

European Migration Network Ad-Hoc Query on humanitarian right to residence

Requested by AT EMN NCP (IOM Vienna)


August 2008



1. Background Information/Questions

- 1) Are there legal provisions in your country on a right to residence for humanitarian reasons/ a residence permit for humanitarian reasons?
- 2) If yes, what is the legal basis and in particular what are the criteria to be granted the right to residence for humanitarian reasons/residence permit for humanitarian reasons? Which groups can be granted this kind of residence permit? What is the period of validity of such permits?
- 3) How many people per year have been granted such a right/residence permit since 2005?

Due to a pressing deadline, we would be most grateful for your answers received by 18 August 2008.

2. Responses

	Belgium	<p>Regularisation Mechanisms:</p> <p>Article 9bis and article 9ter of the Alien's law of December 15, 1980</p> <p>These mechanisms (both formerly article 9.3. of the same law) were originally not meant to be used as regularisation mechanisms. At the time when this article was added, it was meant to facilitate the procedure for foreigners with short term residence permits, who obtained working permits during their stay in Belgium. Before the adding of this article these host-workers had to go to the Belgian embassies in Germany or France to obtain their permit for long residence in Belgium. The main goal of this article was thus, to make it possible to change one's legal status without having to leave the territory.</p> <p>De facto this article has been increasingly used as a regularisation mechanism for illegal residents who, due to "exceptional circumstances", cannot return to their country of origin to apply for a visa (in the Belgian embassy or consular post, as it is the normal procedure). These "exceptional circumstances" have been interpreted as circumstances of humanitarian nature.</p>
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		<p>It is important to note that article 9 bis/ter is a procedural measure and does not form a legal base for any residence right whatsoever. Regularisation under article bis/ter is not a right but a favour that is granted on a case-by-case basis. It addresses the needs of a certain “rest category” of people who do not classify for the normal residence permits and who cannot or pretend they can not go back to their countries of origin.</p> <p>The criteria for regularisation are not defined by law but in circular letters from the minister. The main criteria are:</p> <ul style="list-style-type: none"> - An “unreasonable long” asylum procedure - Medical reasons (9ter) - Other humanitarian situations (parents of children with the Belgian nationality; aged people who are financially dependent of one of their legally resident children; certain categories of handicapped; people who lived in Belgium as a child or as an adolescent but had to return against their will with their parents and who cannot apply for other procedures, etc.) <p>Because very different situations can lead to regularisation, and to keep a certain degree of flexibility, the government has estimated it not opportune to confine itself to a limitative list of “exceptional circumstances”.</p> <p>If the person got regularised under this article, he or she will receive a limited ‘Proof of inscription in the foreigners register’ (residence permit for 3, 6, 9 or 12 months) that can be renewed under certain circumstances.</p> <p>The number of foreigners that use this article to justify their claims for regularisation has become very big over the years. For example, in 2005, 2006 and 2007 respectively 15.927, 12.667 and 13.883 new applications have been made. The number of positive decisions was respectively 5.422, 5.392 and 6.256 (or several times the number of refugee status grants).</p>
	Bulgaria	
	Czech Republic	<p>1) The answer is positive.</p> <p>2) Act on the Residence of Aliens (No. 326/1999 Coll.), cites the humanitarian reasons for granting permanent residence to a foreign national as follows, in particular:</p> <ul style="list-style-type: none"> a) the person is husband/spouse of an asylum status holder and the marriage had started up before the asylum status holder entered the territory of the Czech Republic; b) the person is minor child of an asylum status holder or child dependant on an asylum status holder, unless the child applies for asylum;

c) the person was once of Czech nationality;

and for a dependant of EU citizen:

a) the person will take care of an EU citizen, who is unable to take care of oneself for sake of longstanding bad health condition;

b) the person is minor or major unprovided children of a Czech citizen with registered residence in the Czech Republic or an EU citizen with permanent residence permit in the Czech Republic for the reason of common life

Permit of permanent residence is valid for 10 years and may be renewed repeatedly by 10 years.

3) Statistical data:

Statistical data:

	2005	2006	2007	I-VI. 2008
Applications	360	698	258	252
Refused applications	32	18	9	46
Number of aliens with residence permit granted for humanitarian reasons*	3 335	3 832	4 061	4 068

* The TOP 5 nationalities are Vietnam, Ukraine, Romania, Russia, and Bosnia & Herzegovina.

 **Denmark**


Hereby the answer from Denmark to Austria's questions on humanitarian residence permits.

1) Yes.

2) A residence permit on humanitarian grounds can be granted to a foreign national who is registered as an asylum seeker in Denmark, if significant humanitarian considerations warrant it.

According to the Danish Aliens Act, Section 9b, 1, a residence permit on humanitarian grounds can be granted to a foreign national who is registered by the Immigration Service as an asylum seeker in Denmark.

The applicant must be in such a situation that significant humanitarian considerations warrant a residence permit.

		<p>The Danish Parliament has decided that humanitarian residence permits should be the exception, not the rule.</p> <p>An application for a humanitarian residence permit should be submitted to the Ministry of Refugee, Immigration and Integration Affairs. The Ministry will then conduct a factual assessment of each individual application.</p> <p>In making this assessment, the Ministry places importance on the applicant's personal situation, including whether he or she suffers from a serious physical or psychological illness, and whether the application concerns a family with young children who come from a nation at war.</p> <p>If the applicant suffers from a serious illness which can substantiate a humanitarian residence permit, the Ministry will also assess whether the applicant can receive the necessary treatment for this illness in his or her country of origin.</p> <p>The Ministry's ruling regarding a humanitarian residence permit is final. This means that the ruling cannot be appealed to any other administrative authority.</p> <p>3) 2005: 186; 2006: 216; 2007: 223.</p>
	Germany	<p>1) Yes, according to the German Residence Act there is a possibility to issue residence permits for humanitarian reasons.</p> <p>2) Residence for humanitarian reasons can be permitted under specific circumstances:</p> <p>A foreigner may be granted a residence permit for the purpose of admission from abroad in accordance with international law or on <i>urgent humanitarian grounds</i>. (Section 22)</p> <p>A residence permit can be also granted by the supreme Land authorities to foreigners from specific states or to certain groups of foreigners defined by other means, in accordance with international law, <i>on humanitarian grounds</i> or in order to uphold the political interests of the Federal Republic of Germany. (Section 23 (1)) Furthermore the Federal Ministry of the Interior may order foreigners from specific states or certain categories of foreigners defined by other means to be granted approval for admission in order to safeguard special political interests of the Federal Republic of Germany, that can also include humanitarian reasons. (Section 23 (2))</p> <p>In cases of hardship, a residence permit can be issued by the Land government on petition from a Hardship Commission to a foreigner who is enforceably required to leave the Federal territory (hardship petition). (Section 23a)</p> <p>According to Section 25 residence permit on humanitarian grounds should be granted to a foreigner</p> <p>(1) if the foreigner is incontestably recognised as being entitled to asylum,</p>

(2) if the foreigner is incontestably granted refugee status according to the United Nations Convention Relating to the Status of Refugees,

(3) in case of subsidiary protection, where a deportation ban applies,

(4) who is non-enforceably required to leave the Federal territory may be granted a residence permit for a temporary stay if his or her continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. A residence permit may be extended if departure from the Federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case concerned.




(4a) victims of human trafficking, if he or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence.


(5) who is enforceably required to leave the Federal territory if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if deportation has been suspended for 18 months.

Special regulations apply to **old cases**: foreigner should be granted a residence permit if he or she has been continuously resident in the Federal territory for at least eight years on 1 July 2007; or, if he or she lives together with one or several minor, unmarried children as a family unit on 1 July 2007; where he or she has been continuously resident in the Federal territory for at least six years on 1 July 2007; *and* he or she is well integrated (i.e. adequate knowledge of the spoken German language), earns his own livelihood and has not been convicted of a serious offence wilfully committed in the Federal territory. (Section 104a) Similar provision applies to a child who has reached the age of 14 in the event of the said child's parents or the parent possessing the sole right of care and custody not being granted a residence permit or an extension of the same pursuant to Section 104a and leaving the federal territory.

The residence permits are issued and extended in each instance for a maximum period of three years, however exceptions are possible. (Section 26) The duration of the residence permit for temporary protection is regulated by Article 4 and 5 of the EU directive 2001/55/EC. Regarding old cases Section 104a para 5 and 6 contains special regulations.

A permanent settlement permit can be issued to a foreigner who has been in possession of a residence permit in accordance with Section 25 (1) or (2) for three years if the conditions for revocation or withdrawal of the status as asylum seeker or refugee do not apply. According to Section 26 (4) a foreigner who has been in possession of a residence permit for seven years may otherwise be granted a settlement permit.

		<p>Link to the German Residence Act (English translation): http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Gesetze/Gesetze_Sprachen/AufenthG_en,templateId=raw,property=publicationFile.pdf/AufenthG_en.pdf</p>
	Estonia	<p>1.) Estonia does not issue residence permits on the basis of humanitarian reasons.</p> <p>2.) However, there is a provision in the Aliens Act that says that a residence permit shall not be issued to or extended for an alien if some country which is a part of the Schengen visa area and according to the Schengen Convention, has applied a prohibition on entry with regards to the alien and if the prohibition is entered in the Schengen Information System (SIS). As an exception of that, a temporary residence permit may be issued or extended for the referred alien if the alien has entered Estonia or is living in Estonia because of humanitarian reasons or because of an international obligation. This provision gives an alien who is entered in the SIS, because of the prohibition on entry, a change to apply a residence permit even when a prohibition on entry has been applied with regards to the alien (usually prohibition on entry is a reason to deny a residence permit). In that case, an alien has to apply a residence permit on the basis given in the Aliens Act (for employment, for enterprise, for study, in order to settle with a close relative permanently resident in Estonia, whose permanent legal income ensures their subsistence in Estonia, whose application for a residence permit is based on an international agreement). A residence permit will be issued to him or her if he or she meets all the requirements given in the Aliens Act.</p>
	Ireland	
	Greece	<p>1) Yes, migration legislation provides for a residence right for humanitarian reasons, thus for a specific type of a residence permit on that grounds.</p> <p>2) The legal basis is migration law (Law 3386/05). In specific, according to article 44 of this law upon decision of the Ministers of Interior and Labor and Social Protection, a residence permit on humanitarian grounds may be granted to third country nationals, who:</p> <ol style="list-style-type: none"> a) suffer from injuries after having a labour or other accident and for the duration of their treatment or become pensioners for this reason. b) are victims of criminal acts arisen from a judicial decision and for the duration of their treatment. c) are hosted by public charitable institutions. d) are minors, the custody of whom is held by Greek families or families of third country nationals who are legal residents in Greece or for whom an adoption procedure is pending. e) suffer of serious medical problems. <p>Their medical condition as well as the duration of treatment is established by a recent certificate issued by a public hospital or a hospital of the Social Security Institution. One primary condition for cases a, b and e is that the applicant was previously a residence permit holder on any of the grounds provided for in migration legislation. The residence permit issued for humanitarian reasons according to this provision is of maximum duration of one year and can be renewed for an equal period of time, under the condition of the specific humanitarian reason.</p>

		<p>In addition, where members of their family are holders of a residence permit on the grounds of family reunification, their residence permits are also renewed for a period of time equal to the duration of the permit issued to the sponsor on humanitarian grounds.</p> <p>Holders of such a residence permit have full access to the labour market and the issuance of their residence permits is not subject to the deposit of a fee.</p> <p>In the case that the humanitarian reason on the grounds of which the residence permit was issued ceases to exist, the third country national may retain his residence right on any other ground of the migration law, thus he/she can renew the residence permit accordingly.</p> <p>3)</p> <p>2005: 1.318 residence permits for humanitarian reasons were granted</p> <p>2006: 1.041 residence permits for humanitarian reasons were granted</p> <p>2007: 1.468 residence permits for humanitarian reasons were granted</p> <p>2008: 1.080 residence permits for humanitarian reasons were granted</p>
	Spain	<p>The following information is hereby provided as regards the question broached by the Austrian NCP at the EMN concerning European practices on the right of residence for humanitarian reasons:</p> <p>1. Spanish legislation on alien affairs sets forth and governs the granting of temporary residence permits for humanitarian reasons. More specifically, Article 31.2 of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their integration, amended by Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November, sets forth that “The Spanish Administration may grant temporary residence permits for humanitarian reasons...”.</p> <p>The Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration, approved by Royal Decree 2393/2004 of 30 December, develop the legal provision contained in the aforementioned article. Paragraph 4, Article 45 of such Regulations (concerning the granting of temporary residence permits due to exceptional circumstances) sets forth the grounds under which temporary residence permits for humanitarian reasons may be granted.</p>

2. Pursuant to Article 45.4 of the Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration, approved by Royal Decree 2393/2004, the grounds under which it may be possible to grant a temporary residence permit for humanitarian reasons are the following:

- To any foreigners who are victims of the crimes typified in Articles 311 to 314 of the Criminal Code (concerning certain crimes against the rights of workers), or of crimes in which the aggravating circumstances of racism, anti-Semitism or any other kind of discrimination set forth in Article 22.4 of the Spanish Criminal Code concur, or of crimes arising from violent behaviour within the family environment under the terms legally laid down, as long as a court ruling on such crimes has been issued.
- To any foreigners who can prove they are suffering a serious illness requiring specialized healthcare that cannot be accessed in their country of origin, and the fact that interrupting or not receiving such healthcare would entail a serious risk to their health or life.
- To any foreigners who can prove that returning to their country of origin or from where they have come for the purposes of applying for the relevant visa would place their safety or to that of their family in danger, and who meet all the other requirements to obtain a temporary residence permit or a work and residence permit.





The initial temporary residence permit (which does not require a visa), as well as any possible renovations, will be valid for one year, without prejudice to the possibility of applying for a residence permit or a residence and work permit, pursuant to the provisions set forth in Articles 47 and 98 of the aforementioned Regulations, whenever the requirements laid down thereof are met after having remained in a situation of residence due to exceptional circumstances for a year.






3. Until 2007, the statistics only reflected overall data on temporary residence permits issued due to exceptional circumstances without breaking down the different grounds, including any residence permits issued for humanitarian reasons. It is consequently not possible to provide data for 2005 and 2006.


A total of 504 temporary residence permits were issued in 2007 for humanitarian reasons and, up to 30 June 2008, 608 temporary residence permits have been issued for humanitarian reasons.


Applicable Legislation:

- Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their integration, amended by Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November. (Article 31.3).
- Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration,

		<p>approved by Royal Decree 2393/2004 of 30 December. (Articles 45 to 47 and 98). Accessible at: http://extranjeros.mtin.es/</p> <p>It is also recalled that this response is only for purposes of information exchange among national experts in the framework of the European Migration Network (EMN), for those who have applied, and does not originate rights or expectations of law in favour of these applicants or third parties, nor commits the Public Administrations, and hence, the Government of the Kingdom of Spain.</p>
	France	
	Italy	
	Cyprus	<p>According to Art. 19A of the Refugee Laws 2000-2007, the Head of the Asylum Service, may decide to grant temporary residence for humanitarian reasons to any asylum seeker who is not granted the refugee status or subsidiary protection status.</p> <p>Temporary residence for humanitarian reasons may be granted,</p> <ul style="list-style-type: none"> • For any humanitarian reasons, taking into consideration that these reasons do not constitute reasons for which an asylum seeker may be granted subsidiary protection status. • When the deportation of an asylum seeker is legally or practically impossible, or • When the asylum seeker has strong possibilities to be granted visa by another safe country, which is willing to examine his/her application for asylum <p>An asylum seeker, who is granted temporary residence for humanitarian reasons, (s)he is issued with a temporary residence permit, which is renewed for as long as the reasons for which (s)he was granted the temporary residence status, exist.</p> <p>The temporary residence status for humanitarian reasons is revoked with a decision of the Head of the Asylum Service, in case, after thorough investigation, the reasons for which (s)he was granted this status, cease to exist.</p>
	Latvia	<p>There is a clause in our Immigration Law which provides a possibility to grant a residence permit in some exceptional cases not foreseen in the Law. In this case a decision on granting a residence permit is made by the Minister of Interior (normally it is responsibility of Office of Citizenship and Migration Affairs). Mostly this clause has been used for humanitarian grounds and since 2005 we have issued approximately 30 permits.</p> <p>Criteria - usually people who have been issued these permits are people who are not entitled to the right of family reunification but who due to one or other reason are not able to stay in their home country. The most typical case is elderly mother of citizen of Russia who has a residence permit in Latvia. Persons with residence permits are not entitled to the right of family reunification with their parents, therefore, if this parent is old, sick, alone etc. he/she receives this type of residence permit.</p> <p>Usually the permit is issued for 1 year but repeated permit can be issued for a period for up to 4-5 years (it is not regulated very strictly in our law). After 5 years of continuous residence a person can obtain a permanent residence</p>

		permit.																
	Lithuania																	
	Luxembourg																	
	Hungary																	
	Malta																	
	Netherlands	<p>1) Yes 2) Dutch Aliens Law (section 13) specifies three grounds on which an application for the issue of residence permit shall be granted, i.c. when (a) international obligations necessitate this; (b) the presence of the alien would serve a real interest of the Netherlands, or (c) urgent reasons of a humanitarian nature necessitate this.</p> <p>The legal basis for residence on humanitarian grounds is to be found in section 29 of the Dutch Aliens Law, Grounds for admission: “An asylum residence permit may be granted on the grounds referred to in section 29: on the grounds of the Geneva Convention, on the grounds of the European Convention on Human Rights, on humanitarian grounds, on the grounds of the overall situation in the country of origin and on the grounds of family reunification with an asylum-seeker or the holder of an asylum permit.”</p> <ul style="list-style-type: none"> • Groups: Categorical protection is national policy. (Admittedly there is a comparable instrument within Europe (Directive temporarily protection) which is an international obligation. This Directive is not considered as ‘humanitarian reason’ as there is no personal aspect to it. • Period of validity: an asylum residence permit for a fixed period is granted for a maximum of three years. <p>Lastly the State Secretary of Justice has discretionary powers to grant individuals in very specific cases a residence permit. This can be on humanitarian grounds.</p> <p>Residence on Humanitarian Grounds The Netherlands</p> <table border="1"> <thead> <tr> <th>granted in</th> <th>2005</th> <th>2006</th> <th>2007</th> </tr> </thead> <tbody> <tr> <td>first instance</td> <td>5028</td> <td>2779</td> <td>2976</td> </tr> <tr> <td>second instance</td> <td>1137</td> <td>2045</td> <td>762</td> </tr> <tr> <td>Total</td> <td>6165</td> <td>4824</td> <td>3738</td> </tr> </tbody> </table>	granted in	2005	2006	2007	first instance	5028	2779	2976	second instance	1137	2045	762	Total	6165	4824	3738
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		The above cluster of decisions to grant residence on humanitarian grounds were based on: unequal harshness; humanitarian and relayed status of spouse or minor child.
	Austria	<p>1) Yes, in Austria, a residence title (either a residence permit or a settlement permit) for humanitarian reasons can be granted in individual cases - thus, a residence title can be granted, although the person does not fulfil the general requirements for residence titles as stipulated by the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, NAG), if justified for humanitarian reasons. Exempted from the possibility of being granted a residence title for humanitarian reasons are person with a residence ban.</p> <p>2)</p> <p>a) residence permit for humanitarian reasons:</p> <p>§ 72 NAG stipulates that a person can be granted a residence permit for humanitarian reasons ex officio "for specific reasons to be taken into consideration". The law does not define such "specific reasons", but gives examples for situations, when a person can be issued such kind of permit: 1) if the person cannot be removed because he/she is exposed to a danger in his/her country of origin (non-refoulement) or 2) if he/she left her home country due to an armed conflict (§ 72 par 1 NAG) or 3) if the person is a victim of human trafficking and his/her presence is required to ensure criminal prosecution (§ 72 par 2 NAG).</p> <p>b) settlement permit for humanitarian reasons:</p> <p>Besides residence permits, the authorities can also issue a settlement permit for humanitarian reasons for the above mentioned reasons. The main difference between these two types of permits is that settlement permits allow for (long-term) settlement, which is a precondition if a person wants to get naturalised. Although a residence permit can also be renewed, its intention is residence for a limited period.</p> <p>A settlement permit for humanitarian reasons can be issued ex officio only if the foreigner completed the Integration Agreement (German classes).</p> <p>In addition, a settlement permit for humanitarian reasons can be granted for cases of family reunification, when the yearly quota is already exhausted and the admission of the family members cannot be postponed for certain reasons (usually, if the quota for family reunification is exhausted, the applications have to be deferred to the subsequent year).</p> <p>In general, permits for humanitarian reasons are granted ex officio with the consequence that there is no possibility for the concerned person to file an application him/herself; only the responsible authority can initiate the process of granting a permit for humanitarian reasons. Consequently, there is no legal remedy for the individual if the permit for humanitarian reasons was denied. The granting of permits for humanitarian reasons has to be approved by the Minister of the Interior (§ 75 NAG).</p> <p>Concerning the period of validity, the first settlement permit is valid for one year; the period of validity for first residence</p>

		<p>permits for humanitarian reasons depends on the reasons why this permit was issued: in case of armed conflicts, the permit is issued for three months at maximum, for victims of trafficking for at least 6 months. Renewal is possible.</p> <p><u>Latest developments:</u></p> <p>In June 2008, the Constitutional Court declared the provision that residence titles for humanitarian reasons can only be granted "ex officio" (i.e. that the individual has not the right to file an application) as unconstitutional, referring to Art 8 European Convention for Human Rights. As a consequence, the law has to be amended taking into consideration the Court's ruling until 31st of March 2009.</p> <p>In autumn 2007 the Constitutional Court specified the criteria which have to be taken into consideration by the authorities when humanitarian residence titles are granted (i.e. duration of residence, family life, degree of integration, personal integrity etc.).</p> <p>3) The following number of permits for humanitarian reasons were issued in the period 2005-2008 (residence permits, settlement permits, settlement permits for family reunification):</p> <ul style="list-style-type: none"> • 2005: 254 residence permits, 112 settlement permits; 478 settlement permits for family reunification (for 2005, the old legislation was still in place as the NAG only entered into force in January 2006) • 2006: 144 residence permits, 5 settlement permits, 61 settlement permits for family reunification • 2007: 78 settlement permits, 150 settlement permits for family reunification • 2008 (January until end of June): 26 residence permits, 26 settlement permits, 43 settlement permits for family reunification
	Poland	<p>1) The PL legislation does not specifically provide for a right to residence / residence permit for humanitarian reasons. There are however two forms of protection which might be considered as ones which grant a right to remain in Poland for humanitarian reasons, namely: permission for tolerated stay and temporary protection. In addition, there exist residence visas granted, among others, for humanitarian reasons.</p> <p>2)</p> <p>a) Permission for tolerated stay:</p> <p>According to the Art. 97.1.1 and 1a of Polish Act on 13 June 2003 on granting protection to aliens on the territory of the Republic of Poland, a permission for tolerated stay is issued to a foreigner if his/her expulsion:</p> <ol style="list-style-type: none"> 1) could be effected only to a country where his/her right to live, to freedom and to personal security would be threatened, in which s/he could be tortured, treated in inhuman or humiliating way or punished; s/he could be forced to work, or refused a right to a fair trial, or s/he could be punished without any legal basis in the meaning

of the Convention for the Protection of Human Rights and Fundamental Freedoms created in Rome on the 4 November 1950;

1a) would infringe the right to family life in the meaning of Convention for the Protection of Human Rights and Fundamental Freedoms, created in Rome on the 4th November 1950 or would infringe the rights of a child as defined in Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on the 20 November 1989, to the extent substantially threatening child's psychophysical development

à The abovementioned point 1a is not applied when further residence of the foreigner on the territory of the Republic of Poland constitutes a threat for state defense, state security, public order or public security.

A foreigner who has been issued a permission for tolerated stay has generally the same rights as a foreigner issued a residence permit for a specified period (S/he receives a residence card; the card is valid for a year and has a possibility to renew it). A person holding a permission for a tolerated stay cannot be issued a decision on obligation to leave the territory of the Republic of Poland nor an expulsion decision.

Permission for tolerated stay is withdrawn once: the cause for which it was granted ceased to exist; the foreigner turned for protection to authorities of his/her country of origin; s/he permanently left the territory of the Republic of Poland or further validity of the permit could cause a serious threat for state defense, state security, public order or public security.

Permission for tolerated stay ceases to exist in one of the following cases: the foreigner obtains a refugee status or a subsidiary protection; the foreigner obtains Polish citizenship; the foreigner submits a written notification to the Head of the Office for Foreigners stating that s/he is no longer interested in benefiting from the permission for tolerated stay or the foreigner obtains a residence permit for specified period or a permit to settle.

à See attached Excel file for statistics.

b) Temporary protection

Art. 106. 1 of the aforementioned act states that foreigners, who arrive on the territory of the Republic of Poland in large numbers having left their country of origin or a particular geographic area because of extraneous invasion, war, civil war, ethnic conflicts or flagrant infringements of human rights (the so called 'mass influx') may be granted a temporary protection on the territory of the Republic of Poland regardless whether their arrival was spontaneous or whether it resulted from aid provided by the Republic of Poland or international community.

2. Temporary protection is granted until it is possible for the foreigners to return to their previous place of residence, however for the period no longer than 1 year.

3. If after 1 year the circumstances creating obstacles for a safe return of foreigners to their previous place of residence, the period of temporary protection is prolonged for another 6 months, however such prolonging can take place no more than twice.

à So far, there were no cases of temporary protection in Poland. The abovementioned regulation is in conformity with the EU law on mass influx.

c) Residence visas

2) Art. 47.1 of Polish Act on Aliens of 13 June 2003 states, that if a foreigner proves that there exist an exceptional and pressing reasons, especially humanitarian one, professional one or if it is an important interest of the Republic of Poland, requiring the foreigner's entry and stay on (or transit via) PL territory and that due to reasons beyond the influence of the foreigner and unpredictable, s/he was not able to obtain a visa from the consul, a transit visa or residence visa (for one of the purposes defined in Art. 26.4 b-f and i , i.e. visit; sport event; economic activity; cultural activity or participation in international conferences; professional duties of representatives of administrative body of other state or international organization; education, scientific, didactical) may be issued by the chief of particular Border Guard's post.

Art. 43.1 states that it is possible to prolong the residence visa for a foreigner staying on PL territory if the following conditions are fulfilled (all-in):

- 1) it is justified by important professional or personal interest of the foreigner or by humanitarian reasons;
- 2) circumstances, which constitute a basis for application for prolonging of a visa appeared independently from the foreigner's will and it was impossible to foresee them in the moment of issuing the visa;
- 3) the circumstances do not suggest that the purpose of the foreigner's stay on PL territory will be different than the one declared;
- 4) circumstances quoted in Art. 42 points 2-7 do not appear (e.g. the foreigner creates a threat for public order, his/her stay is against the interest of the Republic of Poland, s/he presented application with false data, etc.).¹

Further, Art. 43.2 states, that the period of residence on PL territory on the basis of prolonged visa cannot exceed the period normally foreseen for the particular type of residence visa, as defined in Art. 26.4 (see above).

In addition:



¹ Nevertheless, art. 33.1 states, that it is possible to grant national residence visa despite of circumstances of art. 42 (defining circumstances under which the residence visa is not granted) if, among others (...):




2) entry to Polish territory is required due to necessity of medical treatment for direct life saving reasons, which cannot be performed in any other country;

3) exceptional personal situation requires the presence of the foreigner on the territory of the Republic of Poland (...);


5) there exists a justified suspicion that a foreigner is a victim of THB on the basis of Council's framework decision of 19 July 2002 on combating THB (OJ L 203 of 01.08.2002), confirmed by a relevant body for procedures related to combating THB.

In cases cited in point 2-3 the visa may be granted for no more than 3 months; in case cited in point 5 for, the visa may be granted for no more than 2 months.

		<p>Art. 57 and Art. 66 state, that a foreigner is refused a residence permit for a specified period as well as a permit to settle in case (among others) where his/her data appears in SIS for the purpose of refusing entry. However, in both cases it is possible to grant the permit regardless the SIS, if it is done for serious reasons, especially humanitarian or resulting from international obligations. The interest of the state which entered the data into SIS needs to be considered.</p> <p>Art. 53.1.15 specifically grants the right to residence permit for a specified period to a foreigner - victim of THB (under certain conditions, i.e. residence on Polish territory, cooperation with relevant body, staying out of touch with persons suspect of THB crimes).</p>
	Portugal	
	Romania	<p>The Romanian legislation does not specifically provides for a right of residence for humanitarian reasons. But, it provides for the possibility to remain in Romania for a period of time. This possibility applies only for the persons against whom a return decision has been taken but for objective reasons he/she cannot leave Romania. It is called toleration.</p> <p>So, toleration of stay on the territory of Romania represents the permission to stay on the territory, granted by the Romanian Immigration Office to the alien who doesn't have a right to reside and can not leave the territory for objective reasons.</p> <p>By objective reasons are meant such circumstances which are independent of the alien's will, cannot be foreseen and removed, which do not allow the alien to leave the territory.</p> <p>Aliens may be tolerated in following instances:</p> <ul style="list-style-type: none"> • when the alien is charged or accused in a penal cause and the magistrate orders the measure of prohibition to leave the place of residence or the country or he/she has been convicted by Court Order and is subject to custodial sentence and do not fulfil the conditions provided by the law to be granted a residence permit; • when the aliens taken into public custody, against whom a measure of return has been ordered, could not be removed for a period of 6 months; • when the aliens taken into public custody, against whom the court instance has ordered expulsion, could not be expelled for a period o 2 years from the date of having been transferred into public custody; • when the aliens' presence on the territory is required by important public interests. In this case, toleration shall be granted upon request of the competent state bodies; • when there are serious reasons to believe that the aliens are victims of trafficking of human beings. In this case, toleration shall be granted upon request of the prosecutor or of the court; • when the Romanian Immigration Office determines that the aliens are unable to leave the territory of Romania for other objective reasons.

		<p>Toleration shall be granted for a period of up to 6 months, which may be extended for new periods of up to 6 months, until the reasons do no longer exist and it does not cancel the obligation to leave the territory when the reasons for which it has been granted cease to exist.</p> <p>When the reasons for which toleration has been granted cease to exist, the alien shall be removed from the territory without previous notification.</p> <p>Toleration has limited territorial validity only for the area of competence of the Immigration Unit which has granted it, and any travel outside this area shall be possible only upon previous approval.</p> <p>As a conclusion, toleration is not a right of residence, but a permission to stay.</p>
	Slovenia	The International Protection Act of the Republic of Slovenia does not regulate the protection for humanitarian reasons.
	Slovak Republic	
	Sweden	<p>1) Yes.</p> <p>2) In the Swedish Aliens act Chapter 5 Section 6 it is said that: "If a residence permit cannot be awarded on other grounds, 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 Sweden. 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 origin. 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 adults." Despite the fact that their personal circumstances are not in accordance with the conditions for being granted the status of refugee/person in need of protection against persecution, certain persons could still be granted a residence permit as a result of particularly distressing circumstances linked directly to the individual's health, adaptation to Sweden and the situation in their native country. A collective assessment of such circumstances could lead to the granting of a residence permit.</p> <p>This means that it is always an assessment in the individual case. If a permit is granted it is a permanent residence permit.</p> <p>3) How many people per year have been granted such a right/residence permit since 2005?</p> <p>2005: 4997 (2487)</p>

		<p>2006: 18480 (14823) 2007: 3938 ()=of wich temporary law</p>
+	Finland	<p>1) According to Finnish Aliens Act section 52 (Issuing residence permits on compassionate grounds) 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.</p> <p>Although according to Finnish Aliens Act section 93 (Other humanitarian immigration) the Finnish Government may decide in a plenary session on admitting aliens into Finland on special humanitarian grounds or to fulfil international obligations, this section of the current Aliens Act has never been applied.</p> <p>2) As mentioned above, a residence permit on compassionate grounds can be granted on the basis of law, The Finnish Aliens Act. The present Aliens Act was adopted in 2004.</p> <p>Most of the residence permits on compassionate grounds have been granted to asylum seekers whose applications have not met requirements for providing international protection (asylum or a residence permit on the basis of a need for protection) but there are circumstances that make the return to the home country impossible on compassionate grounds.</p> <p>A residence permit on compassionate grounds can be granted for example in cases where it would be impossible for an alien to receive essential medical care in his home country. The standard of, or access to the medical care would also have to have serious implications to the person's health. The prerequisite for granting such permit would be that the circumstances in the country of origin after the persons' return would on the whole be such that they would shorten the person's life or alternatively would cause considerable bodily or mental suffering. In individual cases, there ought to be some additional circumstances that make the return to the home country impossible on compassionate grounds. Each case will be assessed individually and the standard of, or access to, the medical care in applicant's country of origin will be closely evaluated when assessing the case.</p> <p>Besides the above mentioned serious medical cases, a residence permit on compassionate grounds can be granted to an unaccompanied asylum seeking minor if he or she is not in need of international protection but his or her parents / other actual guardians are deceased or if their place of residence is unknown.</p> <p>A residence permit on compassionate grounds is a continuous residence permit.</p> <p>A permanent residence permit is issued to aliens who, after being issued with a continuous residence permit, have resided legally in the country for a continuous period of four years and if the requirements for issuing a continuous residence permit are still met.</p>

		<p>3) How many people per year have been granted such a right/residence permit since 2005?</p> <table border="0"> <tr> <td>Year</td> <td>Residents permits on compassionate grounds</td> </tr> <tr> <td>2005</td> <td>161</td> </tr> <tr> <td>2006</td> <td>164</td> </tr> <tr> <td>2007</td> <td>232</td> </tr> <tr> <td>2008 (January-June)</td> <td>103</td> </tr> </table>	Year	Residents permits on compassionate grounds	2005	161	2006	164	2007	232	2008 (January-June)	103
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	<p>United Kingdom</p>	<p>1. In the UK, there are legal provisions for on a right to temporary residence for humanitarian reasons. A person who is granted humanitarian protection in the UK may apply for permanent residence after they have lived legally here for a number of years (usually between 2 and 5 years).</p> <p>2. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:</p> <ul style="list-style-type: none"> • he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; • he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006; • substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and • he is not excluded from a grant of humanitarian protection. <p>Serious harm consists of:</p> <ul style="list-style-type: none"> • the death penalty or execution; • unlawful killing; • torture or inhuman or degrading treatment or punishment of a person in the country of return; or • serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict./ <p>In 2006, 9% of people (nine out of every 100) who applied for asylum but did not qualify for refugee status were given temporary permission to stay for humanitarian or other reasons.</p> <p>3. The following numbers of people have been granted humanitarian protection in the UK, since 2005:</p>										

			Year	Not recognised as a refugee but granted humanitarian protection	
			2005	120	
			2006	55	
			2007	125	
			2008 (Q1 only)	30	
			Total	330	