

ECRE

EUROPEAN COUNCIL
ON REFUGEES AND EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

**COMPLEMENTARY/SUBSIDIARY
FORMS OF PROTECTION
IN THE EU STATES**

AN OVERVIEW

The information given in this paper is updated as of April 1999. It was provided by the ELENA National-Co-ordinators.

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INTRODUCTION

For the purposes of this paper only, the term “complementary/subsidiary forms of protection” is used to describe any status, other than Convention status, which is afforded to persons who may/can not be returned to their country of origin. It is different from “temporary protection” which is intended as an emergency measure to deal with large-scale influxes.

Discussions on complementary and subsidiary forms of protection are currently under way within the EU institutions and working groups, in preparation of the adoption of a harmonised approach by Member States.

At the beginning of the 1990s, the European Commission expressed in several instruments the need to harmonise national provisions and practice on the protection granted to *de facto refugees*.

Discussions at EU level on subsidiary forms of protection became particularly relevant following the adoption of the Council Joint Position of 4 March 1996 on a harmonised notion of the term “refugee” contained in the Geneva Convention. Recently, the debate has focussed on a *Discussion Paper on Subsidiary Forms of Protection*, prepared by the Danish Delegation to the Asylum Working Group, as well as on a draft report of the European Parliament *on the harmonisation of forms of protection complementing refugee status in the European Union* (Rapporteur: Mrs. Michèle Lindeperg), which was adopted in February 1999.

In preparation for advocacy work following the entry into force of the Amsterdam Treaty, ECRE has undertaken to update its information on subsidiary/complementary forms of protection. This information, provided by the ELENA National Co-ordinators, is included in the present paper.

Summary

This overview on subsidiary and complementary forms of protection highlights the differences in the way the EU States regulate such forms of protection.

Some countries have introduced precise regulation, mainly at legislative level, describing in detail the beneficiaries and the rights attached to each status (Denmark, Sweden), while in other countries great importance is given to governmental discretion not only as to the beneficiaries but also the rights to be attached (Belgium, Ireland, Luxembourg).

While some States have set up several forms of protection, each dealing with a certain category of beneficiaries (Denmark, The Netherlands, Spain), others have a single form of protection which is broadened to cover those who cannot be returned because they would risk human rights violations but also those for whom there is no means of transportation available (Finland, Belgium, United Kingdom).

In a number of countries, a form of toleration is granted, which has a legal basis but it is not necessarily matched with a residence right (Germany, Spain, Belgium).

Strong discrepancies among EU States also exist with regard to the beneficiaries of forms of complementary protection. Generally speaking, almost all these countries provide some sort of protection for persons who, if returned, might be at risk of human rights violations (Ireland and Italy represent an exception) or for persons fleeing civil war/ war-like situations.

A few States grant protection to persons fleeing from natural or environmental disasters (Sweden, to some extent Denmark, Finland and the United Kingdom); persons having escaped from war service or who might face disproportionately severe

Spain) and persons who cannot be repatriated for practical reasons (Belgium, Denmark, Germany, Luxembourg, Spain, United Kingdom).

As to the rights afforded to beneficiaries of complementary/subsidiary forms of protection, the situation is even more fragmentary. In a few countries the beneficiaries of subsidiary/complementary protection are given nearly the same rights as Convention refugees (Denmark, Finland, Sweden), while in most of the EU countries their rights are similar to those of aliens in general. No special provisions facilitate family reunification. In nearly all the countries concerned, socio-economic rights are not progressive.

AUSTRIA

Statutes of complementary/subsidiary protection

- temporary residence permit (Art. 15 of the 1997 Asylum Act)
- *Abschiebungsaufschub* (suspension of deportation)

TEMPORARY RESIDENCE PERMIT

Legal basis: Art.15 of the 1997 Asylum Act.

Beneficiaries: aliens who are not recognised as refugees but cannot be deported or forcibly removed.

⇒ persons who, if returned, would be at risk of human rights violations, such as torture or cruel, inhuman and degrading treatment
examples: Somalis, some Kosovo Albanians

Duration: maximum 1 year, and after a second extension, a maximum of 3 years. Permits are extended as long as the reasons for which they had originally been granted exist.

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | the issuing of a work permit is based on administrative discretion. Prospective employers have to prove that no Austrian, EU national, Convention refugee or settled migrant can take up that job. |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | | ✓ | no access to social housing owned by municipalities |
| access to public education | ✓ | | both compulsory and further education |
| social security | ✓ | | access to main social security benefits. |
| health | ✓ | | |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | |
| vocational training | ✓ | | |
| access to citizenship | ✓ | | at the same conditions as aliens in general |

ABSCHIEBUNGSAUFSCHUB SUSPENSION OF DEPORTATION

Legal basis: Aliens Act 1997, Art.56 (2).

Beneficiaries: aliens who cannot be deported for legal or practical reasons.

Duration: maximum 1 year, can be revoked at any time/is not a residence permit.

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | | ✓ | |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | | ✓ | |
| access to public education | ✓ | | only compulsory education |
| social security | | ✓ | |
| health | ✓ | | access to basic services (not only emergency care) |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | |
| vocational training | | ✓ | |
| access to citizenship | | ✓ | |

BELGIUM

Statuses of complementary/subsidiary protection

- resident permit issued under exceptional circumstances (Aliens Act, Section 9.3)
- suspension of deportation

Note: the detailed regulations can be found in a "circulaire", issued by the Minister of the Interior without any intervention from the Parliament. The circulaire is very easy to change and its legality is unclear. The last circulaire relevant to the subject of complementary protection was issued on 15 December 1998.

RESIDENCE PERMITS ISSUED UNDER EXCEPTIONAL CIRCUMSTANCES

Legal basis: Aliens Act, Section 9.3. It is a very general article. The detailed regulations based on that section are included in the "circulaire"(see above).

Beneficiaries:

Examples:

- ⇒ persons who, if returned, would be at risk of human rights violations, such as torture or cruel, inhuman and degrading treatment (Art.3 ECHR)
- ⇒ persons who flee situation of civil war or generalise violence
- ⇒ cases in which the country of origin refuses to readmit the person
- ⇒ persons who cannot be returned to their country of origin because there is no flight or means of transportation available.
- ⇒ persons who cannot be returned for health reasons.
- ⇒ persons having a special relationship with Belgians or with foreigners who permanently stay in Belgium
- ⇒ asylum seekers who had or have to wait too long for a decision on their asylum application.

Duration: permit can be issued for 6 months, 1 year or even longer, renewable.

Rights :

| rights | Y | N | details |
|---|---|---|--|
| Access to wage-earning employment | ✓ | | Restricted access. The type of work permit depends on number of years in Belgium, on a priority for Belgian labour forces, ... |
| Access to self-employment | ✓ | | Restricted access. Professional license needed. |
| Access to liberal professions | ✓ | | Restricted access. |
| access to housing | ✓ | | |
| access to public education | ✓ | | Access to primary education and further education |
| social security | ✓ | | |
| health | ✓ | | |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | Only after 3 years. |
| vocational training | ✓ | | |
| access to citizenship | ✓ | | After 5 years |

SUSPENSION OF DEPORTATION

Legal basis: Aliens Act, Section 9.3 (general) but the status is described in the “circulaire”.

Beneficiaries: if the government foresees that the person will be able to be repatriated after a short period (e.g. short medical problems; e.g. documents will arrive shortly), a suspension of the order to leave the country may be given.

| rights | Y | N | details |
|-----------------------------------|---|---|---------------------|
| Access to wage-earning employment | | ✓ | |
| Access to self-employment | | ✓ | |
| Access to liberal professions | | ✓ | |
| access to housing | ✓ | | Only financial help |

| | | | |
|---|---|---|--|
| education | | | |
| social security | ✓ | | Only financial help by local welfare authorities (OCMW – CPAS) |
| health | ✓ | | |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | |
| vocational training | | ✓ | |
| access to citizenship | | ✓ | |

CATEGORIES WHICH ONES ARE NOT COVERED BY ANY LEGAL PROVISION

| Categories | practice |
|---|--|
| persons who flee famine and environmental disasters | expulsion |
| cases of severe persecution of close relatives | expulsion. In some cases temporary residence for humanitarian reasons. |
| persons who might face severe punishment as a result of fleeing the country or applying for asylum. | it is not clear whether this is taken into account during the decision-making on the asylum application. |

DENMARK

Statutes of complementary/subsidiary protection

- De facto status (Aliens Act, Article 7.2)
- *Humanitær opholdstilladelse* - Humanitarian status (Aliens Act, Art. 9.2.2)
Note - protection issues in the country of origin are not relevant to the granting of residence permit in accordance with this provision.
- Residence permits on exceptional grounds (Aliens Act, Art. 9.2.4)
Note - protection issues in the country of origin are not relevant to the granting of residence permit in accordance with this provision.

DE FACTO STATUS

Legal basis: Aliens Act, Article 7.2.

Beneficiaries: Aliens who, though not falling within the provisions of the 1951 Geneva Convention, ought not to be required to return to their country of origin for reasons similar to those listed in the Geneva Convention or for other important reasons.

⇒ persons who might face severe punishment as a result of fleeing the country and applying for asylum.

examples: Iraqi asylum seekers from Saddam Hussein controlled area of Iraq

⇒ persons having escaped from war service or who might face disproportionately severe punishment for avoidance of war service.

examples: Refugee Appeals Board has been granting de facto status in the cases of Armenian asylum seekers who had evaded draft or deserted the army due to the acts of war between Armenia and Azerbaijan where "it could not with certainty be precluded that the applicant, on his return to Armenia would be forced to participate in military operations".

⇒ 'lack of evidence': when it is impossible *either* to obtain reliable information on the general state of affairs in the country of origin, *or* the applicant is otherwise not able to meet the burden of proof requirement of the Convention, at the same time as the Refugee Appeals Board cannot with certainty preclude persecution on return.

Duration: Temporary permits for three years. After three years permanent residence permit will normally be granted upon application.

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to self-employment | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to liberal professions | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to housing | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to public education | ✓ | | Compulsory education: like Convention refugees Further education: like Convention refugees Acquired as soon as they are given the status |
| social security | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| health | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| freedom of movement within the national territory | ✓ | | Like Convention refugees. Freedom of movement may however be indirectly limited in that a refugee who within the first three years of residence (the so-called "introduction period") moves to another municipality without the consent of that municipality may be deprived of parts of social security benefits. |
| travel document | ✓ | | Danish Aliens Passport upon application. Right acquired at the same time as status is granted. |
| voting rights in municipal election | ✓ | | Like Convention refugees - after three years of uninterrupted residence. |
| right to stand for elections | ✓ | | Like Convention refugees - after three years of uninterrupted residence. |
| family reunification | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| vocational training | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to citizenship | ✓ | | Like Convention refugees - after six years of uninterrupted residence in Denmark. |

HUMANITARIAN STATUS HUMANITÆR OPHOLDSTILLADELSE

Legal basis: Aliens Act, Article 9.2.2.

Beneficiaries: cases not falling under Convention/De facto refugee status, provided that the alien is in such a position that essential considerations of a humanitarian nature make it appropriate.

Humanitarian status is rarely granted.

⇒ families with young children from areas in a state of war or with extremely difficult living conditions (ex. risk of starvation)
examples: During the Lebanese civil war, families with very young children (up to 8-10 years of age) were granted residence permit in accordance with this provision.

Duration: The residence permit for six months and it is renewable. The third time, it is renewed for one year. Afterwards it is granted for 2 years and 10. Finally, a permanent residence permit is granted.

Rights:

| rights | Y | N | details |
|---|---|---|---|
| access to wage-earning employment | ✓ | | Like Convention refugees Acquired after 12 months |
| access to self-employment | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to liberal professions | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to housing | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| access to public education | ✓ | | Compulsory education: like Convention refugees Acquired as soon as they are given the status Further education: like Convention refugees Acquired as soon as they are given the status |
| social security | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| health | ✓ | | Like Convention refugees Acquired as soon as they are given the status |
| freedom of movement within the national territory | ✓ | | Like Convention refugees Acquired as soon as they are given the status. The freedom of movement may however be indirectly limited in that a refugee who within the first three years of residence (the so-called "introduction period") moves to another municipality without the consent of that municipality may be deprived of parts of social security benefits. |
| travel document | | ✓ | Unless it is impossible to get a national travel document of their own country issued/renewed. In these cases Denmark will issue an aliens passport, however only when the applicant has acquired permanent residence permit. |
| voting rights in municipal election | ✓ | | Like Convention Refugees - after three years of uninterrupted residence. |
| right to stand for elections | ✓ | | Like Convention Refugees - after three years of uninterrupted residence. |
| family reunification | ✓ | | Like convention refugees |
| vocational training | ✓ | | Like Convention refugees - right acquired as soon as residence permit is granted. |
| access to citizenship | ✓ | | After 7 years of uninterrupted residence permits with prospect of permanent residence (i.e. in practice after 9 years). |

Legal basis: Aliens Act, Section 9.2.4.

Beneficiaries:

- ⇒ unaccompanied minors whose parents are not resident in the country and who are considered unable (after an evaluation of their age and maturity) to undergo a normal asylum procedure
- ⇒ unaccompanied minors whose applications have been rejected in a refugee status determination procedure, but who would face an emergency on return to his/her country of origin.
- ⇒ asylum-seekers who have received a final rejection both in the refugee and humanitarian status determination procedure but who cannot be removed from the country, on the conditions that the country of origin refuses to readmit the person. A residence permit will be issued only after 18 months since the first attempt to implement the deportation order.

Duration: Initially, the residence permit will be granted for 6 months, renewable for other 6 months. Subsequently, residence can be granted for one year, renewable 4 times (a total of 5 years). Finally, a permanent residence permit will be granted provided if the grounds for granting the residence permit are still existing.

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | Like Convention refugees - right acquired after two times six months of residence. |
| access to self-employment | ✓ | | Like Convention refugees - right acquired upon granting residence permit. |
| access to liberal professions | ✓ | | Like Convention refugees - right acquired upon granting residence permit |
| access to housing | ✓ | | Like Convention refugees - right acquired upon granting residence permit |
| access to public education | ✓ | | Compulsory education: like Convention refugees Further education: Like Convention refugees - right acquired upon granting residence permit |
| social security | ✓ | | Like Convention refugees - right acquired upon granting residence permit |
| health | ✓ | | Like Convention refugees - right acquired upon granting residence permit |
| freedom of movement within the national territory | ✓ | | Like Convention refugees - right acquired upon granting of residence permit |
| travel document | | ✓ | Where it is impossible to obtain/renew a national passport, Denmark will issue an aliens passport on the condition that the applicant's residence permit is permanent. |
| voting rights in municipal election | ✓ | | Like Convention refugees |
| right to stand for elections | ✓ | | Like Convention refugees |
| family reunification | ✓ | | With spouse: after three years of <i>permanent</i> residence permit. With children: after five years of <i>permanent</i> residence permit. |
| vocational training | ✓ | | Like Convention refugees - right acquired upon granting of residence permit. |
| access to citizenship | ✓ | | Seven years after residence permit is granted with the prospect of permanent residence (i.e. after a total of 12 years of residence). |

CATEGORIES WHICH ARE NOT COVERED BY ANY LEGAL PROVISION

| categories | practice |
|--|---|
| ⇒ Persons who flee situations of civil war or generalised violence | Normally rejection and expulsion to country of origin. Exceptions: Families with small children may be granted residence permit on humanitarian grounds. In the case of the war in the former Yugoslavia/Bosnia, special legislation was adopted according to which refugee status determination was postponed and TP was granted. |
| ⇒ Persons who flee famine or natural or environmental disasters | Normally rejection and expulsion. Exceptions: |

| | |
|---|---|
| | environmental disasters (e.g. effects of the Chernobyl disaster), a residence permit on humanitarian grounds. |
| ⇒ Cases of particularly severe persecution of close relatives | Normally rejection and expulsion. In exceptional cases de facto refugee status may be granted if the alien is seriously affected/traumatised by the fate of the relative. |

Statuses of complementary/subsidiary protection

- Residence permits based on the need for protection (Aliens Act, Section 31)

RESIDENCE PERMITS BASED ON THE NEED FOR PROTECTION

Legal basis: Aliens Act, Section 31.

Beneficiaries: aliens who have not been granted asylum but who are deemed unable to return safely to their countries of origin or habitual residence.

- ⇒ persons who, if returned, would be at risk of human rights violations, such as torture or cruel, inhuman and degrading treatment (Art.3 ECHR)
- ⇒ persons who flee situations of civil war or generalised violence
- ⇒ persons who flee natural or environmental disasters
- ⇒ persons having escaped from war service or who might face disproportionately severe punishment for avoidance of war service (some cases)
- ⇒ persons who might face severe punishment as a result of fleeing the country or applying for asylum
- ⇒ cases of particularly severe persecution of close relatives

Duration: A person is first given a residence permit for one year, renewable. After these two years, permanent residence permit is granted quite automatically.

Rights:

| rights | Y | N | details |
|---|---|---|---|
| access to wage-earning employment | ✓ | | like Convention refugees |
| access to self-employment | ✓ | | like Convention refugees |
| access to liberal professions | ✓ | | like Convention refugees |
| access to housing | ✓ | | like Convention refugees in principle, no possibility to choose location |
| access to public education | ✓ | | compulsory and further education: like Convention refugees can be started as soon as residence permit is granted |
| social security | ✓ | | like Convention refugees |
| health | ✓ | | like Convention refugees |
| freedom of movement within the national territory | ✓ | | like Convention refugees |

| | | | |
|-------------------------------------|---|--|---|
| voting rights in municipal election | ✓ | | like Convention refugees |
| family reunification | ✓ | | like Convention refugees can be started as soon as residence permit is granted |
| vocational training | ✓ | | like Convention refugees can be started as soon as residence permit is granted |
| access to citizenship | ✓ | | like Convention refugees |

Statuses of complementary/subsidiary protection

- Territorial asylum (*asile territorial*)

TERRITORIAL ASYLUM ASILE TERRITORIAL

Legal basis: *Loi Chevènement*, Article 16; it is granted by the Ministry of Interior following consultation with representatives from the Ministries of Foreign Affairs, Interior and Social Affairs. Usually the request is made by the applicant but there is also in the law the possibility for the Director of OFPRA or the President of the Commission of Appeals to address a request to the Ministry of Interior in cases where they have denied refugee status but believe that territorial asylum should be granted. However, the Ministry is not bound by their opinion.

Beneficiaries: rejected asylum seekers who, if returned, would be at risk of treatment contrary to Article 3 ECHR.

Note: even though the law expressly and solely refers to Article 3 ECHR, the circular applying the law refers exclusively to cases of persecution by non-state agents and does not mention Article 3 ECHR.

⇒ to date, territorial asylum has been granted exclusively to Algerian nationals.

Duration: aliens who are granted territorial asylum receive a one-year residence permit renewed on a yearly basis for a period of three years, after which a permanent residence permit may be requested and granted. After five years, the granting of a permanent residence permit is automatic and cannot be refused except for reasons of public order.

Rights:

Note: during the proceedings, the applicants don't have any specific rights. If they are granted territorial asylum and therefore a one-year residence permit, their status follows the general rules applicable to immigrants.

| rights | Y | N | details |
|-----------------------------------|---|---|---|
| access to wage-earning employment | ✓ | | they are not entitled to RMI (<i>Revenu Minimum d'Insertion</i>) system. |
| access to self-employment | ✓ | | general rules on aliens |
| access to liberal professions | ✓ | | general rules on aliens |
| access to housing | | ✓ | unlike asylum seekers or refugees, they are not entitled to assistance provided through CPHs (<i>Centres Provisoires d'Hebergement</i>) or CADAS. |
| access to public education | ✓ | | general rules on aliens |

| | | | |
|---|---|---|--|
| health | ✓ | | general rules on aliens |
| freedom of movement within the national territory | ✓ | | general rules on aliens |
| travel document | | ✓ | general rules on aliens |
| voting rights in municipal election | | ✓ | general rules on aliens |
| right to stand for elections | | ✓ | general rules on aliens |
| family reunification | ✓ | | unlike Convention refugees, the general rules of family reunification for immigrants are applicable (legal residence for at least 2 years, sufficient and stable income and adequate housing). |
| access to citizenship | ✓ | | general rules on aliens |

GERMANY

Statuses of complementary/subsidiary protection

- Status for civil war situations - *Aufenthaltsbefugnis* (Aliens Act, Section 32a)
- Deportation suspension (Aliens Act, Section 54)
- Tolerated residence- *Duldung* (Aliens Act, Section 53)

STATUS FOR CIVIL WAR SITUATIONS AUFENTHALTSBEFUGNIS

Legal basis: Aliens Act, Section 32a.

Note: *the provision has been implemented for the first time in April 1999.*

Beneficiaries: persons fleeing war and civil war situations.

example: Kosovo Albanians evacuated in April 1999

Duration: In the law, maximum two years, renewable (Section 34 Par.1). In the case of the Kosovo Albanians, they have been issued a 3 month renewable residence permit.

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | they are entitled to apply for a work permit for a specific job. However, the job must first have been offered to Germans and other EU nationals |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | ✓ | | it depends on the welfare policies of the different districts. |
| access to public education | ✓ | | only compulsory education |
| social security | ✓ | | it depends on the welfare policies of the different districts |
| health | ✓ | | it depends on the welfare policies of the different districts |
| freedom of movement within the national territory | | ✓ | they may not settle where they choose; their freedom of movement is restricted to a local district or a Länder. |
| travel document | | ✓ | they have to claim for a national document. |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | |

| | | | |
|-----------------------|--|---|--|
| vocational training | | ✓ | |
| access to citizenship | | ✓ | |

DEPORTATION SUSPENSION

Legal basis: Aliens Act, Section 54.

It is ordered by the Ministry of Interior of the Land, after unanimous approval by all the states.

Note: It is a policy decision concerning a group of persons, not an individual decision. Section 54 has actually not been applied since 1993/94. There has been a debate recently whether to apply it to Algerians but it was decided negatively. Section 54 can also be implemented by means of "Duldung" (see p.22).

Beneficiaries: persons who, staying in a Land, cannot be returned for humanitarian reasons (civil war situations).

⇒ Before 1993/94, primarily civil war refugees benefited from this provision
examples: Bosnia, Lebanon, Somalia

Duration:

If the Ministry intends to maintain the order for more than 6 months, the Federal Ministry of Interior has to give its consent, after unanimous approval by all states.

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | they may apply for a work permit for a specific job. However, the job must first have been offered to Germans and other EU nationals |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | ✓ | | it depends on the welfare policies of the different districts. |
| access to public education | ✓ | | compulsory education |
| social security | ✓ | | it depends on the welfare policies of the different districts. |
| health | ✓ | | it depends on the welfare policies of the different districts. |
| freedom of movement within the national territory | | ✓ | they may not settle where they choose; their freedom of movement is restricted to a local district or a Länder. |
| travel document | | ✓ | they have to claim for a national document. |
| voting rights in municipal | | ✓ | |

| | | | |
|-----------------------|--|---|--|
| family reunification | | ✓ | |
| vocational training | | ✓ | |
| access to citizenship | | ✓ | |

TOLERATED RESIDENCE DULDUNG

Legal basis: Aliens Act, Section 53.

Note: Duldung is an individual decision. It is not a positive status and the beneficiaries have no legal right of residence.

Beneficiaries: When Section 53, Par.1-4 applies, Duldung is mandatory. According to Section 53, Par.6, Duldung is discretionary.

| |
|---|
| ⇒ Section 53, Par.1-4 concerns persons who, if returned, would be at risk of torture, capital punishment, inhuman or degrading treatment (Article 3 ECHR) |
| ⇒ Section 53, Par.6 concerns persons who, if returned, would face immediate threat to life or physical integrity |

Duration: Duldung is originally granted for six months and can be renewed. There is no right to indefinite leave. Toleration is extended as long as the Federal Office for Refugees considers that the reasons for which it had originally been granted still exist.

Note: In the case where Section 54 was implemented by means of "Duldung"., i.e if Duldung is granted to a group of people, the decision to end the toleration depends on the Ministry of the Interior, after approval by all states (see p.21).

Rights:

| rights | Y | N | details |
|-----------------------------------|---|---|--|
| access to wage-earning employment | ✓ | | they may apply for a work permit for a specific job. However, the job must first have been offered to Germans and other EU nationals |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | | ✓ | they should arrange their own accommodation, but needy persons may be accommodated in hostels, communal shelters or housing provided by the local authorities |
| access to public education | ✓ | | compulsory education |
| social security | ✓ | | |
| health | ✓ | | they are entitled to the same access to the national health system as German nationals, as far as essential medical and dental treatment are concerned, provided |

| | | | |
|---|---|---|--|
| freedom of movement within the national territory | | ✓ | they may not settle where they choose; their freedom of movement is restricted to a local district or Land |
| travel document | | ✓ | they have to claim for a national document |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | |
| vocational training | ✓ | | |
| access to citizenship | ✓ | | |

| |
|--|
| <p>Statuses of complementary/subsidiary protection</p> <ul style="list-style-type: none"> • Residence under tolerance on humanitarian grounds • Residence for humanitarian reasons (in force from June 1999) • Residence permit for exceptional reasons (not in force yet) |
|--|

**RESIDENCE UNDER TOLERANCE
ON HUMANITARIAN GROUNDS**

Legal basis: Aliens Act (Law No. 2452/96), Section 25.6.

Beneficiaries: persons whose asylum applications have been finally rejected and who cannot return to their countries of origin for reasons of *force majeure* (civil war, national disasters, etc.)

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | Prospective employers can apply for a work permit three months after a position has been formally announced to the Organisation for the Employment of the Labour Force if it has not been filled by a Greek national, persons of Greek origin, nationals of other EU countries and Convention refugees |
| access to self-employment | ✓ | | |
| access to liberal professions | ✓ | | Art.4 of the Presidential Decree No. 189/1998 |
| access to housing | | ✓ | |
| access to public education | ✓ | | |
| health | ✓ | | Like Convention refugees. Access to the national health service on the same footing as low-income families residing in Greece. |
| social security | ✓ | | |
| freedom of movement within the national territory | ✓ | | Exceptions are possible for reasons of public security (like Convention refugees) |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| family reunification | | ✓ | |
| vocational training | | ✓ | |

RESIDENCE FOR HUMANITARIAN REASONS
(not in force yet)

Legal basis: Presidential Decree No. 61/99, Art.8.
The Decree should be enforced in June 1999.

Beneficiaries: persons who cannot be returned to the country of origin for objective reasons or reasons of superior order, and members of their family.

⇒ cases when no means of transportation is available, since the country of origin is isolated (for instance, due to economic sanctions)

⇒ health reasons

⇒ cases of civil conflict accompanied by mass violations of human rights

⇒ persons who, if returned, would be at risk of human rights violations (art.3 ECHR)

Duration: beneficiaries are given a 1 year residence permit, renewable for another 1 year upon decision of the General Secretary of the Minister of Public Order.

RESIDENCE FOR EXCEPTIONAL REASONS (not in force yet)

Legal basis: "Order" passed by the Parliament implementing Art.12 of the Aliens Act.
It needs governmental approval.

Beneficiaries: persons who cannot be returned for exceptional reasons which are not provided by other provisions of the law: humanitarian reasons, reasons of superior force or reasons of public interest.

Statuses of complementary/subsidiary protection

- Humanitarian permission to remain (Section 17(6) of the Refugee Act of 1996) - not yet in force
- Temporary permission to remain (under the Aliens Act 1935, at the discretion of the Minister for Justice)

**HUMANITARIAN PERMISSION
TO REMAIN (HPR)
(not in force yet)**

Legal basis: HPR status is codified in Section 17(6) of the Refugee Act of 1996, but it is not in force yet.

**TEMPORARY PERMISSION
TO REMAIN (TPR)**

Legal basis: Over the past five years the Minister of Justice has issued Temporary Permission to Remain (TPR). The Minister for Justice does not have a statutory framework for granting temporary leave to remain. The official stance is that the Minister has an absolute discretion under the Aliens Act, 1935 to grant temporary permission to remain.

Beneficiaries: It is usually granted to people who do not meet the criteria set out in the 1951 Convention, but who cannot be returned to their country of origin for humanitarian or other specified reasons.

⇒ persons fleeing from war or civil war
examples: a group of 450 Bosnians who arrived in Ireland between 1992-1995, were granted the status of temporary protection upon arrival.

⇒ parents of Irish children

Duration: Aliens with TPR receive a residence permit renewable every year depending on changes in the situation in their country of origin.

Rights:

N.B. When the government specifically accepts large numbers of people (eg. Bosnians), their rights are more similar to those of refugees than where applicants are granted TPR on individual basis.

| rights | Y | N | details |
|-----------------------------------|---|---|--|
| access to wage-earning employment | ✓ | | |
| access to self-employment | ✓ | | |
| access to liberal professions | ✓ | | |
| access to housing | ✓ | | They are entitled to a rent deposit of up to |

| | | | |
|---|---|---|--|
| | | | per week towards the payment of their rent. The amount of the allowance differs from region to region. |
| access to public education | ✓ | | Children of persons with TPR have free access to Irish primary and secondary schools. Access to further education but they have to pay fees. |
| social security | ✓ | | beneficiaries are entitled to unemployment benefits from the Social Welfare Department. |
| health | ✓ | | they have access to a medical card which covers a variety of health fields. |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | special individual applications must be made to the Minister of Justice. As a rule, no travel document is issued. |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | | no set policy. In practice, no reunification in the first year. it may be considered where the situation in the country of origin does not improve. |
| vocational training | ✓ | | There may be certain restrictions which do not apply to Convention refugees. it is dealt with on a case by case basis. |
| access to citizenship | ✓ | | |

Statutes of complementary/subsidiary protection

- Residence permits on humanitarian grounds (Art.5, para.6, Law no.40/98)
- Temporary deportation waiver (Asylum and Temporary Protection Bill) - not in force yet

RESIDENCE PERMITS ON HUMANITARIAN GROUNDS

Legal basis: Art.5, para.6 of Law no. 40/98 (enforced on 26 March 1998).

Beneficiaries: persons who, due to humanitarian reasons or international/constitutional obligations, cannot be returned.

⇒ some Kosovo Albanians, some Kurds

⇒ Somalis, Albanians and nationals from former Yugoslavia who had received residence permits on humanitarian grounds under separate Decree-laws.

Note: the provision has not been applied consistently.

As soon as Law no. 40 entered into force, it seemed that Art.5, para.6 should encompass asylum-seekers whose applications had been rejected but who could not be returned due to a situation of generalised violence/human rights violations in their countries of origin. When deeming that such a situation existed, the Central Commission for Eligibility to Refugee Status recommended the *Questure* (Police Headquarters) to apply the provision and, in some cases, the *Questure* complied with the recommendation, issuing temporary residence permits.

In some isolated cases the *Questure*, after consultation of the Ministry of Interior, used Art.5, para.6 as the legal basis for the issuing of residence permits on behalf of aliens who, though not having applied for refugee status, were in need of protection (some Kurds and Kosovo Albanians, as well as an Algerian woman and a mixed ethnic couple from former Yugoslavia).

This practice has currently changed.

In the wake of a **Directive of August 1998**, which provided for the conversion of some residence permits issued prior to the entry into force of Law no.40/98, the attitude of the *Questure* has become more restrictive. In practice, it seems that no application of Art.5, para.6 is allowed beyond the scope of this Directive.¹

Under the Directive, the beneficiaries are:

⇒ holders of valid residence permits issued under art.4, para.12-*bis* and -*ter* (humanitarian grounds/based on international or constitutional obligations) of Law. no. 39/90 (as amended by Law no.388/93);

⇒ holders of valid residence permits issued under the emergency decrees setting up protection systems on behalf of Somalis (1992), displaced persons from former Yugoslavia (1992) and Albanians (1997).

* Please note that the ELENA co-ordinator for Italy could not check the information provided in this chapter.

¹ Under the Directive, holders of residence permits issued under art.4, para.12-*bis* and -*ter* (humanitarian grounds/based on international or constitutional obligations) of Law. no.39/90 (as amended by Law no.388/93) and those issued under the emergency decrees setting up protection systems on behalf of Somalis (1992), displaced persons from former Yugoslavia (1992) and Albanians (1997), can be given residence permits under art.5, para. 6 of Law no. 40/98, provided that their residence permits are still valid at the date of the Directive.

para. 6. It should be noted that those who can demonstrate they have a job/a job offer will be given a 2 year-residence permit for work reasons.

Duration: The Law does not set out a specific time limit. The above-mentioned Directive of August 1998, however, states that aliens falling within its provisions will be issued with a 1-year residence permit (renewable).

Rights:

| rights | Y | N | details |
|---|---|---|--|
| access to wage-earning employment | ✓ | | |
| access to self-employment | ✓ | | |
| access to liberal professions | | | no special provision. Access to liberal profession is very difficult for non EU-nationals (regulation on mutual recognition of studies, enrolment in professional organisations) |
| access to housing | | ✓ | |
| access to public education | ✓ | | compulsory education |
| social security | ✓ | | |
| health | ✓ | | |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | a special regulation applies to Somalis. In special circumstances, they can be given a travel document which is not valid for the Schengen area. |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | ✓ | | no special provision. Law on family reunification for aliens in general applies. |
| access to citizenship | ✓ | | no special provision |

IMPOSSIBILITA' TEMPORANEA AL RIMPATRIO
TEMPORARY DEPORTATION WAIVER
(not in force yet)

Note: the Asylum and Temporary Protection Bill is currently examined by the Parliament.

Beneficiaries: asylum-seekers whose asylum application has been rejected but who cannot be returned for serious humanitarian reasons.

Duration: following a decision to apply the temporary deportation waiver, a one-year residence permit is issued (renewable as long as the reasons for its issuance exist).

Rights: access to work and study.

Statuses of complementary/subsidiary protection

- Authorisation to stay on humanitarian grounds
- Temporary protection in war situations
- Tolerance

Note: the only legal status in Luxembourg is Convention status; the other forms of protection have no legal basis.

AUTHORISATION TO STAY ON HUMANITARIAN GROUNDS

Legal basis: none. The issuing of an authorisation is discretionary.

Beneficiaries: both rejected asylum seekers and people no longer entitled to temporary protection status may apply to the Ministry of Justice for authorisation for residence on humanitarian grounds, if their removal from Luxembourg proves impossible.

⇒ persons who, if returned, would be at risk of human rights violations, such as torture or cruel, inhuman and degrading treatment.

⇒ persons who cannot be returned to their country of origin for reasons relating to their own health conditions or that of a family member.

Rights:

| rights | Y | N | details |
|---|---|---|------------------------------|
| access to wage-earning employment | | | Discretionary. |
| access to self-employment | | ✓ | No example known. |
| access to liberal professions | | ✓ | No example known. |
| access to housing | ✓ | | |
| access to public education | ✓ | | Only compulsory education. |
| social security | ✓ | | |
| health | ✓ | | |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | But exceptions are possible. |
| vocational training | | ✓ | |

Duration: not determined. Generally 1 year, renewable

TEMPORARY PROTECTION

Legal basis: none.

Beneficiaries: persons who flee situation of war or civil war.

Rights:

| rights | Y | N | details |
|---|---|---|---|
| access to wage-earning employment | ✓ | | |
| access to self-employment | | ✓ | No example known. |
| access to liberal professions | | ✓ | No example known. |
| access to housing | ✓ | | |
| access to public education | ✓ | | Only compulsory education. For further education exceptions are possible. |
| social security | ✓ | | |
| health | ✓ | | |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | But exceptions are possible. |
| vocational training | ✓ | | |
| access to citizenship | ✓ | | After 10 years of residence, like foreigners in general. |

TOLERANCE

Legal basis: none.

Beneficiaries: people who cannot be returned for practical reasons.

⇒ This category includes cases in which the country of origin refuses to readmit the person
examples: some rejected asylum seekers from Serbia and Montenegro

| rights | Y | N | details |
|---|----------|----------|----------------------------|
| access to wage-earning employment | | ✓ | |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | | ✓ | |
| access to public education | ✓ | | Only compulsory education. |
| social security | | ✓ | |
| health | ✓ | | Only emergency care. |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | | ✓ | |
| vocational training | | ✓ | |
| access to citizenship | | ✓ | |

Statutes of complementary/subsidiary protection

- Residence status for humanitarian reasons
- Provisional residence permit
- Permit for medical treatment
- Permit for unaccompanied minors

RESIDENCE STATUS FOR HUMANITARIAN REASONS

Legal basis: Aliens Act, Article 9 combined with Article 15A (asylum request).

Beneficiaries: persons who cannot reasonably be expected to return to their country of origin in cases where art. 3 ECHR applies; persons having suffered traumatic experiences in their country of origin, for example if they have been tortured or if close relatives have been killed; persons unable to survive in their country of origin due to their mental/health conditions; persons who have been allowed to await the final outcome in their asylum procedure during a period of three years or more.

Examples:

⇒ persons who cannot return to their country of origin because of their own health conditions

In most cases, a temporary permit for medical treatment is granted. If medical treatment is needed for a longer, indefinite amount of time, a permit based on humanitarian ground may be granted.

⇒ cases of particularly severe persecution of close relatives

The general guidelines for traumatised applicants contain provisions on this subject.

⇒ persons who cannot be returned to their country of origin because there is no flight or means of transportation available + cases in which the country of origin refuses to readmit the person

In very few cases (e.g. Palestinians, Chinese) a permit based on humanitarian grounds was granted.

⇒ persons who flee situations of civil war or generalised violence (persons who flee famine or natural or environmental disasters could also qualify)

In these cases a provisional status is granted. Beneficiaries of this status will qualify for the permanent, humanitarian status if they have been in the possession of this status for at least three years. The temporary status was granted to some nationalities, but for relatively few categories the temporary protection policy was (or still is) upheld for three years or longer. Nevertheless asylum seekers from Iraq (under the previous policy), Sudan, Somali clans, Burundi, Rwanda, and in some cases other beneficiaries were granted a permanent status after three years of provisional admission.

Duration: permit to remain is renewed on a yearly basis; renewal is largely a formality; however, if a provisional permit was issued, renewal will only be granted if the policy for the specific country or category is still upheld at the expiry (and renewal) date.

Rights:

| Rights | Y | N | details |
|---|----------|----------|--|
| access to wage-earning employment | ✓ | | like Convention refugees |
| access to self-employment | ✓ | | like Convention refugees |
| access to liberal professions | ✓ | | like Convention refugees |
| access to housing | ✓ | | like Convention refugees |
| access to public education | ✓ | | Unlike Convention refugees, the opportunities to receive state support in further education are restricted during the first three years of residence. In near future this period will be reduced to one year of residence. In some cases the University assistance Fund (UAF) will support some forms of higher education. |
| social security | ✓ | | like Convention refugees |
| Health | ✓ | | like Dutch nationals |
| freedom of movement within the national territory | ✓ | | |
| travel document | ✓ | | They may apply for an alien's passport if they are not already in possession of a national passport of their own. Such requests are not often met as the alien must prove that he or she cannot obtain a national passport through his or her own authorities. However, this restriction does no longer apply after five years of residence. |
| voting rights in municipal election | ✓ | | After five years of residence. |

| | | | |
|------------------------------|---|--|--|
| right to stand for elections | ✓ | | After five years of residence. |
| family reunification | ✓ | | Unlike Convention refugees, they are required to have sufficient income to support their relatives, as well as suitable accommodation. |
| vocational training | ✓ | | |
| access to citizenship | ✓ | | After five years of residence. |

PROVISIONAL RESIDENCE PERMIT

Legal basis: Aliens Act, Article 12B.

Beneficiaries: persons whose enforced removal to the country of origin would bring unusual hardship in connection with the general situation in the country.

Examples:

⇒ At this moment: asylum seekers from the south of Sudan, from Rwanda and Burundi, some Somali clans, Afghanistan, asylum seekers from the province Kivu in the Democratic Republic of Congo

Duration: renewal every year; conversion into a permanent humanitarian status after three years under the provisional permit;

Rights:

| rights | Y | N | details |
|-----------------------------------|---|---|---|
| access to wage-earning employment | ✓ | | Progressive access. First year: right to work but for a brief period not exceeding 12 weeks in a 12-month period. During the second year, they can take up vocational training. In the third year from the time they have been given temporary status, free access to labour market. |
| access to self-employment | ✓ | | In the third year. |

| | | | |
|---|---|---|---|
| | | | |
| access to housing | ✓ | | Regular housing in communities through a central distribution system; accommodations may have to be shared with other beneficiaries; no rent for the special housing is charged; hosting communities receive a compensation fee for housing the beneficiaries; |
| access to public education | ✓ | | Compulsory education like Convention refugees. Unlike Convention refugees, the opportunities to receive state support in further education are restricted during the first three years of residence (possibility of financial support from UAF to attend higher forms of education). |
| social security | ✓ | | A monthly contribution which is lower than general social assistance; |
| health | ✓ | | Beneficiaries are insured through the hosting communities; depending on the contract with the insurer, the health insurance may not give the same benefits as other residents in the Netherlands receive (for example gender transformation and in vitro fertilisation are not included); |
| freedom of movement within the national territory | ✓ | | |
| travel document | ✓ | | They may apply for an alien's passport if they are not already in possession of a national passport of their own. Such requests are not often met. |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | ✓ | | According to ministerial guidelines no family reunification is possible. However sometimes judges ruled that, in very exceptional cases, family reunification had to be granted under art. 8 ECHR. |
| vocational training | ✓ | | On the second year of the provisional |

| | | | |
|-----------------------|--|---|--|
| access to citizenship | | ✓ | |
|-----------------------|--|---|--|

PERMIT FOR MEDICAL TREATMENT

Legal basis: Aliens Act, Article 9; specifications in the guidelines.

Beneficiaries: persons who cannot return to their country of origin because of their health conditions.

Duration: the permit is granted exclusively on medical grounds for the time period covering the medical treatment.

Rights: No rights except social security. The person granted such status doesn't have access to work or education. It is a very temporary protection.

Examples:

⇒ Many asylum seekers are granted this status, often after a long period in asylum housing centres where their health has deteriorated. If the period for medical treatment appears to be longer than expected, a permit based on humanitarian grounds can be granted (see p.23).

PERMIT FOR UNACCOMPANIED MINORS

Legal basis: Aliens Act, Article 9.

Beneficiaries: unaccompanied minors at the moment of the asylum application.

Rights: a legal guardian is in charge of the minor. The minor can benefit from welfare. He lives in special reception units with other minors. When he comes to age he can have a place on his own but there is no right to work attached to this status.

Duration: after three years, a permanent humanitarian status may be granted after examination of the case.

Statuses of complementary/subsidiary protection

- Residence permit for humanitarian reasons (1998 Asylum Act, art.8)
- Residence permit for exceptional reasons of national interest or for humanitarian reasons (Decree-Law No. 244/98, art.88)

RESIDENCE PERMIT FOR HUMANITARIAN REASONS

Legal basis: 1998 Asylum Act, art.8.

Beneficiaries: aliens who are unable to return to their country of nationality or habitual residence because of a lack of security resulting from armed conflicts or systematic violation of human rights.

⇒ Persons who flee situations of civil war or generalised violence
examples: civilians who fled from some areas of Sierra Leone in 1997

⇒ Cases of particularly severe persecution of close relatives

Duration: aliens given protection for humanitarian reasons are granted a residence permit which is valid for a maximum period of one year. This can be renewed by the Ministry of Interior on a yearly basis following an analysis of the developments in the country of origin of the permit holder. After five years holding this permit, aliens can apply for a residency permit valid for five years.

Rights:

| rights | Y | N | details |
|---|---|---|---|
| access to wage-earning employment | ✓ | | same conditions as nationals |
| access to self-employment | ✓ | | |
| access to liberal professions | ✓ | | same conditions as nationals |
| access to housing | ✓ | | |
| access to public education | ✓ | | both compulsory and further education |
| social security | ✓ | | For the first 4 months, they are granted a monthly subsidy. They are entitled to the Minimum Income Guarantee. |
| health | ✓ | | same conditions as nationals |
| freedom of movement within the national territory | ✓ | | |
| travel document | ✓ | | they may obtain an alien's passport |
| voting rights in municipal | | ✓ | only if they are from Cape Verde |

| | | | |
|------------------------------|---|---|---|
| right to stand for elections | | ✓ | only if they are from Cape verde (special bilateral agreement) |
| family reunification | | ✓ | |
| vocational training | ✓ | | same conditions as nationals |
| access to citizenship | ✓ | | general provisions applying to aliens: 6 years if coming from a Portuguese-speaking country; otherwise 10 years |

RESIDENCE PERMIT FOR EXCEPTIONAL REASONS OF NATIONAL INTEREST OR FOR HUMANITARIAN REASONS

Legal basis: Decree Law No. 244/98, art.88.

Beneficiaries: In practice, most cases dealt with under Section 88 are related to people from former Portuguese colonies.

| |
|--|
| <p>⇒ cases in which the relative benefited from a humanitarian residence permit</p> <p>⇒ persons who have special links to Portugal <i>examples: people married to a Portuguese national, persons from Portuguese-speaking countries</i></p> <p>⇒ persons whose staying in Portugal has never been contested and who are important for the country <i>examples: scientists, foot-ballers</i></p> |
|--|

Duration: Residence permits are granted by the Ministry of Interior for a maximum period of two years (discretionary). They are renewed every two years provided that permit holders can provide evidence that they still meet all the conditions for the continuation of residence in Portugal (being in employment etc.).

Rights: the same as holders of residence permits on humanitarian grounds.

Statuses of complementary/subsidiary protection

- Leave to remain on humanitarian grounds or for reasons of public interest (Asylum Act, Section 17(2))
- Residence permit for displaced persons accepted in Spain (First Additional Provision of the 1995 Asylum Regulation)
- Explicit recognition of “*non-refoulement*” (Asylum Act, Section 17.(3))

LEAVE TO REMAIN IN SPAIN ON HUMANITARIAN GROUNDS OR FOR REASONS OF PUBLIC INTEREST

Legal basis: Asylum Act, Section 17(2).

Beneficiaries: Persons who do not meet the criteria for Convention status but whose return to the country of origin cannot take place due to special circumstances of humanitarian/public interest.

The occurrence of these circumstances is independently assessed by the Minister of the Interior, following the proposal put forward by the Inter-ministerial Commission for Asylum and Refuge (*Comisión Interministerial de Asilo y Refugio*: CIAR).

Section 17(2) only refers explicitly as possible beneficiaries those persons, not eligible for Convention refugee status, “*who have been forced to leave their country of origin due to conflicts or serious disturbances of political, ethnic or religious character*”.

⇒ Persons who flee situations of civil war or generalised violence

examples: Algerian nationals who come from areas of conflict or can be considered as belonging to a “group at risk” (women with a professional career, independent journalists, some categories of civil servants -not those in the military or security forces...)

⇒ Persons who cannot return to their country of origin for reasons relating to their own health condition or that of a close relative

⇒ Persons who suffer a serious illness, for which there is no possible treatment in their country of origin, but who could be treated in Spain. Only if the Institute for Migrations and Social Services (IMSERSO) of the Ministry of Labour and Social Affairs accepts to pay for the cost of treatment and maintaining this person.

⇒ Persons having escaped from war service or who might face disproportionately severe punishment for avoidance of war service.

examples: Kurdish youths from Turkey who have evaded conscription (not in all cases).

⇒ Persons who cannot be returned to their country of origin because there is no flight or means of transportation available

examples: Rejected asylum seekers from Iraq (not in all cases).

circumstances, who have proven integration in Spanish society (through work or studies) or have close family ties in Spain

⇒ Unaccompanied minors

Duration: According to Section 53(2) of the 1996 Aliens Regulation [Royal Decree No. 155/1996], people with humanitarian status are issued with a “*residence permit under exceptional circumstances*”, renewable on a yearly basis. After three years, provided that the exceptional circumstances still prevail, a residence permit valid for more than one year is granted. This last provision has not been implemented yet.

Rights:

N. B.: The issuance of work permits for persons holding a “residence permit under exceptional circumstances” is regulated through an Order of the Minister of Labour and Social Affairs of 25 February 1998.

| rights | Y | N | details |
|-----------------------------------|---|---|--|
| access to wage-earning employment | ✓ | | Unlike Convention refugees, the beneficiaries are required to obtain a work permit once they have found a job. |
| access to self-employment | ✓ | | Unlike Convention refugees, the beneficiaries are required to obtain a work permit. They have to submit an “activity project” to be considered by the decision-making authority. |
| access to liberal professions | ✓ | | Unlike Convention refugees, the beneficiaries are required to obtain a work permit. |
| access to housing | ✓ | | Access to council housing under the same conditions as Spanish nationals. |
| access to public education | ✓ | | Compulsory education: access under the same conditions as Spanish nationals. Further education: neither Convention refugees nor beneficiaries of leave to remain under Section 17(2) of the Asylum Act have access to the regular grant system. IMSERSO has special programmes for subsidising these studies. |
| social security | ✓ | | Beneficiaries of this regime and Convention refugees have access to social security benefits like Spanish nationals (1) if they are working and registered with the Social Security; (2) if they fulfil the requirements established by regional governments for other complementary social benefits. |
| health | ✓ | | Beneficiaries of this regime do not have automatic full access to the National Health System (like Spanish nationals and Convention refugees). They can gain it when they obtain a work permit and register with the Social Security. Otherwise they receive medical treatment |

| | | | |
|---|---|---|---|
| | | | councils. |
| freedom of movement within the national territory | ✓ | | No restrictions. |
| travel document | | ✓ | As a rule and unlike Convention refugees, these persons have to use their national passport. If there is evidence that they cannot obtain one, a substitutive travel document could be issued under the Aliens Regulation by the Spanish authorities. |
| voting rights in municipal election | | ✓ | Not established in Spanish law but for nationals of EU Member States. |
| right to stand for elections | | ✓ | Not established in Spanish law but for nationals of EU Member States. |
| family reunification | ✓ | | Unlike Convention refugees there is no automatic right to family reunification (for spouse or partner and minor children). Persons under this regime must fulfil the general time and economic conditions established for family reunification by the 1996 Aliens Regulation. |
| vocational training | ✓ | | Equal treatment to Convention refugees. |
| access to citizenship | ✓ | | Persons under this regime are subject to the general conditions for access to Spanish citizenship. The general term of residence requested is 10 years. In the case of Convention refugees, however, this term is reduced to 5 years. Foreign residents of certain origin (Latin American countries, Equatorial Guinea, the Philippines, Portugal, Andorra and Sephardi Jews) need only 2 years. |

Other rights:

Residence permit: Unlike Convention refugees, beneficiaries of this status are not automatically granted a residence permit, but have to obtain it through a subsequent procedure with the immigration police.

RESIDENCE PERMIT FOR DISPLACED PERSONS

Legal basis: First Additional Provision of the 1995 Asylum Regulation (within the legal framework of Section 17(2) of the Asylum Act).

Beneficiaries: Groups of displaced persons who have been forced to leave their country of origin due to conflicts or serious disturbances of a political, ethnic or religious character.

These groups of people may be accepted in Spain on humanitarian grounds or in accordance with an international agreement or commitment. The decision to accept these groups is taken by the Council of Ministers, based on a proposal by the Minister of Foreign Affairs and on the advice of the Inter-ministerial

the 1995 Asylum Regulation).

This status could also be applied to an individual asylum seeker whose claim is rejected, but who has been granted leave to remain in Spain under Section 17(2) of the Asylum Act, on the basis that s/he comes from an area where there is a conflict or serious disturbance of a political, ethnic or religious character. (Paragraph 6 of the First Additional Provision of the 1995 Asylum Regulation).

⇒ Since the entry into force of the 1995 Asylum Regulation, no group of displaced persons has been accepted in Spain by decision of the Council of Ministers.

⇒ Some individuals have benefited from this status (paragraph 6 of the 1st Additional Provision of the 1995 Asylum Regulation), but the reasons for considering someone a “displaced person” or “beneficiary of leave to remain on humanitarian grounds” are not clear at all.

Duration: groups of displaced are granted a 1 year residence permit, until the conditions in their country of origin are safe enough for them to return.

Displaced persons are also issued with a “*residence permit under exceptional circumstances*”, renewable on a yearly basis. After three years, provided that the conditions in their country of origin still prevail, a residence permit valid for more than one year would be granted. This last provision has not been implemented yet.

Rights: the same rights as the beneficiaries of leave to remain (see above).

Other rights:

Residence permit: unlike Convention refugees, rejected asylum seekers who become beneficiaries of this regime are not automatically granted a residence permit but have to obtain it through a subsequent procedure with the immigration police

‘Non-refoulement’: according to paragraph 5 of the 1st Additional Provision of the 1995 Aliens Regulation, displaced persons accepted in Spain are entitled to the benefits of “non-refoulement”, as long as it can apply to their situation.

EXPLICIT RECOGNITION OF “NON-REFOULEMENT”

Legal basis: Asylum Act, Section 17(3).

Beneficiaries: Section 17(3) of the Asylum Act rules that the rejection at the border or the deportation of a rejected asylum-seeker cannot be implemented in violation of the obligation established under paragraph 1 of Article 33 of the 1951 Convention, or result in sending that person to a third State where there is no effective protection against “refoulement” to the country of persecution.

N.B. The scope of this provision is unclear since Article 33 of the Convention refers to “refugees”, whereas Section 17(3) of the Spanish Asylum Act regulates the situation of rejected asylum seekers. The National High Court (*Audencia Nacional*) has not given any meaningful interpretation of this provision.

⇒ It has become more frequent in recent decisions that persons who cannot be returned to their country of origin -for reasons which may vary from protection concerns under Article 3 ECHR to practical impossibility-, are granted neither asylum nor leave to remain in Spain on humanitarian grounds. Nonetheless, the decision includes an explicit recognition of the impossibility of sending them back.

Duration: NOT established.

Rights:

N.B. This explicit recognition of “non-refoulement” is a ‘tolerance’, more than a real status. The “beneficiaries” are not entitled to any social benefit and they cannot obtain a residence and/or work permit except under the general conditions and procedures established for economic migrants.

| Rights | Y | N | details |
|---|----------|----------|---|
| access to wage-earning employment | | ✓ | |
| access to self-employment | | ✓ | |
| access to liberal professions | | ✓ | |
| access to housing | | ✓ | |
| access to public education | ✓ | | compulsory education: children under 18 have access under the same conditions as Spanish nationals. |
| social security | | ✓ | |
| health | | ✓ | Children under 18 have full access to the National Health System. Adults only in case of emergency. |
| freedom of movement within the national territory | ✓ | | No restrictions. |
| travel document | | ✓ | |
| voting rights in municipal election | | ✓ | Not established in Spanish law but for nationals of EU Member States. |
| right to stand for elections | | ✓ | Not established in Spanish law but for nationals of EU Member States. |
| family reunification | | ✓ | |
| vocational training | | ✓ | |
| access to citizenship | | ✓ | |

Other rights:

Residence permit: These persons are not, as such, entitled to a residence permit, and there are no special provisions for facilitating legal residence. If the persons who are in this situation gain residence, they will have access to all benefits established for legal residing nationals of non-EU countries.

Statutes of complementary/subsidiary protection

- Residence permits on humanitarian grounds

RESIDENCE PERMITS ON HUMANITARIAN GROUNDS

Legal basis: Section 3 of Chapter 3 of the 1989 Aliens Act.

Beneficiaries:

- ⇒ Aliens/stateless persons who have a well-founded fear of being punished by the death penalty or corporal punishment.
- ⇒ Aliens/stateless persons who have a well-founded fear of being subjected to torture or other kinds of inhuman or degrading treatment or punishment.
- ⇒ Aliens/stateless persons who need protection due to external or internal armed conflict.
- ⇒ Aliens/stateless persons who are unable to return to their country of origin/habitual residence because of an environmental catastrophe.
- ⇒ Aliens/stateless persons who have a well-founded fear of persecution for reasons of their gender or homosexuality.

Duration: As a rule, protection granted to the above-mentioned categories implies a right to a permanent residence permit. However, if the need of protection is considered to be temporary, the Government may order, by ordinance and subject to parliamentary control, that a certain group be given temporary residence permits.

Rights:

| rights | Y | N | details |
|-----------------------------------|---|---|--|
| access to wage-earning employment | ✓ | | same conditions as nationals and Convention refugees |
| access to self-employment | ✓ | | same conditions as nationals and Convention refugees |
| access to liberal professions | ✓ | | same conditions as nationals and Convention refugees |
| access to housing | ✓ | | same conditions as nationals and Convention refugees |
| access to public education | ✓ | | same conditions as nationals and Convention refugees |
| social security | ✓ | | same conditions as nationals and Convention refugees |
| health | ✓ | | same conditions as nationals and |

| | | | |
|---|---|---|--|
| freedom of movement within the national territory | ✓ | | |
| travel document | ✓ | | |
| voting rights in municipal election | | ✓ | |
| right to stand for elections | | ✓ | |
| family reunification | ✓ | | same conditions as nationals and Convention refugees |
| vocational training | ✓ | | |
| access to citizenship | ✓ | | |

Statuses of complementary/subsidiary protection

- Exceptional leave to enter or remain (ELR)
- Sometimes, some national groups have been given extended visitor status as an alternative to ELR (for instance, people from China after Tian Anmen, or Bosnians)

EXCEPTIONAL LEAVE TO ENTER OR REMAIN (ELR)

Legal basis: the granting of such leave is based upon a discretionary decision taken by the Secretary of State for the Home Office.

Beneficiaries: it is issued when there are overwhelming compassionate circumstances or where circumstances prevailing in a country are such that it would be unreasonable to return a rejected asylum seeker there.

- ⇒ persons who, if returned, would be at risk of human rights violations, such as torture or cruel, inhuman and degrading treatment (Article 3 ECHR). In some cases, also persons falling under the exclusion clauses set out in the 1951 Geneva Convention, if a risk of human rights violations upon return exists.
- ⇒ persons who flee situations of civil war or generalised violence.
examples: Somalis, Tamils
- ⇒ persons who flee environmental disasters.
examples: people from Montserrat
- ⇒ cases in which the country of origin refuses to readmit the person.??

Duration: ELR is normally granted for one year, and may be extended further for a 3-year period (alternatively, a 4-year leave may be granted immediately). After 7 years with ELR, an application can be submitted for indefinite leave to remain, which is normally granted.

Rights:

| rights | Y | N | details |
|-----------------------------------|---|---|--|
| access to wage-earning employment | ✓ | | This right is acquired immediately. Like Convention refugees. |
| access to self-employment | ✓ | | This right is acquired immediately. Like Convention refugees. |
| access to liberal professions | ✓ | | This right is acquired immediately. Like Convention refugees. |
| access to housing | ✓ | | This right is acquired immediately. Like Convention refugees. |
| access to public education | ✓ | | With regard to access to the higher education sector, ELR status holders have to meet the criterion of three years residence in the UK, before being able to |

| | | | |
|---|---|---|---|
| social security | ✓ | | This right is acquired immediately. Like Convention refugees. |
| health | ✓ | | Like Convention refugees. They are entitled to access the NHS as for the primary and secondary health care and services are free of charge. |
| freedom of movement within the national territory | ✓ | | |
| travel document | | ✓ | As a rule, they should use a national passport. |
| voting rights in municipal election | | ✓ | Like Convention refugees |
| right to stand for elections | | ✓ | Like Convention refugees |
| family reunification | | ✓ | Persons with ELR have no family reunification rights under the Immigration Rules, but the Home Office will consider an application for family reunification after a person with ELR has been in the UK for 4 years. People with ELR may be required to show that they have the means to support and accommodate relatives without recourse to public funds. |
| access to citizenship | ✓ | | General provision on aliens apply. |