.³⁸⁷⁸

8.1.1. Children of EU Migrants

Under EU law, EU citizens and their family members (including any children they have who are under the age of 21 years or dependent on them) can move to and reside freely in any EU Member State. Migrant children are thus able to access the education of other Member States on the same terms. This is provided for in Articles 7(2) (welfare benefits for workers, namely the parent or guardian of the child) and Article 10 (right to education) of Regulation 492/2011.67, both of which apply to the UK. Children have the right to be placed in a class with their own age group, at the equivalent level to their class in their country of origin, regardless of their language level. At the same time, they are entitled under EU law to receive free language tuition in their new home country to help them adapt to the school system. However, there is no automatic EU-wide recognition of school certificates. Instead, one must ask the national authorities to recognise their children's school certificates before they can enrol them in a local school. Once children are in education, they have a right to stay in the UK with their parent(s) until their education is completed, regardless of whether they can support themselves.³⁸⁷⁹

³⁸⁷⁴ Education Act 1996, s9.

³⁸⁷⁵ Coram Children's Legal Centre, *Growing Up In A Hostile Environment: The rights of undocumented migrant children in the UK* (Report, November 2013) <http://cdn.basw.co.uk/upload/basw_30012-10.pdf> accessed 21 August 2017.

³⁸⁷⁶ PICUM, *Building Strategies to improve the protection of children in an irregular migration situation in Europe: UK* (Country Brief, January 2013) <http://picum.org/picum.org/uploads/publication/UK%20Workshop%20Brief_updated.pdf> accessed 21 August 2017.

³⁸⁷⁷ UK Government, 'School Leaving Age' <<https://www.gov.uk/know-when-you-can-leave-school>> accessed 8 September 2017.

³⁸⁷⁸ Coram Children's Legal Centre, *Access to compulsory education for migrant children* (Factsheet, July 2017) <http://www.childrenslegalcentre.com/wp-content/uploads/2017/07/School-Education-July.2017.final_.pdf> accessed 11 September 2017.

³⁸⁷⁹ Europa, 'Starting school in another EU country' (24 April 2017) <http://europa.eu/youreurope/citizens/education/school/enrol/index_en.htm> accessed 19 June 2017.

8.1.2. Children of Non-EU/EEA Migrants

The right of children to receive education varies for the children of non-EU/EEA migrants. Children in the following categories are entitled to receive education in the UK, but are not entitled to a place in a state-funded school—

- Children from non-EU/EEA countries who are short-term visitors living abroad but admitted to the UK for a short visit but not to study; and
- Children from non-EU/EEA countries who have permission to study in the UK on the basis that they attend an independent, fee-paying school.

State schools that receive applications from children that fall within one of these categories are instructed not to deny the child a place but to alert the Home Office school referrals team who will investigate the case further.³⁸⁸⁰ However the allocation of a place should not be refused on the basis of the Home Office's findings.³⁸⁸¹

An important step was made in this area by the publication of the first report of the Joint Committee on Human Rights on the human rights of unaccompanied migrant children and young people in May 2013 which called on the Government to affirm its commitment Articles 29 and 30 of the 1989 UN Convention on the Rights of the Child ('UNCRC') and ensure equal access to education to children regardless of their immigration status.³⁸⁸²

8.2. Education System in the UK

8.2.1. Accessibility

In a research report³⁸⁸³ commissioned by the charity 'Action For Social Integration' ('AFSI') and published in 2010, it became clear that there is a 'lack of straightforward, easily accessible information about the UK school system'³⁸⁸⁴ to the confusion of newly-arrived migrant and refugee families. 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 AFSI to publish a targeted guide on the education system for migrants and refugees³⁸⁸⁵ which includes information on key issues such as getting children into primary school.³⁸⁸⁶

Government policy concerning children with English as an Additional Language ('EAL') is a useful way to assess any efforts made to increase accessibility to education for migrant children.

³⁸⁸⁰ 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.

³⁸⁸¹ *ibid.*

³⁸⁸² 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.

³⁸⁸³ 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.

³⁸⁸⁴ *ibid.*, 25.

³⁸⁸⁵ *ibid.*

³⁸⁸⁶ 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.

This class often encompasses children of refugees and migrants whose parents have moved to the UK for work.³⁸⁸⁷ In 2012, the Government emphasised that that it would promote ‘rapid language acquisition and include them within mainstream education as soon as possible’.³⁸⁸⁸ Accordingly, Teachers’ Standards Guidance from 2013 stipulates that teachers should have ‘a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.’³⁸⁸⁹ Furthermore, the Qualifications and Curriculum Authority (‘QCA’) in England has provided specific guidance on how to teach EAL. In certain instances, such as where they are still developing their proficiency in English but the class materials are difficult, the QCA recommends that pupils should be encouraged to use their first language through visual cues or collaboration with other EAL learners that speak the same language.³⁸⁹⁰

Funding to support increased accessibility to the education system for migrant children is clearly key. However, since the cessation of the Ethnic Minority Achievement Grant in 2011 there is currently no direct funding from central government for children with EAL.³⁸⁹¹ Instead funding can be received based on local funding formulas, where schools can decide to include a funding factor for children with EAL.³⁸⁹² The Government’s recent proposal for an upheaval of school funding in the UK states that students with EAL would be accounted for when determining the availability of additional funding in order to ‘increase funding to schools likely to have pupils more likely to need additional support.’³⁸⁹³ Nevertheless, the proposal stipulates that schools will not be required to spend the extra funding in a particular way or for particular students.

Another obstacle which can hinder access to education for migrant children is the age assessment procedure conducted by immigration officials. As abovementioned, there is an obligation to provide education for children of compulsory school age. However, age assessments act as a barrier to services, including education, for children who cannot prove that they are under the age of 18. Fortunately, several mechanisms exist in order to broaden access to services. First, age assessments must not be conducted on the basis of appearance alone, as

³⁸⁸⁷ Anglia Ruskin University, *School approaches to the education of EAL students* (Report, April 2014) <<https://www.educ.cam.ac.uk/research/projects/ealead/Fullreport.pdf>> accessed 8 September 2017.

³⁸⁸⁸ *ibid*, 14.

³⁸⁸⁹ Department for Education, *Teachers’ Standards Guidance for school leaders, school staff and governing bodies* (Guidance, June 2013) <https://www.staffs.ac.uk/assets/Teachers__Standards_tcm44-85026.pdf> accessed 21 August 2017, 12.

³⁸⁹⁰ Clare Feikert, ‘The Education of Non-Native Language Speaking Children: United Kingdom (England)’ (*Library of Congress*, April 2009) <<https://www.loc.gov/law/help/non-native-education/uk.php#f16>> accessed 21 August 2017.

³⁸⁹¹ House of Commons, ‘Government policy on support for pupils with English as an additional language – Westminster Hall debate’ (*House of Commons Library*, 18 June 2015) <<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2015-0016>> accessed 11 September 2017.

³⁸⁹² *ibid*; see also: Education Funding Agency, *Funding allocation pack: 2017 to 2018 academic year* (Guidance, February 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/599187/FAP_Special_open_before_1Apr17_cleared_for_publication_referenced.pdf> accessed 11 September 2017.

³⁸⁹³ Department for Education, ‘Schools funding reform proposals’ in *National funding formula: equality analysis* (Report, March 2016) <https://consult.education.gov.uk/funding-policy-unit/schools-national-funding-formula/supporting_documents/Equality_analysis.pdf> accessed 11 September 2017, 13.

decided in the case of *R(B) v Mayor and Burgess of the London Borough of Merton*.³⁸⁹⁴ In addition, guidance from the Association of Directors of Children's Services states that these assessments should be carried out as quickly as possible to expedite access to services.³⁸⁹⁵ In cases where age cannot be established definitively, the guidelines urge that the benefit of the doubt should be given to an individual who claims to be a child.³⁸⁹⁶ Still, doubt was cast over the effective implementation of these mechanisms by the House of Lords in 2016. It was suggested by the Chamber's European Union Committee that age assessments are still a significant challenge to the ability of unaccompanied migrant children to access services, including education.³⁸⁹⁷

Eligibility (or not) for free school meals may further hinder the full and effective enjoyment of the right to education for migrant children. It has been reported that access to free school meals not only helps lift children out of poverty, but also extends important educational benefits.³⁸⁹⁸ In the UK, universal free school meals are available for all children in reception, year 1 and year 2.³⁸⁹⁹ Migrant children are also able to benefit from this policy, regardless of immigration status. Beyond this age, however, eligibility for free school meals in the UK depends on whether parents are in receipt of a specified benefit.³⁹⁰⁰ Asylum-seekers and their dependents who qualify for support under Part VI of the Immigration and Asylum Act 1999 are entitled to free school meals. However, children who are subject to immigration control will be deemed to have 'no recourse to public funds'³⁹⁰¹ and will not be eligible for free school meals. Local authorities have a discretion to fund school meals for these particular children, but there is not a unified approach to this.³⁹⁰²

8.2.2. Discrimination

The Equality Act 2010 prohibits discrimination on grounds of race, gender and religion among others³⁹⁰³ in all sectors, including higher and further education. Asylum-seeking, refugee and migrant children are further entitled to special protection and all associated rights under the regime of the UNCRC.³⁹⁰⁴ Such children should not be the victims of discrimination or

³⁸⁹⁴ [2003] EWCH 1689 (Admin).

³⁸⁹⁵ ACDS, *Age Assessment Guidance* (Guidance, October 2015) <http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf> accessed 11 September 2017, 21.

³⁸⁹⁶ *ibid*, 23-24.

³⁸⁹⁷ House of Lords European Union Committee, *Children in Crisis: unaccompanied migrant children in the EU* (Report, 26 July 2016) <<https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/34/34.pdf>> accessed 11 September 2017, 15-19.

³⁸⁹⁸ The Children's Society, *The future of free school meals* (Report, April 2012) <https://www.childrenssociety.org.uk/sites/default/files/tcs/fair_and_square_policy_report_final.pdf> accessed 13 September 2017, 3.

³⁸⁹⁹ Coram Children's Legal Centre, *Access to compulsory education for migrant children*, 3.

³⁹⁰⁰ UK Government, 'Apply for free school meals' <<https://www.gov.uk/apply-free-school-meals>> accessed 13 September 2017.

³⁹⁰¹ Immigration and Asylum Act 1999, s 115.

³⁹⁰² Coram Children's Legal Centre, *Access to compulsory education for migrant children*, 13.

³⁹⁰³ Equality Act 2010, pt 2 ch 1.

³⁹⁰⁴ Convention on the Rights of the Child, arts 22, 30, 32-33, 35-36, 37(b)-(d), 38, 39 and 40.

stigmatisation since they are deemed to be particularly vulnerable to trafficking as well as economic and sexual exploitation.³⁹⁰⁵

Notwithstanding the existing legal mechanisms, which ought to ensure that any child is treated equally regardless of nationality or immigration status, a number of concerns have been raised in respect of unfair practices which negatively affect the ability of unaccompanied migrant children to access essential services, such as education, on the basis of their immigration status.³⁹⁰⁶ In particular, criticism has been levelled at the practice of granting 'Unaccompanied Asylum Seeking Children Leave' ('UASC Leave'). UASC leave is granted until the age of 17 and a half years, or for a period of 30 months (if shorter), to a child whose asylum claim has been refused but has yet to secure appropriate reception arrangements in the country of return.³⁹⁰⁷ This form of leave has been termed 'problematic' as it is a short-term solution and only 43% of children received UASC leave in 2016.³⁹⁰⁸

In 2016, the UN Committee on the Rights of the Child recommended that the UK Government work to reduce the risk of discrimination in several ways such as–

- Providing sufficient support to facilitate access to basic services;³⁹⁰⁹
- Establishing statutory independent guardians for all unaccompanied and separated children;³⁹¹⁰ and
- Strengthening the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant effective remedies to the child victims.³⁹¹¹

In response, the UK Government launched a new voluntary transfer scheme which seeks a 'fairer distribution of unaccompanied children across all local authorities.'³⁹¹² Under this scheme, a local authority strained by the scale of care required for unaccompanied children may be able to volunteer a child to be transferred to a different authority, one which has fewer unaccompanied children and less strain when providing essential services. For a transfer to be effected, the child's best interests must be considered. The Interim National Transfer Protocol for the scheme expressly provides that a child's right to education should be considered when assessing what is in their best interests.³⁹¹³ The Protocol states that the ability to transfer a child

³⁹⁰⁵ Children's Rights Alliance for England, *Review of Government action on United Nations' recommendations for strengthening children's rights in the UK* (Report, 2014) <http://www.crae.org.uk/media/75135/SOCR_2014_REPORT_WEB.pdf> accessed 23 August 2017, 80.

³⁹⁰⁶ Human Rights Joint Committee, *Human Rights of Unaccompanied Migrant Children and Young People in the UK*.

³⁹⁰⁷ Coram Children's Legal Centre, 'UASC Leave' <<http://www.childrenslegalcentre.com/resources/uasc-leave/>> accessed 11 September 2017.

³⁹⁰⁸ Home Office, *National Statistics 2016: Asylum*.

³⁹⁰⁹ UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (Report, 3 June 2016) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En> accessed 23 August 2017, 21.

³⁹¹⁰ *ibid*, 20.

³⁹¹¹ *ibid*, 10.

³⁹¹² Department of Education et al, *Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-17* (Guidance, 1 July 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534258/Interim_National_UASC_transfer_protocol.pdf> accessed 12 September 2017.

³⁹¹³ *ibid*, 16.

to a less strained and overcrowded local authority will, in the majority of cases, better serve their needs in this regard. The Protocol equally recognises that the right to education may be breached if children are in the care of a local authority where there are no school places available.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. Recognition of Qualifications concerning Higher Education

The UK is a party to the 1997 CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, also known as the 'Lisbon Recognition Convention' ('LRC'), having ratified it in 2003. However, as reported by the LRC Committee in its *Monitoring the Implementation of the LRC Report 2016*,³⁹¹⁴ the procedures and criteria used in the assessment and recognition of qualifications are not regulated in the UK at national level, and the UK Government did not indicate in its response that there was any oversight of regulations and implementation.³⁹¹⁵ The criteria and procedures for recognition are instead regulated by the individual higher education institutions ('HEIs') that provide higher education - typically degrees, diplomas or other certificate programmes - and which have full decision-making authority and total autonomy to set up their own criteria and procedure.³⁹¹⁶

9.2. The UK National Recognition Information Centre

Pursuant to Article IX.2 of the LRC, the UK's National Recognition Information Centre ('NARIC') was established in 1997 to provide services for individuals and organisations advising on comparisons of international qualifications against UK qualification framework levels. As a national agency, the NARIC provides **the only official source of information** on international education and training systems and qualifications and skills attained outside the UK. It is independent, and the centre's tasks and responsibilities are regulated at national level.³⁹¹⁷

Individuals may apply to the NARIC for a statement of comparability, which 'guides universities, colleges, employers and professional bodies on how [an individual's] qualifications (including

³⁹¹⁴ Council of Europe and 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* (Report, Paris 2016) <[http://www.enic-naric.net/fileusers/Monitoring the Implementation of the Lisbon Recognition Convention 2016.pdf](http://www.enic-naric.net/fileusers/Monitoring_the_Implementation_of_the_Lisbon_Recognition_Convention_2016.pdf)> accessed 18 June 2017.

³⁹¹⁵ *ibid*, ch 1.

³⁹¹⁶ *ibid*.

³⁹¹⁷ *ibid*, 59.

professional qualifications) relate to UK qualifications and certificates'.³⁹¹⁸ The statement is not legally binding but issued for guidance purposes only,³⁹¹⁹ which means that ultimately it is the potential employer or institution that decides whether an individual's qualification is suitable for the job or course he/she is applying for.³⁹²⁰

The NARIC also provides a 'Visas and Nationality Service', on behalf of the Home Office, to support individuals applying for UK visas or for settlement in the UK.³⁹²¹ Under this service, individuals may apply for official NARIC statements, 'custom-designed for immigration purposes, that confirm [the individual's] academic qualification level and/or English language proficiency - as appropriate for [the individual's] personal circumstances and immigration route'.³⁹²² These statements are also only for guidance purposes.³⁹²³

9.3. Recognition Procedures

9.3.1. Basic Principles, Procedures and Criteria

In compliance with the LRC's requirement that procedures and criteria used in the assessment and recognition of qualifications are transparent, coherent and reliable,³⁹²⁴ the NARIC has drafted a Code of Practice and its own Evaluation Criteria and Methodology.³⁹²⁵ The application for a statement of comparability requires: a copy of the applicant's certificate(s) together with copies of final transcript(s) in the original language; and a copy of a certified translation in English, if necessary, or a Diploma Supplement and/or Certificate Supplement issued in English.³⁹²⁶ Although the LRC specifies that decisions on recognition shall be made within a reasonable time limit specified beforehand competent recognition authority,³⁹²⁷ the time limit for the assessment of foreign qualifications is not regulated in the UK.³⁹²⁸ The NARIC states that the assessment normally takes 10-15 working days from the date the NARIC receives all documents and payment, while less common qualifications may require additional research and thus may take longer.³⁹²⁹ The applicant's right to appeal the assessment is regulated internally.³⁹³⁰ The

³⁹¹⁸ NARIC, 'Statement of Comparability' <<https://www.naric.org.uk/naric/individuals/Compare%20Qualifications/Statement%20of%20Comparability.aspx>> accessed 11 July 2017.

³⁹¹⁹ NARIC, 'Evaluation Criteria Methodology' <<https://www.naric.org.uk/naric/Code%20of%20Practice/Evaluation%20Criteria%20and%20Methodology.aspx>> accessed 11 July 2017.

³⁹²⁰ NARIC, 'Compare Qualifications' <<https://www.naric.org.uk/naric/Individuals/Compare%20Qualifications/default.aspx>> accessed 11 July 2017.

³⁹²¹ NARIC, 'Visas and Nationality' <<https://www.naric.org.uk/visas%20and%20nationality/Default.aspx>> accessed 11 July 2017.

³⁹²² *ibid.*

³⁹²³ NARIC, 'Evaluation Criteria Methodology'.

³⁹²⁴ Convention on the Recognition of Qualifications 1997, art III.2.

³⁹²⁵ NARIC, 'Evaluation Criteria Methodology'.

³⁹²⁶ NARIC, 'Statement of Comparability'.

³⁹²⁷ Convention on the Recognition of Qualifications 1997, art III.5.

³⁹²⁸ Council of Europe and UNESCO, *Monitoring the Implementation of the Lisbon Recognition Convention*, ch 2.

³⁹²⁹ NARIC, 'Statement of Comparability'.

³⁹³⁰ Council of Europe and UNESCO, *Monitoring the Implementation of the Lisbon Recognition Convention*, ch 3.

timeframe for submitting these requests is six months after the service has been provided, after which the requests can no longer be considered.³⁹³¹

The NARIC states that it focuses predominantly on an outcomes-based approach in its assessment of qualifications.³⁹³² It gives consideration also to criteria relating to qualification duration, entry requirements, method and rigour of assessment, professional or occupational outcomes and quality assurance mechanisms.³⁹³³ References to the position of qualifications within national education systems or frameworks and elaborated progression pathways are also factors in the decision-making process.³⁹³⁴ The resulting evaluation is a comparison to the NARIC Band Framework,³⁹³⁵ a hierarchical structure of educational outcomes. There are 16 bands in the framework which seek to provide 'a mechanism within which it is possible to categorise the wide variety of international qualifications and to further differentiate between them in a coherent and accurate fashion'.³⁹³⁶ The NARIC states that the use of this framework may also facilitate connections and references to domestic and other qualifications frameworks.³⁹³⁷

A key principle in the LRC is the substantial differences principle, which requires parties to the LRC to recognise the higher education qualifications, periods of study and qualifications giving access to higher education conferred in another LRC party, unless a substantial difference between a foreign qualification and a corresponding national qualification can be shown.³⁹³⁸ The UK has no national definition of the terms 'substantial differences'³⁹³⁹ but the report suggests this may mean that: the nominal duration of study is shorter by more than one year; the institution or a programme is not accredited (quality assured); and/or there are differences in programme content/courses.³⁹⁴⁰

9.3.2. Recognition of Refugees' Qualifications

The UK Government acknowledged that they have not implemented Article VII of the LRC and have no regulations at any level concerning the qualifications of refugees' and displaced persons.³⁹⁴¹ However, the NARIC is currently involved in a pilot project for the European Qualifications Passport for Refugees,³⁹⁴² in collaboration with the Council of Europe, the Greek Ministry of Education, Research and Religious Affairs, the office of the UNHCR, and qualification recognition centres in Greece, Italy and Norway. The European Qualifications

³⁹³¹ NARIC, 'Application Procedures' <<https://www.naric.org.uk/naric/Code%20of%20Practice/Application%20Procedures.aspx>> accessed 11 July 2017.

³⁹³² NARIC, 'Evaluation Criteria Methodology'.

³⁹³³ *ibid.*

³⁹³⁴ *ibid.*

³⁹³⁵ NARIC, 'NARIC Band Framework' <<https://www.naric.org.uk/naric/Code%20of%20Practice/Band%20Framework.aspx>> accessed 11 July 2017.

³⁹³⁶ NARIC, 'Evaluation Criteria Methodology'.

³⁹³⁷ *ibid.*

³⁹³⁸ Council of Europe and UNESCO, *Monitoring the Implementation of the Lisbon Recognition Convention*, ch 4.

³⁹³⁹ *ibid.*

³⁹⁴⁰ *ibid.*

³⁹⁴¹ *ibid.*, ch 5.

³⁹⁴² 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.

Passport for Refugees is 'a document providing an assessment of the higher education qualifications based on available documentation and a structured interview',³⁹⁴³ and is intended to help refugees to progress in their studies or employment.³⁹⁴⁴ The pilot scheme was originally developed by the NARIC and the Norwegian Agency for Quality Assurance in Education in September 2015 and is already implemented in Norway.³⁹⁴⁵ A first evaluation round was conducted in March 2017,³⁹⁴⁶ a second round in June 2017, and a further round is due in September 2017.³⁹⁴⁷

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

10.1. Electoral Rights

At the European level, the UK is rather unique in awarding different types of voting rights to migrants, who thus hold the privilege of influencing policy that regulates their rights during their stay as non-citizens in the UK.³⁹⁴⁸ The right to vote for citizens is guaranteed under Protocol 1 to the ECHR, albeit subject to legitimate and proportionate restrictions.³⁹⁴⁹ The UK is thus entitled to reserve the right to vote solely to their own nationals, and even restrict it simply to those resident in the country subject to their specifications.³⁹⁵⁰ These voting rights are not granted uniformly, however, and are awarded to migrant voters depending on the historic relationship their country of origin has with the UK. Political participation for migrants is regulated through a trifurcated system, which differentiates the political participation of three groups: Commonwealth citizens, EU citizens, and citizens of other countries.³⁹⁵¹

10.1.1. Commonwealth and Irish Citizens

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

³⁹⁴³ Council of Europe, 'What is the European Qualifications Passport for Refugees?' <<https://rm.coe.int/168070016d>> accessed 11 July 2017.

³⁹⁴⁴ *ibid.*

³⁹⁴⁵ *ibid.*

³⁹⁴⁶ NARIC, 'NARIC in pilot of European Qualifications Passport for Refugees' (17 March 2017) <<https://www.naric.org.uk/News%20Story.aspx?NewsID=704>> accessed 11 July 2017.

³⁹⁴⁷ NARIC, 'European Qualification Passport for Refugees: NARIC in second round of pilot in Greece' (28 June 2017) <<https://www.naric.org.uk/naric/News%20Story.aspx?NewsID=738>> accessed 11 July 2017.

³⁹⁴⁸ Christine Fauvelle-Aymar, 'The Welfare State, Migration, and Voting Rights' [2014] Public Choice 105, 109.

³⁹⁴⁹ ECHR, protocol 1 art 3; *Mathieu-Mohin and Clerfayt v Belgium* [1987] ECtHR 1, para 52; Lord Goldsmith QC, *Citizenship: Our Common Bond* (Report, 11 March 2008) <<http://image.guardian.co.uk/sys-files/Politics/documents/2008/03/11/citizenship-report-full.pdf>> accessed 13 June 2017, 45.

³⁹⁵⁰ Lord Goldsmith QC, *Citizenship: Our Common Bond*, 43.

³⁹⁵¹ Dr Robert Ford and Ruth Gove-White, *Migrant Voters in the 2015 General Election* (Report, February 2017) <<http://migrantsrights.org.uk/blog/2017/02/23/migrant-voters-2015-general-election/>> accessed 15 June 2017, 5.

restricted by the same age, residence, and capacity restrictions applied to UK citizens.³⁹⁵² The Act also entitles these citizens to vote in local elections in their municipality, including city councils, county councils, local mayoral elections, and elections to the devolved legislatures of Scotland, Wales, and Northern Ireland.³⁹⁵³ If Commonwealth and Irish citizens are registered to vote in general elections to the UK Parliament, they are further entitled to vote and stand in elections to the European Parliament.³⁹⁵⁴

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."'”³⁹⁵⁵ Irish citizens are considered by immigration authorities to have a permanent right of residence in the UK on arrival into the country, and are thus entitled to a large exclusive range of entitlements including rights of political participation equivalent to UK citizens.³⁹⁵⁶

For Commonwealth citizens, voting rights are independent of immigration status and are available to migrant lawfully residing within any electoral constituency.³⁹⁵⁷ Restrictions only arise for the rights to political candidacy, as the Electoral Administration Act 2006 qualifies the right to stand in elections to the House of Commons for Commonwealth citizens who either do not require leave to remain in the UK or who have attained 'indefinite leave to remain'.³⁹⁵⁸ These qualifying Commonwealth citizens are also entitled to stand for local elections if their eligibility is not curtailed by restrictions applied to UK citizens, such as the condition that candidates have a specific connection to the area.³⁹⁵⁹

Nationwide referendums, governed by the Political Parties, Elections and Referendums Act 2000,³⁹⁶⁰ have grown in frequency in the UK in recent years. Eligibility for political participation in such referendums varies depending on the issue being voted on, and may be restricted geographically to either the UK as a whole, any of its four constituent countries, or to individual counties.³⁹⁶¹ The right to vote in referendums is not guaranteed by law and is granted by the Government on an *ad hoc* basis. For example, in the referendum on EU membership held on June 23 2016, eligibility was reserved solely for UK citizens as well as Commonwealth and Irish citizens resident in the UK and Gibraltar.³⁹⁶²

³⁹⁵² Representation of the People Act 1983, s 1(1)(c).

³⁹⁵³ *ibid*, s 2(1)(c); Lord Goldsmith QC, *Citizenship: Our Common Bond*, 47-49.

³⁹⁵⁴ European Parliamentary Elections Act 2002, s 8(2); Lord Goldsmith QC, *Citizenship: Our Common Bond*, 49.

³⁹⁵⁵ 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) <<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661#fullreport>> accessed 13 July 2013, 3.

³⁹⁵⁶ Terry McGuinness and Melanie Gower, *The Common Travel Area, and the Special Status of Irish Citizens in UK Law*, 3.

³⁹⁵⁷ Lord Goldsmith QC, *Citizenship: Our Common Bond*, 46.

³⁹⁵⁸ Electoral Administration Act 2006, s 18(1)-(2).

³⁹⁵⁹ Local Government Act 1972, s 79; Lord Goldsmith QC, *Citizenship: Our Common Bond*, 48.

³⁹⁶⁰ Lord Goldsmith QC, *Citizenship: Our Common Bond*, 50.

³⁹⁶¹ Political Parties, Elections and Referendums Act 2000, s 101.

³⁹⁶² Lord Goldsmith QC, *Citizenship: Our Common Bond*, 50; UK Government, 'EU Referendum' (Government Digital Service) <<https://www.gov.uk/government/topical-events/eu-referendum/about#who-can-vote-in-the-referendum>> accessed 4 July 2017.

10.1.2. EU Citizens

The UK applies Article 20 of the Treaty on the EU to entitle all EU citizens residing in the country to stand and vote in the local elections for their municipality as well as for elections to the European Parliament.³⁹⁶³ Further, these rights are extended to the elections to the devolved legislatures in Scotland, Wales, and Northern Ireland. EU citizens are also entitled to stand for office in any election where they have the right to vote, subject to the same requirements applicable to UK citizens.³⁹⁶⁴

10.1.3. Non-EU Citizens

Migrants who are neither citizens of the Commonwealth nor of the EU are not entitled to vote in any election for public office in the UK.³⁹⁶⁵ This includes the three non-EU EEA Member States.

10.2. Other Forms of Political Participation

Political participation beyond the rights to vote and to stand for political office usually follows the same categories outlined above. The right to donate to political parties is given to registered voters.³⁹⁶⁶

10.3. Restrictions on Political Participation

The UK remains one of few European countries to significantly restrict the right of convicted offenders to vote while they are incarcerated.³⁹⁶⁷ This policy, implemented by the Representation of the People Act 1983, renders any individual sentenced to penal detention 'legally incapable of voting' at an election.³⁹⁶⁸ The blanket ban was declared incompatible with the ECHR in the case of *Hirst v the United Kingdom*,³⁹⁶⁹ however no legal changes have followed the ruling to date.³⁹⁷⁰ That said, in October 2017, the UK Government announced its intention to implement a policy that would allow certain prisoners, specifically those serving short sentences who are entitled to day releases for 'rehabilitation courses' or 'community service', to vote in elections if they

³⁹⁶³ Treaty on European Union, art 20; Christine Fauvelle-Aymar, 'The Welfare State, Migration, and Voting Rights', 111; Lord Goldsmith QC, *Citizenship: Our Common Bond*, 44.

³⁹⁶⁴ Lord Goldsmith QC, *Citizenship: Our Common Bond*, 56.

³⁹⁶⁵ Electoral Commission, 'Who is eligible to vote at a UK General Election?' <<http://www.electoralcommission.org.uk/faq/voting-and-registration/who-is-eligible-to-vote-at-a-uk-general-election>> accessed 11 July 2017.

³⁹⁶⁶ Lord Goldsmith QC, *Citizenship: Our Common Bond*, 51.

³⁹⁶⁷ Prison Reform Trust, *Barred from voting: the right to vote for sentenced prisoners* (Briefing Paper, February 2010) <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/barred%20from%20voting%20Feb%202010.pdf>> accessed 3 September 2017, 1.

³⁹⁶⁸ Representation of the People Act 1983, s 3.

³⁹⁶⁹ *Hirst v the United Kingdom (No 2)* [2005] ECHR 681, paras 84-85.

³⁹⁷⁰ European Court of Human Rights Press Unit, 'Prisoners' right to vote' (Factsheet, July 2017) <http://www.echr.coe.int/Documents/FS_Prisoners_vote_ENG.pdf> accessed 1 September 2017, 1-2; Prison Reform Trust, *Barred from voting: the right to vote for sentenced prisoners*, 1-2.

remained on the voter rolls.³⁹⁷¹ The scope of this prospective policy is unclear, with estimates indicating that it may entitle fewer than 100 prisoners to vote, but the proposal demonstrates a noteworthy shift towards greater political participation for convicts.³⁹⁷² Be that as it may, as the existing prohibition on voting is both ‘automatic and indiscriminate’,³⁹⁷³ the rights of migrants to political participation are not, at present, disproportionately affected when compared with those of British citizens.

10.4. Redress

The electoral register facilitates the invocation of the right to vote for eligible migrant residents in the UK.³⁹⁷⁴ In the event that a migrant is legally eligible for registration, but is denied induction on or removed from the register, he/she is entitled to appeal to the relevant county court if in England, Wales or Northern Ireland, or to the sheriff court if in Scotland.³⁹⁷⁵ Should an unlawful barrier be placed on a migrant’s right to political participation, their immediate avenue of redress is thus through judicial recourse.

On the international level, external voting practices are relatively novel, and electoral laws predominantly regulate the conduct of citizens voting from outside state borders yet ignore the conduct of foreign elections within sovereign borders.³⁹⁷⁶ Consequently, UK legislation outlines the procedures through which British citizens can vote in domestic elections from abroad. The rights of UK-based migrants to participate extraterritorially in foreign political processes are dependent on the varied rules in each respective country.³⁹⁷⁷ External voting predominantly occurs through postal ballot or voting in ‘diplomatic missions or military bases, or other designated places’,³⁹⁷⁸ and thus the UK does not typically assume a role in the process.

³⁹⁷¹ Chris Baynes, ‘Some prisoners “to be allowed to vote” after 12-year human rights battle with Europe’ (*The Independent*, 29 October 2017) <<http://www.independent.co.uk/news/prisoners-allowed-to-vote-eu-european-union-day-release-theresa-may-david-lidington-a8025536.html>> accessed 31 October 2017.

³⁹⁷² Rob Allen, ‘The great revolution in prisoner voting will affect ... a few dozen people’ (*The Guardian*, 30 October 2017) <<https://www.theguardian.com/commentisfree/2017/oct/30/prisoner-voting-government-proposal-european-court-human-rights>> accessed 31 October 2017.

³⁹⁷³ Prison Reform Trust, ‘Prisoner voting: commonsense and a cross-party majority prevail’ (18 December 2013) <<http://www.prisonreformtrust.org.uk/PressPolicy/News/ItemId/200/vw/1>> accessed 30 August 2017.

³⁹⁷⁴ UK Government, ‘The electoral register and the “open register”’ <<https://www.gov.uk/electoral-register>> accessed 20 August 2017.

³⁹⁷⁵ Electoral Commission, *Part D – Monthly Alterations to the Register* (Guidance, August 2009) <https://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0009/43956/Part-D-Monthly-alterations-to-the-register-August-2009.pdf> accessed 20 August 2017, 28.

³⁹⁷⁶ Massimo Tommasoli, ‘Migrants and external voting’ (*Institute for Democracy and Electoral Assistance*, 18 December 2008) <<http://www.idea.int/sites/default/files/speeches/Migrants-and-external-voting-pdf.pdf>> accessed 20 August 2017, 6.

³⁹⁷⁷ UK Government, ‘Voting when you’re abroad’ <<https://www.gov.uk/voting-when-abroad>> accessed 2 September 2017; International Institute for Democracy and Electoral Assistance, *Voting from Abroad: The International IDEA Handbook* (Guidance, 2007) <<http://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf>> accessed 1 September 2017, 65; Massimo Tommasoli, ‘Migrants and external voting’, 6.

³⁹⁷⁸ Massimo Tommasoli, ‘Migrants and external voting’, 4; International Institute for Democracy and Electoral Assistance, *Voting from Abroad: The International IDEA Handbook*, 68.

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Citizenship

There are multiple ways in which one can acquire British citizenship. The traditional ways where one can claim citizenship are through descent, naturalisation after five years,³⁹⁷⁹ or naturalisation after three years as a spouse of a UK citizen.³⁹⁸⁰ The information regarding citizenship can be found in Section 6 of the British Nationality Act 1981 and in Part 2 of the Borders, Citizenship and Immigration Act 2009. There are no separate set of rules for EU citizens and non-EU citizens. All applications for naturalisation governed by the British Nationality Act of 1981 and all candidates have to meet the same requirements regardless of the distinction between EU and non-EU nationals. Thus the Immigration Rules and European Regulations do not alter or affect naturalisation in the UK.³⁹⁸¹

11.1.1. Descent

Due to the Borders, Citizenship and Immigration Act 2009, changes have arisen in regards to descent for children born abroad. Prior to the Borders, Citizenship and Immigration Act 2009, the legislation on this matter referred to descent for citizenship through the father.³⁹⁸² New rules amended the old ones to rectify the anomaly and include ancestry from the mother to qualify for British citizenship.³⁹⁸³

11.1.2. Naturalisation

There are several criteria for a migrant to fulfil in order to qualify at the date of application. The applicant must be of full age, meaning 18 years of age or above.³⁹⁸⁴ Additionally, there are residency requirements whereby the applicant must have been living in the UK for at least five years without being absent from the territory for more than 450 days, and he/she must not have been absent from the territory for more than 90 days in the 12 months prior to the application being submitted.³⁹⁸⁵ There must be no restrictions on the period of stay of the applicant at the time of the application or the 12 months prior to the submission of the application, nor any breach of UK immigration laws within the past 10 years.³⁹⁸⁶

There are also specific requirements at the time of consideration of the application, such as the fact that the applicant must be of good character which signifies that he/she respects and abides

³⁹⁷⁹ Migrants must have resided in the UK for 5 years to be able to apply for naturalisation (for those who are not married to a British Citizen), with the last year having been a permanent resident with an indefinite leave to remain in the UK (ILR) which is normally acquired after 5 years living in the UK on a visa. See: Visa Bureau, 'UK Citizenship and Naturalisation' <<http://www.visabureau.com/uk/citizenship.aspx>> accessed 13 July 2017.

³⁹⁸⁰ UK Government, 'Becoming a British Citizen' <<https://www.gov.uk/becoming-a-british-citizen/if-your-spouse-is-a-british-citizen>> accessed 13 June 2017.

³⁹⁸¹ *ibid.*

³⁹⁸² Borders, Citizenship and Immigration Act 2009, pt 2 s 45.

³⁹⁸³ *ibid.*

³⁹⁸⁴ British Nationality Act 1981, s 6(1).

³⁹⁸⁵ British Nationality Act 1981, sch 1 paras 1(1)(a) and 1(2).

³⁹⁸⁶ *ibid.*

by the law, for example.³⁹⁸⁷ Unless there is an exemption through age or disability, the applicant will need to have sufficient knowledge of the English, Welsh or Scottish Gaelic language as well as take the 'Life in the UK' test which consists of being tested on UK society, history, politics and government.³⁹⁸⁸ This test was introduced in 2005 as a mean to maximize the chances of a successful integration of the applicant in the UK.³⁹⁸⁹ There is also an expectation that the applicant will continue to reside in the UK or will enter into or continue in either the Crown Service under the government of the UK, or service under an international organisations of which the UK or Her Majesty's Government is a member or service in the employment of a company/association established in the UK.³⁹⁹⁰ While these criteria are important to fulfil, the law does allow for discretion therefore permitting instances in which certain requirements can be waived.³⁹⁹¹

11.1.3. Naturalisation through British Spouse or Civil Partner

Section 6(2) of the British Nationality Act also recognises naturalisation through marriage to a British spouse or civil partner.³⁹⁹² The same criteria of Schedule 1 apply, with emphasis on complying with the residency requirements and also having a valid permanent resident card or a document that shows permanent residency are the same. Residency requirements apply unless the spouse or civil partner of the applicant works abroad for the UK government or an organisation related to the government.³⁹⁹³ Otherwise, the requirement is to have lived in the UK for three years before the applicant can begin the process.³⁹⁹⁴ Additionally, the applicant cannot leave the country for more than 270 days in those years, nor can he/she spend more than 90 days outside in the past 12 months.³⁹⁹⁵ It is imperative for the applicant not to have broken any immigration laws.³⁹⁹⁶

11.2. Dual Nationality

The concept of dual nationality is allowed in the UK,³⁹⁹⁷ meaning that it is possible for a migrant to become a British citizen without losing his/her initial nationality. This is dependent on the national laws of the country of origin and whether they also permit dual nationality.³⁹⁹⁸ The result

³⁹⁸⁷ *ibid*, sch 1 s 1(1).

³⁹⁸⁸ Commonwealth Immigration Consultants, 'UK Citizenship/Naturalisation' <http://www.commonwealthimmigration.com/uk_citizenship_naturalization_visa_immigration.html> accessed 19 June 2017; British Nationality Act 1981, sch 1 para 1(1).

³⁹⁸⁹ Bridget Byrne, 'Testing Times: The Place of the Citizenship Test in the UK Immigration Regime and New Citizens' Responses to it' [2016] *Sociology* 51(2) 323, 324.

³⁹⁹⁰ British Nationality Act 1981, sch 1 para 1(1)(d).

³⁹⁹¹ British Nationality Act 1981, sch 1 para 2(1).

³⁹⁹² British Nationality Act 1981, s 6(2).

³⁹⁹³ UK Government, 'Becoming a British Citizen if your Spouse is a British Citizen' <<https://www.gov.uk/becoming-a-british-citizen/if-your-spouse-is-a-british-citizen>> accessed 13 June 2017.

³⁹⁹⁴ *ibid*; British Nationality Act 1981, sch 1 para 3.

³⁹⁹⁵ British Nationality Act 1981, sch 1 paras 3(a)-(b).

³⁹⁹⁶ British Nationality Act 1981, sch 1 para 3(d).

³⁹⁹⁷ UK Government, 'Dual Citizenship' <<https://www.gov.uk/dual-citizenship>> accessed 18 June 2017.

³⁹⁹⁸ *ibid*.

is that other countries may have an indirect impact on the number of applications for British citizenship.

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. EU Programmes and Funding

In principle, Member States of the EU have exclusive competence concerning integration of third country nationals ("TCNs").³⁹⁹⁹ 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 UK has participated in a number of initiatives promoted by the EU, such as the European Migration Network and the European Migration Forum. However, the three main programmes that benefit the UK in the integration of migrants are the European Integration Fund, the Asylum, Migration and Integration Fund, and the European Social Fund.

12.2. The European Integration Fund ('EIF')

The UK has taken part in the EIF since its launch in 2007 until its ending in 2013, receiving a total fund of €110 million. The responsible authority of the fund was firstly the UK Border Agency and, after its abolition in 2013, the Home Office. Since the outset, the UK established four main operational aims to be pursued using the EU funds.⁴⁰⁰⁰ First, focus was on developing a points-based system for immigration to simplify admission procedure and strengthen the possibility of integration for migrants. Second, part of the contribution was to be spent in developing programmes offering TCNs the chance to learn English as well as to gain new skills facilitating their entry in the UK job market. Finally, the last priority was identified as developing a clearer track to gain British citizenship for TCNs. Overall, 292 projects were funded using the funding that the UK was awarded. Of these, 8 were funded in 2007, 18 in 2008, 44 in 2009, 61 in 2010, 59 in 2011, 40 in 2012, and 62 in 2013.⁴⁰⁰¹

12.3. The Asylum, Migration and Integration Fund ('AMIF')

The UK opted into the AMIF in 2014. This fund, as the name suggests, was offered by the EU to Member States to support projects concerning asylum return strategies and integration. The UK was granted €370 million under the fund and decided to allocate different shares of such funding to the three different objectives. As far as asylum is concerned, this objective aims to

³⁹⁹⁹ European Commission, 'Communication on the Integration of Third Country Nationals' [2016] COM 377.

⁴⁰⁰⁰ Home Office, *European Integration Fund* (Guidance, 15 September 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461002/European_Integration_Fund.pdf> accessed 16 June 2017.

⁴⁰⁰¹ Home Office, *European Integration Fund: Successful Projects from 2007 to 2013* (Report, 15 September 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461005/List_of_funded_projects_EIF.pdf> accessed 16 June 2017.

developing better asylum procedures, enhancing staff training as well as providing social assistance to asylum seeker throughout the application process⁴⁰⁰². This objective was allocated €74 million (approximately 20%) of the AMIF. The vast majority of the funding, amounting to over €200 million (approximately 55%) was allocated to the second objective, namely return strategies. These include voluntary return measures as well as enforced returns and cover specific issues such as assisted travel arrangements, financial assistance and pre- and post-return counselling for TCNs.⁴⁰⁰³ Finally, in tackling the issue of integration, the UK government decided to allocate €74 million under the AMIF (approximately 20%). Under this objective, it was established that three main projects were to be supported by the funding: the development of regional and local integration strategies; language and cultural initiatives; and a twelve-month resettlement programme for refugees.⁴⁰⁰⁴ Notwithstanding the planned allocation of the AMIF to the three different objectives stated above, 27 projects have been funded as of July 2016. Of these, 18 projects were supported under the objective of return measures (amounting to over £85 million), 2 under the heading of integration (amounting to £12 million), and 7 under the objective of asylum (amounting to over £8 million).⁴⁰⁰⁵

12.4. The European Social Fund ('ESF')

The ESF is an EU initiative created to facilitate access to employment, with a particular focus on individuals belonging to disadvantaged social groups who struggle to access the job market. Between 2014 and 2020, the UK was allocated over €4 billion⁴⁰⁰⁶ for projects which predominantly aim to tackle youth unemployment and facilitate access to employment for job seekers by creating a more inclusive job market.⁴⁰⁰⁷ Migrants, as a vulnerable category of individuals, have thus been the focus of a number of projects funded by the ESF. In 2008, for example, the Minority Ethnic Employment Support Project, launched by GEMS Northern Ireland, was awarded €148,415 of ESF funding.⁴⁰⁰⁸ This ongoing initiative aims to help minority ethnic individuals entering the job market by providing language and training courses, workshops on job applications and job interviews, and development and volunteering opportunities. Since its launch in 2004, this project has proved to be extremely successful and, in its latest evaluation,

⁴⁰⁰² Home Office, *Asylum, Migration and Integration Fund Programme* (Guidance, 17 August 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455177/uk_national_program_me_version_v1.pdf> accessed 16 June 2017, 8.

⁴⁰⁰³ *ibid*, 14.

⁴⁰⁰⁴ *ibid*, 11.

⁴⁰⁰⁵ Home Office, *EU Asylum, Migration and Integration Fund Activities: July 2016* (Report, 1 August 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542335/AMIF_Project_List_July_2016.pdf> accessed 16 June 2017.

⁴⁰⁰⁶ European Commission, 'European Social Fund Budget by Country: 2014-2020' <<http://ec.europa.eu/esf/main.jsp?catId=443&langId=en>> accessed 01 September 2017.

⁴⁰⁰⁷ UK Department for Work and Pensions, *European Social Fund Operational Programme 2014-2020* (Report, 17 September 2015).

⁴⁰⁰⁸ European Commission, 'European Social Fund: Giving migrants a working chance' (4 October 2011) <<http://ec.europa.eu/esf/main.jsp?catId=46&langId=en&projectId=260>> accessed 1 September 2017.

it has been observed that 80% of the participants have gained employment, whilst the majority of the remaining 20% have decided to pursue further education.⁴⁰⁰⁹

Conclusions

Several considered conclusions can be drawn from the British tapestry of interconnected yet varied migration policies, practices, and rules. First, there seems to be a lack of information regarding access to certain services, such as healthcare and education, available to migrants. Although charities such as 'Migrant Help' and the Refugee Council have received government funding to provide advice and support to those seeking asylum, the information available from government bodies and authorities is often outdated or difficult to access. Second, the accreditation of qualifications concerning education may prove to be equally as problematic. The Higher Education Institutions ('HEIs') who regulate the recognition of prior qualifications and education obtained have complete discretion as to the criteria and internal procedures they choose to implement, thus leading to a spectrum of possible outcomes which depend on the nature of the relevant decision-making institution. Third, there is scope to successfully challenge other controversial practices, such as the 'deport first appeal later' policy, on the grounds of incompatibility with convention rights under the ECHR. Indeed, the Human Rights Act continues to play a central role in forging British immigration law, often softening the effects of certain immigration policies and rules.

Nevertheless, with Brexit looming on the horizon, it is difficult to predict the future of immigration laws and policies in the UK. It is an estimated number of 588,000 migrants entered the constituent countries in 2016. In this context, questions regarding the immigration status of EU citizens resident in the UK following its divorce from the EU have caused a considerable amount of debate and unease. Most recently, the incumbent Government has pledged to tackle irregular migration and to reduce regular migration. New domestic policies, such as the awarding of visas (with the exception of student visas and temporary work visas) on the basis of skill and value, the requesting of access to patient records from the NHS for immigration purposes, and the scrapping of direct funding of 'English as an Additional Language' programmes, are liable to influence either the integration of migrants or the process of migration in and of itself. It remains to be seen, however, whether such policies will have the desired, immigration-curbing effect.

⁴⁰⁰⁹ European Commission, 'Minority Ethnic Employability Support Project (MEESP)' <<https://ec.europa.eu/migrant-integration/intpract/minority-ethnic-employability-support-project-meesp>> accessed 1 September 2017.

Table of legislation

<p>Ireland Act 1949</p>	<p>Section 2: Republic of Ireland not a foreign country. ‘(1) It is hereby declared that, notwithstanding that the Republic of Ireland is not part of His Majesty’s dominions, the Republic of Ireland is not a foreign country for the purposes of any law in force in any part of the United Kingdom or in any colony, protectorate or United Kingdom trust territory, whether by virtue of a rule of law or of an Act of Parliament or any other enactment or instrument whatsoever, whether passed or made before or after the passing of this Act, and references in any Act of Parliament, other enactment or instrument whatsoever, whether passed or made before or after the passing of this Act, to foreigners, aliens, foreign countries, and foreign or foreign-built ships or aircraft shall be construed accordingly.’</p>
<p>Immigration Act 1971</p>	<p>Section 2(1): Statement of right of abode in United Kingdom ‘A person is under this Act to have the right of abode in the United Kingdom if – (a) he is a British citizen; or (b) he is a Commonwealth citizen who— (i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(d) or section 2(2) of this Act as then in force; and (ii) has not ceased to be a Commonwealth citizen in the meanwhile.’</p>
<p>Local Government Act 1972</p>	<p>Section 79: Qualifications for election and holding office as member of local authority ‘(1) A person shall, unless disqualified by virtue of this Act or any other enactment, be qualified to be elected and to be a member of a local authority if he is a qualifying Commonwealth citizen or a citizen of the Republic of Ireland or a relevant citizen of the Union and on the relevant day he has attained the age of eighteen years and— (a) on that day he is and thereafter he continues to be a local government elector for the area of the authority; or (b) he has during the whole of the twelve months preceding that day occupied as owner or tenant any land or other premises in that area; or (c) his principal or only place of work during that twelve months has been in that area; or (d) he has during the whole of those twelve months resided in that area; or</p>

	<p>(e) in the case of a member of a parish or community council he has during the whole of those twelve months resided either in the parish or community or within three miles of it.’</p>
<p>British Nationality Act 1981</p>	<p>Section 6: Acquisition by naturalisation</p> <p>‘(1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.</p> <p>(2) If, on an application for naturalisation as a British citizen made by a person of full age and capacity who on the date of the application is married to a British citizen, or is the civil partner of a British citizen, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.’</p> <p>Schedule 1 para 1: Naturalisation as a British citizen under section 6(1)</p> <p>‘(1) Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it—</p> <p>(a) the requirements specified in sub-paragraph (2) of this paragraph, or the alternative requirement specified in sub-paragraph (3) of this paragraph; and</p> <p>(b) that he is of good character; and</p> <p>(c) that he has a sufficient knowledge of the English, Welsh or Scottish Gaelic language; and</p> <p>(ca) that he has sufficient knowledge about life in the United Kingdom; and</p> <p>(d)that either—</p> <p>(i) his intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to him, his home or (if he has more than one) his principal home will be in the United Kingdom; or</p> <p>(ii) he intends, in the event of such a certificate being granted to him, to enter into, or continue in, Crown service under the government of the United Kingdom, or service under an international organisation of which the United Kingdom or Her Majesty’s government therein is a member, or service in the employment of a company or association established in the United Kingdom.</p> <p>(2) The requirements referred to in sub-paragraph (1)(a) of this</p>

paragraph are–

(a) that the applicant was in the United Kingdom at the beginning of the period of five years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 450; and

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of five years so ending in the United Kingdom in breach of the immigration laws.’

Schedule 1 para 1: Naturalisation as a British citizen under section 6(1)

‘(1) Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it–

(a) the requirements specified in sub-paragraph (2) of this paragraph, or the alternative requirement specified in sub-paragraph (3) of this paragraph; [...]

(2) The requirements referred to in sub-paragraph (1)(a) of this paragraph are–

(a) that the applicant was in the United Kingdom at the beginning of the period of five years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 450; an

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of five years so ending in the United Kingdom in breach of the immigration laws.’

Schedule 1 para 3: Naturalisation as a British citizen under section 6(2)

‘Subject to paragraph 4, the requirements for naturalisation as a British citizen under section 6(2) are, in the case of any person who applies for it–

(a) that he was in the United Kingdom at the beginning of the period of

	<p>three years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 270; and</p> <p>(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and</p> <p>(c) that on the date of the application he was not subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and</p> <p>(d) that he was not at any time in the period of three years ending with the date of the application in the United Kingdom in breach of the immigration laws; [...]</p>
<p>Representation of the People Act 1983</p>	<p>Section 1: Parliamentary electors.</p> <p>‘(1) A person is entitled to vote as an elector at a parliamentary election in any constituency if on the date of the poll he—</p> <p>(a) is registered in the register of parliamentary electors for that constituency;</p> <p>(b) is not subject to any legal incapacity to vote (age apart);</p> <p>(c) is either a Commonwealth citizen or a citizen of the Republic of Ireland; and</p> <p>(d) is of voting age (that is, 18 years or over).’</p> <p>Section 2: Local government electors</p> <p>‘(1) A person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he—</p> <p>(a) is registered in the register of local government electors for that area;</p> <p>(b) is not subject to any legal incapacity to vote (age apart);</p> <p>(c) is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and</p> <p>(d) is of voting age (that is, 18 years or over).’</p> <p>Section 3: Disfranchisement of offenders in prison</p> <p>‘(1) A convicted person during the time that he is detained in a penal institution in pursuance of his sentence [or unlawfully at large when he would otherwise be so detained] is legally incapable of voting at any parliamentary or local government election.’</p>
<p>Children Act 1989</p>	<p>Section 20: Provision of accommodation for children</p> <p>‘Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—</p> <p>(a) there being no person who has parental responsibility for him;</p> <p>(b) his being lost or having been abandoned; or</p> <p>(c) the person who has been caring for him being prevented (whether or</p>

	not permanently, and for whatever reason) from providing him with suitable accommodation or care.’
Education Act 1996	<p>Section 7: Duty of parents to secure education of children of compulsory school age</p> <p>‘The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—</p> <p>(a) to his age, ability and aptitude, and</p> <p>(b) to any special educational needs he may have, either by regular attendance at school or otherwise.’</p>
Human Rights Act 1998	<p>Section 1: The Convention rights</p> <p>‘(1) In this Act “the Convention rights” means the rights and fundamental freedoms set out in—</p> <p>(a) Articles 2 to 12 and 14 of the Convention,</p> <p>(b) Articles 1 to 3 of the First Protocol, and</p> <p>(c) Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.</p> <p>(2) Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 14 and 15).</p> <p>(3) The Articles are set out in Schedule 1.’</p> <p>Section 3: Interpretation of legislation</p> <p>‘(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.</p> <p>(2) This section—</p> <p>(a) applies to primary legislation and subordinate legislation whenever enacted;</p> <p>(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and</p> <p>(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.’</p> <p>Section 6: Acts of public authorities</p> <p>‘(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.</p> <p>(2) Subsection (1) does not apply to an act if—</p> <p>(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or</p> <p>(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is</p>

	<p>compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.</p> <p>(3) In this section “public authority” includes—</p> <p>(a) a court or tribunal, and</p> <p>(b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.’</p> <p>Section 19: Statements of compatibility</p> <p>‘(1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—</p> <p>(a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (“a statement of compatibility”); or</p> <p>(b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.</p> <p>(2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate.’</p> <p>Schedule 1, First Protocol, Article 2: Right to education</p> <p>‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.’</p>
<p>Immigration and Asylum Act 1999</p>	<p>Section 10: Removal of certain persons unlawfully in the United Kingdom</p> <p>‘(1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if—</p> <p>(a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;</p> <p>(b) he uses deception in seeking (whether successfully or not) leave to remain;</p> <p>(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);</p> <p>(c) directions have been given for the removal, under this section, of a person (“the other person”) to whose family he belongs.’</p> <p>Section 115: Exclusion from benefits</p> <p>‘(1) No person is entitled to income-based jobseeker’s allowance</p>

	<p>benefits. under the Jobseekers Act 1995 or to— 1995 c. 18.</p> <p>(a) attendance allowance, (b) severe disablement allowance, (c) invalid care allowance, (d) disability living allowance, (e) income support, (f) working families' tax credit, (g) disabled person's tax credit, (h) a social fund payment, (i) child benefit, (j) housing benefit, or (k) council tax benefit, under the Social Security Contributions and Benefits Act 1992 while he is 1992 c. 4. a person to whom this section applies.</p> <p>(2) No person in Northern Ireland is entitled to—</p> <p>(a) income-based jobseeker's allowance under the Jobseekers S.I. 1995/2705 (Northern Ireland) Order 1995, or (N.I. 15). (b) any of the benefits mentioned in paragraphs (a) to (j) of subsection (1), under the Social Security Contributions and Benefits (Northern Ireland) 1992 c. 7. Act 1992 while he is a person to whom this section applies.'</p> <p>(3) This section applies to a person subject to immigration control unless he falls within such category or description, or satisfies such conditions, as may be prescribed.</p>
<p>European Parliamentary Elections Act 2002</p>	<p>Section 8: Persons entitled to vote</p> <p>'(1) A person is entitled to vote as an elector at an election to the European Parliament in an electoral region if he is within any of subsections (2) to (5).</p> <p>(2) A person is within this subsection if on the day of the poll he would be entitled to vote as an elector at a parliamentary election in a parliamentary constituency wholly or partly comprised in the electoral region, and—</p> <p>(a) the address in respect of which he is registered in the relevant register of parliamentary electors is within the electoral region, or (b) his registration in the relevant register of parliamentary electors results from an overseas elector's declaration which specifies an address within the electoral region.'</p>
<p>National Health Service (General Medical Services Contracts)</p>	<p>Regulation 15: Essential services</p> <p>'(6) A contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to</p>

Regulations 2004	<p>an accident or emergency at any place in its practice area.</p> <p>(7) In paragraph (6), “emergency” includes any medical emergency whether or not related to services provided under the contract.’</p>
Electoral Administration Act 2006	<p>Section 18: Certain Commonwealth citizens</p> <p>‘(1) In section 3 of the Act of Settlement (1700 c. 2), the words from “That after the said limitation shall take effect” to “in trust for him.” (which impose certain disqualifications) do not apply (so far as they relate to membership of the House of Commons) to a person who is—</p> <p>(a) a qualifying Commonwealth citizen, or</p> <p>(b) a citizen of the Republic of Ireland.</p> <p>(2) For the purposes of subsection (1), a person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either—</p> <p>(a) is not a person who requires leave under the Immigration Act 1971 (c. 77) to enter or remain in the United Kingdom, or</p> <p>(b) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act.’</p>
Immigration, Asylum and Nationality Act 2006	<p>Section 57: Deprivation of right of abode</p> <p>‘(1) After section 2 of the Immigration Act 1971 (c. 77) (right of abode) insert—</p> <p>“2A: Deprivation of right of abode</p> <p>(1) The Secretary of State may by order remove from a specified person a right of abode in the United Kingdom which he has under section 2(1)(b).</p> <p>(2) The Secretary of State may make an order under subsection (1) in respect of a person only if the Secretary of State thinks that it would be conducive to the public good for the person to be excluded or removed from the United Kingdom. [...]”</p>
The Refugee or Person in Need of International Protection (Qualification) Regulations 2006	<p>Regulation 2: Interpretation</p> <p>‘In these Regulations—</p> <p>“application for asylum” means the request of a person to be recognised as a refugee under the Geneva Convention;</p> <p>“Geneva Convention” means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 and the New York Protocol of 31 January 1967(1);</p> <p>“immigration rules” means rules made under section 3(2) of the Immigration Act 1971(2); [...]</p> <p>“person eligible for humanitarian protection” means a person who is eligible for a grant of humanitarian protection under the immigration rules;</p> <p>“refugee” means a person who falls within Article 1A of the Geneva</p>

	<p>Convention and to whom Regulation 7 does not apply; [...] “person” means any person who is not a British citizen.’</p> <p>Regulation 7: Exclusion</p> <p>‘(1) A person is not a refugee, if he falls within the scope of Article 1D, 1E or 1F of the Geneva Convention.</p> <p>(2) In the construction and application of Article 1F(b) of the Geneva Convention:</p> <p>(a) the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;</p> <p>(b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean the time up to and including the day on which a residence permit is issued.</p> <p>(3) Article 1F(a) and (b) of the Geneva Convention shall apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions.’</p>
<p>Equality Act 2010</p>	<p>Section 9: Race</p> <p>‘(1) Race includes—</p> <p>(a) colour;</p> <p>(b) nationality;</p> <p>(c) ethnic or national origins.</p> <p>(2) In relation to the protected characteristic of race—</p> <p>(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;</p> <p>(b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.</p> <p>(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.</p> <p>(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.’</p>
<p>Health and Social Care Act 2012</p>	<p>Section 261: Other dissemination of information</p> <p>‘(5) The Information Centre may also disclose information which it obtains by complying with a direction under section 254 or a request under section 255 (whether or not it falls within subsection (2)) if—</p> <p>(a) the information has previously been lawfully disclosed to the public,</p> <p>(b) the disclosure is made in accordance with any court order,</p> <p>(c) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,</p> <p>(d) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person conferred under or by</p>

	<p>virtue of any provision of this or any other Act, (e) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or (f) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).’</p>
<p>Immigration Act 2014</p>	<p>Section 39: Charges for health services ‘(1) A reference in the NHS charging provisions to persons not ordinarily resident in Great Britain or persons not ordinarily resident in Northern Ireland includes (without prejudice to the generality of that reference) a reference to— (a) persons who require leave to enter or remain in the United Kingdom but do not have it, and (b) persons who have leave to enter or remain in the United Kingdom for a limited period.’</p>
<p>National Health Service (Charges to Overseas Visitors Regulations 2015</p>	<p>Regulation 9: Relevant services exempt from charges ‘No charge may be made or recovered in respect of any of the following relevant services provided to an overseas visitor— (a) accident and emergency services, but not including any services provided— (i) after the overseas visitor has been accepted as an in-patient at a hospital(c); or (ii) at an outpatient appointment; [...]’</p>
<p>Immigration (European Economic Area) Regulations 2016</p>	<p>Section 6(1): Qualified person ‘In these Regulations— “jobseeker” means an EEA national who satisfies conditions A, B and, where relevant, C; “qualified person” means a person who is an EEA national and in the United Kingdom as— (a) a jobseeker; (b) a worker; (c) a self-employed person; (d) a self-sufficient person; or (e) a student.’</p> <p>Section 15(1): Right of permanent residence ‘The following persons acquire the right to reside in the United Kingdom permanently— (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; [...]’</p> <p>Section 25(2): Cancellation of a right of residence ‘The conditions in this paragraph are met where—</p>

	<p>(a) a person has a right to reside in the United Kingdom as a result of these Regulations;</p> <p>(b) the Secretary of State has decided that the cancellation of that person's right to reside in the United Kingdom is justified on the grounds of public policy, public security or public health in accordance with regulation 27 or on grounds of misuse of rights in accordance with regulation 26(3); [...]'</p>
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