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3.13.2.1. National forms of protection

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Initiatives related to national forms of protection have been increasing in recent years, and 2023 saw particularly many developments on the criteria to qualify for such protection and related rights.

In Italy, an amended law revised the criteria for national forms of protection, which can now be granted to: victims of domestic violence or forced marriage (for 1 year which can be converted into a work or study permit), victims of exceptional calamities by natural disaster (for 6 months and renewable for another 6 months, which cannot be converted into another permit), victims of labour exploitation (for 1 year which can be converted into a work permit), people whose life is exposed to danger in preventing public or private damage (for 2 years which can be converted into a work permit) based on the principle of non-*refoulement* (which cannot be converted into a work permit) and on the ground of constitutional and international obligations. The new law amended the criteria for the recognition of national (special) protection and cancelled the wording of the ECHR, Article 8 (considerations for private and family life). However, this national (special) protection may be granted in cases where international and constitutional obligations occur. Unaccompanied minors turning 18 are now issued a residence permit with a maximum duration of 1 year.862The Tribunal of Bologna clarified that an application for a special permit must be formalised even when the requesting person lacks a passport or other identity documents.

The Opportunity Residence Act came into force in Germany on 31 December 2022 and will remain valid until 30 December 2025 to allow tolerated persons (persons with Duldung) who have lived in the country for 5 years and who meet further conditions – first and foremost establishing their own identity – to obtain a special residence permit.863

Third-country nationals whose application for international protection was rejected can no longer acquire permanent residence in Czechia by having lived in the country for 4 years.864

In Denmark, the Special Act for Persons having Assisted Danish Authorities etc. in Afghanistan was extended until 1 December 2025, meaning that the residence permits – if extended – are valid until the end of 30 November 2025. The Special Act was initially adopted in 2021 and originally granted a 2-year residence permit for Afghans who qualified for a temporary residence permit pursuant to the Special Act.865

The Swedish government proposed to remove the possibility of obtaining a residence permit based on particularly distressing circumstances. Residence permits could only be granted based on exceptionally distressing circumstances. The proposal would align the legal requirements for children and adults to be granted a permit, but in practice, the particular circumstances for children to qualify do not have to have the same level of seriousness and severity as for adults. The Swedish Migration Agency assessed that the change would make the legislation less complex and welcomed the proposal.866

National courts increasingly reviewed the criteria to grant national forms of protection in cases when applicants did not qualify for international protection, but their return to the country of origin was not possible either.867The Administrative Court of Sofia referred questions to the CJEU for a preliminary ruling on the legal situation of these applicants.

The Icelandic Immigration Appeals Board ruled that the fact that a person under humanitarian protection travelled to the country of origin twice is insufficient in itself to conclude that she availed herself of the protection of the country of origin. The authorities established that she only travelled because her husband was unable to get visa at the time and joined her later, while residing regularly in Iceland afterwards.

In Malta, the Court of Appeal decided that, when renewing residence permits under the Specific Residence Authorisation Policy, the authorities should consider the criteria that were in force at the time of the first application. For example, the more restrictive criteria of the new, revised policy cannot be applied for extensions of permits granted under the previous policy.

The Swiss Administrative Court ruled that an Afghan with temporary admission cannot be required to obtain a passport from his country of origin, and thus, a foreign national passport must be issued to him.

- 862Decreto-Legge 10 marzo 2023, n. 20 Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare, convertito con modificazioni dalla L. 5 maggio 2023, n. 50 [Decree-Law No 20 of 10 March 2023 on the legal entry of foreign workers and on preventing and combating irregular immigration, converted with amendments by Law No 50 of 5 May 2023]. (10 March 2023). https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.data
03-10&atto.codiceRedazionale=23G00030&elenco30giorni=true
- 863Gesetz zur Einführung eines Chancen-Aufenthaltsrechts [Law to introduce an opportunity residence right], December 31, 2022.

- 864Zákon č. 173/2023 Sb. Zákon, kterým se mění zákon č. 325/1999 Sb., o azylu, ve znění pozdějších předpisů, zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů, ve znění pozdějších předpisů, a další související zákony [Act No 173/2023 Coll. Act amending Act No. 325/1999 Coll., on asylum, as amended, Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and amending certain laws, as amended, and others related law], 21 June 2023.

- 865L 41 Forslag til lov om ændring af lov om midlertidig opholdstilladelse til personer, der i Afghanistan har bistået danske myndigheder m.v [L 41 Proposal for a law amending the

law on temporary residence permits for persons who have assisted Danish authorities etc. in Afghanistan] (2023). https://www.ft.dk/samling/20231/lovforslag/l41/index.htm

Minister of Immigration and Integration | Udlændinge- og Integrationsministerie. (2023, June 27). *Regeringen vil forlænge særloven for evakuerede afghanere [The government will extend the special law for evacuated Afghans]*.

- 866Swedish Migration Agency (SMA) | Migrationsverket. (2023, March 31). *Vissa svårigheter med att tillämpa ändrade regler för anhöriginvandring [Some difficulties with applying changed rules for family immigration]*.

- 867European Union Agency for Asylum. (2024, May 15). *Digest of All Cases*.

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