



STUDY ON BEST PRACTICES OF HUMANITARIAN VISAS AMONG EU AND SCHENGEN STATES

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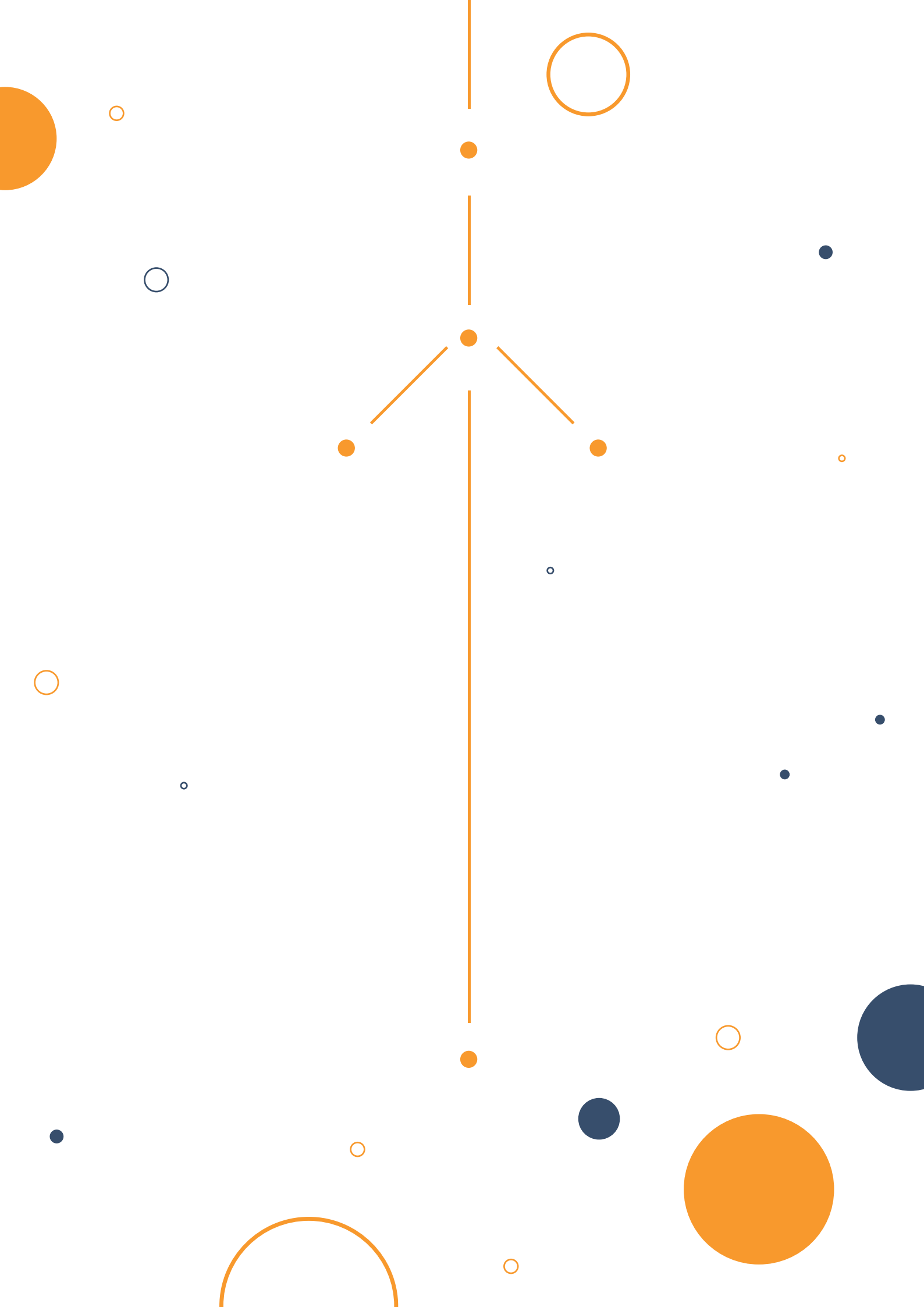


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All European Union Member States recognize that people fleeing persecution have the right to asylum. Asylum is a fundamental right and granting it to people who comply with the criteria set in the 1951 Geneva Convention Relating to the Status of Refugees is an international obligation for States parties. The right to asylum is also guaranteed by Article 18 of the EU Charter of Fundamental Rights. The EU Member States have agreed to a Common European Asylum System (CEAS), which sets minimum standards for the treatment of all asylum-seekers and applications across the EU.

In international and EU law, a refugee is defined as someone who has fled their country of nationality owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group¹. In many parts of the world, lesbian, gay, bisexual, transgender, queer or intersex (LGBTI+) persons face persecution due to their sexual orientation or gender identity, in which case they can have the right to international protection as «members of a particular social group» under the 1951 Refugee Convention². In addition, the European Asylum Support Office has confirmed that some conditions and serious illnesses, such as HIV/AIDS, could also be considered a common characteristic that cannot be changed, based on which individuals can be persecuted, and therefore in need of and entitled to international protection³.

However, the legislation relevant to the protection of refugees has failed to address the question of how those entitled to international protection are supposed to access such protection in practice. Only in very rare cases can asylum-seekers simply buy a plane ticket and enter the country where they would be able to seek protection. The EU has introduced visa requirements and imposed carrier sanctions on airlines and other group carriers for transporting irregular migrants. These mechanisms operate as barriers, preventing asylum-seekers from access to the territory of a European country where they could seek and find protection.

One of the tools that EU Member States can use to ensure that people in need of protection can legally access internationally recognized protection in Europe is by providing them humanitarian visas. It means giving third-country nationals the option to approach a diplomatic mission of an EU Member State in their country of residence, apply for a visa on humanitarian grounds, enter EU territory legally, and ask for international protection.

¹ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, vol. 189, p. 137, Article 1A, <https://www.unhcr.org/en-ie/3b66c2aa10> (date accessed: 15.06.2021)

² Also confirmed by Article 10 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095> (date accessed: 12.07.2021)

³ European Asylum Support Office (EASO), EASO Guidance on membership of a particular social group, March 2020, <https://easo.europa.eu/sites/default/files/EASO-Guidance-on%20MPSG-EN.pdf> (date accessed: 29.08.2021)

At the moment, the EU does not have a humanitarian visa system, but in the different Member States there are national humanitarian visa practices. This study aims to examine the implementation of humanitarian visa schemes, which enable asylum-seekers to enter the territory of an EU/Schengen country lawfully for the sole purpose of being able to lodge an application for asylum. Additionally, it aims to highlight the best humanitarian visa practices used in EU/Schengen countries and develop legislative recommendations for the Estonian context.

The first section of the study introduces the relevant legal framework regarding entering the EU, including Protected Entry Procedures available for asylum-seekers. It outlines the current legal basis provided by the EU legislation for issuing humanitarian visas, as well as the recent relevant developments in the EU. The second section provides an overview of the existing humanitarian visa systems in EU/Schengen countries, and analyzes best practices which could be transferable to Estonia. The third part looks into the current legislation in Estonia and provides recommendations on how to adapt the best practices of humanitarian visa systems into Estonian legislation.

The common EU visa policy is derived from the Schengen acquis, which creates an area without controls at internal borders. The Schengen Area encompasses most EU countries, and a few non-EU states: Iceland, Norway, Switzerland and Liechtenstein. Some EU countries — Bulgaria, Croatia, Cyprus, Ireland and Romania — are not part of the Schengen Area⁴.

The entry conditions to the Schengen Area are outlined in the Schengen Borders Code⁵. For the purpose of short-term stays, third-country nationals must be in possession of a valid visa, if required so by the EU Regulation 2018/1806, which lists the countries whose nationals have to be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement⁶. The EU Visa Code regulates the issuance of visas, listing visa requirements and the grounds on which a visa may be refused. For example, the applicant must hold a valid passport, have a round trip reservation or itinerary, travel insurance, proof of accommodation, proof of financial means, proof of paid visa fee. Due regard is paid to the assessment of whether the applicant intends to leave the territory of the Member States⁷.

Visa means an authorization issued by a Member State for transit through or an intended stay in the territory of the Member States. Uniform Schengen visa is valid for the entire territory of the Member States. Schengen visas can be divided into type A visa and type C visa — type A visa is an airport transit visa, which means a visa valid for transit through the international transit areas of one or more airports of the Member States; type C stands for a short-term visa which allows its holder to reside in a Schengen Area for no more than three months in any six-month period⁸.

In addition, it is possible to issue LTV visas — visas with limited territorial validity — which are valid for the territory of one or more Member States, but not in all EU Member States⁹. The holder of this type of visa cannot enter or transit through any other Schengen country that is not the destination target specified by the visa.

⁴ European Commission, Migration and Home Affairs, Schengen Area, https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en (date accessed: 15.06.2021)

⁵ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399> (date accessed: 29.08.2021)

⁶ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 303, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32018R1806> (date accessed: 29.08.2021)

⁷ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0810> (date accessed: 29.08.2021)

⁸ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Article 2 p. 2, OJ L 243, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0810> (date accessed: 29.08.2021)

⁹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Article 2 p. 4, OJ L 243, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0810> (date accessed: 29.08.2021)

While EU law regulates short-term stays in detail, the issuance of long stay visas and residence permits is regulated mostly at national level. However, there are EU directives harmonizing the rules in some cases, for example, regarding long term residents¹⁰, family reunification¹¹, entry and residence for the purposes of research, studies, training, voluntary service, au pairing¹², as well as entry and residence of highly qualified workers¹³.

If a third-country national wishes to stay in an EU Member State longer than 90 days, they can apply for a national long stay visa (type D). In Estonia, type D visa can be issued for a period of up to 12 months. If a third-country national intends to stay in Estonia for longer than one year, they must apply for a temporary residence permit. Temporary residence permits may be granted, for example, for settling with a spouse or a close relative, for study, for employment, or for settling permanently in Estonia¹⁴.

○ PROTECTED ENTRY PROCEDURES (PEPS)

Regular migrants who want to move from one country to another apply for a visa or residence permit for the particular purpose, which can be, for example, studies, work or family reunification. An asylum-seeker — a person seeking international protection who has not yet been recognized as a refugee¹⁵ — is not likely to have the necessary documentation for applying for a regular Schengen visa¹⁶. Asylum-seekers would certainly not be able to provide any proof of their intention to leave the territory of the Member States before the expiry of the visa, which is a ground for refusing the visa according to the Schengen Visa Code, as mentioned above. As a result of the very limited possibilities for asylum-seekers to legally enter the EU, it has been estimated that 90% of those granted international protection reached the European Union through irregular means¹⁷. These people are vulnerable to several human rights violations, they may be trafficked, smuggled, and are very often abused. In order to resolve the problem, EU Member States have introduced different schemes to enable more persons in need of international protection to reach the EU without resorting to smugglers.

¹⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003L0109> (date accessed: 29.08.2021)

¹¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32003L0086> (date accessed: 29.08.2021)

¹² Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, OJ L 132, <https://eur-lex.europa.eu/eli/dir/2016/801/oj> (date accessed: 29.08.2021)

¹³ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0050> (date accessed: 29.08.2021)

¹⁴ Aliens Act (Välismaalaste seadus), RT I 2010, 3, 4, 09.12.2009, <https://www.riigiteataja.ee/akt/110072020073> (date accessed: 31.08.2021)

¹⁵ UNHCR Glossary, <https://www.unhcr.org/449267670.pdf> (date accessed: 15.06.2021)

¹⁶ European Asylum Support Office (EASO), Practical Guide: Access to the Asylum Procedure, 2016, <https://www.easo.europa.eu/sites/default/files/public/Practical-Guide1.pdf> (date accessed: 15.09.2021)

¹⁷ V. Moreno-Lax, The Added Value of EU Legislation on Humanitarian Visas — Legal Aspects, Annex 1 to European Added Value Assessment accompanying the European Parliament's legislative own-initiative report, October 2018, p.34.

These are called Protected Entry Procedures (PEPs), which are defined as procedures that allow non-nationals to approach the potential host state outside its territory with a claim for asylum or other forms of international protection, and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final¹⁸.

Refugee resettlement programmes could be called the most common form of PEPs. According to the UNHCR, resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State that has agreed to admit them – as refugees – with permanent residence status¹⁹.

Another form of PEPs are private sponsorship programmes of refugees by either NGOs or individuals, which are often linked with family reunification. These options usually require that the person in question has already received refugee status and is being resettled in order to alleviate pressure on the hosting country²⁰.

One relevant EU mechanism is the Temporary Protection Directive (2001/55/EC)²¹, which was adopted to deal with movements of large numbers of people from a particular region in search for protection. It requires EU Member States to provide «persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas». Mass influx is defined as the arrival in the EU of a large number of displaced persons who come from a specific country or geographical area, regardless of whether their arrival is spontaneous or aided. The existence of a mass influx of displaced persons «shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission». The Temporary Protection Directive was developed as a result of the conflict in the Western Balkans, but it has not been used since it entered into force²².

Humanitarian visas fall within the category of PEPs. However, humanitarian visas are distinct in several ways. First of all, the individual autonomy of the asylum-seeker is given a central role – the third-country national directly approaches the diplomatic representation of the potential host state outside its territory with an application for a humanitarian visa. The diplomatic representation of the potential host Member State processes a humanitarian visa application to identify protection needs (pre-screening) before the third-country national reaches the territory of the Member State.

¹⁸ G. Noll, J. Fagerlund, F. Liebaut, Study On The Feasibility Of Processing Asylum Claims Outside The EU Against The Background Of The Common European Asylum System And The Goal Of A Common Asylum Procedure, Danish Centre for Human Rights on behalf of the European Commission, 2002, p. 3.

¹⁹ UN High Commissioner for Refugees (UNHCR), UNHCR Resettlement Handbook, July 2011, <https://www.refworld.org/docid/4ecb973c2.html> (date accessed: 29.08.2021)

²⁰ E. Kritikopoulou, J. Dougenis, Humanitarian VISAs, Policy Paper #70/2021, May 2021, p. 3, <https://www.eliamep.gr/wp-content/uploads/2021/05/Policy-paper-Humanitarian-VISA-final.pdf> (date accessed: 21.06.2021)

²¹ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212/12, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0055> (date accessed: 29.08.2021)

²² M. Ineli-Ciger, What a difference two decades make? The shift from temporary to immediate protection in the new European Pact on Asylum and Migration, 11 November 2020, <https://eumigrationlawblog.eu/what-a-difference-two-decades-make-the-shift-from-temporary-to-immediate-protection-in-the-new-european-pact-on-asylum-and-migration/> (date accessed: 24.08.2021)

The final determination procedure is conducted inside the territory of the Member State — once a humanitarian visa has been issued and the asylum-seeker has entered the territory of the destination state, they may lodge an application for asylum or for other residence permits (e.g. a humanitarian residence permit). The individual asylum procedure is thus conducted within the territory of the Member State²³.

○ LEGAL BASIS FOR ISSUING HUMANITARIAN VISAS IN THE EU

There is currently no EU-wide scheme for humanitarian visas. However, the legal basis for it does exist. The Schengen acquis and the common EU visa policy provide the legal basis for the Member States to issue Schengen short-stay visas with limited territorial validity (LTV) on humanitarian grounds, for reasons of national interest or because of international obligations. Article 19 of the Visa Code allows derogations from admissibility requirements for visa applications «on humanitarian grounds». Article 25 provides that, «when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations», a visa with limited territorial validity (LTV) «shall» be issued²⁴. However, since there is no separate procedure established for the lodging and processing of an application for a humanitarian LTV visa in the Visa Code, potential protection needs and human rights issues are therefore examined in «ordinary» visa applications. It is unclear whether there is a mandatory assessment of protection needs and human rights issues under Articles 19(4) and 25(1) when admissibility requirements and entry conditions are not met²⁵.

«Humanitarian grounds» are not defined in the Schengen Borders Code and the Visa Code. The guidelines in the Visa Handbook provide examples of humanitarian grounds, focusing on health-related issues rather than protection-related issues, such as the sudden serious illness of a close relative. Examples of the concept of «international obligations» are not provided in the Visa Handbook, but the Schengen Handbook focuses on protection-related issues to define «international obligations»²⁶.

Beyond the Visa Code provisions, Member States may also issue national long-stay visas. Article 18, the first indent of the Schengen Convention makes it possible to issue visas to asylum-seekers by according Member States the freedom to issue long-stay visas (type D) for stays exceeding 90 days. This provision implies that Member States may issue humanitarian or other protection visas to persons in need of international protection in accordance with their national laws²⁷.

²³ U. I. Jensen, Humanitarian Visas Option of Obligation, Study for the LIBE Committee, European Parliament, September 2014, p. 9, <https://www.refworld.org/docid/541fcbd24.html> (date accessed: 29.08.2021)

²⁴ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009R0810> (date accessed: 29.08.2021)

²⁵ U. I. Jensen, Humanitarian Visas Option of Obligation, Study for the LIBE Committee, European Parliament, September 2014, p. 50, <https://www.refworld.org/docid/541fcbd24.html> (date accessed: 29.08.2021)

²⁶ U. I. Jensen, Humanitarian Visas Option of Obligation, Study for the LIBE Committee, European Parliament, September 2014, p. 19, <https://www.refworld.org/docid/541fcbd24.html> (date accessed: 29.08.2021)

²⁷ U. I. Jensen, Humanitarian Visas Option of Obligation, Study for the LIBE Committee, European Parliament, September 2014, p. 18, <https://www.refworld.org/docid/541fcbd24.html> (date accessed: 29.08.2021)

The Court of Justice of the European Union (CJEU) ruling in the Koushkaki case established that Member States cannot refuse to issue a uniform Schengen visa by relying on a ground not provided for in the Visa Code²⁸. The case concerned an Iranian national whose Schengen visa application to Germany was refused due to significant doubt as to his intention to return to Iran before the expiry of the visa. Professor of EU and Human Rights Law Steve Peers argued in his commentary that following Koushkaki, Member States could be considered to be obliged to issue an LTV visa on humanitarian grounds or because of international obligations. According to Peers, the binding nature of the relevant international obligations, and the use of the word «shall» in the Article 25 of the Visa Code, override the discretion suggested by the words «consider it necessary» in the same article²⁹.

However, in 2017, the CJEU gave a preliminary ruling in the case X and X v. Belgium, in which, against the recommendations of the Advocate General, the CJEU left the responsibility for granting humanitarian visas with the Member States. The applicants, nationals of Syria, applied for visas at the Belgian Embassy in Beirut. As the purpose of the visas they stated their intention to apply for asylum in Belgium. The Belgian Immigration Office rejected their applications, stating that the applicants intended to stay in Belgium for more than 90 days. The CJEU argued that, although the request for a visa was formally submitted on the basis of Article 25 Visa Code, the situation fell outside the scope of the Visa Code, since Article 1 of the Visa Code sets out the scope of the Code which is limited to stays not exceeding 90 days in any 180-days period. Since the applications for visas on humanitarian grounds were made with the intention of applying for asylum in Belgium, the CJEU held that the applications fell solely within the scope of national law³⁰.

EU DEVELOPMENTS OF HUMANITARIAN VISAS

The possibility of an EU humanitarian visa system for asylum-seeking purposes has often been discussed at the EU level. The European Commission was originally favorable towards the idea, even outsourcing a feasibility study in 2002. In 2013, the Commission called to explore the opening of legal channels for asylum-seekers to safely access the European Union. However, since then its emphasis has shifted towards increasing border controls and cooperation with third countries, together with limited resettlement programmes, such as the EU Commission Recommendation 2015/914 of 8 June 2015 for the resettlement of 20 000 people in need of international protection in two years by EU Member States³¹. In parallel with this policy shift, several Member State schemes have been abolished³².

²⁸ Court of Justice of the European Union, Rahmanian Koushkaki v Bundesrepublik Deutschland, C-84/12, 2013, para 47, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=145915&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21568574> (date accessed: 29.08.2021)

²⁹ S. Peers, Do potential asylum-seekers have the right to a Schengen visa? 2014, <http://eulawanalysis.blogspot.ie/2014/01/do-potential-asylum-seekers-have-right.html> (date accessed: 29.08.2021)

³⁰ Court of Justice of the European Union, X and X v État belge, C-638/16 PPU, 2017, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=188626&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21570027> (date accessed: 29.08.2021)

³¹ Commission Recommendation (EU) 2015/914 of 8 June 2015 on a European resettlement scheme, OJ L 148, 13.6.2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015H0914> (date accessed: 09.09.2021)

³² V. Moreno-Lax, The Added Value of EU Legislation on Humanitarian Visas – Legal Aspects, Annex 1 to European Added Value Assessment accompanying the European Parliament's legislative own-initiative report, October 2018, p. 10

However, the European Parliament has consistently called for an EU system of humanitarian visas. In its 2016 resolution on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament stated that persons seeking international protection should be able to apply for a European humanitarian visa directly at any consulate or embassy of a Member State, and that once granted, such a European humanitarian visa would allow its holder to enter the territory of the Member State which had issued the visa, for the sole purpose of lodging an application for international protection in that country³³. As part of the negotiations on the 2014 Commission proposal for a Visa Code, a number of amendments aimed at the creation of a European humanitarian visa were included in the report adopted by Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). However, during trilogue negotiations both Commission and Council opposed the inclusion of provisions on humanitarian visas in the Visa Code, with the Council refusing to continue negotiations if these amendments were not withdrawn. In September 2017, after several months of deadlock in the negotiations, Parliament's negotiating team withdrew the amendment in relation to the creation of a European humanitarian visa³⁴.

In December 2018, the European Parliament requested the European Commission to present, by 31 March 2019, a legislative proposal establishing a European Humanitarian Visa, giving access to EU territory (exclusively to the Member State issuing the visa) for the purpose of submitting an application for international protection. According to the European Parliament, humanitarian visas would help to address the death toll in the Mediterranean, to combat human smuggling, and to manage arrivals, reception and processing of asylum claims better. However, the Parliament stressed that the decision to issue European humanitarian visas should remain the sole competence of the member states and the applicants will have to prove well-founded exposure to or risk of persecution and not be in a resettlement process already. The assessment of the application should not involve a full status determination process, but before issuing the visa, each applicant should be subject to a security screening, through the relevant national and European databases³⁵.

According to the report, the following elements, among others, should be guaranteed for the application and issuance of humanitarian visas:

- The application can be submitted electronically or in writing to any embassy of an EU member state.
- All applicants are to be invited to an interview, which can also take place via electronic means of communication.
- The decision on obtaining a humanitarian visa is made known to the person within 15 days.
- The applications are assessed according to uniform criteria in order to ensure harmonization.
- The applications are handled by well-trained staff who have adequate knowledge and expertise in matters of international protection.

³³ European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)), p. 27, https://www.europarl.europa.eu/doceo/document/TA-8-2016-0102_EN.html (date accessed: 29.08.2021)

³⁴ V. Moreno-Lax, The Added Value of EU Legislation on Humanitarian Visas – Legal Aspects, Annex 1 to European Added Value Assessment accompanying the European Parliament's legislative own-initiative report, October 2018, p. 10

³⁵ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report with recommendations to the Commission on Humanitarian Visas, 2018/2271(INL), 4 December 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.html (date accessed: 15.07.2021)

- The decision on the application is individualized, written and motivated.
- There is a possibility for appeal as is currently foreseen in the case of a refusal of a short-stay visa.
- Information on the process and the criteria for obtaining a humanitarian visa are made widely available and can be viewed on the embassy's website, among other places³⁶.

The Commission's answer welcomed Parliament's interest in safe and legal avenues to the EU for third-country nationals needing international protection, but highlighted its Union Resettlement Framework proposal as sufficient, and found that creating a subjective right to admission would be 'politically not feasible'. It also noted that it would consider including in the evaluation of the application of the regulation establishing a Union Resettlement Framework, an assessment whether additional measures for admission to the territory of the Member States for persons in need of international protection are needed³⁷.

³⁶ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report with recommendations to the Commission on Humanitarian Visas, 2018/2271(INL), 4 December 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.html (date accessed: 15.07.2021)

³⁷ European Parliament, Legislative Train Schedule Towards A New Policy On Migration, Proposal For A Regulation On Establishing A European Humanitarian Visa, 20 November 2019, <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa> (date accessed: 21.06.2021)

II HUMANITARIAN VISA SYSTEMS IN EU/SCHENGEN COUNTRIES

According to an EU study conducted in 2014, 16 EU Member States have had some form of scheme for issuing humanitarian visas³⁸. However, this number has significantly reduced since then³⁹. The following section investigates the humanitarian visa practices in different countries that are members of the EU or the Schengen Area. The following countries are analyzed in more detail: Switzerland, Poland, Lithuania, Latvia, Belgium, Germany, and France. These countries were selected on the basis of information that they have recently admitted asylum-seekers into their territory based on humanitarian visas, either through a legal system that allows an asylum-seeker to approach a diplomatic representation of the country abroad and apply for a humanitarian visa with the purpose to apply for asylum in the country, or through humanitarian admission/community sponsorship schemes.

○ SWITZERLAND

Legal basis

The humanitarian visa was introduced in 2012 to replace asylum applications submitted at Swiss diplomatic representations. Until then, Switzerland was the last European country to have permitted «embassy asylum» applications by which asylum-seekers could apply directly at a Swiss embassy abroad⁴⁰.

The legal basis for the humanitarian visa is laid down in the Swiss visa regulation — *Verordnung über die Einreise und die Visumerteilung* (VEV). According to Article 4 Para. 2 of the VEV, foreign nationals who do not meet the general visa requirements can, in justified cases, be granted permission to enter Switzerland for humanitarian reasons, particularly if the person's life or physical integrity are directly, seriously and specifically endangered in the country of origin⁴¹. Before 2018, visas in this category were issued as Schengen visas on the basis of the special instruction of the State Secretariat for Migration (SEM). Since 2018, such visas have been issued as national visas with a view to a longer stay due to the adjustment of the legal basis⁴².

³⁸ U. I. Jensen, Humanitarian Visas Option of Obligation, Study for the LIBE Committee, European Parliament, September 2014, p. 41, <https://www.refworld.org/docid/541fcbd24.html> (date accessed: 29.08.2021)

³⁹ V. Moreno-Lax, The Added Value of EU Legislation on Humanitarian Visas – Legal Aspects, Annex 1 to European Added Value Assessment accompanying the European Parliament's legislative own-initiative report, October 2018, p. 10

⁴⁰ D. Thraenhardt, Speed and Quality — What Germany Can Learn from Switzerland's Asylum Procedure, Bertelsmann Stiftung, 2016, https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/28_Einwanderung_und_Vielfalt/IB_Studie_Asyllum_Procedures_Switzerland_Thraenhardt_2016.pdf (date accessed: 26.06.2021)

⁴¹ Swiss Federal Council, Verordnung über die Einreise und die Visumerteilung (VEV), 15 August 2018, <https://www.fedlex.admin.ch/eli/cc/2018/493/de> (date accessed: 29.08.2021)

⁴² State Secretariat for Migration SEM, Visa Monitoring Jahresausgabe 2018, Bern-Wabern, 18 April 2019, <https://www.sem.admin.ch/sem/en/home/publiservice/statistik/visamonitoring.html> (date accessed: 29.08.2021)

In addition to this type of national long-stay humanitarian visa, which is specifically meant for asylum-seekers, VEV Art. 3 Para. 4 provides a possibility to issue a short-stay Schengen visa with limited territorial validity (LTV) for humanitarian reasons, national interests or international obligations (making a reference to Art. 25 of the EU Visa Code), for persons who do not meet one or more entry requirements in the Schengen Borders Code or against the objections of one or more Schengen states in the context of the Schengen consultation⁴³.

Procedure

To apply for a humanitarian visa, the applicants must directly contact a Swiss representation abroad and book an appointment. The application, which is free of charge, must be submitted in person at a Swiss representation. The Swiss Red Cross (SRC), which has been running a humanitarian visa advisory service since 2014, has published informational leaflets on applying for the Swiss humanitarian visa for potential applicants. The SRC recommends bringing to the appointment a completed visa application form (in German, French, Italian, or English), a travel document, two recent passport photos, and an excerpt from the family register. All documents that are not in German, French or Italian have to be translated to one of those languages or English by a sworn translator⁴⁴.

According to Article 7 of the VEV, in justified cases, the SEM can grant exemptions from the travel document requirement, in particular for humanitarian reasons or to protect national interests⁴⁵.

The SRC emphasizes that the applicant must be able to credibly prove individual persecution or particularly serious individual humanitarian circumstances. A general situation of crisis or conflict at the place of residence is not sufficient for a humanitarian visa to be granted if the applicant is not individually affected. As a rule, the Swiss authorities presume that individuals who are already in another country are no longer in any danger. In practice, the applicant usually also needs to show a link to Switzerland (e.g. family members). The SRC recommends bringing written explanations about specific personal problems in the applicant's home country, also whether they are registered with the UNHCR, whether they have sought protection in a refugee camp, what their living conditions are, and why it is impossible to remain in the current country of residence⁴⁶.

Applicants have the option of obtaining an informal assessment of the chances of their application from the Swiss representation or the SEM. This is a provisional assessment by the relevant authorities as to whether an application would be approved or not. A formal application can still be submitted to a Swiss representation at a later stage, irrespective of the response from the authorities⁴⁷.

⁴³ Federal Assembly of Switzerland, Verordnung über die Einreise und die Visumerteilung (VEV), 15 August 2018, <https://www.fedlex.admin.ch/eli/cc/2018/493/de> (date accessed: 29.08.2021)

⁴⁴ Swiss Red Cross, Information on the application procedure for humanitarian visas, <https://www.redcross.ch/de/katastrophen-chronologie/syrien-konflikt/syrien-humanitaere-visa-informationen> (date accessed: 15.07.2021)

⁴⁵ Federal Assembly of Switzerland, Verordnung über die Einreise und die Visumerteilung (VEV), 15 August 2018, <https://www.fedlex.admin.ch/eli/cc/2018/493/de> (date accessed: 29.08.2021)

⁴⁶ Swiss Red Cross, Information on the application procedure for humanitarian visas, <https://www.redcross.ch/de/katastrophen-chronologie/syrien-konflikt/syrien-humanitaere-visa-informationen> (date accessed: 15.07.2021)

⁴⁷ Swiss Red Cross, Information on the application procedure for humanitarian visas, <https://www.redcross.ch/de/katastrophen-chronologie/syrien-konflikt/syrien-humanitaere-visa-informationen> (date accessed: 15.07.2021)

If the application for the humanitarian visas is refused, the applicant has 30 days to appeal against the decision to the SEM or to a Swiss representation. The appeal must be written in German, French or Italian and sent by registered post or handed in at a Swiss representation⁴⁸.

Practice

The State Secretariat for Migration (SEM) publishes annual reports on the issuance of visas, including humanitarian visas, by Swiss diplomatic missions abroad. According to SEM, in 2020, a total of 296 visas for humanitarian reasons were issued, including both national humanitarian visas for asylum-seekers, as well as Schengen LTV visas for other humanitarian reasons. This represents the lowest number of humanitarian visas in recent years (2019: 399 visas; 2018: 489 visas; 2017: 522 visas; 2016: 748 visas; 2015: 1017 visas; 2014: 3771 visas).

In 2020, the SEM issued 66 humanitarian visas to potential asylum-seekers (on the basis of Art. 4 Para. 2 of VEV), which is significantly lower than in previous years (2019: 172 visas). These visas were mainly issued to citizens of Syria (21 visas in 2020; 65 visas in 2019), Eritrea (17 visas in 2020; 27 visas in 2019) and Sri Lanka (2 visas in 2020; 25 visas in 2019). Presumably, two developments have strongly influenced the downward trend in humanitarian visas — on the one hand, closed borders and restricted travel options due to COVID-19 made the entire visa process difficult. In addition, the number of visas for Syrian citizens has been declining for years (2020: 21 visas; 2019: 75 visas; 2018: 151 visas; 2017: 207 visas)⁴⁹.

In the «other» humanitarian reasons category, 230 visas were issued in 2020, practically the same number as in the previous year. Of these, 52 visas were issued to people whose entry ban was lifted for humanitarian reasons. The remaining 178 visas were almost exclusively visas that were issued to people who, in accordance with the COVID-19 ordinance, were in a situation of extreme necessity and who were therefore required to enter Switzerland. The two most common reasons for travel were to continue with necessary medical treatment and to visit or support close family members in medical emergencies⁵⁰.

The SEM does not publish statistics on how many people applied for the humanitarian visas or what was the percentage of positive answers. However, one year after the introduction of the humanitarian visa system, the SEM commissioned an external company to evaluate the experience gained with the new practice. This evaluation found that between September 2012 and September 2013, Swiss representations received 162 applications for humanitarian visas, but only 6 humanitarian visas were issued, which means that 3.7% of the applicants at the representations examined were successful⁵¹.

⁴⁸ Swiss Red Cross, Information on the appeal procedure in case a humanitarian visa is refused, <https://www.redcross.ch/de/katastrophen-chronologie/syrien-konflikt/syrien-humanitaere-visa-informationen> (date accessed: 23.07.2021)

⁴⁹ State Secretariat for Migration SEM, Visa Monitoring Jahresausgabe 2020, Bern-Wabern, 15 April 2021, <https://www.sem.admin.ch/sem/en/home/publiservice/statistik/visamonitring.html> (date accessed: 29.08.2021)

⁵⁰ State Secretariat for Migration SEM, Visa Monitoring Jahresausgabe 2020, Bern-Wabern, 15 April 2021.

⁵¹ Interface Politikstudien Forschung Beratung, Universität Luzern, Evaluation Praxis humanitäre Visa, Luzern, 19 December 2013, https://www.interface-pol.ch/app/uploads/2018/09/Be_Humanitaere_Visa.pdf (date accessed: 29.08.2021)

Evaluation

The Swiss system has most of the elements of a humanitarian visa system recommended by the European Parliament⁵².

- The system is accessible to individual asylum-seekers, who can make an appointment and submit an application (it is not restricted to family members of citizens or other pre-selected candidates).
- There is a clear legal basis and the applications are assessed according to uniform criteria, the practice is not completely discretionary.
- The decisions are made in writing and individually.
- Information on the process and the criteria for obtaining a humanitarian visa are accessible, however, mainly through the Swiss Red Cross — on the websites of embassies (such as the Swiss embassy in Lebanon⁵³), there is no mention of a humanitarian visa or a visa for asylum-seekers, only under the FAQ page of SEM can a mention of humanitarian visa be found⁵⁴.
- There is a possibility of making exceptions from the travel document requirement (according to the VEV Article 7⁵⁵), which is important for asylum-seekers who might not have the possibility to turn to their state authorities in order to renew travel documents.
- There is a system for appealing negative decisions.

However, according to the Swiss Red Cross, there are still ways to optimize the procedure of humanitarian visas. **In particular:**

- Information about the humanitarian visa and the application procedure should be more easily accessible at the individual Swiss representations.
- The visa application form should be adapted to correspond to the situation of a humanitarian visa applicant, it is currently not designed for humanitarian visa applications.
- It should be made possible to submit an application electronically, not only at the embassies in person. This could make the procedure more efficient, more cost-effective and, in particular, safer for the people making the application, since it would eliminate the sometimes dangerous and long journey to the nearest Swiss representation.
- Even though there is a specific refusal form for humanitarian visa applicants, the individual reasons for the refusal are still not stated and it is still difficult for the applicant to understand why the visa has been refused.

⁵² European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report with recommendations to the Commission on Humanitarian Visas, 2018/2271(INL), 4 December 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.html (date accessed: 15.07.2021)

⁵³ Swiss Embassy in Beirut, Visa & entry to Switzerland, <https://www.eda.admin.ch/countries/lebanon/en/home/visa.html> (date accessed: 15.07.2021)

⁵⁴ State Secretariat for Migration, FAQ – Entry, <https://www.sem.admin.ch/sem/en/home/themen/einreise/faq.html> (date accessed: 15.07.2021)

⁵⁵ Federal Assembly of Switzerland, Verordnung über die Einreise und die Visumerteilung (VEV), 15 August 2018, <https://www.fedlex.admin.ch/eli/cc/2018/493/de> (date accessed: 15.07.2021)

Legal basis

According to the Act of 12 December 2013 on Foreigners, Art. 60.1.23, a Schengen (LTV) visa or a national visa can be issued for the purpose of entry into Poland for humanitarian reasons, due to the interest of the state or international obligations⁵⁶.

Procedure

Even though the Act on Foreigners does not restrict the right to humanitarian visas for specific nationalities, the only Polish embassy that mentions humanitarian visas on their website is the Polish embassy in Belarus. The embassy website makes a specific mention under the D-type visa category (national long-stay visa) that in order to obtain information on the required documents for a humanitarian visa, the applicant should contact directly the consular offices in Brest, Grodno or Minsk⁵⁷.

In response to an information request, the Consular Department of the Ministry of Foreign Affairs of Poland replied that applications for humanitarian visas may be submitted also in Polish consulates located in other countries. However, there are no official guidelines as regards deciding which cases fall under the “humanitarian reasons” category. Each case is assessed individually by the consul⁵⁸.

The VFS Global website specifies that to apply for a humanitarian visa in Belarus for entering Poland, the applicants have to make an appointment to Polish Visa Application Center in the online registration system for the purpose of “National visa type D” or contact by phone or e-mail with one of the Polish consulates in Belarus. To obtain a visa, the applicants should bring a completed and signed visa application form with a photograph; a valid passport; medical insurance; as well as a written application for a visa to Poland. If the consul’s decision is positive, then the applicant can receive a national visa (for humanitarian purposes) for up to 1 year. The visa is free of charge, but when applying at a Visa Application Center, the applicant will need to pay a service fee in the amount of 11 euros⁵⁹.

⁵⁶ Sejm of the Republic of Poland, Act on Foreigners, Art. 60.1.23, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf> (date accessed: 31.08.2021)

⁵⁷ Representation of Poland in Belarus, ‘Wiza humanitarna’ section under ‘Wiza typu D – złożenie wniosku’ topic, <https://www.gov.pl/web/bialorus/wiza-typu-d> (date accessed: 23.07.2021)

⁵⁸ Ministry of Foreign Affairs of the Republic of Poland, Consular Department, Response to information request, 21 July 2021.

⁵⁹ VFS Global, Visas to Poland — Humanitarian purpose, <https://visa.vfsglobal.com/blr/en/pol/news/humanitarian-purpose> (date accessed: 23.07.2021)

Practice

According to the Consular Department of the Ministry of Foreign Affairs of Poland, they do not collect statistics on humanitarian visas granted by Polish embassies to potential asylum-seekers⁶⁰.

In October 2020, it was reported in the media that around 400 Belarusians have come to Poland with humanitarian visas due to the difficult situation in the country, but Polish consuls have issued several times more such visas, which Belarusians receive through an accelerated and simplified procedure. At that time, 107 of the Belarusians had applied for international protection in Poland, while 74 people declared that they will submit an asylum application⁶¹.

In August 2021, when the Taliban took over the Afghan capital of Kabul, Poland announced that it is issuing humanitarian visas to people who worked with Polish and European Union missions in the country, as well as to their families. Poland has not had an embassy in Kabul since 2014, but it has been working with the French, German and US embassies to coordinate possible evacuations⁶².

Evaluation

The Polish legislation provides a legal basis for humanitarian visas, which allows anyone to submit an application at diplomatic representation. There is also a general appeal procedure — if an applicant does not agree with the consul's decision, they may ask to have the visa application re-considered within 14 days of its delivery⁶³.

However, no information is available about this option to any other nationalities other than Belarus nationals. In addition, this option is used in *ad hoc* cases for emergencies, such as for evacuations from Afghanistan. There is no transparency regarding the criteria, and no statistics are collected, so it is impossible to assess in which cases and how regularly humanitarian visas are granted.

⁶⁰ Ministry of Foreign Affairs of the Republic of Poland, Consular Department, Response to an information request, 21 July 2021.

⁶¹ The First News, Over 700 Belarusians in Poland thanks to policies granting protection, 20 October 2020, <https://www.thefirstnews.com/article/over-700-belarusians-in-poland-thanks-to-policies-granting-protection-16868> (date accessed: 23.07.2021)

⁶² Notes from Poland, Poland grants humanitarian visas to Afghans who helped Polish and EU missions, 15 August 2021, <https://notes-frompoland.com/2021/08/15/poland-grants-humanitarian-visas-to-afghans-who-helped-polish-and-eu-missions/> (date accessed: 17.08.2021)

⁶³ Representation of Poland in Belarus, 'Wiza humanitarna' section under 'Wiza typu D – złożenie wniosku' topic, <https://www.gov.pl/web/bialorus/wiza-typu-d> (date accessed: 23.07.2021)

Legal basis

According to Article 16 Para. 2 of the Law on the Legal Status of Aliens, a Schengen visa with limited territorial validity may be issued when the conditions for entering, established in the Schengen Borders Code, are not fully complied with, but it is necessary for the alien to enter due to humanitarian reasons, national interests or international obligations⁶⁴.

Article 17 of the Law on the Legal Status of Aliens regulates the issuance of a national (D) visa, which allows one to enter the Republic of Lithuania and stay in it for a period longer than three months. It does not specify grounds for applying for this type of visa⁶⁵.

Procedure

There is no specific procedure for the application of humanitarian visas. The general visa application procedure is described on the websites of the Lithuanian Ministry of Foreign Affairs, embassies and the Lithuanian Migration Information System (MIGRIS)⁶⁶.

However, from September 2020, Lithuania temporarily simplified the procedure for issuing visas to citizens of the Republic of Belarus for obtaining a D-type national visa for up to six months⁶⁷.

Practice

From August 2020, Lithuania has been granting humanitarian visas to Belarusian citizens who have been persecuted by the Belarusian regime. The permissions are issued by the Minister of the Interior based on the motivated proposal by the Ministry of Foreign Affairs. Belarusian nationals, who wish to apply for this visa, have been required to contact the Lithuanian embassy in Belarus, where they would provide information that verifies special humanitarian reasons, and apply for the Schengen visa, which allows to arrive to the Schengen territory and be there during the period indicated in the visa, but no longer than 90 days during any time-period within 180 days⁶⁸.

⁶⁴ The Seimas of the Republic of Lithuania, Law on the Legal Status of Aliens, No IX-2206, 29 April 2004, <https://www.refworld.org/pdfid/41c01b314.pdf> (date accessed: 31.08.2021)

⁶⁵ The Seimas of the Republic of Lithuania, Law on the Legal Status of Aliens, No IX-2206, 29 April 2004, <https://www.refworld.org/pdfid/41c01b314.pdf> (date accessed: 31.08.2021)

⁶⁶ MIGRIS, Electronic Migration Service, <https://www.migracija.lt/noriu-gauti-viza2#> (date accessed: 27.07.2021)

⁶⁷ Consulate General Of The Republic Of Lithuania In Grodno (Republic Of Belarus), Consular information — Visas, <http://consulate-grodno.mfa.lt/grodno/ru/konsul-jskaaa-informatsiaa/glabnaaa-konsul-jskaaa-informatsiaa/vizjy> (date accessed: 27.07.2021)

⁶⁸ Platform for Migration Information and Cooperation, Ministry Of The Interior: 768 Belarusian Citizens Allowed To Arrive To Lithuania On The Grounds Of Humanitarian Reasons, 28 December 2020, <https://mipas.lt/en/2020/12/28/ministry-of-the-interior-768-belarusian-citizens-allowed-to-arrive-to-lithuania-on-the-grounds-of-humanitarian-reasons/> (date accessed: 31.08.2021)

In June 2021, the Interior Ministry said that a total of 818 Belarusian citizens have been allowed to come to Lithuania on humanitarian grounds since 11 August 2020. Some 384 people have arrived and 155 have applied for asylum⁶⁹.

In addition to the Schengen visa, potential asylum-seekers from Belarus can also apply for a national (D) visa. On December 2, the government decided to issue Lithuanian national visas free of charge to Belarusians persecuted by the regime. The waiver is applied in cases when the Ministry of Foreign Affairs of the Republic of Lithuania confirms that the application is submitted for special humanitarian reasons or the issuance of a national visa without a consular fee meets the objectives of development cooperation, foreign policy or national security⁷⁰.

Before this, in 2017, Lithuanian Foreign Minister Linas Linkevicius announced that Lithuania granted visas to two natives of Chechnya who suffered persecution because of their sexual orientation. Linkevicius said it was «not that unusual» for Lithuania to offer such visas and that it had been issuing them for many years⁷¹. However, there are no statistics available about issuing humanitarian visas to asylum-seekers from other countries.

Evaluation

The legal possibility for applying for humanitarian visas exists, but there is no specific system for it. It appears that for protection-related reasons, humanitarian visas are issued only in limited cases decided by the government. The websites of embassies do not mention any option of applying for humanitarian visas, although some of them mention that visa fees can be exempted for humanitarian reasons (Lithuanian Embassy in Belarus⁷², Lithuanian Embassy in Georgia⁷³).

⁶⁹ The Baltic Times, Lithuanian minister sees risks for 'humanitarian corridor' for fleeing Belarusians, 3 June 2021, https://www.baltic-times.com/lithuanian_minister_sees_risks_for_humanitarian_corridor_for_fleeing_belarusians/ (date accessed: 31.08.2021)

⁷⁰ The Office of the Government of the Republic of Lithuania, Režimo persekiojamiems baltarusiams — nemokamos Lietuvos nacionalinės vizos, 2 December 2020, <https://lv.lt/lt/naujienos/rezimo-persekiojamiems-baltarusiams-nemokamos-lietuvos-nacionalines-vizos> (date accessed: 31.08.2021)

⁷¹ EU Observer, Lithuania helps gay Chechens flee Russia, 19 May 2017, <https://euobserver.com/lgbti/137976> (date accessed: 31.08.2021)

⁷² Consulate General Of The Republic Of Lithuania In Grodno (Republic Of Belarus), Consular information — Visas, <http://consulate-grodno.mfa.lt/grodno/ru/konsul-jskaaa-informatsiaa/qlabnaaaa-konsul-jskaaa-informatsiaa/vizy> (date accessed: 27.07.2021)

⁷³ Embassy of the Republic of Lithuania to Georgia, Visas, <https://ge.mfa.lt/ge/en/travel-and-residence/coming-to-lithuania/visas> (date accessed: 27.07.2021)

Legal basis

According to the Latvian Immigration Law, Section 11, Para. 2, a long-stay visa can be issued for reasons of humanitarian nature, among other reasons. Furthermore, the law also provides an option to make exceptions from the provisions on refusing the visa for reasons of humanitarian nature. Regarding Schengen visas, the Immigration Law states that they are issued in accordance with the EU Visa Code⁷⁴.

Procedure

There is no specific procedure for applying for humanitarian visas. The Latvian Visa Regulations provide that when requesting a long-stay visa, a foreigner shall submit a valid travel document; completed visa application form; a photo; insurance policy; documents justifying the necessity to receive a visa in accordance with international legal provisions or national interests of Latvia, or if they are related to *force majeure* or humanitarian considerations, or essential personal or professional reasons; documents justifying the place of stay; documents attesting to necessary financial means⁷⁵.

Neither the website of the Latvian Ministry of Foreign Affairs⁷⁶ nor the websites of Latvian consular missions (for example, in Egypt⁷⁷, Turkey⁷⁸, India⁷⁹) mention the option of applying for a visa for humanitarian purposes, but only list categories such as tourism, private visit, business visit.

Practice

The Latvian State Security Service (VDD) has reported that given the deteriorating situation in Belarus after the presidential elections on 9 August 2020, one of the tasks of VDD in close cooperation with the Latvian Embassy in Belarus was to assess the applications of Belarusian citizens seeking visas for entry into Latvia under the so-called asylum programme. This programme gave Belarusian citizens the opportunity to apply for a Latvian long-term visa on humanitarian grounds, in relation to current or potential threats to health and life, fear of persecution and violence, and other circumstances that make it unsafe for the person to stay in Belarus.

⁷⁴ The Parliament of the Republic of Latvia, Immigration Law, 31.10.2002, https://likumi.lv/ta/en/en/id/68522-immigration-law#_ft-n1&pd=1 (date accessed: 31.08.2021)

⁷⁵ The Republic of Latvia, Cabinet Regulation No. 676, Visa Regulations, 30 August 2011, <https://likumi.lv/ta/en/en/id/235770> (date accessed: 31.08.2021)

⁷⁶ Ministry of Foreign Affairs of the Republic of Latvia, Applying for a visa, <https://www.mfa.gov.lv/en/consular-information/applying-for-a-visa> (date accessed: 29 July 2021)

⁷⁷ Embassy of the Republic of Latvia in the Arab Republic of Egypt, Visas, <https://www.mfa.gov.lv/en/egypt/visas> (date accessed: 31.08.2021)

⁷⁸ Embassy of the Republic of Latvia in the Republic of Turkey, Visa Requirements, <https://www.mfa.gov.lv/en/turkey/consular-information/visa-requirements> (date accessed: 31.08.2021)

⁷⁹ Embassy of the Republic of Latvia in the Republic of India, Applying for a Long Stay (national) visa, <https://www.mfa.gov.lv/en/newdelhi/consular-section/applying-for-a-long-stay-visa> (date accessed: 31.08.2021)

In 2020, VDD received information about more than 130 Belarusian citizens who sought humanitarian visa to enter Latvia. After checking these persons, in three cases a negative answer was given because of the risks identified⁸⁰.

According to the Office of Citizenship and Migration Affairs, Latvian Embassies in other countries than Belarus also accept humanitarian visa applications. Each visa application is assessed individually, however, in practice, visas are not usually issued to potential asylum-seekers for humanitarian reasons, and there are no relevant statistics available. The Office of Citizenship and Migration Affairs confirmed that in 2020, the number of long-stay D visas issued to Belarusian citizens increased, but most of the recipients of these visas did not apply for asylum in Latvia⁸¹.

Evaluation

Although the legal basis for applying for humanitarian visas exists, it is not regularly used for asylum-seekers in practice. There is no information made available about the possibility of applying for humanitarian visa to potential asylum-seekers.

BELGIUM

Legal basis

In Belgium, the Law of 15 December 1980 (Aliens Act) regulates the entry, stay, settlement and removal of foreign nationals, as well as governs the asylum procedure and the competences of the asylum institutions. The law does not explicitly mention the possibility of obtaining a visa for humanitarian reasons. However, the State Secretary for Asylum Policy and Migration and the Immigration Office can grant visas on humanitarian grounds, either short-term (C-type) or long-term (D-type) visas⁸³.

Long term humanitarian visas (D-type, more than 90 days) are being issued on the basis of Article 9 and 13 of the Aliens Act, which give a wide discretionary competence to the State Secretary in deciding whether or not to grant the visa⁸⁴. The legal basis for short term humanitarian visa (C-type, maximum 90 days) is based on the EU Visa Code, which foresees the possibility for Member States to derogate from the common conditions and grant an LTV visa on humanitarian grounds⁸⁵.

⁸⁰ Latvian State Security Service (VDD), Annual Report for 2020, Riga, March 2021, <https://vdd.gov.lv/en/useful/annual-reports/> (date accessed: 31.08.2021)

⁸¹ Latvian Office of Citizenship and Migration Affairs, Response to information request, 20 July 2021.

⁸⁴ Belgian Federal Migration Centre Myria, Les Visas Humanitaires, MyriaDocs#4, May 2017, https://www.myria.be/files/Myriadocs4_Visas_humanitaires.pdf (date accessed: 31.08.2021)

⁸⁵ EMN National Contact Point Belgium, Resettlement and Humanitarian Admission in Belgium, December 2016, https://emnbelgium.be/sites/default/files/publications/Resettlement%20and%20Humanitarian%20Admission%20in%20Belgium%20dec2016_0.pdf (date accessed: 31.08.2021)

The humanitarian grounds which can justify the granting of a humanitarian visa are not defined, it is a discretionary power, the State Secretary for Asylum Policy and Migration and the Immigration Office assess the applications on a case-by-case basis⁸⁶.

Procedure

In principle, anyone can apply for a humanitarian visa, but there is no specific procedure or eligibility criteria for it. A regular application for a short-stay (C) or long-stay (D) visa must be submitted to the competent diplomatic or consular mission, which forwards it to the Immigration Office to make a decision. In exceptional cases, an applicant is allowed to submit the application at a more accessible diplomatic mission or consular post – this was the case for Syrians who could turn to the Belgian diplomatic missions in the region (Beirut, Ankara and Istanbul) at least until 2016, according to a report by the European Migration Network⁸⁷.

Even though there are no official criteria, the State Secretary has clarified the policy concerning the issuing of humanitarian visas. Firstly, the applicant should be able to explain his personal situation and demonstrate why these personal circumstances justify the granting of a humanitarian visa (a simple reference to the general situation prevailing in the region or country of origin is not sufficient). Furthermore, the Immigration Office also pays much attention to the place of submission of the application – if the application is filed in a country that is not the country of origin of the applicant, the Immigration Office requests for information about the situation of the applicant in that country⁸⁸.

Applicants also need someone in the host country that guarantees their visa. In addition, the Immigration Office will also check whether the applicant has a connection with Belgium. If the link concerns the presence of a family member in Belgium, the Immigration Office will check whether the situation of the applicant justifies a family reunification (in the broad sense) in Belgium, in accordance with Article 8 of the European Convention on Human Rights⁸⁹.

Practice

In 2020, a total of 806 humanitarian visas were granted by Belgian authorities (105 short-stay visas, 701 long-stay visas), which is lower than in previous years – in 2019, the number was 1,190 (278 short-stay visas and 912 long-stay visas), in 2018, it was 2,096 (175 short-stay and 1,921 long-stay visas) and in 2017, the number of humanitarian visas issued was 2,313 (235 short-stay and 2,078 long-stay).

⁸⁶ EMN National Contact Point Belgium, Resettlement and Humanitarian Admission in Belgium, December 2016, https://emnbelgium.be/sites/default/files/publications/Resettlement%20and%20Humanitarian%20Admission%20in%20Belgium%20dec2016_0.pdf (date accessed: 31.08.2021)

⁸⁷ EMN National Contact Point Belgium, Resettlement and Humanitarian Admission in Belgium, December 2016, https://emnbelgium.be/sites/default/files/publications/Resettlement%20and%20Humanitarian%20Admission%20in%20Belgium%20dec2016_0.pdf (date accessed: 31.08.2021)

⁸⁸ EMN National Contact Point Belgium, Resettlement and Humanitarian Admission in Belgium, December 2016, https://emnbelgium.be/sites/default/files/publications/Resettlement%20and%20Humanitarian%20Admission%20in%20Belgium%20dec2016_0.pdf (date accessed: 31.08.2021)

⁸⁹ EMN National Contact Point Belgium, Resettlement and Humanitarian Admission in Belgium, December 2016, https://emnbelgium.be/sites/default/files/publications/Resettlement%20and%20Humanitarian%20Admission%20in%20Belgium%20dec2016_0.pdf (date accessed: 31.08.2021)

The percentage of positive decisions has decreased as well – in 2017, about 90% of the decisions made were positive, in 2020, the positive decisions made up approximately 60% of all the decisions made on humanitarian visas that year. Long-stay visa recipients came mainly from Syria, Afghanistan, Somalia, Palestine and Turkey in the last few years, while short-stay visa recipients originated from Democratic Republic of Congo, Morocco, China, and other countries⁹⁰.

According to the Belgian Federal Migration Centre Myria, the majority of humanitarian visas were issued in four situations:

- Resettlement of persons selected by the UNHCR and the Commissioner General for Refugees and Stateless Persons (CGRS). They undergo a selection process in a third country, but must still formally apply for asylum in Belgium after entry, so in practice, they receive a humanitarian visa to come to Belgium.
- Rescue operations of Syrians, especially Christian Syrians. It concerns a multitude of operations, including the humanitarian corridor of Sant'Egidio.
- Humanitarian applications from family members of persons (usually refugees) residing in Belgium. When applying, they refer to their family ties and (in most cases) to their protection needs.
- Urgent humanitarian, medical or professional reasons may be the basis of a short-stay humanitarian visa for persons who have to travel quickly without being able to demonstrate that they meet all the conditions for entry into the Schengen area (for example an urgent medical procedure or the funeral of a family member)⁹¹.

In 2018, it was reported that Belgium granted humanitarian visas to five gay men from Chechnya who face persecution for their sexual orientation. Belgian State Secretary for Asylum and Migration Theo Francken said that the five men had received visas from the Belgian Embassy in Moscow to travel to Belgium. Francken added that more humanitarian visas may be issued to LGBTI+ asylum-seekers from Chechnya in the future⁹².

Evaluation

The humanitarian visas are granted on an ad hoc and discretionary basis. Individual asylum-seekers can apply, but according to the Belgian Federal Migration Centre Myria, the procedure is often expensive and long, and the result can be random, as there are no eligibility criteria for the granting of this visa⁹³.

Myria has recommended simplifying access to the procedure for granting humanitarian visas, in particular:

- allowing the application to be submitted by a third party or by post to the embassy and by providing for the possibility of submitting the application through a family member in Belgium;

⁹⁰ Belgian Federal Migration Centre Myria, Response to information request, 29 July 2021.

⁹¹ Belgian Federal Migration Centre Myria, Humanitaire Visa: Naar Een Omkaderd En Transparant Beleid, 29 January 2019, <https://www.myria.be/files/Myria-Nota-voor-de-Kamercommissie-290119.pdf> (date accessed: 31.08.2021)

⁹² RFERL, Belgium Provides Five Chechen Gays With Humanitarian Visas, 6 April 2018, <https://www.rferl.org/a/russia-chechnya-belgium-visas-for-gays/29149753.html> (date accessed: 31.08.2021)

⁹³ Belgian Federal Migration Centre Myria, Les Visas Humanitaires, MyriaDocs#4, May 2017, https://www.myria.be/files/Myriadocs4_Visas_humanitaires.pdf (date accessed: 31.08.2021)

- exempting particularly vulnerable people from paying visa fees and administrative fees or at least reducing costs for these people;
- setting a maximum legal deadline for processing the visa requests;
- having greater flexibility when examining and accepting the documents produced to certify the family relationship, the relationship of dependence with family members in Belgium and the precarious situation in the country of origin;
- having clear, practical guidelines in embassies concerning the procedure for granting humanitarian visas, guidelines that will be regularly updated as changes occur, and will be available not only to embassy staff, but also to applicants, in their own language⁹⁴.

GERMANY

Legal basis

The Residence Act (Aufenthaltsgesetz), Section 6, regulates the types of visas that may be granted to third-country nationals. It provides that short-stay Schengen visas and airport transit visas are granted in accordance with the EU Visa Code. A national visa is required for longer stays; this visa is granted before the foreigner enters the federal territory. It is issued on the basis of applicable provisions for a temporary residence permit, EU Blue Card, ICT Card, permanent settlement permit or EU long-term residence permit⁹⁵.

Section 22 of the Residence Act provides that a foreigner may be granted a temporary residence permit for the purpose of admission from abroad for reasons of international law or on urgent humanitarian grounds. A temporary residence permit is to be granted if the Federal Ministry of the Interior or the body designated by it has declared, so as to uphold the political interests of the Federal Republic of Germany, that the foreigner is to be admitted⁹⁶.

Section 23 of the Residence Act provides that the supreme Land authority may order a temporary residence permit to be granted to foreigners from specific states or to certain groups of foreigners defined by other means, for reasons of international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. The same section specifies that the order may be issued subject to a declaration of commitment⁹⁷. This provision is the basis of Germany's humanitarian admission programmes.

⁹⁴ Belgian Federal Migration Centre Myria, Les Visas Humanitaires, MyriaDocs#4, May 2017, https://www.myria.be/files/Myriadocs4_Visas_humanitaires.pdf (date accessed: 31.08.2021)

⁹⁵ The Parliament of Germany, Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory — Residence Act (Aufenthaltsgesetz), Federal Law Gazette I p. 166, https://www.gesetze-im-internet.de/englisch_aufenthg/index.html (date accessed: 31.08.2021)

⁹⁶ The Parliament of Germany, Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory — Residence Act (Aufenthaltsgesetz), Federal Law Gazette I p. 166, https://www.gesetze-im-internet.de/englisch_aufenthg/index.html (date accessed: 31.08.2021)

⁹⁷ The Parliament of Germany, Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory — Residence Act (Aufenthaltsgesetz), Federal Law Gazette I p. 166, https://www.gesetze-im-internet.de/englisch_aufenthg/index.html (date accessed: 31.08.2021)

Furthermore, in consultation with the supreme Land authorities, the Federal Ministry of the Interior may, within the context of resettling persons seeking protection, order the Federal Office for Migration and Refugees to grant approval for admission to certain persons seeking protection who have been selected for resettlement⁹⁸.

Procedure

There is no procedure for individuals to apply for a humanitarian visa at German diplomatic representations. Temporary residence permit for the purpose of admission from abroad on urgent humanitarian grounds is granted in very rare cases, based on the decision of the German Federal Ministry of the Interior.

Germany runs humanitarian admission programmes (HAP) on federal and state level. They are intended to enable a quick admission of larger groups of refugees who mostly belong to a specific nationality or group. There is no generally applicable process for humanitarian admission programmes. Until 2015, the federal government had three humanitarian admission programmes for Syrians and the federal states had various other admission programmes. The three humanitarian admission programmes of the federal government were based on three admission decrees of the Federal Ministry of the Interior, which outlined the number of people to be admitted, the selection criteria and method. During the first federal government humanitarian admission programme, UNHCR was involved in pre-selecting the people. During the second and third federal government humanitarian admission programmes, Syrians living in Germany could also apply for their relatives to be admitted. The selection was not only based on humanitarian criteria, but also family links to Germany and the ability of family members to provide for the people arriving (so-called «declaration of commitment» or «Verpflichtungserklärung» in German). The humanitarian admission programmes of federal states also require proof of existing family links to Germany as well as proof that the family members have the financial ability to cover the accommodation and living costs of the person admitted⁹⁹. The exact requirements vary in the individual federal states. For example, in Berlin, Thuringia, and North Rhine-Westphalia, individuals who are not Syrian nationals (for example stateless Kurds and Palestinians from Syria) were also considered whereas other federal states denied this group access to their programmes¹⁰⁰.

In addition, Germany practices community sponsorship schemes, which are admission programmes for refugees from specific countries financed by non-governmental organisations, municipalities or private individuals¹⁰¹.

⁹⁸ 166, https://www.gesetze-im-internet.de/englisch_aufenthg/index.html (date accessed: 31.08.2021)

⁹⁹ Resettlement.de, Humanitarian admission programmes, <https://resettlement.de/en/humanitarian-admission-programmes/> (date accessed: 22.07.2021)

¹⁰⁰ Resettlement.de, Aktuelle Aufnahmen, <https://resettlement.de/aktuelle-aufnahmen/> (date accessed: 22.07.2021)

¹⁰¹ Resettlement.de, Private Sponsorship, <https://resettlement.de/private-sponsorship/> (date accessed: 22.07.2021)

Practice

Section 22 of the Residence Act has been used for the admission from Afghanistan of local employees of the German army or police (e.g., interpreters) who could demonstrate that they were in danger for life and limb because of their links to the German forces. As of March 2015, this residence permit had been granted in 577 cases and 353 former local employees had arrived in Germany with their families¹⁰².

In June 2017, German authorities announced that they approved the first visa for a gay Chechen man to take shelter in Germany, following reports that the Chechen police were torturing gays. The first Chechen man arrived in Germany on a special humanitarian visa, several other applicants were invited to make statements in the German embassy in Moscow. It was reported that people from outside Germany can obtain a residence permit on urgent humanitarian grounds, but such cases are very rare¹⁰³.

In the framework of the humanitarian admission programmes, since 2013, approximately 20,000 persons from Syria were able to enter Germany through three federal admission programmes (which have now been closed). With the exception of Bavaria, all federal states established their own admission programmes for specific groups, but most of the programmes were either limited from the beginning or not extended, the programmes are currently only implemented in a few states¹⁰⁴.

In May 2019, a private sponsorship pilot programme “New start in the team - NesT” was initiated, for the admission of 500 refugees, selected according to the protection criteria of the UNHCR. The final decision on admission is made by the Federal Office for Migration and Refugees (BAMF). NesT refugees in Germany receive the resettlement residence permit (Section 23 (4) of the Residence Act)¹⁰⁵.

Evaluation

There is no option for individual asylum-seekers to apply for a humanitarian visa at German diplomatic representations. There are humanitarian admission programmes, community sponsorship programmes, and in rare cases, humanitarian admission can be authorised by the federal government for individual refugees.

¹⁰² Fundamental Rights European Experts Group, Humanitarian Visas: An EU Tool For a Safe Access to the EU Territory? 1 August 2017, <https://free-group.eu/2015/09/18/humanitarian-visas-an-eu-tool-for-a-safe-access-to-the-eu-territory/> (date accessed: 29.07.2021)

¹⁰³ Deutsche Welle, Germany grants first visa to protect Chechen gays, 8 June 2017, <https://www.dw.com/en/germany-grants-first-visa-to-protect-chechen-gays/a-39165582> (date accessed: 21.08.2021)

¹⁰⁴ UNHCR, Humanitarian admission programmes, <https://help.unhcr.org/germany/admission-to-germany/humanitarian-admission-programmes/> (date accessed: 22.07.2021)

¹⁰⁵ Resettlement.de, Private Sponsorship, <https://resettlement.de/private-sponsorship/> (date accessed: 22.07.2021)

Legal basis

In France, the general issuance of visas is regulated by the Code Governing the Entry and Stay of Foreign Nationals and Right to Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile). It provides for short stay visas, under the conditions of the EU Visa Code, and long-stay visas, for any foreigner wishing to enter France to stay there for a period of more than three months for family related reasons, as a visitor, student, intern, or as part of a professional activity, and more generally any type of stay of duration of more than three months¹⁰⁶.

Even though there is no specific provision for it, the French authorities issue long-stay national visas for asylum-seekers to apply for international protection in France upon arrival. Domestic stakeholders commonly call such humanitarian, long-stay visas: «visas asile»¹⁰⁷.

Procedure

French legislation has not codified the criteria in respect of issuing such humanitarian visas. The Ministry of Interior Affairs can request the opinion of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) as to the applicant's need of international protection, but issuing a humanitarian visa is a discretionary practice¹⁰⁸.

Individuals can lodge an application for a humanitarian visa at French diplomatic representations in their country of origin or first country of asylum. The application is pre-assessed during an interview by the consulates based on the criteria laid down in the 1951 UN Refugee Convention and the EU directives and taking into account the applicants' vulnerability. Additionally, the individual's connections with France and their integration perspectives are considered as positive elements¹⁰⁹.

¹⁰⁶ The Parliament of France, Code de l'entrée et du séjour des étrangers et du droit d'asile, <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070158/> (date accessed: 31.08.2021)

¹⁰⁷ European Resettlement Network, Feasibility Study — Towards a Private Sponsorship Model in France, April 2018, <https://resettlement.eu/sites/icmc/files/ERN%2B%20Private%20Sponsorship%20Feasibility%20Study%20-%20Towards%20a%20Private%20Sponsorship%20Model%20in%20France.pdf> (date accessed: 31.08.2021)

¹⁰⁸ European Resettlement Network, Feasibility Study — Towards a Private Sponsorship Model in France, April 2018, <https://resettlement.eu/sites/icmc/files/ERN%2B%20Private%20Sponsorship%20Feasibility%20Study%20-%20Towards%20a%20Private%20Sponsorship%20Model%20in%20France.pdf> (date accessed: 31.08.2021)

¹⁰⁹ Fundamental Rights European Experts Group, Humanitarian Visas: An EU Tool For a Safe Access to the EU Territory? 1 August 2017, <https://free-group.eu/2015/09/18/humanitarian-visas-an-eu-tool-for-a-safe-access-to-the-eu-territory/> (date accessed: 29.07.2021)

Practice

Since 2013, this humanitarian visa mechanism has been used for the benefit of Syrian nationals. Since 2014, the special visa procedure has also been employed for Iraqi nationals from persecuted religious minorities (predominantly Christian and Yazidi)¹¹⁰. It has been used for 7,934 Syrians (including 348 in 2020) and 7,756 Iraqis (including 47 in 2020)¹¹¹.

In addition, in 2017, a gay refugee from Chechnya was admitted to France on an emergency humanitarian visa to apply for asylum. According to French gay rights campaign SOS Homophobie, other cases were also examined¹¹².

Evaluation

Even though the option exists to apply for a visa at French embassies for the purpose of applying for asylum upon arrival to France, it is not specifically regulated in the legislation, there are no specific eligibility criteria nor procedure. In addition, information to potential asylum-seekers about this option is lacking. In practice, it appears to be only used for specific nationalities (Syria and Iraq) and other *ad hoc* cases.

SUMMARIES OF PRACTICES IN OTHER EU COUNTRIES

ITALY

Italian legislation does not provide for a humanitarian visa to access the territory in order to apply for international protection. However, Italy practices Humanitarian Corridors programme, which was established through the cooperation between state institutions and civil society organisations for refugees in particularly vulnerable conditions (including single women with children, victims of human trafficking, elderly people and disabled or sick people)¹¹³.

¹¹⁰ EMN France, Annual Report 2019 on Migration and Asylum Policies in France Part 2, April 2020, <https://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM2/Rapports-sur-les-migrations-et-l-asile#ra-2019> (date accessed: 31.08.2021)

¹¹¹ EMN France, Annual Report 2020 on Migration and Asylum Policies in France, April 2021, <https://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM2/Rapports-sur-les-migrations-et-l-asile#ra-2019> (date accessed: 31.08.2021)

¹¹² RFI, First Chechen gay refugee arrives in France, 2 June 2017, <https://www.rfi.fr/en/europe/20170602-first-chechen-gay-refugee-arrives-france> (date accessed: 31.08.2021)

¹¹³ Raisd, Humanitarian corridors in Italy a legal and safe alternative, <https://raisd-h2020.eu/project/humanitarian-corridors-in-italy-a-legal-and-safe-alternative/> (date accessed: 31.08.2021)

FINLAND

Finland does not have a humanitarian visa scheme, but has exceptionally issued LTV Schengen visas for humanitarian reasons when the travel document of the applicant is not recognized by one or more Member States. Under the refugee quota, persons whom the UNHCR has designated as refugees have also been exceptionally issued LTV Schengen visas¹¹⁴.

PORTUGAL

In Portugal, article 54 of the Immigration Law (Law no. 23/2007 of 4 July) provides for the issuing of a «Temporary Stay Visa» for the purpose of access to medical treatment at officially recognized health facilities, and article 123 establishes the exceptional regime which provides for authorization to stay in Portugal for humanitarian reasons¹¹⁵. However, there is no information available about the latter provision being used for asylum-seekers.

NORWAY

According to the Norwegian Immigration Act (Section 11), if it is necessary for humanitarian reasons, national considerations or international obligations, a visa may be issued for a period not exceeding three months even if the conditions laid down in the Act are not satisfied¹¹⁶. However, such visas are very rarely granted and there is no system for such an application¹¹⁷.

IRELAND

There is no separate humanitarian visa system, but various resettlement and humanitarian admission programmes exist. In 2015, the Irish Government established the Irish Refugee Protection Programme for relocation and resettlement of refugees. There is also a Community Sponsorship scheme, as well as a Humanitarian Admissions Programme (IHAP). IHAP was introduced in 2017 to allow Irish citizens or international protection holders apply for their family members to be admitted to Ireland. It was followed by IHAP 2 in 2018/2019¹¹⁸. In August 2021, Ireland announced the provision of up to 150 humanitarian visas for Afghan nationals under the Irish Refugee Protection Programme¹¹⁹.

¹¹⁴ M. V. Hakkarainen, EU Visa Policy: A Bastion of Exclusion or Patron of Refugees — The Case of the Humanitarian Visa, August 2014, <https://helda.helsinki.fi/bitstream/handle/10138/157477/GraduHakkarainen%28final%29.pdf?sequence=2&isAllowed=y> (date accessed: 31.08.2021)

¹¹⁵ J. N. Meyer, D. Peschke, et al., Humanitarian Visas: An EU Tool For a Safe Access to the EU Territory, 15 September 2015, <https://free-group.eu/2015/09/18/humanitarian-visas-an-eu-tool-for-a-safe-access-to-the-eu-territory/> (date accessed: 31.08.2021)

¹¹⁶ The Parliament of Norway, *The Act on the Entry of Foreign Nationals into the Kingdom of Norway and their stay in the realm (the Immigration Act)*, https://www.legislationline.org/download/id/4048/file/Norway%20Immigration%20laws_amendments_adopted_January_2010_en.pdf (date accessed: 31.08.2021)

¹¹⁷ The European Legal Network on Asylum (ELENA) coordinator in Norway, Response to an information request, 20 May 2021.

¹¹⁸ Economic & Social Research Institute, Ireland has increased pathways to protection for vulnerable migrants in recent years, but disparities in supports remain, 9 January 2020, <https://www.esri.ie/news/ireland-has-increased-pathways-to-protection-for-vulnerable-migrants-in-recent-years-but> (date accessed: 19.08.2021)

¹¹⁹ The Journal, Ireland confirms plans to issue 150 humanitarian visas to Afghan refugees, 16 August 2021, <https://www.thejournal.ie/irish-nationals-refugees-afghanistan-5524006-Aug2021> (date accessed: 17.08.2021)

SPAIN

According to the Organic Law 4/2000 on the Rights and Freedoms of Aliens in Spain and their Social Integration, Article 25.4, the entry into Spain of foreigners who do not meet the requirements established in the preceding paragraphs may be authorized when there are exceptional reasons of a humanitarian nature, public interest or compliance with commitments undertaken by Spain¹²⁰. Article 38 of the Asylum Act states: «In order to process cases that are presented outside the national territory, provided that the applicant is not a national of the country in which the diplomatic representation is located and his physical integrity is at risk, the Spanish Ambassadors may promote the transfer of the asylum-seeker to Spain in order to make possible the submission of the application in accordance with the procedure provided for in this Law. The Regulations implementing this Law shall expressly determine the conditions of access to the Embassies and Consulates of the applicants, as well as the procedure for assessing the need to transfer them to Spain»¹²¹. However, the lack of regulations means that this article is not applied in practice¹²².

ICELAND

Pursuant to Article 43 of Foreign Nationals Act, the Directorate of Immigration may authorise groups of refugees to enter Iceland on a proposal from the Icelandic Refugee Board, and in cooperation with the United Nations High Commissioner for Refugees. The same applies to groups of foreign nationals who have not been deemed to be refugees, but come from a country where armed conflict is taking place or from a region of natural disaster, and fulfill conditions laid down by the authorities at any time. The Directorate may decide whether other foreign nationals who enter the country on the basis of this provision are to be granted refugee status or a residence permit on humanitarian grounds¹²³.

The remaining EU and Schengen countries do not have any form of humanitarian visa schemes, apart from resettlement and relocation programmes.

¹²⁰ The Parliament of Spain, Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, <https://www.boe.es/eli/es/lo/2000/01/11/4/con>

¹²¹ The Parliament of Spain, Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria, <https://www.boe.es/eli/es/l/2009/10/30/12/con> (date accessed: 31.08.2021)

¹²² The European Legal Network on Asylum (ELENA) coordinator in Spain, Response to an information request, 21 May 2021.

¹²³ The Parliament of Iceland, Foreign Nationals Act, 2016 no. 80, 16 June, <https://www.government.is/library/04-Legislation/Foreign%20Nationals%20Act.pdf> (date accessed: 31.08.2021)

The previously outlined humanitarian visa practices in EU/Schengen countries are assessed taking into account the criteria recommended by the European Parliament in the 2018 Report with recommendations to the Commission on Humanitarian Visas¹²⁴. In particular, importance is placed on whether there is a legal possibility for asylum-seekers to submit a humanitarian visa application to diplomatic representations for the purpose of applying for asylum upon entry to the state; whether there is a specific process for applying for the humanitarian visa; whether applications are assessed according to uniform eligibility criteria set out by laws or regulations; whether there is a specific process for applying for the humanitarian visa; and whether information is made available on the process and the criteria for obtaining a humanitarian visa.

Special focus is on the accessibility of the humanitarian visas to various groups of asylum-seekers — not exclusively to persons fleeing conflict areas, but also to asylum-seekers escaping persecution due to belonging to the LGBTI+ community or being HIV-positive. It is widely documented that LGBTI+ individuals are targets of killings, sexual and gender-based violence, physical attacks, torture, arbitrary detention, and severe discrimination in different regions around the world, and many countries maintain severe criminal laws for same-sex relations. Intersecting factors that may contribute to the effects of violence and discrimination include HIV status¹²⁵. Since being HIV-positive can be considered a status that cannot be changed, it may form the basis for an asylum claim based on belonging to a particular social group, if the individual is threatened with persecution due to their HIV status.

The countries whose practices were outlined in more detail were Switzerland, Poland, Lithuania, Latvia, Belgium, Germany, and France. In practice, only Switzerland and Belgium grant humanitarian visas to asylum-seekers from various countries, not only to pre-determined nationalities and exceptional *ad-hoc* cases. However, in Belgium, the practice is based on discretion, rather than clear and codified guidelines. Even though the legislation in Poland, Lithuania, Latvia provides the option for humanitarian visas, it appears to be practiced only in very limited cases decided by the government, without clear eligibility criteria or a specific procedure. In the case of France, the legal possibility exists, but the exact conditions are unregulated, and the practice is limited to specific nationalities and cases. Germany practices humanitarian admission programmes and can admit refugees in exceptional cases based on temporary residence permit, but only in rare cases.

¹²⁴ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report with recommendations to the Commission on Humanitarian Visas, 2018/2271(INL), 4 December 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.html (date accessed: 15.07.2021)

¹²⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <https://www.refworld.org/docid/50348afc2.html> (date accessed: 31.07.2021)

Countries	Legal basis	Accessible to all asylum-seekers	Clear eligibility criteria	Specific procedure	Information available	Recently practiced
Switzerland	Yes, specifically for asylum-seekers	Yes, but as a rule, only for the asylum-seekers residing in their own country	Yes, law provides for a general eligibility criteria, clarified by Swiss Red Cross	Yes, but no separate application form	Yes, but through Swiss Red Cross	Yes
Poland	Yes, but for general humanitarian reasons	No restriction in the law, but practice appears to be limited to exceptional cases/ specific nationalities	No, no official guidelines	No	Yes, but only for Belarusian nationals	Yes, but only for exceptional cases/specific nationalities
Lithuania	Yes, but for general humanitarian reasons	No restriction in the law, but practice appears to be limited to exceptional cases/ specific nationalities	No, no official guidelines	No	No	Yes, but only for exceptional cases/specific nationalities
Latvia	Yes, but for general humanitarian reasons	No restriction in the law, but practice appears to be limited to exceptional cases/ specific nationalities	No, no official guidelines	No	No	Specific program for Belarusians, but usually not issued to asylum-seekers
Belgium	No explicitly	Yes, but as a rule, only for the asylum-seekers residing in their own country	No, but State Secretary has certain guidelines	No	No	Yes
Germany	No, but temporary residence permit on humanitarian grounds may be issued for admission from abroad	No, only specific cases decided by the government	No	No	No	Yes, but only for exceptional cases/specific nationalities
France	Yes	No restriction in the law, but practice appears to be limited to exceptional cases/ specific nationalities	No, but no information about possible internal guidelines	No	No	Yes, but only for exceptional cases/specific nationalities

Based on the criteria outlined above, Switzerland's humanitarian visa system would be the best practice to follow. Importantly, Swiss visa regulation provides a clear basis to grant humanitarian visas specifically for asylum-seekers – if the person's life or physical integrity are directly, seriously and specifically endangered in the country of origin. As most other countries, Switzerland issues national long-stay (D) visas as humanitarian visas for asylum-seekers (however, Swiss laws also provide the option of issuing short-stay LTV Schengen visas for other humanitarian reasons). The procedure and eligibility criteria are public, although the information is not shared through state authorities, but through a non-governmental organization Swiss Red Cross, which has the role of advising potential applicants.

As a rule, Switzerland only grants humanitarian visas to asylum-seekers in their country of origin, since the authorities presume that individuals who are already in another country are no longer in any danger. Considering that Estonia has diplomatic representations in limited countries, this limitation would not be reasonable in Estonian context. It could not be assumed that the asylum-seeker is no longer at risk, if they are in another country irregularly or based on a short-term visa, and in case of a negative decision they could be returned to their country of origin where they face persecution.

In Switzerland, the application for humanitarian visa is free of charge, similarly to Polish and Lithuanian schemes for Belarusian nationals. Considering the humanitarian nature of the visas, it would be advisable to either waive the fee for humanitarian visa applications, or at least provide an option for exemptions from the visa fee in the cases where it is necessary.

The recommendations made to Switzerland by the Swiss Red Cross point out the need for a separate application form for humanitarian visas, as well as for the information about the application process to be available through embassy websites. It is also suggested that there should be an option to submit applications electronically. Refusal of the applications should be reasoned and specific, so that applicants could understand whether or not there is any reason to appeal. Based on the example of Belgium, lack of predictability can lower the efficiency of the system, the administrative burden is higher if there are appeals that reach international courts due to the lack of clarity on the conditions.

III ADAPTING BEST PRACTICES TO ESTONIAN LEGISLATION

OVERVIEW OF THE CURRENT ESTONIAN VISA SYSTEM

In Estonia, the issuing of visas is regulated by the Aliens Act (*Välismaalaste seadus*). According to the Aliens Act, Estonia issues three categories of visas: an airport transit visa; a short-stay visa and a long-stay visa. An airport transit visa and a short-stay visa may be issued on the basis provided for in the Visa Code. A long-stay visa may be issued to an alien for a single or multiple temporary stay in Estonia, with a period of validity up to twelve months. The total period of stay of an alien on the basis of a long-stay visa may not exceed 548 days in 730 consecutive days, unless otherwise provided by an international agreement¹²⁶.

Short-stay Schengen visa

When processing visa applications, Estonian authorities follow the EU Visa Code. The Ministry of Foreign Affairs has listed the documents that need to be submitted when applying for a visa, such as a valid travel document, a completed application form, photo, insurance policy, documents indicating the purpose of journey, documents in relation to accommodation, documents indicating sufficient means of subsistence for the duration of the intended stay and for the return to country of origin, information which enables to assess the applicant's intention to leave Schengen area before the expiry of the visa, visa fee. This list of supporting documents is non-exhaustive and provides examples of possible supporting documents¹²⁷.

Long-stay (D) visa

A long-stay (D) visa is an Estonian visa that may be issued for the period of stay of up to 365 days within twelve consecutive months. It must be applied for in person at an Estonian representation that handles visa applications or at a service point of the Police and Border Guard Board in Estonia. Documents to be submitted upon application for a long-stay visa are a travel document, fully completed and signed application form, photo, insurance policy, visa fee, and documents indicating the purpose of journey, e.g. confirmation letter from the host or documents proving that applicant is going to work in Estonia¹²⁸.

¹²⁶ Estonian Parliament (Riigikogu), Aliens Act (*Välismaalaste seadus*), 9 December 2009, <https://www.riigiteataja.ee/akt/108072021017> (date accessed: 31.08.2021)

¹²⁷ Estonian Ministry of Foreign Affairs, Applying for a visa to the Schengen area, <https://vm.ee/en/applying-visa-schengen-area> (date accessed: 30.07.2021)

¹²⁸ Estonian Ministry of Foreign Affairs, Long-stay (D) visa, <https://vm.ee/en/long-stay-d-visa> <https://vm.ee/en/applying-visa-schengen-area> (date accessed: 30.07.2021)

Humanitarian clauses

The Aliens Act does not outline any options for issuing visas on humanitarian grounds. However, there is a possibility of granting a residence permit on humanitarian grounds, if the foreigner is already in Estonia. According to this provision, in exceptional circumstances, an alien may be granted a temporary residence permit issued for settling permanently in Estonia, if the alien is staying in Estonia and it has become evident that forcing a person to leave Estonia would be clearly unduly burdensome for them, they lack the possibility of getting the residence permit in Estonia on another basis and the alien does not constitute a threat to public order and national security¹²⁹.

Visas issued to family members of beneficiaries of international protection

The Act on Granting International Protection to Aliens (Välismaalasele rahvusvahelise kaitse andmise seadus) provides for the right of family members¹³⁰ of beneficiaries of international protection to reunite with their family and receive a residence permit on the same basis and with the same period of validity¹³¹. The situation is comparable to humanitarian visas issued to asylum-seekers, since when the family members arrive in Estonia, they have the obligation to submit an application for international protection¹³².

However, neither the Act on Granting International Protection to Aliens nor the Aliens Act addresses the issue of how the family member arrive in Estonia. According to the Ministry of Foreign Affairs, Estonian Embassies issue long-stay (D) visas to family members of beneficiaries of international protection to enter Estonia, if possible. However, if there is no Estonian Embassy in the country where they are located and the visa is issued on behalf of Estonia by another Schengen member state that represents Estonia there, then a short-term (C) visa can be issued based on the Visa Code. All cases are reviewed and resolved on a case-by-case basis, taking into account the applicants' travel options. For humanitarian reasons, a long-stay visa may exceptionally be issued if the travel document is valid for less than three months after the expiry of the visa¹³³.

A report by the Estonian Contact Point of the European Migration Network also points out that it is up to the Police and Border Guard Board to decide whether the general visa requirements are imposed or not in the case of family reunification of beneficiaries of international protection, and in practice, the requirement to have a health insurance policy is often not imposed¹³⁴.

¹²⁹ Estonian Parliament (Riigikogu), Aliens Act (Välismaalaste seadus), § 2103, 9 December 2009, <https://www.riigiteataja.ee/akt/108072021017> (date accessed: 31.08.2021)

¹³⁰ According to the § 7 (2), Act on Granting International Protection to Aliens the definition of family members is limited to only spouses, minor children (or adult children if the child is unable to cope independently due to their state of health or disability), and parents or grandparents maintained by the beneficiary of international protection if the country of origin does not provide support resulting from other family ties, <https://www.riigiteataja.ee/akt/117062020004> (date accessed: 31.08.2021)

¹³¹ Estonian Parliament (Riigikogu), Act on Granting International Protection to Aliens (Välismaalasele rahvusvahelise kaitse andmise seadus), § 46, 14 December 2005, <https://www.riigiteataja.ee/akt/117062020004> (date accessed: 31.08.2021)

¹³² EMN Estonian National Contact Point, Family Reunification of TCNs in the EU: National Practices, Estonian national report, Tallinn 2016, <https://www.emn.ee/wp-content/uploads/2019/02/ee-20120402-familyreunificationstudy-final-en.pdf> (date accessed: 31.08.2021)

¹³³ Estonian Ministry of Foreign Affairs, Response to information request, 29 July 2021.

¹³⁴ EMN Estonian National Contact Point, Family Reunification of TCNs in the EU: National Practices, Estonian national report, Tallinn 2016, <https://www.emn.ee/wp-content/uploads/2019/02/ee-20120402-familyreunificationstudy-final-en.pdf> (date accessed: 31.08.2021)

Other exceptions

In August 2021, when the Taliban took power in Afghanistan, the Estonian government made a decision to relocate up to 30 people in need of international protection from Afghanistan to Estonia, as follows:

- 1 up to 5 persons and their immediate family members who have worked for NATO;
- 2 up to 5 persons and their immediate family members who have worked for the European Union;
- 3 up to 20 persons and their immediate family members who have worked in Afghanistan together with Estonian organizations and helped to implement Estonia's foreign policy objectives in Afghanistan¹³⁵.

This decision was approved by the European Union Affairs Committee of the Parliament. The Act on Granting International Protection to Aliens is stated as the legal basis for the decision, however, as can be concluded from the minutes of the European Union Affairs Committee, there is confusion around the exact legal ground¹³⁶.

The first family evacuated from Afghanistan arrived in Tallinn on 25 August 2021¹³⁷. According to the Estonian Ministry of Foreign Affairs, there were no visas issued to the evacuated Afghan nationals, as it was possible to transfer them from one flight to another at the same airport and confirm by a letter that the Estonian state will accept them¹³⁸.

Applying for international protection in Estonia

Application for asylum or international protection can be submitted in the territory of Estonia. Estonia does not accept asylum applications submitted in embassies. Estonian asylum law is regulated by the Act on Granting International Protection to Aliens. When it comes to LGBTI+ asylum-seekers, the Act on Granting International Protection to Aliens does not specifically mention sexual orientation or gender identity, but regarding the exact criteria for qualifying for international protection, it refers to the Directive 2011/95/EU of the European Parliament and of the Council (Qualification Directive)¹³⁹.

The Qualification Directive provides for a possibility of determining membership of a particular social group based on sexual orientation and gender identity¹⁴⁰.

¹³⁵ Estonian State Chancellery Document Register (Riigikantselei dokumendiregister), Minutes of the meeting of the Government of the Republic, 19 August 2021, <https://dhs.riigikantselei.ee/avalikteave.nsf/documents/NT0038702A?open> (date accessed: 31.08.2021)

¹³⁶ European Union Affairs Committee of the Parliament (Riigikogu Euroopa Liidu asjade komisjon), Minutes of Emergency Meeting No 153, 20 August 2021, <https://www.riigikogu.ee/tegevus/dokumendiregister/toimikud/327d1022-d361-4963-8b3f-d82228a79791> (date accessed: 31.08.2021)

¹³⁷ Estonian Ministry of Foreign Affairs, Esimene Afganistanist evakueeritud pere jõudis Tallinna, 25 August 2021, <https://vm.ee/et/ uudised/esimene-afganistanist-evakueeritud-pere-joudis-tallinna> (date accessed: 31.08.2021)

¹³⁸ Estonian Ministry of Foreign Affairs, Response to information request, 26 August 2021.

¹³⁹ Estonian Parliament (Riigikogu), Aliens Act (Välismaalaste seadus), § 20 (1), 9 December 2009, <https://www.riigiteataja.ee/ akt/108072021017> (date accessed: 31.08.2021)

¹⁴⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), Article 10, OJ L 337, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095> (date accessed: 31.08.2021)

In practice, the Estonian Police and Border Guard Board has granted refugee status to asylum-seekers who have applied for international protection based on persecution because of their sexual orientation. For example, the Police and Border Guard Board has recognised gay men in Tajikistan as a particular social group¹⁴¹.

○ LEGISLATIVE CHANGES NEEDED FOR ADAPTING A HUMANITARIAN VISA SCHEME

As explored in previous chapters, there are two legal possibilities for humanitarian visas — short-stay Schengen (C) visa with limited territorial validity, which relies on the exception in Article 25 of the EU Visa Code, or long-stay (D) visa, which can be regulated by individual Member States. When it comes to short-stay visas, Estonian legislation refers to the EU Visa Code. Long-stay (D) visa could be considered more appropriate for humanitarian visas, as it is regulated on the national level, and this option is also used by most of the other EU/Schengen countries that are issuing humanitarian visas. However, the possibility could be left open to issue both types of visas on humanitarian grounds, as several other countries have done (Switzerland, Lithuania, Poland).

Furthermore, the option of issuing long-stay visas is currently used in Estonia for family members of beneficiaries of international protection, who also may not always meet the general visa requirements. Therefore, the option to make *ad hoc* exceptions from visa requirements on humanitarian grounds for family member of beneficiaries of international protection already exists. However, for a functioning and efficient humanitarian visa system, any exceptions would need to be regulated specifically.

The analysis of current humanitarian visa schemes in EU/Schengen countries established that the best practice to follow would be Switzerland. Therefore, first of all, it would be important to have a clear legal basis for the humanitarian visa for asylum-seekers. Currently, Aliens Act § 62 provides a list of the conditions for the issuance of visas, pursuant to which a long-term visa may be issued to an alien:

- 1 who holds a valid travel document;
- 2 if the purpose of his or her application for the Estonian long-stay visa is justified;
- 3 he or she has sufficient financial resources to cover the costs of accommodation and stay during his or her stay in Estonia and to return to his or her country of origin or transit;
- 4 he or she has a valid health insurance policy which guarantees payment of any costs related to his or her medical treatment due to his or her illness or injury during the validity of the visa (section 3 specifies exemptions from the requirement of a health insurance policy).

¹⁴¹ K. Grossthal, M. Meior, L. Laanpere, Compliance Report on the implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Estonia, July 2018, <https://ilga-europe.org/sites/default/files/Attachments/estonia.pdf> (date accessed: 31.08.2021)

This general provision could be supplemented with a specific provision regarding humanitarian visas, as has been done with other specific situations (for short-term employment, studies, start-up business)¹⁴².

In Switzerland, the relevant provision (Article 4 Para. 2 of the VEV) states that foreign nationals who do not meet the general visa requirements can, in justified cases, be granted permission to enter Switzerland for humanitarian reasons, particularly if the person's life or physical integrity are directly, seriously and specifically endangered in the country of origin¹⁴³. Other countries, such as Latvia, Lithuania, and Poland have kept the provision more general, providing for the option to grant visas for humanitarian reasons, national interests or international obligations.

At the minimum, the new provision could provide for the option to issue visas for humanitarian reasons. However, in order to specifically give all potential refugees the option to apply for a humanitarian visa, it would be reasonable to refer to the already existing definition of international protection in the Act on Granting International Protection to Aliens. For example, the added provision could specify that humanitarian visas can be granted to applicants in whose case there are grounds to believe that they would qualify as a refugee or a beneficiary of subsidiary protection within the meaning of the Act on Granting International Protection to Aliens. The purpose of the visa would be for the applicant to enter Estonia and submit an application for international protection, which would fall under the «justified purpose» referred to in Aliens Act § 62. The provision could also state that it is possible to make exceptions from the general visa requirements for these applicants.

Pursuant to the Aliens Act, the practical guidelines regarding the organization of visa affairs are established by a regulation of the minister responsible for the area in coordination with the Minister of Foreign Affairs (such as the requirements for long-stay visa, the terms for the issue and refusal to issue of a visa, the procedure and terms for making decisions on the issue of visas, etc)¹⁴⁴. Therefore, a specific regulation could also regulate the requirements, procedure and issuance of visas for humanitarian purposes.

Based on the existing regulations and taking into account the humanitarian visa requirements in Switzerland, the regulation should set out the following aspects:

- Data and documents to be submitted when applying for a humanitarian visa
- Steps of the procedure (submission of the application, documents, interview, granting of the visa)
- Eligibility criteria for assessing the application
- Deadline for processing the application
- Appeal procedure

¹⁴² Estonian Parliament (Riigikogu), Aliens Act (Välismaalaste seadus), § 621 – § 625, 9 December 2009, <https://www.riigiteataja.ee/akt/108072021017> (date accessed: 31.08.2021)

¹⁴³ Swiss Federal Council, Verordnung über die Einreise und die Visumerteilung (VEV), 15 August 2018, <https://www.fedlex.admin.ch/eli/cc/2018/493/de> (date accessed: 31.08.2021)

¹⁴⁴ Estonian Parliament (Riigikogu), Aliens Act (Välismaalaste seadus), § 101, 9 December 2009, <https://www.riigiteataja.ee/akt/108072021017> (date accessed: 31.08.2021)

According to the State Fees Act, a state fee of 100 euros shall be paid for the review of an application for a long-stay visa¹⁴⁵. However, the States Fees Act also provides that persons who enter Estonia for humanitarian considerations or in the cases of international obligations or pursuant to international custom can be exempt from payment of state fees for the review of visa applications¹⁴⁶. Therefore, no legislative amendments to the State Fees Act are needed there to create an exemption for asylum-seekers.

Eligibility criteria of the humanitarian visas should derive from the Act on Granting International Protection to Aliens, which is based on the EU Qualification Directive. Other countries, such as Switzerland, Belgium and France have also taken into account ties to their country or particular vulnerabilities of applicants. In this case, these conditions should also be specified in the regulation and made public, in order for applicants to have a clear idea of the prospect of their application. It would be necessary to create clear guidelines for embassies, which would help to have a harmonized practice and also make it easier to filter out manifestly unfounded applications.

As emphasized by the European Parliament in the 2018 Report with recommendations to the Commission on Humanitarian Visas, the applications should be assessed by staff who have knowledge in asylum law. To guarantee that, it would make sense to follow the example of the Belgian system where the humanitarian visa applications are forwarded to the national asylum authorities for evaluation. In the Estonian case, the asylum authority is the Police and Border Guard Board, so the humanitarian visa applications could be forwarded to the Police and Border Guard Board, which can process the applications and make decisions.

Taking into account the limited number of Estonian diplomatic representations around the world, there could be a provisional assessment system of the applications, similar to the one practiced in Switzerland. Eventually, the applicant would need to visit an Estonian embassy, as fingerprints need to be collected and visa needs to be inserted to the travel document, but the pre-assessment phase could be conducted electronically. This would provide applicants with an idea of their chances and prevent them from taking on hazardous journeys unnecessarily.

Finally, it would be helpful to publish information about the possibility of applying for humanitarian visas, as well as about the requirements, conditions and procedures on embassy websites. Making detailed information available would make the outcome of the procedure more predictable for the applicants, and could lower the administrative burden on the authorities when it comes to providing information and processing applications.

In conclusion, the Aliens Act could be supplemented with an additional provision, which, at the minimum, could be phrased as follows:

§ 62⁶. Issue of visa for humanitarian purposes

A long-stay or short-stay visa may be issued for the purpose of entry into Estonia for humanitarian reasons, due to the interest of the state or international obligations.

¹⁴⁵ Estonian Parliament (Riigikogu), State Fees Act (Riigilõivuseadus), § 276 (3), 10 December 2014, <https://www.riigiteataja.ee/en/eli/528062021005/consolide> (date accessed: 31.08.2021)

¹⁴⁶ Estonian Parliament (Riigikogu), State Fees Act (Riigilõivuseadus), § 39 (2) p. 7-8, 10 December 2014, <https://www.riigiteataja.ee/en/eli/528062021005/consolide> (date accessed: 31.08.2021)

The provision could also be specified in the following way: «The foreign nationals who do not meet the general visa requirements can, in justified cases, be granted a visa to enter Estonia for humanitarian reasons, particularly if there are grounds to believe that they would qualify as a refugee or a beneficiary of subsidiary protection within the meaning of the Act on Granting International Protection to Aliens».

This study explored the legal framework and developments regarding humanitarian visas in the European Union, outlined and analysed practices of individual states, and developed recommendations for legislative amendments needed to implement a humanitarian visa system in Estonia.

After evaluating humanitarian visa schemes of different EU/Schengen states, Switzerland was identified as the best practice to follow. The Swiss system has most of the features recommended by the European Parliament in the 2018 Report with recommendations to the Commission on Humanitarian Visas¹⁴⁷, and it is accessible for all asylum-seekers, including LGBTI+ asylum-seekers or HIV-positive asylum-seekers.

Based on the research, it is recommended to supplement the Aliens Act with a new provision (§ 62⁶), which would provide that long-stay or short-stay visas can be granted on humanitarian grounds, or more specifically, to applicants in whose case there are grounds to believe that they would qualify as a refugee or a beneficiary of subsidiary protection within the meaning of the Act on Granting International Protection to Aliens. The provision could also include a possibility to make exceptions from the general visa requirements listed in the Aliens Act § 62, such as the requirement to have a health insurance policy and sufficient financial resources to return to the country of origin.

In addition, the specific requirements and procedures concerning humanitarian visas could be outlined in a separate regulation, added to § 101 (1) of the Aliens Act. Eligibility criteria for the humanitarian visas should derive from the Act on Granting International Protection to Aliens, assessed by staff trained in asylum law, which in the Estonian case is currently the Police and Border Guard Board. For the practice to be harmonised and efficient, clear guidelines should be developed for diplomatic representations, and detailed information about the eligibility criteria and procedures should be made available to potential applicants on embassy websites.

¹⁴⁷ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report with recommendations to the Commission on Humanitarian Visas, 2018/2271(INL), 4 December 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.html (date accessed: 15.07.2021)

Käesolevas uuringus analüüsiti humanitaarviisasüsteemide rakendamist Euroopa Liidu ja Schengeni ala liikmesriikides ning tehti soovitusi humanitaarviisasüsteemi loomiseks Eestis. Humanitaarviisade all mõeldakse viisaid, mis võimaldavad kolmandate riikide kodanikel pöörduda EL-i või Schengeni riigi saatkonna poole, taotleda humanitaarsetel alustel viisat, siseneda seaduslikult riigi territooriumile ja paluda rahvusvahelist kaitset.

Uuringu esimeses osas tutvustatakse õigusraamistikku Euroopa Liitu sisenemisega seoses, sealhulgas varjupaigataotlejatele saadaval olevaid võimalusi. Teises osas antakse ülevaade olemasolevatest humanitaarviisade süsteemidest EL-i/Schengeni riikides ning analüüsitakse parimaid praktikaid. Kolmandas osas antakse ülevaade Eestis kehtivatest asjakohastest seadustest ning antakse soovitusi, kuidas kohendada humanitaarviisade parimaid praktikaid Eesti seadusandlusesse.

Humanitaarviisade praktikaid hinnatakse võttes arvesse Euroopa Parlamendi 2018. aasta raportis¹⁴⁸ soovitatud kriteeriume. Selgitatakse ka humanitaarviisade kättesaadavust erinevatele varjupaigataotlejate rühmadele, mitte üksnes konfliktipiirkondadest põgenevatele inimestele, vaid ka varjupaigataotlejatele, kes põgenevad tagakiusamise eest LGBTI+ kogukonda kuulumise või HIV-positiivne olemise tõttu.

Riigid, mille praktikad detailsemalt analüüsiti, olid Šveits, Poola, Leedu, Läti, Belgia, Saksamaa ja Prantsusmaa. Praktikad väljastavad ainult Šveits ja Belgia humanitaarviisid järjepidavalt erinevate riikide varjupaigataotlejatele, seejuures mitte ainult kindlate riikide kodanikele või ainult erakorralistele juhtumite puhul. Samas Belgia praktika põhineb pigem otsustajate diskretsioonil kui selgetel ja reguleeritud suunistel. Poola, Leedu ja Läti seadused näevad ette üldise humanitaarviisade väljastamise võimaluse – viisa võib väljastada, kui riiki sisenemine on vajalik humanitaarsetel põhjustel, riigi huvide või rahvusvaheliste kohustuste tõttu – kuid praktika paistab olevat piiratud kindlate olukordadega, mille on otsustanud valitsus, ilma selgete kriteeriumiteta. Viimaste aastate jooksul on nimetatud riigid humanitaarviisa väljastamise võimalust kasutanud näiteks poliitilise tagakiusamise eest põgenevate Valgevene kodanike puhul. Prantsusmaa puhul on võimalus humanitaarviisade väljastamiseks olemas, kuid täpsed tingimused on reguleerimata ja praktika piirdub peamiselt ettemääratud riikide kodanikega, nagu näiteks Süüria ja Iraak. Saksamaa praktiseerib erinevaid humanitaarprogramme rahvusvahelise kaitse saajate vastuvõtmiseks, samuti on Saksamaal olemas õiguslik võimalus välismaalasi vastu võtta humanitaarsetel alustel antava elamisloa alusel, kuid seda kasutatakse ainult erandlikel juhtudel.

¹⁴⁸ Euroopa Parlament, Kodanikuvabaduste, justiits- ja siseasjade komisjon, Raport soovitustega komisjonile humanitaarviisade kohta (2018/2271(INL)), 04.12.20180, https://www.europarl.europa.eu/doceo/document/A-8-2018-0423_ET.html (15.07.2021)

Analüüsi tulemusel tuvastati, et Šveitsi humanitaarviisade süsteem oleks parim praktika, mida näiteks võtta. Oluline on märkida, et Šveitsi seadusandlus annab selge aluse humanitaarviisade väljastamiseks spetsiaalselt varjupaigataotlejatele, nimelt, kui isiku elu või füüsiline puutumatus on päritoluriigis otseselt, tõsiselt ja konkreetselt ohustatud. Nagu enamik teisi riike, väljastab Šveits varjupaigataotlejatele humanitaarviisana pikaajalisi (D) viisapid (samas võimaldab Šveitsi seadusandlus lisaks väljastada piiratud territoriaalse kehtivusega lühiajalisi Schengeni viisapid muudel humanitaarsetel põhjustel). Menetlus ja kriteeriumid on avalikud, kuigi teavet ei jagata riigiasutuste kaudu, vaid valitsusvälise organisatsiooni Šveitsi Punase Risti kaudu, mille üks ülesanne on nõustada potentsiaalseid taotlejaid. Šveitsis on humanitaarviisa taotlemine tasuta, sarnaselt Poola ja Leedu skeemidele Valgevene kodanike jaoks. Punase Risti poolt Šveitsile antud soovitusel juhatakse tähelepanu vajadusele luua eraldi humanitaarviisade taotlusvorm, samuti sellele, et teave taotluste esitamise võimaluse kohta oleks kättesaadav saatkondade veebilehtedel. Samuti on Punane Rist soovitanud, et taotlusi peaks olema võimalik esitada elektrooniliselt ning taotluste tagasilükkamine peaks olema põhjendatud ja konkreetne, et taotlejad saaksid aru, kas on põhjust edasi kaevata. Belgia näitel võib prognoosimatus vähendada süsteemi tõhusust ning suurendada halduskoormust, kui apellatsioonkaebusi esitatakse tingimuste ebaselguse tõttu.

Eestis reguleerib viisade väljastamist välismaalaste seadus¹⁴⁹. Välismaalaste seaduse kohaselt väljastab Eesti kolme liiki viisapid: lennujaama transiidiviisa; lühiajaline viisa ja pikaajaline viisa. Lennujaama transiidiviisa ja lühiajalise viisa võib väljastada Euroopa Liidu viisaeeskirjas sätestatud alustel. Pikaajalise viisa võib välismaalasele anda ühe- või mitmekordseks ajutiseks Eestis viibimiseks, kehtivusajaga kuni kaksteist kuud. Välismaalaste seadus ei näe ette võimalust viisade väljastamiseks humanitaarsetel kaalutlustel. Samas praktikas tehakse erandeid viisa andmise kriteeriumitest humanitaarsetel kaalutlustel rahvusvahelise kaitse saajate perekonnaliikmete viisade puhul¹⁵⁰.

Uuringus tuvastati, et humanitaarviisade väljastamiseks on kaks õiguslikku võimalust – piiratud territoriaalse kehtivusega lühiajaline Schengeni (C) viisa, mis põhineb EL-i viisaeeskirja artiklis 25 sätestatud erandil¹⁵¹, või pikaajaline (D) viisa, mida reguleeritakse riiklikul tasandil. Lühiajalise viisa puhul viitab välismaalaste seadus EL-i viisaeeskirjale. Humanitaarviisade jaoks võib sobivamaks pidada pikaajalist (D) viisat, kuna seda saab reguleerida riiklikul tasandil ning seda võimalust kasutavad ka enamik teistest humanitaarviisapid väljastavatest EL-i/Schengeni riikidest. Samas võib jätta avatuks võimaluse väljastada mõlemat tüüpi viisapid humanitaarkaalutlustel, nagu seda on teinud mitmed teised riigid (näiteks Šveits, Leedu, Poola).

Šveitsi näidet järgides on oluline, et varjupaigataotlejatele antava humanitaarviisa jaoks oleks olemas konkreetne õiguslik alus. Praegu on välismaalaste seaduse §-s 62 loetletud viisade väljastamise tingimused, mille kohaselt pikaajalise viisa võib anda välismaalasele, kui tal on kehtiv reisidokument; tema Eesti pikaajalise viisa taotlemise eesmärk on põhjendatud; tal on piisavad rahalised vahendid, et katta majutus- ja viibimiskulud Eestis viibimise ajal ning pöörduda tagasi oma päritoluriiki või transiidiriiki; tal on kehtiv terisekindlustusleping.

¹⁴⁹ Riigi Teataja, Välismaalaste seadus, 09.12.2009, <https://www.riigiteataja.ee/akt/108072021017> (31.08.2021)

¹⁵⁰ Euroopa rändevõrgustiku (EMN) Eesti kontaktpunkt, Family Reunification of TCNs in the EU: National Practices, Estonian national report, Tallinn 2016, <https://www.emn.ee/wp-content/uploads/2019/02/ee-20120402-familyreunificationstudy-final-en.pdf> (31.08.2021)

¹⁵¹ Euroopa Parlamendi ja Nõukogu Määrus (EÜ) nr 810/2009, 13. juuli 2009, millega kehtestatakse ühenduse viisaeeskiri (viisaeeskiri), OJ L 243, <https://eur-lex.europa.eu/legal-content/ET/TXT/PDF/?uri=CELEX:32009R0810&from=en> (31.08.2021)

Seda sätet võiks täiendada erisättega humanitaarviisade kohta, nagu seda on tehtud ka muude olukordade puhul (lühiajalise töötamise, õpingute ja iduettevõtluse jaoks). Kõige üldisem versioon uuest sättest võiks anda võimaluse väljastada viisasid humanitaarsetel kaalutlustel, nagu on sätestatud Läti, Leedu ja Poola seadustes. Šveitsi eeskujul võiks uus säte olla ka konkreetsem — näiteks võiks säte täpsustada, et humanitaarviisasid võib anda välismaalastele, kelle puhul on alust arvata, et nad kvalifitseeruvad pagulaseks või täiendava kaitse saajaks rahvusvahelise kaitse andmise seaduse tähenduses¹⁵².

Välismaalaste seaduse kohaselt kehtestab viisaasjade korraldamise praktilised juhised valdkonna eest vastutav minister määrusega kooskõlastatult Välisministeeriumiga¹⁵³. Seetõttu võiks eraldi määrus reguleerida ka humanitaarviisade nõudeid ja menetlust.

Tuginedes kehtivatele asjakohastele määrustele ja võttes näiteks Šveitsi humanitaarviisade süsteemi, peaks määrus sisaldama järgnevaid aspekte:

- Humanitaarviisa taotlemisel esitatavad andmed ja dokumendid
- Menetluse etapid (taotluse ja dokumentide esitamine, vestlus, viisa väljastamine)
- Taotluse hindamise kriteeriumid
- Taotluse menetlemise aeg
- Apellatsiooni esitamise võimalus

Vastavalt riigilõivuseadusele tasutakse pikaajalise viisa taotluse läbivaatamise eest riigilõivu 100 eurot¹⁵⁴. Riigilõivuseadus näeb samuti ette, et isikud, kes sisenevad Eestisse humanitaarsetel kaalutlustel või rahvusvaheliste kohustuste alusel või vastavalt rahvusvahelistele tavadele, on vabastatud riigilõivu tasumisest¹⁵⁵. Seetõttu ei ole vajalik muuta riigilõivuseadust, et luua varjupaigataotlejatele erand, kuid humanitaarviisasid puudutavas määruses või juhistes saatkondadele peaks riigilõivust vabastamise võimalus mainitud olema, et tagada ühtlane praktika.

Humanitaarviisale kvalifitseerumise tingimused võiks tugineda välismaalastele rahvusvahelise kaitse andmise seadusele. Teised riigid, näiteks Šveits, Belgia ja Prantsusmaa, on lisaks võtnud arvesse sidemeid riigiga ning taotlejate erilist haavatavust. Sellisel juhul tuleks need tingimused samuti määruses täpsustada ja avalikustada, et taotlejatel oleks oma taotluse väljavaate kohta selge ettekujutus. Samuti oleks vajalik luua saatkondadele selged suunised, mis aitaksid kaasa ühtlasele praktikale ja hõlbustaksid selgelt põhjendamatute taotluste välja filtreerimist.

Nagu rõhutas Euroopa Parlament 2018. aasta raportis soovitudega humanitaarviisade kohta, peaksid taotlusi hindama varjupaigaõiguses pädevad töötajad. Selle tagamiseks oleks mõistlik võtta eeskjuu Belgia süsteemist, kus humanitaarviisade taotlused edastatakse hindamiseks riiklikele asutustele, mis menetlevad varjupaigataotlusi. Eesti puhul on selleks asutuseks Politsei- ja Piirivalveamet, seega võiks humanitaarviisade taotlused edastada Politsei- ja Piirivalveametile, mis menetleks taotlusi ja teeks otsuseid.

¹⁵² Riigi Teataja, Välismaalasele rahvusvahelise kaitse andmise seadus, § 4, 14.12.2005, <https://www.riigiteataja.ee/akt/117062020004> (31.08.2021)

¹⁵³ Riigi Teataja, Välismaalaste seadus, § 101, 09.12.2009, <https://www.riigiteataja.ee/akt/108072021017> (31.08.2021)

¹⁵⁴ Riigi Teataja, Riigilõivuseadus, § 276 (2), 10.12.2004, <https://www.riigiteataja.ee/akt/125062021005> (31.08.2021)

¹⁵⁵ Riigi Teataja, Riigilõivuseadus, § 39 (2), 10.12.2004, <https://www.riigiteataja.ee/akt/125062021005> (31.08.2021)

Arvestades Eesti saatkondade piiratud arvu maailmas, oleks mõistlik rakendada taotluste eelhindamist sarnaselt Šveitsiga. On selge, et taotlejatel on taotlusprotsessi jooksul vaja isiklikult külastada Eesti saatkonda, et anda sõrmejäljed ning sisestada viisa reisidokumenti, kuid eelhindamise etapi saaks läbi viia elektrooniliselt. See annaks taotlejatele aimu oma võimalustest ja ennetaks asjatuid ohtlikke reise. Oluline on ka saatkondade veebilehtedel avaldada info humanitaarviisade taotlemise võimaluse, nõuete, tingimuste ja korra kohta. Täpse info kättesaadavaks tegemine muudab menetluse tulemuse taotlejate jaoks prognoositavamaks ning vähendab seega ametiasutuste halduskoormust info jagamisel ja taotluste menetlemisel.

Kokkuvõtteks oleks soovitatav välismaalaste seadust täiendada sättega, mille võiks sõnastada järgmiselt:

§ 62⁶. Viisa väljastamine humanitaarkaalutlustel

Välismaalasele võib anda pikaajalise või lühiajalise viisa riiki sisenemiseks humanitaarsetel põhjustel, riigi huvidest või rahvusvahelistest kohustustest tulenevalt.

Seda sätet võiks veel täpsemaks muuta järgnevalt: «Välismaalasele, kes ei vasta üldistele viisanõuetele, võib põhjendatud juhtudel anda viisa Eestisse sisenemiseks humanitaarsetel kaalutlustel, eriti, kui on alust arvata, et ta kvalifitseerub pagulaseks või täiendava kaitse saajaks välismaalastele rahvusvahelise kaitse andmise seaduse tähenduses».

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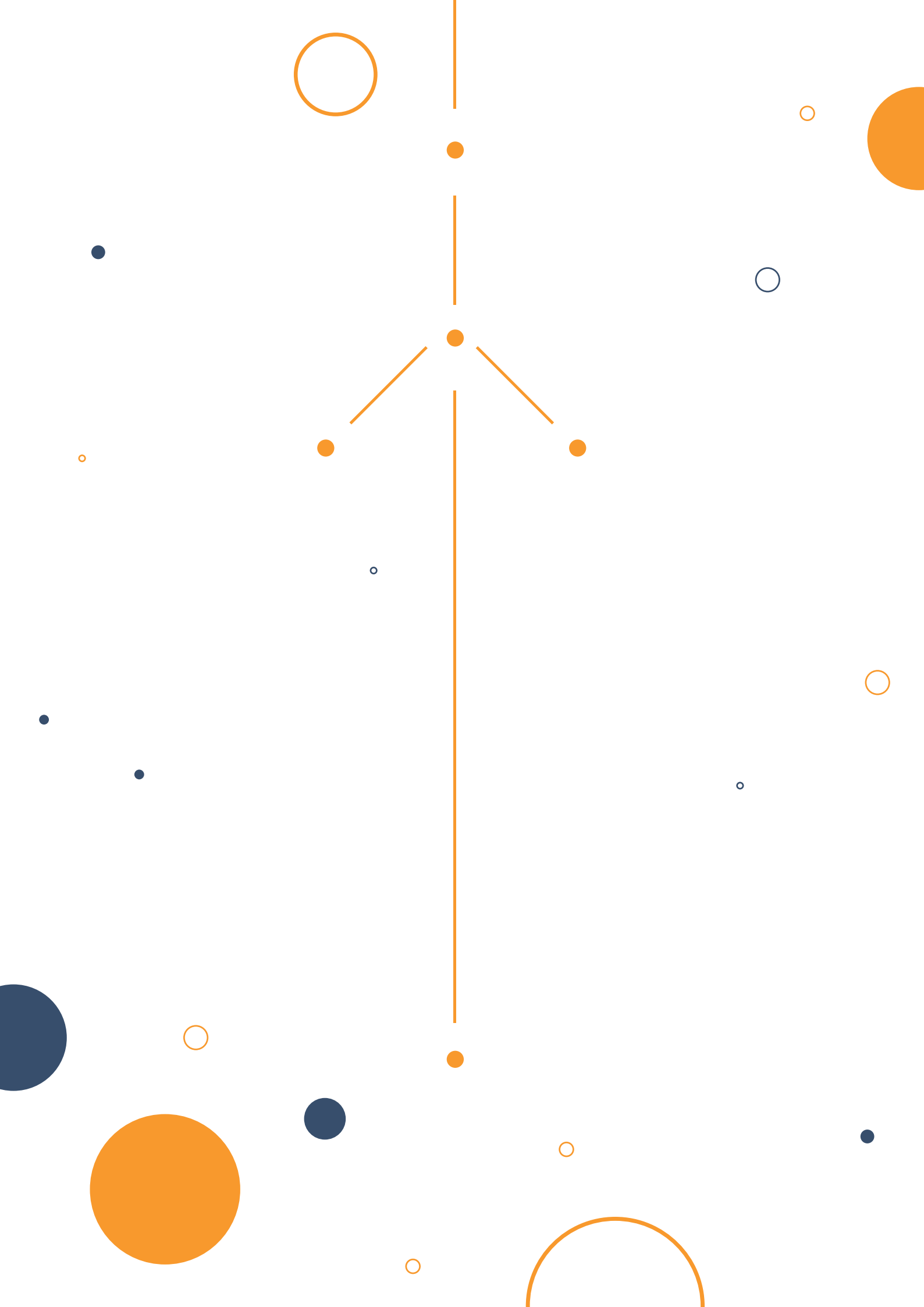
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