

OPEN Summary of EMN Ad-Hoc Query No. [2019.92]

AHQ on long-term resident scheme for children

*Answered by BE, BG, DE, EE, FI, LU, NL, NO, PL, SE, CZ, CY, HR, IT, LV, LT, PT, SK, HU and FR.
Launched on 9 October 2019 by EMN NCP NL*

KEY POINTS TO NOTE

- ★ Eleven (Member) States have experience with cases where third-country nationals (especially children and families with children), without a permanent right of residence, stay for a long time in their countries as a result of prolonged or multiple residence permit procedures: **BE, BG, CZ, DE, EE, FI, LU, NL, NO, PL** and **SE**. Six (Member) States have not reported experience: **CY, HR, LV, LT, PT** and **SK** have not reported experience with such cases. Three (Member) States did not make a statement about experiences with third-country nationals staying in the country as a result of prolonged or multiple residence permit procedures: **HU, IT** and **SK**.
- ★ This issue has led to public or policy debates in eight (Member) States: **BE, BG, DE, EE, FI, NL, NO** and **SE**.
- ★ Nine (Member) States, **BE, CY, DE, FI, LU, NL, PL, IT** and **PT** have policies whereby (unaccompanied) children without a residence permit are eligible for a residence permit as a consequence of long stay in their (Member) State;
- ★ For **BE**, this policy is designed only for unaccompanied minors.
- ★ **BE, CZ, FR, EE, HR, SE, LV, HU** and **LT** did not have describe specific policy whereby (accompanied) children without a permanent residence permit are eligible for a residence permit as a consequence of long stay;
- ★ Policy evaluations regarding this issue have been rare. Only **HU** and **NO** report that they have evaluated these policies.

BACKGROUND

Over the last few years, a lot of media attention in the Netherlands was given to several cases of migrants

who became subject to return procedures after having stayed in the Netherlands for many years. Their prolonged stay in the Netherlands was in part due to the length of procedures, but also often due to the start of multiple application procedures. Several of those cases concerned families with children who had already been staying in the Netherlands for a considerable time. A number of those cases reached the media, which led to public commotion.

On 8 September 2018, it was announced that the Minister for Migration had used his discretionary power to allow two Armenian children to remain in the Netherlands. The discretionary power of the Minister entails that he or she can independently take a decision on individual cases and thus deviate from the rules¹.

The case of the two Armenian children led to a lot of public debate and media attention. Much of the debate was focused on the eligibility criteria for the so-called 'Definitive regulation for long-term resident children'. This regulation stated that children -and their families- who have resided in the Netherlands for more than five years without receiving a permanent right of residence, and who have exhausted all legal means, could apply for a permit on the basis of this regulation. Since this regulation entered into force, only a small number of children and their families were granted a residence permit under this scheme.

As a result of this public debate, the Minister for Migration announced several new measures on 29 January 2019. One of these measures was that this 'Definitive regulation' stopped to exist. A transitional measure, named the 'Final Regulation for long-term resident children' (referred to in the media as the 'children's pardon of 2019') was put in place. The Final Regulation contains less stringent criteria than the previous regulation for long-term resident children.

¹ The discretionary power of the Minister of Migration was abolished on 1 May 2019. Please see <https://ind.nl/en/news/pages/discretionary-power-abolished-with-effect-from-1-may.aspx> for more information

Applications based on the Final regulation could be submitted until 25 February 2019².

Considering this, the Netherlands would like to gather some information about similar situations in other European (Member) States in order to learn from their experiences.

MAIN FINDINGS

1. Does or did your (Member) State have experience with similar cases (especially regarding children and families with children), where third-country nationals without a permanent right of residence, stay for a long time in your country as a result of prolonged or multiple residence permit procedures?

BE, BG, CZ, DE, EE, FI, LU, NL, NO, PL and **SE** have experience with cases where third-country nationals, without a permanent right of residence, stay for a long time in their countries as a result of prolonged or multiple residence permit procedures. **NO** mentions three types of groups in this regard: (families and their) children who remained in Norway after their applications for residence permits were rejected, (families and their) children who were granted temporary residence due to strong humanitarian considerations, but cannot obtain permanent residence due to doubts about their identities, and foreign students with their partners who came through family immigration, with children subsequently born in Norway. **PL** often encounters situations where the parents' or legal guardians' negligence results in breaking legal continuity of stay of a minor on the territory of Poland, or cause that the stay of a minor in Poland has never been legalized.

CY, HR, LV, LT, PT, SK have not reported experience with such cases. **PT** mentions that such cases with families and children used to exist,, but in 2004 a change in law occurred which stated that foreign minors born on Portuguese territory and who have not been absent from national territory, are exempt from a visa to obtain a residence permit. The same automatically applies to their parents, who in relation to the minor, actually exercise parental responsibility.

HU, IT, and **SK** did not make a statement about experiences with third-country nationals staying in the country as a result of prolonged or multiple residence permit procedures. **IT** mentions that in case of prolonged permit procedures, and the time frame for issue and renewal is longer than established by law, applicants may benefit from the rights linked to the permit requested since the time of application. **HU** mentions that temporary residence is offered to those who remained in Hungary beyond the duration of lawful residence due to humanitarian reasons, in connection with unemployment, or for personal or other unavoidable reasons. **SK** mentions that if a third country national does not meet the conditions for any type of residence, it applies the return procedures.

² For more information on the 'Final regulation', please see: <https://ind.nl/en/about-ind/Pages/All-about-the-Regulation-for-long-term-resident-children.aspx>

2. Were there any public or policy debates (for example in Parliament or in the media) in your (Member) State during the last three years related to third-country nationals (in particular children and families with children), who stay in your (Member) State for a long time without a permanent right of residence as a result of prolonged or multiple residence permit procedures?

BE, BG, DE, EE, FI, NL, NO and **SE** mention that public or policy debates related to this topic have taken place in their (Member) State during the last three years. **BE** mentions that national media has covered various personal stories of migrants who were well-integrated into society, but were facing return to their country of origin. In most of these cases, it concerned young adults and families with children who had been staying in Belgium for many years, sometimes due to prolonged and/or multiple asylum or migration procedures. Media also reported on attempts to return families with minor children who were born in Belgium or had arrived at young age. The Flemish Commissioner for the Rights of the Child has pleaded in favor of a special regime of regularization for minors who had been staying in Belgium for many years and were well-integrated in society. His proposals have not been taken up by the federal government. In **DE**, the debates have led to further differentiation of the legal situation and new legal entitlements for persons who have been in Germany for a long period and do not possess a residence permit. In **SE**, this has mostly concerned persons who arrived as unaccompanied minors during the so-called 'refugee crisis' of 2015 and 2016, who had to wait relatively long for a decision in their asylum application.

In **CZ, CY, FR, HR, HU, IT, LV, LT, PL, PT, LU** and **SK** these public or policy debates did not exist during the last three years. However, in **IT**, the issue of prolonged residence permit procedures has led to the stipulation of a convention between the Minister of Interior and the Italian national postal service in order to reduce overcrowding in police headquarters in 2006.

3. Do you have a policy in your (Member) State whereby children without a residence permit are eligible for a residence permit as a consequence of long stay in your (Member) State? If yes, what criteria need to be fulfilled in order to be eligible for this residence permit?

BE, CY, DE, FI, LU, NL, PL, PT, and **IT** have policies whereby children without a residence permit are eligible for a residence permit as a consequence of long stay in their (Member) State. For example, in **DE**, minors can be issued a residence permit, provided that they meet certain minimum integration criteria, such as minimum periods of residence, successful schooling, integration into the way of life in Germany, a commitment to the free constitutional system, and a command of Germany. In **LU**, children without a residence permit are eligible for a residence permit when they have been continuously and successfully pursuing education for at least four years in a school in Luxembourg and submit their application before the

age of twenty-one by justifying having the sufficient resources to meet their needs. The examination of the application is made on a case-by-case basis. In **PT**, the residence visa exemption applies to minors born on Portuguese territory who either have parents holding a residence permit or are attending (pre)school, as well as children of holders of a residence permit who have reached legal adult age and have habitually remained in Portuguese territory since the age of ten years old. In **IT**, the law prescribes that unaccompanied minors *in general* cannot be expelled from Italian territory, except in cases of danger to public order and security. Accompanied minors have the right to follow their parents or foster, subjected to an expulsion decision. In 2019, it was decided that children should always stay for five years in the country of residence in order to obtain a long-term residence permit.

Finally, **CY** does have a policy whereby both families and children without a residence permit are eligible for a residence permit due to long stay in Cyprus. However, the minister can also decide to grant an autonomous residence permit or another permit offering the right to stay for compassionate, humanitarian reasons to a third-country national staying illegally in the country.

BE only has a special policy where unaccompanied minors can obtain a residence permit as a result of long stay in the Member State. For **BE**, in order to be eligible, the unaccompanied minor needs to be a national of a country outside of the EEA, under the age of 18 years, unaccompanied by a person exercising parental authority, identified as unaccompanied minor by the Guardianship Service of the General Public Service Justice. The personal situation of the minor will be taken into account, but long stay in Belgium is not a formal requirement as such.

CZ, EE, FR, HR, LV, LT, HU and **SE** do not have special policies granting eligibility for a residence permit as a consequence of long stay in their (Member) State.

4. If you answered no to question 3, how does your MS deal with these cases (e.g. forced return, reception in special reception facilities, a special pardon or scheme, et cetera)?

BE, FR, EE, HR, LV and **LT** describe how their countries deal with such cases. They have no specific policy whereby (accompanied) children without a permanent residence permit are eligible for a residence permit as a consequence of long stay in your (Member) State. In **BE**, the minister or his/her administration can grant authorisation to families with minor children on a discretionary basis, if the foreign national can prove that exceptional circumstances justify that s/he cannot file an application from abroad and that s/he has well-founded reasons to apply for authorisation to stay in Belgium. Certain elements, such as prolonged residence procedures or long-term stay in the territory, may be taken into account in the assessment of these cases. **EE** indicates that it is

generally possible to issue an exceptional temporary residence permit on humanitarian grounds to a third country national. A person cannot apply him or herself for such a permit, but can only emphasize why s/he needs it. In **HR**, Foreigners Act Article 65 technically proscribes a right to stay under humanitarian grounds, *inter alia*, in case of serious justified humanitarian grounds, but this act is not specifically designed for these cases and could only be applicable in exceptional circumstances. Unaccompanied minors staying irregularly in Lithuania can be returned, only provided that she/he is duly taken care of in the foreign state to which the minor is returned to and considering child's needs, age and level of independence. If that is not the case, she/he receives a temporary residence permit of one year.

5. Have there been any evaluations of these policies (i.e. measuring the effects or outcomes, for example whether more or less children received a residence permit)?

Policies related to third-country nationals, who stay in a European (Member) State for a long time without a permanent right of residence as a result of prolonged or multiple residence permit procedures, have rarely been evaluated in the European (Member) States. Only **HU** and **NO** report that they have evaluated these policies. **NO** mentions that in 2015, both the Directorate of Immigration and the Immigration Appeals Board reported to the Ministry of Justice and Public that a greater number of children are now granted residence permits after the regulations were changed in 2014.

EMN NCPs participating: responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden, United Kingdom plus Norway (23 in total).

The responses from Austria, Ireland and the United Kingdom were not for wider dissemination and are therefore not included in this summary.

Disclaimer: The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN National Contact Points (NCPs) in the framework of the EMN. The contributing EMN NCPs have provided information that is (to the best of their

knowledge) up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State. The responses are interpreted by the EMN in order to write this summary.

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