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# 4.14.2.1. National forms of protection and regularisation measures

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icon on national forms of protection

Several countries provided national forms of protection to persons fleeing Ukraine prior to the activation of the Temporary Protection Directive, and continued to do so for some Ukrainian citizens who did not fall under the scope of the Council Implementing Decision.1059 In parallel, some EU+ countries continued with initiatives which offered a right to stay to former applicants who could not be returned and had reached a certain level of integration.

The Finnish Ministry of the Interior published a report on potential solutions for people who had resided in the country for a long period without having the legal right to residence, including rejected applicants for international protection who could not be returned to their country of origin.1060 The same project investigated the possibility of issuing a residence permit and an alien's passport to applicants whose lack of a valid travel document is the sole impediment to granting the residence permit. The aim of these investigations was to identify possibilities to prevent social exclusion and the emergence of a parallel society.

In Germany, the draft of the Second Law for the Introduction of a Right of Opportunity to Stay was presented and debated in the parliament. Among other objectives, the law would end the accumulation of tolerated stay periods *(Kettenduldung)*, which would no longer be counted towards residence rights.1061

The Irish government launched a scheme with a strand for undocumented migrants and another for applicants for international protection. Asylum seekers who have been in the asylum procedure for at least 2 years can apply for unrestricted access to the labour market and a pathway to Irish citizenship. They can continue with the asylum procedure in parallel with the regularisation process. The scheme was open for 6 months between February and August 2022. 1062

A report published in December 2021 by the Federation Red Acoge highlighted that Spanish Immigration Law makes citizenship conditional to a set of criteria which are very difficult to meet for migrants, thus leaving many of them in a situation of social exclusion. With the aim of promoting a people's legislative initiative to regularise 500,000 persons by collecting 500,000 signatures, a group of organisations (including a political party) joined to form the platform

“EsencialES”. In December 2022, the campaign reached 700,000 signatures that were submitted to the Office for the Electoral Roll in order to start the parliamentary procedure. A gathering in front of the Congress was also organised by the Platform EsencialES, with the aim of celebrating the great support received for this Popular Legislative Initiative. The parliamentary procedure foresees a maximum of 6 months to analyse the popular initiative and to submit it to the congress for its consideration.1063

Some other countries, like Italy and Malta, amended existing procedures for granting national forms of protection, while in the Netherlands, some cases needed to be re-assessed, following clarifications about the criteria for qualifying for a special residence permit.

In Poland, changes were made to issuing humanitarian visas and humanitarian stays for citizens of Belarus. The requirements were eased for those with a visa which was about to expire or those who had fled the regime to Ukraine and then entered Poland through a special procedure. 1064

The Italian Ministry of the Interior published a new circular in January 2022, which clarified the connection between the special protection status (a national form of protection) and the Dublin procedure *(see Section 4.2)*, as well as subsequent applications. For example, it addressed that special protection cannot be assessed merely on the basis of documentation attached to a subsequent application; the applicant always must be heard.1065

The Supreme Court of Cassation provided additional guidance for the assessment of special protection and consolidated its judgments from 2021. The court confirmed that the certified attendance in an Italian language course or a fixed-term employment contract should be considered signs of serious intention to integrate.1066 The court followed the same reasoning and sent back cases due to a lack of the appropriate assessment of the applicants’ level of integration, for example in the case of a Gambian applicant.

Medical conditions are another factor that courts assessed for granting special protection. The Tribunal of Bari granted this form of protection to a Pakistani citizen suffering from serious psychiatric problems.

The Spanish Supreme Court established that national authorities are obliged to assess a request for residence on humanitarian grounds within the asylum procedure, if this is requested by the applicant. Authorities should have a proactive approach for applicants with vulnerabilities and assess the option to provide humanitarian protection, even when there is no evident request from the applicant.

The International Protection Act was amended in Malta and – amongst other provisions – it modified the Temporary Humanitarian Protection procedure, which is a national form of protection. A new provision allows the International Protection Agency to revoke, end or refuse to renew this status, when it is established that the person did not originally meet the criteria for it. The decision to not grant international protection but grant Temporary Humanitarian Protection can be appealed.1067 While welcoming the legislative changes, MOAS noted grey zones in the implementation of the laws and regulations on Temporary Humanitarian Protection that would need to be clarified.1068

In the Netherlands, the final regulation implemented a children's pardon *(kinderpardon)* that allowed a certain group of rejected minor applicants and their family members to request a residence permit before 25 February 2019.1069 The IND re-assessed approximately 30 files in 2022, following a confirmation from the Minister for Migration that in some cases a permit can be granted, even though an asylum application was not submitted on behalf of the children. 1070 The Dutch Council of State provided guidance on the assessment of these requests in two cases, noting that the authorities can assess the behaviour of the family member when deciding on the application. However, when this element is held against the child, courts have a wider scope for reviewing the cases on appeal.

In June 2022, the Council of State in the Netherlands ruled that there are three possible situations for unaccompanied minors who do not qualify for an asylum permit:

- There is adequate reception in the county of return and a return decision is issued;
- There is no adequate reception and the unaccompanied minor must be granted a residence permit on national grounds; or
- Further research is needed. In this situation, the unaccompanied minor retains lawful residence on the basis of Article 8, preamble and under f, Aliens Act. The investigation can lead to two conclusions: either there is adequate reception so that a return decision can be issued, or there is no adequate reception and the unaccompanied minor receives a residence permit on national grounds. The unaccompanied minor can appeal the decision stating that further research is needed. The Council of State further rules that the fact that the applicant is no longer a minor does not mean that the Secretary of State can refrain from investigating whether they should have been granted a permit based on national grounds.

The Finnish Supreme Court analysed whether a rejected applicant for international protection, who submitted false information during the asylum procedure and founded a family in the meantime, could still be given a residence permit based on family ties. While in one of the cases the court confirmed that the reasons for rejecting the residence permit application were more weighty than reasons for the protection of family life and the best interests of the child, in the other, it came to the opposite conclusion. In the first case, the court underlined that attempts to evade law had been long-lasting and continuous until requesting the residence permit, while in the second case, the applicant's evasion of the rules focused only on a certain period, dating before 2016.

PICUM published a report on regularisation mechanisms and programmes, citing examples of regularisation processes involving former applicants for international protection.1071

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