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Permanent Residence and Access to Citizenship

of Persons Who Have Been Granted Asylum

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Introduction

According to the latest data published by EUROSTAT, during the year 2017 approximately 826,000 persons acquired the nationality of one of the EU Member States. Only about 17 percent of them were already nationals of other Member States, while most were third country nationals or did not have any nationality.[1] In addition, during the same year, 49,590 persons were granted refugee status and 31,140 subsidiary protection. In 2018, 41,720 persons obtained a refugee status, while 38,420 persons were granted subsidiary protection.[2] In order to ensure the greatest possible level of integration and naturalisation of refugees, several EU Member States amended their national legislation regulating citizenship requirements and procedures by reducing the required period of legal residence and/or administrative costs of the procedure, and by eliminating the obligation to renounce the citizenship of the country of origin.[3]

Since the beginning of the implementation of the first Law on Asylum in 2008 and including the period that ended in June 2019, the Republic of Serbia has granted 68 refugee statuses and 88 subsidiary protections.[4] With increasing number of positive decisions in asylum procedures and as part of a wider integration process, the issues of regulating permanent residence of persons who have been granted asylum and the naturalisation of refugees are becoming increasingly relevant. According to the currently applicable provisions, persons who have been granted asylum are not allowed access to the procedure for obtaining permanent residence, while the right of naturalisation is guaranteed at a declarative level, but without any stronghold in the provisions that prescribe the procedure, i.e. more closely define the requirements for citizenship.

The aim of this document is to provide a summary overview of international and regional standards, with particular reference to those that are defined under EU auspices in terms of the possibility of obtaining permanent residence status, i.e. access to citizenship, for persons who have been granted some form of international protection. It also provides a comparative overview of legislative solutions from certain European countries, as well as an overview of the currently applicable positive regulations of the Republic of Serbia. Finally, the document also offers proposals for improving the legislative framework so that – guided by its own internationally assumed commitments as well as the EU standards – Serbia can establish a legal framework that would provide legal residence to persons who have been granted asylum, or access to citizenship to those who have been granted refugee status.

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1 Source: EUROSTAT, 41/2019 - 6 March 2019. https://ec.europa.eu/eurostat/documents/2995521/9641781/3-06032019-AP-EN.pdf/2236b272-24b1-4b59-ade4-748361331b18

2 Source: Eurostat

3 Source: UNHCR, Note on the Integration of Refugees in the European Union, p. 12. https://www.unhcr.org/463b462c4.pdf. In addition, five Member States (Czech Republic, France, Ireland, Lithuania and Luxembourg) have completely removed the stay requirement, while other countries (but not all) envisage a reduced minimum stay period for recognised refugees. For additional information, see: Acquisition and loss of citizenship in EU Member States - Key trends and issues, European Parliament, July 2018. For additional information, see also: http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI(2018)625116_EN.pdf

4 Source: UNHCR, Asylum office statistics - July 2019. http://www.unhcr.rs/en/dokumenti/statisktike/azil.html .

International and Regional Sources

As a signatory to the **Convention Relating to the Status of Refugees**[5] (hereinafter referred to as "the Convention"), at the time of ratification the Republic of Serbia undertook to assume and implement its provisions. The Convention, among other things, prescribes that persons who have been granted refugee protection and who meet certain requirements may apply for citizenship as a form of completion of the integration process - by acquiring the right to effective citizenship through naturalisation. More specifically, **Article 34 of the Convention provides for two obligations: a general one, relating to the obligation of the State to facilitate the assimilation and naturalisation of refugees as far as possible, and a special one, that States should make every effort to expedite naturalisation proceedings and reduce the associated charges or costs**.

In line with the general comments of the UNHCR, Article 34 refers to local integration as a legal process during which asylum countries progressively grant a wider scope of rights to refugees.[6] It implies that "a refugee has been granted some form of permanent legal status which enables him/her to reside indefinitely in the territory of the asylum country and to fully participate in the social, economic and cultural life of the local community".[7]

Also, the general obligation is not defined in such a way as to require States Parties to actually grant citizenship to refugees; they are to facilitate these persons' naturalisation to the maximum extent possible,and should view the general obligation as a principle rather than consider it formally binding. The focus is on securing the possibility of transition from the status of refugee to that of citizen of the asylum country. The special obligation is also general in nature, meaning that it encourages States Parties to omit – as far as possible – the necessary formal requirements in the process of naturalisation, in order to ensure that refugees have the opportunity to acquire citizenship with minimal difficulty.[8]

According to the interpretation of Article 34,[9] the term 'assimilation' is to be interpreted to mean integration into the economic, social and cultural life of a community, and in a sense it is a stage that preceeds naturalisation. One segment of integration involves acquisition of the status of long-term resident immediately or shortly after the refugee status has been granted. According to the UNHCR interpretation, the type of residence granted to foreign nationals who has been granted refugee status is relevant not only 'with respect to their ability to acquire durable legal status in their country of asylum', but also with respect to their 'eligibility to access to the naturalisation process'. In addition, 'the legal residence status granted to refugees upon recognition should, for the purposes of integration, be compatible with the form of residence ultimately required for naturalisation'.[10]

In this regard, the State Parties' national legal frameworks governing the acquisition of citizenship and their legal frameworks pertaining to the refugee law should be harmonised in such a way as to allow refugees access to the citizenship procedure; also, necessary efforts should be made to speed up the procedure and make it somewhat easier.

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5 "Official Gazette of the Federal People's Republic of Yugoslavia – International treaties", no. 7/60.

6 UNHCR, Local Integration, Global Consultations on International Protection, EC/GC/02/6, 25 April 2002, paragraph 6.

7 Hathaway, James C., "The Rights of Refugees under International Law", 2005

8 Ibid. 2005: 982-987

9 UNHCR, Rights of Refugees in the Context of Integration: Legal Standards and Recommendations, June 2006: 25.

10 Ibid. 2006:42-43

The **European Convention on Nationality** (which – it should be noted – has not been ratified by the Republic of Serbia) obliges States to provide in their national legislations for the possibility of naturalising foreign nationals who are lawfully residing in their territories, and to stipulate **facilitated acquisition of citizenship for recognised refugees who are lawful and regular residents**. Explaining the provisions of the European Convention on Nationality, the report of the Council of Europe lists the following as examples of facilitated requirements: reduction of the length of required residence, less stringent language requirements, an easier procedure, and lower procedural fees.[11]

In addition, this preferential treatment should also apply to persons without nationality and persons with undetermined nationality. States are allowed to prescribe other justifiable requirements for naturalisation, in particular those relating to integration, while the maximum period of stay that may be required for naturalisation is fixed and is ten years.[12]

Within the framework of **EU law**, the relevant sources that directly or indirectly regulate the issue of integration in the wider sense of the word and the residence of persons who have been granted international protection are: the Qualification Directive and the Permanent Residence Directive.

The **Qualification Directive**[13] aims to ensure that Member States apply common criteria for identifying persons who truly need international protection, and that a minimum scope of rights is guaranteed to such persons in all Member States. Unlike the Convention, the Directive denotes 'international protection' to mean both refugee and subsidiary protection,and provides for an almost identical body of rights for holders of both types of protection.

The rights arising from the status of beneficiary of international protection provided for in the Directive include the right to short-term residence, i.e. the right to be issued a residence permit. Pursuant to the provisions of the Directive, States are required to issue a residence permit to a third country national immediately after s/he has been granted international protection. The length of the period for which residence is approved, or residence permit issued, depends on the granted form of protection. Therefore, persons with the refugee status are issued residence permits for a period of at least three years, while persons with the subsidiary protection status are approved for a period of at least one year, with the possibility of extension, unless otherwise required for reasons of national security (Article 24). As regards the right to naturalisation, the Directive does not contain provisions that guarantee it explicitly, but it does stipulate, under Article 34, the right of access to integration programmes.

The provisions of the Qualification Directive represent the minimum standards that EU Member States are required to meet under their domestic legislation, while each Member State is also allowed to introduce or retain provisions that are more favourable than the standards laid down in this Directive. The possibility of, and requirements for, obtaining a permanent residence for persons who have been granted international protection is regulated in the Permanent Residence Directive.

The **Permanent Residence Directive**[14] specifies conditions under which a Member State grants or cancels the status of a permanent resident to third-country nationals, and prescribes the rights that are applicable to them, as well as the requirements for exercising the right of residence of persons who permanently reside in other Member States. Among the categories of persons prohibited from accessing the right of permanent residence, the initial version of the Directive also listed persons

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11 Explanatory Report to the European Convention on Nationality, 1997, paragraph 52

12 Ibid., 1997: p. 9.

13 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and standards relating to to content (rights and obligations) of the protection granted - revised.

14 Council Directive 2003/109/EU.

who have been granted international protection under the Qualification Directive. Amendments and supplements of 2011[15] lifted the above prohibition and persons who were granted refugee status or subsidiary protection were allowed to exercise the right to permanent residence under the same conditions as other third-country nationals. The intention of the legislator was to enable this category of foreign nationals to obtain, after a certain period of time, long-term residence in a Member State which had granted them protection, as it is the key element of their full integration[16], as well as promotion of economic and social cohesion, as one of the Union's core objectives under the provisions of TFEU.[17]

In order to understand the integration framework the Directive seeks to achieve, it is important to bear in mind that the Directive rests on the view that "In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, beneficiaries of international protection who have status of long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by Directive."[18]

The conditions for acquiring the status of a foreign national with approved permanent residence are: 1) the foreign national has resided legally and continuously within the territory of the State for five years, immediately prior to the submission of the relevant application (Article 4, paragraph 1), 2) he/she has stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, and 3) he/she has sickness insurance. Furthermore, the Directive provides for the possibility of the States to also prescribe the obligation to fulfil additional integration conditions, which most often entail knowledge of the official language and script (Article 5).

As regards conditions relating to *legal residence*, it is important to note that the Directive does not define either the concept of 'legal residence' or the conditions or rights pertaining to said residence; they fall within the competence of the Member States,[19] with a proviso that in determining legal residence Member States must remain within the framework of EU law. Article 3(2), on the other hand, prescribes forms of legal residence to which the Directive does not apply: stay in pursue of studies or vocational training, temporary protection, au pair, seasonal employment, employment as worker posted by a service provider for the purposes of cross-border provision of services, or in cases where [a person's] residence permit has been formally limited. The first Commission report of 2011 on the implementation of the provisions of the Permanent Residence Directive highlights as a particular implementation problem the extensive and uneven interpretation of the last condition, i.e. "in cases where [a person's] residence permit has been formally limited".[20] The Court of Justice of the EU has to a certain extent clarified the scope for considering this condition by taking the view that the Directive excludes "residence of third-country nationals which, although lawful and continuous, does not reflect *prima facie* his/her intention to permanently reside in the territory of that Member State" (paragraph 47) and that "the fact that a residence permit contains formal limitations does not in and of itself give an indication as to whether the third-country national in question could remain permanently in the Member State regardless of the existence of such a limitation". In this regard, it is up to the "national court to determine whether a formal limitation of the residence permit of a third-country national permits, or does not permit, his/her long-term stay in that Member State". Whether or not a residence permit may be continuously extended pursuant to the national regulations should also be taken into account during consideration.

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15 Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EU to extend its application to beneficiaries of international protection).

16 Preamble to the Permanent Residence Directive (2).

17 Ibid. (3).

18 Ibid. (6).

19 CJEU, judgment of 18 October 2012 in the case no. C-502/10, paras 39-40.

20 Report of the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC, COM (2011) 585 final.

Pursuant to Article 4, when considering applications for permanent residence of beneficiaries of international protection, when calculating a period of legal and continuous stay of at least five years, Member States are required to take into account at least one half of the period between the date of application for international protection based on which said international protection had been granted, and the date on which the residence permit referred to in Article 24 of the Qualification Directive was issued, that is, the entire period if it exceeds 18 months.

Continuous stay is considered to be a legal residence which must not be interrupted by a long absence of the applicant from the territory of the country in which he/she is applying for permanent residence. The period of absence must not exceed six consecutive months, that is, must not exceed the total period of 10 months during the five years of the legal stay. The Directive, however, does allow for certain derogations, i.e. it provides for the possibility for Member States to accept, based on their national legislation, longer periods of absence from their territory under exceptional and specific circumstances of a temporary nature. In addition, Member States are allowed to take into account periods of absence due to employment for the purposes of cross-border provision of services (Article 4(3)).

In addition to the five years of legal and continuous stay, the applicant for a permanent residence permit must also demonstrate that he/she possesses stable and regular sources of income and health insurance.

As regards refusal or termination of the status of a permanent resident, the Directive provides for an obligation for Member States not to grant a permanent residence to a foreign national whose form of international protection has been revoked, annulled or refused to be renewed for certain reasons [presentation of untrue facts by the applicant; circumstances indicating that a person enjoys the protection or assistance of a body or agency of the United Nations other than the United Nations High Commissioner for Refugees, or has been recognised by the competent authorities of the State of residence as having rights and obligations related to the possession of nationality of that State, or equivalent rights and obligations, or there are serious reasons to believe that a person who has been granted asylum: a) had committed a crime against peace, a war crime or a crime against humanity; b) had committed a serious non-political crime outside the territory of the State prior to entering the territory; c) has committed an act contrary to the purposes and principles of the United Nations, as outlined in the Preamble and Articles 1 and 2 of the Charter of the United Nations, i.e. that the person to whom subsidiary protection has been granted had committed, or otherwise participated in, the commission of: a) a crime against peace, a war crime or a crime against humanity; (b) a serious crime; (c) acts contrary to the purposes and principles of the United Nations as outlined in the preamble and Articles 1 and 2 of the Charter of the United Nations; (d) or if the person poses a danger to the society or security of the Member State in which s/he is located]; while providing, on the other hand, for the possibility (but not the obligation) for competent authorities of the State to withdraw, under the same circumstances, a foreign national's previously approved status of permanent resident. **In addition, it is important to keep in mind that the Directive does not explicitly state – among the circumstances that may be taken into account when granting and withdrawing permanent residence to a foreign national who has been granted international protection – the reasons for termination of international protection provided for by the Qualification Directive (i.e. the reason for the termination of circumstances due to to which protection has been granted), which indicates that they cannot be assessed when considering a request for permanent residence, that is, that they cannot be taken into account as a basis for its termination**.[21]

21 Extending EU long-term resident status to refugees and persons with subsidiary protection status, Professor Steve Peers Law School, University of Essex, https://www.statewatch.org/analyses/no-114-ltr.pdf

National sources

Pursuant to the provisions of the **Law on Asylum and Temporary Protection**,[22] asylum is the right to residence and protection enjoyed by a foreign national who, by a decision of the competent authority, has been granted the right of refuge or subsidiary protection.

No special decision is taken to approve a person's residence; the right to it is instead "drawn" from the decision granting the asylum, i.e. subsidiary protection, and proved by the identity card of the person who has been granted asylum. Given the fact that a person who has been granted asylum is issued an identity card that is valid for a period of five years, and that a person who has been granted **subsidiary protection is issued an identity card that is valid for up to one year**, it can be concluded that the length of the granted period of residence corresponds to the period of validity of the identity card. In addition, cessation, that is, revocation of or cancelling the decision on upholding an application for asylum, also terminates the right of residence of the person to whom the decision refers. According to the current practice of the Asylum Office, in the wordingof the decision upholding the application for asylum it is not stated that the person to whom asylum has been granted, residence is also approved, nor does the decision specify the period for which such residence is granted. On the other hand, when the Asylum Office takes a negative decision concerning an application for asylum, the mandatory part of the decision is the statement that refers to the requirement that the applicant, unless s/he has other grounds for residence, must leave the territory of the Republic of Serbia within a specified deadline. Bearing in mind that the Law on Asylum and Temporary Protection prescribes that the decision granting the asylum, i.e. subsidiary protection approves the right to residence, and that according to the regulations governing the general administrative procedure the identity card does not represent a constitutive administrative act, it is necessary that **decisions granting asylum also contain a statement explicitly establishing the right of residence**.

With regard to the issue of how refugees could obtain citizenship, **Article 71 of the Law on Asylum** and Temporary Protection stipulates the obligation of the Republic of Serbia to provide, **within its capabilities, conditions for the inclusion of persons who have been granted asylum in social, cultural and economic life and to facilitate the naturalisation of refugees**. However, the Law does not regulate in details the requirements for naturalisation, but rather stipulates that the conditions, manner, procedure and other issues of importance for the naturalisation of refugees shall be specified by the Government at the proposal of the Commissariat.

On the other hand, the Law on Citizenship[23] does not explicitely stipulate the possibility of acquiring citizenship for persons who have been granted asylum. Not only are there no specific provisions providing for the possibility of acquiring citizenship of the Republic of Serbia for refugees, but **refugees (together with persons who have been granted subsidiary protection) are in fact placed at a disadvantage when compared to other foreign nationals in terms of access to the procedure for obtaining citizenship by admission**. Pursuant to the applicable provisions of the Law on Citizenship, Article 14 stipulates that a foreign national who has been granted permanent residence in accordance with the regulations that govern the movement and stay of foreign nationals may be granted citizenship of the Republic of Serbia if, among other things, prior to the day of submission of the application s/he has had uninterrupted residence in the territory of the Republic of Serbia for at least three years . The provision clearly stipulates that the possibility for a foreign national to acquire citizenship by admission is conditional on previously granted permanent residence; who, in accordance with the applicable provisions of the Law on Foreigners, can not be persons who had been granted asylum.

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22 "Official Gazette of the Republic of Serbia" no. 24/2018

23 "Official Gazette of the Republic of Serbia" nos. 135/2004, 90/2007 i 24/2018.

The **Law on Foreigners**[24] recognises the following: 1) a short-term stay, 2) a stay based on a long-term visa, 3) temporary residence, and 4) permanent residence.

Short-term stay implies a visa-free stay of up to 90 days, as well as a stay based on a short-term visa. A stay based on a long-term visa is granted to foreign nationals who, in accordance with the visa regime of the Republic of Serbia, do require a visa and intend to apply for a temporary residence permit in the Republic of Serbia.

If a foreign national intends to remain in the Republic of Serbia longer than 90 days for the purpose of employment, schooling, learning the Serbian language, study, participation in international student exchange programmes, professional specialisation, training and practice, scientific and research work or other scientific and educational activity, family reunification, performance of religious services, medical treatment or care, property ownership, humanitarian stay, or if s/he is a person with the status of presumed victim of human trafficking or an actual victim of human trafficking, as well as for other justified reasons in accordance with the law or international treaty, such person has the right to submit an **application for temporary residence**.

Permanent residence is an authorization to reside long-term in the Republic of Serbia. The Law on Foreigners specifies the conditions and deadlines which a foreign national must meet in order to be entitled to apply for a permanent residence: s/he must fulfil the general requirements (must have a valid personal passport, proof of possessing means of support, proof of health insurance, registered residential address in the Republic of Serbia, proof of justification of the application for granting permanent residence, proof of payment of the prescribed administrative fee), and have proof that s/he had resided continuously in the Republic of Serbia for more than five years based on a temporary residence permit prior to applying, and that at the moment of applying for permanent residence s/he is present in the country under approved temporary residence. When it comes to exceptions to the possibility of obtaining permanent residence depending on the grounds for temporary residence, unlike the provisions of the Directive, our law explicitly exempts only foreign nationals who had been granted temporary residence in the Republic of Serbia on the grounds of study or schooling.

Permanent residence may also be granted in special cases (Article 68), to foreign nationals who fulfill the following general requirements: 1) a person who is married or living in a common law marriage with a citizen of the Republic of Serbia or a foreign national who had been granted permanent residence, 2) to minors temporarily residing in the Republic of Serbia whose parent (one of the parents) is a citizen of the Republic of Serbia or a foreign national who had been granted permanent residence, 3) to foreign nationals who are from the Republic of Serbia by origin, or 4) if reasons of humanity so require, or if granting such residence is in the interest of the Republic of Serbia.

Persons who have been granted a refugee status also cannot be subject to the exception under Article 68 paragraph 1 (4) of the Law on Foreigners, primarily due to the fact that the above Law does not recognise residence granted based on the Law on Asylum and Temporary Protection as a form of legal (temporary) residence.

In other words, the Law on Foreigners does not explicitly recognise residence that is based on a decision to approve the application for asylum, as a special form of residence. Persons who have been granted asylum may apply for permanent residence in the Republic of Serbia, but under less favourable conditions than other third-country nationals. More precisely, pursuant to the provisions of the Law on Administrative Proceedings, persons who have been granted asylum may apply for

24 "Official Gazette of the Republic of Serbia" nos. 24/2018 and 31/2019.

permanent residence, but the decision made upon such an application would almost certainly be a negative one because these persons do not fulfil one of the key requirements – a previously granted temporary residence in duration of five years in the Republic of Serbia. **A foreign national who has been granted residence based on a decision upholding the application for asylum could fulfil the above requirement for permanent residence permit only if s/he changed the grounds for his/her residence in the Republic of Serbia, and ,,replaced" residence based on a positive decision upon the application for asylum by residence based on one of the legally prescribed grounds** (s/he would become eligible to apply for permanent residence after the expiry of five years from the date of issuance of the temporary residence permit). In addition, under the applicable provisions, even if a person who has been granted asylum would change his/her grounds for residence, the period during which s/he legally stayed in the country, based on a positive decision on the asylum application, would not be taken into consideration when calculating the period of continuous stay in the process of granting permanent residence, regardless of the fact that such a stay, by its nature, can be considered continuous within the meaning of Article 67, paragraph 5 of the Law.

The way in which persons that have been granted asylum could access the procedure for the issuance of permanent residence should be interpreted also in the context of the regime that is applicable to the family members of persons who have been granted asylum and persons who have been granted temporary residence for humanitarian reasons. Persons who have been granted asylum are in a disadvantaged position in terms of granting of permanent residence also in relation to these two specific categories to which the provisions of the Law on Foreigners apply. Given that the Law stipulates only the exception based on study or schooling, it follows from the argumentum a fortiori interpretation that it is possible for family members of persons who have been granted asylum and persons who have been granted temporary residence for humanitarian reasons to be granted permanent residence. Even if persons who have been granted temporary residence for humanitarian reasons and family members of persons who have been granted asylum due to the reasons that could be considered temporary, were required to change the grounds for their temporary residence, the time they spent in the Republic of Serbia since they were first approved temporary residence would be calculated as time necessary to fulfill the five-year requirement, due to the absence of a provision to the contrary.

The acquisition of permanent residence status for recognised refugees is important, first and foremost, because of the provisions of the Law on Citizenship, which does not explicitly stipulate the possibility of acquiring citizenship for persons who have been granted refugee status in accordance with the Law on Asylum and Temporary Protection, prescribing such a possibility rather for foreign nationals who have been granted permanent residence in the Republic of Serbia in accordance with the regulations that govern the movement and stay of foreign nationals. Once Serbia becomes a full member of the EU, granting permanent residence status to refugee will be significant also because they will be able to relocate to another Member State.

Practice in Countries of the EU

In most countries, beneficiaries of international protection are issued a temporary residence permit for a specific period of time, based on a positive decision upon an application for asylum. In some countries, the period of validity of the residence permit varies depending on the form of protection granted: in Austria[25] and Germany[26] the residence permit for refugees is valid for three years, while for holders of subsidiary protection it is valid for one year and may be renewed if the reasons why it had been granted in the first place continue to exist. In Belgium,[27] the period of validity is five years for refugees and one year for beneficiaries of subsidiary protection. On the other hand, in countries such as Greece,[28] the Netherlands[29] and Italy,[30] a temporary residence permit has the same validity period for both refugees and holders of subsidiary protection, although the period of validity varies from one country to the next. Thus, in Greece, a temporary residence permit is valid for three years, while in the Netherlands and Italy[31] it is valid for five years. It is important to note that in most of the above countries the renewal of the residence permit depends on whether the circumstances relevant to the recognition of the status of refugee, i.e. holder of international protection are still present.

Once a person who has been granted international protection is residing legally based on a temporary residence permit, s/he may initiate the procedure to obtain permanent residence. In Germany, for example, the conditions that need to be fulfilled for issuing a permanent residence permit vary depending on whether the person in question is a refugee or a holder of subsidiary protection. In this regard, a refugee may apply for a permanent residence after: a) three years of stay based on a temporary residence permit, with the obligation to meet certain integration conditions (must have advanced knowledge of German, be able to cover an 'enormous part' of the living expenses, and prove that s/he has sufficient living space for him/herself and his/her family members); or b) five years of stay (taking into account the period pending the asylum procedure), with less demanding integration conditions (must have basic knowledge of German, be able to cover the 'bulk' of the living expenses, and prove that s/he has sufficient living space for him/herself and his/her family members). In comparison to other foreigners, holders of subsidiary protection do not have privileged access to the permanent residence permit procedure, in the sense that, in addition to the five-year stay they must also fulfil other general conditions such as the obligation to bear the entire cost of living for themselves and their family members. They must also prove that they have been paying pension contributions for at least 60 (preceding) months.

In Belgium, after the expiry of the five-year period of stay based on previously granted temporary residence, refugees and holders of subsidiary protection acquire the right to remain in the country for an indefinite period of time, i.e. have the possibility to initiate the proceedings for obtaining a permanent residence permit. The requirements they must fulfil in order to do this include: a) a legal and continuous stay in Belgium for five years, immediately prior to applying for the permanent residence permit; b) stable and regular income sufficient to support the applicant and his/her family members; c) health

25 AIDA country report Austria, March 2019. Source: http://www.asylumineurope.org/reports/country/austria.

26 AIDA country report Germany, April 2019. Source: http://www.asylumineurope.org/reports/country/germany.

27 AIDA country report Belgium, March 2019. Source: http://www.asylumineurope.org/reports/country/belgium

28 AIDA country report Greece, March 2019. Source: http://www.asylumineurope.org/reports/country/greece.

29 AIDA country report Netherlands, Apr 2019. Source:http://www.asylumineurope.org/reports/country/netherlands.

30 AIDA country report Italy, April 2019. Source: http://www.asylumineurope.org/reports/country/italy.

31 In issuing a residence permit some difficulties tend to occur in practice. Namely, the issuance of a residence permit requires registration of a domicile (address) at the time of application, but users of international protection very often cannot provide this information because they do not have a permanent address (that is, their housing issue is not settled). AIDA country report Italy, op.cit.

insurance. When calculating the legal and continuous stay, the competent authorities are obliged to take into account one half of the period that passed from the moment when the asylum application was submitted to the positive decision. If this period happens to be longer than 18 months, then the entire period is taken into account. It is important to emphasise that in the event that the status of a beneficiary of international protection has in the meantime been abolished/annulled, the competent authorities deciding in the procedure of issuing/renewing the permanent residence permit also reserve the right to revoke the permanent residence permit; in doing this, they are obliged to take into account family, cultural and social ties with the country of origin. As regards access to the procedure for issuing a permanent residence permit, similar conditions in terms of type and length of stay are prescribed in Slovenia (five years of continuous legal stay, as well as other general conditions: possession of a passport, health insurance, and sufficient funds); in the Netherlands (five years of continuous stay immediately prior to the submission of the application for a permanent residence permit, possession of sufficient financial means, health insurance, passed integration examination, and fulfilment of security requirements: the person does not pose a threat to national security and had never been convicted of a crime punishable by three or more years of imprisonment); in Austria (a legal stay for a period of five years, a completed specific integration program, B1-level knowledge of the German language, a certain amount of income, sufficient health insurance, adequate accommodation, and the applicant does not pose a security risk); in Greece (five years of legal and continuous stay, a certain amount of income, health insurance, and fulfilled integration requirements in terms of good knowledge of the Greek language and of the elements of Greek history and civilisation). The situation in Italy is the same. When calculating the period of legal and continuous stay, most of these countries take into account at least one half of the period from the moment of application for asylum to the positive decision. An example of other preferential provisions vis-à-vis other third-country nationals is their exemption from the obligation to prove the availability of adequate accommodations, pass the Italian language test (Italy), or to pay the administrative costs of issuing the permit (Slovenia).

In some of the above countries, such as Belgium and Germany, the granting of a permanent residence permit, i.e. exercising the right thereto is also related to the status of international protection; namely, it is reqired that the competent authority had not initiated the procedure for revocation or withdrawal of the status.

Under national legislation governing citizenship, some of the above countries have special provisions on refugees – in addition to the regular naturalisation procedure there are also special preferential provisions in relation to this category of foreign nationals (for example: shorter periods of stay than required for other foreign nationals, and exemption from the obligation to renounce previous citizenship, etc.). Thus, the Austrian Law on Citizenship provides that citizenship is granted to refugees after 10 years of continuous stay in the country, or after 15 if the person in question is a beneficiary of subsidiary protection, provided that the national authority deciding in the procedure for granting and terminating the right to asylum informs the competent authority, upon request, that the procedure for cessation of the right to asylum has not been initiated and that such conditions are not fulfilled. Exceptionally, refugees and subsidiary protection holders can submit an application for citizenship even before the expiry of the prescribed period of stay, that is, after six years, if: 1) they speak German at level B2; or 2) they speak German at level B1 and can demonstrate personal integration efforts; however, they must meet the general requirement i.e. denounce their previous nationality.

The Slovenian Law on Citizenship[32] distinguishes between the regular naturalisation procedure, which requires 10 years of prior stay in the country, and the naturalisation procedure which carries benefits that allow certain categories of foreign nationals (including refugees) to acquire citizenship under

32 http://www.mnz.gov.si/en/services/slovenia_your_new_country/citizenship/

facilitated conditions, that is, during a period that is shorter than the five years of lawful and continuous stay, and does not provide for the obligation to renounce previous nationality (which is a mandatory requirement for other third-country nationals in the regular naturalisation procedure).

Greece provides for a period of three years of legal and continuous stay for refugees, counting from the date of issuance of the residence permit (this is a residence permit issued in a special procedure immediately after the refugee status is granted and it is valid for three years),[33] unlike the seven-year period required for other third country nationals. The situation in Italy is the same: a shorter period of stay is required for refugees – five years of legal and continuous stay, while a period of 10 years is required for holders of subsidiary protection and other third-country nationals. Despite the seemingly preferential provision, in practice beneficiaries of international protection are impeded to access procedure for issuing residence permit once they are granted asylum; therefore, they are very often not able to initiate the proceedings for obtaining citizenship.

The Dutch Law on Citizenship provides for identical conditions for acquiring citizenship by way if naturalisation for refugees and other third-country nationals, with one exception: it stipulates that the obligation to renounce previous citizenship will not be applied to refugees whose status has been recognised, i.e. persons in possession of a (permanent) asylum residence permit. The German Law on Citizenship stipulates the same.

Belgium is one of the examples of EU Member States whose national legislations do not contain provisions on the preferential treatment of refugees. In this context, the 'naturalisation of nationality' procedure provides for two methods of acquiring citizenship: a) the person has continuously resided in the territory of Belgium based on a permanent residence permit, is older than 18 years of age, and fulfils the integration conditions (that is, s/he can prove that s/he speaks the language and that s/he has reached a certain level of social integration and participation in the economic life of the community); b) the person has continuously resided in the country for 10 years based on permanent residence and is able to prove that s/he is participating in the life of the community.

In addition to the right to permanent residence in an EU Member State, the advantage of acquiring the citizenship of one of these countries – in comparison to permanent residence – is the right to vote and the right to permanently reside in other EU Member States as well.

33 Other conditions that apply to other nationals: a) the person has reached legal age by the time the petition for naturalisation has been filed, b) s/he had not been convicted of certain criminal offences in the previous 10 years, c) no decision on deportation has been taken regarding that person, d) s/he possess one of the residence permits recognised by the Law on Citizenship: a permanent residence permit, a residence permit for recognised refugees or beneficiaries of subsidiary protection, or it is a second generation residence permit.

Next Steps

In one of the next stages of harmonisation of national legislation governing the residence and stay of foreign nationals with the provisions of EU law it is necessary to redefine the conditions for applying for a permanent residence permit so as to enable persons who have been granted asylum to enter the permanent residence permit procedure. In this regard, it is necessary to first recognise residence deriving from the status of a person who has been granted asylum, as a form of legal residence from which such a person would be able to directly initiate the procedure for granting permanent residence. Considering the temporary nature of residence based on the approved application for asylum and the comparative practice of EU Member States, this can be achieved in the following way: in accordance with the Law on Asylum and Temporary Protection, residence based on an approved asylum application should be recognised as a form of legal residence that is equated to temporary residence, or as additional special grounds for temporary residence. Another option would be to introduce explicit provisions in articles of the Law on Foreigners that govern the issue of permanent residence, so as to provide for the possibility where persons whose legal residence has been granted based on a positive decision on an asylum application, would also be allowed to apply for permanent residence.

Furthermore, the conditions for obtaining a permanent residence should also take into account the specific situation of persons who have been granted asylum. In this regard, special provisions should be laid down on how to calculate their previous stay, i.e. residence from the moment they applied for asylum, in accordance with the standards of the Permanent Residence Directive and relying on established comparative regulations and practices. Also, it is necessary to redefine the general conditions referred to in Article 70 in such a way that persons who have been granted the right to asylum are exempted from the obligation to obtain a foreign travel document[34]. It could be done by providing for the possibility of using identification documents issued to persons who have been granted asylum by the competent authorities of the Republic of Serbia, or by providing for an exception by which permanent residence would be granted by a decision (as is the case when temporary residence is granted in a situation where, due to humanitarian reasons, the interests of the Republic of Serbia, or force majeure, temporary residence of a foreign national who does not possess a valid travel document but otherwise fulfils the general conditions for granting temporary residence, is granted or extended by a decision issued pursuant to Article 44 of the Law on Foreigners). In addition, it is necessary to also regulate the special circumstances under which permanent residence applications of persons who have been granted protection is rejected, in accordance with the mandate requirements and the reasons provided for by the Permanent Residence Directive.

If the Law on Foreigners is amended with regard to the possibility of obtaining permanent residence, persons who have been granted asylum could fulfil the conditions and exercise the right to apply for citizenship of the Republic of Serbia.

In addition, it should be taken into account that the Law on Asylum and Temporary Protection recognises naturalisation as one of the segments of refugee integration, but does not regulate it more closely, instead envisaging the adoption of an act of the Government of the Republic of Serbia at the proposal of the Commissariat. Regulation of the manner, procedure and other issues relevant for naturalisation is a matter that falls under status law and as such cannot be regulated in a by-law. In this regard, the

34 The Law on Foreigners of the Republic of Croatia stipulates that persons who have been granted asylum or subsidiary protection do not have to have a valid foreign travel document, while the Law on Foreigners of Montenegro stipulates that they do not have to have either a valid foreign travel document or health insurance.

procedure for naturalisation of refugees should be regulated more closely in one of the next phases of amending and supplementing the Law on Asylum and Temporary Protection and/or the Law on Citizenship.

Acquisition of citizenship by way of naturalisation should be regulated in such a way as to allow refugees to access the procedure for acquiring citizenship at least under the same conditions as other permanently residing foreign nationals. In this regard, the naturalisation procedure under the Law on Asylum and Temporary Protection should be regulated by direct reference to the procedure for acquiring citizenship by admission of a foreign national, in accordance with the provisions of the Law on Citizenship, with the assumption that the amendments and supplements to the Law on Foreigners have provided refugees with access to the procedure for obtaining permanent residence in line with the provisions of the Permanent Residence Directive.

Also, bearing in mind the preferential provisions provided for in the legislation of some EU Member States for persons who have been granted the status of refugees, it might be worth considering the possibility of organising expert thematic debates on the importance and possible conditions for prescribing special preferential provisions for acquiring of citizenship by admission for persons who have been granted refugee status in the Republic of Serbia.

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