



**PROTECTION STATUSES
COMPLEMENTING E.U.
LEGISLATION ON
IMMIGRATION AND ASYLUM
IN PORTUGAL**



**Protection Statuses
complementing E.U. legislation
on Immigration and Asylum
in Portugal**

**European Migration Network
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PORTUGAL
NATIONAL CONTACT POINT
FOR THE EUROPEAN MIGRATION NETWORK



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PROTECTION STATUSES

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Executive Summary

This report provides an overview of the non-harmonised Protection Statuses granted to third country nationals in Portugal. To this end, it is necessary to distinguish between the statuses that have been harmonised with the EU legal framework pertaining to Immigration and Asylum, namely by means of the transposition of [Directives Nos. 2001/55/EC, by the Council, dated 20 July](#)¹ and [2004/83/EC, by the Council, dated 29 April](#)² to the national legal framework, and the statuses that are derived exclusively from national laws, which are not covered by the aforesaid directives, now known as “non-harmonised protection statuses”.

In accordance with the specifications that served as the basis for this study,³ the following elements of national legislation were identified as being harmonised protection statuses:

- International Protection (Status of Refugee and Subsidiary Protection) – present in [Law No. 27/2008, dated 30 June](#),⁴ (Asylum Law), which establishes the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum seekers, refugees and subsidiary protection, transposing Directives Nos. [2004/83/EC, by the Council, dated 29](#)

¹ Regarding the minimum norms in matters of granting temporary protection in the case of a massive influx of displaced individuals and measures aimed at ensuring a balanced division of efforts by Member States hosting such individuals and supporting the consequences resulting from this hosting. Directive No. 2001/55/EC, by the Council, dated 20 July, accessed on 17 August 2009, at the following website:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:PT:PDF>

² Which establishes the minimum norms regarding the conditions to be fulfilled by third country nationals or stateless individuals to be able to benefit from the status of refugee or individuals who, for other reasons, require international protection, as well as the minimum norms regarding the respective status and the contents of the protection granted.

³ Migrapol, European Migration Network, Doc. 168: *Specifications for EMN Study – The different national practices concerning granting of non-EU harmonised protection statuses*. Final version: 11th May 2009.

⁴ Law No. 27/2008, dated 30 June, which establishes the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum seeker, refugee and subsidiary protection, transposing Directives Nos. 2004/83/EC, by the Council, dated 29 April, and 2005/85/EC, by the Council, dated 1 December, to the Portuguese legal framework. Accessed on 17 August 2009, at the following website:
<http://www.dre.pt/pdf1s/2008/06/12400/0400304018.pdf#1>

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[April](#),⁵ and [2005/85/EC, by the Council, dated 1 December](#)⁶ to the Portuguese legal framework;

- Temporary Protection – regulated by [Law No. 67/2003, dated 23 August](#),⁷ which transposes [Directive No. 2001/55/EC, by the Council, dated 20 July](#)⁸ to the Portuguese legal framework.

Apart from the statuses that have been harmonised at the level of the EU it is also necessary to consider the following national regimes for protection (non-harmonised statuses);

- Status of refugee for activities in favour of democracy, freedom and human rights – Granting the right to asylum on the basis of persecution or the threat of persecution, as a consequence of the individual's activities in favour of democracy, social and national liberty, peace amongst peoples, freedom and human rights - Paragraph 1 of Art. 3 of the Asylum Law ([Law No. 27/2008, dated 30 June](#)) – which expands the presuppositions for granting the status of refugee contained in Directive No. [2004/83/EC, by the Council, dated 29 April](#);
- Subsidiary protection for humanitarian reasons – Subsidiary protection attributed to individuals who are not eligible for being granted the right to asylum, in situations of a systematic violation of human rights in their country of

⁵ Directive No. 2004/83/EC, by the Council, dated 29 April, which establishes the minimum norms regarding the conditions to be fulfilled by third country nationals or stateless individuals to be able to benefit from the status of refugee or individuals who, for other reasons, require international protection, as well as the minimum norms regarding the respective status and the contents of the protection granted. Accessed on 17 August 2009, at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:PT:PDF>

⁶ Directive No. 2005/85/EC, by the Council, dated 1 December, regarding the minimum norms applicable to the procedures for granting and withdrawing the status of refugee. Accessed on 17 August 2009, at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2005L0085:20060102:PT:PDF>

⁷ Accessed on 17 August 2009, at the following website:

http://www.cidadevirtual.pt/cpr/lei67_2003.html

⁸ Directive 2001/55/EC, by the Council, dated 20 July, regarding the minimum norms in matters concerning the granting of subsidiary protection in case of a massive influx of displaced individuals and measures aimed at ensuring a balanced division of efforts by Member States hosting such individuals and supporting the consequences resulting from such hosting. Accessed on 17 August 2009, at the following website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:PT:PDF>

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nationality or where they habitually reside - Art. 7, Paragraph 1, of the Asylum Law ([Law No. 27/2008, dated 30 June](#)), thus expanding the scope of individuals who are eligible for the purposes of subsidiary protection, as compared to the regime envisaged by Directive No. [2004/83/EC, by the Council, dated 29 April](#). Apart from this status, it is also important to note that the concept of “serious harm” has been enshrined in Portuguese law as being a “serious threat against the life or physical integrity of the applicant” (Art. 7, Paragraph 2, Line c) of the asylum law), expanding the scope of a mere “serious individual threat”, as defined in Art. 15 of Directive No. 2004/83/EC;

- Granting residence permits waiving the need for a residence visa in special situations, or within the scope of an exceptional regime, for humanitarian reasons, granting the status of resident in Portugal, under the terms, respectively, of Art. 122 and Art. 123 of the Foreigners’ Law ([Law No. 23/2007, dated 4 July](#));
- Temporary stay visas, issued in favour of foreign citizens requiring hospital treatment, under the terms of Art. 54, Paragraph 1, Lines a) and g) of the Foreigners’ Law.

In general terms, with regard to the harmonised protection statuses – Status of Refugee, Temporary Protection and Subsidiary Protection – it can be observed that the Portuguese national legal framework applies norms that are more favourable than the minimum rules established by [Directives Nos. 2001/55/EC, by the Council, dated 20 July](#)⁹ and [2004/83/EC, by the Council, dated 29 April](#). Examples of this include: the expansion of the eligibility conditions for accessing the statuses in question and the fact that beneficiaries of the status of subsidiary protection and the status of refugee are

⁹ Directive No. 2001/55/EC, by the Council, dated 20 July, regarding the minimum norms in matters concerning the granting of subsidiary protection in case of a massive influx of displaced individuals and measures aimed at ensuring a balanced division of efforts by Member States hosting such individuals and supporting the consequences resulting from such hosting. Accessed on 17 August 2009, at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:PT:PDF>

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granted residence permits valid for a longer period than the minimum periods defined by EU directives.

In this regard, it is also important to note that Portuguese legislation pertaining to immigration and asylum pays special attention to safeguarding the fundamental rights of individuals in situations of risk or a lack of protection in their countries of origin, especially for humanitarian reasons. These specific characteristics of Portuguese legislation have been included in the definition of Protection¹⁰ for the purposes of this study, and must be viewed as non-harmonised protection statuses in this context.

The non-harmonised protection statuses have been defined over the course of this study, along with the legal regime that frames them and conditions for access. A distinction has been made between protection statuses in the context of asylum (access to the status of refugee and subsidiary protection) and in the context of immigration (granting residence permits in special situations and Temporary Stay Visas).

This report will also enumerate the rights associated with each of the non-harmonised protection statuses, in terms of period of residence in the country, obligations to renew residence permits, access to permanent residence, medical assistance and social benefits, education and access to the labour market, the right to family reunification and, finally, access to Portuguese nationality.

Some general data is presented in the section dedicated to a statistical overview. However, that fact that it is impossible to separate the data on the basis of the reasons why the different statuses in question were granted hinders a more detailed analysis.

Finally, this study presents opinions regarding granting non-harmonised protection statuses, particularly the views of representatives of institutions that work directly with matters pertaining to Immigration and Asylum, namely the [Aliens and Borders Service \(SEF\)](#)¹¹, which is responsible for implementing these policies and applying the legislation governing immigration and asylum, the High Commission for Immigration

¹⁰ UNHCR Master Glossary regarding Refugees. Accessed on 5 August 2009, at the following website: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=42ce7d444>

¹¹ Accessed on 15 August 2009, at the following website: <http://www.sef.pt/portal/v10/PT/asp/page.aspx>

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and Intercultural Dialogue (ACIDI), the [Portuguese Council for Refugees](#) (CPR), a strategic partner of the Portuguese state in terms of hosting asylum seekers and assisting in the integration of refugees,¹² and the [National Focal Point of the RAXEN Network](#)¹³ of the [Agency for Fundamental Rights](#).¹⁴

¹² Accessed on 15 August 2009, at the following website:
<http://www.cpr.pt/>

¹³ Since 2001 the National Focal Point of the RAXEN Network (European Racism and Xenophobia Network) has been Númena – Centre for Research in the Social and Human Sciences. Accessed on 15 August 2009, at the following website:
<http://www.numena.org.pt/>

¹⁴ Accessed on 15 August 2009, at the following website:
http://www.fra.europa.eu/fraWebsite/home/home_en.htm

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1. Introduction: Objectives and Methodology

The purpose of this study is to identify and analyse the Portuguese national protection statuses that are not harmonised with EU legislation. To this end, Non-Harmonised Protection statuses are considered to be those statuses that go beyond or complement the legal regimes for protection consecrated in [Directives Nos. 2001/55/EC, by the Council, dated 20 July](#) and [2004/83/EC, by the Council, dated 29 April](#).

The protection statuses granted in Portugal are based on a set of international legal instruments, including the [Geneva Convention dated 28 July 1951](#), regarding the status of refugee;¹⁵ EU agreements such as the European Agreement on the [Abolition of Visas for Refugees \(1959\)](#);¹⁶ and national legislation – especially the [Constitution of the Portuguese Republic](#),¹⁷ the [Asylum Law](#) and the [Foreigners' Law](#).

For the purposes of identifying and selecting information, this study consulted the relevant national legislation as well as the diverse EU Directives that establish the minimum norms for harmonising protection statuses.

The sources that were used have been cited over the course of this study and are listed in Annexe III of this report. No national studies regarding this theme were identified.

For the purposes of collecting opinions regarding the practical implementation of the procedures pertaining to granting national protection statuses, in addition to the specific knowledge of the team at the National Contact Point (NCP) of the European Migration Network (EMN), the authors of this study also interviewed technical staff at the CPR and jurists who work in the field of immigration in Portugal.

¹⁵ Geneva Convention, dated 28 July 1951, regarding the status of refugees, ratified by means of Decree-Law No. 43201, dated 1 October 1969 (*Diário do Governo*, Series I, No. 229 dated 1 October 1960). Accessed on 17 August 2009, at the following website:
http://www.cidadevirtual.pt/cpr/asilo1/conv_0.html

¹⁶ European Agreement on the Abolition of Visas for Refugees, approved for ratification by Decree No. 75/81 dated 16 June (*Diário da República* No. 136, Series I, dated 16 June 1981). Accessed on 17 August 2009, at the following website:
http://www.cidadevirtual.pt/cpr/asilo1/75_81.html

¹⁷ Accessed on 17 August 2009, at the following website:
<http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>.

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No difficulties worthy of note were encountered while preparing this study and it was possible to approach all the aspects outlined in the specifications, except perhaps in the context of the statistical overview, owing to the limited number of individuals benefiting from the status of asylum and subsidiary protection in Portugal, as well as the difficulties involved in obtaining detailed data about the regimes in question, differentiated on the basis of the reasons why protection was granted.

This study was prepared within the scope of the tasks of the European Migration Network,¹⁸ whose national contact point is ensured by the SEF and co-ordinated by Dr. João Ataíde, with the participation of Ana Cristina Barateiro, Maria José Torres, Maria Alexandra Bento and Pedro Dias. Edite Rosário and Tiago Santos – researchers at Númena – Centre for Research in Social and Human Sciences¹⁹ co-drafted this report.

¹⁸ Accessed on 17 April 2009, at the following website:
<http://emn.sarenet.es/html/index.html>.

¹⁹ Accessed on 17 April 2009, at the following website:
<http://www.numena.org.pt/>.

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2. Protection Statutes in Portugal

In addition to the protection statuses established by [Directives Nos. 2001/55/EC, by the Council, dated 20 July](#)²⁰ and [2004/83/EC, by the Council, dated 29 April](#), other legal regimes exist in Portugal, which go beyond the scope of the said directives, now known as “non-harmonised protection statuses”, as defined for the purposes of this study.

2.1. Protection statuses harmonised with Council Directives Nos. 2001/55/EC and 2004/83/EC

2.1.1. International Protection (Statuses of Refugee and Subsidiary Protection)

The Asylum Law ([Law No. 27/2008, dated 30 June](#)) establishes the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum seeker, refugee and subsidiary protection, transposing Directives Nos. [2004/83/EC, by the Council, dated 29 April](#) and [2005/85/EC, by the Council, dated 1 December](#) to the Portuguese legal framework.

It is important to note that Portuguese legislation has a more generous scope as compared to the minimum norms established by Directive No. [2004/83/EC, by the Council, dated 29 April](#) with regard to the period of validity of the Residence Permit (RP) granted to individuals benefiting from the status of refugee and subsidiary protection. More specifically, the said Directive envisages that refugees should be issued residence permits valid for at least three years while beneficiaries of the status of subsidiary protection should receive a residence permit valid for at least one year while Portuguese national legislation stipulates that these RPs be granted for an initial period of five and two years, respectively.

²⁰ Directive No. 2001/55/EC, by the Council, dated 20 July, regarding the minimum norms in matters concerning the granting of subsidiary protection in case of a massive influx of displaced individuals and measures aimed at ensuring a balanced division of efforts by Member States hosting such individuals and supporting the consequences resulting from such hosting. Accessed on 17 August 2009, at the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:PT:PDF>

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2.1.2. Temporary Protection

[Law No. 67/2003, dated 23 August](#) regulates the regime for granting temporary protection in the case of a massive influx of displaced individuals who cannot return to their country of origin in the short term. This law transposes [Directive No. 2001/55/EC, by the Council, dated 20 July](#) to the Portuguese legal framework.

The norms pertaining to temporary protection in national legislation have an identical orientation as that proposed in the aforesaid Directive, namely in terms of granting temporary protection, application and duration, Portugal's obligations with regard to the beneficiaries of the said status (i.e. with regard to conditions for their stay, access to housing, healthcare, education, work and family reunification), access to the process of asylum in the context of temporary protection, return and subsequent measures when the protection status in question comes to an end and the modalities for exclusion from this status.

2.2. National Statuses

In addition to the legal regime implemented by the transposition of [Directives Nos. 2001/55/EC, by the Council, dated 20 July](#) and [2004/83/EC, by the Council, dated 29 April](#) to the Portuguese legal framework, in Portugal the following legislation can be classified as non-harmonised protection statuses:

2.2.1. Status of Refugee for activities in favour of democracy, freedom and human rights

In the context of recognising the right to asylum, Portuguese legislation provides broader conditions of eligibility for accessing this status, allowing that the status of refugee be granted to foreign citizens and stateless individuals who are being persecuted or are seriously threatened by persecution as a consequence of their activities in favour

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of democracy, social and national liberty, peace amongst peoples, freedom and human rights. This right, outlined in Paragraph 1 of Art. 3 of [Law No. 27/2008 dated 30 June](#), is derived from the contents of the [Constitution of the Portuguese Republic](#) (Paragraph 8 of Art. 33).

Thus, the Portuguese national legal framework has instituted a more favourable legal regime for determining whether individuals are eligible to benefit from the status of refugee as compared to the regime defined in Directive [2004/83/EC, by the Council, dated 29 April](#).²¹

2.2.2. Subsidiary Protection for Humanitarian Reasons

Expanding the conditions for eligibility for granting the status of Subsidiary Protection, as defined in Directive No. [2004/83/EC, by the Council, dated 29 April](#), the asylum law envisages that foreign nationals and stateless individuals can be attributed a Residence Permit for humanitarian reasons, in situations of a serious lack of security as a result of armed conflicts or the systematic violation of human rights, which prevent such individuals from returning to the country of their nationality or where they habitually reside (Paragraph 1 of Art. 7 of the Asylum Law).

In this context, it is also important to note the substantial expansion of the concept of “serious harm”, which, in national legislation is defined as a “serious threat to the life or physical integrity of the applicant” (Art. 7, Paragraph 2, Line c) of the Asylum Law), instead of the mere “serious individual threat” that is stipulated in Art. 15 of Directive No. 2004/83/EC.

²¹ Art. 3 of Directive No. 2004/83/EC, by the Council, dated 29 April, envisages the application, on the part of Member States, of more favourable norms to determine the individuals who meet the conditions for benefiting from the status of refugee or who are eligible for subsidiary protection, as well as to determine the contents of the protection, as long as it is compatible with the said Directive.

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Likewise in this case, Portuguese legislation has established more favourable conditions with regard to individuals who are eligible for subsidiary protection than the regime defined in Directive No. [2004/83/EC, by the Council, dated 29 April](#).²²

2.2.3. Residence Permits and Temporary Stay Visas in special situations

Within the scope of the Foreigners' Law ([Law No. 23/2007, dated 4 July](#)), from the perspective of this study, it is important to note that Residence Permits are granted and Temporary Stay Visas are issued in certain special situations, specified by law, respectively in Art. 122, Paragraph 1, Lines f), g), n) and o), Art. 123, Paragraph 1, Line b) and Art. 54, Paragraph 1, Lines a) and g) of the aforesaid law.

The status of resident can be granted without a residence visa in exceptional circumstances, in certain situations that seek to safeguard relevant interests in the area of humanitarian protection. For the purposes of this study, a residence permit can be issued even in the absence of a residence visa to third country nationals or stateless individuals in the following situations²³, listed in Article 122:

- Individuals who have ceased to benefit from the right to asylum in Portugal owing to the fact that the reasons for which they were granted the said protection no longer exist [Art. 122, line f)];

²² Art. 3 of Directive No. 2004/83/EC, by the Council, dated 29 April, envisages the application, on the part of Member States, of more favourable norms to determine the individuals who meet the conditions for benefiting from the status of refugee or who are eligible for subsidiary protection, as well as to determine the contents of the protection, as long as it is compatible with the said Directive.

²³ Law No. 23/2007, dated 4 July, also enumerates other situations in which the requirement for foreign nationals to hold a residence visa in order to obtain a residence permit can be waived [Paragraph 1 of Art. 122, from line a) to q)], which include, as an example, minors born in Portugal who have remained in the country and are frequenting pre-school education or basic, secondary or professional education; adults born in the national territory, who have not absented themselves from the country or who have lived here from when they were younger than 10 years of age, children of holders of residence permits who have become adults and have habitually resided in the national territory since 10 years of age. Accessed on 20 August 2009, at the following website: <http://www.sef.pt/documentos/56/NOVA%20LEI%20ESTRANGEIROS.pdf>.

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- Individuals who suffer from an illness that requires prolonged medical assistance in Portugal which prevents them from returning to their country, in order to avoid risks for the health of the individual in question [Art. 122, line g)];
- Individuals who are or have been victims of a serious or very serious penal or administrative offence in terms of labour relations, translating into conditions of a lack of social protection, exploitation in terms of wages and working hours, corroborated by the General Labour Inspectorate, as long as they have reported the infractions to the competent authorities and collaborate with them [Art. 122, line n)];
- Individuals who have benefited from a residence permit (Art. 109) under the terms of the legal regime regarding protection for victims of penal infractions linked to human trafficking or aiding and abetting illegal immigration [Art. 122, line o)].

Beneficiaries can thus access the status of foreigner resident in Portugal. Such individuals benefit from the right to exercise a subordinate or independent professional activity, access to education and schooling, professional guidance and training, healthcare and the right to access courts. Similarly, they are also guaranteed coverage by dispositions that ensure equal treatment for foreign citizens, namely in terms of social security, tax benefits, trade union membership, the recognition of diplomas, certificates and other professional qualifications or access to goods and services available to the public, as well as the application of dispositions that grant them special rights (Art. 83 of the [Foreigners' Law](#)).

On the other hand, for situations that are not covered by the aforesaid legal regime (stipulated in Art. 122), the Foreigners' Law also envisages an extraordinary regime for granting residence permits. On an exceptional basis, on the initiative of the Minister for the Internal Administration or by means of a proposal by the National Director of the [Aliens and Borders Service](#) (SEF) a residence permit can be granted to foreign nationals who do not fulfil the requirements stipulated in the general law. This status can be granted on the grounds of reasons of national interest, public interests or humanitarian interests, and it is this last category that is relevant for the purposes of this study.

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Finally, for the purposes of this study, the Temporary Stay Visa is a long term consular visa that can be issued in favour of third country nationals who require medical treatment in officially accredited health establishments and their family members, as companions (Art. 54, Paragraph 1, Lines a) and g)).

Although it is a short term status, in the context of this study one can also note the existence of a special visa (Art. 68 of the Foreigners' Law) for the purposes of entry and a temporary stay in the country issued to foreign nationals who do not meet the legal requirements necessary for the effect. This visa can be granted at border posts for humanitarian reasons or reasons of national interest and is only valid for the national territory. Given its characteristics, this regime is of an instrumental nature with regard to eventually accessing any of the protection statuses envisaged in national legislation.

2.3. General Conditions for Granting Protection Statuses

2.3.1. Status of Refugee for Activities in Favour of Democracy, Freedom and Human Rights

In addition to the conditions outlined in Directive No. [2004/83/EC, by the Council, dated 29 April](#), the Asylum Law makes it possible for foreign nationals and stateless individuals who are being persecuted or are seriously threatened by persecution as a consequence of their activities in favour of democracy, social and national liberty, peace amongst peoples, freedom and human rights to access the status of refugee. This is a specific feature of Portuguese national legislation, consecrated by the [Constitution of the Portuguese Republic](#).

The application for asylum and the subsequent decision making process entirely follow the procedure legally stipulated by national legislation and hence there are no specificities to be mentioned in this regard.

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2.3.2. Subsidiary Protection for Humanitarian Reasons

According to Portuguese national legislation, the violation of human rights in the country of the applicant's nationality constitutes grounds for granting the status of subsidiary protection. The granting of this subsidiary status to foreign nationals and stateless individuals who do not meet the necessary conditions for granting the right to asylum, on the basis of the aforesaid grounds, reinforces the protection of the applicants and expands the scope of the legal regime outlined in [Directive No. 2004/83/EC, by the Council, dated 29 April](#), which does not contain these conditions.

While ascertaining the conditions to access subsidiary protection the rules adopted within the scope of this Directive were used, as were the reasons for exclusion and refusal mentioned in this European Directive.

The Minister for the Internal Administration is responsible for decisions regarding the request for protection (Art. 29), liable to judicial appeals before the administrative courts, within a period of fifteen days, with a suspensive effect. The judicial decision is issued within a period of fifteen days (Art. 30).

It can also be noted that the regimes for protection envisaged in the Asylum Law do not hinder the use of other means of protection contained in the Foreigners' Law, as has been mentioned in this study²⁴.

Moreover, it is important to mention that the Portuguese national legislation proceeded to substantially expand the concept of "serious harm", which serves as a basis for granting the status of subsidiary protection. In fact, the asylum law classifies "serious harm" to be a "serious threat to the life or physical integrity of the applicant" (Art. 7, Paragraph 2, Line c) of the asylum law), instead of requiring a concrete "serious individual threat", as stipulated in Art. 15 of Directive No. 2004/83/EC.

²⁴ On the other hand, it is possible to present a subsequent application after a decision of refusal if there are new elements of proof to access the right to international protection. In case an evaluation of this new application also concludes in a verdict of inadmissibility, the applicant is notified about the reasons for the decision, as well as the possibility of a judicial appeal, before the administrative courts, under general terms and with a merely devolutive effect. When the applicant is present in national territory, he or she is notified of the decision of refusal and that they must leave the country within a period of 20 days, after which such individuals are subject to the juridical regime for the entry, stay, exit and removal of foreigners from the national territory.

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2.3.3. Residence Permits and Temporary Stay Visas in special situations

In the context of long term statuses, for the purposes of this study, the Portuguese Immigration Law allows Residence Permits²⁵ to be granted, waiving the requirement of a residence visa, in special situations, namely in cases where individuals have ceased to benefit from the right to asylum; who suffer from an illness that requires prolonged medical assistance; who are victims of labour offences; who have benefited from a residence permit under the terms of the article allowing such permits to be issued to victims of human trafficking (Art. 122)²⁶; as well as for humanitarian reasons, in the case of extraordinary situations to which the dispositions outlined in the law regulating the right to asylum are not applicable (Art. 123).

In order to benefit from this status, third country nationals or stateless individuals in the aforesaid situations must meet certain requirements, namely: the absence of any fact that, if known by the competent authorities, would prevent the granting of the visa; the absence of a conviction for a crime that in Portugal would be punishable by a sentence depriving the individual of freedom for a duration of more than one year; the absence of indications in the Schengen Information System and the Integrated Information System of the SEF to not admit the individual in question.

Without prejudice to criminal responsibility or the dispositions of international conventions ratified by Portugal, the eventual removal of third country nationals who have benefited from residence permits is done exclusively by judicial means (an autonomous judicial measure of expulsion), on the grounds of being a threat to national security or public order; activities that constitute a threat to the interests or the dignity of the Portuguese state or its citizens; abusive interference in exercising the rights of political participation reserved for national citizens; practising acts that, if they were known to the Portuguese authorities, would have been grounds for preventing the foreign national from entering the country; serious reasons to believe that grave criminal

²⁵ RP valid for a period of one year and renewable for successive periods of two years. (Art. 75 of Law No. 23/2007, dated 4 July). Accessed on 20 August, at the following website:

<http://www.sef.pt/documentos/56/NOVA%20LEI%20ESTRANGEIROS.pdf>

²⁶ Art. 122 of Law No. 23/2007, dated 4 July, envisages a series of other situations in which the requirement of foreign nationals having a residence visa in order to obtain a residence permit can be waived, which are not relevant for the purposes of this study regarding non-harmonised protection statuses.

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acts have been committed or that there was an intention to commit such acts, namely in the territory of the European Union (Art. 134).

Decisions of expulsion are subject to judicial appeals and such appeals do not have the effect of suspension. A foreign national who has been expelled is prohibited from entering Portugal for a period of no less than five years (Art. 144 of the Foreigners' Law).

On the other hand, the following foreign citizens cannot be expelled: those who have been born in Portuguese territory and reside here; those who are effective guardians of minor children with Portuguese nationality residing in Portugal; who have minor children, nationals of a third country, resident in Portuguese territory, over whom they effectively exercise parental authority, being responsible for their sustenance and education; as well as all those individuals who have been living in Portugal from before the age of 10 years and reside here (Art. 135).

For the purposes of this study, the consular Temporary Stay Visa is issued in favour of third country nationals who require medical treatment in officially accredited healthcare establishments, as well as to the family members of the patient who will assist and accompany the patient during the course of the medical treatment in Portugal (Art. 54, Paragraph 1, Lines a) and g) of the Foreigners' Law). The territorial validity of this visa is limited to Portugal for a period of three months, extendible whenever justified, up to one year, and extendible for similar periods.

The beneficiaries of this visa are subject to the legislation applicable to foreigners, in general terms; namely with regard to the regime for the removal of foreigners in an irregular situation, in case the validity of the visa has expired without being extended or the lack of any other legal element to rectify the situation of being in the national territory in an irregular manner.

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3. Procedures and rights

3.1. Procedures for granting protection statuses

3.1.1. Status of Refugee for activities in favour of democracy, freedom and human rights and Subsidiary Protection for Humanitarian Reasons

The expansion²⁷ of the scope for granting asylum and subsidiary protection (under the aforesaid terms) did not have significant implications with regard to procedures or rights, defined by the common regime.

The procedure for asylum comprises two phases: that of the admissibility of the application for asylum (Art. 10 to Art. 26 of the Asylum Law) and the decision regarding granting asylum (Art. 28 to Art. 31). The phase of the admissibility of the application consists of a preliminary evaluation of the application for asylum and the grounds for the application, aimed at quickly deciding whether the application should be accepted or refused. National legislation protects applicants and family members accompanying the applicant, preventing any administrative procedure or criminal case for irregular entry into the national territory instituted against the applicant or accompanying family members (Art. 12 of the Asylum Law).

The decision about whether or not to accept the application for asylum is the responsibility of the National Director of the SEF. The application is deemed to have been accepted in case no decision is made during the stipulated period (Art. 20). The applicant is notified of the decision within a period of 48 hours, and, in case it is not admissible, the notification must state that the applicant has to leave the country within a period of 20 days, on pain of an immediate expulsion once this deadline is over. In

²⁷ By means of the Asylum Law, which transposed Directive No. [2004/83/EC, by the Council, dated 29 April](#), which establishes the minimum norms regarding the conditions to be met by third country nationals or stateless individuals to be able to benefit from the status of refugee or of an individual who, for other reasons, requires international protection, as well as those regarding the respective status and contents of the protection granted.

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case the applicant does not comply, the SEF must initiate a process with a view to immediately expelling the individual in question under the terms stipulated for the legal regime applicable for the entry, stay and removal of foreigners from Portuguese national territory (Art. 21). The decision is liable to a judicial appeal before the administrative courts, with a suspensive effect. The judicial decision is issued within a period of eight days.

In case the application for asylum is accepted, the case is then processed. To this end, the applicants benefit from a provisional RP, valid for a period of four months, renewable for identical periods until a final decision is issued. The case is processed by the SEF, within a period of 60 days, extendable for similar periods, until a maximum limit of 180 days (Art. 28). The applicant is notified of the proposal to grant or refuse asylum and in the case of the latter can react within a period of 5 days. The decision is liable to judicial appeal before the administrative courts, with a suspensive effect. The judicial decision is proffered within a period of 15 days. If asylum is refused, the applicant can remain in Portugal for a transitional period that must not exceed 30 days. Once this period is over, the applicant is subject to the general regime applicable to foreign nationals (Art. 31).

Individuals benefiting from the status of refugee and subsidiary protection enjoy the same rights and are subject to the same duties as any other foreign national resident in Portugal, on the condition that they do not infringe the dispositions of [Law No. 27/2008, dated 30 June](#). They are thus obliged to uphold laws and regulations as well as comply with measures aimed at maintaining public order (Art. 65). The asylum law defines the material conditions for hosting such individuals and providing them healthcare, as well as the administrative and jurisdictional guarantees that are applicable to individuals benefiting from the status of refugee and subsidiary protection.

3.1.2. Residence Permits and Temporary Stay Visas in special situations

Residence Permits and Temporary Stay Visas in special situations have been defined in the so-called Foreigners' Law ([Law No. 23/2007, dated 4 July](#)).

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RPs issued in special situations are aimed at third country nationals who do not meet the conditions for accessing the status of resident required by the general regime governing immigration in Portugal, namely, when they do not possess the necessary residence visa issued by a Portuguese consular entity abroad. Even in cases where individuals do not have this essential requisite, Portuguese legislators have considered that there could be extenuating circumstances, i.e. of a humanitarian nature, for such individuals to access the status of resident²⁸ - contained in articles 122 and 123 of the Foreigner's Law.

Once the statuses in question have been attributed, beneficiaries enjoy the same rights and are subject to the same duties as any other foreign national resident in Portugal. In this context, as examples, one can highlight the right to access education and schooling, to exercise subordinate or independent professional activities, access to professional guidance and training, healthcare and access to the legal system and courts. Similarly, they are also guaranteed the application of dispositions that ensure equal treatment for foreign nationals, namely in terms of social security, tax benefits, trade union membership, the recognition of diplomas, certificates and other professional qualifications or access to goods and services available to the public, as well as the application of dispositions that grant them special rights.²⁹ These special rights will be examined in the next section.

In order to obtain a residence permit without a residence visa under the aforesaid terms, applicants must have housing, means of subsistence, a certificate testifying to the absence of a criminal record issued by the country of origin and a valid passport. They are also subject to a Portuguese criminal background check by the SEF (Art. 61, Paragraph 1 of Regulative Decree No. 84/2007, dated 5 November).

Applicants who have ceased to benefit from the right of asylum in Portugal do not need to present a passport and a criminal background check from their country of origin (Art. 61, Paragraph 7). In the case of applicants suffering from an illness that requires

²⁸ Apart from this situation, the law also envisages other kinds of special situations in which a temporary residence permit can be granted in the absence of a residence visa (Art. 122).

²⁹ Ombudsman (2008) *Relatórios Sociais: Imigração, Direitos das Mulheres; Infância e Juventude; Protecção da Saúde; Sistema Penitenciário*. Lisbon: Provedoria de Justiça. Accessed on 21 August 2009, at the following website: http://www.provedor-jus.pt/restrito/pub_ficheiros/RelatoriosSociais2008.pdf

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prolonged medical treatment, they are required to present the relevant medical certificate issued by the respective healthcare establishment (Art. 61, Paragraph 8). Applicants who have been victims of a penal or administrative infraction in the area of labour are required to present the respective denunciation and confirmation of their collaboration with the investigation on the part of the authority responsible for verifying Labour Conditions or a competent judicial authority (Art. 61, Paragraph 14). Finally, in the case of victims of human trafficking or actions aiding and abetting illegal immigration it is necessary to present a statement by the judicial authorities declaring that the need for collaboration has ceased or a certificate testifying to the judicial decision (Art. 61, Paragraph 15).

In terms of the exceptional regime for accessing the status of resident on humanitarian grounds (Art. 123 of the Foreigners' Law) which cannot be framed within the aforesaid legal regime,³⁰ in addition to the general requirements that have already been mentioned, applicants must present proof of their exceptional situation, attesting to the humanitarian nature of their request (Art. 62 of Regulative Decree No. 84/2007, dated 5 November).

The consular Temporary Stay Visa for medical treatment in Portugal implies submitting medical records and proof from the official or officially accredited healthcare establishment, corroborating the fact that the applicant has been admitted or is receiving outpatient treatment. For the purposes of visas for family members to accompany the patient, the following relations are considered: spouse, a long term domestic partner, ascendants, children or other relatives. In the case of minors, or incapacitated individuals, in the absence of a family member, the visa can be issued to the individual responsible for them or family members of the said individual who is responsible for them (Art. 18, Paragraphs 1 and 4 of Regulative Decree No. 84/2007, dated 5 November). In such cases, the visa application must also be accompanied by proof of blood ties, which justify such an accompaniment (Art. 18, Paragraph 2 of the aforesaid Regulative Decree).

³⁰ Art. 122 of the Foreigners' Law.

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Apart from these specific requirements, the granting of such a visa implies that applicants must also meet the general requirements for issuing long term consular visas.

In exceptional circumstances, and for the purposes of this study, a special visa can be issued at border posts on the national external frontiers (Art. 69 of the Foreigners' Law). This visa can be granted for humanitarian reasons or reasons of national interest, recognised by a dispatch issued by the MAI, allowing the entry and temporary stay of foreign nationals who do not meet the legal requirements necessary to admit them into Portuguese territory. Holders of a Special Visa who wish to remain in the country for a period longer than the stay that was initially authorised can apply for an extension of their stay for a period of up to 60 days and, if an application for a residence permit is pending or in duly justified cases, the visa can be extended beyond this limit (Art. 72).

3.2. Rights associated with the protection statuses

3.2.1. Status of Refugee for activities in favour of democracy, freedom and human rights and Subsidiary Protection for Humanitarian Reasons

a) Duration of stay

National legislation allows individuals who have been attributed the status of refugee or subsidiary protection to be granted a residence permit under the terms of these statuses, which is valid for an initial period of five and two years, respectively, and can be renewed successively.

b) Obligations for renewal

Residence permits issued to refugees are renewable, except for imperative reasons of public order or national security or in case any of the reasons that can lead to the withdrawal of this status occur (Art. 41, Paragraph 1, of the asylum law). Residence permits granted under the terms of the status of subsidiary protection are renewable, after analysing the evolution of the situation in the country of origin and if there are no

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impediments in terms of imperative reasons of public order or national security and if none of the reasons that can lead to the withdrawal of this status occur (Art. 41, Paragraph 2, of the asylum law).

c) Access to the status of long term resident (Art. 3, Paragraph 2, b) and c) and Art. 12 of Directive No. 2003/109/EC, by the Council, dated 25 November)

In accordance with the Foreigners' Law, third country nationals benefiting from international protection (status of refugee and subsidiary protection) as well as applicants for this status cannot access the status of long term resident.

d) Medical Assistance and Social Benefits

Individuals who have been granted asylum or subsidiary protection and their respective family members benefit from the right to access the National Health Service on the same terms as Portuguese citizens. Since these are particularly vulnerable individuals, legislation assures them adequate healthcare (Art. 73). In terms of social benefits, the same social benefits that are in effect for Portuguese citizens are also applicable to such individuals (Art. 72).

e) Education

Minors who have been granted the status of refugee or subsidiary protection are guaranteed full access to the educational system, on the same terms as Portuguese citizens. Adults are allowed to access the general education system as well as training, specialised professional courses or professional rehabilitation courses, on the same terms as Portuguese citizens. They are also assured equal treatment for foreign nationals, in terms of the recognition of diplomas, certificates and other official foreign qualifications (Art. 70).

f) Access to employment

Individuals benefiting from asylum or subsidiary protection are ensured access to the labour market under the terms of the general legislation (Art. 71).

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g) Travel documents

Art. 69 of the Asylum Law regulates the attribution of travel documents to beneficiaries of the statuses of subsidiary protection and refugees. Upon request, beneficiaries of the status of refugee are issued a travel document in conformance with the dispositions of the annexe to the Geneva Convention, except in cases where imperative reasons of public order or national security impede this.

Individuals who have been attributed the status of subsidiary protection who prove that they cannot obtain a passport of their nationality can be issued, after submitting an application, a Portuguese passport for foreign nationals, as long as reasons of public order and security do not impede this.

h) Family reunification

Under the terms of the asylum law, individuals benefiting from the status of refugee or subsidiary protection are entitled to family reunification (Art. 68, Paragraph 1) and the general rules outlined in the Foreigners' Law are applicable in such cases. It must be highlighted that Paragraph 3 of Art. 98 of Law No. 23/2007, dated 4 July, expressly consecrates the right of refugees to family reunification (reiterated in Art. 68 of the Asylum Law), on identical terms as those stipulated for other foreign nationals.

On the other hand, given that the definition of a "family member" is broader under national legislation than the concept contained in Directive No. 2004/83/EC, by the Council, dated 20 July, the national regime applicable to individuals benefiting from subsidiary protection ensures a more comprehensive preservation of the family unit.

It can also be noted that individuals benefiting from the status of refugee or subsidiary protection are entitled to family reunification with members of their family who are within or outside the national territory, without prejudice to the legal dispositions that recognise the status of refugee for family members (Art. 98 of the Foreigners' Law).

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i) Access to Portuguese nationality

Beneficiaries of the statuses of refugee and subsidiary protection can access Portuguese nationality, under the general terms of the law. More specifically, with regard to naturalisation, Portuguese nationality is granted to foreign nationals who cumulatively meet the following requirements: are majors or have been emancipated in the eyes of Portuguese law, have resided legally in the country for at least six years, have a sufficient knowledge of the Portuguese language and have not been convicted, with a judgement by the court of last resort, for practising a crime that is punishable with a maximum prison sentence equal to or greater than 3 years, according to Portuguese legislation (Art. 6 of the Nationality Law).

3.2.2. Residence Permits and Temporary Stay Visas in special situations

a) Duration of stay

Individuals benefiting from a residence permit in special situations or under the terms of an exceptional regime, for humanitarian reasons, (respectively articles 122 and 123 of the Foreigners' Law), access the status of resident in Portugal. Once they have obtained the status of resident the general regime is applicable to them.

Under the terms of the general regime, a temporary residence permit is valid for a period of one year, renewable for successive periods of two years (Art. 75 of Law No. 23/2007, dated 4 July).

The consular Temporary Stay Visa for health reasons is valid for an initial stay of 90 days, extendible up to a limit of one year, successively (Art. 54 and Art. 72 of the Foreigners' Law). However, visa extensions granted to the patient's family members cannot exceed the duration of the extension granted to the patient. The temporary stay visa does not confer the status of resident in Portugal upon beneficiaries but does not hinder an eventual acquisition of this status, by means of other general regimes that could be applicable.

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b) Obligations for renewal

The renewal of a temporary residence permit must be requested by the interested parties up to 30 days before the validity of the permit is due to expire. Conditions for renewal imply that the third country nationals have means of subsistence,³¹ housing, comply with tax and social security obligations and have not been convicted with a sentence or sentences that, either separately or together, exceed 1 year in prison (Art. 78 of the Foreigners' Law).

The renewal of a consular temporary stay visa presupposes the continuation of the conditions that allowed the foreign nationals in question to be admitted into Portugal (Art. 71, Paragraph 3 of the Foreigners' Law). The application is evaluated keeping in mind humanitarian reasons (Art. 45, Paragraph 3, Line. a) of Regulative Decree No. 84/2007, dated 5 November), which is relevant in terms of the statuses being studied herein.

The absence of the holder of a temporary residence permit from the country, without due cause, for six consecutive months or eight interspersed months during the total period of the validity of the residence permit constitutes grounds for cancelling a temporary residence permit, except in cases of adequate justification (Art. 85 of the Foreigners' Law).

c) Access to the status of long term resident (Art. 3, Paragraph 2, b) and c) and Art. 12 of Directive No. 2003/109/EC, by the Council, dated 25 November)

Third country nationals who have resided legally and uninterruptedly in Portugal for the five years immediately prior to the presentation of the application can access the status of long term resident (Art. 126 of the Foreigners' Law).

However, access to this status is not allowed in the case of holders of a residence permit for purposes of study, unpaid professional internships or voluntary activities or those who are in Portugal exclusively for temporary reasons, such as seasonal workers, in-company workers posted by a service provider for the purpose of providing cross-

³¹ The amounts are defined by an Ordinance issued by the Minister for the Internal Administration and the Minister for Labour and Social Solidarity.

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border services, or providers of cross-border services. It can thus be observed that none of these exceptions is applicable in the case of the non-harmonised statuses that are being studied in this point.

Applicants for the status of long term resident must have regular and stable means of subsistence and housing, must possess health insurance and must demonstrate fluency in basic Portuguese. They are issued a permanent residence permit, known as the EC long term residence permit (Art. 126) and this status is not lost even if the permit lapses. It must also be mentioned that protection for long term residents in Portugal (defined in Art. 136 of the Foreigners' Law) conforms to the stipulations of Art. 12 of Council Directive No. 2003/109/EC, dated 25 November.

d) Medical Assistance and Social Benefits

In Portugal, social benefits are accessible to all foreign citizens and their family members who reside legally in the country. In this regard, the [Constitution of the Portuguese Republic](#) consecrates a vast list of social rights, including the right to healthcare, education and social security which, except for dispositions to the contrary, are universally applicable.

Specifically in terms of the right to healthcare, in the light of constitutional dispositions, any person who is in Portugal – even in the case of a foreign national in an irregular situation – has the right to access the healthcare provided within the framework of the National Health Service.³² Likewise, in this context, the Foreigners' Law expressly reaffirms the rights of holders of residence permits to access healthcare and social security (Art. 83).

e) Education

In Portugal, education is also a universal right enshrined in the Constitution. According to Art. 74 of the Portuguese Constitution, everybody has a right to education and is guaranteed the right to equal opportunities in accessing scholastic success. The state is

³² Ombudsman (2008) *Relatórios Sociais: Imigração, Direitos das Mulheres; Infância e Juventude; Protecção da Saúde; Sistema Penitenciário*. Lisbon: Provedoria de Justiça. Accessed on 21 August 2009, at the following website: http://www.provedor-jus.pt/restrito/pub_ficheiros/RelatoriosSociais2008.pdf

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responsible for ensuring universal basic education, which is free and compulsory between the ages of 6 and 15. Specifically aimed at the children of immigrants of a school-going age, adequate support is envisaged for effectively implementing the right to education, irrespective of their situation in the country. In this context, the Foreigners' Law expressly reaffirms the rights of holders of residence permits to access education and schooling (Art. 83).

f) Access to employment

Access to the labour market and the residence of third country nationals in Portugal are provided by a single document. This document can be in the form of a residence permit or a temporary stay visa³³, in this case aimed at stays of a limited duration. Under these terms, foreigners who have been granted residence permits in special situations have the right to exercise a professional activity without needing another authorisation, as well as to access professional guidance, training and higher levels of training (Art. 83 of the Foreigners' Law).³⁴

In the specific case of temporary stay visas issued in favour of patients and their family members, such individuals cannot exercise a professional activity.

g) Travel documents

Passing through external frontiers implies possessing a valid passport or other recognised travel document. Simultaneously, and for the purposes of this study, it is also necessary to possess a residence permit, temporary stay visa or an extension of such a visa. It must be highlighted that, for all legal purposes, the residence permit substitutes the identification document (Art. 84).

³³ Only in cases where this visa is issued for professional purposes.

³⁴ The [Authority for Labour Conditions](#) is responsible for monitoring the fact that labour norms are being upheld in Portugal and for conducting the necessary checks and verifications, including the specific conditions related to foreigners in this area.

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h) Family reunification

As holders of residence permits, foreigners covered by the protection in question can benefit from family reunification under the terms of the general regime. This right covers family members who are outside the national territory (and, in exceptional cases, those who are in Portugal in a regular situation), who have lived with the resident in the other country or depend on the resident.

Family members of holders of temporary residence permits are issued a residence permit of an identical duration. As a general rule, after two years have passed, or whenever the holder who is entitled to family reunification has minor children resident in Portugal, the family members will be entitled to an autonomous residence permit (Art. 107 of the Foreigners' Law).

The legal regime for family reunification is not applicable to individuals who have been attributed a temporary stay visa.

i) Access to Portuguese nationality

Portuguese nationality by means of naturalisation is granted to foreigners who have resided legally in Portuguese territory for at least six years. The concept adopted for the purpose is that of regular stay, by means of any kind of permit that is valid for the purpose, and not that of merely holding a residence permit. Under these terms, the beneficiaries of the non-harmonised statuses in question can access Portuguese nationality after the said time period has elapsed. For this purpose, in accordance with Art. 6 of the Nationality Law, it is also necessary for foreign nationals to cumulatively satisfy the following requirements: to be majors or emancipated in the eyes of Portuguese law, to have a sufficient knowledge of the Portuguese language and to not have been convicted, by the court of last resort, for practising a crime punishable with a maximum prison sentence equal or superior to 3 years, according to Portuguese law.

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4. Statistics regarding protection

The statistical overview has been prepared in accordance with the typologies of non-harmonised national statuses, as identified at the beginning of this study.³⁵

In the case of statuses of subsidiary protection for humanitarian reasons and the status of refugee for activities in favour of democracy, freedom and human rights, the information is not available separately, so as to be able to distinguish these non-harmonised statuses. In fact, a distinction based on the reasons for which the statuses were granted in the present data only encompasses the grounds listed in the Council Directives, namely No. [2001/55/EC](#) and No. [2004/83/EC](#). Thus, it was not possible to attempt a statistical analysis of this situation.³⁶

In any case, keeping in mind the limited dimensions of the numbers in question, it would be difficult to arrive at relevant conclusions, apart from the aspects related to safeguarding statistical confidentiality.

As for residence permits and temporary stay visas in special situations, it must be noted that part of the statistical information presented has not been differentiated according to the reasons why the status was granted.

Thus, in 2008, **493** Residence Permits were granted within the scope of the aforesaid special status, divided into the following categories: **267** were issued for health reasons (line g) of paragraph 1 of art. 122 of the Foreigners' Law), **4** in favour of victims of penal or administrative infractions regarding labour relations (line n) of the same article); **4** on the grounds of the cessation of the right to asylum in Portugal (line f) and

³⁵ Subsidiary protection for humanitarian reasons (Paragraph 1 of Art. 7 of the Asylum Law) status with a broader scope than Directive No. 2004/83/EC in terms of eligibility conditions;

Status of refugee for activities in favour of democracy, freedom and human rights (Paragraph 1 of Art. 3 of the Asylum Law) status with a broader scope than Directive No. 2004/83/EC in terms of eligibility conditions;

Residence permit and temporary stay visa in special situations (articles 122, 123 and 54 respectively, of the Foreigners' Law). The special visa was also cited as an element that was liable to be framed within the concept of a "non-harmonised status".

³⁶ The information compiled herein is differentiated and has been published in the annual statistical reports of the EMN – applications and positive decisions regarding asylum and reinstatement data.

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24 issued in favour of victims of penal infractions linked to human trafficking, who collaborated with the Portuguese justice system (line o).

A total of **194** residence permits were issued under the terms of the exceptional regime (Art. 123), regarding which no separate information exists that would make it possible to isolate the underlying humanitarian reasons for which they were granted and the status being analysed herein.³⁷

It was likewise also not possible to differentiate the information as required with regard to temporary stay visas. However, merely for indicative purposes, it can be mentioned that in 2008, **1,344** favourable opinions were proffered for granting consular temporary stay visas and **3,407** extensions of temporary stay visas were carried out within the national territory. Once again, it can be noted that this figure reflects the total number of extensions³⁸ and not just extensions pertaining to holders of a temporary stay visa issued on the grounds of illness.

³⁷ MAI (2009) [Relatório Anual de Segurança Interna. Ano 2008](#). Lisbon: MAI.

³⁸ Namely, foreigners who go to Portuguese national territory to exercise a professional activity, which as a rule does not surpass six months.

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5. Opinions of national entities on the granting of protection

In terms of the opinions of relevant entities involved in the area of immigration and asylum regarding this subject, it was possible to compile some contributions. The most relevant aspects of these opinions pertaining to the subject in question have been summarised below.

In the view of the Aliens and Borders Service (SEF), efforts aimed at harmonising statuses at the level of asylum should be encouraged. It is true that the nature of the “minimum standard” outlined in EU Directives makes it possible to safeguard relevant national specificities. However, the flexibility that was permitted in terms of its transposition hinders the effective existence of harmonised statuses. In this area, a higher degree of harmonisation would be desirable, especially in terms of social rights, so as to minimise secondary movements of asylum seekers and *asylum shopping*.

From the contribution proffered by the High Commission for Immigration and Intercultural Dialogue (ACIDI) it is possible to highlight the point regarding the harmonisation of these statuses; which “should be approached carefully, since it could result in the risk of a reduction of protection that the national legislators wished to consecrate in this regard, unless the objective was to be in alignment with the highest level of protection that exists amongst Member States”.

The Portuguese Council for Refugees (CPR) also proffered its views regarding the harmonisation of the statuses of protection, likewise advocating the importance of harmonisation within the EU, as long as this is characterised by maintaining the existing rights: “One must note that any EU harmonisation of protection statuses that have not yet been harmonised will be important if and insofar as it promotes the more generous national standards of protection that currently exist, as opposed to a harmonisation that uses the minimum common denominator as a reference”. It also states that, “This safeguarding is especially important in the case of Portugal, since, under the terms of national legislation, there are no relevant divergences in terms of rights and duties in the juridical sphere for the beneficiaries of the different types of harmonised and non-harmonised protections – especially see Art. 15, Paragraph 1 of the [Portuguese](#)

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[Constitution](#),³⁹ Art. 65 of Law No. 27/2008, dated 30 June, Art. 83 and Art. 84 of [Law No. 23/2007, dated 4 July](#) and Art. 15, Paragraph 1 of Law No. 37/81, dated 3 October (Nationality Law).”

According to the [National Focal Point of the RAXEN Network](#)⁴⁰ of the [Agency for Fundamental Rights](#),⁴¹ in general terms, from the perspective of human rights it is positive that the national legislation surpasses the minimum standards consecrated in the EU directives pertaining to this protection.

³⁹ Accessed on 7 October 2009, at the following website:
<http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>.

⁴⁰ Since 2001, the National Focal Point of the RAXEN Network (European Racism and Xenophobia Network) has been Númena – Centre for Research in Social and Human Sciences. Accessed on 15 August 2009, at the following website:
<http://www.numena.org.pt/>

⁴¹ Accessed on 15 August 2009, at the following website:
http://www.fra.europa.eu/fraWebsite/home/home_en.htm

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6. Conclusions

The Non-Harmonised Protection Statutes envisaged by Portuguese legislation can be divided between the areas of asylum and subsidiary protection and the aspect of admitting third country nationals.

In short, the “non-harmonised statuses” consist of specific conditions of eligibility to be able to access statuses that validate the stay of third country nationals in Portugal, with a view to safeguarding relevant situations from a humanitarian perspective. In this context, it must be mentioned, however, that these statuses are not autonomous elements but are instead concrete mechanisms to be able to access statuses consolidated in the national legal framework (by defining more generous eligibility conditions), which, in the case of admission, have a considerably broader scope and extent. On the other hand, once the status of refugee or resident⁴² has been attributed, such individuals benefit from a set of identical rights within the respective status, irrespective of the grounds on which they were granted this status.

In terms of asylum, the non-harmonised statuses expand the scope for accessing the statuses of refugee and subsidiary protection, consecrating more favourable conditions for eligibility than those stipulated in Directive No. [2004/83/EC, by the Council, dated 29 April](#).

In terms of the status of refugee, the asylum law implements the norm envisaged in Art. 33, Paragraph 8, of the Portuguese Constitution, in the sense that it attributes the status of refugee to individuals who are being persecuted on account of their activities in favour of democracy, social and national liberty, peace amongst peoples, freedom and human rights. In this way, in Portugal, the right to asylum has an “objective constitutional dimension, as a means of protecting these values”, consecrated constitutionally⁴³.

⁴² Except in cases of temporary stay visas, keeping in mind the specific regime that is applicable in such cases.

⁴³ Gomes Canotilho, *Constituição da República Portuguesa anotada* (1993).

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In the same line of reasoning, the granting of subsidiary protection on the grounds of a systematic violation of human rights in the country of an applicant's nationality reaffirms the Portuguese constitutional approach in terms of safeguarding fundamental rights. Moreover, considering that the national legal framework prior to Directive No. [2004/83/EC, by the Council, dated 29 April](#), already consecrated this regime, it would have been unsuitable, at the time of the transposition, to opt for a less favourable legislative solution for subsidiary protection.

In terms of admission, the statuses in question expand the conditions by which third country nationals can access the status of resident, in special situations, and admission into Portuguese national territory for humanitarian reasons.

In the case of granting the status of resident, the main characteristic consists of waiving the need for a consular residence visa keeping in mind special situations of vulnerability or a lack of protection (e.g. owing to illnesses, in the case of victims of human trafficking or labour abuse or for humanitarian reasons). By establishing an autonomous reason for issuing a temporary stay consular visa in favour of patients requiring medical treatment which is not available in their country of origin, Portuguese legislators sought to find a more streamlined way of validating entries and stays in Portugal for the aforesaid purposes.

In light of the above, these non-harmonised regimes raise the protection of third country nationals to a substantially higher level than that envisaged by the minimum harmonised rules at the level of the EU. These mechanisms of protection are based on a broad and coherent vision of humanitarian questions and safeguarding fundamental rights, chalked out in the Portuguese Constitution.

Considering that these non-harmonised statuses seek to respond to special situations that tend to be residual cases, when compared to a universe amply covered by the harmonised statuses, their significance and relevance must be ascertained from an eminently "qualitative" perspective.

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Furthermore, keeping these characteristics in mind, it would appear that the beneficiaries of these statuses would not have an especially significant presence⁴⁴, particularly when compared to the beneficiaries covered by the harmonised statuses.

⁴⁴ Notwithstanding the dearth of detailed statistical information, as has been mentioned in Chapter 4 with regard to statistics.

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7. ANNEXES

ANNEXE I

Diagram showing the Protection Statutes Harmonised with Directives 2001/55/EC and 2004/83/EC (in white) and Non-Harmonised Statutes, referring to national legislation regarding matters pertaining to Asylum and Immigration (in blue).



Law No. 27/2008, dated 30 June

Directive No. 2004/83/EC

Law No. 67/2003, dated 23 August

Directive No. 2001/55/EC

Law No. 23/2007, dated 4 July

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ANNEXE II

Directives transposed by [Law No. 23/2007, dated 4 July](#):

- Directive No. 2003/86/EC, by the Council, dated 22 September, regarding the right to family reunification;
- Directive No. 2003/110/EC, by the Council, dated 25 November, regarding support in case of transit for the purposes of removal by air transport;
- Directive No. 2003/109/EC, dated 25 November, regarding the status of third country nationals who are long term residents;
- Directive No. 2004/81/EC, by the Council, dated 29 April, regarding residence permits granted to third country nationals who are victims of human trafficking or the object of an action to aid and abet illegal immigration and who co-operate with the competent authorities;
- Directive No. 2004/82/EC, by the Council, dated 29 April, regarding the obligation of transport companies to communicate passenger data;
- Directive No. 2004/114/EC, by the Council, dated 13 December, regarding the conditions for admitting third country nationals for the purpose of studies, student exchanges, unpaid training or voluntary activities;
- Directive No. 2005/71/EC, by the Council, dated 12 October, regarding a specific procedure to admit third country nationals for purposes of scientific research.

PROTECTION STATUSES

ANNEXE III

The sources that have been consulted while preparing this study have been cited over the course of the text and hence only the main reference documents are listed below.

- Framework decision on combating trafficking in human beings, September 2002.
- Decree-Law No. 229/2008, dated 27 November, which established the Observatory for Human Trafficking.
- Decree-Law No. 252/2000, dated 16 October, Organic Law of the Aliens and Borders Service (SEF).
- Directive No. 2004/83/EC, by the Council, dated 29 April, which establishes the minimum norms regarding the conditions to be met by third country nationals or stateless individuals to be able to benefit from the status of refugee or individuals who, for other reasons, need international protection, as well as those regarding the respective status and the contents of the protection granted. Accessed on 17 August 2009, at the following website:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:PT:PDF>
- Directive No. 2001/55/EC, by the Council, dated 20 July, regarding the minimum norms in terms of granting subsidiary protection in case of a massive influx of displaced individuals and measures aimed at ensuring a balanced division of efforts by Member States to host such individuals and support the consequences resulting from this hosting:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:PT:PDF>
- Directive No. 2005/85/EC, by the Council, dated 1 December 2005 regarding the minimum norms applicable to the procedure for granting and withdrawing the status of refugee in Member States (JO L 326 dated 13.12.2005, p. 13).
- Directive No. 2008/115/CE on common standards and procedures in Member States for returning illegally staying third country nationals.

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- Law No. 23/2007, dated 4 July, which approved the legal regime for the entry, stay, exit and removal of foreigners in Portuguese national territory.
- Law No. 27/2008, dated 30 June, which established the conditions and procedures for granting asylum or subsidiary protection and the statuses of asylum seeker, refugee and subsidiary protection, transposing Directives No. 2004/83/EC, by the Council, dated 29 April, and 2005/85/EC, by the Council, dated 1 December, to the Portuguese legal framework.
- Law No. 34/94, dated 14 September, which defines the regime for hosting foreign nationals or stateless individuals in Temporary Residential Centres.
- Ombudsman (2008) *Relatórios Sociais: Imigração, Direitos das Mulheres; Infância e Juventude; Protecção da Saúde; Sistema Penitenciário*. Lisbon: Provedoria de Justiça:
http://www.provedor-jus.pt/restrito/pub_ficheiros/RelatoriosSociais2008.pdf
- Parliamentary Assembly Recommendation 1327 (1997) about protecting and reinforcing the human rights of refugees and asylum seekers in Europe (Council of Europe).
- Website of the United Nations High Commissioner for Refugees:
www.unhcr.org
- Website of the Portuguese Council for Refugees:
www.cpr.pt
- Website of the European Council on Refugees and Exiles:
<http://www.ecre.org>
- Website of the Portuguese Ministry for Internal Administration:
www.mai.gov.pt
- Website of the European Parliament:
<http://www.europarl.europa.eu>

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- Website of Refworld:
<http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain>
- Website of the Portuguese Aliens and Borders Service (SEF):
www.sef.pt
- UNHCR, Master Glossary of Terms Regarding Refugees:
<http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain/opendocpdf.pdf?docid=42ce7d444>
- UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers. UNHCR: February 1999.
<http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>



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