



COMPLEMENTARY PROTECTION IN EUROPE

July 2009



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The information given is current as of March 2009.

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INTRODUCTION

In January 2009, the European Council on Refugees and Exiles (ECRE) undertook a limited update of its 2004 survey on complementary and subsidiary protection in European Union Member States.¹ This update covers nine EU Member States – Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Sweden and the United Kingdom - plus Switzerland.

In 2004, complementary and subsidiary protection were taken in a single group, meaning “*any status, other than Convention refugee status, which is afforded to persons who may/can not be returned to their country of origin.*”² In the present update, they are clearly distinct. Subsidiary protection refers to internal mechanisms adopted in order to comply with the 2004 Qualification Directive.³ Complementary protection refers to other forms of protection, created by national law, different from refugee status and from subsidiary protection status, conferred on persons whose return is impossible or undesirable. Supplementing the 2008 ECRE/ELENA study on subsidiary protection,⁴ this report focuses on forms of complementary protection.

The survey contains legislative information about 22 systems of complementary protection,⁵ but does not assess how these instruments are applied in practice. Furthermore, two of the surveyed countries, Sweden and Finland, had not transposed the Qualification Directive by the time of the update,⁶ and two others, Denmark and Switzerland, are not bound by it.⁷ Therefore, they lack subsidiary protection for comparison purposes.

¹ ECRE, *Complementary/subsidiary forms of protection in the EU Member States: an overview*, July 2004. <http://www.ecre.org/files/CFP%20July%202004.pdf>

² *Ibid.*, p. 3.

³ Council Directive 2004/83/EC of 29 April 2004 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, Official Journal L 304, 30.9.2004.

⁴ ECRE, *The Impact of the EU Qualification Directive on International Protection*, October 2008. http://www.ecre.org/files/ECRE_QD_study_full.pdf

⁵ Finland’s “Residence Permits Based on Other Grounds” encompasses three distinct mechanisms: “Residence permits in cases where aliens cannot be removed;” “Residence permits on compassionate grounds;” and “Residence permits when exception clauses are applied.”

⁶ The data is updated until March 2009.

⁷ Denmark opted out of EU immigration and asylum regulations and Switzerland is not a EU Member State.

SUMMARY

1. Developments between 2004 and 2009

Since ECRE's 2004 survey, Member States have been engaged in the transposition of the Qualification Directive to national legislation. However, the regulation of complementary protection has also slightly advanced during this period. New grounds were adopted and at least one country, Finland, introduced substantial changes.

In Austria, the new 2005 Asylum Act implemented complementary protection based on Article 8(1) of the European Convention on Human Rights (ECHR),⁸ which protects private and family life.⁹ Belgium created a separate mechanism based on medical reasons, reasoning that asylum authorities would not have sufficient medical expertise to decide this type of claim.¹⁰ By adopting such grounds, Austria and Belgium followed European tendencies that will be explored below. Sweden's 2005 Aliens Act also presents an interesting innovation. It introduces explicit language on protection against chain *refoulement*, prohibiting return to a country from which the person risks being sent to another country where he or she would be in danger.¹¹

Finland has implemented the most significant changes since 2004. Four new complementary regimes were created through the 2004 Aliens Act. Grounds such as health, social ties with the State and practical impossibility of return now support complementary protection in Finland.¹²

In general, besides the mechanisms adopted to transpose the Qualification Directive's subsidiary protection and Finland's expansion of complementary protection, the surveyed States have not implemented substantial modifications since 2004. Therefore, most of the mechanisms of complementary protection discussed here already existed when the original research was completed.

2. Qualification for complementary protection

Many of the complementary forms of protection that predate the Qualification Directive already included the qualification standards of subsidiary protection. Grounds like death penalty or execution and torture or inhuman or degrading treatment or punishment¹³ were based on obligations of non-*refoulement* established by the Convention Against Torture (CAT)¹⁴ and the ECHR.¹⁵ Additionally, the States have adopted grounds based on international obligations relating to family unity, health, and the treatment of children. Still other grounds of complementary protection, like social integration, are not provided based on requirements of international law, but rather on States' discretionary protection policies.

⁸ "Everyone has the right to respect for his private and family life, his home and his correspondence."

⁹ Article 10, Section 5 (2), 2005 Asylum Act.

¹⁰ Dirk Vanheule, *The Qualification Directive: A Milestone in Belgium Asylum Law*, in Karin Zwaan, ed., *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected States* (Wolf Legal Publishers, 2007), p. 75.

¹¹ Sections 1 and 2, Chapter 12, 2005 Aliens Act.

¹² Sections 51, 52 and 89, Aliens Act 301/2004.

¹³ *Council Directive 2004/83/EC* (Qualification Directive), Article 17 (a) and (b).

¹⁴ "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (Article 3 (1), 1984 *Convention Against Torture*).

¹⁵ Article 3 and Protocol 6 of the ECHR implicitly create obligations of non-refoulement, according to the European Court of Human Rights (*Soering v. the United Kingdom* Eur. Ct. H.R. 14038/88).

2.1 Grounds based on international obligations

Among the most common European grounds for complementary protection, the survey identified four grounds based on the State's obligations before international and European human rights law. Besides three specific tendencies – family unity, health and the protection of minors – some provisions include general references to obligations and treaties.

2.1.1 Blanket clauses

Four countries have clauses that refer to international obligations in general. Finland's "Immigration on other Humanitarian Grounds" can be triggered in order to "*fulfil international obligations.*" Germany's "Temporary Suspension of Deportation" may be ordered because of "*international law considerations.*" Switzerland grants "Provisional Admission" when deportation conflicts with its obligations under international law and the British "Discretionary Leave" may be granted in cases of flagrant denial of any right guaranteed by the ECHR.¹⁶

2.1.2 Family

Article 8 of the ECHR protects private and family life. The European Court of Human Rights has recognized it as a basis for not removing people¹⁷. Following their obligations under this provision, five countries adopted complementary protection related to family matters. In Austria¹⁸ and the United Kingdom,¹⁹ the clauses explicitly refer to Article 8, whereas Denmark opted for the term "*family unity.*"²⁰ Furthermore, Irish judicial practice has interpreted "*humanitarian considerations*"²¹ as encompassing "*family connections,*" and Belgium administrative practice indicates that "*exceptional circumstances*" comprehend a concrete family-related situation, protecting parents of a child with Belgium nationality.²²

2.1.3 Health

The European Court of Human Rights has declared that persons suffering from serious illness may in certain circumstances fall within the scope of Article 3 of the ECHR.²³ Most of the surveyed countries maintain mechanisms of complementary protection based on health issues. While in most States legislation makes unspecified reference to health or medical necessity, in the United Kingdom, the Home Office Asylum Policy Instruction indicates the requirement of a "*serious medical condition*" for granting Discretionary Leave. Belgium recently adopted a health-based independent system,²⁴ consistent with the European trend.

¹⁶ According to the Asylum Policy Instruction issued by the Home Office, the "Discretionary Leave" authorized by the 1971 Immigration Act includes this general clause. See <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary>

¹⁷ *Mamatkulov and Askarov v Turkey* Eur. Ct. H.R. 46827/99 and 46951/99 and others. See Helene Lambert, *The European Court of Human Rights and the right of refugees and other persons in need of protection to family reunion*, Int J Refugee Law Jul 1999; 11: 427 – 450.

¹⁸ Article 10, Section 5(2), 2005 Asylum Act.

¹⁹ UK Home Office, *Asylum Policy Instruction on Discretionary Leave*.

²⁰ Section 9 (c)(1), Aliens Consolidation Act.

²¹ Section 3 (6), 1999 Immigration Act.

²² Article 9bis, par. 1, 1980 Aliens Act (amended in 2006).

²³ *D. v. United Kingdom* Eur. Ct. H.R. 30240/96. See also, *Tanko v. Finland* Eur. Ct. H.R. 23634/94.

²⁴ "Leave to Stay due to Medical Reasons".

2.1.4 Unaccompanied minors

International and regional human rights instruments impose particular legal obligations concerning the treatment of children.²⁵ Three of the surveyed countries have adopted systems of complementary protection for unaccompanied minors. Sweden applies a lower threshold to concede “Residence Permits on Grounds of Exceptionally Distressing Situations” for children than for adults.²⁶ According to the British Home Office’s Instruction, unaccompanied asylum seeking children who do not qualify for asylum or subsidiary protection²⁷ should be granted Discretionary Leave if there are inadequate reception arrangements in the country of return.²⁸ In Denmark, unaccompanied minors may be granted complementary protection if either there are particular reasons to assume they should not undergo asylum proceedings, or if they will in fact be placed in “*an emergency situation*” if returned.²⁹

2.2 Discretionary grounds

The surveyed States have adopted complementary protection grounds that are not required by international law. They are the product of national protection policies and encompass a variety of situations, such as environmental disasters and armed conflicts. The most common discretionary grounds are general humanitarian clauses, practical impossibility of return and social integration.

2.2.1 General clauses

All ten States, except for Switzerland, adopt general humanitarian clauses expressed in terms like “exceptional circumstances,” “humanitarian reasons,” “compassionate grounds” and “individual circumstances.” Their interpretation is ultimately decided by decision-makers, being judges, immigration officers or Ministers, with different levels of discretion and deference to previous decisions. For example, Ireland extends protection for “*humanitarian reasons*”³⁰ and in Denmark “*considerations of humanitarian nature*” trigger “Humanitarian Status.” Under these general clauses, the decision whether to provide protection depends upon discretionary determinations of what is, for instance, “*exceptional*” or “*compassionate*.”

2.2.2 Practical grounds

The practical impossibility of returning a person, for example, because she would not be readmitted to her country of origin or there is no transportation available, triggers complementary protection in four countries.³¹ Denmark has a specific rule to determine “*impossibility of return*”: eighteen months must have passed without successful return, provided that the person co-operated with the authorities in return efforts during the entire period, and that return is considered futile according to information

²⁵ For example, Article 10(3) of the 1966 International Covenant on Economic, Social and Cultural Rights requires “*special measures of protection and assistance*” to all children and young persons. Jane McAdam views Article 3 of the Convention on the Rights of the Child as an umbrella provision that requires all actions concerning children – including when they are asylum seekers – to be undertaken in the “*best interest of the child*.” McAdam, Jane. *Complementary Protection in International Refugee Law* (Oxford University Press, 2007), p. 177.

²⁶ Section 6, Chapter 5, 2005 Aliens Act.

²⁷ The United Kingdom’s system of subsidiary protection is called “Humanitarian Protection”.

²⁸ UK Home Office, *Asylum Policy Instruction on Discretionary Leave*.

²⁹ Section 9 (c) 3, Aliens Consolidation Act.

³⁰ “Leave to Remain”.

³¹ Belgium, Denmark, Finland and Switzerland.

available at the time of decision.³² In these cases, a residence permit is issued temporarily or permanently, according to the assessment of the situation.

Germany is the only country that has adopted complementary protection based on practical grounds related to State or public interest. According to the Residence Act of 2007, a deportation may be suspended for a limited period of time in order to ensure Germany's political interests or important public interests, or, for instance, when the person's presence is necessary in a criminal procedure.³³

2.2.3 Social integration

The legislators of six surveyed States have considered the level of social integration within the country a reason for granting complementary protection. Countries such as Sweden³⁴ and Switzerland³⁵ have specific provisions on progressive "integration" or "adaptation". In Austria, the Constitutional Court has determined that the level of integration is a relevant factor for granting "Residence Permits for Humanitarian Reasons."³⁶ Belgium considers that asylum applicants who had their claim rejected after several years of procedures, during which they built strong ties to the country, are under "*exceptional circumstances*," deserving a "Leave of Stay."³⁷ Moreover, Germany provides economically well-integrated aliens – including rejected asylum seekers – with residence permits.³⁸

2.2.4 Other grounds

Besides those common grounds, the surveyed countries have adopted systems considering the situation in the country of origin, which appears either in general terms³⁹ or in concrete cases, such as armed conflict,⁴⁰ generalized violence⁴¹ or poor conditions of living.⁴² Further examples include victims or witnesses of human trafficking,⁴³ stateless persons⁴⁴ and persons fleeing from environmental disasters.⁴⁵ Finally, two States⁴⁶ have provisions for the protection of people denied status due to the application of exclusion clauses.⁴⁷

³² Section 9(c) 2, Aliens Consolidation Act.

³³ Section 60a (1).

³⁴ Section 6, Chapter 5, 2005 Aliens Act.

³⁵ Article 14 (2), Chapter 4, 1998 Asylum Act.

³⁶ As mentioned in the Press Release of the Ministry of the Interior, *Ministerrat beschließt Neuregelung des Humanitären Aufenthalts*, No. 5318, 24 February 2009, available at: <http://www.bmi.gv.at/>

³⁷ Article 9bis, par. 1, 1980 Aliens Act (amended in 2006).

³⁸ Germany's 2007 Residence Act, Section 23(1).

³⁹ Sweden's 2005 Aliens Act, Chapter 5, Section 6 and Finland's Aliens Act 301/2004, Section 52.

⁴⁰ Austria's 2005 Residence Act, Section 7, Article 72(1) and Switzerland's 2005 Aliens Act, Chapter 11, Article 83 (3).

⁴¹ Switzerland's 2005 Aliens Act, Chapter 11, Article 83 (3).

⁴² According to the United Kingdom's Home Office Asylum Policy Instruction, these cases would fall under the situation in which there is a violation of Article 3 of the ECHR, but the person was not able to get subsidiary protection.

⁴³ Austria's 2005 Residence Act, Section 7, Article 72(1).

⁴⁴ According to the administrative practice on Belgium's Article 9bis of the 1980 Aliens Act.

⁴⁵ Finland's Section 88, par. 1, aliens Act 301/2004.

⁴⁶ Finland's "Residence permits when exclusion clauses apply" and the United Kingdom's "Discretionary Leave".

⁴⁷ The qualification for refugee or subsidiary protection status is subjected to reasons for exclusion, stated in Art. 12 (2) and Art. 17 of the Qualification Directive. They exclude people who would qualify for protection, but have, for instance, committed war crimes or acts contrary to the principles and purposes of the UN.

3. Content of complementary protection

In the majority of the surveyed States where the Qualification Directive was transposed, beneficiaries of complementary status receive lower standards of social rights than beneficiaries of subsidiary protection. Only Belgium and France place them on an equal footing. Austria, Germany, Ireland and the United Kingdom impose differences between the two systems, although they are minor in the Irish and British cases.

In Austria, while subsidiary protection guarantees full access to employment,⁴⁸ persons with Residence Permits for Humanitarian Reasons – conceded on grounds like social integration – do not have access to liberal professions and are required to obtain work permits, which are very difficult to acquire,⁴⁹ in order to engage in wage-earning employment. The other Austrian mechanism has even stronger limitations. Persons granted “Inadmissibility of Deportation,” for reasons such as family unity, do not have any access to employment and are not guaranteed full health care. Furthermore, while beneficiaries of subsidiary protection have the right to family reunification at least in relation to family members who are outside Austria, Inadmissibility of Deportation doesn’t allow any kind of family reunification.

In Germany, those protected by Temporary Suspension of Deportation receive significantly lower social security benefits and lower standards of medical care than beneficiaries of subsidiary protection. In Ireland and in the United Kingdom, the only difference between the two systems is that beneficiaries of complementary status must have three years of residence in order to be eligible for higher education grants and loans.

Four of the 22 mechanisms of complementary protection surveyed will be excluded from the analysis of content: France’s “Constitutional Asylum”, which is rarely used and carries the same rights as extend to Convention refugees;⁵⁰ the two Belgium instruments, which establish equal footing with beneficiaries of subsidiary protection; and the Swiss “Residence Permit on Grounds of Exceptional Circumstances,” which grants a status equivalent to that of any third-country national with a residence permit.

3.1 The European minimum core of protection

Among the 18 systems left, it is possible to outline a “European minimum core of protection.” Two rights seem to be almost unanimous, presenting very few exceptions. Access to education is guaranteed by 15 of the 18 statuses and all three exceptions may be considered minor restrictions.⁵¹ Similarly, 16 instruments provide their beneficiaries with full access to health care. The only two exceptions are Germany’s Temporary Suspension of Deportation,⁵² which gives health care limited to urgent needs; and Austria’s Inadmissibility of Deportation, which provides only emergency care for beneficiaries who do not receive social aid.

The second level of this minimum core of European protection includes access to employment and social welfare. Twelve of the surveyed mechanisms guarantee access to employment. In Germany⁵³ and Switzerland⁵⁴ there are waiting periods of one year and three months respectively. Germany also requires a review of the availability of privileged aliens for the job, but the same restriction applies to

⁴⁸ There is no requirement of a work permit since January 2008.

⁴⁹ ECRE, *Country information sheets*, March 2009 (see below, p. 18).

⁵⁰ Those granted refugee status according to the *1951 Geneva Convention relating to the Status of Refugees*.

⁵¹ Germany, Ireland and the United Kingdom restrict access to grants, loans and subsidy for higher education.

⁵² Section 4, Asylum Seekers Benefit Law.

⁵³ “Temporary Suspension of Deportation”.

⁵⁴ Chapter 4, Article 75 (1), 1998 Asylum Act, for “Provisional Protection”.

subsidiary protection under German law.⁵⁵ In one Austrian,⁵⁶ and in two of the Finish mechanisms,⁵⁷ beneficiaries do not have access to employment at all. Social welfare is granted by 13 of the statuses, although in Switzerland it may vary according to the canton.⁵⁸ In Denmark,⁵⁹ there is a waiting period of seven years for full support, during which the person must have been employed for 2.5 years. In Austria⁶⁰ and Germany⁶¹ social benefits are significantly lower than those granted to beneficiaries of subsidiary protection.

3.2 Freedom of movement

Movement rights for beneficiaries of complementary protection are often limited. Half of the systems do not allow freedom of movement within the country's territory. In Germany⁶² and Switzerland,⁶³ protected people must remain in an assigned district or canton. In Denmark,⁶⁴ they must remain for three years, or risk being deprived of social security benefits. Sweden⁶⁵ also has restrictions, but they are the same as apply to every alien in Swedish territory.⁶⁶

Eight systems impose conditions for access to international travel documents. Normally, they are only granted to those unable to acquire one in their countries of origin.⁶⁷ The German, the two Austrian and one Swiss mechanism⁶⁸ do not allow any possibility of getting a travel document. This same restriction also applies to subsidiary protection in Germany and Austria.

3.3 Family reunification

The right to family reunification is also limited. It is guaranteed only in Sweden and by two other mechanisms, one in Finland⁶⁹ and one in Switzerland.⁷⁰ One of the Austrian instruments concedes it, but only for family members overseas.⁷¹ Denmark imposes restrictions like age limits,⁷² while Swiss and British mechanisms impose waiting periods.⁷³ In the latter, the right to family reunification is only guaranteed after the person acquires indefinite leave to remain, which happens after six or ten years

⁵⁵ ECRE, *The Impact of the EU Qualification Directive on International Protection*, October 2008, at p.248, available at: http://www.ecre.org/files/ECRE_QD_study_full.pdf

⁵⁶ "Inadmissibility of Deportation" and "Residence Permits for Humanitarian Reasons".

⁵⁷ "Residence permits when aliens cannot be removed" and "Residence permits when exclusion clauses apply".

⁵⁸ Articles 80-84, Chapter 5, 1998 Asylum Act.

⁵⁹ For all three existent mechanisms.

⁶⁰ For "Inadmissibility of Deportation".

⁶¹ "Temporary Suspension of Deportation".

⁶² Section 61 (1a), 2007 Residence Act.

⁶³ For "Provisional Protection" and "Provisional Admissions".

⁶⁴ For all three existent mechanisms.

⁶⁵ *Ibid.*

⁶⁶ *Skyddsgrundsdirektivet och svensk rätt En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande*, 2006, p. 40.

⁶⁷ This is the case in Denmark, Finland and the United Kingdom.

⁶⁸ "Provisional Admission".

⁶⁹ "Residence permits on compassionate grounds".

⁷⁰ "Provisional Protection".

⁷¹ "Residence Permits for Humanitarian Reasons".

⁷² For all three existing mechanisms.

under complementary protection.⁷⁴ The other Austrian,⁷⁵ three Finnish and the German mechanism do not guarantee family reunification at all.

3.4 Access to housing

Access to accommodation is mostly left to districts and municipalities. Only in Ireland, Switzerland and the United Kingdom it is a guaranteed right, but Finland obliges its municipalities to afford accommodation. In Denmark, Germany and Sweden, access to accommodation varies according to local governments. Finally, in Austria, it also depends on the respective region, but in practice there are insufficient housing facilities.⁷⁶

3.5 Political rights

The right to vote in municipal elections is afforded only by Finland and Sweden. In Denmark and Austria,⁷⁷ there are waiting periods of three and five years respectively. In the United Kingdom, Germany and in the case of Austria's Inadmissibility of Deportation, there is no right to vote.

A possibility of standing for municipal elections was not found in any of the surveyed countries, except for Austria, where people entitled to Residence Permits for Humanitarian Reasons may be elected in the district level in Vienna, although there are still some restrictions. The other Austrian mechanism, Inadmissibility of Deportation, together with Denmark, Sweden, Switzerland and the United Kingdom do not afford this right.

3.6 Residence permits

Acquiring a residence permit may be essential to access the rights discussed above in practice. In the surveyed countries, the duration of available permits ranges from three months to immediate permanent residence. Austria grants Residence Permits for Humanitarian Reasons to victims of armed conflicts solely for the duration of the conflict, up to a maximum of three months.⁷⁸ Denmark, Finland and Switzerland concede residence permits with one year of duration. Above that, the United Kingdom grants Discretionary Leave for three years in cases related to the ECHR and for unaccompanied minors, but with the age limitation of 17.5 years old⁷⁹. Switzerland gives "Provisional Protection" to persons exposed to "*serious general danger*," especially during armed conflicts, for five years.⁸⁰ Finally, all three Swedish systems of complementary protection entitle protected persons to a permanent residence permit, unless special circumstances apply, like criminal activities or national security concerns, in which cases a temporary residence permit may be granted.⁸¹

Most of the permits are renewable and may lead to permanent residence. The extensions are normally for the same period of time initially granted, but there is at least one case of gradually longer extensions, in Denmark.⁸² When a permanent residence permit is not immediately issued, the waiting periods to acquire or to apply for one vary from five to ten years. In Belgium, the "Leave of Stay due to

⁷³ 3 years in case of "Provisional Admission" in Switzerland.

⁷⁴ UK's Home Office, *Asylum Policy Instruction on Discretionary Leave*.

⁷⁵ "Inadmissibility of Deportation".

⁷⁶ ECRE, *Country information sheets*, March 2009 (see below, p. 18).

⁷⁷ Only for "Residence Permits for Humanitarian Reasons" and only in the district of Vienna.

⁷⁸ 2005 Residence Act, Section 7, Article 72 (1).

⁷⁹ UK's Home Office, *Asylum Policy Instruction on Discretionary Leave*.

⁸⁰ Chapter 4, Article 74 (3), 1998 Asylum Act.

⁸¹ Chapter 5, Section 7 of the 2005 Alien's Act.

Medical Reasons” may lead to a permanent residence card in five years, after yearly renewals. In the United Kingdom, this period varies according to the ground for Discretionary Leave. In cases of violation of the ECHR and of unaccompanied minors, an application for indefinite leave to remain may be filed after six years. In cases of excluded persons, this may be done after ten years.⁸³ In general, complementary status may lead to citizenship after around 10 years of permanent residence. The rules applied are the same as for Convention refugees and other resident aliens. However, two systems do not lead to citizenship at all: Austria’s Inadmissibility of Deportation and Germany’s Temporary Suspension of Deportation.

4. Conclusion

This research was a limited update of ECRE’s 2004 survey on complementary and subsidiary protection. The objective was to analyze systems of complementary protection operating in ten European countries. Since 2004, these States did not implement major changes, except for Finland, where four new mechanisms were created.

With regards to qualification grounds for complementary protection, besides the use of general clauses – either based on international obligations or on discretionary decisions – it was possible to identify specific European trends. In order to fulfil their international obligations, many of the surveyed countries have adopted mechanisms based on the protection of family unity, health conditions and unaccompanied minors. Furthermore, at their own discretion, they have instituted protection for people who cannot be removed for practical reasons, or who are well integrated in the host society.

Although beneficiaries of complementary protection still enjoy lower standards of social rights than Convention refugees and beneficiaries of subsidiary protection, the research identified a “European minimum core of protection” for them. Virtually all ten States grant protected persons access to education, health care, employment and social welfare. Access to housing, travel documents, freedom of movement inside the country, family reunification and political rights for beneficiaries of complementary protection are still limited to varying degrees. Finally, there is significant variance in the lengths of residence permits available to these persons, ranging from three months to immediate permanent residence.

⁸² When “Humanitarian Status” is initially conceded for only one year, it is renewable in sequence for one, two and three years.

⁸³ UK’s Home Office, *Asylum Policy Instruction*.

AUSTRIA

Statutes of complementary/subsidiary protection

- Subsidiary Protection
- Inadmissibility of Deportation/Temporary Suspension of Deportation
- Residence Permits for Humanitarian Reasons

Austria transposed the Qualification Directive with the Federal Act Concerning the Granting of Asylum (2005 Asylum Act - *Asylgesetz* 2005),⁸⁴ which came into force on January 1st 2006. The Federal Act established the subsidiary protection status that substituted prior protection regimes. Furthermore, the Federal Act stipulates specific cases under which, despite the fact that an alien does not qualify for either refugee status or subsidiary protection status, his/her deportation is either inadmissible or should be temporarily suspended for reasons listed in the legislation. In addition to that, according to the Residence Act of 2005,⁸⁵ aliens can be granted with residence permits for humanitarian reasons. These residence permits can take two forms, *Aufenthaltsbewilligung* (Residence Permit) and *Niederlassungsbewilligung* (Establishment Permit) according to the degree of integration of the alien.

⁸⁴ Federal Law Gazette (FLG) I No. 100/2005, available in German at:
<http://www.unhcr.org/refworld/country,...AUT.4562d8b62.4416b2004.0.html>

A translation in English (not legally binding) is available at:

<http://www.unhcr.org/refworld/type.LEGISLATION,..AUT.46adc62c2.0.html>

⁸⁵ Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich, (Niederlassungs- und Aufenthaltsgesetz – NAG), 16 August 2005, available at:
<http://www.unhcr.org/refworld/country,...AUT.4562d8b62.4416bfea8.0.html>

SUBSIDIARY PROTECTION **(Status des subsidiär Schutzberechtigten)**

Legal basis: Section 4, Article 8, 2005 Asylum Act

Beneficiaries: Subsidiary protection status shall be granted to an alien:

1. who has filed an application for international protection in Austria, if such application is dismissed in regard to the granting of asylum status; or
2. whose asylum status has been withdrawn

if the alien's rejection at the border, forcible return or deportation to his country of origin would constitute a real risk of violation of Art. 2 or Art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would 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.⁸⁶

The decision concerning the granting of subsidiary protection status shall be issued in conjunction with the dismissal ruling or the asylum status withdrawal ruling.⁸⁷

Applications for international protection shall be dismissed in regard to the granting of subsidiary protection status if an internal flight alternative is available.⁸⁸ If the asylum seeker's country of origin cannot be established, the application for international protection shall be dismissed in regard to subsidiary protection status.⁸⁹ In such event, an order for expulsion from the federal territory shall be issued, if such expulsion is not inadmissible.⁹⁰

An alien's subsidiary protection status shall be withdrawn ex officio by administrative decision if:

1. the conditions required for the granting of subsidiary protection status 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 art. 2 or art. 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.⁹¹

Duration: An alien who has been granted subsidiary protection status shall at the same time be accorded, by the authority granting such status, limited right of residence as a person eligible for subsidiary protection.⁹² Right of residence shall be valid for one year and shall, upon application by the alien, be extended by the Federal Asylum Agency if the conditions required continue to exist.⁹³ Following an application by the alien, right of residence shall exist until a final decision has been rendered on the extension of residence entitlement if the extension application was filed prior to expiry of the right of residence.⁹⁴

⁸⁶ Section 4, Article 8(1), 2005 Asylum Act.

⁸⁷ Section 4, Article 8(2), 2005 Asylum Act.

⁸⁸ Section 4, Article 8(3), 2005 Asylum Act.

⁸⁹ Section 4, Article 8(6), 2005 Asylum Act.

⁹⁰ *Ibid.*

⁹¹ Section 4, Article 9(1), 2005 Asylum Act.

⁹² Section 4, Article 8(4), 2005 Asylum Act.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		No requirement for a work permit since 01.01.2008 ⁹⁵ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		In general there are insufficient housing facilities. However, it depends also on the respective region ⁹⁶ .
Access to public education	✓		Compulsory education from the ages of 6 to 15. Higher education is also possible.
Social security	✓		Provided through the social care of the Federal States. There are different conditions and benefits in every Federal State (duration of legal residence, benefit in cash or credit, etc.).
Health	✓		More than simply emergency care. Health insurance is obligatory if the person is employed.
Freedom of movement within the national territory	✓		Like Convention refugees.
Travel document		✓	An alien who has been granted subsidiary protection status shall be issued with a card, which shall serve as proof of identity and lawfulness of residence in the federal territory ⁹⁷ . The law does not mention anything about the issue of travel documents. In practice, travel documents, are never given to persons with subsidiary protection ⁹⁸ .
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family reunification		✓	If the family member of an alien who has been granted subsidiary protection status is outside Austria, that person shall, upon application, be granted entry following the first extension of the limited right of residence of the alien who has already been granted subsidiary protection status unless it may be assumed, on the basis of certain facts, that the conditions required for the granting of subsidiary protection status no longer exist or will no longer exist in three months ⁹⁹ .
Vocational training	✓		The labour market service decides on a case-by-case basis if training would be useful to an unemployed individual.
Access to citizenship	✓		Same conditions as aliens in general (after 10 years).

⁹⁵ See also Section 1, Article 1(2)(a) of the Act on the Employment of Foreign Nationals, available at: [http://www.jusline.at/Auslaenderbeschaeftigungsgesetz_\(AusIBG\).html](http://www.jusline.at/Auslaenderbeschaeftigungsgesetz_(AusIBG).html)

⁹⁶ ECRE, *The Impact of the EU Qualification Directive in International Protection*, October 2008, p.254. http://www.ecre.org/files/ECRE_QD_study_full.pdf

⁹⁷ Section 6, Article 52(1), 2005 Asylum Act.

⁹⁸ ECRE, *The Impact of the EU Qualification Directive in International Protection*, October 2008, p.254. http://www.ecre.org/files/ECRE_QD_study_full.pdf

⁹⁹ Section 4, Article 35(2), 2005 Asylum Act.

INADMISSIBILITY OF DEPORTATION/TEMPORARY SUSPENSION OF DEPORTATION¹⁰⁰

Legal basis: Section 5, Article 10, 2005 Asylum Act

Beneficiaries: Individuals are issued with an expulsion order when¹⁰¹:

1. their application for international protection is rejected;
2. their application for international protection is dismissed in regard to the granting of both asylum status and subsidiary protection status;
3. their asylum status is withdrawn and the subsidiary protection status is not conferred or
4. their subsidiary protection is withdrawn

However, their expulsion is inadmissible if¹⁰²:

1. in individual cases they hold a right of residence that is not based on the present federal act or
2. their expulsion would constitute a violation of Art. 8 of the European Convention on Human Rights.

Furthermore, if execution of an expulsion order would constitute a violation of art. 3 of the European Convention on Human Rights for reasons relating to the person of the asylum seeker and such reasons are not long lasting, a pronouncement shall be made simultaneously with the issue of the expulsion order that the execution thereof shall be postponed for the necessary period.¹⁰³

Duration: No legal status is foreseen. Regulations will come into force from April 1st 2009. The legal changes are still under negotiation, but it is clear that aliens who may not be deported due to reasons of Art 8 ECHR shall get a residence permit, either with free access to the labour market (when they fulfill the integration contract, requirements which means German language knowledge level A2) or with restricted access to the labour market.

Rights:

Rights	Y	N	Details
Access to wage-earning employment		✓	
Access to self-employment		✓	
Access to liberal professions		✓	
Access to housing		✓	Insufficient housing facilities provided by the State, and the social aid differs in each Federal State. The responsibility mainly lies with NGOs.
Access to public education	✓		Compulsory education from the ages of 6 to 15. Higher education is also possible.
Social security	✓		Some social benefits are now accorded on a very low level. (Provision applied since 1 May 2004).
Health	✓		More than simply emergency care for persons receiving social aid, otherwise only emergency care. According to a provision applied since 1 May 2004, some health insurance is now provided.
Freedom of movement within the national territory	✓		
Travel document		✓	
Voting rights in municipal		✓	

¹⁰⁰ There is no specific term to define this category of beneficiaries. Article 10 which refers to the inadmissibility of deportation is entitled "*Verbindung mit der Ausweisung*".

¹⁰¹ Section 5(1), Article 10, 2005 Asylum Act.

¹⁰² Section 5(2), Article 10, 2005 Asylum Act.

¹⁰³ Section 5(3), Article 10, 2005 Asylum Act.

election			
Right to stand for elections		✓	
Family reunification		✓	
Vocational training		✓	
Access to citizenship		✓	

RESIDENCE PERMITS FOR HUMANITARIAN REASONS (*Aufenthaltstitel aus humanitären Gründen*)

Legal basis: Section 7, Articles 72-74 Residence Act of 2005

Beneficiaries: There are two different kinds of permits for humanitarian reasons. A residence permit (*Aufenthaltsbewilligung*) is granted by the authorities of a region to third-country nationals whose individual circumstances merit particular attention due to humanitarian considerations¹⁰⁴. The authorities may also decide to grant to third-country nationals establishment permits (*Niederlassungsbewilligung*)¹⁰⁵. A prerequisite to the attainment of this kind of permits is the fulfilment of the "Integration Agreement"¹⁰⁶. These can either be establishment permits which provide the beneficiary with a right to work, if he is entitled to work according to the Act on the Employment of Foreign Nationals¹⁰⁷, or in any other case, establishment permits without the right to work¹⁰⁸. In order for both types of residence permits to be granted on humanitarian reasons the Regional authorities must obtain the agreement of the Federal Ministry of the Interior¹⁰⁹.

The Constitutional Court has determined in its jurisprudence the relevant factors that should be taken into account for the granting of such types of permits¹¹⁰:

- Nature and Duration of the stay in the country till the time of the application, especially if the stay was legal.
- Existence of family ties in Austria at the present time.
- Existence of private life that is protected.
- Level of Integration.
- Ties with the Country of Origin.
- Status of the Criminal Record.
- Any offences against public order.

¹⁰⁴ Section 7, Article 72, 2005 Residence Act.

¹⁰⁵ Section 7, Article 73, 2005 Residence Act. The difference between the two types of residence permits is that the residence permit (*Aufenthaltsbewilligung*) is granted for a temporary stay, with a certain duration, for a particular reason; in this case humanitarian considerations. An establishment permit (*Niederlassungsbewilligung*) is again granted for certain duration and a particular reason but in this case the stay is not deemed to be merely temporary. This is due to the fact that the beneficiary has already begun to integrate in the society.

¹⁰⁶ *Ibid.* The details of this Integration Agreement are described in Section 7, Article 14, 2005 Residence Act.

¹⁰⁷ Section 7, Article 73(2), 2005 Residence Act.

¹⁰⁸ Section 7, Article 73(3), 2005 Residence Act.

¹⁰⁹ Section 7, Article 75, 2005 Residence Act.

¹¹⁰ As mentioned in the Press Release of the Ministry of the Interior, "Ministerrat beschließt Neuregelung des Humanitären Aufenthalts", No. 5318, 24 February 2009, available at: <http://www.bmi.gv.at/>

-The fact of whether the private and family life ties were created at a time when all the parties concerned were aware of the insecure status of residence of the alien.

The Council of Ministers has recently decided on a new regulation concerning residence permits of a humanitarian nature¹¹¹. In order to avoid lengthy procedures in the future all applications of aliens to remain in the country will also be examined to ascertain whether a permit because of humanitarian considerations can be granted¹¹². The new procedure, which will include the recommendation by an Advisory Board and the possibility of an economic “sponsorship”, is expected to enter into force on April 1st 2009¹¹³.

Duration: Residence permits are granted for a certain period of time. The law stipulates, concerning residence permits (*Aufenthaltsbewilligung*), that in cases where aliens left their country as victims of an armed conflict, the permit is granted solely for the duration of the conflict, up to a maximum of three months¹¹⁴. In cases involving victims or witnesses of human trafficking, the permit lasts for the necessary time in order to guarantee the prosecution of punishable acts, up to a maximum of 6 months.¹¹⁵

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Only with a work permit, which is very hard to obtain.
Access to self-employment	✓		
Access to liberal professions		✓	
Access to housing		✓	Insufficient housing facilities provided by the State and the social aid differs in each Federal State.
Access to public education	✓		Compulsory education from the ages of 6 to 15. Higher education is also possible.
Social security	✓		Provided through the social care of the Federal States. There are different conditions and benefits in every Federal State (duration of legal residence, benefit in cash or credit, etc.).
Health	✓		More than simply emergency care. Health insurance is obligatory for those who are employed.
Freedom of movement within the national territory	✓		Like Convention refugees.
Travel document		✓	
Voting rights in municipal election		✓	In Vienna, on district level after five years of residence.
Right to stand for elections		✓	In Vienna, on district level with exceptions.
Family reunification		✓	Extension of status to family members, but no family reunification for family members abroad.
Vocational training		✓	
Access to citizenship	✓		Like other foreigners (after 10 years of legal residence)

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Section 7, Article 72(1), 2005 Residence Act.

¹¹⁵ Section 7, Article 72(2), 2005 Residence Act.

BELGIUM

Statutes of complementary/subsidiary protection

- Subsidiary Protection
- Leave of Stay for Medical Reasons
- Leave of Stay under Exceptional Circumstances

On September 15th 2006, Belgium introduced two legislative acts¹¹⁶ amending the Aliens Act of 1980, in order to transpose the Qualification Directive¹¹⁷. The provisions concerning subsidiary protection became effective as of 10 October 2006. The legislative reform in its entirety became effective as of the 1st of June 2007. Through these acts the subsidiary protection regime was established for the first time in Belgium. Prior to its introduction, various solutions were adopted in order to accommodate asylum seekers that did not qualify for asylum protection but could not be removed. The solutions were either a form of toleration of presence on the Belgian territory (often in the form of suspension of deportation), individual regularisations through a leave of stay granted by the Minister of the Interior under exceptional circumstances or ad hoc schemes of temporary protection (e.g. during the crises in Former Yugoslavia and Rwanda)¹¹⁸. Apart from the subsidiary protection regime the legislation introduced a special regime for people who could not be removed for medical reasons¹¹⁹. Furthermore, leave of stay under exceptional circumstances can still be sought, when specific conditions apply¹²⁰.

¹¹⁶ Act of 15th September 2006 amending the Aliens Act of 15th December 1980 (*Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangères*), MB 6 October 2006, and Act of the 15th September 2006 reforming the Council of State and creating a Council of Aliens Litigation, MB 6 October 2006, available at: http://www.ejustice.just.fgov.be/doc/rech_f.htm

¹¹⁷ 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, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

¹¹⁸ Vanheule, Dirk, "The Qualification Directive: A Milestone in Belgian Asylum Law", in *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, Karin Zwaan, (ed.), Wolf Legal Publishers, 2007, at p. 71.

¹¹⁹ Article 9^{ter} of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹²⁰ Article 9^{bis} of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

SUBSIDIARY PROTECTION (Statut de Protection Subsidaire)

Legal basis: Article 48/4 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

Beneficiaries: Individuals who do not satisfy the conditions to be recognised as a refugee or do not benefit of the regime of leave of stay for medical reasons and for whom there are serious reasons to believe that, if returned to their country of origin or, if they are stateless, to their country of habitual residence, they would incur a real risk of suffering serious harm and who are who are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country¹²¹. In addition, they should not be excluded for reasons enumerated in the law¹²².

Serious harm consists of¹²³:

- a) the death penalty.
- b) torture or inhuman or degrading treatment in their country of origin.
- c) serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Belgium has therefore not transposed the requirement that the threat to a civilian's life or person is "individual". The body responsible for the examination of the merits of asylum applications is the *Commissariat Général aux réfugiés et Apatrides* - 'CGRA' (Commissioner General for Refugees and Stateless Persons). There is a single procedure for the consideration of refugee and subsidiary protection status. Refugee status is assessed prior to the consideration of subsidiary protection.

Duration: A recipient of subsidiary protection will receive a one-year residence permit, extendable and renewable if conditions in the country of return persist¹²⁴. Five years after the date of the introduction of the asylum claim, the alien who was recognised as a beneficiary of subsidiary protection receives a permanent residence card¹²⁵.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Beneficiaries of subsidiary protection need a work permit (type C, annually renewable, valid for any profession, obtained with few formalities) during their temporary stay on the territory (5 years) ¹²⁶ . After they obtain a permanent residence card they no longer need this permit ¹²⁷ .
Access to self-employment	✓		In this case they need another type of authorisation (<i>Carte Professionnelle</i>) ¹²⁸ . This is not so easily obtainable,

¹²¹ Article 48/4 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹²² Article 55/4 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹²³ Article 48/4 par.2 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹²⁴ Article 49/2 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹²⁵ Article 49/2 par.3 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹²⁶ ECRE, *The Impact of the EU Qualification Directive on International Protection*, October 2008, p.247.
http://www.ecre.org/files/ECRE_QD_study_full.pdf

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

			as the type C work permit, as it depends on the economic viability of the project ¹²⁹ .
Access to liberal professions	✓		
Access to housing	✓		No special provision.
Access to public education	✓		Access to primary and further education.
Social security	✓		They are entitled to social aid, which is granted, without prejudice to age or nationality, to any person in financial distress in order to allow a dignified level of living ¹³⁰ . They also receive family benefits.
Health	✓		
Freedom of movement within the national territory	✓		
Travel document		✓	The beneficiaries of subsidiary protection may not contact the Belgian authorities in order to acquire travel documents. It is considered that the beneficiaries of subsidiary protection can contact the consular authorities of their country ¹³¹
Voting rights in municipal election		✓	Belgium accords the right to vote in municipal elections to all foreigners that can prove legal and uninterrupted residence during 5 years ¹³²
Right to stand for elections		✓	
Family reunification	✓		The family of a beneficiary of subsidiary protection benefits of the right to family reunification under the same conditions as other migrants who are allowed to stay in Belgium ¹³³ (they have to prove stable means of subsistence and sufficient housing). The family members receive a residence permit valid for the same amount of time as the one of the main beneficiary ¹³⁴ .
Vocational training	✓		
Access to citizenship	✓		Through both the procedures of naturalisation or declaration of nationality ¹³⁵

¹²⁹ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 48.

¹³⁰ *Ibid.*, p. 48.

¹³¹ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 44.

¹³² *Ibid.*, at p.51.

¹³³ ECRE, *The Impact of the EU Qualification Directive on International Protection*, October 2008, p. 241. http://www.ecre.org/files/ECRE_QD_study_full.pdf

¹³⁴ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 46.

¹³⁵ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 51.

LEAVE OF STAY DUE TO MEDICAL REASONS ¹³⁶

Legal basis:

- Article 9ter of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
- Arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, 17 Mai 2007¹³⁷.
- Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006¹³⁸.

Beneficiaries: As it has been established by the jurisprudence of the European Court of Human Rights, persons who suffer from a serious illness fall within the scope of the protection of Article 3 ECHR. However, the Belgian legislator decided to specifically exclude this category of people from subsidiary protection, creating a special protective regime for them¹³⁹. This specific procedure was introduced because the asylum authorities were believed to have insufficient knowledge in medical matters to decide on this type of residence claims¹⁴⁰.

According to the law¹⁴¹ an alien may claim a leave of stay in Belgium due to medical reasons when:

1. He suffers from a disease in such a manner that this disease constitutes a serious risk for his life or physical integrity or a serious risk of facing inhuman or degrading treatment because there exists no adequate treatment in his country of origin.
2. He holds an identity document or a passport. This clause does not apply to asylum seekers that are still in the asylum process or who have introduced an administrative appeal against the rejection of their application as inadmissible or to foreigners who can prove the impossibility to obtain the requested document in Belgium.
3. He includes in his application a medical certificate as to his disease.
4. He includes in his application any other information or relevant items concerning his disease that are in his possession at the date of the introduction of his demand.
5. He states in his application an effective residence address in Belgium.

The application will be declared inadmissible if the following are included:

- elements that have been stated again during an asylum application and have been rejected, apart from those that were rejected because they were irrelevant to the criteria for the refugee or the subsidiary protection definition.
- elements that should have been invoked during an asylum examination procedure, to the extent that they existed and they were known to the asylum applicant until the end of the asylum procedure.
- elements that have been invoked again during a previous application of leave to stay in Belgium due to exceptional circumstances.

¹³⁶ The law only describes this class of beneficiaries and does not define this status with a specific term. See Article 9ter of the Aliens Act.

¹³⁷ Available at: <http://www.medimmigrant.be/2007%2005%2017%20KB%20over%20oa%209ter%20BS%2031%2005%202007.pdf>

¹³⁸ Available at the Moniteur Belge website at: http://www.ejustice.just.fgov.be/mopdf/2007/07/04_2.pdf

¹³⁹ Thérèse Legros and Isabelle Doyen, Introduction à la réforme du Droit des étrangers, ADDE, July 2007, p. 13.

¹⁴⁰ Dirk Vanheule, "The Qualification Directive: A Milestone in Belgian Asylum Law", in *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, Karin Zwaan, (ed.), Wolf Legal Publishers, 2007, p. 75.

¹⁴¹ The requirements are set out in Article 9ter par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006 read in conjunction with Article 7 of the May 2007 Royal Decree (*Arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, 17 Mai 2007*).

- elements that have been invoked again during a previous application of leave to stay in Belgium for medical reasons.

The alien is excluded if there are serious reasons to believe that he has committed an act stipulated in Article 55/4¹⁴² of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006¹⁴³. However, as stated in the *travaux préparatoires* such an alien cannot be removed from the territory if his state of health is such that his removal would constitute a violation of Article 3 ECHR¹⁴⁴.

The application should not be made at the municipal authority where the alien is residing but directly to the *Office des Étrangers* (Aliens Office)¹⁴⁵. The application will be declared inadmissible if any of the necessary documentation is missing or it is not addressed to the correct authorities¹⁴⁶. In the opposite case, the Alien's Office will instruct the municipal authorities to hand the applicant with a registration certificate valid for 3 months during the examination of his claim¹⁴⁷. This certificate can be prolonged 3 times, each time for a 3-month period¹⁴⁸. It can be withdrawn, if the alien does not present himself to the medical expert who is responsible for the examination of his application, without any valid reason¹⁴⁹.

Duration: A person granted with a leave to stay due to medical reasons, will receive a one-year residence permit, extendable and renewable if the conditions that lead to its grant continue to exist¹⁵⁰. Five years after the date of the introduction of the asylum claim, the alien who was granted with a leave to stay due to medical reasons receives a permanent residence card¹⁵¹.

Rights: Same rights as the beneficiaries of subsidiary protection. Regarding social security it must be noted that, if the application is declared admissible, the alien has a right to social benefits during the examination of his demand¹⁵². If the application is declared inadmissible or admissible but unfounded the applicant has the right to emergency medical care only¹⁵³. If the application is declared admissible and founded the alien has a right to full social benefits¹⁵⁴.

LEAVE OF STAY DUE TO EXCEPTIONAL CIRCUMSTANCES¹⁵⁵

¹⁴² This is the provision regulating the exclusion of beneficiaries of subsidiary protection.

¹⁴³ 9ter par.4 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹⁴⁴ This is mentioned in Thérèse Legros and Isabelle Doyen, Introduction à la réforme du Droit des étrangers, ADDE, July 2007, at p. 15. See also Doc.Chambre 51 2478/001, at p.34 (as referenced in the above-mentioned article) available at: <http://www.lachambre.be/FLWB/pdf/51/2478/51K2478001.pdf>

¹⁴⁵ Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006.

¹⁴⁶ Article 7 of the May 2007 Royal Decree.

¹⁴⁷ *Ibid.*

¹⁴⁸ Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006.

¹⁴⁹ Article 7 of the May 2007 Royal Decree.

¹⁵⁰ Article 13 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006 read in conjunction with Article 8 of the May 2007 Royal Decree.

¹⁵¹ Article 13 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹⁵² Circulaire relative à la régularisation de séjour pour raisons médicales et son impact sur le droit à l'aide sociale, February 2008, p. 3, available at: <http://www.medimmigrant.be/2008%2002%2020%20OB%20ocmw%20bij%20ontv%209ter%20FR.pdf>

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ The law only describes this class of beneficiaries and does not define this status with a specific term. See Article 9bis of the Aliens Act.

Legal basis:

- Article 9bis of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
- Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006¹⁵⁶.

Beneficiaries: Article 9bis organizes the regularization for "exceptional circumstances". Aliens may claim a leave of stay in Belgium due to exceptional circumstances when:

1. They are able to prove exceptional circumstances preventing them from submitting a demand to stay in Belgium longer than three months from the competent Belgian embassy (which is the normal procedure)¹⁵⁷. There is no definition in the law as to which circumstances could be considered as "exceptional". According to the administrative practice the following cases are indicative as to what constitutes an exceptional circumstance¹⁵⁸:

- impossibility of return (e.g. because the country of origin refuses to readmit the person or there is no flight or means of transportation available),
- an asylum procedure that has been very protracted,
- asylum applicants whose applications were rejected after taking several years for a decision, and who now have strong ties to Belgium,
- parents of a child with Belgian nationality,
- people who are stateless and cannot reside in any other country but Belgium.

According to the law the following do not constitute exceptional circumstances¹⁵⁹:

- elements that have been stated again during an asylum application and have been rejected, apart from those that were rejected because they were irrelevant to the criteria for the refugee or the subsidiary protection definition.
- elements that should have been invoked during an asylum examination procedure, to the extent that they existed and they were known to the asylum applicant until the end of the asylum procedure.
- elements that have been invoked again during a previous application of leave to stay in Belgium due to exceptional circumstances.
- elements that have been invoked again during a previous application of leave to stay in Belgium for medical reasons.

2. They possess an identity document¹⁶⁰. This clause does not apply to asylum seekers that are still in the asylum process or who have introduced an administrative appeal against the rejection of their application as inadmissible or to foreigners who can prove the impossibility to obtain the requested document in Belgium¹⁶¹

3. The exceptional circumstances are expressly and specifically mentioned, and if the applicant belongs to a special category of applicants (e.g. student) he has to produce specific documents¹⁶².

4. They have effective residence in Belgium¹⁶³.

¹⁵⁶ Available at the Moniteur Belge website at: http://www.ejustice.just.fgov.be/mopdf/2007/07/04_2.pdf

¹⁵⁷ Article 9bis par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹⁵⁸ See for details Thérèse Legros and Isabelle Doyen, Introduction à la réforme du Droit des étrangers, ADDE, July 2007, p. 13.

¹⁵⁹ Article 9bis par. 2 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² See for more details Article 1 of the *Circulaire du 21 juin 2007*.

¹⁶³ *Ibid.*

The applications should be made at the municipal authority where the alien is residing¹⁶⁴. They will then be transmitted to the Minister of Interior¹⁶⁵. The applications are examined by the *Office des Étrangers* (Aliens Office)¹⁶⁶ which can either declare the application inadmissible (if the applicant does not state any exceptional circumstances or has unjustifiably failed to provide any identification documents), it can declare the application unfounded (if the invoked arguments are rejected), or it can accept the demand and communicate its decision to the administrative authorities so that they perform the necessary steps to provide the applicant with a residence permit¹⁶⁷.

Duration: The law does not provide a specific duration. In the February 2008 *Circulaire* it has been stated that the beneficiary receives a one-year residence permit, extendable and renewable¹⁶⁸.

Rights: Same rights as people granted a leave for stay due to medical reasons. However, it must be noted that during the examination of the demand there is no right to social benefits and access is provided only to emergency medical care¹⁶⁹. If the application is declared admissible and founded can a beneficiary claim for social benefits¹⁷⁰.

¹⁶⁴ Article 9bis par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

¹⁶⁵ *Ibid.*

¹⁶⁶ The '*Office des Étrangers*' is a Directorate General of the Ministry of the Interior.

¹⁶⁷ *Circulaire relative à la régularisation de séjour pour raisons médicales et son impact sur le droit à l'aide sociale*, February 2008, at p. 3.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

DENMARK

Statutes of complementary/subsidiary protection

- Protection Status
- Humanitarian Status
- Exceptional Reasons /Hindrances to Deportation

Denmark is not bound by the Qualification Directive, as it is automatically excluded from all EC asylum measures. However, it remains a party to the 1990 Dublin Convention and in order to update the position while respecting Denmark's exclusion from asylum measures as EC law, the Community and Denmark have concluded a treaty, which extends the "Eurodac" and "Dublin Regulation" to Denmark¹⁷¹. The main legal instrument that regulates asylum in Denmark is the Alien's (Consolidation) Act¹⁷². Also of relevance is the Executive Order on Aliens' Access to Denmark (Aliens Order)¹⁷³, as well as the Consolidation of the Act on Integration of Aliens in Denmark (the Integration Act)¹⁷⁴. Apart from being recognized as a Convention refugee an asylum seeker can be granted a residence permit on protection grounds, on humanitarian considerations and because there are exceptional reasons which make it appropriate or hindrances to deportation.

¹⁷¹ Steve Peers, *EU Justice and Home Affairs Law*, 2nd edition, Oxford University Press, 2006, at p. 307.

¹⁷² Consolidation Act No. 808 of 8 July 2008, available at:

http://www.nyidanmark.dk/NR/rdonlyres/C2A9678D-73B3-41B0-A076-67C6660E482B/0/alens_consolidation_act_english.pdf

¹⁷³ Executive Order No. 635 of 24 June 2008, available at:

http://www.nyidanmark.dk/NR/rdonlyres/80A97DB0-B657-4B6D-8734-D17BD6AE74C0/0/aliens_order.pdf

¹⁷⁴ Consolidation Act No. 839 of 5 September 2005, available at:

http://www.nyidanmark.dk/NR/rdonlyres/105C4108-2914-4BCB-B5CE-5023B5EF62F7/0/act_on_integration_2005.pdf

PROTECTION STATUS

Legal basis: Aliens (Consolidation) Act 2008, Section 7(2)

Beneficiaries: Aliens who do not qualify for refugee status under the Geneva Convention but risk the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to their country of origin.

It becomes apparent that this definition is narrower than the definition of subsidiary protection beneficiaries in the Qualification Directive that includes asylum seekers who face a real risk of serious harm in the sense of a “serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict”¹⁷⁵.

Duration: A residence permit under this section of the Aliens Act is issued with a possibility of permanent residence in Denmark, unless the alien applies for a residence permit for the purpose of a temporary stay only¹⁷⁶. The residence permit may be issued for a limited period of time¹⁷⁷. A time-limited residence permit under this section of the Aliens Act is issued for seven years¹⁷⁸. The residence permit is issued for two years if it is expected, upon a general assessment of the conditions in the applicant's country of origin, that the conditions for asylum will not be satisfied during this entire period¹⁷⁹. In such cases, the residence permit may then be extended by two years or five years depending on an assessment of the development in the applicant's country of origin¹⁸⁰. If the residence permit is extended by two years, the residence permit may then be extended by further three years¹⁸¹. A permanent residence permit is issued upon application to an alien who has lived lawfully in Denmark for more than the last 7 years and who, throughout this period, has been issued with a residence permit on the same basis, unless there is a basis for revoking the residence permit under section 19 Aliens (Consolidation) Act¹⁸².

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Exempt from the work permit requirement ¹⁸³ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		The local council is responsible for housing of beneficiaries allocated to the municipality in question ¹⁸⁴ .
Access to public education	✓		Like Convention Refugees. An introduction program

¹⁷⁵ Article 15 (c), Qualification Directive.

¹⁷⁶ Aliens Order, Section 22(1).

¹⁷⁷ Aliens Consolidation Act, Section 11(1).

¹⁷⁸ Aliens Order, Section 23(1).

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² Aliens Order, Section 11(3). See also Section 19 Aliens Consolidation Act for a detailed list of revocation reasons.

¹⁸³ Section 14 (1)(iv), Aliens Consolidation Act.

			planned by the responsible local council must be offered to aliens who are 18 years of age or more at the date when the local council takes over responsibility ¹⁸⁵ .
Social security	✓		Like Convention refugees. For the first 3 years while they are following an introduction programme and if they are unemployed they receive an introduction allowance ¹⁸⁶ , which is only a percentage of the full amount of social benefits. After the completion of the introduction course they continue to receive the same low amount until they have resided in Denmark for seven years, and they can prove that they have been employed full-time for 2.5 years ¹⁸⁷ .
Health	✓		Like Convention refugees. Access to the National Health system as for all nationals. They can also be granted assistance for expenses that cannot be met under other legislation ¹⁸⁸ .
Freedom of movement within the national territory	✓		Like with Convention refugees, the freedom of movement may 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 social security benefits ¹⁸⁹ .
Travel document	✓		Beneficiaries receive a Danish Aliens Passport upon application ¹⁹⁰ . However, aliens are not allowed to visit their home country without prior approval.
Voting rights in municipal election		✓	Aliens can vote only if they have held permanent residence in Denmark in the three years preceding the election.
Right to stand for elections		✓	
Family reunification	✓		Like Convention refugees. There are a number of conditions that have to be fulfilled for a reunification with a spouse or unmarried children under 15, including an age limit, 24 years of age, for reunification with a spouse and proof of financial security ¹⁹¹ .
Vocational training	✓		Like Convention refugees. Acquired as soon as they

¹⁸⁴ Integration Act, Part 2, Section 4(1), It should be noted with reference to the Integration Act, that for the purpose of this particular Act many categories of aliens who are not Convention refugees fall under the definition of "refugee". See Part 12 Section 54, Integration Act.

¹⁸⁵ Integration Act, Part 4, Section 16(1), The introduction program includes Danish courses as well as other individual elements according to each person's skills. Following an introduction program is a prerequisite to qualify for an introduction allowance.

¹⁸⁶ Integration Act, Part 5, Section 25.

¹⁸⁷ This is stipulated by the Act on an Active Social Policy. See also a report by Amnesty International on the subject (in Danish), *Starthjælp – Når staten diskriminerer, November 2007*, available at: <http://www.amnesty.dk/log/N%E5rStatenDiskriminerer.pdf>

The 2 ½ half years only start counting after the 7 years of residence. This means that there is no automatic move into full social benefits after a certain period of residence and a refugee in Denmark will therefore be on the lower introductory allowance for a unlimited time period unless he or she enters into employment for the requires time-span.

¹⁸⁸ Integration Act, Part 6, Section 36.

¹⁸⁹ See Integration Act, Part 2, Section 5(2), Integration Act, Part 4, Section 18(1),(2).

¹⁹⁰ Aliens Order, Section 6(2)(i).

¹⁹¹ See Section 9, Aliens Consolidation Act. However, these conditions can be waived in certain individual cases, if their application would result to a violation of other international obligations of Denmark.

		are given the status. See above for the details of the introduction programme.
Access to citizenship	✓	Like Convention refugees. In 2005 an "Agreement on Nationality" was passed that established guidelines for the preparation of naturalisation bills and describes the several requirements in order to be granted Danish citizenship.

HUMANITARIAN STATUS

Legal basis: Aliens (Consolidation) Act 2008, Section 9(b)

Beneficiaries: A person who does not qualify for Convention refugee status under section 7(1) of the Act or protected status under section 7(2) of the Act but is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant a residence permit. Such an application may only be submitted by aliens staying in Denmark who are registered as asylum-seekers. When examining applications for a residence permit for humanitarian considerations, the Ministry of Refugee, Immigration and Integration Affairs may, without the applicant's consent, procure the documents included in the case of a residence permit for the applicant for asylum (for convention or other protection grounds) from the Danish Immigration Service or the Refugee Appeals Board and procure health information on the applicant from the accommodation operator and the Danish Immigration Service.

Duration: A residence permit under section 9b of the Aliens Act is issued with a possibility of permanent residence or a temporary stay in Denmark¹⁹². In deciding whether to issue the residence permit with a possibility of permanent residence or a temporary stay, particular regard must be had to the purpose of the residence or stay¹⁹³. The residence permit may be issued for a limited period of time¹⁹⁴. A time-limited residence permit under section 9b of the Aliens Act is issued for not more than one year at a time, after two years for not more than two years, and after four years for not more than three years at a time¹⁹⁵. A permanent residence permit is issued upon application to an alien who has lived lawfully in Denmark for more than the last 7 years and who, throughout this period, has been issued with a residence permit on the same basis, unless there is a basis for revoking the residence permit under section 19 Aliens (Consolidation) Act¹⁹⁶.

Rights: Same rights as persons who are granted residence permits based on protection with one exception:

- **Travel Document:**

An alien's passport is issued upon application to this category of beneficiaries if they are unable to procure a passport or other travel document, provided that they have been issued with a residence permit¹⁹⁷.

¹⁹² Aliens Order, Section 22(2).

¹⁹³ *Ibid.*

¹⁹⁴ Aliens Consolidation Act, Section 11(1).

¹⁹⁵ Aliens Order, Section 23(5).

¹⁹⁶ Aliens Order, Section 11(3). See also Section 19 Aliens Consolidation Act for a detailed list of revocation reasons.

¹⁹⁷ Aliens Order, Section 6(3)iii.

EXCEPTIONAL REASONS/HINDRANCES TO DEPORTATION

Legal basis: Aliens (Consolidation) Act 2002, Sections 9(c)(1), 9(c)(2), 9(c)(3)

Beneficiaries:

1. Exceptional Reasons¹⁹⁸: A residence permit may be issued to an alien if exceptional reasons make it appropriate, including regard for family unity. Unless particular reasons make it inappropriate, it must be made a condition for a residence permit which is granted, under this Section, as a result of family ties with a person living in Denmark that the conditions referred to in section 9(2) to (17) are satisfied (conditions to family reunification that apply to all aliens including proof of financial security).

2. Hindrances to Deportation¹⁹⁹: A residence permit may be issued to a person who does not qualify for Convention refugee status or protection status under section 7(2) of the Act, but whom it has not been possible to return to his/her country of origin for at least 18 months, and provided that the alien has assisted (co-operated with the Danish authorities) in the return efforts for 18 months consecutively, and return is considered futile according to information available at the time.

3. Special Provisions for Unaccompanied Minors²⁰⁰: A residence permit may be issued to:
(i) an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 (which includes convention status and protection status) prior to his 18th birthday if, from information available on the alien's personal circumstances, there are particular reasons to assume that the alien should not undergo asylum proceedings;
(ii) an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 prior to his 18th birthday, if there is reason to assume that in cases other than those mentioned in section 7(1) and (2) the alien will in fact be placed in an emergency situation upon a return to his country of origin.

Duration: A residence permit under section 9c of the Aliens Act is issued with a possibility of permanent residence or a temporary stay in Denmark²⁰¹. In deciding whether to issue the residence permit with a possibility of permanent residence or a temporary stay, particular regard must be had to the purpose of the residence or stay²⁰².

The residence permit may be issued for a limited period of time²⁰³. In particular, a time-limited residence permit under section 9c(2) of the Aliens Act for aliens with reference to the fact that return, has not been possible for at least 18 months is issued for not more than one year the first time and may be extended for two-year periods at a time²⁰⁴. Furthermore, a time-limited residence permit under section 9c(3) of the Aliens Act for under-age unaccompanied aliens who have entered Denmark and been registered as asylum-seekers is issued for not more than two years at a time, and after four years for not more than three years at a time²⁰⁵. As in the previous cases, a permanent residence permit is issued upon application to an alien who has lived lawfully in Denmark for more than the last 7 years and who, throughout this period, has been issued with a residence permit on the same basis, unless there is a basis for revoking the residence permit under section 19 Aliens (Consolidation) Act²⁰⁶.

¹⁹⁸ Aliens Consolidation Act, Section 9(c)1.

¹⁹⁹ Aliens Consolidation Act, Section 9(c)2.

²⁰⁰ Aliens Consolidation Act, Section 9(c)3.

²⁰¹ Aliens Order, Section 22(2).

²⁰² *Ibid.*

²⁰³ Aliens Consolidation Act, Section 11(1).

²⁰⁴ Aliens Order, Section 23(8).

²⁰⁵ Aliens Order, Section 23(6).

²⁰⁶ Aliens Order, Section 11(3). See also Section 19 Aliens Consolidation Act for a detailed list of revocation reasons.

Rights: Same rights as persons who are granted residence permits based on protection, including the right to work²⁰⁷, with one exception:

- **Travel Document:**

An alien's passport is issued upon application to this category of beneficiaries²⁰⁸ if they are unable to procure a passport or other travel document, provided that they have been issued with a residence permit²⁰⁹.

²⁰⁷ See Aliens Consolidation Act, Section 14(1)(vi) which states that: The following aliens are exempt from the requirement of a work permit: (vi) aliens issued with a residence permit under section 9c when the permit has been issued to an alien who has submitted an application for a residence permit under section 7 (asylum). Therefore, all failed asylum seekers who are granted a residence permit under this Section are exempt. See also Aliens Consolidation Act, Section 14(1)(v) which states the exemption of: aliens issued with a residence permit under section 9c(1) when the permit has been issued in immediate continuation of a residence permit under section 9b (humanitarian status).

²⁰⁸ This category being: "an alien who has submitted an application for a residence permit under section 7 of the Aliens Act", therefore a failed asylum seeker.

²⁰⁹ Aliens Order, Section 6(3) iv.

FINLAND

Status of complementary/subsidiary protection

- Residence permits based on the need for protection
- Residence permits based on other grounds
- Immigration on other Humanitarian Grounds

The Qualification Directive has not yet been transposed in Finland. The current law that regulates asylum is the 301/2004 Alien's Act that has been in force since the 1st of May 2004²¹⁰. Apart from refugee protection an alien can be granted with a residence permit "based on the need for protection", a regime, which is comparable to the subsidiary protection regime, established by the Qualification Directive. Furthermore, a residence permit can be granted on other grounds, not related to the need or requirements for international protection, that have to do with the applicant's health situation or impossibility of return to his/her country of origin. Finally, the government can decide on a special procedure to admit aliens on other humanitarian grounds.

²¹⁰ Aliens Act (301/2004, amendments up to 973/2007 included), A non-binding translation of the law in English is available at the website of the Finnish Immigration Service at: <http://www.migri.fi/download.asp?id=Aliens+Act;1220;{7DE0B313-A3EA-4EE1-B90A-1E6D8E42E0A1}A>

A binding translation in Swedish is available at:

<http://www.finlex.fi/sv/laki/ajantasa/2004/20040301>

RESIDENCE PERMITS BASED ON THE NEED FOR PROTECTION

Legal basis: Aliens Act (301/2004, amendments up to 973/2007), Section 88

Beneficiaries: Aliens are issued with a residence permit on the basis of a need for protection if the requirements for granting asylum are not met but the aliens are in their home country or country of permanent residence under the threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, or if they cannot return there because of an armed conflict or environmental disaster²¹¹.

Aliens are excluded from this protection if they have committed, or if there are reasonable grounds to suspect that they have committed²¹²:

- 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;
- 2) a serious non-political crime outside Finland before entering Finland; or
- 3) an act which violates the aims and principles of the United Nations.

Duration: A continuous residence permit is issued to aliens who are allowed to remain in Finland on the basis of a need for protection²¹³. A continuous residence permit (A-permit) can be extended for a maximum of four years at a time. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act²¹⁴. The period of four years is calculated from the date of entry into the country²¹⁵.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Aliens who have been issued with a permanent residence permit or a continuous residence permit have the right to gainful employment ²¹⁶ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		Like Convention refugees: municipalities are obliged to provide accommodation.

²¹¹ Section 88, par.1, Aliens Act 301/2004.

²¹² Section 88, par.2, Aliens Act 301/2004.

²¹³ Section 113, par.1, Aliens Act 301/2004.

²¹⁴ Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:

- 1) the alien is found guilty of an offence punishable by imprisonment; or
- 2) is suspected of an offence punishable by imprisonment; or
- 3) is found guilty of two or more offences; or
- 4) is suspected of two or more offences.

²¹⁵ Section 56, par.4, Aliens Act 301/2004

²¹⁶ Section 79, par.1

Access to public education	✓		Children and adults have access to education. Public authorities must secure equal opportunities for every resident in Finland to get education also after compulsory schooling.
Social security	✓		Like Convention refugees.
Health	✓		All regular residents in Finland are entitled to sickness insurance compensation.
Freedom of movement within the national territory	✓		Persons that have been granted with a residence permit can move freely in Finland.
Travel document	✓		Aliens who have been issued with a residence permit on the basis of a need for protection are issued with an alien's passport ²¹⁷ .
Voting rights in municipal election	✓		Like Convention refugees.
Family reunification	✓		A residence permit is issued on the basis of family ties to a family member of an alien who has been issued with a residence permit on the basis of a need for protection if: 1) the sponsor lives in Finland or has been issued with a residence permit for the purpose of moving to Finland; and 2) the applicant is not considered a danger to public order, security or health ²¹⁸ .
Vocational training	✓		Like Convention refugees
Access to citizenship	✓		Like Convention refugees

RESIDENCE PERMITS BASED ON OTHER GROUNDS

Legal basis: Aliens Act (301/2004, amendments up to 973/2007), Sections 51, 52, 89

Beneficiaries: A residence permit maybe granted for other grounds that are not related to the need or requirements for international protection. The law states three different categories of potential beneficiaries:

1. Residence permits in cases where aliens cannot be removed from the country²¹⁹. Aliens residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country. Issuing such a residence permit does not require that the alien have secure means of support.

2. Residence permits on compassionate grounds²²⁰. Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

²¹⁷ Section 134, par.2, Aliens Act 301/2004.

²¹⁸ Section 114, par.1, Aliens Act 301/2004.

²¹⁹ Section 51, Aliens Act 301/2004.

²²⁰ Section 52, Aliens Act 301/2004.

3. Residence permits when exception clauses are applied²²¹. Aliens residing in Finland who are not granted asylum or a residence permit on the basis of a need for protection because they have committed, or there are reasonable grounds to suspect that they have committed, an act referred to in section 87(2) are issued with a temporary residence permit for a maximum of one year at a time if they cannot be removed from the country because they are under the threat of death penalty, torture, persecution or other treatment violating human dignity.

Duration:_

Residence permits in cases where aliens cannot be removed from the country: In this case, beneficiaries receive a temporary residence permit. A temporary residence permit (B-permit) can be extended for a maximum of a year at a time. An alien who has been issued with a temporary residence permit because he or she cannot be removed from the country are issued with a continuous residence permit after a continuous residence of two years in the country if the circumstances on the basis of which they were issued with the previous fixed-term permit are still valid²²².

Residence permits on compassionate grounds: In this case, beneficiaries receive a continuous residence permit. A continuous residence permit (A-permit) can be extended for a maximum of four years at a time. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act²²³. In this case, the period of four years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country²²⁴.

Residence permits when exception clauses are applied: In this case, beneficiaries receive a temporary residence permit for a maximum of one year at a time. Aliens who have been issued with a residence permit for this reason are issued with a continuous residence permit after three years of continuous residence in the country if the grounds for issuing a residence permit still exist²²⁵. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act²²⁶. In this case, the period of four years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country²²⁷.

²²¹ Section 89, Aliens Act 301/2004.

²²² Section 54, par.5, Aliens Act 301/2004.

²²³ Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:

- 1) the alien is found guilty of an offence punishable by imprisonment; or
- 2) is suspected of an offence punishable by imprisonment; or
- 3) is found guilty of two or more offences; or
- 4) is suspected of two or more offences.

²²⁴ Section 93, par.3, Aliens Act 301/2004.

²²⁵ Section 113, par.2, Aliens Act 301/2004.

²²⁶ Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:

- 1)the alien is found guilty of an offence punishable by imprisonment; or
- 2) is suspected of an offence punishable by imprisonment; or
- 3) is found guilty of two or more offences; or
- 4) is suspected of two or more offences.

²²⁷ Section 93, par.3, Aliens Act 301/2004.

Rights:

Residence permits in cases where aliens cannot be removed from the country:

Same rights as persons who are granted residence permits based on the need for protection with three exceptions:

- **Family reunification**

The law explicitly states that the family members of this category of beneficiaries who are residing abroad are not issued with a residence permit on the basis of family ties²²⁸. However if the circumstances persist and the main beneficiaries are issued continuous residence permit as described above, then they have the right to family reunification²²⁹.

- **Right to employment**

This category of beneficiaries does not enjoy the right to gainful employment, as they are not listed in any of the Sections 79, 80 of the Alien's Act. However if the circumstances persist and they are issued continuous residence permit as described above, then they have the right to employment²³⁰.

- **Travel Document**

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them²³¹.

Residence permits on compassionate grounds:

Same rights as persons who are granted residence permits based on the need for protection, including family reunification²³² with one exception:

- **Travel Document**

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them²³³.

Residence permits when exception clauses are applied:

Same rights as persons who are granted residence permits based on the need for protection with three exceptions:

- **Family reunification**

Family members are issued with a continuous residence permit only after beneficiaries of this category receive a continuous residence permit²³⁴, therefore after 3 years of continuous residence in the country under a temporary residence permit.

²²⁸ Section 51, par.3, Aliens Act 301/2004.

²²⁹ Section 47, par.3, Aliens Act 301/2004.

²³⁰ Section 79, par.1, Aliens Act 301/2004.

²³¹ Section 134, par.1, Aliens Act 301/2004.

²³² Section 52, par.3, Aliens Act 301/2004.

²³³ Section 134, par.1, Aliens Act 301/2004.

²³⁴ Section 113, par.3, Aliens Act 301/2004.

- **Right to employment**

This category of beneficiaries does not enjoy the right to gainful employment, as they are not listed in any of the Sections 79, 80 of the Alien's Act. However if the circumstances persist and they are issued continuous residence permit as described above, then they have the right to employment²³⁵.

- **Travel Document**

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them²³⁶.

IMMIGRATION ON OTHER HUMANITARIAN GROUNDS

Legal basis: Aliens Act (301/2004, amendments up to 973/2007), Section 88

Beneficiaries: The Government may decide in a plenary session on admitting aliens into Finland on special humanitarian grounds or to fulfil international obligations²³⁷. The Ministry of the Interior and the Ministry for Foreign Affairs prepare a joint proposal for Government decision²³⁸.

Duration: Persons who are admitted in Finland on the basis of a government decision under the aforementioned procedure receive a temporary residence permit²³⁹. A temporary residence permit (B-permit) can be extended for a maximum of a year at a time. After three years of continuous residence in the country and if the grounds for issuing a residence permit still exist they receive a continuous residence permit²⁴⁰. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act²⁴¹. In this case, the period of four years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country²⁴².

Rights: Same rights as persons who are granted residence permits based on the need for protection with two exceptions:

- **Family reunification**

²³⁵ Section 79, par.1, Aliens Act 301/2004.

²³⁶ Section 134, par.1, Aliens Act 301/2004.

²³⁷ Section 93, par.1, Aliens Act 301/2004.

²³⁸ Section 93, par.2, Aliens Act 301/2004.

²³⁹ Section 112, par.1, Aliens Act 301/2004.

²⁴⁰ Section 113, par.2, Aliens Act 301/2004.

²⁴¹ Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:

- 1) the alien is found guilty of an offence punishable by imprisonment; or
- 2) is suspected of an offence punishable by imprisonment; or
- 3) is found guilty of two or more offences; or
- 4) is suspected of two or more offences.

²⁴² Section 93, par.3, Aliens Act 301/2004

Family members are issued with a continuous residence permit only after beneficiaries of this category receive a continuous residence permit²⁴³, therefore after 3 years of continuous residence in the country under a temporary residence permit.

- **Travel Document**

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them²⁴⁴.

²⁴³ Section 113, par.3, Aliens Act 301/2004.

²⁴⁴ Section 134, par.1, Aliens Act 301/2004.

FRANCE

Statutes of complementary/subsidiary protection

- Subsidiary protection
- Constitutional Asylum

Until January 2004 the Minister of Interior granted territorial asylum, a form of complementary protection, to rejected asylum seekers who established that their life or freedom would be threatened, or they would be at risk of treatment contrary to Article 3 of the European Convention on Human Rights (ECHR), if returned to their country of origin. In December 2003, new legislation was adopted that modified the Asylum legislation of 1952 and introduced the subsidiary protection regime in France²⁴⁵. Therefore, France transposed the Qualification Directive²⁴⁶ in an anticipatory manner, even before it was formally adopted, and this transposition incorporated selectively elements of the European Commission's proposal²⁴⁷. Apart from the subsidiary protection regime, France maintains another form of asylum-Constitutional Asylum that is in many respects almost identical to Convention Asylum. All other applications for humanitarian or tolerated residence raise immigration and not an asylum issue in French Law. In practice, the *préfets* (local representatives of the State) have the discretionary power to deliver a residence permit. Since late 2006, there is an exceptional leave to remain (*admission exceptionnelle au séjour*) for humanitarian considerations or exceptional reasons²⁴⁸. This power falls within the remit of the *préfet* "with the help" of a national committee²⁴⁹.

²⁴⁵ Law No 2003-1176 of 10th December 2003, which modified Law No 52-893 of 25th of July 1952 concerning the right to asylum. The aforementioned legislation, as it has been amended by recent decrees, is incorporated into the Code Regulating the Entry and Residence of Aliens and the Right to Asylum (from now mentioned as CESEDA). The latest consolidated version of the Code (dating 5th of January 2009) is accessible at: http://www.legifrance.gouv.fr/affichCode.do?sessionId=D91AAC7BC647F1BF35AFD0583F136C93.tpdjo02v_3?cidTexte=LEGITEXT000006070158&dateTexte=20090205

²⁴⁶ 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, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

Section 3(6) of the Immigration Act, 1999, available at: http://www.inis.gov.ie/en/INIS/Immigration_Act_1999_amended.pdf/Files/Immigration_Act_1999_amended.pdf

²⁴⁷ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 38. A synthesis of the Report is available at: <http://www.france-terre-asile.org/positions/710-etude-protection-subsidaire-en-europe->

²⁴⁸ Article L313-14 of the CESEDA.

²⁴⁹ This provision was created in 2006 to "substitute" the debated repeal of a provision granting a residence permit to foreigners who lived in France for 10 years in an irregular manner. Therefore, the exceptional leave to remain was created primarily to address private and family situations of foreigners. Since 2007, its scope was broadened to foreigners that have an economic activity. As practitioners commented, the effectiveness of the procedure is questionable. The exact set of rights granted to beneficiaries of this class is not set out in the law.

SUBSIDIARY PROTECTION **(Protection Subsidiaire)**

Legal basis: Law No. 2003-1176 of 10th December 2003, amending Law No. 52-893, of 25th July 1952, concerning the right to asylum. Both legislative instruments, along with further recent decrees amending them, are incorporated into the Code Regulating the Entry and Residence of Aliens and the Right to Asylum (*Code de l'Entrée et du Séjour des Etrangères et du Droit d'Asile*-CESEDA).

Beneficiaries: Individuals who do not satisfy the conditions to be recognised as a refugee²⁵⁰ and who have established that if returned to their country of origin they would be exposed to one of the following serious threats²⁵¹:

- d) the death penalty.
- e) torture or inhuman or degrading treatment.
- f) regarding civilians: a serious and individual threat to their life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

The French Office for the Protection of Refugees and Stateless Persons (*Office Français de Protection des Réfugiés et Apatrides* - OFPRA), which was already in charge of granting refugee status, determines an applicant's eligibility for subsidiary protection as well²⁵². There is a single procedure for the consideration of refugee and subsidiary protection status. Refugee status is assessed prior to the consideration of subsidiary protection. Depending on the circumstances and the nature of the threat that lead to the grant of the subsidiary protection status one can distinguish between two categories of recipients: those who are incapable of obtaining documents pertaining to their civil status by their national authorities and those who can contact the consular authorities of their country of origin for that purpose²⁵³. This distinction has no consequence whatsoever in what concerns residence rights and access to social rights²⁵⁴.

Duration: A recipient of subsidiary protection will receive a one-year residence permit, renewable if conditions in the country of return persist²⁵⁵. In practice, subsidiary protection status is very seldom withdrawn. Subsidiary protection beneficiaries can apply for a permanent residence card after residing for five years in the country²⁵⁶.

Appeal: On the one hand, if the OFPRA rejects the request for protection, the applicant can make an appeal to a special administrative court (*Cour National du Droit D'Asile*)²⁵⁷. On the other hand, if the OFPRA decides to grant a subsidiary protection status (instead of recognizing the status of refugee), a plaintiff can also lodge an appeal in order to contest this decision and to get the refugee status²⁵⁸.

²⁵⁰ For either conventional or constitutional asylum.

²⁵¹ Article L712-1 of the CESEDA.

²⁵² Article L713-1 of the CESEDA.

²⁵³ France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 38.

²⁵⁴ *Ibid.*, at p.39.

²⁵⁵ Article L712-3 of the CESEDA.

²⁵⁶ France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 45.

²⁵⁷ Article L731-2 of the CESEDA.

²⁵⁸ *Ibid.*

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Subsidiary protection beneficiaries have access to employment as soon as the protection is recognised. If there are certain conditions to be fulfilled/certification needed in order to exercise a profession beneficiaries of subsidiary protection have to either validate their diplomas or undergo an examination to verify their level of knowledge ²⁵⁹
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		As other asylum seekers or refugees, they are entitled to assistance provided through CPHs (<i>Centres Provisoires d' Hébergement</i> ²⁶⁰). In order to qualify for the DALO ²⁶¹ (<i>Droit au Logement Opposable</i>) they need to be residing in the country for 2 years ²⁶² .
Access to public education	✓		Refugees and subsidiary protection beneficiaries have access to education. They also benefit from stipends for university education if they fulfil certain criteria (legal residence, limited economic resources) ²⁶³ .
Social security	✓		Since March 2008, the Minister of Employment has decided to grant subsidiary protection beneficiaries with the RMI (Revenu Minimum d'Insertion) ²⁶⁴ . Beneficiaries are also entitled to child benefits, as long as they can prove the legality of their stay ²⁶⁵ .
Health	✓		Benefit from C.M.U. (Couverture de Maladie Universelle) ²⁶⁶ as long as they can prove legal residence ²⁶⁷ . People who cannot prove legal

²⁵⁹ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 48.

²⁶⁰ Article L345-1 of the Social Action and Family Code available at : <http://www.legifrance.gouv.fr/rechCodeArticle.do?reprise=true&page=1>

²⁶¹ See for more details : Loi n°2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (1) establishing a judicial right of access to accommodation available at : <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000271094&dateTexte=>

²⁶² *Ibid.*, at p. 50.

²⁶³ See for more details also concerning the validation of diplomas: France Terre d'Asile, *Emploi et formation LA REPRISE D'ÉTUDES*, December 2007, available at: http://www.france-terre-asile.org/images/stories/pdf/droits-refugies/emploi-formation/la_reprise_d_etudes.pdf

²⁶⁴ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 49.

²⁶⁵ The only document that is needed is their one-year residence card. See for more details Article L.512-2, D.512-1 of the Social Security Code, available at:

<http://www.legifrance.gouv.fr/affichCode.do?dateTexte=20090206&cidTexte=LEGITEXT000006073189&fastReqId=1472466581&fastPos=1&oldAction=rechCodeArticle>

²⁶⁶ The CMU guarantees for access to the general medical system for people who are legally residing in France who are not affiliated with a health insurance provider.

²⁶⁷ Articles L.380-1 and R.380-1 of the Social Security Code.

			residence benefit from state medical aid (AME) ²⁶⁸ .
Freedom of movement within the national territory	✓		Every foreigner legally residing in France has the right to move freely within the national territory ²⁶⁹ .
Travel document		✓	Subsidiary protection beneficiaries who are unable to contact the authorities of their country of origin are provided with an identity and travel certificate (<i>Titre d'Identité et de Voyage</i> -TIV) that is valid for one year and can be renewed twice ²⁷⁰ .
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family unification	✓		The same rules apply as for refugees (therefore they do not have to fulfil the following criteria: legal residence for at least 2 years, sufficient and stable income and adequate housing) ²⁷¹ . The only difference is that the family members receive also a one-year residence permit card that is renewable ²⁷² .
Access to citizenship	✓		They have to be residents in France for 5 years in order to be eligible to apply for naturalisation ²⁷³ .

²⁶⁸ Article L252-1 of the Social Action and Family Code. For more details see also: France Terre d'Asile, Les prestations sociales, LA COUVERTURE MALADIE, December 2007, available at: http://www.france-terre-asile.org/images/stories/pdf/droits-refugies/prestations-sociales/la_couverture_maladie.pdf

²⁶⁹ Article R.321-1 of the CESEDA. There are some exceptions concerning territories other than Metropolitan France. For more information see: France Terre d'Asile, Les droits civils: LA LIBERTÉ DE CIRCULATION ET D'INSTALLATION, December 2007, available at: http://www.france-terre-asile.org/images/stories/pdf/droits-refugies/droits-civils/la_liberte_de_circulation_et_d_installation.pdf

²⁷⁰ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 45.

²⁷¹ *Ibid.*, at p. 47.

²⁷² L313-13 of the CESEDA.

²⁷³ Article 21-17 and 21-19 of the Civil Code, available at: http://www.legifrance.gouv.fr/affichCode.do?sessionId=53D6E46AC2D18F6C1A9A2BB084A8D434.tpdjo15v_2?idSectionTA=LEGISCTA000006165459&cidTexte=LEGITEXT000006070721&dateTexte=20090205

CONSTITUTIONAL ASYLUM *(Asile Constitutionnel)*

Legal basis: Article 53-1 of the 1946 Constitution, incorporated into 1958 Constitution²⁷⁴ and Article L-711-1 of the CESEDA.

Beneficiaries: Constitutional asylum is granted to persons for their actions in their “fight for freedom” who do not qualify as Convention refugees, under the same procedure as Convention refugee status is determined. In practice, this provision has had a very limited application.

Duration: Beneficiaries are granted with a ten-year residence permit²⁷⁵.

Rights: There is no difference between Convention refugee status and Constitutional asylum; in fact, the decision to grant refugee status does not even specify under which provision it was granted. Therefore, persons granted Constitutional asylum receive the same rights as Convention refugees.

²⁷⁴ Available at: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/constitution/constit58.pdf

²⁷⁵ Article L314-11 of the CESEDA.

GERMANY

Statutes of complementary/subsidiary protection

- Subsidiary Protection
- Temporary Suspension of Deportation

Germany transposed the Qualification Directive with a legislative act that came into force on the 1st of January 2005. The law was amended further and therefore, the current legislative act that regulates asylum qualification in Germany is the Residence Act (*Aufenthaltsgesetz*) that has been in force since the 28th of August 2007²⁷⁶. The Residence Act includes the possibility to be granted subsidiary protection status. Apart from that, the only other possibility for an asylum seeker to remain in Germany is the temporary suspension of his deportation, also known as *Duldung*, which means tolerance. *Duldung* may or may not lead to the grant of a residence permit and therefore, it constitutes merely an individual decision relating to the enforceability of a deportation order. Finally, there is a possibility²⁷⁷ to grant residence permits to (economically) well integrated migrants (e.g. rejected asylum seekers)²⁷⁸.

²⁷⁶ The law is available in German in the website of the Federal Office for Migration and Refugees, at:

http://bundesrecht.juris.de/aufenthg_2004/index.html

²⁷⁷ It must be noted that this possibility is not related with the asylum procedure.

²⁷⁸ Section 23(1), 2007 Residence Act. People falling under this category, qualified for a residence permit under a so called "long stayers regulation" (esp. Section 104a Residence Act). Furthermore, the resettlement of the 2500 Iraqis from Syria and Jordan which Germany has proposed to take over under the respective EU-wide voluntary resettlement scheme will be dealt with under 23 (2) Residence Act.

SUBSIDIARY PROTECTION

Legal basis: Residence Act of 2007, Section 60 (2), (3), (5), (7)

Beneficiaries: Residence permits are issued to aliens in the following situations:

- Aliens cannot be sent back to a state where they would incur a real risk of facing torture, or inhuman or degrading treatment or punishment²⁷⁹.
- Aliens cannot be send back to a state where they would incur the risk of facing the imposition or the execution of the death penalty²⁸⁰.
- Aliens cannot be send back to a state, if it follows from the provisions of the European Convention of Human Rights that such a deportation is forbidden according to the Convention²⁸¹.
- Aliens cannot be sent back to a state where there is a concrete and considerable danger for their life, person or liberty. Furthermore, civilians may not be returned to a state where they would face serious and individual threats to their life or person by reason of international or internal armed conflict²⁸². Moreover the health situation may lead to the granting of subsidiary protection under 60 (7) 1 Residence Act if a there is a risk of a "severe aggravation of the health situation of the individual" if s/he was deported.

Duration: The law stipulates that beneficiaries of subsidiary protection should be granted with a residence permit with duration of at least one year²⁸³. However, the formulation of this provision leaves a wide margin of discretion to the state as it allows for the residence permit to be withheld from beneficiaries if they have performed a gross or repeated breach of their duty to co-operate or if it is reasonable and possible for them to depart to another state²⁸⁴. In practice, beneficiaries receive a residence permit, which is valid for one or two years²⁸⁵. Beneficiaries of subsidiary protection can claim for a permanent residence permit, after residing in Germany for 7 years and if they have the financial means to sustain themselves economically and they have a basic command of the language²⁸⁶

Rights:

Rights	Y	N	Details
Access to wage-earning employment		✓	German law does not contain a right to a work permit in principle ²⁸⁷ . Limited access to the labor market is granted, after beneficiaries have faced a waiting period of one year, which depends on a review of the availability of privileged aliens for a particular job ²⁸⁸ . German provisions only allow ending the review of availability of privileged

²⁷⁹ Section 60(2), 2007 Residence Act.

²⁸⁰ Section 60(3), 2007 Residence Act.

²⁸¹ Section 60(5), 2007 Residence Act.

²⁸² Section 60(7), 2007 Residence Act.

²⁸³ Section 25(3), in conjunction with Section 26(2), 2007 Residence Act.

²⁸⁴ Section 25(3), 2007 Residence Act.

²⁸⁵ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 44.

²⁸⁶ Section 26(4), 2007 Residence Act.

²⁸⁷ Section 25(3), in conjunction with Section 4(2), 2007 Residence Act.

			aliens after 4 years of residence or 3 years of employment as a discretionary decision, not as a right ²⁸⁹ .
Access to self-employment		✓	
Access to liberal professions		✓	
Access to housing	✓		Dependent upon the welfare policies of the different districts.
Access to public education	✓		Access to schools – but not Universities - automatically ²⁹⁰ . Persons with this status presently are only entitled to public financial support for their studies if they have stayed in Germany with a legal stay permit for at least five years and have been employed for that time (Section 8 (2) <i>Bundesausbildungsförderungsgesetz</i>) ²⁹¹ .
Social security	✓		Full social assistance, the same as German nationals in what concerns unemployment benefits ²⁹² . Regarding family benefits, they should fulfil the requirement of residing in the country for 3 years before they can claim them ²⁹³ .
Health	✓		Entitled to the same access to the national obligatory health system as German nationals.
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 <i>Länd</i> .
Travel document		✓	
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family reunification		✓	They have no legal entitlement. German law requires that the sponsor have a secure residence status in the form of a settlement or residence permit pursuant to section 29(1) <i>AufenthG</i> ²⁹⁴ . Family reunification may be possible to a limited extent under specific circumstances ²⁹⁵ .

²⁸⁸ ECRE, The Impact of the EU Qualification Directive on International Protection, October 2008, at p.248, available at: http://www.ecre.org/files/ECRE_QD_study_full.pdf

²⁸⁹ *Ibid*.

²⁹⁰ *Ibid*, at p.251. It should be noted that this issue is not a question for the Federal Government but for the 16 federal states (*Länder*).

²⁹¹ *Ibid*. The actual text of the law is available at: <http://www.das-neue-bafoeg.de/de/204.php>.

²⁹² France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 49.

²⁹³ *Ibid*.

²⁹⁴ See also Federal Office for Migration and Refugees, Family Reunification in Germany, Working Paper 10, Small Scale Study IV in the Framework of the European Migration Network, 2007, at p. 30, available at: http://www.bamf.de/clin_092/nn_435122/SharedDocs/Anlagen/EN/Migration/Downloads/EMN/EMNselbst/small-scale-4-family-reunification.html

²⁹⁵ *Ibid*. See also Section 29(3), 2007 Residence Act.

Vocational training		✓	
Access to citizenship	✓		They can apply for naturalisation after eight years of residence, if they benefit from a permanent residence permit, if they have substantial economic means to support their family needs and if they have not been convicted of a crime or do not pose a danger to national security ²⁹⁶ .

TEMPORARY SUSPENSION OF DEPORTATION (*DULDUNG*)

Legal basis: Residence Act of 2007, Section 60a

Beneficiaries: There are factually two forms of “*Duldung*”. First of all, the highest state authorities of each ‘Land’ may order a temporary suspension of deportation on humanitarian or international law considerations, or in order to ensure the political interests of the Federal Republic of Germany²⁹⁷. This provision only applies to aliens from certain countries or to specific groups of aliens²⁹⁸.

Furthermore there is another form of *Duldung*, which concerns, individual rejected asylum seekers whose deportation is suspended as long as it is impossible due to factual²⁹⁹ or legal reasons and no residence permit³⁰⁰ has been accorded to them³⁰¹. The deportation of an alien is also suspended when his temporary presence is required for a criminal procedure because, without his presence, the investigation of the facts of a criminal case would be hindered³⁰². Furthermore, the deportation of an alien is suspended when imperative humanitarian or personal considerations or important public interests require it³⁰³.

Duration: *Duldung* is not conceived as a residence status, but as an individual decision on the enforceability of deportation its duration is up to 6 months³⁰⁴.

The pronouncement of such a temporary suspension of transfer may or may not lead to the grant of a residence permit This is the case because the issuance of the residence permit is done by the local aliens authority (on the level of the "Land"), whereas the examination of the asylum application is done by the Federal Office for Migration and Refugees (on the federal level). The law stipulates that a deportable alien, whose deportation is non-executable, can be handed with a temporary residence permit as long as imperative humanitarian or personal considerations or important public interests require it³⁰⁵. This type of residence permit can be extended when, because of the particular circumstances of the individual case, the departure from the territory would constitute an extraordinary

²⁹⁶ *Ibid.*, at p.51.

²⁹⁷ Section 60a(1), 2007 Residence Act.

²⁹⁸ *Ibid.*

²⁹⁹ An example can be the health situation of a person.

³⁰⁰ What is meant here is that no residence permit on other grounds, e.g. subsidiary protection status, has been awarded to him.

³⁰¹ Section 60a(2), 2007 Residence Act.

³⁰² *Ibid.*

³⁰³ *Ibid.* See also Section 60a(2a) that regulates the suspension of deportation for one week in the cases described by the Council Regulation 2003/110/EC regarding assistance during repatriation operations.

³⁰⁴ Section 60a(1), 2007 Residence Act.

³⁰⁵ Section 25(4), 2007 Residence Act.

hardship for the alien³⁰⁶. Furthermore, the law stipulates that a deportable alien, may be granted with a residence permit when his deportation is impossible due to factual or legal reasons and the abolition of these obstacles is not deemed possible in the foreseeable future³⁰⁷. In both these cases, the temporary residence permit is granted for a period of 6 months at the most³⁰⁸. The residence permit shall be granted when the deportation has been suspended for a period of 18 months³⁰⁹. Such a residence permit should be granted only when the alien is not responsible for the obstacles to his deportation³¹⁰. Such a responsibility lays to the alien in particular when he makes false declarations or he changes his identity or nationality or he doesn't fulfil reasonable demands that could lead to the removal of the deportation obstacles³¹¹.

Rights:

Rights	Y	N	Details
Access to wage-earning employment		✓	After beneficiaries have faced a waiting period of one year they may apply for a work permit concerning a specific job. However, there should be first a review of the availability of privileged aliens for a particular job.
Access to self-employment		✓	
Access to liberal professions		✓	
Access to housing	✓		Dependent upon the welfare policies of the different districts.
Access to public education	✓		Access to compulsory education. Higher education is in theory possible. However, they receive no subsidies for learning material, travel costs or fees.
Social security	✓		They receive significantly lower benefits. In particular, they receive the same benefits as asylum seekers, according to the Asylum Seeker Benefits Law ³¹² .
Health	✓		Reduced medical care limited to urgent needs ³¹³ .
Freedom of movement within the national territory		✓	Beneficiaries may not settle where they choose. They have to remain in the local district of the Alien's Administration Unit that was formerly in charge of their application ³¹⁴ .
Travel document		✓	
Voting rights in municipal election		✓	
Family reunification		✓	Family reunification is not granted to persons holding this category of temporary residence permit ³¹⁵ .

³⁰⁶ *Ibid.*

³⁰⁷ Section 25(5), 2007 Residence Act.

³⁰⁸ Section 26(1), 2007 Residence Act.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

³¹² Section 1 (1), Asylum Seeker Benefits Law (*Asylbewerberleistungsgesetz*). The law is available at: <http://bundesrecht.juris.de/asylblg/>

³¹³ Section 4, Asylum Seeker Benefits Law.

³¹⁴ Section 61(1a), 2007 Residence Act.

Vocational training		✓	
Access to citizenship		✓	

³¹⁵ Federal Office for Migration and Refugees, Family Reunification in Germany, Working Paper 10, Small Scale Study IV in the Framework of the European Migration Network, 2007, at p. 30.

IRELAND

Statutes of complementary/subsidiary protection

- Subsidiary Protection
- Leave to remain

Up to the transposition of the Qualification Directive³¹⁶ there was no subsidiary protection regime in Ireland. Leave to Remain was granted at the discretion of the Minister for Justice, Equality and Law Reform³¹⁷. On the 10th of October 2006, the European Communities (Eligibility for Protection) Regulations 2006³¹⁸ came into force in order to give effect to the Qualification Directive. The Regulations established a subsidiary protection regime while at the same time keeping in place the former discretionary regime of Leave to Remain³¹⁹. The 2006 Regulations were created as an interim measure in order to give full effect to the provisions of the Directive by the transposition deadline. The procedure to create a new Immigration, Residence and Protection Bill that would set out, in a single code, comprehensive statutory procedures for the application of policies to the various stages of the immigration process³²⁰ was already underway. The Immigration, Residence and Protection Bill was published in January 2008³²¹. However, it is still undergoing amendments and has not been enacted yet. When enacted, the Bill purports to create a single procedure where all the grounds, including discretionary grounds, for remaining in Ireland will be examined³²². Currently, the procedure is sequential allowing for refused asylum seekers to apply both for subsidiary protection as well as for leave to remain at the same time and within fifteen days of the Minister's proposal to deport³²³.

³¹⁶ 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, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

³¹⁷ Section 3(6) of the Immigration Act, 1999, available at: http://www.inis.gov.ie/en/INIS/Immigration_Act_1999_amended.pdf/Files/Immigration_Act_1999_amended.pdf

³¹⁸ S.I. No. 518 of 2006, available at: <http://www.inis.gov.ie/en/INIS/AsylumQual.pdf/Files/AsylumQual.pdf>

³¹⁹ See Regulation 4(6) of the Eligibility for Protection Regulations that states: Nothing in these regulations shall affect the discretionary power of the Minister under Section 3 of the 1999 Act.

³²⁰ See Asylum Policy Division-Irish Naturalisation and Immigration Service, Background Note on Asylum Policy, at p. 5, available at: <http://www.inis.gov.ie/en/INIS/AsylumPolicyMarch07.pdf/Files/AsylumPolicyMarch07.pdf>

³²¹ Available at: http://www.inis.gov.ie/en/INIS/IRPB_2008.pdf/Files/IRPB_2008.pdf

³²² See Part 7 "Protection" of the Immigration, Residence and Protection Bill 2008.

³²³ See Regulation 4 of the Eligibility for Protection Regulations 2006 as well as Section 3(3)(b) and 3(6) of the Immigration Act, 1999.

SUBSIDIARY PROTECTION

Legal basis: Regulation 4 of the Eligibility for Protection Regulations 2006.

Beneficiaries: Individuals whose application for asylum has been rejected and who has been notified in writing of the Minister's proposal to be deported³²⁴. They should also not be a national of a Member State, nor be excluded under the Regulation³²⁵. Further substantial grounds need to be shown for believing that, if returned to their country of origin, they would face a real risk of suffering serious harm and are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country³²⁶.

Serious harm consists of³²⁷:

- (a) death penalty or execution,
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Duration: Subsidiary protection beneficiaries are granted permission to remain in the State for three years³²⁸. This permission is renewable, unless compelling reasons of national security or public order require otherwise³²⁹.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Subsidiary Protection beneficiaries are entitled to seek and enter employment, and to carry on any business, trade or profession ³³⁰ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		
Access to public education	✓		Access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen ³³¹ .
Social security	✓		Same social benefits as those to which Irish citizens are entitled ³³² .
Health	✓		Same medical care and services as those to which Irish citizens are entitled ³³³ .

³²⁴ See Regulation 4(1) of the Eligibility for Protection Regulations 2006.

³²⁵ See Regulation 2(1) of the Eligibility for Protection Regulations 2006.

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ See Regulation 17(1) of the Eligibility for Protection Regulations 2006.

³²⁹ See Regulation 17(2) of the Eligibility for Protection Regulations 2006.

³³⁰ See Regulation 19(1)(b) of the Eligibility for Protection Regulations 2006.

³³¹ See Regulation 19(1)(b) of the Eligibility for Protection Regulations 2006.

³³² See Regulation 19(1)(c) of the Eligibility for Protection Regulations 2006.

Freedom of movement within the national territory	✓		Same rights of travel in or to or from the State, other than to their country of origin, as those to which Irish citizens are entitled ³³⁴ .
Travel document	✓		Beneficiaries need to apply in writing for such a document ³³⁵ . The Minister may, for reasons of national security or public order (<i>ordre public</i>), refuse to issue a travel document ³³⁶ .
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family reunification		✓	No right to family reunification, but they may apply to the Minister for permission to be granted to a member of his or her family or to a dependant to enter and to reside in the State ³³⁷ .
Vocational training	✓		
Access to citizenship	✓		

LEAVE TO REMAIN

Legal basis: Sections 3(3)(b) and 3(6) of the Immigration Act, 1999.

Beneficiaries:

1. Individuals whose application for asylum has been rejected and who have been notified in writing of the Minister's proposal to deport them³³⁸. The application for leave to remain is made at the same time as a subsidiary protection application and within fifteen days of the Minister's proposal to deport. A number of people have been granted leave to remain before it has been determined whether they should be granted subsidiary protection (or perhaps before they even applied for it). The Minister for Justice, Equality and Law Reform, in his discretion, decides whether there are humanitarian or other reasons not to make a deportation order and to allow an individual to remain in the country. The Supreme Court has held that a decision under this provision is discretionary and therefore, the Minister is not obliged to provide reasons for a positive or negative decision³³⁹. However, from this it does not follow that the Minister can exercise this discretion in a capricious way or in a way that would be counter to proper procedure or constitutional principle³⁴⁰.

³³³ *Ibid.*

³³⁴ See Regulation 19(1)(a) of the Eligibility for Protection Regulations 2006.

³³⁵ See Regulation 18(1) of the Eligibility for Protection Regulations 2006.

³³⁶ See Regulation 18(2) of the Eligibility for Protection Regulations 2006.

³³⁷ See Regulation 18(2) of the Eligibility for Protection Regulations 2006 that also defines the terms "member of family" and "dependent member of the family".

³³⁸ Section 3(3)(b) of Immigration Act, 1999. It should be stressed at this point, once more, that currently the procedure is sequential and therefore, an individual may only make representations as to why they should be granted leave to remain only after receiving the Minister's proposal to deport.

³³⁹ See e.g. *P, B & L v Minister for Justice, Equality and Law Reform*, 2 January 2001, 2000/596 JR, 2000/597JR, 2000/758JR, available at: http://www.unhcr.org/refworld/country_IRL_HC_ROM_4562d8b62_45ebf77f2_0.html

The 1999 Act states that the Minister should take into consideration before making the deportation order the following factors: the age of the person, the duration of residence in Ireland, the family and domestic circumstances of the person, the nature of the person's connections with Ireland, the person's employment record and employment prospects, the person's character and conduct within and outside of Ireland, humanitarian considerations, representations made by and on behalf of the person, the common good, and considerations of national security and public policy³⁴¹. While the term "humanitarian" is not defined in the 1999 Act or in administrative regulations, it has been judicially interpreted to include circumstances such as illness, family connections and personal considerations. Prohibition of refoulement could also conceivably constitute a situation where a failed asylum-seeker could not be removed to a particular destination because of humanitarian considerations³⁴². Therefore, when one takes into consideration that, currently, the application for leave to remain is made at the same time as a subsidiary protection application the possibility for overlap with the subsidiary protection regime becomes apparent.

2. Prior to 2003, parents of children who were born in Ireland were also able to withdraw from the asylum process and seek leave to remain. Since February 2003, the Department of Justice, Equality and Law Reform has ended the separate procedure which existed to enable persons to apply for residence in the State on the sole basis of parentage of an Irish born child³⁴³. In 2005 the Irish Born Child Scheme (IBC/05) allowed a number of foreign national parents of children born in Ireland prior to 1 January 2005 to stay in the country granting them leave to remain for an initial period of 2 years. From January 2007 it is possible to apply for a renewal a month before the expiry date of their leave to remain³⁴⁴

Duration: Not specified in the statute or in administrative regulations

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		No requirement of a work permit.
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		Beneficiaries are entitled to assistance from local authorities and are included in housing lists. They are eligible for a rent supplement. Emergency accommodation may be provided if necessary.
Access to public education	✓		Access to primary and secondary education. Eligible to receive grants, scholarships and

³⁴⁰ Brian Ingoldsby, Leave to remain other than through the regular migration process, *paper delivered at the Incorporated Law Society Seminar: Rights to Reside in Ireland on 14 May 2002*, p. 3, available at: <http://www.inis.gov.ie/en/INIS/LeaveMigrat.pdf/Files/LeaveMigrat.pdf>

³⁴¹ Section 3(6) of Immigration Act, 1999.

³⁴² Brian Ingoldsby, Leave to remain other than through the regular migration process, *paper delivered at the Incorporated Law Society Seminar: Rights to Reside in Ireland on 14 May 2002*, p. 4.

³⁴³ See the "Notice to Non-National Parents of Irish Born Children" issued by the Department of Justice, Equality and Law Reform in July 2003, available at: <http://www.inis.gov.ie/en/INIS/Pages/WP07000210>

³⁴⁴ See the "Reminder Notice of IBC/05 Renewal Scheme" accessible at: <http://www.inis.gov.ie/en/INIS/33x6%20Irish%20Born%20Child.pdf/Files/33x6%20Irish%20Born%20Child.pdf>, as well as further information on the Irish Born Child Renewals at: <http://www.inis.gov.ie/en/INIS/Pages/WP07000030>

			remission of fees in relation to higher education, if they have been resident in Ireland for more than 3 years (same as for recognised refugees).
Social security	✓		Social Welfare on the same basis as an Irish citizen. Access to Supplementary Welfare Support, Social assistance payments and other payments such as Child Benefit. Employees who make Pay-Related Social Insurance Contributions receive related benefits and pensions like nationals.
Health	✓		Access to health care, including free medical and dental care.
Freedom of movement within the national territory	✓		
Travel document	✓		A person who has been granted leave to remain may apply for a "soft cover" travel document. Before making any travel arrangement beneficiaries must obtain a re-entry visa.
Voting rights in municipal election	✓		
Right to stand for elections		✓	
Family reunification		✓	No right to family reunification, but a beneficiary may apply to have a family member join him in Ireland.
Vocational training	✓		
Access to citizenship	✓		

SWEDEN

Statutes of complementary/subsidiary protection

- Persons otherwise in need of protection
- Residence Permit on Grounds of Exceptionally Distressing Situations
- Measures In Case of Impediments to the Enforcement of Refusal of Entry or Expulsion Orders

The transposition process of the Qualification Directive³⁴⁵ has not yet been completed in Sweden. A government inquiry had been assigned to draw up a comprehensive report on legislative changes necessary to transpose the Directive, and delivered a 494-page report on January 2006, including detailed legislative proposals³⁴⁶. At the moment the legislation is undergoing amendments and will be enacted in the following months. However, the most recent legislative instrument, the Alien's Act 2005³⁴⁷ as well as other legislative instruments encompass already many of the notions included in the Qualification Directive. In what concerns complementary protection, there is a status very similar to subsidiary protection that is defined as protection for "persons otherwise in need of protection"³⁴⁸. Furthermore, a residence permit can be granted as a result of particularly distressing circumstances linked directly with the applicant³⁴⁹. The law also recognises certain impediments to the enforcement of refusal of entry and expulsion decisions³⁵⁰. In this case the Migration Board may re-examine the case, either after a request of the applicant³⁵¹ or on its own accord³⁵² or after the request of some other authority³⁵³. Finally, the law as amended in November 2008, enables failed asylum seekers that have employment in Sweden to, in certain situations, apply for a temporary permit³⁵⁴.

³⁴⁵ 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, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

³⁴⁶ Gregor Noll, "The Qualification Directive and its Transposition into Swedish Law", in *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, Karin Zwaan, (ed.), Wolf Legal Publishers, 2007, at p. 79. The text of the proposal (Skyddsgrundsdirektivet och svensk rätt En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande), is available at: <http://www.regeringen.se/sb/d/108/a/56440>. A small 10-page summary is included in English.

³⁴⁷ Alien's Act 2005, Swedish Code of Statutes no 2005:716, issued 29 September 2005, official English translation available at: http://www.sweden.gov.se/sb/d/5805/a/66122.jsessionid=axnOnhDLLWS_

³⁴⁸ Chapter 4, Section 1 of the 2005 Alien's Act.

³⁴⁹ Chapter 5, Section 6 of the 2005 Alien's Act.

³⁵⁰ Chapter 12, Sections 1-3 of the 2005 Alien's Act.

³⁵¹ Chapter 12, Section 19 of the 2005 Alien's Act.

³⁵² Chapter 12, Section 18 of the 2005 Alien's Act.

³⁵³ Chapter 12, Section 17 of the 2005 Alien's Act.

³⁵⁴ Chapter 5, Section 15a of the 2005 Alien's Act. The amendments are available at: <http://www.sweden.gov.se/content/1/c6/11/83/77/107e027f.pdf>. The provision states the following:

A temporary residence permit may be granted to an alien whose application for a residence permit as a refugee under Chapter 4, Section 1 or as a person otherwise in need of protection under Chapter 4, Section 2 or corresponding older provisions has been rejected owing to a decision that has become final and non-appealable, if the alien is staying here and

1. for at least six months has had employment that meets the requirements specified in Chapter 6, Section 2, first paragraph and refers to a period of at least one year from the time of the application, or

PERSONS OTHERWISE IN NEED OF PROTECTION ³⁵⁵

Legal basis: Aliens Act 2005, Chapter 4, Section 2.

Beneficiaries³⁵⁶: An alien who does not qualify as a refugee but is outside the country of the alien's nationality, because he or she

1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,
2. needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or
3. is unable to return to the country of origin because of an environmental disaster.

The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

Duration: As a general rule, persons falling into this category receive a permanent residence permit³⁵⁷. The law states that a residence permit may be denied to a beneficiary of this status if in view of his or her criminal activities there are special grounds for not granting them a residence permit or if there are exceptional grounds for not granting such a permit in view of what is known about their previous activities or with regard to national security³⁵⁸.

Additionally, a temporary residence permit may be granted if there is a reason to question a person's expected mode of life³⁵⁹. This period can be seen as a period of probation for a permanent residence permit. Those who receive a temporary residence permit need a permit to work. However, a temporary permit of at least a year means that the beneficiaries can register in the community, therefore they are entitled to social care and they can work.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		The work permit requirement does not apply to an alien who has a permanent residence permit ³⁶⁰ .
Access to self-employment	✓		There is no work permit requirement for aliens who wish to run their own business.
Access to liberal professions	✓		
Access to housing	✓		Beneficiaries have access to municipal social assistance programmes, which include allocation of housing ³⁶¹ .
Access to public education	✓		Swedish legislation gives children who

2. under Section 3, first paragraph, points 1-4, Section 3a, first paragraph, point 1 or second paragraph has strong ties to a person who has been granted a residence permit under point 1.

The Swedish Migration Board must have received an application for a temporary residence permit under the first paragraph no later than two weeks after the decision to reject the application for a residence permit as a refugee or a person otherwise in need of protection has become final and non-appealable.

³⁵⁵ This term is the official translations of the Swedish equivalent.

³⁵⁶ As defined in the official translation of the Aliens Act 2005, Chapter 4, Section 2.

³⁵⁷ Chapter 5, Section 1(1) of the 2005 Alien's Act.

³⁵⁸ Chapter 5, Section 1(2) of the 2005 Alien's Act.

³⁵⁹ Chapter 5, Section 7 of the 2005 Alien's Act.

³⁶⁰ Chapter 2, Section 8 of the 2005 Alien's Act.

			benefit from this protection status the right to schooling or other education under the same conditions as Swedish children ³⁶² . Adult aliens who have been granted this status have access to municipal adult education and higher education ³⁶³ . Furthermore, they can claim credit for both Swedish and foreign education under the same conditions as Swedish nationals ³⁶⁴ .
Social security	✓		They are entitled to residence-based social insurance benefits under the same conditions as Swedish nationals from the date that a residence permit that leads to entry in the population registry is granted ³⁶⁵ .
Health	✓		
Freedom of movement within the national territory	✓		Aliens' freedom of movement is limited either through legislation or through ordinances ³⁶⁶ . These provisions make no distinction between aliens on the basis of the grounds they have for living in the country ³⁶⁷ .
Travel document		✓	At present an alien's passport can be issued for this purpose, but there is no obligation to do so ³⁶⁸ .
Voting rights in municipal election	✓		People who hold a permanent residence permit have a right to vote for the municipal elections ³⁶⁹ .
Right to stand for elections		✓	
Family reunification	✓		Same as every person who holds a permanent residence permit. However, unlike refugees, the cost of transport for the family members is not undertaken by the State ³⁷⁰ .
Vocational training	✓		
Access to citizenship	✓		After residence in Sweden for at least five years ³⁷¹ .

³⁶¹ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, at p. 50.

³⁶² *Skyddsgrundsdirektivet och svensk rätt En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande*, (2006 Inquiry), p. 37.

³⁶³ *Ibid.*

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*, at p. 38.

³⁶⁶ *Ibid.*, at p.40.

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*, at p. 40. See also Chapter 2 of the Alien's Ordinance 2006, Swedish Code of Statutes no 2006:97, issued 23 February 2006, official English translation available at: <http://www.sweden.gov.se/sb/d/5805/a/75618;jsessionid=aVxlo2sM-Ep->

³⁶⁹ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 52.

³⁷⁰ ECRE, *The Impact of the EU Qualification Directive in International Protection*, October 2008, p.247. http://www.ecre.org/files/ECRE_QD_study_full.pdf

RESIDENCE PERMIT ON GROUNDS OF EXCEPTIONALLY DISTRESSING SITUATIONS³⁷²

Legal basis: Aliens Act 2005, Chapter 5, Section 6.

Beneficiaries: A permit may be granted to an alien if on an overall assessment of the alien's situation there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden³⁷³. In making this assessment, particular attention shall be paid to the alien's state of health, his or her adaptation to Sweden and his or her situation in the country of origin³⁷⁴. Children may be granted residence permits under this Section even if the circumstances that come to light do not have the same seriousness and weight that is required for a permit to be granted to adults³⁷⁵.

Duration: This category of beneficiaries will also usually benefit from a permanent residence permit. The beneficiary will be granted with a temporary residence permit if, in view of their expected way of life, there is doubt as to whether a residence permit should be granted³⁷⁶. Furthermore, a residence permit that is granted on grounds of sickness shall be for a limited time if the alien's sickness or need of care in Sweden is of a temporary nature³⁷⁷.

Rights: Depending on whether they receive a permanent or a temporary residence permit, they have the same rights as "persons otherwise in need of protection", that fall into each respective category. However, a temporary permit of at least a year provides access to the same level of rights.

MEASURES IN CASE OF IMPEDIMENTS TO THE ENFORCEMENT OF REFUSAL OF ENTRY OR EXPULSION ORDERS³⁷⁸

Legal basis: Aliens Act 2005, Chapter 12.

Beneficiaries: The Alien's Act 2005 specifically defines what can constitute an impediment to the enforcement of refusal of entry and end expulsion orders. Therefore, according to the legislation:

1. The refusal of entry and expulsion of an alien may never be enforced to a country where there is fair reason to assume that
 - the alien would be in danger there of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment or
 - the alien is not protected in the country from being sent on to a country in which the alien would be in such danger³⁷⁹.

³⁷¹ France Terre d'Asile, *Asile : La Protection Subsidaire en Europe : Une Mosaïque de Droits*, Les Cahiers du Social No18, Septembre 2008, p. 52.

³⁷² This term is the official translations of the Swedish equivalent.

³⁷³ Aliens Act 2005, Chapter 5, Section 6.

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*

³⁷⁶ Chapter 5, Section 7 of the 2005 Alien's Act.

³⁷⁷ Chapter 5, Section 9 of the 2005 Alien's Act.

³⁷⁸ This term is the official translations of the Swedish equivalent.

2. The refusal of entry and expulsion of an alien may not be enforced to a country
 - if the alien risks being subjected to persecution in that country or
 - if the alien is not protected in the country from being sent on to a country in which the alien would be at such risk³⁸⁰.

An alien may, however, be sent to such a country if it is not possible to enforce the refusal of entry or expulsion to any other country and the alien has shown by committing an exceptionally gross offence that public order and security would be seriously endangered by allowing him or her to remain in Sweden³⁸¹. This is, however, not applicable if the persecution threatening the alien in the other country entails danger for the life of the alien or is otherwise of a particularly severe nature³⁸².

An alien may also be sent to such a country if the alien has conducted activities that have endangered national security and there is reason to assume that the alien would continue to conduct these activities in the country and it is not possible to send the alien to any other country³⁸³.

3. The refusal of entry and expulsion of a “person who is otherwise in need of protection” that needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or who is unable to return to the country of origin because of an environmental disaster, may not be enforced to the alien’s country of origin or to a country where he or she risks being sent on to the country of origin unless there are exceptional grounds for this³⁸⁴.

The legislation also defines what measures can be taken in the event of impediments to enforcement. There are four different cases:

1. **Some other authority than the Swedish Migration Board is to enforce a refusal of entry or expulsion order**³⁸⁵. In this case, if this authority finds that it cannot enforce the order or that it needs additional information, the authority shall notify the Swedish Migration Board. The same applies if an alien invokes the existence of an impediment to enforcement referred to above, in contact with the authority or if it comes to light in some other way that there may be such impediments. In such cases the Swedish Migration Board shall provide directions on enforcement or take other measures.
2. **The Swedish Migration Board finds that new circumstances have come to light in a case that has become final and non-appealable**³⁸⁶. If these new circumstances mean that there is an impediment to enforcement as mentioned above, or there is reason to assume that the intended country of return will not be willing to accept the alien or there are medical or other special grounds why the order should not be enforced, the Swedish Migration Board may grant a permanent residence permit if the impediment is of a lasting nature. If there is only a temporary impediment to enforcement, the Board may grant a temporary residence permit. The Swedish Migration Board may also order a stay of enforcement.
3. **An alien invokes new circumstances that have come to light in a case that has become final and non-appealable**³⁸⁷. If, can be assumed that these circumstances constitute a lasting impediment to enforcement as described above and that these circumstances could not previously have been invoked by the alien or the alien shows a valid excuse for not previously

³⁷⁹ Chapter 12, Section 1 of the 2005 Alien’s Act.

³⁸⁰ Chapter 12, Section 2 of the 2005 Alien’s Act.

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Ibid.*

³⁸⁴ Chapter 12, Section 3 of the 2005 Alien’s Act.

³⁸⁵ Chapter 12, Section 17 of the 2005 Alien’s Act.

³⁸⁶ Chapter 12, Section 18 of the 2005 Alien’s Act.

³⁸⁷ Chapter 12, Section 19 of the 2005 Alien’s Act.

having invoked these circumstances, the Swedish Migration Board shall, if a residence permit cannot be granted under the previous procedure (Section 18 of the Alien's Act), reexamine the matter of a residence permit and issue an order staying the enforcement case. If the conditions set out in the first paragraph have not been fulfilled, the Swedish Migration Board shall decide not to grant a re-examination.

4. **Expulsion on account of a criminal offence/ security cases**³⁸⁸.

- If, in a case referring to a judgment or order of a general court concerning expulsion on account of a criminal offence, it comes to light that enforcement cannot be carried out, the Swedish Migration Board shall not take its own decision in the case but shall promptly turn over the case, attaching its own opinion, to the Government for examination under Chapter 8, Section 14³⁸⁹.
- If, during the enforcement of a refusal-of-entry or expulsion order in a security case, information comes to light that the enforcement cannot be carried out, the Swedish Migration Board shall promptly turn the case over to the Government for examination under Section 18. In this examination the Government shall obtain an opinion from the Migration Court of Appeal. The opinion shall specifically state whether there is an impediment to enforcement as defined above. If the Court finds that there is such an impediment to enforcement, the Government may not diverge from the assessment of the Court in its examination. In an examination under the second paragraph the Government may order a stay of enforcement, decide on a residence permit and work permit and cancel the refusal-of-entry or expulsion order.

Duration: As mentioned above, the alien may receive a permanent or a temporary residence permit, according to the evaluation of the Swedish Migration Board or of the Government (in criminal/security cases)³⁹⁰.

Rights: Depending on whether they receive a permanent or a temporary residence permit, they have the same rights as “persons otherwise in need of protection”, that fall into each respective category. However, a temporary permit of at least a year provides access to the same level of rights.

³⁸⁸ Chapter 12, Section 20 of the 2005 Alien's Act.

³⁸⁹ This Article states the following: If the Government finds that a judgment or order of expulsion on account of criminal offences issued by a general court cannot be enforced or if there are some other special grounds why the order shall no longer apply, the Government may set aside the order wholly or in part. In connection with this, the Government may also make a decision regarding a residence permit and work permit. If the judgment or order of expulsion is not cancelled, the Government can, in cases referred to in the first paragraph, issue a temporary residence permit and work permit. The expulsion order may not be enforced while the permit is valid.

³⁹⁰ Concerning the temporary residence permit for this category of beneficiaries see also Chapter 5, Section 11 of the 2005 Alien's Act.

SWITZERLAND

Statutes of complementary/subsidiary protection

- Provisional Protection
- Residence Permit on Grounds of Exceptional Circumstances
- Provisional Admission

Switzerland, although not an EU Member State, signed an association agreement to Schengen/Dublin on 26 October 2004. On 12 December 2008 the Schengen association agreement of Switzerland was fully implemented. As a result, land border controls between Switzerland and the 24 countries that currently make up the Schengen area have been lifted. However, apart from its participation in the Dublin system Dublin, Switzerland is not bound by the EC legislative measures on asylum, therefore it is not bound by the Qualification Directive either. Asylum in Switzerland is regulated by the Asylum Act of 1998 (as amended till December 2008)³⁹¹. The Alien's Act also contains provisions that are of relevance regarding complementary statuses of protection³⁹². Apart from refugee status, asylum seekers can be granted with provisional protection if they will be exposed to a serious general danger upon their return. Furthermore, independently of the state of the asylum procedure, the cantons may grant a residence permit on grounds of exceptional circumstances. Finally, people who may not be deported are admitted provisionally to the territory, as regulated by the Alien's Act.

³⁹¹ Loi sur l'asile du 26 juin 1998 (LAsi), in force since 1st of October 1999, available at :

http://www.admin.ch/ch/fr/rs/c142_31.html

³⁹² Loi fédérale sur les étrangers (LEtr), 16 Decembre 2005, available at :

<http://www.admin.ch/ch/ff/2005/6885.pdf>

PROVISIONAL PROTECTION (*Protection Provisoire*)

Legal basis: Asylum Act 1998 (as amended till December 2008), Chapter 1, Article 4

Beneficiaries: Persons who are exposed to a serious general danger, especially during international or internal armed conflict or during situations of generalized violence³⁹³. Persons who compromise seriously public order and security are excluded from the grant of the provisional protection status³⁹⁴.

Duration: If, after 5 years, the Federal Council (*Conseil Federal*) has not yet lifted the provisional protection, the beneficiary of this form of protection receives a residence permit (*autorisation de séjour*), which expires at the moment that the protection is lifted³⁹⁵. Ten years after the grant of the provisional protection status, the canton can issue beneficiaries with an establishment permit (*autorisation d'établissement*)³⁹⁶.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		It must be noted that during the first 3 months following their entry beneficiaries are not allowed to work ³⁹⁷ . After this period elapses their access to employment is regulated by the provisions of the Alien's Act ³⁹⁸ . However, the Federal Council may pronounce less restrictive requirements for this class of beneficiaries ³⁹⁹ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		
Access to public education	✓		
Social security	✓		They are entitled to social benefits and child benefits, which are allocated by the canton (municipality) in which they reside ⁴⁰⁰ . However, until they are granted with a residence permit social benefits can take the form of in-kind contributions and the level of

³⁹³ Chapter 1, Article 4, Asylum Act 1998.

³⁹⁴ Chapter 4, Article 73, Asylum Act 1998.

³⁹⁵ Chapter 4, Article 74 (2), Asylum Act 1998. The Federal Council can lift the provisional protection, after consulting the representatives of the cantons, the Office of the UN High Commissioner for Refugees and other non-governmental and international organizations, concerning certain groups of beneficiaries. This decision has a general application. However, the persons concerned are granted a right to file a claim that they fear persecution. For more details see Chapter 4, Article 76, Asylum Act 1998.

³⁹⁶ Chapter 4, Article 74 (3), Asylum Act 1998.

³⁹⁷ Chapter 4, Article 75(1), Asylum Act 1998.

³⁹⁸ *Ibid.*

³⁹⁹ Chapter 4, Article 75(2), Asylum Act 1998.

⁴⁰⁰ Chapter 5, Articles 80-84, Asylum Act 1998.

			benefits may differ from those accorded to Swiss nationals ⁴⁰¹ .
Health	✓		As stipulated in the Health Insurance Act with certain exceptions for beneficiaries who have not yet acquired a residence permit ⁴⁰² .
Freedom of movement within the national territory		✓	Persons benefiting from provisional protection reside in the "canton" to which they are assigned ⁴⁰³ .
Travel document		✓	They are provided with an identity card. When they receive a residence permit they can be granted with a travel document ⁴⁰⁴ .
Right to stand for elections		✓	
Family reunification	✓		Authorised unless particular circumstances oppose it ⁴⁰⁵ .
Vocational training		✓	
Access to citizenship	✓		People who have been resident in Switzerland for twelve years - the years spent in this country between the completed 10th and 20th years are counted double for this purpose - may apply for naturalisation.

RESIDENCE PERMIT ON GROUNDS OF EXCEPTIONAL CIRCUMSTANCES
(Autorisation de séjour en cas de rigueur)

Legal basis: Chapter 2, Article 14, Asylum Act 1998

Beneficiaries: Failed asylum seekers who cannot be deported or asylum seekers who withdrew their application cannot engage in a procedure to remain in the country according to the immigration legislation (Alien's Act 2005)⁴⁰⁶. The cantonal authorities may, however, with the consent of the Federal Office for Migration, grant a residence permit to persons who fulfill the following requirements⁴⁰⁷:

1. They have been living in Switzerland since 5 years, which are counted from the submission of the asylum claim.
2. Their place of stay has always been known to the authorities.
3. The case raises exceptionally severe circumstances [in case of deportation] because of the progressed integration of the concerned person.

⁴⁰¹ Chapter 5, Articles 82, Asylum Act 1998.

⁴⁰² See Chapter 5, Articles 82a, Asylum Act 1998.

⁴⁰³ Chapter 4, Article 74 (1), Asylum Act 1998.

⁴⁰⁴ Chapter 9, Article 59(2), Alien's Act 2005.

⁴⁰⁵ Chapter 4, Article 71, Asylum Act 1998.

⁴⁰⁶ Chapter 4, Article 14(1), Asylum Act 1998.

⁴⁰⁷ Chapter 4, Article 14(2), Asylum Act 1998.

It must be stressed, that this status is granted independently of the asylum procedure⁴⁰⁸. It aims at regularizing the legal position of persons who have been staying for a considerable amount of time in Switzerland⁴⁰⁹.

Duration: Beneficiaries receive a residence permit (autorisation de séjour ordinaire- titre de séjour B). This type of authorisation is granted for a period of more than one year⁴¹⁰. This authorization of stay can be prolonged according to the conditions of the Alien's Act⁴¹¹. As described in Chapter 10, Articles 62-63 Alien's Act such a permit is extended unless it is proved that an alien acquired it through false declarations or that the alien has been condemned for a crime with a penalty of long-term imprisonment, or the alien has posed a threat to the public order and security of Switzerland or abroad, in a serious or repeated manner or poses a threat for the external and internal security of Switzerland, or finally the alien or a person for which he is responsible depends constantly and on a large extent on social aid.

Rights: There are no special provisions in the Alien's Act 1998. Beneficiaries receive the same rights that any third-country national granted with a residence permit (*Titre de Séjour B*) would receive.

PROVISIONAL ADMISSION (Admission Provisoire)

Legal basis: Alien's Act 2005 (as amended till January 2009), Chapter 11, Article 83.

Beneficiaries: The Federal Office for Migration decides to admit the alien provisionally if his return or the execution of the deportation order is not possible, is not lawful, or cannot be reasonably demanded⁴¹². The execution of the deportation order is not possible when the alien cannot leave Switzerland (voluntary) to return to his country of origin, his country of consignment (pays de provenance) or a third country and cannot be forcibly returned to any of those states either⁴¹³. The execution of the deportation order is not lawful when the forcible return of the alien to his country of origin, his country of consignment (pays de provenance) or a third country is contrary to Switzerland's obligations under international law⁴¹⁴. The execution of the deportation order cannot be reasonably demanded if the forcible return or the expulsion of the alien to his country of origin, his country of consignment (pays de provenance) will place him in concrete danger, for example in case of international or internal armed conflict, generalized violence or medical necessity⁴¹⁵. The cantonal authorities can propose the provisional admission⁴¹⁶. The following categories of persons are excluded from the scope of provisional admission⁴¹⁷: aliens who have been condemned for a crime with a

⁴⁰⁸ See Federal Office for Migration, Loi sur l'asile (LAsi): questions et réponses, available at : http://www.bfm.admin.ch/etc/medialib/data/migration/asyl_schutz_vor_verfolgung/asylgesetz/abstimmungen.Par.0010.File.tmp/FAQ_AsyLG_f_neu.pdf

⁴⁰⁹ *Ibid.*

⁴¹⁰ Chapter 6, Article 33, Alien's Act 2005.

⁴¹¹ Chapter 4, Article 14(6), Asylum Act 1998.

⁴¹² Chapter 11, Article 83(1), Alien's Act 2005.

⁴¹³ Chapter 11, Article 83(2), Alien's Act 2005.

⁴¹⁴ Chapter 11, Article 83(3), Alien's Act 2005.

⁴¹⁵ Chapter 11, Article 83(3), Alien's Act 2005.

⁴¹⁶ Chapter 11, Article 83(6), Alien's Act 2005.

⁴¹⁷ Chapter 11, Article 83(7), Alien's Act 2005.

penalty of long-term imprisonment, aliens who have posed a threat to the public order and security of Switzerland or abroad, in a serious or repeated manner or who pose a threat for the external and internal security of Switzerland, and finally aliens whose deportation cannot be executed due to their behavior.

Duration: The residence title of a beneficiary of this category is granted by the canton where they reside, has duration of maximum twelve months and can be prolonged⁴¹⁸. The Federal Office for Migration verifies periodically whether the alien fulfills the conditions of provisional admission and if he no longer does orders for the execution of their deportation⁴¹⁹.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Persons admitted provisionally can acquire by the cantonal authorities a work permit, regardless of the situation of the work market or the general economic situation ⁴²⁰ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		
Access to public education	✓		
Social security	✓		They are entitled to social benefits, which are allocated by the canton (municipality) in which they reside ⁴²¹ . However, the same provisions as for beneficiaries of provisional protection apply, namely social benefits can take the form of in-kind contributions and the level of benefits may differ from those accorded to Swiss nationals ⁴²² .
Health	✓		As stipulated in the Health Insurance Act with certain exceptions ⁴²³ .
Freedom of movement within the national territory		✓	Persons benefiting from provisional admission reside in the "canton" to which they are assigned, unless they are authorized by the Federal Office of Migration to change their place of residence ⁴²⁴ . They can choose however freely their place of residence within the canton ⁴²⁵ .
Travel document		✓	They are provided with an identity card.
Right to stand for elections		✓	

⁴¹⁸ Chapter 11, Article 85, Alien's Act 2005.

⁴¹⁹ Chapter 11, Article 84(1)(2), Alien's Act 2005.

⁴²⁰ Chapter 11, Article 85(6), Aliens Act 2005.

⁴²¹ Chapter 11, Article 86, Aliens Act 2005.

⁴²² Chapter 11, Article 86(1), Aliens Act 2005.

⁴²³ Chapter 11, Article 86(2), Aliens Act 2005.

⁴²⁴ Chapter 11, Article 85(3), Aliens Act 2005.

⁴²⁵ Chapter 11, Article 85(5), Aliens Act 2005.

Family reunification	✓		It is possible after three years of residence under this provision and if the following requirements are met: the family will live together, they already have an appropriate lodging and they will not depend on social aid ⁴²⁶ .
Vocational training		✓	
Access to citizenship	✓		People who have been resident in Switzerland for twelve years - the years spent in this country between the completed 10th and 20th years are counted double for this purpose - may apply for naturalisation.

⁴²⁶ Chapter 11, Article 85(7), Aliens Act 2005.

UNITED KINGDOM

Statutes of complementary/subsidiary protection

- Humanitarian Protection (HP) status
- Discretionary Leave (DL)

In the 1st of April 2003, Humanitarian Protection (HP) and Discretionary Leave (DL) replaced Exceptional Leave to Remain (ELR), which was formally the system of subsidiary protection in the UK⁴²⁷. These two forms of protection were based in the 1971 Immigration Act that gives discretion to the Secretary of State for the Home Office to grant leave to a person for a reason not covered by the Immigration Rules. This regime was further amended on the 9th of October 2006 when two legal instruments that implemented the Qualification Directive⁴²⁸ came into force. Those instruments were: “The Refugee or Person in Need of International Protection (Qualification) Regulations 2006”⁴²⁹ and the “Statement of Changes in Immigration Rules, CM 6918”⁴³⁰. As an outcome, Humanitarian Protection status (HP) is now regulated by these legislative instruments and constitutes the equivalent of the Qualification Directive’s subsidiary protection status for the UK⁴³¹. Discretionary Leave (DL) was not incorporated in either the Immigration Rules or the Qualification Regulations of 2006. Therefore, it remains on the discretion of the Secretary of State for the Home Office and is amended by more recent asylum policy instructions.

⁴²⁷ Until 2007 some residents in the UK still had ELR status that was granted before the change. ELR recipients who had received ELR for four years were, upon the completion of that period, considered for settlement under the rules in place prior to the change. Recipients who had received ELR for less than four years and sought an extension of their stay were evaluated to see if they qualified for HP or DL status; if not, their stay was not extended.

⁴²⁸ *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*, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

⁴²⁹ Statutory Instrument 2006 No. 2525, available at: <http://www.opsi.gov.uk/si/si2006/20062525.htm>

⁴³⁰ Presented to Parliament on September 2006, available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2006/cm6918.pdf?view=Binary>

⁴³¹ See also Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, available at: http://www.opsi.gov.uk/si/em2006/uksiem_20062525_en.pdf

HUMANITARIAN PROTECTION (HP)

Legal basis: Consolidated version of the Immigration Rules as they have been updated until November 2008⁴³² and The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, implementing the Qualification Directive.

Beneficiaries: Asylum seekers who do not qualify as refugees and for whom there are substantial reasons for believing that if returned to the country of return, they would face a real risk of suffering serious harm and who are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country⁴³³. In addition, they should not be excluded from a grant of humanitarian protection⁴³⁴.

Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing⁴³⁵;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Duration: Humanitarian protection is granted for five years⁴³⁶. At the end of five years, recipients are eligible to apply for Indefinite Leave to Remain (ILR), also known as settlement. Applications for ILR are reviewed to determine whether the applicant still qualifies for humanitarian protection. Usually, the status will not be revoked and there will not be an active review, meaning an in-depth review of the applicant's circumstances. This will mainly take place if the particular country of origin of the individual is under review or the individual's conduct (e.g criminal offences) leads to closer scrutiny of whether the UK has to let them stay.

⁴³²The legal basis for the creation of the Immigration Rules is Section 3(2) of the 1971 Immigration Act. Asylum is regulated at Part 11 of the Rules. The latest consolidated version of the Immigration Rules is available at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

⁴³³ Paragraph 339C of the Immigration Rules.

⁴³⁴ Paragraphs 339C, 339D of the Immigration Rules.

⁴³⁵ The UK has decided to retain the notion of unlawful killing and add it to the list of Article 15 of the Qualification Directive. According to the UK Border Office however, this notion does not contain cases where the threat to life is:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

See UK Border Office Asylum Policy Instruction on Humanitarian Protection available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/humanitarianprotection.pdf?view=Binary>

⁴³⁶ Paragraph 339Q(ii) of the Immigration Rules.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		No conditions are imposed restricting the employment or occupation in the UK of a person granted asylum or HP ⁴³⁷ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		This right is acquired immediately. To meet the requirements of the Qualification Directive the Secretary of State for Communities and Local Government will amend secondary legislation to reflect the change in Humanitarian Protection being granted inside the immigration rules ⁴³⁸ .
Access to public education	✓		Irrespective of the child's immigration status or right of residence authorities have a legal obligation to make education available for all children of school age ⁴³⁹ . Both refugees and beneficiaries of humanitarian protection, as well as their spouse, civil partner or children are able to access university education paying the same low fees as EU nationals if they have remained ordinarily resident in the UK and Islands since being granted that status ⁴⁴⁰ .
Social security	✓		Same conditions apply as for Convention refugees. They are entitled to the same income-related benefits as UK nationals, provided that they fulfil the normal conditions of entitlement ⁴⁴¹ .
Health care	✓		Same as Convention refugees. They are entitled to access the NHS as for the primary and secondary health care and services are free of charge ⁴⁴² .
Freedom of movement within the national territory	✓		There is no bar on those granted refugee status or humanitarian protection (unless otherwise detained) ⁴⁴³ . Therefore there is no legislative basis for freedom of movement for people with refugee status any more than there is a legal basis for freedom of movement for anyone else ⁴⁴⁴ .
Travel document	✓		A travel document will be issued where the person is unable to obtain a national passport or other identity documents which enable him

⁴³⁷ Paragraph 344b of the Immigration Rules.

⁴³⁸ Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 25.

⁴³⁹ Section 13, 12 of the Education Act 1996.

⁴⁴⁰ Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 23.

⁴⁴¹ *Ibid.*, p.24.

⁴⁴² *Ibid.*

⁴⁴³ *Ibid.*, p.26.

⁴⁴⁴ *Ibid.*

			to travel, unless compelling reasons of national security or public order otherwise require ⁴⁴⁵ .
Voting rights in municipal election		✓	Like Convention refugees.
Right to stand for elections		✓	Like Convention refugees.
Family reunification		✓	Dependants of persons granted refugee status or humanitarian protection that are in the country of origin can apply to join the principal applicants subject to the necessary conditions ⁴⁴⁶ . Immigration Rule 349 confirms that dependants will be granted leave in line with that of the main applicant, unless otherwise requested, and where this is the case they will also have access to the benefits as set out in article 24-34 ⁴⁴⁷ .
Access to citizenship	✓		General provisions on aliens apply.

DISCRETIONARY LEAVE (DL)

Legal basis: Provisions of the 1971 Immigration Act allow the Secretary of State for the Home Office to grant leave to a person for a reason not covered by the Immigration Rules.

Beneficiaries: Discretionary Leave is granted where a person does not qualify for asylum or Humanitarian Protection, but neither an enforced nor a voluntary return is possible without prejudice to protected rights⁴⁴⁸. Such cases are the following⁴⁴⁹:

1. Removal would result in a direct breach of Article 8 of the ECHR by breaching the right to a private and family life in the UK. It does not include situations that fall under the exception to the right in Article 8(2) or people who allege they would face a breach of Article 8 in the country of return.
2. Removal would be contrary to Article 3 of the ECHR but Humanitarian Protection was not applicable. Examples⁴⁵⁰:

⁴⁴⁵ Paragraph 344A(ii) of the Immigration Rules. Paragraph 344A(iii) states that where the beneficiary can obtain a national passport or identity documents but has not done so, the Secretary of State will issue that person with a travel document where he can show that he has made reasonable attempts to obtain a national passport or identity document and there are serious humanitarian reasons for travel.

⁴⁴⁶ Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 20. This is also confirmed by Immigration Rules 352A-352D.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ As there is no specific legislation governing Discretionary Leave see on it's application the Asylum Policy Instruction issued by the Home Office available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary>

⁴⁴⁹ As they are described in the Home Office's "Asylum Policy Instruction".

⁴⁵⁰ These cases are deemed as not meriting Humanitarian Protection because they are not protection-related cases. See Asylum Policy Instructions on Humanitarian Protection at p. 11. Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/humanitarianprotection.pdf?view=Binary>

Where a person has a serious medical condition and removal would have very serious consequences for the person concerned (a very high threshold). Discretionary Leave is granted only if: the UK has assumed responsibility for the person's care; there is credible evidence that return would significantly reduce the applicant's life expectancy, due to a complete absence of medical care in the country of return; and return would subject the applicant to acute physical and mental suffering⁴⁵¹.

Rare cases where the applicant would face such poor conditions if returned, such as absence of water, food or basic shelter, that removal would result in a breach of Article 3.

3. Other cases that would breach the ECHR. This involves situations where there would be a flagrant denial of a Convention right in the person's country of origin.
4. Unaccompanied asylum seeking children who do not qualify for asylum or Humanitarian Protection, should be granted Discretionary Leave if there are inadequate reception arrangements available in their own country. Where an unaccompanied child qualifies for Discretionary Leave on more than one ground (i.e. on the ground of inadequate reception arrangements and also on another ground) they should be granted leave on the basis of the ground that provides the longer period of stay.
5. Other cases where individual circumstances are so compelling that it is appropriate to grant some form of leave. From time to time separate instructions may be issued describing categories of case for which Discretionary Leave might be granted under this heading.
6. Where the person would have qualified for refugee status or Humanitarian Protection but was excluded. In what concerns this category of applicants, Ministers must be advised on any proposal to grant Discretionary Leave.

Duration: The duration of Discretionary Leave depends upon the basis for granting the leave:

- Article 8 cases: three years ⁴⁵²
- Article 3 cases: three years
- Other ECHR cases: three years
- Unaccompanied asylum seeking children: 3 years⁴⁵³ or until the child reaches 17,5 years of age, whichever is shorter
- Other cases: three years
- Persons excluded from Humanitarian Protection: six months. This period applies to the first grant and any subsequent grants following an active review.
- Shorter periods of leave may be granted if it is *clear* that the circumstances leading to the granting of Discretionary Leave will be short-lived⁴⁵⁴.

⁴⁵¹ See also Asylum Policy Instruction "Applications Raising Article 3 Medical Grounds", available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/applicationsraisingarticle3.pdf?view=Binary>

⁴⁵² See also Asylum Policy Instruction "Periods of discretionary leave granted to those with marriage-based Article 8 claims", available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/periodsofdiscretionaryleave.pdf?view=Binary>

⁴⁵³ Or 12 months for certain countries. See Asylum Policy Instruction "Amendment to Discretionary Leave Policy Regarding to Asylum Seeking Children", available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/amendmenttopolicyasc.pdf?view=Binary>

⁴⁵⁴ An example is where a grant of leave is appropriate to enable a person to stay in the UK to participate in a court case.

Individuals may apply for an extension of leave, and an extension will be granted if the individual still qualifies for Discretionary Leave. A person is not eligible for consideration for ILR/settlement until they have completed six years of Discretionary Leave (10 years in exclusion cases)⁴⁵⁵. ILR is granted if the individual still qualifies for Discretionary Leave (unless, in exclusion cases, the Ministers decide it would be conducive to the public good to deny settlement, in which case Discretionary Leave will be extended)⁴⁵⁶.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Same as Convention refugees ⁴⁵⁷ .
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		This right is acquired immediately. Like Convention refugees.
Access to public education	✓		With regard to access to the higher education sector, DL status holders have to meet the criterion of three years residence in the UK, before being able to claim a university grant or student loan ⁴⁵⁸ .
Social security	✓		Same as Convention refugees ⁴⁵⁹ .
Health	✓		Like Convention refugees. They are entitled to access the NHS as for the primary ⁴⁶⁰ and secondary health care and services are free of charge.
Freedom of movement within the national territory	✓		
Travel document	✓		People granted Discretionary Leave would normally be expected to keep their own national passport valid ⁴⁶¹ . They may apply however for a Home Office Certificate of Identity if they show that they have been formally and unreasonably refused a national passport, unless the UK Border Agency has accepted that they have a well-founded fear of their national authorities ⁴⁶² .
Voting rights in municipal election		✓	Like Convention refugees.
Right to stand for elections		✓	Like Convention refugees.

⁴⁵⁵ Asylum Policy Instruction "Discretionary Leave", at p. 11.

⁴⁵⁶ *Ibid.*, at p. 16.

⁴⁵⁷ Asylum Policy Instruction "Discretionary Leave", at p. 4.

⁴⁵⁸ Only refugees are not required to satisfy a 3-year prior residence test. See Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 23.

⁴⁵⁹ Asylum Policy Instruction "Discretionary Leave", at p. 4.

⁴⁶⁰ (NHS) primary medical services are free to all persons lawfully resident in the UK regardless of their immigration status. As mentioned in the Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 25.

⁴⁶¹ Asylum Policy Instruction "Discretionary Leave", at p. 18.

⁴⁶² *Ibid.*

Family reunification		✓	Only qualify for family reunion when have been granted ILR, after six (or ten) years of DL status ⁴⁶³ . The sponsor is not expected to satisfy the maintenance and accommodation requirements as set out in the Immigration Rules (paragraph 240 (iii) and (iv) of HC395) ⁴⁶⁴ . If family members are already in port or country, they will normally be granted leave to remain along with the sponsor.
Access to citizenship	✓		General provision on aliens applies

For further information contact:

European Council on Refugees and Exiles (ECRE)
www.ecre.org

Tel.: + 32 2 2343800
Email: ecre@ecre.org

⁴⁶³Information available at the UK Border Agency website. <http://www.ukvisas.gov.uk/en/ecg/chapter16/>

⁴⁶⁴ *Ibid.*