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## Long-Term<sup>1</sup> Residence Permit in the Czech Republic, Slovak Republic and the Republic of Poland<sup>2</sup>

### Introduction

With their accession to the European Union<sup>3</sup> (EU)<sup>4</sup>, the Republic of Poland, the Slovak Republic, and the Czech Republic agreed to respect all integration-related commitments. The commitments which these countries had to assume and comply with included the adoption of provisions on the free movement of persons within the European Union.<sup>5</sup> Under these rules, the EU laid uniform foundations for its members regarding alien law, which they must observe.<sup>6</sup> Adherence to the

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<sup>3</sup> Hereinafter the “EU”.

<sup>4</sup> Accession of the Czech Republic and the Republic of Poland to the EU on 1 May 2004.

<sup>5</sup> Convention Implementing the Schengen Agreement of 14 June 1985.

<sup>6</sup> For example, 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), Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

principles related to the travel and migration of persons not only in the European Union is, however, accompanied with important obligations under international law<sup>7</sup>, which must be observed in relation to all aliens at the international level, beyond the scope of the obligations under EU law, i.e., also towards persons from so-called third countries. In the Old Testament the Bible suggests what the relationship towards foreigners should be, specifically in the Third Book of Moses – Leviticus (Lv. 19, 33–34): “And if a stranger sojourn with thee in your land, ye shall not vex him. The stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt”.<sup>8</sup>

Within the framework of aliens’ rights, the Czech Republic has three options enshrined in its law, on the basis of which aliens may reside in the Czech Republic.<sup>9</sup> Aliens thus can use a temporary residence permit, which includes both short-term and long-term residence, or apply for permanent residence. Within the European Union, a visa-free approach is allowed for EU members, but this does not apply<sup>10</sup> to aliens from third countries, countries outside the European Union (or outside the Schengen area), and such persons must apply for one of the types of residence permit offered by individual member states according to their national legal regulations.

The conditions for entry into the territory of the Member States of the European Union for nationals of third-countries outside the Schengen area are governed by national legal regulations, and the matter

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<sup>7</sup> For example, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (No. 143/1988 Coll.); International Covenant on Civil and Political Rights (No. 143/1988 Coll.), Convention on the Rights of the Child (No. 104/1991 Coll.), Universal Declaration of Human Rights (UN General Assembly Resolution 217 A (III) of 10 December 1948), Convention for the Protection of Human Rights and Fundamental Freedoms (No. 209/1992 Coll.).

<sup>8</sup> Bible: Holy Scriptures of the Old and New Testaments: (including deuterocanonical books): Czech ecumenical translation (translated into English). 13<sup>th</sup> ed. (4<sup>th</sup> ed.), originally translated into Czech by M. Bič, J.B. Souček, and J. Mánek, Czech Bible Society, Prague 2007, p. 129.

<sup>9</sup> In this article, the term “alien” means both men and women who are persons from third countries outside the Schengen area.

<sup>10</sup> Does not apply to cases of bilateral or multilateral visa-free treaties. The Czech Republic has a bilateral visa-free treaty for a visa-free stay for a maximum period of three months with Argentina, Chile, Israel, Republic of Korea, Costa Rica, Malaysia, and Uruguay. The Czech Republic also allows a 30-day visa-free stay for Singapore citizens. Furthermore, the Czech Republic has a bilateral treaty for a three-month stay in the Schengen area during a six-month period with the following countries: Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay.

of short-term stays is further governed by Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009, which establishes a Community Code on Visas (Visa Code), while the harmonization for long-term residency is only partial, e.g., the directive on long-term visas for students.<sup>11</sup> Although it is up to the individual Member States to regulate this area and apply visa requirements to third-country nationals, even such regulations must follow certain exceptions.<sup>12</sup>

However, such exceptions are not only specific to individual legal regulations or bilateral contractual obligations between countries that regulate the entry of aliens into the territory of the countries, they may also be found in so-called customary law. In the context of the entry of an alien into a foreign territory, we can include in the customary norms (an important exception to international law that cannot be restricted in national law) the principle of non-refoulement, i.e., the need to accept a refugee into the territory. Furthermore, we can include other restrictions here, such as the prohibition of torture. These are institutions that must be observed by every country, even though they are not a party to the Convention Relating to the Status of Refugees.<sup>13</sup>

Although the alien law has several dimensions, this article will deal with only one institution within this framework, namely the long-term residence permit, which falls into the category of temporary residence in the Czech Republic. In the article, we will first consider the right of residence and related issues of entry of an alien into a foreign territory, and then address the issue of long-term residence permits from the perspective of the Czech Republic, Slovak Republic<sup>14</sup>, and the Republic of Poland. In the final part of the article, we will focus on long-term residence from the perspective of studying. This article aims to compare individual legal regulations on a single institution under alien law and to point out to different aspects of long-term residence of aliens in individual territories from the point of view of Central European countries. First, we will briefly examine the issue of the right to reside and enter a foreign territory.

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<sup>11</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchanges, unremunerated training or voluntary service.

<sup>12</sup> J. Vlášil, *Právo na vstup a pobyt na území členských států Evropské unie*, Prague 2016. *Prameny a nové proudy právní vědy*, ISBN 978-80-87975-52-7, p. 34–35.

<sup>13</sup> P. Pořízek, *Vstupcizincenaúzemístátu: pohledmezinárodního, unijního a českéhopráva*, Prague 2013, ISBN 978-80-7201-907-6, p. 348.

<sup>14</sup> Hereinafter “Slovakia”.

## 1. Right to Reside

There are fundamental differences in the alien law that aliens enjoy under their residence permits. There are those who were born in the territory of a foreign state, live here, and have a permanent residence permit, or those who are permitted only a short-term visit. The difference in the perception of alien status of individuals from third countries may thus seem very extreme. However, the *vested right of residence* or the right to reside, as stated by some authors<sup>15</sup>, is derived from already acquired rights or legitimate expectations, hence it cannot be automatically considered entitlement or acquired rights.<sup>16</sup> The right is not defined as such by law and is not enforceable as such. Not even extended legal residence can be considered an establishment of the right of residence. In this case, there would have to be an indefinite residence permit without the possibility to cancel such residence.<sup>17</sup>

The Czech Constitutional Court stated in its Decision Pl. ÚS 23/11 of 24 April 2012 that “there is no subjective constitutionally guaranteed right of aliens to reside in the territory of the Czech Republic. Each state can decide for itself the conditions under which it allows aliens to stay in their territory. None of the rights enshrined in the Charter establish the right of aliens to reside in the territory of the Czech Republic. The provision of Section 14(4) of the Charter guarantees such right only to citizens of the Czech Republic (and currently also to EU citizens), while other aliens only have the right to freely leave the territory of the Czech Republic (Section 14(4) of the Charter)”<sup>18</sup>, or rather that “no catalogue of internationally protected human rights contains the right of an alien to enter and reside in the territory of a foreign state” (II. ÚS 33/11).<sup>19</sup> However, this statement can no longer be accepted today. Moreover, Pavel Pořízek states in his book that “the

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<sup>15</sup> G.S. Goodwin-Gill, *International Law and the Movement of Persons Between States*, Oxford 1978, p. 259.

<sup>16</sup> P. Pořízek, *Vstup cizince na území státu: pohled mezinárodního, unijního a českého práva*, Prague 2013, ISBN 978-80-7201-907-6, p. 81.

<sup>17</sup> R. Plender, *International Migration Law*, Revised Second Edition, Dordrecht 1988, p. 159–162.

<sup>18</sup> Decision of the Constitutional Court Pl. ÚS 23/11 of 24.04.2012, section 23. Available at: [http://nalus.usoud.cz/Search/GetText.aspx?sz=PI-23-11\\_1](http://nalus.usoud.cz/Search/GetText.aspx?sz=PI-23-11_1) (accessed: 1 IV 2020).

<sup>19</sup> Decision of the Constitutional Court Pl. ÚS 33/11 of 21.04.2011. Available at: <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=69896&pos=1&cnt=1&typ=result> (accessed: 1 IV 2020).

above-mentioned decisions of the Constitutional Court are a typical example of a stereotyped view of the issue of the admission of aliens, which ignores the shifts that have occurred in recent years in the field of the protection of human rights".<sup>20</sup> Both the Union and international alien law, even historically, indicate that aliens can only be rejected for serious reasons, often a criminal history or other serious violation of public order in the country.<sup>21</sup>

However, the development in alien law cannot be neglected and the right of residence must be seen today, although it is not explicitly set forth anywhere, as a right that can be derived from the provisions of Article 8 of the European Convention on Human Rights.<sup>22</sup> Aliens are people who have their fundamental human rights, which no country may restrict unlimitedly.<sup>23</sup>

<sup>20</sup> P. Pořízek, *Vstup cizince na území státu...*, p. 346.

<sup>21</sup> An example of the practice in Poland can be found in the decision of the Provincial Administrative Court in Warsaw of 11 October 2013, IV SA / Wa 102/13, available at: <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/iv-sa-wa-102-13-wyrok-wojewodzkiego-sadu-521723697> (accessed: 1 IV 2020), where the court rejected an alien's application for a residence permit for a fixed period due to his criminal history, even though the alien was married to a citizen of the Republic of Poland. In the grounds for the decision, the court states in section 5 (loosely translated): "Case law generally presupposes that a violation of public security and order is contrary to the generally accepted legal norms, leading to the final judgement of the criminal court which found the applicant guilty (see Decision of the Provincial Administrative Court in Warsaw of 21 August 2012, ref. No. V SA / Wa 2635/11). At the same time, it is argued that not only acts punishable by imprisonment can justify rejection of a residence permit for a fixed period (see Decision of the Provincial Administrative Court in Warsaw of 21 February 2006, ref. No. V SA / Wa 1498/05). It should be taken into consideration that not all behaviour of an alien, even if it constitutes a violation of the law, may indicate that that person will pose a threat to the protected values in the future. According to the case law of administrative courts, the current conduct of the alien should be taken into account when assessing whether the conduct falls within the scope of the respective legal provisions (see Decision of the Supreme Administrative Court of 22 December 2010, ref. No. II OSK 129/10)." It is clear from the above decision that the Polish court approaches the assessment of a possible refusal to grant a residence permit in accordance with EU and international standards and considers each alien individually, taking account of their current situation, however, while still emphasizing that their behaviour may be critical in relation to the state and its citizens.

<sup>22</sup> European Convention on Human Rights, available at: [https://www.echr.coe.int/Documents/Convention\\_CES.pdf](https://www.echr.coe.int/Documents/Convention_CES.pdf) (accessed: 1 IV 2020).

<sup>23</sup> M. Savino, *The right to stay as a fundamental freedom? The demise of automatic expulsion in Europe*, "Transnational Legal Theory" [online] 2016, no. 7(1), p. 70–94 (accessed: 1 IV 2020), DOI: 10.1080/20414005.2016.1171558.

The right to reside is also linked to the right to enter the territory.<sup>24</sup> Generally, we can proceed from the International Covenant on Civil and Political Rights, which states in Art. 12(4) that “no one shall be arbitrarily deprived of their right to enter their own country”. The Universal Declaration of Human Rights states in Art. 13(2) that “everybody has the right to leave any country, including their own country, and return to their own country”. We can thus notice that the right to enter is narrowed down only to nationals, who have the right to *return*. It follows logically from the right to leave any country that we have the right to enter another country. However, it is clear, as G. Noll states, that the right to emigrate is broader than the right to immigrate.<sup>25</sup> The European Court of Human Rights refers to Art. 2(2) of Protocol No. 4 to the European Convention on Human Rights provision that “right to leave for such country of the person’s choice to which he may be admitted”.<sup>26</sup> The court notes that everyone has the unconditional right to enter and reside in the territory of that state of which they are a national.<sup>27</sup> However, the ECHR also emphasizes that it is within the state’s sovereignty to regulate the *entry of aliens* into its own territory.<sup>28</sup> It must be emphasized that it is the privilege of each state to decide on the entry of aliens into its territory and to set conditions under national law, although EU law restricts such discretion when EU law implies the right to enter the territory of a Member State for certain aliens.<sup>29</sup>

The entry of aliens from outside the Schengen area is subject to the relevant EU legislation contained in Directive 2004/38<sup>30</sup>, which addresses

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<sup>24</sup> This is primarily to compare individual legal regulations of long-term residence of aliens in individual countries. The matter of entry into the territory is crucial. Unfortunately, the scope of the article precludes more detailed elaboration. We can recommend more detailed publications on the matter, e.g., P. Pořízek, *Vstup cizince na území státu...*, Prague 2013, ISBN 978-80-7201-907-6 or idem, *Základní teoretické přístupy k otázce přijímání cizinců na území státu*, Ministry of the Interior: “Administrative Law” 2012, No. 8, year XLV, p. 449–470.

<sup>25</sup> G. Noll, *Negotiation Asylum. The EU Acquis, Extraterritorial Protection and the Common Marke of Deflection*, The Hague–Boston–London 2000, p. 378.

<sup>26</sup> Decision of ECHR of 13.11.2003 in the case of *Napijalo v. Croatia* (application No. 66485/01), point 68.

<sup>27</sup> Cf. Decision of the Court of 5 May 2011 in the case of *McCarthy*, C-434/09, ECLI:EU:C:2011:277, point 29.

<sup>28</sup> Cf. Decision of the European Court of Human Rights of 26 July 2005 in the case of *N v. Finland*, application No. 38885/02, ECLI:CE:ECHR:2005:0726JUD003888502, point 158.

<sup>29</sup> J. Vláčil, *Právo na vstup...*, p. 29.

<sup>30</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside

the exercising of the rights of the individual *vis-à-vis* a Member State. The provisions of this directive have direct effect<sup>31</sup>; here a third-country national has the right of residence in a Member State under EU law, and it can logically be concluded that EU law precludes that the person is denied entry by a Member State without relevant reasons if the alien has left the territory and wants to return again. As Vláčil states, those persons have the right to enter the territory of the respective Member State if they present a valid passport, prove their right of residence in the territory of the Member State, and in the absence of serious grounds for refusing entry.<sup>32</sup>

### Partial Conclusion

The right of residence is closely related to the issue of the right of entry, while the right of entry is regulated by national legal regulations and, in the case of European Union countries, also by EU legislation. However, the right of entry is a different institution from the right of residence, to which, according to the above valid Czech legislation, there is no right. The right of entry is most often defined by a residence permit, i.e., a visa. A visa entitles the alien to enter and remain in the territory and to leave the territory for the period of validity indicated in the visa. It is therefore a limited-validity right to remain in the territory of the state, although it is not an exercise of a right which automatically follows from law. However, in view of the European Union's obligations, a visa cannot be issued to citizens who have their permanent residence in a state which is a member of the European Union.<sup>33</sup>

We believe that the issue of entry is currently regulated at the international level in a very appropriate manner and that it is appropriate for individual states to adjust the basic conditions for the entry of aliens into their territory while reflecting EU law, which provides for the basis and harmonises the diverse legal environments. In our opinion, the concepts

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freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

<sup>31</sup> M. Bobek, P. Bříza, J. Komárek, *Vnitrostátní aplikace práva Evropské unie*, Prague 2011, p. 70.

<sup>32</sup> J. Vláčil, *Právo na vstup...*, p. 35.

<sup>33</sup> R. Ondruš, *Průvodce cizineckým řízením: se vzory procesních postupů správních úřadů a účastníků řízení podle stavu k 1.1.2005*, Prague 2005, ISBN 80-7201-516-8, p. 137.

of the right of residence and the right of entry cannot be merged. We are of the opinion that while the right of residence in alien law does not exist as such, it can be derived, for example, from the Universal Declaration of Human Rights in Art. 13(2). The right of residence is also related to the fundamental right of free residence and movement stemming from Article 14 of the Charter of Fundamental Rights and Freedoms of the Czech Republic.<sup>34</sup> It is therefore not a right directly enforceable by an alien, but rather a derived right, which administrative bodies should consider when taking decisions. However, it is not required that an administrative body deals with that right in its grounds for a decision on a residence permit. Given the scope of the article, we can no longer devote space to the issue of entry and will focus the following chapter on long-term residence in the individual selected states.

## **2. Long-term Residence Permit**

### **2.1. Czech Republic**

Act No. 326/1999 Coll., on Residence of Aliens in the Czech Republic and on Amending Certain Acts (the “Act on Residence of Aliens”) defines long-term visa and long-term residence permits. The law defines a long-term visa as one that entitles an alien to reside in the territory for more than 90 days.<sup>35</sup> A visa for more than 90 days is granted for two purposes: for the purpose of taking over the relevant residence permit in the territory or for the purpose of applying for a long-term residence permit.<sup>36</sup>

The Czech Act on Residence of Aliens defines several regimes under which it is possible to apply for a long-term residence permit. The basic criteria stipulated by the Act that allow for an application for a long-term visa in the Czech Republic to be made include family cohabitation, study, scientific research, protection in the territory, employee cards, blue card, transfer of an employee, investment, or tolerance of residence. When applying for a long-term residence permit, certain rules must be

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<sup>34</sup> Charter of Fundamental Rights and Freedoms of the Czech Republic, Act No. 2/1993 Coll., Art. 14(1): “The freedom of movement and residence is guaranteed”.

<sup>35</sup> Section 17b of Act No. 326/1999 Coll., on Residence of Aliens in the Czech Republic and on Amending Certain Acts.

<sup>36</sup> Sections 30 and 49 of Act No. 326/1999 Coll., on Residence of Aliens in the Czech Republic and on Amending Certain Acts.



observed, which in the event of violation, may lead to that the alien and their application being rejected by the Ministry of the Interior.<sup>37</sup> The Ministry of the Interior<sup>38</sup> may reject an alien's application, for instance, on the grounds that the alien does not provide all the documents required by law or that they provide false information in the application or even submit forged documents.<sup>39</sup> Other reasons for rejection include a reasonable risk that the alien could endanger the inhabitants of the state and life in the state during their stay.<sup>40</sup> This list can also include other reasons, such as absence from a scheduled interrogation or circumvention of the law by the alien.

## 2.2. Slovak Republic

In the Slovak Republic, a new Act on Residence of Aliens, No. 404/2011 Coll., came into force on 1 January 2012, which sets forth three types of residence: temporary residence, permanent residence, and tolerated residence. The new legislation in Slovakia introduced a new division of permanent residence into alien law, namely permanent residence for five years, permanent residence for an indefinite period, and residence of an alien with the status of a long-term resident in the European Union. Tolerated residence can be compared to the currently applicable Czech long-term visa. In Slovakia, tolerated residence is granted for a maximum of 180 days and must be renewed.

Temporary residence is also granted in Slovakia on the basis of purpose. The purpose for granting temporary residence may be business, employment, study, family reunification, research and development, and so-called journalistic temporary residence (granted to accredited journalists). As in the Czech Republic, a long-term residence permit

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<sup>37</sup> Section 42 of Act No. 326/1999 Coll., on Residence of Aliens in the Czech Republic and on Amending Certain Acts.

<sup>38</sup> The competencies of the Ministry of the Interior are determined by Act No. 2/1969 Coll., on the Establishment of Ministries and Other Central Bodies of the State Administration of the Czech Socialist Republic, in Section 12(1)(h), which states that the Ministry is the central body of the state administration for internal affairs, especially for travel documents, residence permits for aliens, or the status of refugees.

<sup>39</sup> For example, Section 42i(6)(a) and Section 46a(2)(e) of Act No. 326/1999 Coll., on Residence of Aliens in the Czech Republic and on Amending Certain Acts.

<sup>40</sup> Section 46g(2)(d) of Act No. 326/1999 Coll., on Residence of Aliens in the Czech Republic and on Amending Certain Acts.

or temporary residence are granted only for a specific purpose and only for a specified period. The provisions of Section 21 of Act No. 404/2011 Coll. contain a specific list of the reasons, which includes the purpose of “special activities”. We would not find any such institution in the Czech legislation. Act No. 404/2011 Coll., in the provisions of Section 25, defines what is meant by a specific activity: teaching, artistic, or sports activities, internships in university studies, provision of healthcare, or accompanying a third-country national to whom to whom the alien provides healthcare, if necessary, or volunteering. This category also includes the above-mentioned activity of journalists who are accredited in the Slovak Republic. This type of temporary residence is granted only for the time necessary to achieve the purpose, but no more than two years.

When comparing the Czech legislation with the Slovak legislation, reference should be made to the institution of so-called special activity. In our opinion, this institution is a suitable solution and would certainly mean an easier way<sup>41</sup> to obtain a residence permit for other specific activities. For aliens, this would mean an easier and more open way to entry and residence if they perform other specific job activities that are not included in other institutions offered by alien law. From our point of view, this institution could be incorporated into the legal environment of the Czech Republic. Currently, the Czech Republic only allows applications for long-term visa on the basis of the purpose “other”. Such an application may be submitted by an alien who intends to stay in the Czech Republic temporarily for more than three months and where the reason for their stay cannot be classified under other purposes. However, the alien must prove in some way that they would perform a certain activity there, which must be confirmed by a relevant document attached to the application.<sup>42</sup> The Czech system would become clearer both for the state administration and aliens if a new category was set out in the Act on Residence of Aliens, which, as in Slovakia, would stipulate various specific activities.

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<sup>41</sup> By an easier way, we mean that the alien would have more options for obtaining a residence permit. In this case, the law would not be an example of an established rigid system, but rather allow for some wiggle room and flexibility for specific and individual cases.

<sup>42</sup> Most often, these are other educational activities that cannot be classified under the provisions of Section 64 of the Act on Residence of Aliens. In such a case, the alien must produce, for instance, an employment contract.

### 2.3. Republic of Poland

The legal system of the Republic of Poland allows aliens to enter the territory on the basis of one of the four residence permits offered. These types of permits include a general short-term Schengen visa, which is also referred to by letter C, a long-term Polish visa, also referred to by letter D, permanent residence, and long-term residence obtained in another Schengen state.

The legal system of the Republic of Poland regulates alien law under Act of 12 December 2013, the Aliens Act (hereinafter the “Polish Act”).<sup>43</sup> A temporary residence permit is defined by the Polish Act in Section 98, where it is stated that an alien may obtain a temporary residence permit only at their request if they intent to stay in the territory of the Republic of Poland for more than three months. Furthermore, the Polish Act states in the second paragraph of Section 98 that temporary residence is guaranteed only for a specified purpose and may not last more than three years. The reasons for rejecting temporary residence in the Republic of Poland (hereinafter “Poland”) include the fact that an alien has obtained a permanent residence permit or is a citizen of the European Union residing in Poland on the basis of long-term residence. Furthermore, applications for temporary residence are denied if the alien applies for asylum or is a person who has been prosecuted or is serving a sentence, or if the alien has failed to provide fingerprints.<sup>44</sup>

Based on a comparison of legal regulations of Central European countries where it is not possible to grant a long-term residence permit, or temporary residence permit under Polish Act, it can generally concluded that all these countries stress the safety of their citizens, while respecting the fundamental rights of the European Union (emphasizing the rights of EU citizens and the rights deriving from EU citizenship). All three legal regulations state that in the event that the purpose on the basis of which a temporary residence permit was granted changes or ceases, the permit is revoked.<sup>45</sup> The Polish Act also defines the

<sup>43</sup> Act on Aliens of 12 December 2013. English version. Effective as of 30 December 2013. Available at: [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Poland%20act\\_on\\_foreigners\\_en\\_0.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Poland%20act_on_foreigners_en_0.pdf) (accessed: 1 IV 2020). The current version in Polish: Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach. Effective as of 3 April 2020. <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf> (accessed: 1 IV 2020).

<sup>44</sup> Section 99 of Act on Aliens of 12 December 2013.

<sup>45</sup> Section 101(1) of Act on Aliens of 12 December 2013.

purposes on the basis of which a temporary residence permit may be granted. The Polish Act includes among these purposes the purpose of work, highly qualified employment, intra-company transfer of employees<sup>46</sup> similar to the Czech legislation, and business (this is comparable to the purpose of investment in the Czech Republic). The Polish Act also allows for temporary residence for university students; in the Czech Republic, study at a secondary school is also included in this purpose.<sup>47</sup> In both Czech and Polish legislation, it is possible to obtain a temporary residence permit for the purpose of scientific research and for the purpose of family reunification. The Polish Act also defines a temporary residence permit for those who have become victims of human trafficking; the equivalent in the Czech legislation is a long-term residence permit for the purpose of protection in the territory.<sup>48</sup> Furthermore, the Polish Act grants permits to aliens who, for certain reasons, need to remain in the territory. As a parallel to this regulation, it is possible to include the Czech institution of tolerance of residence in the territory, for example, due to criminal proceedings in which the presence of the alien is required. However, it is also worth mentioning the provision which can be described as “residual”, namely Section 186 et seq. the Act, which temporarily entitles aliens to reside in the territory due to other circumstances. This provision regulates other situations that may arise, thus opening other possibilities of residence for aliens not regulated in law in more specific terms. These possibilities include permits for the purpose of further education or performance of priestly activity. Interestingly, the provisions of Section 187(6) state that temporary residence, in the light of other facts, should be guaranteed to aliens with respect to the rights and needs of family life enshrined in the Convention on Human Rights and Fundamental Freedoms<sup>49</sup>, if the alien would otherwise reside in Polish territory illegally. This provision is essential, since it allows those residing in the territory without a permit to obtain a temporary permit after only invoking their rights under the Convention for the Protection of Human Rights and Fundamental

<sup>46</sup> Chapter 4 Section 140 of Act on Aliens of 12 December 2013.

<sup>47</sup> Section 64 of Act on Residence of Aliens.

<sup>48</sup> Section 42e of Act on Residence of Aliens, Charter 9 Section 170 Act on Aliens of 12 December 2013.

<sup>49</sup> Communication of the Federal Ministry of Foreign Affairs No. 209/1992 Coll., on Negotiation of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, available at: <https://www.zakonyprolidi.cz/cs/1992-209> (accessed: 1 IV 2020).

Freedoms. Although it can be stated that, in general, the legal regulation of long-term residence in the Czech Republic is similar to that in Poland, the Polish Act contains some exceptional institutions not found in the Czech legislation. It could be generalized that the Polish Act is “looser” and aliens are given more options to obtain a residence permit, even though this is accompanied with more red tape. Although the so-called “residual” provision of Section 186 of the Polish Act may seem extreme from the point of view of the Czech legislation, it may still have its advantages if incorporated into the Czech legislation, especially from a procedural point of view in possible administrative proceedings on the illegal stay of an alien, since this provision could reduce the number of such proceedings.

### **3. Long-Term Residence for the Purpose of Study**

Below, we will focus on the regulation of one of the institutions: long-term residence for the purpose of study.<sup>50</sup> The Czech legislation defines a long-term residence permit for the purpose of study in the territory in the provisions of Section 42d and Section 64 of the Act on Residence of Aliens, which contains a definition of the term study within the Act. In the provision of Section 42d(1) of the Act on Residence of Aliens the Act stipulates when an alien is entitled to submit an application for this purpose, while the basic rule to this end is submission of the application at the embassy. An application submitted at the Ministry of the Interior of the Czech Republic may be submitted from the territory by an alien who holds a study permit issued by another EU Member State or a long-term residence permit for another purpose, or if they hold a visa for a stay of more than 90 days. For their application the alien must present a passport, proof of the purpose (usually a decision on admission to a certain school<sup>51</sup>), funds for residence, proof of ac-

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<sup>50</sup> The article is part of the project Residence Permits for Students in the Czech Republic.

<sup>51</sup> In the event that a student does not attend the enrolment (does not start their studies), the university must immediately inform the Ministry of the Interior thereof, as required by Section 107(5) of the Act on Residence of Aliens. We are of the opinion that it suffices to produce a decision on admission to a certain school to apply for a residence permit for the purpose of study. However, in order to fulfil the purpose, the student must enrol into the study. Upon the school notifying the Ministry of the Interior that the student failed to enrol into the study, the decision on the residence

commodation, a photograph, and possibly parental consent, as well as a document equivalent to an extract from the Criminal Register and proof of compliance with measures against carrying infectious diseases. The Czech legislation requires submission of a certificate of funds required for the residence in the territory. Under the Act on Residence of Aliens, the term “study” means both study at a university and language or professional training for study. The term also includes secondary education or higher vocational education or an internship to acquire knowledge and practical experience. Before applying for long-term residence for the purpose of study, an alien must submit a document on travel health insurance for the period of the residence in compliance with the conditions specified in Section 180j of the Act on Residence of Aliens. It is important to mention that the validity of a student’s residence permit must be extended by the last day of validity or a new residence permit must be applied for, otherwise the student’s right of residence expires and cannot be extended. The Act on Residence of Aliens forbids the Ministry of the Interior to pardon any failure to observe deadlines, even in cases particularly worthy of consideration.

The Polish Act defines long-term residence for the purpose of study in Section 144 et seq. The Polish Act defines the basic conditions for the possibility of granting a residence permit for the purpose of study in that the student must provide proof of admission to study, or confirmation of payment for studying if the studies are paid, have financial resources for both accommodation and payment of health insurance, as well as for the travel back to the country of origin. The Polish Act defines temporary residence for the purpose of study only for university students and doctoral students. Some of the universities in Poland must obtain a permit to admit a foreign student issued by the Minister of the Interior. In general, study permits are issued for the period of 15 months if it is the first year of study, or for one academic year. From the point of view of the arrangement and sequence of provisions of legal regulations and from the perspective of composition of individual provisions, there is an apparent difference from the Czech legal regulations. The Polish Act, specifically as regards residence permits for study purposes, first sets out the basic conditions for granting the permit by the Minister

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permit is automatically revoked with the reference that the purpose of the submitted application has not been met.

of the Interior and subsequently defines the conditions under which the permit may be revoked, for instance, due to the fact that the alien has failed to fulfil the purpose for which the permit was issued. The following section is devoted to the administration and necessary documents that must be kept about the student or also which information should be listed on the student's "card" and in the system. In the case of foreign students, the control system is also accessed by the "voivode"<sup>52</sup>, who is responsible for checking the data on aliens to which they granted a temporary residence permit. Another part of the Act focuses on the transfer of students, either within Poland or within the European Union, and on related administrative matters. The period for deciding on an application for a temporary residence permit for the purpose of study is 60 days. It is appropriate to point out the fundamental development of law in the field of study. When comparing the version of the Act from 2013 and the current version, it is clear at first glance that the view of the student's temporary residence in Poland has changed and currently much greater emphasis is being placed on the process of permitting study, i.e., determining whether an alien meets all conditions to obtain this type of residence permit, and also on the follow-up and ongoing administration of foreign students during their stay in the territory, i.e., updating their data, etc. Unlike the Czech legislation, the Polish Act does not mention secondary education and rather emphasizes university or doctoral studies.

The Slovak legislation in Act No. 404/2011 Coll., regulates temporary residence for the purpose of study in the provisions of Section 24, and the permit is granted to students of both secondary schools and universities or to students in language or vocational training to study at a university. In this part, the legislation is identical to that in the Czech Republic. A temporary residence permit for the purpose of study is granted for the period of the study, but for a maximum of six years. The exception where a university student does not need a residence permit for the first 360 days may be applied if the third-country student holds a valid residence permit issued by another Member State for the purpose of studying at a university. The exception is also applied in the event that the university in Slovakia itself notifies the Ministry of the Interior

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<sup>52</sup> The Republic of Poland is divided into 16 voivodships (comparable to regions in the Czech Republic), and a voivodship is the highest administrative unit in the country. The voivode is therefore the head of this administrative unit (can be compared to Czech regional governors).

of the student's intention to study at a Slovak university prior to their arrival. The Ministry then may, within 30 days of receiving this notification, raise an objection to the application of 'student mobility' if the student does not have a valid passport, has falsified documents, does not study in the Slovak Republic, or has already exhausted the 360 days during previous stays.<sup>53</sup>

## Conclusion

In all three Central European countries, long-term residence is defined as residence for a specific purpose of more than 90 days. The requirements for granting this type of residence are generally similar but with differences in the individual types of purpose of this residence permit. The Polish Act contains a category that could be defined as above-framework, expanding the range of options that make it possible to obtain long-term residence. The Slovak legislation contains the purpose of "special activities". In comparison with the Czech legislation, the range of possibilities for obtaining long-term residence in Slovakia is more extensive and less rigid.

Specifically, in the case of long-term residence for the purpose of study, there is a fundamental difference in the legislation in the Czech Republic and Slovak Republic where Slovak legislators include in the term "study" all university, secondary, and higher vocational education. The Polish Act only mentions university studies and doctoral studies. The administration related to admission of a foreign student to a specific school in the territory is certainly more extensive and demanding in Poland, with both the minister and voivode enter the process beyond the framework of standard state administration bodies. The arrangement of the Act reveals a fundamental difference in Poland, where the sequence and logic of the arrangement is different to the Czech or Slovak legislation, which shows on which institutions Poland focuses more attention and emphasis. However, none of the countries completely leaves the issue of visas for aliens from third countries unregulated. Although the legislation is identical in many

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<sup>53</sup> More on the conditions for student mobility in Section 36b of Act No. 404 of 21 October 2011, on Residence of Aliens and on Amending Certain Acts, as effective from 1 January 2020, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2011/404/20200101> (accessed: 1 IV 2020).



respects, there are differences between individual institutions and periods for which a visa can be issued. However, the issue of alien law is, at first sight, very extensive and content-intensive in all three Central European countries, as evidenced by the length of the legislation itself, complexity of individual institutions, and specific complexity of the provisions. However, this area of administrative law is so specific that in order to regulate and define all possible situations comprehensively, it cannot be any less simple.

## **LONG-TERM RESIDENCE PERMIT IN THE CZECH REPUBLIC, SLOVAK REPUBLIC AND THE REPUBLIC OF POLAND**

### **Summary**

In all three Central European countries, long-term residence is defined as residence for a specific purpose of more than 90 days. The requirements for granting this type of residence are generally similar with differences in the individual types of purpose of this residence permit. The Polish Act contains a category that could be defined as 'above-framework', expanding the range of options that make it possible to obtain long-term residence. The Slovak legislation contains the purpose of "special activities". In comparison with the Czech legislation, the range of possibilities for obtaining long-term residence in Slovakia is more extensive and less rigid.

Specifically, in the case of long-term residence for the purpose of study, there is a fundamental difference in the legislation in the Czech Republic and Slovak Republic, where Slovak legislators include in the term "study" all university, secondary, and higher vocational education. The Polish Act mentions only university studies and doctoral studies. The administration related to the admission of a foreign student to a specific school in the territory is certainly more extensive and demanding in Poland, with both the minister and the voivode enter the process beyond the framework of standard state administration bodies. The arrangement of the Act reveals a fundamental difference in Poland, where the sequence and logic of the arrangement is different to the Czech or Slovak legislation, which is expressed in which institutions Poland focus greater attention and emphasis or importance. None of the countries completely leaves the issue of visas for aliens from third countries unregulated. Although the legislation is identical in many respects, there are differences between individual institutions and the periods for which a visa can be issued. However, the issue of alien law is, at first sight, very extensive and content-intensive in all the above Central European countries, as evidenced by the length of the legislation itself, the complexity of individual institutions, and specific complexity of the provisions.

**Keywords:** residence permit – aliens – administrative law

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