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10 THE LEGAL INTEGRATION OF POTENTIAL CITIZENS: DENIZENS IN THE EU IN THE FINAL YEARS BEFORE THE IMPLEMENTATION OF THE 2003 DIRECTIVE ON LONG-TERM RESIDENT THIRD COUNTRY NATIONALS¹

KEES GROENENDIJK

10.1 Introduction

10.1.1 *Denizenship: short history of a concept*

Since the inception of the nation-state in Europe and even beforehand in the powerful European cities, the population of the city or the state was divided into citizens, i.e. full members of the political community, citizens without full citizenship rights and others, who had come from another city or state, i.e. foreigners or aliens. Cities and states had and still have their territorial and population borders, either visible or imagined. How should they deal with persons who crossed those borders and stayed for longer than a short trade visit or as a temporary refugee? Some migrants were valued as an economic or demographic asset, while others could not be refused entry or residence because of cultural or religious ties, for moral reasons or simply for want of organized force to repel a large number of refugees from a neighbouring territory. A major political issue of the nation-state thus became “the principles and practices for incorporating aliens and strangers, immigrants and newcomers, refugees and asylum seekers, into the existing polities” (Benhabib 2004: 1).

In some states, either immediately upon admission or after long residence, immigrants were granted full citizen status, with the same rights as those who had been members of the community since birth. Other states granted a second class membership to immigrants, withholding certain citizenship rights from the new members, or they created a special status for immigrants who were not yet accepted as full members of the community.

The term *denizen* was already used in early eighteenth century legislation in England to describe a status approximately halfway between a citizen and a non-citizen, a status that could be obtained by a foreigner on the basis of his residence in the country. In the English Settlement Act of 1701, the term was used to describe naturalised foreigners, who were still excluded from appointment to certain public offices.² In the terminology of this research project, such persons would be described as nationals with restricted citizenship.

The Swedish political scientist Thomas Hammar (1994) first used the term *denizen* to describe the status of the migrant workers who came to Western and Northern Europe in the 1960s and 1970s for temporary employment or in order to find protection but who, ten or twenty years later, were still resident in their country of immigration. In most of these countries, such immigrants were granted free access to the labour market, the same rights under the social security system as the nationals of the country and they were protected against sudden expulsion from the country. In several countries, they were also granted the

¹ I am grateful to the national experts of the NATAC project and to Yves Pascouau (University of Pau at Bayonne) who kindly provided the information that formed the basis for the analysis in this chapter.. A more extensive description of all relevant changes in the relevant national laws of the 15 old Member States during 2000-2004 is available in the extended version of this report on the CD-Rom.

² Article III of the 1701 Act stipulated: no person born out of the Kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents) shall be capable to be of the Privy Council, or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself or to any other or others in trust for him. Bauböck (1994: 65) pointed out that the term had already been used by John Locke.

right to participate in local elections. From a legal perspective, these immigrants were still aliens – non-citizens. From a social or political perspective, they had obtained a status equal or similar to that of a citizen. The term *denizen* elegantly described their status halfway between the ‘real’ non-citizen and the citizen.

In an earlier study, we distinguished three intermediate statuses in between the status of the national, with full citizenship rights on the one hand, and the alien who is allowed to stay but not granted any of the privileges of a full citizen: (1) *privileged non-citizens*, such as EU migrants or refugees with Convention status, (2) *denizens* and (3) *quasi-citizens*. This third term was used to identify groups of non-citizens even more similar to citizens than denizens, as defined by Hammar. Quasi-citizenship is the label for non-citizens who are treated almost as citizens, with full protection from expulsion and some political rights, but who, for some reason, are not granted full citizenship rights by the country of residence. In this chapter, we will deal with recent developments concerning the denizenship status in the old EU Member States. The status of quasi-citizenship will be described and analysed in Chapter 10.

10.1.2 The denizen status in European law (1955-2000)

The European Convention on Establishment was the first European instrument that codified certain elements of the denizenship status. The Convention was adopted by the Council of Europe in 1955. It provided for security of residence, equal treatment and access to the labour market for nationals of the other contracting states after a certain periods of lawful residence (two, five or ten years) in the country. Political rights were not included. The immediate effect of the Convention was limited, since it only entered into force in 1965. The free movement of workers, developed within the EEC between 1961 and 1968, granted more rights to migrant workers from the Member States than the Convention on Establishment.³ However, the rights of the migrant worker under Community law were closely linked to his position on the labour market. His residence status in the case of long-term unemployment was unclear.⁴ The long-term resident EEC worker had a right to continued residence only after the age of retirement or in cases of permanent disability. A worker from another Member State had few or no political rights outside the workplace. As of 1975, the Court of Justice started to reinforce the legal status of EEC migrants by its strict interpretation of the public order exceptions in the EEC Treaty and the secondary legislation and by an extensive interpretation of the non-discrimination clauses.⁵

In 1976, the EEC Council of Ministers adopted an action programme that professed as one of its aims the reinforcement of the legal status of workers, both from inside and outside the EEC, with the goal of facilitating free movement and, to that end, stimulating their integration in the country of immigration.⁶ The changing economic situation severely reduced interest in this theme within the EEC, but also forced the migrants to stay. As a result of the stricter immigration rules, they would never have the chance to come back after a temporary return to their country of origin. In 1984 a Brussels based NGO, the Churches Committee for Migrant Workers in Europe (CCMWE), tried to bring the issue of long-term residents to the European political agenda by publishing a report entitled “A European Right of Settlement for

³ Seven Council of Europe Member States, Denmark, Greece, Ireland, Norway, Sweden, Turkey and the UK, ratified the Convention on Establishment (long) before they entered the EC or the EEA in order to acquire a higher level of protection for their nationals living and working in the EC and in other states party to the Convention.

⁴ Article 7 of Directive 68/360/EEC.

⁵ See the judgements *Sotgiu* [1974] ECR 153, *Royer* [1976] ECR 497 and *Bouchereau* [1977] ECR 1999.

⁶ *OJ* 1976 C 34/2.

Migrant Workers”.⁷ Four years of intensive lobbying with this report resulted in a recommendation on this issue being adopted by the Parliamentary Assembly of the Council of Europe in 1988.⁸ Subsequently, the European Commission also tried to draw attention to the social integration of third country nationals residing on a permanent basis in the EC Member States by publishing two reports on this issue (European Commission 1989 and 1990).

The status of long-term resident migrant workers received more attention and, more importantly, a concrete legal foundation in European law as a result of two important judgements by the European courts. In 1990, the Court of Justice in Luxembourg in the *Sevince* case held that Decision 1/80 of the Association Council EEC-Turkey granted a directly applicable right of residence to Turkish workers and their family members with long-term lawful employment or residence in a Member State.⁹ In a series of later judgements, the Court explained that the status of those Turkish workers under the association rules in many (but not all) respects was similar to that of migrant workers from the Member States. Since Turkish nationals are by far the largest group of third country immigrants in the EU, this case law provided the nucleus for an EU model of denizenship (Peers 1996; Guild 2000; Staples 1999). In 1991, the European Court of Human Rights in Strasbourg in its *Moustaquim* judgement, made it clear that expulsion of a third country national with long-term residence in and strong family ties to the country of residence could be a violation of Article 8 ECHR.¹⁰ The combined effect of these two judgements was that the expulsion of long-term resident third country nationals and the residence rights and access to employment of the largest group of third country nationals were no longer solely a matter for national law and administrations, but subject to limits set by EC law and by the ECHR.¹¹

In 1992, the twelve EU Member States signed the Treaty of Maastricht that instituted citizenship of the Union, granted EU citizens resident in another Member State the right to vote in municipal elections in the country of residence and integrated the intergovernmental cooperation of the Member States on migration issues into the Third Pillar of the EU Treaty. In the same year, the Convention on the Participation of Foreigners in Public Life at Local Level was adopted within the Council of Europe.¹² This convention provides for participation in municipal elections for non-citizens with five years of lawful residence in the country, irrespective of their nationality.

The first effort to harmonise the national rules of the EU Member States concerning long-term immigrants was the adoption in 1996 by the Justice and Home Affairs Council within the Third Pillar of a resolution on the status of third country nationals who reside on a long-term basis in the territory of the Member States.¹³ The resolution formulated the principles on the granting of long-term resident status and the rights attached to that status. The status should be acquired after a period of lawful residence to be determined by the Member States, but no longer than ten years. The purpose of that status was to further integration. This non-binding resolution was a French initiative. The provision on monitoring its implementation by peer review remained a dead letter. The resolution had little visible effect on the national law of the Member States.

⁷ On the role of the CCMWE, see Groenendijk 1994.

⁸ Recommendation 1082(1988) adopted by the Parliamentary Assembly on 30 June 1988.

⁹ C-192/89 *Sevince* [1990] ECR I-3461.

¹⁰ *Moustaquim v. Belgium*, 26 March 1992, Series A no. 234.

¹¹ In a separate opinion in one of the first in a long line of judgements of the ECtHR on the expulsion of third country nationals with long-term residence, Judge Pettiti made it clear that in the end the Member States would have to decide on common rules concerning the expulsion of denizens and could not leave that job to the courts, ECtHR, 13 July 1995, *Nasri v. France*, Series A-320B.

¹² The Convention was adopted on 5 February 1992. By July 2005, the Convention had been ratified by Albania, Denmark, Finland, Iceland, Italy, the Netherlands, Norway and Sweden.

¹³ Resolution of 4 March 1996, *OJ* 1996, C 80/2.

In the years between 1996 and 2000, European and national NGOs and a group of public officials entrusted with furthering immigrant interests in the Member States published several detailed proposals for binding common rules on the status of long-term resident nationals of third countries and their freedom of movement within the Union (Groenendijk 2001). Since 1997, the issue had also once again been a subject of debate and negotiations within the Council of Europe. This resulted in the adoption in 2000 of a Recommendation of the Committee of Ministers to Member States concerning the security of residence of long-term migrants.¹⁴ The officials of the EU Member States were thus confronted with the issue during the discussions in the Council of Europe.

10.1.3 Post-Amsterdam developments (2000-2005)

A few weeks after the EU Member States had signed the Treaty of Amsterdam, the European Commission published a proposal for a Convention concerning the admission of third country nationals to Member States. The proposal contained a definition of long-term immigrants (five years of legal residence or a residence document valid for ten years), the right to a residence document valid for at least ten years, access to employment, equal treatment as EU citizens and a conditional right to work in another Member State.¹⁵ This proposal was withdrawn after the entry into force in 1999 of the Treaty of Amsterdam that granted the EU Council of Ministers the competence to make binding EC rules on this issue rather than a convention.¹⁶

In October 1999, the European Council in Tampere decided that “a more vigorous integration policy” was necessary and required the fair treatment of third country nationals who legally reside in the EU. The Council stated “that the legal status of third country nationals should be approximated to that of Member States’ nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted a set of uniform rights in that Member State which are as near as possible to those enjoyed by EU citizens”.¹⁷ Moreover, “irrespective of their nationality, [they] should not be treated as second-class citizens, but are entitled to equal treatment, secure residence rights and the option of full citizenship”.¹⁸

More than a year before the Tampere Council, the European Commission had commissioned a comparative study of the relevant law of the Member States (Groenendijk, Guild & Barzilay 2000). The Commission used that study when drafting its proposal for a Directive concerning the status of third country nationals who are long-term residents. That proposal was introduced by the Commission in March 2001.¹⁹ After two years of negotiations, a relatively short period for an EC Directive on a sensitive issue, the Directive was formally adopted by the Council in November 2003.²⁰

The Directive has three main elements. Firstly, it creates a new status, the long-term resident status; most third country nationals with five years of lawful residence in a Member

¹⁴ Recommendation (2000)15 adopted by the Committee of Ministers on 13 September 2000. See Groenendijk, Guild & Dogan 1998 and Recommendation 1504(2001) of the Parliamentary Assembly on the protection of long-term residents against expulsion.

¹⁵ Articles 32-35 of the proposal published on 30 July 1997, *OJ* 1997 C 337/9. For an analysis of this proposal see Peers 1999.

¹⁶ Article 63(3) and 63(4) of the EC Treaty.

¹⁷ This summary of the Tampere Conclusions is quoted from the second recital of Directive 2003/109/EC.

¹⁸ European Council, Tampere Presidency Conclusions, SN 200/99, Brussels 16 October 1999.

¹⁹ COM(2001)127 of 13 March 2001 and *OJ* 2001 C 240E/79.

²⁰ Council Directive 2003/109/EC of 25 November 2003, *OJ* 2004 L 16/44. Denmark, Ireland and the UK did not take part in the adoption of this Directive.

State, who fulfil the other conditions specified in the Directive, are entitled to the status. Secondly, the Directive defines the rights attached to the status: secure residence and equal treatment as nationals in a whole range of fields. Thirdly, it grants a conditional right to work, study or live in another Member State.²¹ All Member States, except Denmark, Ireland and the UK, will have to implement the Directive in their national legislation by 23 January 2006.²²

Over the past fifty years, the Council of Europe and the EC/EU have taken turns in making rules concerning the status of long-term immigrants. NGOs and the European Commission have played an important role in placing and keeping this issue on the political agenda in Europe. The constant line of thinking has been that granting secure residence and equal treatment as citizens with regard to all but the core citizenship rights, will stimulate the social integration of the long-term non-citizen immigrants in the country of residence.

10.1.4 Methodology and research questions

We asked experts in the fifteen ‘old’ EU Member States to describe the changes, if any, in the national rules and practices concerning the status of long-term resident third country nationals that have occurred since 1999. We decided not to make a complete update of the comparative report written for the European Commission in 1999. Considering the relatively short period since that report, an update with a full description of the national rules and practices would to a large extent be a duplication of our earlier report. Moreover, such an update would probably fairly soon be outdated, since twelve of the fifteen ‘old’ Member States are obliged to implement Directive 2003/109/EC in their national laws by January 2006. This obligation will give rise to changes in the relevant national legislation in most of the Member States concerned.

In some Member States, little or no changes were made to the relevant national law (Belgium, Ireland and Luxembourg) In other states, there was only one major change: in Italy, the residence requirement for the status was increased from five to six years; in Portugal, the residence requirement was reduced from ten to eight years; in the UK fees were introduced for issuing the permanent residence document. In the following sections we will describe and analyse the main changes in the relevant national law and practices of the fifteen ‘old’ Member States in the years 2000-2004. On the basis of this information we will answer in the final section (1.3) the following five research questions:

- What are the main changes in the national law and practice of the Member States?
- Have the changes increased or reduced the rights of third country nationals?
- Has there been a trend of convergence or divergence between the national laws of the Member States since 1999 and, if so, how can this trend be explained?
- Do the changes relate to policies on the integration of immigrants?
- Have the negotiations on Directive 2003/109/EC and the need to implement that Directive by January 2006 produced visible effects at the level of the Member States so far?

²¹ For a detailed discussion of the Directive, see Peers 2004; Hailbronner 2004; Boelaert-Suominen 2005; Carrera 2005; Halleskov 2005; Handoll 2005.

²² Article 26 of Directive 2003/109/EC.

10.2 Country reports

10.2.1 Austria

10.2.1.1 Past and present legislation

The Austrian Federal Law regulating the entry, residence and settlement of aliens of 1997 (*Fremdengesetz*), that entered into force in 1998, provided for two types of residence permit for third country nationals: the temporary residence permit (*Aufenthaltserlaubnis*) and the establishment/settlement? permit (*Niederlassungsbewilligung*); the latter is subject to the immigration quota laid down annually. However, family members of Austrian, Swiss and EEA nationals are exempt from the immigration quota. The initial establishment permit is valid for one year. The law grants applicants the right to renew the permit twice for two years if certain conditions, such as sufficient income, accommodation and health insurance, are fulfilled. The Aliens Act was amended in 2002.²³ The new provisions came into effect in January 2003.

10.2.1.2 Acquisition of the status

Until January 2003, holders of an establishment permit could apply for a permanent establishment permit (*unbefristete Niederlassungsbewilligung*) after five years. The amendment of the Aliens Law in 2002 replaced the permanent establishment permit with the certificate of establishment (*Niederlassungsnachweis*).²⁴ It also introduced the so-called Integration Agreement (IA), which has to be signed by certain groups of third country nationals who intend to settle permanently in Austria.²⁵

As of January 2003, an initial establishment permit may be issued only for three categories of third country nationals: (1) key professionals and their family members, (2) persons of independent means and their family members, and (3) family members of persons who were admitted to Austria before January 2003.

Third country nationals who were admitted to Austria on the basis of an establishment permit after January 1998, as well as those who have been granted an establishment permit since January 2003, have to sign an Integration Agreement (IA), unless they are subject to one of the numerous exemptions. The IA requires that immigrants acquire a basic knowledge of German within four years of the issue of the initial establishment permit. In order to comply with the IA, they have to attend a German integration course lasting 100 hours or take a specifically designed exam to obtain a German language certificate.²⁶ Failure to comply with the IA may lead to sanctions ranging from a financial penalty to loss of the right to residence and expulsion.

Several large categories of immigrant are exempt from the obligation to sign an IA: asylum-seekers and refugees, holders of temporary residence permits, EEA and Swiss citizens and their family members, family members of Austrian nationals, children under the age of 16, persons who cannot reasonably be expected to fulfil the IA because of their advanced age or health and, finally, persons who can prove sufficient knowledge of German in a conversation with the authorities or by providing an A-1 level language certificate.²⁷ Between

²³ BGBl. I of 13 August 2002, no. 126.

²⁴ § 24 of the Aliens Act.

²⁵ § 50a–50d and § 108 of the Act.

²⁶ § 50d of the Act and the *Verordnung Integrationsvereinbarung*, BGBl. II of 20 September 2002 no. 338, p. 2427.

²⁷ § 50b of the Act.

January and July 2004 roughly 800 immigrants attended a German integration course, while 30,500 immigrants were exempt for one of the reasons mentioned above.²⁸

A person issued with an establishment permit is entitled to a certificate of establishment, if he or she has signed an IA and complied with it and belongs to one of the four following categories:

- 1 permanently resident in Austria for the past five years and receiving a regular income from legal employment;
- 2 permanently resident for the past five years and was or is required to attend school in Austria;
- 3 spouse or minor child of a person who holds or fulfils the conditions for obtaining a certificate of establishment, living with him or her in a common household and has had his or her principal residence in Austria for the past five years;
- 4 family member of an Austrian, EEA or Swiss national with residence in Austria for the past two years.

The certificate of establishment is valid for ten years and is automatically extended upon application.

10.2.1.3 Loss of the status

The certificate of establishment may be revoked if the persons no longer desire to settle in Austria and leave the country permanently. Withdrawal may be avoided if the holder of the certificate of establishment informs the authorities of an intentional longer stay abroad or can demonstrate that he or she does not intend to leave Austria for good (König & Perchinig 2003: 24). New grounds for loss have been introduced: if the person has not fulfilled his or her obligations under the integration agreement within four years and is not willing to do so.²⁹

At the end of December 2004, of the 555,187 valid residence permits, 58 per cent (319,067) were issued for an unlimited duration; 40 per cent of the latter (127,402) held a certificate of establishment.

10.2.1.4 Rights attached to the status

The 2002 reform represented an important step in the Austrian context. Nevertheless, its impact on improving the legal status of long-term residents is limited. Prior to the reform, permit-free employment was not available to third country nationals, even after they had obtained a permanent establishment permit. The new certificate of establishment confers the right to permanent residence and the right to take up employment in the private sector without a work permit. The certificate of establishment does not entail any other privileges. Third country nationals with a permanent establishment permit granted prior to January 2003 do not have the right to take up permit-free employment. However, the 'old' permits are to be replaced by the certificate of establishment upon application.

As for the protection from expulsion, the reform of 2002 did not bring about any changes. Since the reform of the Aliens Law in 1997, third country nationals enjoy increased protection from expulsion after five, eight and ten years of residence, provided they are entitled to establish permanent residency. Thus, holders of a certificate of establishment enjoy, depending on the duration of their residence, the same protection from expulsion as holders of an establishment permit that may still be limited in time. Second generation

²⁸ *Der Standard* 8 February 2005.

²⁹ Article 34(2a) of the Aliens Act. Article 34(2b) stipulates that the third country national has to be expelled, if he or she has not started fulfilling the obligations under the agreement within three years.

immigrants enjoy absolute protection from expulsion if they were born or have grown up in Austria.³⁰ This right is not dependent on the possession of a certificate of establishment.

Generally, the scope of the rights available to immigrants in Austria does not depend on the possession of a certificate of establishment, but more on the duration of residence or lawful employment in the country. Thus, access to social rights and benefits is in many cases available after three to five years of residence although, in some cases, third country nationals may qualify for some benefits only after eight (e.g. emergency assistance in cases of prolonged unemployment) or even ten years (e.g. public assistance in the province of Vienna).

With regard to voting rights, the certificate of establishment has no special significance. Third country nationals do not enjoy voting rights at the local, regional, provincial or national level. In 2002, the city government of Vienna introduced the right to vote and to run for elections to district councils (*Bezirksräte*) for third country nationals with five years of residence, but the Constitutional Court ruled that this regulation violated the federal constitution. Until recently, third country nationals were not allowed to stand as candidates in elections to works' councils or to the Chambers of Labour. In 2001, the European Commission started an infringement procedure against Austria and, in 2004, the European Court of Justice ruled that nationals of countries with which the EU has concluded an association agreement must be granted the right to stand for elections to works' councils and the Chambers of Labour.³¹

10.2.1.5 Comments

In the five years since 2000, no major change occurred in the rule on the acquisition and loss of the permanent residence status. The introduction of the establishment certificate is, basically, a consolidation of the practice under the previous legislation. The political debate focused on the introduction of the integration agreements. This issue received a lot of media attention but only a very small minority of all third country nationals was actually obliged to enter into an integration agreement and the level of German that can be learned in 100 hours of language training is rather modest.

The rights attached to the new establishment certificate were extended: access to the labour market without a work permit. This improves the chances of integration for persons holding the certificate and reduces a potential source of insecurity or even deportation in the event of long-term unemployment.

10.2.2 Belgium

10.2.2.1 Present legislation

In Belgium, no major revision of the immigration legislation took place in the years 2000-2004.

The special status for non-nationals with long lawful residence, the establishment permit (*vestigingsvergunning/permis d'établissement*), was codified in the Aliens Act of 1980.³² The conditions for the acquisition and loss of the status have not been modified in the past five years.

³⁰ Article 35(4) and Article 38(2) Aliens Act.

³¹ ECJ 16 September 2004 *Commission v. Austria*, C-465/01.

³² Act of 15 December 1980.

10.2.2.2 Acquisition of the status

Third country nationals with five years of continuous lawful residence have, upon application, a statutory right to this permit. Periods covered by a residence permit as a student or as a family member of a student are not taken into account. Other periods of unstable residence e.g. pending the decision on an asylum request, are taken into account once the person has obtained an unlimited residence permit.³³ If a third country national meets the above requirements, an establishment permit can be refused only on the grounds of a criminal conviction for serious crimes or repeated convictions.³⁴ Insufficient income is not grounds for refusal. Certain categories of non-nationals are entitled to the permit without the five-year waiting period: Union citizens and their third country family members applying their right to free movement under Community law, non-Belgian spouses, children or parents of Belgian citizens, spouses and children under eighteen and dependent on aliens with an establishment permit and, finally, persons who fulfil the conditions for acquisition of Belgian nationality.³⁵

10.2.2.3 Rights attached to the status

Third country nationals with an establishment permit are exempt from the requirement that they hold a work permit for employment. However, they still are required to hold a special permit for self-employment. Acquisition of permanent residence status does not grant a third country national more rights to family reunification or to social security than persons holding a temporary residence permit.

Voting rights in municipal elections were only granted to resident EU nationals in Belgium in 1999. The constitutional amendment allowing for municipal voting rights for Union citizens also opened up the possibility of granting active and passive voting rights in municipal elections to resident third country nationals.³⁶ The act that implemented the extension of active voting rights to resident third country nationals was adopted on 19 March 2004.³⁷

The other major change in the position of long-term resident third country nationals in Belgium was the change in Belgian nationality by the Act of March 2000, that introduced a simplified naturalisation procedure for all persons over eighteen years of age with seven years of lawful residence in Belgium with a permanent residence right. They acquire Belgian nationality as of the date of registration of their declaration, unless the public prosecutor raises objections within one month.³⁸ Since the nationality law of March 2000 entered into force in May 2001, most third country nationals holding an establishment permit now have the opportunity to obtain Belgian nationality by way of simple declaration.

10.2.3 Denmark

10.2.3.1 Past and present legislation

Since the Danish Aliens Act of 1998, a permanent residence permit has no longer been automatically granted after three years of residence on the basis of a residence permit for a

³³ Article 14 of the Act.

³⁴ Article 15(4) of the Act.

³⁵ Article 15(1) and Article 40 ff. of the Act.

³⁶ Article 8(4) and 8(5) of the Belgian Constitution as amended by the Act of 11 December 1998.

³⁷ *Belgisch Staatsblad* of 23 April 2004.

³⁸ Article 4 of the Act of 1 March 2000, amending Article 12bis of the Code on Belgian Nationality, *Belgisch Staatsblad* of 6 April 2000.

non-temporary purpose. Instead, a permanent residence permit can as a rule only be granted if three conditions are met: (1) completion of the integration programme offered under the 1998 Act regarding the Integration of Aliens in Denmark, (2) no recent conviction leading to a prison sentence and, (3) no serious debt to a public authority. Since 2000, the rules on the acquisition and loss of the permanent residence permit and the legal status of third country nationals holding such permit have been changed repeatedly. Most of the changes relate to the debate on the integration of immigrants, to measures to combat terrorism, the policy to reduce family migration and the implementation of the Schengen *acquis*. The relevant changes to the immigration legislation have been incorporated into the Consolidation Act no. 808 of 14 July 2004.

10.2.3.2 Acquisition of the status

In June 2002, the residence requirement was raised from three to seven years. A new condition was added: for the whole seven-year period, the legal basis for the temporary residence permit should not have changed. In addition to the existing conditions (completion of the introduction programme and absence of serious debt to public authorities), passing a Danish language test approved by the Minister of Integration was added as another condition.³⁹ A permanent residence permit may no longer be issued to a person who has been sentenced to a custodial sentence of at least two years' unsuspended imprisonment for violation of certain sections of the Act against Drugs, the Penal Code or the Aliens Act. Moreover, the waiting period of seven years was extended for persons who had been sentenced to imprisonment for other crimes: by three years for suspended imprisonment and 5-15 years for unsuspended imprisonment.⁴⁰

In June 2003, the seven-year residence requirement was mitigated by permitting exceptions to that rule for third country nationals who:

- 1 have lawfully resided in Denmark for more than the past five years with a residence permit issued on the same legal basis for the entire period;
- 2 have for the past three years been regularly employed or self-employed in Denmark and are still (self-)employed;
- 3 have not for the past three years received social security benefits; and
- 4 have acquired substantial affiliation to Danish society.

If significant circumstances warrant it, a permanent residence permit can be issued to a person who has lawfully resided in Denmark for more than the past three years with a residence permit issued on the same legal basis for the entire period and meets the other three conditions mentioned.⁴¹ This amendment, apparently, introduces a five-year residence requirement for third country nationals with a good employment and integration record and a three-year residence requirement dependent on the discretion of the authorities.

10.2.3.3 Loss of the status

Under the current legislation, a permanent residence permit may *always* be revoked:

- if it was obtained by fraud;
- if information exists about circumstances which would have precluded the person from obtaining the permit, for instance that he or she is considered a danger to national security, a serious threat to public order, security or health, or covered by Article 1F of the Refugee Convention, or has been sentenced outside Denmark for acts which could have entailed

³⁹ Sections 11(3) and 11(9) Aliens Act as amended by the Act no. 365 of 6 June 2002.

⁴⁰ Sections 11(7) and 11a Aliens Act as amended by the Act no. 365 of 6 June 2002.

⁴¹ Sections 11(4) and 11(5) Aliens Act as amended by the Act no. 425 of 10 June 2003.

expulsion if tried in Denmark, or if there are serious grounds for assuming that the alien has committed a crime outside Denmark which could have entailed expulsion;

- if the third country national has been registered in the Schengen Information System as undesirable due to circumstances which, in Denmark, could have entailed expulsion.⁴²

Further, a permanent residence permit may be revoked if an administrative authority in another Schengen state or in a state with connections to the EU has made a final decision regarding the expulsion of the person on the basis of circumstances which, in Denmark, could have entailed expulsion under Sections 22-25 or 25a(1) or 25a(2)(3) of the Aliens Act. If the decision was reached on the basis of a criminal offence, the permit can only be revoked if the person has been convicted of a crime which may result in punishment of at least one year of imprisonment in the country in question. This ground for revocation of the permit does not apply if the person is a family member of an EU national who has made use of the right to freedom of movement.⁴³

The basic rules on removal and deportation in Danish immigration law have not changed significantly since 2001. However, in the wake of the terrorist attacks in the US on 11 September 2001, the possibility of issuing an expulsion order irrespective of the actual duration of imprisonment has been extended to cover more provisions of the Penal Code, such as crimes against the autonomy and security of the state, crimes against the constitution and the supreme state authorities, the crime of endangering people's lives through the pollution of drinking water reservoirs, the crime of poisoning goods on the market, possessing, trading or otherwise handling particularly dangerous weapons, female circumcision and particularly serious cases of handling stolen goods.⁴⁴

Moreover, the clause stating that an alien may be expelled when necessary for the sake of the security of the state, has been widened by stipulating that an alien may be expelled when it must be assumed that he or she (1) is a danger to state security, or (2) must be assumed to pose a serious threat to public order, security or health.⁴⁵ In 2004, new grounds for expulsion were added: "if the alien has been sentenced to non-suspended imprisonment or other legal consequence of a criminal act [...] in reference to Penal Code Sections 260 or 266 for having forced someone else to enter into marriage against his or her will".⁴⁶

Traditionally, when preparing an expulsion order, the courts must take into consideration whether or not the effect of the expulsion will be disproportionate due to particular circumstances. The 1998 Aliens Act, in section 26(1), explicitly mentioned seven examples of relevant circumstances. Section 26(2) stipulated that aliens sentenced to imprisonment for drug-related offences or other crimes dangerous to the community could be expelled, unless the circumstances mentioned in the first paragraph constituted a decisive argument against expulsion. The effect of the second paragraph was that expulsion in those cases became the rule, irrespective of the length of the person's residence in Denmark. This practice changed after a judgement by the Danish Supreme Court in November 1998 in two test cases, where expulsion had been ordered in relation to a prison sentence of two weeks for a drug-related offence. The Supreme Court referred to a statement in the preparatory documents for the Act, confirming that expulsion decisions should be in conformity with the ECHR.

The Act of June 2002 deleted two circumstances related to the person's ties to Danish society from the list of relevant criteria in section 26(1): "whether the alien came to Denmark

⁴² Sections 19(2) and (3) Aliens Act.

⁴³ Section 19(4) Aliens Act.

⁴⁴ Section 22(1)(6) Aliens Act.

⁴⁵ Section 25 Aliens Act.

⁴⁶ Section 26(1)(7) Aliens Act as amended by Act no. 429 of 9 June 2004.

as a child or very young person” and “the duration of the alien’s stay in Denmark”.⁴⁷ The reason given for this amendment was that the section applies to the withdrawal of both temporary and permanent residence permits. The government stated that the fact that the residence requirement for a permanent permit was being raised to seven years did not imply that withdrawal of a permit or expulsion should no longer be possible after those seven years. Whether the alien’s ties were such that withdrawal of the permit or expulsion should no longer take place should be decisive. It was further stated that such decisions could only be taken as long as they would be compatible with Denmark’s international obligations, including the ECHR.

10.2.3.4 Rights attached to the status

The conditions for the right to *family reunification* for persons with a permanent residence permit have been restricted considerably as a result of amendments to the rules on family reunification in the Aliens Act, adopted in 2002, 2003 and 2004.

Following the amendment of the Aliens Act in 2002, the main conditions for family reunification are now: both spouses or partners must be at least 24 years of age and live together at a shared residence, either in marriage or in regular cohabitation of prolonged duration; the sponsor has to be a permanent resident in Denmark and a national of a Nordic country, an officially recognised refugee or a third country national who has held a permanent residence permit for more than three years. As a consequence of the last condition, a third country national has to have resided in Denmark for a total of ten (= seven + three) years before family-reunification with a spouse is possible.⁴⁸

The other conditions to be met are that the sponsor residing in Denmark must prove an ability to support the other spouse or partner economically and provide financial security of DKK 50,000 (approximately 6,700 euros) to cover any future public expenses for assistance granted to the applicant under the Active Social Policy Act or the Integration Act. The sponsor must not have received assistance under the Active Social Policy Act or the Integration Act within the previous year and must have a dwelling of a reasonable size. The couple’s aggregate ties to Denmark (‘overall attachment’) must be stronger than the couple’s aggregate ties to another country. There must be no any doubt that the marriage or relationship was established at both parties’ desire and, finally, there must be no concrete reason to assume that the purpose of establishing the marriage or relationship was to obtain a residence permit.⁴⁹

In 2003, the Aliens Act was amended to include a provision that the ‘overall attachment’ requirement need not be satisfied if the spouse or partner residing in Denmark has been a Danish national for more than 28 years, has been lawfully residing in Denmark for more than 28 years and was born and raised in Denmark, or has been living in Denmark since childhood. Furthermore, the grounds for refusal, that the marriage was not freely contracted by the spouses, which was introduced in June 2003, was made more strict six months later: if the marriage or relationship is between closely related persons or otherwise more closely related persons, it is doubtful whether the marriage or relationship is established at the will of both parties, unless particular reasons indicate otherwise.⁵⁰

In June 2004, additional conditions were again introduced into the statutory rules with regards to reunification with a foreign spouse or partner. Reunification will not be permitted if the spouse or partner living in Denmark has been convicted and given a final sentence of

⁴⁷ Sections 26(1)(1) and (2) Aliens Act as amended by Act no. 365 of 6 June 2002.

⁴⁸ Section 9(1) Aliens Act as amended by Act no. 365 of 6 June 2002.

⁴⁹ Section 9(2) to Section 9(9) Aliens Act as amended by Act no. 365 of 6 June 2002.

⁵⁰ Sections 9(7) and 9(8) Aliens Act as amended by Act no. 1204 of 27 December 2003.

(un)suspended imprisonment for criminal acts against a spouse or partner within the past ten years. Moreover, reunification is to be refused if, at the same time, an application for the applicant's child is refused on the grounds that the sponsor in Denmark is unable to support the child economically. However, this rule does not apply if the child can be taken care of by close family in his or her home country and, according to the Act, the child's interests have to be duly taken into consideration.⁵¹

The rules on *family reunification with children* have also been made stricter over the past few years. Currently, the main rules are:

- the child must be unmarried and under the age of fifteen ;
- if the child and one of his or her parents are residing in the child's home country, a residence permit may only be granted if the child has achieved or has the possibility of achieving such close ties to Denmark that a solid foundation is laid for successful integration of the child in Denmark; this condition does not apply if the application is submitted no more than two years after the person residing in Denmark has met the other conditions;
- a residence permit may only be granted to a child who wants to return after having previously resided in Denmark, if this is in the child's interests;
- a residence permit may not be granted to a child when it is obviously not in the child's interests or to a child if the sponsor in Denmark or his or her spouse has been convicted and given a final sentence of (un)suspended imprisonment for criminal acts against minor children within the past ten years.⁵²

Family members depend on the continuing relationship with the person holding a permanent residence permit and the grounds on which their residence permit was obtained in the first place must still be in place. After seven or five years (or, under special circumstances, three years) they may obtain an independent permanent residence permit, provided that they meet the aforementioned conditions of Section 11 the Aliens Act.

State educational grants are conditional upon the student holding Danish nationality, on international agreements, or on rules laid down by the Minister of Education which grant certain categories of non-citizens the same treatment as Danish nationals, e.g. if the person is covered by the Integration Act.⁵³

10.2.3.5 Comments

A surprisingly rapid series of changes in the Danish immigration law has taken place since 2002. From a country with one of the most liberal systems in terms of the treatment of settled third country nationals, within a few years Denmark developed into a country with the strictest rules on both family reunification and the status of permanent residents from third countries. It is clear that most of the more extreme new statutory rules could only be enacted because Denmark, under its Protocol to the Amsterdam Treaty, is not bound by the new rules on immigration and asylum, adopted on the basis of Title IV of the EC Treaty. Several rules introduced in Denmark in recent years, such as the seven-year residence requirement for the permanent residence permit, the 24-year minimum age condition and the ten-year residence requirement for reunification with spouses, would be clearly incompatible with Directive 2003/109/EC on the status of long-term resident third country nationals or with Directive 2003/86/EC on the right to family reunification. Even without these external restrictions, some of the more extreme statutory measures were changed or mitigated by another amendment to the Aliens Act within six or twelve months of their adoption.

⁵¹ Sections 9(10) and 9(11) Aliens Act as amended by Act no. 427 of 9 June 2004.

⁵² Section 9(1)(ii) and Section 9(13) to Section 9(16) of the Aliens Act.

⁵³ Administrative Decree no. 469 of 03/06/2003, Sections 61-63.

As regards permanent resident status, the general tendency over the past three years has been to make it more difficult to obtain and more easy to lose this status. Apart from the right to family reunification, however, the rights attached to the status appear generally to have remained unchanged. The other exception to this trend is the reduction in protection from expulsion after long-term lawful residence in Denmark. Deleting the explicit references in the Aliens Act to “the duration of the alien’s residence in Denmark” and “whether the alien came to Denmark as a child or very young person” as relevant circumstances in expulsion cases can hardly be considered an incentive for national courts and immigration authorities to ensure that their decisions are in conformity with the case law of the European Court of Human Rights on Article 8 ECHR.

10.2.4 Finland

10.2.4.1 Past and present legislation

The Finnish Aliens Act of 1991 introduced the permanent residence permit, to be granted to third country nationals who had lawfully resided in Finland with a temporary residence permit, unless that permit was granted for an inherently temporary purpose, such as study, or as a seconded worker with a foreign company. In May 2004, a new Aliens Act (Act 301/2004) entered into force, replacing the 1991 Act. The new Act modified the conditions and the procedure for obtaining the permanent residence permit and the grounds for deportation of a person with that status.

10.2.4.2 Acquisition of the status

The length of the residence requirement was increased from two to four years of continuous lawful residence.⁵⁴ Residence is considered continuous if the third country national has resided in Finland for at least half of time that his temporary residence permit has been valid. The two-year requirement still applies to third country nationals admitted before the 2004 Act entered into force. The permanent residence permit is still issued only to persons with a temporary residence permit granted for a non-temporary aim, such as former Finnish citizens, children or grandchildren or other family members of Finnish citizens and persons admitted for non-temporary employment. The Aliens Act contains a broad definition of family members with respect to family reunification: the spouse, unmarried children under eighteen years old, persons who have entered into a registered partnership and persons who have been living continuously for two years in a marriage-like relationship in the same household, regardless of their sex. Family members of a person with a permanent residence permit and who have already been admitted may apply for the same permit after four years of lawful residence in Finland.

Secure income is a condition for being granted a permanent residence permit. Family members of Finnish citizens are exempt from this requirement; an exemption can also be granted on exceptionally serious grounds or if it is in the best interests of the child.

A permanent residence permit may be refused on public order grounds if the person is convicted for or suspected of an offence punishable by imprisonment. The sentence does not yet have to be final. However, the nature and seriousness of the criminal act and the length of the alien’s residence in Finland should be taken into account when making the decision. If the person has been sentenced to an unconditional prison term, a permanent residence permit may still be issued if three years have passed since the alien served the sentence in full. If the

⁵⁴ Section 56 of the Act.

person has been sentenced to conditional imprisonment, a permanent residence permit may be issued if more than two years have passed since the probation ended. In other cases, a permanent residence permit may be issued if the offence was committed more than two years before the decision on the application is made. Finally, the permit may be refused if the person is considered a danger to public order, security or health, or to Finland's international relations, or if there are reasonable grounds to suspect that the person intends to evade immigration legislation. The rules on the right to appeal to the County Administrative Court and the Supreme Administrative Court are contained in sections 190 and 196 of the new Act.

10.2.4.3 Loss of the status

The permanent residence permit may be withdrawn if the person has left Finland permanently or has continuously resided outside Finland for more than two years for a permanent purpose. New grounds for withdrawal have been introduced: a request from another Schengen State on the grounds that the person has been prohibited from entering that state or has been expelled from the Schengen area for having committed a criminal offence carrying a minimum statutory punishment of one year of imprisonment or more, or for engaging in activities that may endanger the national security or the foreign relations of that Schengen state, or if his or her behaviour constitutes a danger to the safety of others.⁵⁵

In the new Act, the old grounds for deportation – espionage or illegal intelligence activity – have been replaced by more generally worded grounds: that the person engages in activities that might endanger Finland's national security.⁵⁶

According to section 146 of the new Aliens Act, when considering issuing a deportation order, particular attention should be paid to the best interests of children and the protection of family life. Other facts to be considered are the length and purpose of the third country national's residence in Finland, the nature of the residence permit issued and his or her ties to Finland.

The new Aliens Act no longer requires that the Ombudsman for Minorities be given the opportunity to be heard before a deportation order is enforced. The new Act does however state that the alien and his or her spouse or partner residing in Finland shall be given an opportunity to be heard in cases relating to deportation.⁵⁷

The period for which a ban on re-entry in connection with a deportation order may be made has been amended in the new Aliens Act. An entry ban of unspecified duration may be ordered in respect of a third country national who has been sentenced for an offence of an aggravated or professional nature. An entry ban may be revoked on the basis of a change in the circumstances or for important personal reasons.⁵⁸

10.2.4.4 Rights attached to the status

The only major change in the rights attached to the status since 1999 is that the two-year residence requirement for educational grants has been abolished, unless the person has been admitted for study purposes only.

10.2.4.5 Comments

There was no indication that Finland had already started to implement Directive 2003/109/EC before the Summer of 2005.

⁵⁵ Section 58 of the Aliens Act

⁵⁶ Section 149 of the Aliens Act.

⁵⁷ Section 145 of the Aliens Act.

⁵⁸ Section 150 of the Aliens Act.

The 2004 Aliens Act, on the one hand, made it more difficult to acquire permanent residence status (the length of the residence requirement doubled) and introduced new grounds for refusal of the status and for deportation of a person holding the status. On the other hand, the possibilities for third country nationals with close family ties to Finnish citizens or former Finnish citizens to obtain the status expanded: exemption from the residence or income requirement. The drafters of the new Act apparently took the obligations of Finland under the UN Convention on the Right of the Child seriously.

10.2.5 France

10.2.5.1 Past and present legislation

The permanent residence status embodied in the *carte de résident* was introduced in the French immigration law of 1984. This introduction indicated a clear change in French immigration policy: the immigrants of the 1960s and 1970s and their family members were no longer defined as disposable temporary workers, but as a permanent element of French society. The permanent resident permit should provide the security of residence that stimulates the integration of the immigrants (Lochak 2005: 6). Since the document is valid for ten years and is automatically renewable, it is commonly called the *carte de dix ans*. Some third country nationals were entitled to this status after several years of lawful residence; others, especially those with a close family relationship, were granted a statutory right to the status without a waiting period.

10.2.5.2 Acquisition of the status

The rules on the acquisition of this status were changed in November 2003, with the entry into force of the *Loi Sarkozy*⁵⁹, amending the *Ordonnance* of 1945 that embodied most of French immigration law for the second half of the last century. The *Ordonnance* was replaced by the *Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile* in November 2004.⁶⁰ The provisions concerning the permanent residence permit in Articles 14-18 of the *Ordonnance* have been transferred to Articles L 314-1 to L 314-13 of the new Code. The new Code entered into force on 1 March 2005.

The *Loi Sarkozy* of 2003 has increased the residence requirements and reduced the categories that have automatic entitlement to the status. Third country nationals with a normal temporary residence permit are entitled to the permanent residence permit only after five years, rather than three years under the previous legislation (Article L 314-8). The spouse of a French citizen is entitled to the status only after two years of marriage, rather than after one year (L 314-9). The parents of a French child and the family members of a third country national with the permanent residence status do not obtain the status until after two years of residence on the basis of a temporary residence permit. Under the previous legislation, these two groups were automatically entitled to the permanent residence status.⁶¹

A new condition was introduced for all four categories mentioned above: “*l'intégration républicaine de l'étranger dans la société française*”. This integration will be judged especially with regard to knowledge of the French language and of the principles governing the French Republic. The prefect may, before deciding on the application for the

⁵⁹ Act no. 2003-1119 of 26 November 2003, JORF no. 274 of 27 November 2003, p. 20136.

⁶⁰ JORF 25 November 2004.

⁶¹ Articles L 314-9 and L 314-11.

permanent residence permit, seek the advice of the mayor of the municipality where the applicant resides.⁶²

This new condition does not apply to the categories of persons mentioned in Article L 314-11, who have a statutory right to the permanent residence permit, once they have lawful residence in France. The main categories exempted from the integration test are: third country nationals married to a French national for two years, foreign children under 21 years of age who have French parents and officially recognised refugees. Neither does this condition apply to the only remaining category with a statutory right to the permanent status without the requirement of lawful residence in France: children born in France to non-French parents who, upon reaching at the age of eighteen, have their habitual residence in France and who have lived in France since their eleventh birthday for more than five years (Article L 314-12). This category of second generation immigrants is also entitled to opt for French nationality.⁶³

In January 2005, a new provision on *intégration républicaine* was inserted into the Family Code. It provides for a contract on integration to be signed both by new immigrants and by those already established in France. The exact level of knowledge of the French language and other requirements are to be specified in a Decree. This provision will enter into force on 1 January 2006.⁶⁴

In the period 1997-2003, the total number of *cartes de résident* issued for the first time was fairly constant. It varied between 29,000 and 34,000 per year. Most of the permits were issued to family members of non-French or French nationals or to officially recognised refugees.⁶⁵ Algerian nationals who are entitled to a special permanent residence document are not included in these figures.

10.2.5.3 Loss of the status

The main rules on the loss of the status (absence from the country for more than three years and fraud) have not changed. The rules on fraudulent information are not codified but still only subject to the case law of the *Conseil d'Etat*. The protection from expulsion for persons with long lawful residence or close family ties to French nationals has been increased as a result of political action to end the double punishment (*la double peine*), i.e. that persons who have served a long prison sentence are then subjected to an administrative sanction (deportation) for the same offences. Article L 521-3 lists the protected categories: aliens with habitual residence in France since the age of thirteen (formerly ten years), aliens with more than twenty years of lawful residence, aliens with more than ten years of lawful residence who are married to a French national or have a French child for whom they are currently caring. However, this protection does not apply if the deportation is considered urgent for reasons of state security or public security. A new exception is added to this previous exception: deportation is also possible in cases where behaviour has been detrimental to fundamental state interests, the acts in question are related to activities of a terrorist character or involved incitement to racial discrimination, hate or violence against a group of persons on the grounds of their origin or religion.

⁶² Articles L314-2 and L 314-10.

⁶³ Article 21-7 of the *Code Civile*.

⁶⁴ Article L 117-1 of the *Code de l'action sociale et des familles*, inserted by Act no.2005-32 of 18 January 2005, JORF 19 January 2005.

⁶⁵ *Dictionnaire Permanent Droit des Etrangers*, Bulletin 134 (May 2005) p. 6899

10.2.5.4 Rights attached to the status

The *Loi Sarkozy* has made it more difficult for family members of a third country national with a permanent residence permit to acquire that same permit. It appears that there have been no major changes in the rights attached to the status over the past five years.

The major changes in French nationality law adopted in 2003 are documented in the chapter on France in this report.

10.2.5.5 Comments

The language and integration conditions, previously unknown in French immigration law, were introduced by the *Loi Sarkozy* even before adoption of Directive 2003/109/EC on the status of third country nationals who are long-term residents. That Directive stipulates that Member States may require applicants for the long-term resident status to comply with integration conditions in accordance with national law.⁶⁶

The amendments introduced by the Act of 2003 (*Loi Sarkozy*) clearly have made it more difficult to acquire the permanent residence permit for large groups of long-term immigrants in three ways: the longer residence requirement, the reduction of groups automatically entitled to this permit and the new integration condition. This is part of a long-term development of gradually making access to this status more difficult since its introduction in 1984 (Lochak 2005). It has become more difficult to obtain a permanent residence permit for the family members of a person with this status. The integration requirement was introduced without a clear idea about the content of the requirement. The rules specifying the requirement had yet to be adopted eighteen months after the requirement was introduced by the immigration legislation.

The protection from deportation of persons with the permanent residence permit has, on the one hand, been reinforced as a result of the political actions of immigrant organisations and some active MPs and, on the other hand, this protection has been diminished by the introduction of new exceptions justified by the policy against terrorism.

10.2.6 Germany

10.2.6.1 Past and present legislation

In 2004, two thirds of the total number of non-national residents of Germany (6.5 million) had already been living in the country for more than eight years.⁶⁷

For several decades, German immigration law had two separate statuses for long-term resident aliens: the unrestricted residence permit (*unbefristete Aufenthaltserlaubnis*) and the establishment permit (*Aufenthaltsberechtigung*). The former permit could be obtained after five years of lawful residence, the latter only after eight years. The conditions for the latter permit were higher than for the former. Command of the German language was a condition for acquisition of both permanent statuses. In 1999, Germany was the only Member State with a language requirement for acquisition of the permanent residence status. The establishment permit granted free access to the labour market without a work permit and access to self-employment. In 1999, the unrestricted residence permit only granted free access to employment after six years of lawful residence. The family members of persons with an

⁶⁶ Article 5(2) of the Directive.

⁶⁷ *Migration und Bevölkerung* June 2005.

unrestricted residence permit could be excluded from the labour market for a waiting period or even permanently (2000: 44-49).

10.2.6.2 Acquisition of the status

On 1 January 2005, after a long political and legal debate, the Immigration Act (*Zuwanderungsgesetz*) entered into force. With this Act, the former Aliens Act of 1990 was replaced by the Act on the Residence, Economic Activity and Integration of Foreigners on Federal Territory, referred to as Residence Act (*Aufenthaltsgesetz*).

Under the new Act, adopted in 2004, the two former statuses were merged into one new status, the new settlement permit (*Niederlassungserlaubnis*). This new status can be obtained after only five years of lawful residence. The other conditions, such as sufficient means, housing, payment of social security contributions and absence of public order violations, required for the permanent residence status under the previous legislation, remained largely unchanged. However, the language requirement has become stricter. The previous condition of 'speaking and understanding the German language in a basic manner', has been replaced by 'sufficient knowledge of the German language'. A new integration condition was also added: basic knowledge of the legal and social system and of the German way of life.⁶⁸ Both conditions are met if the person passes the test at the end of the compulsory integration course for new immigrants, provided for in § 43-45 of the Residence Act of 2004. Persons with physical, intellectual or mental limitations may be exempt from this condition.

The new establishment permit may also be granted immediately upon admission to immigrants with high professional qualifications.⁶⁹ The rights attached to the status have not changed much compared to the previous legislation, but the status allows free access to employment and self-employment. Since the spouse of persons who hold this status may obtain the permanent status themselves, if the other spouse fulfils the conditions related to income and labour performance, these spouses may obtain free access to employment in situations where they could be (temporarily) excluded from the labour market.

10.2.6.3 Loss of the status

Several new grounds for loss of the status and expulsion from the country have been introduced. Most of these grounds are related to the 'fight against terrorism'. The new grounds are:

- smuggling persons into Germany; this is a compulsory ground for deportation if the person has been sentenced to a non-suspended prison term for this offence;
- leadership of a banned organisation or belonging to an organisation which supports terrorism or supporting such organisation will as a rule be sufficient grounds for deportation; former membership or acts are relevant insofar as still pose a current danger;
- 'intellectual incendiaries', such as religious agitators, may be expelled on a discretionary basis.⁷⁰

Moreover, before a settlement permit is issued, a routine check will be performed on the applicant's record with the secret service (*Verfassungsschutz*).⁷¹

⁶⁸ See §§ 9(7) and 9(8) of the Residence Act 2004.

⁶⁹ § 19 of the Residence Act 2004.

⁷⁰ Paragraphs 53-55 of the Residence Act.

⁷¹ See § 73(2) of the Residence Act.

10.2.6.4 *Rights attached to the status*

The major revision of the Germany Nationality Act that came into force on 1 January 2000 and included the introduction of the *ius soli* principle for second generation immigrants born in Germany, provided one of their parents has at least eight years of lawful residence in the country, is discussed at length elsewhere in this report.

10.2.6.5 *Comments*

In 2005, implementation of Directive 2003/109/EC on the status of third country nationals who are long-term residents had not yet started in Germany. The discussions on the bill for the Residence Act of 2004, that introduced the extended language and social knowledge conditions and the compulsory integration course for new immigrants, influenced Germany's position during the negotiations on that Directive. The references to national legislation on integration conditions or integration measures in Article 5 and Article 15 of the Directive were the result of proposals made by Austria, Germany and the Netherlands.

The major changes in the relevant legislation in Germany after 1999 have moved in opposing directions. The reduction of the residence requirement, the possibility of acquiring the status upon admission for certain selected immigrant groups, the removal of barriers to employment for spouses and the new nationality law are all clear examples of liberalisation. However, the introduction of a more extensive language and integration condition, the routine check with the secret service and the new grounds for loss of the status, may make acquisition of the status more difficult and loss of the status easier. It is as yet unclear what the actual effect of those changes will be in practice in the longer term. The debate on the new German immigration legislation has clearly influenced the content of Directive 2003/109/EC, although that Directive has so far had few, if any, effect on German law.

10.2.7 **Greece**

10.2.7.1 *Past and present legislation*

Under the Greek immigration legislation of 1991, a third country national admitted for work purposes was eligible, after fifteen years of work and residence in Greece, for a permanent residence permit. Periods of residence as a student or periods spent in prison did not count towards the fifteen years. From a comparative study in 1999 it appeared that this residence requirement was by far the most lengthy of all EU Member States; the closest in length was Portugal with ten years (Groenendijk, Guild & Barzilay 2000: 96-98). Family members of third country nationals could be granted a permanent residence permit five years after they had been admitted to Greece.

In the reform of immigration legislation enacted in 2001, the residence requirement was reduced to ten years. The provisions on acquisition and loss of the status are to be found in the Articles 19 – 27 of the Law 2910/2001, amended several times since adoption in 2001.⁷² A bill proposing a far-reaching reform of the current Greek immigration legislation is under consideration within the Ministry of the Interior.

⁷² Official Gazette A'91 of 2 May 2001.

10.2.7.2 Acquisition of the status

As under the previous legislation, only third country nationals who have entered Greece for work purposes with prior authorisation for employment are eligible for the permanent residence status. The first residence permit and the first work permit are granted for one year only. The permits are renewable for one year and, later, for two years. After ten years, immigrants may apply for the permanent residence permit to the Secretary-General of the Region and for the permanent work permit to the Prefecture. The other main requirements are that the immigrant has paid the full social security contribution for 300 days of work per year over the ten years and has no serious criminal record. If the application is refused by the Secretary-General of the Region, the general rules of administrative procedure apply. The applicant may ask for a re-examination of his case. Appeal to the administrative courts against a negative decision is possible. Granting the permanent residence permit is at the discretion of the administrative authorities and is not considered a right to which the immigrant is entitled. The same rules also apply to self-employed third country nationals.⁷³

Family reunification is only possible after the third country national has been resident in Greece for two years.⁷⁴ Family members who have been admitted may be granted a permanent residence permit at the same time as the principal.

It is estimated that, in 2004, approximately 300 foreign nationals were in possession of a permanent residence permit. In 2005, a discussion began on the position of long-term resident third country nationals in Greece, in relation to the implementation of Directive 2003/109/EC. It has been estimated that about 200,000 long-term immigrants could be entitled to the long-term resident status under this Directive.⁷⁵

10.2.7.3 Loss of the status

The permanent residence status may be withdrawn on three grounds: fraud, public order violations or non-compliance with the immigration legislation.⁷⁶ The rules on deportation in the 2001 Law are similar to those in the 1991 Law, except that deportation on the grounds of violation of public morals is no longer provided for in the 2001 Law.

10.2.7.4 Comments

Over the past five years the residence requirement has been reduced considerably, from fifteen to ten years. This reduction has not resulted in a notable increase in the number of permanent residence permits issued, despite the fact that many third country nationals have been lawfully resident in Greece for a long period. It is expected that the need to implement Directive 2003/109/EC will bring about a major change in Greek immigration legislation concerning this issue.

10.2.8 Ireland

10.2.8.1 Past and present legislation

In Ireland, the Aliens Act of 1935, as amended by the Immigration Act of 1999, is still in force. In the years 2000-2004, no changes were enacted in Irish immigration legislation. A

⁷³ Article 27(4) of Law 2910/2001.

⁷⁴ Article 28 of Law 2910/2001.

⁷⁵ Migration News Sheet February 2005, p. 4.

⁷⁶ Article 43 of Law 2910/2001.

comprehensive Immigration and Residence Bill is due to be introduced in the course of 2005. This bill may include provisions on long-term residents. Since Ireland has not participated in the adoption of Directive 2003/109/EC, Ireland is not obliged to implement the directive. Nevertheless, the drafters of the bill may take the provisions of the directive into consideration when preparing the new legislation.

10.2.8.2 Acquisition and loss of the status

No material change to the relevant law has occurred since 2000. The current immigration law does not provide for a special secure residence status for long-term resident third country nationals. There is a long-standing administrative practice of granting a non-national who has been legally resident in Ireland for five to ten years, depending on the status of the applicant, the opportunity to obtain a residence stamp, giving the person 'permission to remain without condition as to time'. A person with this status still is subject to other requirements on third country nationals, such as work permit, visa and registration.

However, there has been a major change in the protection of the non-national parents of an Irish child. The liberal treatment accorded these non-national parents following the 1990 *Fajujonu* case was overturned after the January 2003 Supreme Court judgement in the *O & L* cases, which decided that an Irish citizen child had no absolute right to the company of his or her non-national parents in Ireland. After that judgement, the Minister ceased to accept applications for residency from third country nationals on the grounds of their parentage of an Irish citizen child.

A constitutional amendment approved by referendum in June 2004 removed the constitutional right of Irish-born children to be entitled to Irish citizenship. In January 2005, following the entry into force of the Irish Nationality and Citizenship Act 2004, the Minister introduced a new procedure for non-national parents seeking residence on the basis of the Irish citizenship of a child born before 1 January 2005. Parents obtaining permission on this basis will be on course to obtain long-term resident status after five years.

10.2.8.3 Comments

Apart from the restriction of the *ius soli* rule in the nationality law, there has been no relevant change in the Irish law regarding long-term resident third country nationals. It will be interesting to see to what extent the forthcoming revision of the Irish immigration law will incorporate elements of Directive 2003/109/EC, bearing in mind that Ireland is not bound by that Directive.

10.2.9 Italy

The 1998 Italian Act on the immigration and the legal status of aliens (No. 40/1998) created the permanent residence permit known as the *carta di soggiorno*. The main rules concerning the acquisition and the loss of this permit, as well as the rights attached to it, were specified in Article 9 of the consolidated Legislative Decree on immigration (No. 286/1998).

In 2002, a major revision of the 1998 legislation was enacted by the adoption of an Act commonly known as the Bossi-Fini Act.⁷⁷ As part of this revision, the residence requirement for the permanent residence permit was raised from five to six years. All the other statutory provisions regarding the permanent residence permit remained unchanged.

⁷⁷ Act no. 189 of 30 July 2002.

Third country nationals with a permanent residence permit will experience the effect of some of the other changes enacted by the 2002 Act, such as the creation of special immigration desks at the regional offices of the central government or the additional requirements concerning the legalisation of documents to be presented with an application for family reunification.

However, the other conditions for acquisition of the status (sufficient income, a residence permit for a non-temporary purpose and no recent criminal record) and the grounds for loss of the status (a criminal conviction for an offence that could have been grounds for refusal, ordered by either an administrative authority (Article 9(3) or by a criminal court as an extra sanction or as a substitute for a prison sentence (Article 13)) and the protection from deportation (administrative deportation order only on very limited grounds, Article 9(5) and Article 13(1) and 13(2) of the Act) remained unchanged.

Some of the rights of third country nationals with a permanent residence permit are specified in Article 9(4), such as the right to perform any lawful activity except those explicitly reserved for Italian citizens and access to all public services unless specifically excluded. The right to participate in local elections, recognised in Article 9(4)(d) of the 1998 legislation, has not been implemented in practice because the necessary amendment of the Italian Constitution has not been adopted.

10.2.10 Luxembourg

The 1972 Act on the entry and residence of aliens distinguishes between a temporary residence authorisation, valid for a maximum of one year, and an identity card for third country nationals admitted for long-term residence. Discretionary power exists to issue a long-term residence card after five years of lawful employment in Luxembourg. Due to administrative delays, it may take more than five years before this card is issued. The security of residence of persons holding this status is provided mainly by the case law of the administrative courts and not by the legislation. Few, if any, rights are attached to this status.

In spring 2005, the Luxembourg government announced the introduction of a Bill amending the 1972 legislation. This bill will possibly deal with the implementation of Directive 2003/109 on the status of long-term resident third country nationals.

10.2.11 The Netherlands

10.2.11.1 Past and present immigration legislation

The Aliens Act of 1965 has been replaced by the Aliens Act 2000, that entered into force on 1 April 2001.⁷⁸ The establishment permit (*vestigingsvergunning*) under the former Act has been replaced by the permanent residence permit (*verblijfsvergunning voor onbepaalde tijd regulier*), provided for in the Articles 20-22 of the new Aliens Act. The new Act provides for a special permanent residence permit for refugees and persons granted subsidiary protection (Articles 33-35). Since 2001, this new status has been granted after three years of residence on the basis of a one-year permit. As early as 2004, the residence requirement for the permanent permit for refugees was extended to five years. The statutory right to permanent residence for admitted family members of Dutch nationals and aliens with a permanent residence right under Article 10 of the 1965 Act has been abolished. Persons holding this statutory right are granted a permanent residence permit under the transitional provisions of

⁷⁸ Act of 23 November 2000, *Staatsblad* 2000, no. 495.

the new Act. That new status can be withdrawn, whereas the former statutory right could not be ended by the administration as long as the family members lived together.

10.2.11.2 Acquisition of the status

The conditions for acquisition of the permanent residence permit are specified in Article 21(1)-(3) of the Act. In comparison with the former Act, three new conditions have been added. The five-year residence period has to be uninterrupted lawful residence rather than simple residence.⁷⁹ Secondly, only aliens holding a temporary residence permit issued for non-temporary purposes can obtain a permanent residence permit.⁸⁰ The residence permit issued for temporary purposes is specified in detail in Article 3.5 of the Aliens Decree 2000. Thirdly, the applicant has to have his main residence in the Netherlands.⁸¹ The former policy rule that the income of both partners is taken into account for the purposes of the requirement of sufficient and stable income has been codified in Article 21(1)(a) of the Act. Children born in the Netherlands or who have been admitted for family reunification are exempt from some of the requirements. Special, more liberal rules apply to former Dutch nationals, non-citizens who have returned to their country of origin after long lawful residence in the Netherlands and who then return to the Netherlands because their re-emigration was unsuccessful and to certain categories of privileged third country nationals with more than ten years of lawful residence in the Netherlands.⁸²

In spring 2004, the government announced its plans to introduce a language and integration test as a further condition for obtaining the permanent residence permit.⁸³

In 2002, the fee for the permanent residence permit was increased. In 2003, there was a further increase to 890 euros, which amounts to almost twice the net statutory minimum wage for a worker aged eighteen.⁸⁴

In 2004, the authority to issue a permanent residence permit was transferred from the local aliens police to the regional offices of the Immigration and Naturalisation Service (IND) of the Ministry of Justice.

In the event of refusal or withdrawal of a permanent residence permit, it is possible to apply to the Minister for an administrative review of the decision. The independent Advisory Commission on Alien Affairs is no longer consulted in these cases. If the outcome of the review is negative, it is possible to appeal against that decision at the District Court of The Hague, with a further appeal on limited grounds to the Judicial Division of the State Council.

In January 2004, a total of 590,000 non-citizens were registered in the national aliens register: 32 per cent of registered aliens held a permanent residence permit, another 5 per cent held a permanent residence permit for refugees, 15 per cent had an EC residence card, 40 per cent held a temporary residence permit and 8 per cent were registered asylum-seekers waiting for the (final) decision on their asylum request. Thus, more than half of the registered non-citizens (52 per cent) had permanent residence status.

10.2.11.3 Loss of the status

Previous case law on withdrawal of the permanent residence permit on the grounds that false or incomplete information was provided with the application has been codified in Article

⁷⁹ Article 21(1) of the Act.

⁸⁰ Article 21(1)(f).

⁸¹ Article 21(1)(c).

⁸² Articles 3.92 and 3.93 Aliens Decree.

⁸³ *Contourennota herziening inburgeringstelsel* of 23 April 2004, TK 29543.

⁸⁴ Article 3.34(2) of the Aliens Regulation.

21(1)(e) of the Aliens Act. These grounds for withdrawal no longer apply twelve years after provision of the incorrect information.⁸⁵

The 'sliding scale' that describes the relationship between the length of the prison sentence and the duration of lawful residence in the Netherlands for the purposes of determining whether an alien can be removed on public order grounds has been transferred from the Aliens Circular to Article 3.86 of the Aliens Decree.

The Minister is no longer obliged to consult the Advisory Commission on Aliens Affairs in cases of withdrawal of the permanent residence permit but there is administrative review, appeal to the District Court and a further appeal to the Judicial Division of the State Council.

10.2.11.4 Rights attached to the status

In 2004 the income requirement for third country nationals with a permanent residence permit and for Dutch citizens for family reunification was raised from 70 per cent to 100 per cent of the standard amount of public assistance in case of family reunion and to 120 per cent in cases of family formation.⁸⁶ Moreover, a bill is pending in Parliament that introduces a language and integration test abroad. The test has to be taken at the Dutch embassies and includes speaking with a computer in the Netherlands over the telephone. A visa for family reunion with a spouse in the Netherlands will only be granted after the test has been passed successfully.⁸⁷ Both partners have to be 21 years of age before the partner from abroad is admitted.⁸⁸ After the first year, the temporary permit given to admitted family members may be prolonged for five years and no longer needs to be extended each year.⁸⁹

Children of persons with a permanent residence permit are entitled to their own permanent residence permit, once they have reached the age of eighteen, as codified in Articles 21(4) and (5) of the Aliens Act. Those rights were previously only policy rules in the Aliens Circular.

10.2.11.5 Obtaining nationality

In April 2003, a far-reaching change to the Act on Dutch nationality entered into force. The categories of persons applying for naturalisation who are allowed to retain their former nationality were reduced. A new strict four-hour language and integration test was introduced. Applicants are required to speak, listen to, read and write the Dutch language. The introduction of this new test resulted in a reduction in the number of persons naturalised by more than 50 per cent between 2002 and 2004. For non-citizens born in the Netherlands, who have lived there since birth, the simple unilateral declaration (option) between the ages of eighteen and 23 has been replaced by a simplified naturalisation procedure. In this procedure, the Minister may oppose the acquisition of Dutch nationality on serious public order grounds, but there is no language and integration test.

10.2.11.6 Comments

With the introduction of the new immigration legislation in 2001, several new conditions for obtaining the permanent residence permit were introduced. In 2002, a new barrier was introduced in the form of a high fee to be paid by the applicant. Recently, the introduction of

⁸⁵ Article 3.96 Aliens Decree.

⁸⁶ Article 3.74 Aliens Decree as amended by Royal Decree of 29 September 2004, *Staatsblad* 2004, no. 496.

⁸⁷ TK 29700.

⁸⁸ Articles 3.14 and 3.15 Aliens Act.

⁸⁹ Article 3.67 Aliens Decree.

yet another new condition – the language and integration test – was announced. The introduction of that condition was explicitly justified by the government with reference to Directive 2003/109/EC.

The Aliens Act abolished the permanent residence status that provided for an automatic secure residence right for admitted family members of persons with a permanent residence permit. On the other hand, more liberal rules for the acquisition of the permanent residence permit were introduced for third country nationals with close ties to Dutch citizens, for former Dutch citizens and for long-term residents returning to the Netherlands after an unsuccessful return to their country of origin.

The possibility for third country nationals with a permanent residence permit to be united with their spouse in the Netherlands has been severely reduced as a result of a series of measures creating new barriers for family reunification, such as high fees and a high income requirement; additional, similar measures (integration test abroad) are under preparation.

Whilst the acquisition of the permanent residence permit has become more difficult, the barriers to naturalisation have also been raised. Thus, both roads to a more secure residence status have been severely restricted since 2000.

10.2.12 Portugal

10.2.12.1 Past and present legislation

The 1998 Aliens Act was amended in 2001 by the Decree-Law 4/2001 and again in 2003 by the Decree-Law 34/2003. Some of the dispositions regarding the legal status of third country nationals with a permanent residence permit were changed by these amendments.

10.2.12.2 Acquisition and loss of the status

In 2003, the length of the residence requirement for the permanent residence permit, which was ten years under the 1988 Aliens Act, was reduced. A third country national is now eligible for a permanent residence permit if he or she has resided with a residence permit in Portugal for eight years. For nationals of Portuguese-speaking countries, the residence requirement has been reduced to five years.⁹⁰ The permanent residence permit will be denied if, during the period of residence in Portugal, the person has committed a crime or several crimes that carry a sentence or a combination of sentences of over one year of imprisonment.

The permanent residence permit may be withdrawn by a decision by the Minister of Home Affairs or by the Director of the Aliens and Frontiers Service on behalf of the Minister on the following grounds: the holder was subject to an expulsion order, has acquired the residence permit by fraud, has acquired the residence permit by a marriage of convenience or has left Portugal for a consecutive period of 24 months or for a total of 30 months over a three-year period.⁹¹

The grounds for loss of the permanent residence status have been reduced as a result of a judgement by the Constitutional Court of 31 March 2004, ruling that a third country national can not be expelled if he or she is the parent of a minor child of Portuguese nationality living in Portugal.

⁹⁰ Article 85 of the 1998 Aliens Act as amended by the Decree-Law 34/2003.

⁹¹ Article 93 of the 1998 Aliens Act as amended by the Decree-Law 34/2003.

10.2.12.3 Rights attached to the status

Third country nationals from Portuguese-speaking countries with a permanent residence permit are entitled to vote and to be elected in national, regional and municipal elections, under the condition of reciprocity. They cannot serve as President of the Republic, President of the Parliament or Prime Minister, but they may be elected as a Member of Parliament, President of an autonomous Region or to serve in the local authorities. At present, a relevant treaty is only in force between Portugal and Brazil. Under this treaty, concluded in 2000, Brazilians have the above voting rights if they hold a three-year residence permit.

Nationals of the EU Member States, Cap Verde, Peru and Uruguay who hold a residence permit have the right to vote and be elected in municipal elections. Nationals of Argentina, Chile, Israel, Norway and Venezuela are entitled to vote in municipal elections.

10.2.12.4 Comments

During the period 2000-2004, access to the permanent residence status was facilitated by the reduction in the residence requirement, protection from expulsion has increased and the political rights of long-term lawful resident third country nationals have been extended. Regarding the first and the third issues, nationals of Portuguese-speaking countries are in a privileged position.

10.2.13 Spain

10.2.13.1 Past and present legislation

The permanent residence permit was introduced into Spanish law by the 1996 Aliens Decree. The status was codified and consolidated in the Immigration Act of 2000, that constituted a major step in the protection of the rights of long-term residents.⁹² This Act has since been amended, once in 2000 and twice in 2003.⁹³ In December 2004, a new implementing Royal Decree was adopted.⁹⁴

10.2.13.2 Acquisition of the status

According to Article 32(1) of the 2000 Immigration Act of 2000, the permanent residence permit authorises a person to reside in Spain indefinitely and to work under the same conditions as Spanish nationals. Article 32(2) states that foreigners are entitled to a permanent residence status after they have enjoyed temporary, uninterrupted residence for at least five years. Relaxation of the residence requirement is possible with respect to persons who have special ties to Spain, to be determined by decree. The Royal Decree of 2004 contains a list of groups exempt from the general residence requirement. The list includes foreign residents who are beneficiaries of a state pension, foreign residents born in Spain and who, when they reach the age of eighteen, have been living in Spain for at least the three previous years, persons of Spanish origin who, generally, acquired Spanish nationality at birth but have since lost their Spanish nationality, foreign residents who for most of their lives have been under

⁹² *Ley Organica 4/2000* of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration.

⁹³ *Ley Organica 8/2000* of 22 December 2000, *Ley Organica 11/2003* and *Ley Organica 14/2003* of 20 November 2003.

⁹⁴ *Real Decreto 23/93/2004* of 30 December 2004.

the guardianship of a Spanish public entity, stateless residents and refugees and foreigners who have contributed to the economic, scientific or cultural progress of Spain.⁹⁵

The status is in principle permanent although it can be revoked. The permanent residence permit does not need to be renewed. But once the permit has been granted, the foreigner needs to apply for a document which has to be renewed every five years.⁹⁶

10.2.13.3 Loss of the status

A permanent residence permit may be revoked on four grounds:

- the foreigner remained abroad for more than twelve consecutive months or more than 30 months over five years of residence;
- the applicant has made serious errors when applying for the residence permit;
- the activities of the foreigner are grounds for deportation or an entry ban under Article 57(5) of the Immigration Act;
- grounds provided for in the legislation on a state of emergency.⁹⁷

According to Article 57(5) of the Immigration Act, permanent residents cannot be deported except on two grounds: (1) he or she is participating in activities that may be detrimental to national security or is engaged in activities harmful to public order, as described in the 1992 Act on the Protection of Citizens' Security⁹⁸, or (2) for the second time within one year, he or she commits a very serious offence which may be grounds for deportation, such as participation in activities related to clandestine immigration, acts of discrimination on the grounds of race, ethnicity or religion or the employment of foreign workers without a work permit.

Spouses, parents, minors or handicapped children who are the responsibility of a permanent resident who is subject to deportation cannot be deported if they have been lawfully resident in Spain for over two years. Nor can pregnant women be deported if the measure will entail a risk to the health of mother or to the pregnancy.⁹⁹

10.2.13.4 Rights attached to the status

As under the previous immigration legislation, third country nationals with a permanent residence permit are entitled to work without restrictions.¹⁰⁰ They are also entitled to social security benefits and social assistance under the same conditions as Spanish nationals.¹⁰¹

All immigrants with lawful residence in Spain are entitled to family reunion.¹⁰² There have been two important amendments to the relevant Article 17 of the 2000 Immigration Act: (1) the list of persons who are entitled to family reunion no longer includes 'other family members where residence is necessary for humanitarian reasons', and (2) chain family migration has been restricted by adding the condition that when a person has been admitted for family reunion, he or she can only bring in his or her family members if they acquire a residence and work permit independently of the sponsor.

A family member joining a lawfully resident third country national is entitled to a residence permit of the same duration as the latter's permit.¹⁰³ Admitted family members,

⁹⁵ Article 72 of the Decree 2393/2004.

⁹⁶ Article 4 of the Immigration Act and Article 7(6) and Article 74(1) of the Decree 2393/2004.

⁹⁷ Article 76 of the Decree 2393/2004.

⁹⁸ *Ley Organica* 1/1992.

⁹⁹ Article 57(6) of the Immigration Act.

¹⁰⁰ Article 32(1) of the Immigration Act.

¹⁰¹ Articles 10, 12, 13 and 14 of the Immigration Act.

¹⁰² Article 16(2) and Article 17 of the Immigration Act.

¹⁰³ Article 18 of the Immigration Act.

when applying for a work permit, are exempt from the quotas relating to work permits.¹⁰⁴ Admitted family members are entitled to an independent residence permit, once they have obtained their own work permit.¹⁰⁵

The children of a third country national born in Spain are entitled to a permanent residence permit if, upon reaching the age of eighteen, they have been living in Spain for the three previous years.¹⁰⁶

10.2.13.5 Comments

The major revision of the Immigration Act in 2000 only resulted in minor changes to the conditions for acquisition or loss of the permanent residence permit and the rights attached to that status. Some of the changes to the conditions for loss will reinforce the position of the settled immigrants (longer periods of absence from Spain are permitted); other changes tend to reduce the protection provided by the status (more grounds for loss of the status and deportation). The change in the permitted periods of absence from Spain by the Decree of December 2004 has brought Spanish legislation more closely into line with the comparable provisions of Directive 2003/109/EC. The idea of shorter residence requirements for lawful residents with special ties to Spain is a feature common to the nationality of many EU Member States. However, with respect to the permanent residence status, this feature is present in the laws of only a few Member States.

10.2.14 Sweden

10.2.14.1 Past and present legislation

The Swedish Aliens Act of 1989, that entered into force on 1 July 1989 and replaced the former 1980 Aliens Act, has been amended several times since 2000. Most of the amendments were related to the changing national political climate regarding immigrants or related to the implementation of international instruments, especially Schengen and EU rules. The amendments, generally, tended to make the statutory rules more restrictive. The changes in the rules on the permanent residence permit are minor, but the consequences of changes in other areas, such as admission for family reunification, may have far reaching effects on the lives of long-term resident third country nationals in Sweden.

10.2.14.2 Acquisition and loss of the status

Under Swedish legislation, the rights of third country nationals do not vary greatly between those holding a temporary residence permit and those with a permanent residence permit. The primary basis of granting or withholding rights is the purpose for which the immigrant has been admitted or the length of his or her lawful residence in Sweden. The rules on the residence requirement and other conditions for the acquisition of the permanent residence permit did not change in the period 2000-2004.

The rules on admission for family reunification were changed by the Law 2001:201. The rules on the admission of spouses and unmarried partners have changed, so that the spouse or partner of a foreigner resident in Sweden can be admitted, even if the two partners have not lived together abroad or intend to marry or live together, on condition that the relationship appears to be serious and there are no special grounds to refuse admission. A new

¹⁰⁴ Article 40 b of the Immigration Act.

¹⁰⁵ Article 19 of the Immigration Act.

¹⁰⁶ Article 32(2) of the Immigration Act and Article 42(3)(c) of the Decree 2393/2004.

condition was added: when deciding on applications for family reunification, the immigration authorities should take into account whether or not the applicant can be expected to behave properly and live an honest life.¹⁰⁷ After two years, admitted family members (in exceptional cases, even earlier), may be issued a permanent residence permit if the family relationship still exists. Interviews are conducted every six months to verify whether the relationship between the partners is still continuing. If the family relationship has broken down, the temporary residence permit may still be extended if the partner or spouse has a special relationship with Sweden, if the relationship ended due to violence or serious maltreatment or on other serious grounds.¹⁰⁸ Unless one of those exceptions applies, the partner may be expelled, even if he or she had held a permanent residence permit for decades. Recently, the permit was withdrawn in the case of a permanent resident who had resided in Sweden for 40 years because it was deemed that the relationship with Sweden justifying the permit was no longer strong enough. Obtaining Swedish nationality is the only guarantee of permanent residence.

New grounds for withdrawal of a permanent residence permit have been introduced: if the third country national is registered on a list of prohibited persons or in the Schengen Information System and the grounds are sufficiently serious.¹⁰⁹ As a result of the implementation of the Directive on the mutual recognition of expulsion decisions, an expulsion decision by another EU Member State, Norway or Iceland, may also be grounds for withdrawal of the permit if the decision by the other state was based on a serious threat of public order or internal security, on a conviction for a crime carrying a minimum prison sentence of one year, or on suspicion of having committed such a crime. In those cases, the permit can only be withdrawn after the other state that made the expulsion decision has been consulted.¹¹⁰

In recent years, the administration has intensified the controls in order to verify whether long-term residents actually continue to live in Sweden, e.g. after retirement. When an investigation reveals indications that a person has been away from the country for a longer period of time, his or her residence permit may be withdrawn on the grounds that he or she ceased to have residence in Sweden.¹¹¹ This happened in a recent case, where the residence permit of a retired person with more than 40 years of residence in Sweden and whose entire family, including children and grandchildren, were living in Sweden, was suddenly denied his resident permit and the person was threatened with expulsion, to the entire family's shock. The immigration authorities deemed that he had ceased to be domiciled in Sweden because he had apparently spent several months in his country of origin. After the case came to the attention of the media, the decision was annulled and the person was allowed to stay, since his whole family was living in Sweden.

10.2.14.3 Rights attached to the status

Except for the rules on family reunification, no major changes occurred after 2000. Third country nationals with a permanent residence permit are exempt from the requirement that they hold a labour permit for employment. Acquisition of the permanent residence status does not give the third country national more rights to family reunification or to social security than persons holding a temporary residence permit. In theory, no great difference exists between the rights attached to a temporary residence permit and a permanent residence

¹⁰⁷ Chapter 2, Article 4:7, paras. 1-2, subsections 1-2 and 4 of the Aliens Act as amended by the Law 2001:201.

¹⁰⁸ Chapter 2, Articles 4d and 4e of the Aliens Act as amended by the Law 2000:292.

¹⁰⁹ Chapter 2, Article 10 of the Aliens Act as amended by Law 200:344 and Law 2000:351.

¹¹⁰ Chapter 2, Article 10a of the Aliens Act as amended by Law 2002:865.

¹¹⁰ Chapter 2, Article 12 of the Aliens Act.

¹¹¹ Chapter 2, Article 12 of the Aliens Act.

permit. Yet, in practice, the lack of a permanent residence permit may become relevant when the right to continued residence is challenged or, possibly, when looking for a job or an apartment.

10.2.14.4 Comments

There was no indication that Sweden had already started implementing Directive 2003/109/EC before the Summer of 2005.

10.2.15 United Kingdom

10.2.15.1 Past and present legislation

Under the UK Immigration Act of 1971, the permanent residence status is known as indefinite leave to remain (ILR), provided for in section 3(1) of the Act.

Third country nationals admitted for work, self-employment, retirement or investment-related purposes are eligible to apply for indefinite leave to remain after four years of continuous (temporary) residence permits. The same four-year residence requirement applies to persons granted protection other than in accordance with the Geneva Convention. Refugees recognised under the Geneva Convention are immediately granted this status. Children or parents of British citizens or third country nationals with ILR admitted for the family purposes are granted the status upon admission to the UK, if they have acquired the relevant entry clearance prior to arrival in the UK. Spouses admitted or allowed to remain for the purposes of family reunion with a British citizen or a third country national with ILR may apply for the status after completing one year of limited leave to remain.

10.2.15.2 Acquisition and loss of the status

The statutory rules on ILR were not amended in the years 2000-2005. In August 2003, a special fee was introduced. Anyone applying to have a new passport endorsed with the information that the holder has indefinite leave to remain has to pay 155 pounds. As of April 2005, a charge of 500 pounds will be made for any enquiry relating to the application of the Immigration Act made in person at the Home Office, rather than enquiring by post.

It is the policy of the present British government to minimise expense to the British taxpayer, although applicants are actually likely to be taxpayers themselves, by increasing charges or imposing a new charge. Under this new policy, the fees for naturalisation and for registration will be increased. In a recent consultation document, it is suggested that persons should be paying for their own appeals or removal from the country.

In 2005, the government repeatedly made statements suggesting that an integration test should be introduced for long-term resident third country nationals and that the residence requirement should be extended from four to five years.¹¹²

10.2.15.3 Rights attached to the status

There have been no relevant changes to the rights attached to the ILR status.

¹¹² *Migration News Sheet*, February 2005, p. 4.

10.3 Conclusions

During the period under review (2000-2004), a major revision of the existing immigration legislation occurred in seven of the fifteen 'old' Member States: Denmark (in 2002, 2003 and 2004), Finland (2004), France (2003), Germany (2004), Italy (2002), the Netherlands (2001) and Spain (2000, 2003).

Some of the rules on the permanent residence permit were changed but, generally, the status remained in place in most Member States. The far-reaching changes in Denmark are the exception to this rule. Fewer, yet significant, changes occurred in Austria in spring 2005. Few or no changes to the relevant rules were observed in Belgium, Ireland, Luxembourg or the UK. Plans for a complete revision of the immigration legislation are under preparation in two Member States: Greece and Ireland.

The most important changes in the relevant immigration legislation relate to the acquisition and loss of the permanent residence status. The *rights attached to the status* remained relatively constant apart from extensions of voting rights in Portugal, Luxembourg and Belgium. Only minor changes to those rights occurred in a few Member States. Most of the changes implied granting more rights to third country nationals holding the status.

An extension of the rights attached to the status occurred in Austria and Germany (permit-free access to employment for certain categories in both countries), Luxembourg and Belgium (active voting rights in local elections and facilitation of naturalisation), Finland (more access to educational grants) and Portugal (voting rights in local elections).

A reduction in the rights of third country nationals with permanent resident status occurred mainly as a result of the introduction of new restrictions on the right to family reunification in Denmark, the Netherlands, Spain and Sweden.

Whilst the package of rights attached to the status remained almost constant, the *possibilities for acquiring the status and the chances of losing the status* altered considerably. Generally, after 2000 in the majority of the Member States, either access to the permanent residence status became more difficult with the introduction of new conditions and practical barriers, or new grounds for losing the status were introduced. This makes it clear that there is no natural or unavoidable trend towards granting a more secure status to long-term residents. Under changed political circumstances, the trend may well be reversed and access to the permanent status restricted.

In particular, Denmark stands out as a country where access to the permanent status was restricted. There has been a surprisingly rapid series of changes to Danish immigration law since 2002. From a country with one of the most liberal systems regarding the treatment of settled third country nationals, within a few years Denmark developed into a country with the strictest rules, both regarding family reunification and regarding the status of permanent residents from third countries. It is clear that most of the more extreme new statutory rules could only be enacted because Denmark, under its Protocol to the Amsterdam Treaty, is not bound by the new rules on immigration and asylum, adopted on the basis of Title IV of the EC Treaty. Several rules introduced in Denmark in recent years, such as the seven-year residence requirement for the permanent residence permit, the minimum age condition of 24 and the ten-year residence requirement for reunification with spouses, would clearly be incompatible with Directive 2003/109/EC on the status of long-term resident third country nationals or with Directive 2003/86/EC on the right to family reunification. Even without these external restrictions, some of the more extreme statutory measures have been changed or mitigated by another amendment to the Aliens Act within six or twelve months of their adoption.

As regards the permanent resident status, the general tendency over the past three years has been to make it more difficult to obtain and more easy to lose the status. Apart from the right to family reunification, however, the rights attached to the status appear generally to have remained unchanged. The other exception to this trend is the reduction of the protection from expulsion after long lawful residence in Denmark. Deleting the explicit references in the Aliens Act to ‘the duration of the alien’s residence in Denmark’ and ‘whether the alien came to Denmark as a child or very young person’ as relevant circumstances in expulsion cases, can hardly be considered an incentive for the national courts and immigration authorities to ensure that their decisions are in conformity with the case law of the European Court of Human Rights on Article 8 ECHR. The recent abolition of the absolute protection from expulsion of immigrant children born in Austria illustrates that a similar development also occurred elsewhere in the EU.

Passing a *language test* has traditionally been one of the conditions for naturalisation in many (but not all) Member States. Until recently, this condition was absent from the immigration legislation of the Member States, except Germany. From the historical overview in the introduction to this Chapter, it appeared that the constant feature, when drafting European rules on denizens in the second half of the last century, was the assumption that granting secure residence and equal treatment will stimulate the integration of long-term non-citizen immigrants in the country of residence. Recently, in some Member States, the correlation between secure status and integration has been turned around: integration has become a condition for the denizen status (Groenendijk 2004). ‘*Le lien entre intégration et stabilité du séjour se trouve ainsi inversé par rapport à la logique qui avait présidé à la création de la carte de résident en 1984...*’ (Lochak 2004: 3).¹¹³

From the German experience discussed in section 2.3, we may learn that a language test can effectively block access to the secure residence status for the majority of long-term immigrants. If the Member States decided to introduce an explicit integration condition alongside the implicit integration condition of the residence requirement, this could dramatically reduce the number of long-term immigrants from third countries who will be able to acquire the status (Boelaert-Suominen 2005: 1023 and 1050). That development has been aptly paraphrased by Danielle Lochak (2004): ‘*L’intégration alibi de la précarisation*’. Integration will then become an alibi for increasing insecurity among long-term immigrants.

So far, Directive 2003/109/EC appears to have had the more ‘perverse’ effect of scaling down (making access more difficult) rather than levering up the protection (by facilitating access to the status) of third country nationals. The first tendencies were observed in Germany, France, the Netherlands and the UK while, until summer 2005, the second tendency was visible only in Spain.

In 1999, we observed that the data on long-term residents available for four countries (Austria, Germany, France and the Netherlands) indicated that approximately 50 per cent or more of the registered third country nationals had a permanent or long-term residence permit (Groenendijk, Guild & Barzilay 2000: 100). More recent figures indicate that the share of long-term residents among the foreign population has increased. At the end of 1998, two thirds of the foreign residents in Germany had been living in the country for six years or more (Groenendijk, Guild & Barzilay 2000: 45). By the end of 2004 two thirds of the foreign nationals had been living in Germany for eight years or more.¹¹⁴ This illustrates the growing importance of the denizen status in Europe.

We do not have systematic information on *how the immigrants concerned perceive this status*. Do they see it as a stepping stone on the way to nationality or as a discriminatory

¹¹³ ‘The link between integration and security of residence is thus reversed compared to the logic governing the creation of the residence card in 1984.’

¹¹⁴ *Migration und Bevölkerung*, June 2005, p. 1.

form of second-class citizenship? In Member States where this status was easily accessible, once the residence requirement was met, very large numbers of third country nationals have been granted denizen status: hundreds of thousands to several million non-nationals in Austria, Belgium, France, Germany, the Netherlands and the UK. This is an obvious indication that these immigrants saw acquisition of this status as a positive step, even if many did not consider applying for naturalisation an attractive next step. In states where access to the nationality is going to be effectively blocked for a large proportion of the immigrant population, as appears to be the case in the Netherlands following the recent changes to Dutch nationality law, immigrants may well tend to perceive denizenship as a second-class citizenship. This tendency will be reinforced if the same Member States – in addition to blocking access to nationality – also make it hard to acquire the denizenship status in law or in practice.

The development of the denizen status in most of the ‘old’ Member States since the early 1980s and the codification of the status in Directive 2003/109/EC create two dilemmas for the *concept of Union citizenship*. The first dilemma is how to justify the remaining differences between the rights attached both statuses. Why are certain rights granted to Union citizens but withheld from third country nationals? Is there sufficient justification for granting certain rights to Union citizens immediately after they have used their freedom of movement by migrating from one Member State to another, while excluding third country nationals from those rights even after five years of lawful residence in the country (e.g. voting rights at local level or access to certain jobs in the public sector)? Other examples of discrepancy in treatment can be found in Article 11 of the Directive that contains a general equal treatment provision granting denizens the same treatment as nationals in many areas but, at the same time, allowing Member States to make exceptions to that principle in certain areas. This dilemma was evident during the negotiations on the Directive, when the negotiators had to implement the instruction of the European Council in Tampere to make ‘a set of uniform rights which are as near as possible to those enjoyed by EU citizens’. The negotiators chose to find practical ad hoc compromises rather than devise or follow a general line or principle (Halleskov 2005). The latter would have obliged them to rethink the concepts of nationality and state sovereignty.

The second dilemma relates to differences in treatment between third country national denizens and the nationals of the country of residence. Under EC free movement law, certain rights are granted only to Union citizens who have actually used their freedom of movement and not to Union citizens who remain in the country of their nationality. For example, there are EC rules on the right to family reunification for EU migrants and, since 2003, EC rules on family reunification for resident third country nationals, but the family reunification of Union citizens who have not used their freedom of movement remains subject to national law. The relevant national rules for nationals may be stricter than the EC rules for denizens. Is there sufficient justification for this situation of ‘reverse discrimination’, i.e. for according certain Union citizens worse treatment than denizens?

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