



European Migration Network

Ad-Hoc Query on the rights and documents of persons enjoying subsidiary protection

Requested by HU EMN NCP on 18th June 2008

Compilation produced on 10th August 2009

Responses from [Austria](#), [Belgium](#), [Bulgaria](#), [Estonia](#), [France](#), [Germany](#), [Hungary](#), [Ireland](#), [Latvia](#), [Netherlands](#), [Malta](#), [Poland](#), [Portugal](#), [Slovenia](#), [Spain](#), [United Kingdom](#) (16 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

HU NCP formulated three questions regarding the rights and documents of persons enjoying subsidiary protection. The query was requested by the Hungarian Office of Immigration and Nationality.

In Hungary a completely new legislation on asylum entered into force on the 1st of January, 2008. This legislation implements all European directives regarding asylum-seekers. Therefore the practice has to deal with new types of residence permits and a different approach. In order to develop a best practice in Hungary we would like to be aware of the European models and solutions regarding the rights and entitlements of persons enjoying subsidiary protection (as in the Qualification Directive).



2. Responses¹

		Wider	1) Does the document (e.g. residence permit, identity card or else) given to the person enjoying subsidiary protection entitle him/her to
--	--	--------------	---

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

EMN Ad-Hoc Query: Rights of subsidiary protected







Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

		Dissemination? ²	<p>travel (without passport) within the territory of the Schengen zone? 2) What rights are attached to the documents given to the persons enjoying subsidiary protection? 3) How many persons enjoying subsidiary protection are in your Member State?</p>
	<p>Austria</p>	<p align="center">Yes</p>	<p>1. Persons with subsidiary protection status are issued a "residence card for persons with subsidiary protection status" (§ 52 AsylG; §8 AsylG) (restricted validity: 1 year - will be renewed if conditions of subsidiary protection still apply), which is a permit to enter and reside in Austria. In practice, persons with subsidiary protection do not enjoy freedom of travel. There is an option to apply for an "Aliens' passport", if the applicant has to travel to another state for humanitarian reasons. However, for the granting of this document not only the interests of the applicant are taken into consideration, but also the interests of the Republic of Austria. For reasons of threat to public order and security, an Aliens' Passport can be denied.</p> <p>2. The document grants the right to enter and reside in Austria. Persons with subsidiary protection status further have a right to Basic Welfare Support (like asylum seekers, recognised refugees, rejected asylum seekers, who cannot be deported), if they do not have sufficient financial means to sustain themselves. Basic Welfare Support includes e.g. accommodation, food, health insurance. Concerning welfare services in general (e.g. access to child care allowance, family allowance) or access to the Austrian citizenship, persons with subsidiary protection status do not have the same rights as recognised refugees. However, since 1 January 2008 (following an amendment of the Aliens' Employment Act (Ausländerbeschäftigungsgesetz), persons with subsidiary protection status have equal access to employment like recognised refugees (no restrictions to work in Austria). Before, they were granted access only after one year of residence in Austria.</p> <p>3. There is no data available on stocks of persons enjoying subsidiary protection.</p>
	<p>Belgium</p>	<p align="center">Yes</p>	<p>1. The persons enjoying subsidiary protection receive a "Certificate of Registration on the Alien's Register", valid for one year. All persons in possession of such residence permit can travel within the Schengen zone, if they are in possession of a valid passport.</p> <p>2. "people enjoying the status of subsidiary protection can work (as employee or self-employed), but they first have to ask for a work permit or professional card (as long as they do not have a residence permit valid for indefinite period). In the field of social security rights, the Belgian law that does not stipulate anything on particular on subsidiary protection. In practice this means they have the same rights as any other foreigner with the same residence permit (distinction is made between limited or unlimited duration of residence permit validity)."</p>

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."





EMN Ad-Hoc Query: Rights of subsidiary protected

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			3. 2007: 585 (of which 279 by the Commissioner General for Refugees and Stateless Persons) 2008 (until May): 143
	Bulgaria	Yes	<p>1. Bulgaria is still not a part of the Schengen zone and neither Bulgarian citizens nor persons enjoying subsidiary protection could freely travel within the Schengen area .</p> <p>2. The following identification documents shall be issued to the persons that have been granted subsidiary protection (= humanitarian status): card of foreigner with humanitarian status and certificate for travel abroad of foreigner with humanitarian status. The card of foreigner with humanitarian status is issued by the bodies of the Ministry of Interior to a foreigner with conceded humanitarian status with term of validity up to 3 years. The certificates for travel abroad of a foreigner with humanitarian status is issued by the bodies of the Ministry of Interior to a foreigner with conceded humanitarian status with term of validity up to 3 years, but not bigger than the term of validity of the card of foreigner with humanitarian status. The certificate for travelling abroad of a foreigner with a humanitarian status entitles its holder to enter and exit the Republic of Bulgaria within the term of its validity under the conditions and by the order for permanently staying foreigners in the Republic of Bulgaria.</p> <p>3. Since 1993 when the State agency for refugees was established till the 31 May 2008 a total number of 3944 persons have been granted subsidiary protection. Since the beginning of 2008 till the 31 May 2008 a total number of 125 persons have been granted subsidiary protection.</p>
	Cyprus	Yes	
	Czech Republic	Yes	
	Denmark	Yes	
	Estonia	Yes	<p>1. To the person who enjoys the subsidiary protection in Estonia is issuing an ID-card. The ID card is a document for domestic use and is mandatory for all persons residing in Estonia: Estonian citizens (over 15 years of age) and permanent resident aliens. The card is issued by the Citizenship and Migration Board. The above named card doesn't allow travelling in Schengen area.</p> <p>2. The ID-card is only for domestic use (only Estonian citizens may travel with it within EU-countrys), so for aliens and for persons enjoying in Estonia some protection status ID-card is only the tool for identification. The person enjoying international protection has the right to receive state pensions, family benefits, employment services and employment subsidies, social benefits and other assistance on the same grounds provided by legislation as permanent residents of Estonia</p> <p>3. Since 2000 Estonia has given the subsidiary status to 12 persons.</p>
	Finland	Yes	




EMN Ad-Hoc Query: Rights of subsidiary protected

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	France	Yes	<p>The beneficiaries of subsidiary protection get a temporary residence permit, valid for one year, entitled "vie privée et familiale" ("private and family life"). It may be renewed by tacit. It gives therefore the right to engage in gainful employment on the French territory.</p> <p>Regarding the travel document, 2 situations may arise:</p> <ol style="list-style-type: none"> 1. Subsidiary protection type 1 applies to persons who are unable to obtain documents by the authorities of their country of origin. The prefecture give them a travel document entitled "titre d'identité et de voyage" ("identity and travel card") that does not correspond to the travel card under the Geneva Convention but allows them to travel outside the Schengen zone. 2. Subsidiary protection type 2 applies to persons who are able to obtain their national passport by their consular authorities <p>The distinction between these two protections is made by OFPRA (French protection of refugees and stateless persons Office). The type of protection afforded figure in the agreement decision of the Office.</p> <p>Subsidiary protection was given to : 557 in 2005 ; 554 in 2006 ; 706 in 2007. Figures on 2008 are not yet available.</p>
	Germany	Yes	<ol style="list-style-type: none"> 1. No 2. <ul style="list-style-type: none"> <u>Social benefit:</u> Child allowance Support credit for single mothers/fathers Special support for parents who give up their job for taking care of their children (Erziehungsgeld/Elterngeld) Basic support for job seekers Social welfare Education sponsorship 3. January – May: 221 positiv decisions according to § 60 II, III, V, VII Aufenthaltsgesetz <p><u>Employment</u> Normally there is a verification whether priority has to be given to other groups of job seekers. Basicly this depends on the aliens department (Ausländerbehörde – ABH). Agreement of Federal Employment Office (Bundesagentur für Arbeit) is necessary. Exceptions are possible – especially for persons who already have a residence permit over a longer time.</p>
	Greece	Yes	
	Hungary	Yes	<p>The Hungarian Act on Asylum (2007/LXXX) provides that the Republic of Hungary shall grant subsidiary protection to a foreigner who</p>






EMN Ad-Hoc Query: Rights of subsidiary protected

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>does not satisfy the criteria of recognition as a refugee but there is a risk that, in the event of his/her return to his/her country of origin, s/he would be exposed to serious harm and is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his/her country of origin.</p> <p>Fear of serious harm or of the risk of harm may also be based on events which occurred following the foreigner's departure from his/her country of origin or on the activities of the foreigner which s/he was engaging in following departure from his/her country of origin.</p> <p>The refugee authority shall review the existence of the criteria of eligibility for subsidiary protection at least every five years following recognition.</p> <p>As for the legal status of beneficiaries of subsidiary protection: Except as set out in subsections (2) and (3) (a beneficiary of subsidiary protection shall be entitled to the travel document determined in a separate legal rule and a shall have no suffrage), unless a rule of law or government decree expressly provides otherwise, a beneficiary of subsidiary protection shall have the rights and obligations of a refugee. Unless a rule of law or government decree expressly provides otherwise, except as set out in subsections (4) and (5) (see above), a refugee shall have the rights and obligations of a Hungarian citizen. Therefore a refugee is entitled to an identity card as well.</p> <p>(4) A refugee</p> <p>a) shall have no suffrage except for elections of local municipality representatives and majors, local referenda and public initiative;</p> <p>b) may not fulfil a job or responsibility and may not hold an office, the fulfilment or holding of which is tied by law to Hungarian nationality.</p> <p>(5) A refugee shall be entitled to</p> <p>a) an identity card determined in separate legal rule and a bilingual travel document specified by the Geneva Convention;</p> <p>b) provisions, benefits and accommodation under the conditions determined in the present Act and in separate legal rule.</p> <p><u>Statistics</u></p> <p>Since 1st of January, 2008 the number of persons enjoying subsidiary protection is 68.</p>
	Ireland	Yes	The Irish Permanent Representation in Brussels responded directly to the initial query made by their Hungarian counterpart.
	Italy	Yes	
	Latvia	Yes	<p>1. If person is granted subsidiary protection status in Latvia he/she is entitled to receive travel document which looks like a passport. Temporary residency permit (sticker) is stuck in passport. In Latvia identity cards are not issued.</p> <p>2. According to the Asylum Law person granted subsidiary protection receives travel document and temporary residence permit for a term of one up to four years (temporary residence permit can be prolonged if situation which was ground for granting subsidiary protection status is still actual). If person doesn't have other means of existence he/she is entitled to receive state allowance for 9 months. Person granted subsidiary protection status has rights to family reunification and rights to work. Besides this person granted subsidiary protection status has the same rights as Latvia citizen except suffrage and certain restriction on professions (for example, judge can be only citizen of Latvia etc.).</p>

EMN Ad-Hoc Query: Rights of subsidiary protected

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.





			3. Since 2002 when subsidiary protection status was introduced in Latvia asylum legislation 20 persons have received it.
	Lithuania	Yes	
	Luxembourg	Yes	
	Malta	Yes	<ol style="list-style-type: none"> 1. Persons granted subsidiary protection in Malta are issued with a protection certificate and entitled to an Alien's travel document and a temporary residence permit covering the duration of their protection, for a maximum period of one year. These documents allow the person to travel within and outside the Schengen zone. An identity card is issued for domestic use. 2. The rights attached to subsidiary protection are:- <ul style="list-style-type: none"> • Right to work • Free access to State Health and State Education • A state subsistence allowance if the person does not have adequate means of subsistence. • Temporary accommodation (sheltered care when person is vulnerable). No suffrage rights are attached to subsidiary protection 3. During the year 2008, 1387 persons were granted subsidiary protection and 7 persons were granted temporary humanitarian protection, while 19 persons were accorded refugee status. Subsidiary protection was introduced on the 1st August 2008 into the Maltese legal system.
	Netherlands	Yes	<ol style="list-style-type: none"> 4. No, he gets a residence permit valid for five years. This permit is also a national identity card, however, is not a travel document. For travelling within the territory of Schengen he is entitled to a Convention travel document if he meets the criteria laid down in the Passport Law. 5. Since 1 April 2001 the Netherlands have a single status asylum procedure. All persons who are granted asylum are entitled to the same rights. It is irrelevant whether protection in the individual case is granted on the ground of Geneva Convention, subsidiary or humanitarian asylum reasons. 6. In 2007 approximately 5600 positive decisions are given in Total on asylum requests in first instance. Approximately 1100 of these 5600 regarded subsidiary protection in confirmation with the qualification directive.
	Poland	Yes	<p>1) Does the document (e.g. residence permit, identity card or else) given to the person enjoying subsidiary protection entitle him/her to travel (without passport) within the territory of the Schengen zone?</p> <p>Person enjoying subsidiary protection in Poland is provided with a residence card, valid for two years, which confirms his/her identity during his/her residence on the territory of Poland and which, <u>together with a valid travel document</u>, enables him/her to multiple border crossing and traveling within the territory of the Schengen zone. Polish travel document, valid for the period of one year, is issued at the request of a person enjoying subsidiary protection if s/he lost his/her document or his/her document is damaged or outdated and s/he cannot obtain a new one.</p> <p>2) What rights are attached to the documents given to the persons enjoying subsidiary protection?</p>

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>Subsidiary protection was introduced into Polish legal system in the Act of 18 March 2008 amending the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland and other acts; and entered into force on 29 May 2008. According to the Act, subsidiary protection is granted if the alien does not meet the conditions for being granted a refugee status but whose return to the country of origin may expose the alien on actual risk of suffering a serious harm. The serious harm consists of:</p> <ul style="list-style-type: none"> (a) making a judgement on a death penalty or performing an execution; or (b) torture or inhuman or degrading treatment or punishment; 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. <p>The Act on granting protection to aliens within the territory of the Republic of Poland specifies that a refugee status constitutes a basis for protection and thus every application for granting a protection shall be seen as an application for granting a refugee status (unless the person specifically demands other form of protection). If it appears that the alien does not meet the prerequisites for being granted a refugee status it shall be examined if the alien shall be granted a subsidiary protection or a tolerated stay.</p> <p>Beneficiaries of subsidiary protection enjoy the rights of aliens, who have been granted residence permit for a fixed period, unless the rule of the Act, or other acts expressly provide otherwise (art. 89f). This means they are entitled to residence card (valid for two years), Polish travel document (valid for one year) in the circumstances specified in q1 or temporary travel document, in case the circumstances specified in q1 would appear abroad and a person would like to return to Poland.</p> <p>Residence card granted to beneficiaries of subsidiary protection does not provide for any suffrage (in order to have suffrage, such person would have to, for e.g. become the EC long term resident i.e. fulfill the conditions specified in art. 64 of Polish Act on Aliens of 13 June 2003).</p> <p>According to the Act on granting protection to aliens, persons enjoying subsidiary protection have a right to the same social assistance benefits (including integration programs), as recognized refugees (art. 89e). These are specified in Act on Social Assistance of 12 march 2004.</p> <p>Persons granted a refugee/subsidiary protection status cannot be issued a decision of an obligation to leave the territory of Poland nor a decision of expulsion without prior deprivation of the status.</p> <p>3) With the introduction of subsidiary protection into Polish legal system, statuses of persons previously granted tolerated stay on the grounds of art. 97.1.1 of Act on granting protection to aliens within the territory of the Republic of Poland (below) were „transformed” into subsidiary protection (from then on, both subsidiary protection and tolerated stay statuses are granted, yet current tolerated stay offers much less rights than before). Therefore, the number of persons with subsidiary protection in Poland is quite significant, and amounts to 6300 persons, according to data of the 29th of May 2008.</p>
--	--	--	---




EMN Ad-Hoc Query: Rights of subsidiary protected

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>Art. 97.</p> <p>1. An alien shall be granted the permit for tolerated stay on the territory of the Republic of Poland if his / her expulsion:</p> <p>1) may be effected only to a country where his/her right to life, to freedom and personal safety could be under threat, where he/she could be subjected to tortures or inhumane or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (J.L. of 1993 No. 61, it. 284 and 285, of 1995 No. 36, it. 175, 176 and 177 and of 1998 No. 147, it. 962 and of 2002 No. 127, it. 1084)</p>
	Portugal	Yes	The formulated questions were answered orally by PT REPER in Brussels to Hungarian REPER. Concerning the number of persons who had subsidiary protection, last year (2007) 18 persons were granted with this status.
	Romania	Yes	
	Slovak Republic	Yes	
	Slovenia	Yes	<p>According to the International Protection Act that entered into force on 4th January 2008, subsidiary protection status shall be granted to a third country national or a stateless person who does not qualify as a refugee, but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm.</p> <p>Serious harm shall consist of:</p> <ul style="list-style-type: none"> - the death penalty or execution; - torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; - serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. <p>A decision by which subsidiary protection has been granted to an applicant is used, as of the day of service, as a valid temporary residence permit for the Republic of Slovenia for a period of three years.</p> <p>When the subsidiary protection of a person has been renewed, the decision by which the subsidiary protection was renewed is used as a valid temporary residence permit in the Republic of Slovenia for a period of two years, with the possibility of renewal.</p> <p>A person granted subsidiary protection has no suffrage rights and, much like in Hungary, may not fulfil a job or responsibility, which is tied by law to Hungarian nationality.</p> <p>An identity card of subsidiary protection shall be used as a document certifying the status of subsidiary protection and providing for the exercise of rights. A person granted subsidiary protection shall use his/her national passport. If the person referred to in the preceding paragraph is not in possession of a national passport, and humanitarian reasons arise that require their presence in another State, such person shall be issued an alien passport pursuant to the Aliens Act, unless compelling reasons of national security or public order</p>

EMN Ad-Hoc Query: Rights of subsidiary protected

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>otherwise require.</p> <p>There are 17 persons enjoying subsidiary protection in the Republic of Slovenia.</p>
	Spain	Yes	<p>1. In application of the directive 2004/83/CE the authorities shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.</p> <p>2) They will have the same benefits than a refugee, it means right to work, education and social assistance and medical care.</p> <p>3) Statistics: 2007: 345 persons enjoying protection subsidiary 2008: 57 “</p>
	Sweden	Yes	
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. The UK equivalent of subsidiary protection is called humanitarian protection. Individuals who are granted humanitarian protection are given permission to enter and remain in the UK for an initial period of 3-5 years. This entitles them the same rights as permanent residents of the UK <i>but does not</i> allow them to travel without passport within the territory of the Schengen zone (note that the UK has not signed up to the Schengen Agreement in full and UK residents cannot travel within the Schengen zone without passports). If someone has humanitarian protection, they can apply to the UK Border Agency for travel documents if they are unable to obtain a national passport or other identity documents from another country to enable them to travel. They are not allowed to travel to the country they came from. 2. Individuals granted humanitarian protection have the same rights as permanent residents of the UK. For example, they are able to work and apply for official support, known as benefits. 3. In the first quarter of 2008 (1st January to 31st March inclusive) 30 people were given initial asylum decisions of humanitarian protection (this is 1% of the total initial asylum decisions made during this period).