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Institute of Political Studies

Bc. Yana Krivenkaya

Immigration Policy of the European Union: Legal Status of Third-Country Residents

Master's Thesis

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Author: **Bc. Yana Krivenkaya**

Supervisor: **JUDr. Miroslav Pulgret, Ph.D.**

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In memoriam

Alexandra Stoll

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Abstract

This master thesis deals with the issue of development of the EU immigration policy and expansion of the rights of third-country nationals who have been legally residing in the territory of the Union throughout this development. The aim of this thesis is to outline the crucial milestones in the form of primary and secondary legislation that led to the broadening of the scope of rights of third-country nationals in the Union, while examining their legal status in the Union in general and in the Member States in particular.

The first part of this master thesis introduces the historical background, outlines the development in context of the European Union and provides the categorisation of legal third-country nationals residing in the territory of the EU, whereas the second part of the thesis deals with transposition of European legislation into national legislation of the selected Member States – Germany and the Czech Republic – while drawing a line of compliance and emphasising local requirements that were introduced in addition to (but not exceeding the scope of limitation provided by) EU legislation.

In order to be able to determine the quality and ease of fit between the EU and the receiving Member States the descriptive content analysis is employed. In the second part of this thesis it is case study method based on detailed examination of related legal acts that were selected in order to achieve its objectives.

Keywords

EU, European Union, third-country, immigration policy, residents, legal, immigrants, Schengen, free movement, permanent residence, long-term residence

Abstrakt

Tato diplomová práce se zabývá vývojem imigrační politiky Evropské Unie a prohlubováním práva příslušníků třetích zemí, jež jsou legálními imigranty na území EU, s tímto vývojem spojeným. Hlavním cílem práce je rekonstrukce klíčových dokumentů evropské legislativy – a to jak primárních, tak i sekundárních – které vedly k rozšíření právního statutu příslušníků třetich zemí, ale zároveň shrnutí legálního postavení těchto příslušníků vymezeného evropskou legislativou a legislativou jednotlivých členských států (a sice Německa a České republiky).

V první části práce je vymezen historický kontext vývoje imigrační politiky, jsou popsány klíčové milníky ve vývoji evropské legislativy a je poskytnuta kategorizace příslušníků třetích zemí pobývajících na území legálně v rámci vytčených evropským právem kategorií. V druhé části práce je provedena analýza transpozice evropské legislativy do legislativ národních, a sice německého a českého imigračního zákonu. V druhé části práce je taktéž vymezena hranice dodržování evropského práva a jsou popsány podmínky, které členské státy zavedly dodatečně opatřením směrnic EU.

V rámci této diplomové práce byla použita deskriptivní obsahová analýza v kombinaci s případovou studií zaměřenou na detailní rozbor jednotlivých právních dokumentů.

Klíčová slova

EU, Evropská unie, třetí země, imigrační politika, rezidenty, legální, imigranti, Schengen, volný pohyb, trvalý pobyt, dlouhodobý pobyt

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All laws and legal acts referenced in this thesis are discussed as they were effective on the cited date of access.

Declaration of Authorship

The author hereby declares that she complied this thesis independently, using only the listed resources and literature, and the thesis has not been used to obtain a different or the same degree.

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In Prague, May 11, 2016

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Signature: Bc. Yana Krivenkaya

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Table of Contents

List of Abbreviations

AFSJ – Area of Freedom, Security and Justice

CEAS – Common European Asylum System

CEE – Central and Eastern Europe

EC – European Community

ECI – European Citizens' Initiative

ECJ – European Court of Justice

ECT – Treaty Establishing the European Community

EECT – Treaty establishing the Economic European Community

EP – European Parliament

EU – European Union

HLWG – High-Level Working Group on Asylum and Immigration

JHA – Justice and Home Affairs

QMV – Qualified Majority Voting

SEA – Single European Act

TCN – Third-Country National

TEA – Treaty on European Union (also known as Maastricht Treaty)

TFEU – Treaty on the Functioning of the European Union (also known as Lisbon Treaty)

VIS – Visa Information System

Introduction

It is only the matter of the last two decades of the 20th century that issues and complex decisions falling within the mandate of justice and interior became a collective concern of the European Union.

Initially, a prerogative of the nation-state, the immigration and asylum policy started to develop towards the more supranational approach within the 1990s, and was later on reinforced by the EU efforts to ensure protection against illegal immigration and participate in the "war against terrorism".

According to Virginie Guiraudon immigration has become "high politics" alongside the creation of single market and Economic and Monetary Union.[1]

EU competence in immigration policy officially started only in 1992, and since then it has been an often challenging development and negotiation between the Union and the Member States. The area of immigration and asylum has been always considered politically sensitive and hence has been viewed as a matter of national sovereignty. Prior to the Amsterdam treaty, immigration and asylum were solely a responsibility of respected Member States and were only adjusted via the individual court processes within the ECJ.

Since then, 'immigration and asylum' has become an essential part of the Union's diplomacy and external relations. Not only does it define general direction of the EU, but it also plays a prominent role in the accession negotiation, as it did in the more recent enlargements of 2004, 2007 and 2013.

However stuck the immigration policy and the whole concept of JHA might have been seen in the early 1990s, with the novelties introduced by the Maastricht Treaty that resulted into the accusations in the Union's "democratic deficit", with the development of the concept of Union Citizenship, many concerns that were a prerogative of a nation-state have started being transferred upwards (including the previously subnational phenomenon of a citizens' initiative).

Union Citizenship, however, is a principle that reaches *beyond* the state, but not *without* it. This remains a challenging idea to be triggered.

[1] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.160.

Immigration control has always been considered a prerogative of a Member State. It is defined by international law as an inherent right of a state to approve an alien's stay within its borders and expel an alien if needed ("to control the entry, residence and expulsion of the aliens").[2] Immigration control is, strictly put, a natural right and obligation of a nation-state that guarantees its sovereignty and independence. In this sense, the right of a state (or often, responsible official) to approve/disapprove the right of the foreigner to enter the country could be considered absolute according to the common international law definition. In sum, an alien is not provided with the absolute right to be accepted by the hosting state, and thus does not have the right to demand a Court re-examination of the entry or visa denial, but needs to obey the state's decision. The right to expel foreigners from the state is however considered limited according to international law: the state cannot expel its own citizens (even citizens seeking asylum in another country), refugees or stateless individuals.[3] In this case a foreigner, indeed, holds the right to appeal the decision in the Court.

It needs to be noted that the legislation of Member States on rights of foreigners is quite limiting towards court resolutions on visa denial: official decisions on visa approval/denial are not subject to court appeals (Act 326/1999 Coll, Section 171). Administrative processes, on the contrary, could be subjected to appeal.

The Member States bear the right of sovereignty to control migration flow, but any control needs to be applied in accordance with international law, European law and with respect to human rights.

The right of residence and free movement within the European Union is considered a fundamental right. It is provided to all EU citizens, as well as TCNs by the Member States, and is expanded by a number of Directives (Directive 2003/109/EC, Directive 2004/38, Directive 2005/71/EC, Directive 2009/50/EC and others). Execution of the MSs' sovereignty is partially diminished by the Union Directives. By joining the EU, the MSs inherently agree with transferring a certain extent of their rights (as granted by international law) to the Union level. Since the 1990s, but mainly in the last 15

[2] UNITED NATIONS, General Assembly, Third report on the expulsion of aliens by Mr. Maurice Kamto. Right of expulsion, p.113 [online]. Available at: http://legal.un.org/ilc/documentation/english/a_cn4_581.pdf [consulted on: 2.5.2016].
[3] International Covenant of Civil and Political Rights, 1966, Article 12 (4). [online]. Available at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [consulted on: 2.5.2016].

years, this scope of rights also involves immigration policy and free movement, first under the Schengen agreement, and then in context of the Directives. In signing, a MS commits to obey the Directives, and through this its sovereignty becomes partially limited – however, signing is a free decision of that given Member State.

Objectives of the thesis

In light of the recent influx of foreigners into the EU Member States, and a constantly developing history of both the Union's and Member States' national legislation, it stands as a global issue to consider whether the application of Directives is correct, sufficient and appropriate.

The main goal of my thesis will be to outline the development of the immigration policy of the EU that is aimed towards expanding rights of TCNs and to examine TCNs' legal status in the Union in general, and in the Member States in particular. I will constitute my analysis on outlining the most recent legal development in relation to TCNs and on summarising the crucial milestones towards the expansion of their rights.

My research questions are as follows:

Q1: How has the immigration policy of the EU developed throughout the last two decades, and which Directives contributed to the broadening of legal immigrants' rights?

Q2: What are the categories of legal TCNs, as outlined by European law to-date? How do their rights differ within this categorisation?

Q3: How have Germany and the Czech Republic applied the related Directives into their national immigration laws and how have these MSs complied with the EU's expansion of their rights?

Methodology and operationalisation

Because the crucial portion of my thesis is based on the analysis of legal acts, I have employed a descriptive content analysis in combination with deductive methods, as they appeared to be essential. In Part 2 of my thesis I will apply a case study method based on detailed examination of related legislative acts of the MSs by building

parallels with European legislation, using analytical method. Additionally, I will apply a descriptive meta-analysis of secondary literature.

As a main dependent variable I introduce the membership of the Czech Republic and Germany in the European Union. The independent variable is European law/European legislation and national immigration laws. The degree of harmonization of the Czech and German national legislation with EU legislation will be introduced as a control variable.

The topic of my thesis is from the broader perspective not anchored in theoretical approach, however, the theoretical background serves as a tool for understanding the scope and course of the analysis. I will draw from the intergovernmentalism and neo-functionalism approaches that are introduced in Chapter 1, even though the decision-making process would not fall within the scope of my analysis.

Construction and Structure

I have made a number of deviations from the project of the thesis. I have introduced several additional sub-chapters that helped to grasp certain aspects of the topic, which emerged essential during the analysis.

I also divided my analysis into two general parts. Part I serves as theoretical background, mainly focusing on the policy development, and Part II introduces the cases of Member States.

In Chapter 1 I will outline the theoretical background and indicate the main theoretical concepts behind the research. I will follow in Chapter 2 by introducing the historical overview of the EU development from the very start of the European Community, through the 1990s with a shift towards immigration and asylum, concluding with the TFEU ratification and the introduction of the European Citizenship principle. Chapter 3 will prevailingly serve as Directive analysis, while mentioning the development of the TCNs' rights over time and outlining the way their rights have been expanded through the related Directives.

Chapters 4 and 5 will introduce the German and Czech residence acts: in a non-comparative analysis I will outline the content of the national legislation in relation to TCNs and create a parallel with relevant EU Directives. In this part of my thesis I will

attempt to underline specificities and additional requirements expanding the scope of the Union legislation as introduced by the national laws. In accordance with my research question (Q3) I will analyse the compliance of the residence acts of EU MSs with superior European law.

Sources Cited

The main sources for my analysis are the legal acts, including individual articles of the EU founding Treaties, secondary legislation (in the form of Directives, Regulations) and further official documents (such as impact assessments, Court cases, etc.).

The scope of secondary sources for the theoretical background of my analysis is immensely broad. I based my analysis both on the legally oriented monographs (i.e. by Horspool, or Craig and de Búrca), as well as chapters in edited collections, which were written by European studies scholars who have dedicated their research to related topics (as Cini, Uçarer, Shaw etc.).

There was only one found source that focused on TCNs rights expansion – that being a dissertation of Oldrich Lejnar focusing on the free movement right of TCN family members granted by Directive 2004/38/EC.

The development of the immigration policy towards legal residents seems to have been a minor concern in academics. The European Union is edging towards being an even more competitive, and therefore attractive destination for TCNs. In recent related academic work and discussion, there has been an emphasis on asylum-seekers, and the issues of those subject to international protection. Because of this limited focus, research on legal immigration has not been duly addressed, perhaps even neglected. The intent of this thesis is to add to the body of work on the topic of legal immigration and serve as a transparent and structured analysis of the application of EU Directives in regard to legal TCNs who are residents of the MSs.

PART I

1. Theoretical Background of the European Integration and Policy-Making Principles

In this chapter I will introduce two theoretical concepts behind my thesis as well as my further analysis. The first part of this chapter will, in essence, outline the theoretical background of the European integration as developed by international relations' scholars throughout the years of development of the European Community, starting in the late 1950s. The second part of the chapter will be dedicated to the Union's main principles that are now incorporated into the Treaties as constituents of EU policy-making and functionality, following the scientific approach with the two sides of the "axe" being supranational and intergovernmental.

1.1. Supranational, Intergovernmental and Syncretic Nature of the European Integration

The concept model of the European Community was outlined throughout the 1960s and 1970s by a number of scholars. Neo-functionalism was a prevailing stream, a normative foundation of the European integration (and, consequently, federalism) idea, emphasising human welfare needs and interest groups as primary actors of the integration process. Nye and Haas extended this approach towards spill-over neo-functionalism when they emphasized political and functional interconnection within sectors. Both neo-functionalism and spill-over functionalism present a form of a supranational approach.

Intergovernmentalism, as represented by Stanley Hoffman and Robert O. Keohane, seemed to be a juxtaposition to neo-functionalism with its emphasis on institutional cooperation in regard to the European integration phenomenon. This state-centric approach recognised the crucial role of the Member States, but disregarded the growing function of the Community institutions. It views the Community as a body that emerged from the "self-help based international system", however, it has got quite

problematic in that coping with integration is a continuous process of development.[4] Intergovernmentalism tried to set limits towards "spill-over" in order to sustain a degree of sovereignty for nation-states.

Neo-functionalism, on the contrary, puts an emphasis on dynamic integration rather than stable environment, and identifies the roles of supranational and sub-national actors in this process. The weak side of this approach is its struggle with grasping and identifying the Member States' roles in the process of integration.

Whereas intergovernmentalism places significance on inter-state mutual communication in matters of common interest (sovereignty is not directly undermined), neo-functionalism and federalism involve a concession of national sovereignty to a certain extent.

Andrew Moravcsik, an advocate of the theory of liberal intergovernmentalism, found inspiration in Hoffman's intergovernmentalism approach from the early European Community days. He attempted to revive a state-centric approach by emphasising the role of interstate negotiation and proclaiming an assumption of rational state behaviour.[5] On the other side of spectrum, scholars such as Wolfgang Wessels and Lisbet Hooghe indirectly took after neo-functionalism by proclaiming the EU as a "polity-creating process, and thus as a political system".[6] In other words, they recognised the constantly weakening role of nation-states, but denied their political extinction, as opposed to tenacious neo-functionalists.

O'Neill came up with a synthesis of both approaches when he introduced the "syncretic paradigm" of the European integration that combined state-centric approach and neo-functionalism, not dissimilar to Wessels' and Hooghe's theory mentioned above. By "replacing certitude with paradox" this approach emerged from the assumption that the Member States are not sole relevant actors on the Union level, and their relevance does not disappear with time and the broadening of the integration.[7] This approach emphasised cooperation between politicians and

[4] GEHRING, Thomas (1996). Integrating Integration Theory: Neo-Functionalism and International Regimes. *Global Society*, vol. 10, No. 3, p. 225.
[5] BURCHILL, Scott (2011). Liberalism. In: BURCHILL, Scott, DEVETAK, Richard, LINKLATER, Andrew. Theories of International Relations, p. 39.
[6] FALKNER, Gerda (1998). EU Social Policy *in the 1990s: Towards a Corporatist Policy Community*, p. 16
[7] Ibid., p. 15.

bureaucrats, as for instance, participation of the national executives in EU-level policy-making.

To conclude, Wessels described this synergy/synthesis of approaches as "an amalgamation of the national system into a new common system with its own competencies, institutions and procedures, […] the central features of this process lead neither to a federation in the traditional notion nor to an extensive use of intergovernmentalism, […] is close to what is known as cooperative federalism"[8].

1.2. EU Policy-Making Principles as an Outline of its Supranational and Intergovernmental Nature

In the context of the European Union we can discuss three main principles that define its functioning and competences:

1) Principle of subsidiarity. This principle outlines the functioning and the decision-making process in the Union and aims at determining the level of intervention. The principle of subsidiarity was significantly strengthened by the TFEU, when the monitoring of its application was improved and reinforced. According to this principle, the EU may only intervene "if it is able to act more effectively than EU countries at their respective local or national levels". In every case when this principle is to be applied, there are criteria that need to be laid down in order to examine the necessity of Union's intervention:
    - does the action have transnational aspects that could not be solved by the MSs?
    - would national action or an absence of action be against requirements of the Treaty?
    - does EU-level action have clear advantages?[9]

    The principle of subsidiarity is the most relevant of these three to this thesis, especially in the context of European legislation application in the Member States, which will be further discussed in Part II.

[8] Ibid, p. 17
[9] The Principle of Subsidiarity. [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:ai0017&from=CS [consulted on: 16.4.2016].

2) Principle of proportionality. This principle regulates that the content and form of the Union's action does not exceed what is necessary to achieve the objectives of the Treaties.
3) Principle of conferral. This principle outlines that the Union shall act "only within the limits of the competences conferred upon it by the Member States in the Treaties".[10]

Whereas the principle of conferral governs the limits of Union competences, the principles of subsidiarity and proportionality govern the use of Union competences and define to what extent these competences shall be used – these two principles are corollary to the first mentioned.

It needs to be noted that the theoretical concepts mentioned in sub-chapter 1.1. do not fall within the scope of the analysis in the following chapters, thus, they were outlined very briefly in order to introduce the terminology and concepts that will be mentioned as my analysis proceeds. Understanding the difference between the intergovernmental and supranational approaches (as well as the decision-making process) would provide a novice with an introduction to the topic. Concepts outlined in the sub-chapter 1.2., however, will serve as an explanation regarding the functionality of MSs' legislation in correlation to European law and the application of EU Directives on the national level.

[10] Treaty on European Union, Article 5 (2). [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT [consulted on: 28.4.2016].

2. Immigration Policy of the EU: Historical Background

In this chapter I will outline the crucial milestones and steps towards the common European immigration policy that remains quite a challenging area of the EU mandate. As pointed out by Emek M. Uçarer, "because of the sensitive nature of the issues involved, cooperation has been slow and difficult", even though it has eventually resulted in a number of policies established across the EU's internal and external borders.[11] After the Maastricht Treaty (the Treaty on European Union) it seemed that the policy had reached its dead end when the decision-making was complicated, non-binding policy instruments - inefficient, and negotiations ended up in a deadlock due to the request of unanimity and exclusion of the European Parliament from this process. Nevertheless the Amsterdam and Nice Treaties, and later the Tampere summit brought a switch in the policy-making that then focused on developing common rules for travel within and entry into the Union, as well as process harmonisation towards refugees and asylum seekers.

2.1. Introduction of the Policy

The immigration policy in its narrow sense is a part of one of the most recent European policies, Justice and Home Affairs. JHA, in contrast, comprises quite a vast spectrum of issues: alongside immigration and asylum, it covers police and judicial cooperation (also known as a "third pillar" of the EU). This field has always been seen as intergovernmental, and even though there were steps taken towards the new dimension with the Lisbon Treaty, it remains rather challenging and borderlines with the question of national interest.

It was only in the 1980s when the attention of the Community turned to the creation of external borders of the EC and development of coherent rules on access. Before that point all the efforts to capture this field and set rules were launched by the Council of Europe, presenting an organisation, independent from the European Community, whose membership comprised both West and East European states. Often CoE meetings led to binding treaties that were subsequently incorporated into EU law. These early efforts targeted three main groups:

[11] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 305.

- EC/EU citizens;
- long-term EU residents of third countries (with valid residence and work permits);
- third-country nationals (labour migrants and refugees).[12]

Policy-making within the Council of Europe was slow and inefficient due to the need to tackle a variety of interests and to defend both parties' interests equally.

One of the crucial milestones therefore seemed to be the establishment of the Trevi Group in 1975, which was to function as an "informal assembly" in order to "deal with cross-border terrorism through closer cooperation between EC law enforcement authorities".[13] The drawbacks of the Trevi Group could be found in its nature as a rather loose network that was functioning on the principle of non-binding consultations.[14]

In the 1990s the efforts of these sporadic consultations on immigration, asylum and judicial matters intensified and shifted towards the European institutions. Maastricht brought Justice and Home Affairs under the "third pillar", as a policy covered by the EU. It also defined nine areas of "common interest":

- asylum policy;
- rules applicable to the crossing of the EU's external borders;
- immigration policy and policy regarding nationals of third countries (including conditions of entry and moving, conditions of residence, combating unauthorised immigration);
- combating drug addiction and drug trafficking;
- combating international fraud;
- judicial cooperation in civil matters;
- judicial cooperation in criminal matters;
- customs cooperation;

[12] Ibid, p. 306.
[13] Ibid, p. 306.
[14] There were several other groups established, that subsequently became "Europeanized" and transformed into the policies, i.e. the Judical Cooperation Group, the Customs Mutual Assistance Group, the Ad Hoc Groups on Immigration and Organized Crime.

- police cooperation for the purpose of preventing and combating terrorism and international organized crime.[15]

The TEU also introduced the new decision-making framework and provided the number of groups settled in the previous decades a new institutional background. However, it's not until the Amsterdam Treaty when the "third pillar" got to be "fixed" (see 2.4.). Maastricht did not provide enough coverage of the JHA matters and kept states divided over how the policy should be carried out. There were two main "camps": those supporting a supranational approach vs. those who preferred it to remain an intergovernmental dialogue. Hence, the European Commission was left out of the decision-making process and became only one of 16 possible points of origin for the JHA policies (with the other 15 being the Member States themselves). The European Parliament took over a mere consultation role, and the European Court of Justice was excluded from JHA matters, which, in return, led to accusations pertaining to the EU's "democratic deficit".[16]

2.2. Free Movement of Persons as a Fundamental Right in the EU

During the initial phases of JHA cooperation, the short-term goal was to demolish barriers to the free movement of persons within the EU. Free movement as a concept was, however, introduced several decades prior to the JHA itself.

Horspool provides the definition of the free movement principle as follows: "there shall be no discrimination as to nationality, that those in search of employment are to be entitled to do so, that those who have moved to another Member State for the purpose of employment should be allowed to remain there when they fall ill or retire, and that they should be allowed to take their families with them and have the same social security benefits as a Member State's own nationals". [17]

The policy of free movement was introduced by the establishing document of the Community – the Treaty of Rome. The free movement of labour (which further on was developed into the free movement of persons) was one of the "four freedoms" established by the Treaty that was initially in line with the main objective of the

[15]European Parliament Fact Sheet: Justice and Home Affairs: General Aspects. [online]. Available at: http://www.europarl.europa.eu/facts_2004/4_11_1_en.htm [consulted on: 12.3.2016].
[16] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 308.
[17] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 388.

common market. This commitment was accompanied by "promoting and coordinating economic activities, ensuring stability and economic development and raising standards of living."[18] The "four freedoms" pledge introduced the free movement of goods, services, capital and labour, and in doing this surpassed the mere customs union definition.

Margot Horspool points out that the founding of the European Community was initiated with the principle of free movement for workers, which, in return, was essential for the international market construction.[19] She regards it as it was mentioned in the Treaty of Rome. However, only with the Lisbon Treaty has the focus been shifted from workers to persons. Articles 45–48 TFEU embody these aspirations, where Article 45 lays down the principles and Article 46 provides details of implementation. Article 45, in contrast to other from the set, has direct effect and does not depend on subsequent implementation by the Union.

In 1957, the provisions for free movement meant mainly the abolition of restrictions of labour mobility, allowing workers to be employed anywhere within the Community. The Treaty of Rome conceived the free movement of persons as one of the steps towards achieving of what was then the common market. In order to complete this objective it was crucial to ensure the fullest possible mobility of the economically active population.

But if the free movement principle is connected so closely with economic factors and common market development, what are its correlations with immigration policies that are crucial for my thesis? The expansion of these principles started to develop as the Union shifted into more than just an economic unit: then, the free movement articles were interpreted expansively by the Court of Justice. For instance, the Maastricht Treaty incorporated three directives concerning the right of residence for retired people, for students and for those with sufficient resources.

Uçarer mentions an "increase in labour and family unification migration into West European countries" as one of the precursors to developments in the immigration policy of the EU, which links it to the free movement concept. Yet another mentioned precursor is linked to the Single Market idea: "desire to complete the Single Market

[18] CINI, Michelle (2007). *European Union Politics*, p. 254.
[19] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 386.

by gradually removing controls at the Union's internal borders."[20] This removal of internal borders was written into the Treaty of Rome, but only came into full effect in the early 1980s. Also, free movement was reaffirmed as a core goal in the SEA and considered "a cornerstone of a developing of 'European Citizenship'" by the Maastricht Treaty.

The free movement rights were further developed via **Directive 2004/38/EC**, which includes several former statements outlined by the earlier documents and functions as a link between the free movement principle (initially, a principle of economic nature) and the immigration policy. It takes into consideration the majority of cases and changes that were accommodated/approved as amendments to the earlier articles. Currently, it is the main source of explanation in regard to the free movement of workers (later persons), their family members, expatriation cases and many further formal obligations in connection to all mentioned above.

Siobhane suggests that it was Directive 2004/38/EC that closely associated the free movement principles with the idea of Union Citizenship, nonetheless the original source, Article 18 EC, has still remained the residual source of the free movement principle, the legal basis for all resolutions of free movement disputes and should therefore be used in preference to the "more generic rights" associated with EU Citizenship.[21] According to it "every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect" (Article 18 EC).[22]

Similarly to the right of free movement, the right of residence (right to remain for a reasonable time while looking for a job) is considered one of the fundamental rights for workers (and later, persons) within the Union. This right is briefly mentioned in Article 45 TFEU, but it also refers to the right of free movement only 'to accept offers of employment actually made'. After the Court's involvement (Case C-292/89 R v Immigration Tribunal), the Article had to be interpreted as giving a "non-exhaustive list of rights for nationals of the Member States in the context of free movement,

[20] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 305.
[21] SHUIBNE, N. Niamh (2009). The Outer Limits of EU Citizenship. In: BARNARD, Catherine, OKEOGHENE, Odudu. *The Outer Limits of European Union Law*, p. 170.
[22] Treaty Establishing the European Community. Article 18. [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12002E%2FTXT [consulted on: 28.3.2016].

including the right to move and stay within the territory of a Member State for the purposes of seeking employment".[23]

For self-employed or independent professionals the freedom of establishment was outlined. The right of establishment and the freedom to provide services were laid out in the Treaty of Rome. Later on, Articles 49-55 TFEU deal with the right of establishment. There are still disputes about what falls under the "provision of services" article, and what falls under the "establishment". But as Hoorspol argues, both are based on the broader concept of European Citizenship and the "facilitation of free trade ideals within the EU."[24] (more on that see chapter 2.5.)

There are certain exceptions to the right of the free movement of persons that have been constructed by the Court from the very beginning, similarly to the limitations that apply to establishment and services. It is a tool to protect a state from having to admit those who can harm its citizens, present a threat to national security or cause disruption to the state order. In the past, there were several cases in which entry was refused due to the activity they were about to conduct (Case 41/74 van Duyn v Home Office (1974)), or on the contrary, the action of the Member State who was willing to deport those who were working in a non-prohibited job was declined by the Court (Cases 115 and 116/81 Adoui and Cornuaille v Belgium (1982)).[25]

A crucial question for later chapters remains: what are the rights of the Member States in regards to freedom of movement? How much is a Member State subjected to the Union's regulations and how much discretion does it have in restricting a national's right of free movement?

The development of this legal opinion was Case 30/77 R v Pierre Bouchereau (1977), when the Court found that anything causing a "genuine and sufficiently serious threat affecting one of the fundamental interests of society" could potentially justify certain restrictions on the free movement of persons and be recoursed by a national authority.[26] As Horspool points out, often the national authorities "should balance the threat and the fact that the person has received a particular sentence for specific

[23] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 392.
[24] Ibid, p. 403.
[25] Ibid, p. 415.
[26] Ibid, p. 416.

offences against the fact that he had resided for many years in the host Member State and could plead family circumstances against that expulsion."[27]

Horspool argues however that in order to avail oneself of the free movement provisions in the Treaty, there has to be a "Union element". It was introduced only in the Maastricht treaty in Articles 20-25. Article 21, for example, takes after the provisions of Article 18 EC that "every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations laid down in the Treaties."[28]

Michael Dougan suggests, with the introduction of Union Citizenship, "the relationship between free movement and the forging of a common European identity has become more ambitious, but also more controversial, as Community law proves increasingly capable of deconstructing the Member State's thresholds".[29]

2.3 The Schengen Area as an Extension of the Free Movement Principle

The Schengen project has brought a new perspective to the concept of the free movement of persons. As mentioned in chapter 2.1., there was no formal intergovernmental cooperation on the subject of immigration or asylum before the Schengen Agreement.

In 1985, a number of the EC Member states agreed to remove controls at their internal borders. This new system established by Benelux, Germany, France and Italy was formalized in 1990 by the Schengen Implementation Convention. They then created the Schengen Information System - a shared database that stored information such as criminal records and asylum applications, which was accessible by national law enforcement authorities.

"The Schengen accords sought to remove controls on persons, including third-country nationals, at their internal borders while allowing Member States to reintroduce them only under limited circumstances. Member states agreed to develop

[27] Ibid, p. 416.
[28] Ibid, p. 419.
[29] DOUGAN, Michael (2009). Expanding the Frontiers of Union Citizenship by Dismantling the Territorial Boundaries of the National Welfare States? In : BARNARD, Catherine, ODUDU, Okeoghene. *The Outer Limits of European Union Law*, p.163.

common entry policies for their collective territory, issue common entry visas to entrants, designate a responsible state for reviewing asylum claims, and jointly combat transnational crime."[30]

Following its establishment, the main goal of the Schengen project was to develop certain policies that could be enforced the external borders of the future European Union and eventually remove the internal borders. Schengen also regarded asylum in a certain way: "it instituted a new system for determining the state responsible for reviewing asylum claims in individual cases", which was a way to reduce the administrative costs of processing additional or duplicate asylum claims.[31] It also introduced the idea of an EU-wide visa policy where the negotiation of an entry visa for certain countries' residents would take place on the Union level. Additionally, the uniform visas were introduced for the Schengen territory. Finally, Schengen was an effort to improve cooperation on law enforcement matters, especially the ones involving drug trafficking.

Schengen was incorporated into the EU by a protocol appended to the Amsterdam Treaty. According to the acceptance of the Protocol, EU-15 was divided into those who decided to opt out (Denmark) and those who have been outside and would remain there unless decided to opt out (the UK and Ireland). There was a new formation "Schengen 15", which involved 13 EU members and two countries outside the Union – Norway and Iceland. The UK and Ireland only agreed on cooperation to a certain extent: police and judicial cooperation. According to Uçarer the incorporation of Schengen into the EU *acquis* "did not result in the simplification hoped for, but rather maintained, if not augmented, the convoluted system that emerged in the early 1990s".[32]

Schengen was not unproblematic: during the enlargement negotiations it was pointed out by the CEE countries that some of the existing Member States had not reached full compliance with the Schengen Agreement (Italy and Greece being the most troublesome ones). [33]

[30] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 307.
[31] Ibid.
[32] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 310.
[33] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.174.

In 2011-2012 a new wave of concerns arose while introducing the monitoring mechanism in order to evaluate the quality of Schengen agreement application. As a substantial outcome of the wave of asylum seekers, the possibility of the border control reintroduction on internal EU borders was mentioned. The rules of Schengen functionality were to become stricter and more enforceable: Italy and France tightened up the protection of their borders, with an option to restore full border control if needed. The aim of the new policy was in accordance with the new approach of the Commission towards a higher level of control and an initiative to enforce coordination of the EU in emergency situations.[34]

Nowadays the Schengen Area is comprised of 26 countries, four of which (Norway, Iceland, Lichtenstein and Switzerland) are not members of the EU.

2.4. Breakthrough of the Immigration and Asylum Policies via the Treaty of Amsterdam and Treaty of Nice

Schengen *acquis* was supposed to be incorporated into the EU with the Amsterdam Treaty which fully acknowledged the immigration policy and set it as a new direction. The Treaty was also supposed to diminish the decision-making deficiencies that were set by the Maastricht Treaty and practically excluded the Commission, Parliament and Court from the decision-making process. It is also the Amsterdam Treaty that created “an area of freedom, security and justice” and was expected to make the Union more responsive to its citizens.

The major changes incorporated into the Amsterdam Treaty were:

- “communitarization” of the third pillar (Title IV);
- “streamline” of the institutional framework;
- incorporation of the Schengen framework.[35]

The most crucial are Articles 61-4 of the Treaty, which incorporated the shift of the majority of the third pillar issues into the first pillar (the criminal matters were left in the third pillar and remained to a certain extent dependent on the ascent of the Member States), whereas Article 67 specified the new rules of decision-making. It

[34] KRUTÍLEK, Ondřej, KUCNYŇKOVÁ, Petra, PÁLIČKOVÁ, Iveta (2013). *Monitoring Evropské legislativy 2012*, p. 62
[35] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 309.

introduced the rule of unanimity in the JHA Council, which would act on proposals from the Commission and consultations with the EP. Only after 5 years was the Commission to gain the exclusive right of initiative in concerns of JHA transferred to the first pillar ("the Council shall act on proposals from the Commission"). Also, the "co-decision procedure" was introduced, which was expected to give the EP more power in visa issuing procedures and decisions on uniform visa rules ("the Council, acting unanimously after consulting the European Parliament shall take a decision […] and adapting the provisions relating to the powers of the Court of Justice").[36]

Schengen was incorporated into the Treaty in the form of an appended protocol that provided for the closer cooperation of the "Schengen 13" within the EU framework, which became even more complicated given the overlapping groups involved in this Agreement (as described in 2.3.).

The Treaty of Nice brought several institutional changes: it went further on expanding the Commission's shared right of the initiative in the "third pillar". Actions towards this objective were undertaken in Tampere, Finland where in October 1999 at the European summit on Justice and Home Affairs the EU leaders "committed themselves to developing a comprehensive immigration and asylum policy and decided to place and maintain this objective at the very top of the political agenda."[37] Tampere is also known as a "preparation process", the first cycle of policy-making in terms of the unified immigration policy. The main goals were to evaluate the impact of Amsterdam and discuss future steps on JHA cooperation. "Tampere milestones" included the creation of an AFSJ, as well as "reiterated commitment to a common market complete with freedom of movement". [38] It also covered issues of transparency, democratic control and the convergence of judicial systems. As a long-term goal, management of migration and deterrence of human trafficking were outlined.[39]

[36] Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts. [online]. Available at: http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf [consulted on: 1.3.2016].
[37] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.160.
[38] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 313.
[39] European Commission Fact Sheet No. 3.1. Tampere: Kick-Start to the EU's Policy for Justice and Home Affairs. [online]. Available at: http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf [consulted on 6.3.2016].

The initiative went as far as creating a High-Level Working Group on Asylum and Immigration (HLWG) to focus on studying the reason and precursors of both processes, including poverty and other political and economic conditions that compel individuals to leave their countries of origin.[40] The HLWG advocated linking JHA policies to tools of foreign policy, based on a number of case studies done on the recent developments in third-world countries. In doing that it officially declined JHA as a "domestic" policy, instead it introduced it as a complex issue of several dependents.

The Member States committed to the creation of a Common European Asylum System that was supposed to unify the standards for reviewing claims of asylum applicants and rules for refugee recognition. The Commission was to act as a coordinator of policy proposals in this regard. As a result, several new proposals related to asylum were introduced in the upcoming years, including "policies on reception conditions for refugees, a common set of minimum standards for the review of asylum claims, as well as common family reunification schemes for refugees." [41]

In 2000, the European Commission issued a road map on this matter and stated two main objectives:

- to secure rights for long-term foreign residents and asylum seekers;
- to fight illegal immigration and trafficking (which was still partially the matter of the third pillar).

In December 2001, in the aftermath of the 9/11 terrorist attack, a new perspective was added to this view: at the summit in Laeken the EU leaders by linking illegal immigration with terrorism agreed to reinforce border controls "by enacting a stricter visa policy."[42]

Robert Dover regards the Global War on Terror, as announced by George W. Bush, the "largest foreign and security challenge for the EU" in the long term. Despite the fact that he considers it a main focus for the foreign and security policy of the Union, he mentions its indisputable effect on the Justice and Home Affairs sphere, which

[40] Also, if the country of origin was considered a "safe third country", according to the EU definition a national of this country was denied access to the asylum process.
[41] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 313.
[42] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.160.

evolved into the new domestic agenda centred on immigration, policing and intelligence.[43]

The outcome of this Union commitment was the new Title VI to the EU Charter of Fundamental Rights draft (completed December 2000) on combating terrorism. This new framework decision developed by the Commission was adopted on June 13th 2002.

The next development took place in June 2002 at Seville European Council and was mainly presented by the plan to combat illegal immigration and management of the external borders. Guiraudon argues that it was the start of an era when "the kinder, gentler approach of Tampere [had] evaporated": the ideas discussed were more drastic (up to financial sanctions towards the non-cooperating third countries' authorities or creation of a "European corps of border guards") and the conclusions mention "the possibility of retaliatory measures against non-cooperating countries".[44]

The next phase, however, was only triggered after the lapse of the 5-year period stated in the Treaty of Amsterdam, which officially came into effect in 1999. In 2004 the new integrated border management system was created, which was followed by the creation of a Visa Information System (VIS) – a database to store biometric data of the visa applicants. The Brussels European Council took place in November 2004, followed by the adoption of the rather ambitious Hague Programme, which reaffirmed the Union's priority to develop an area of freedom, security and justice. The five-year course contained proposals and deadlines for the areas where the policy decisions needed to be seen (hence, it was often referred to as a "wish list").[45] It mainly covered the issue of the abolition of internal border controls, which was to happen after the SIS II project launch in 2007. The strengthening of the external borders, on the other hand, was a direct outcome of the Hague Programme. It also expanded the European Refugee Fund established in Tampere and called for the implementation of the common asylum system by 2010. Importantly, the Hague Programme emphasized the role of partnership with third countries.[46] According to Guiraudon these

[43] DOVER, Robert (2007). In: CINI, Michelle. European Union Politics, p. 247.
[44] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.179.
[45] VAN SELM, Joanne. *The Hague Program Reflects New European Realities.* [online]. Available at: http://www.migrationpolicy.org/article/hague-program-reflects-new-european-realities [consulted on: 29.2.2016].
[46] The Hague Programme: Strengthening Freedom, Security and Justice in the European Union. [online]. http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf [consulted on: 22.3.2016].

partnerships provided the Union with some kind of security in order to prevent immigration into the EU by addressing the so-called “push-factors” (i.e. lack of economic opportunity) versus the “pull-factors” (prosperity and family ties in the EU).[47]

The abolishment of the pillar structure and a greater use of QMV was proposed at the Intergovernmental Conference of 2003-2004, which led to the signing of the Constitutional Treaty. While the pillar structure was eliminated, the QMV rule encountered several disagreements and resulted in adding an additional mechanism through which a Member State could suspend negotiations in case of a significant opposition to the Council. Monitoring the implementation of JHA policies remained up to national parliaments. Constitutional Treaty was rejected in referenda in France and the Netherlands later in 2005.

As the EU grew, the initial idea of lifting barriers within the Union was shifted to a new level: JHA matters now needed to be discussed with the future external borders in mind. This was to be ensured via more agreements involving third countries (countries of origin and transit), especially the “neighbours”, as Central and Eastern Europe, Maghreb area and the Mediterranean basin. Prior to the “eastern enlargement” several agreements with CEE countries – or the “buffer states” – were made. At the risk of deteriorating relations with certain third countries, whose citizens benefited from visa-free access, the applicant states gradually adopted the EU’s JHA policies, which were accompanied by acceptance of an advisory role of the EU for policy making. Following this, North African, non-enlargement Mediterranean, Caribbean and Pacific countries were also expected to support some of the Union’s immigration and asylum policies in order to “ease migratory pressures into the Union”.[48]

It is worth mentioning that several instruments were introduced since, including the European Neighbourhood and Partnership Programme, several readmission agreements with third countries, the EU Returns Directive etc.

[47] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.178.
[48] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 316.

2.5. Towards the European Citizenship Principle

According to Margot Horspool "the concept of citizenship of the Union has revolutionised the scope of rights available to Member State nationals".[49]

The principle of equal treatment on the grounds of nationality was established in the 1970s, and it was laid as the ground stone of the EU Citizenship idea. EU Citizenship as it is known today is strongly grounded in the principles of free movement anchored in Article 18 EC, and additionally Articles 39 (for workers) and 43 (for establishment), and, consequently, offers an extension of these provisions.

Citizenship of the EU was added to the Treaties as part of the changes agreed upon in Maastricht and at the time when the expansion of the free movement principle came to a force (as mentioned in 2.2.). More than a fixed legal concept, the principle of citizenship was, rather, a "dynamic set of entitlements evidencing recognition that a union of people should involve all the people" and added to the free movement of persons provisions. Horspool considers this step as the official start of development of a "truly meaningful European citizenship".[50]

A crucial milestone in the development of EU Citizenship was Directive 2004/38/EC (also known as the "Free Movement Directive") on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This Directive, which came into force on April 30th 2006, covers all the areas previously covered by both regulations and directives while preserving the limitations included in the previous legislations.[51]

Articles 27-33 of the Directive repealed and replaced Directive 64/221 and additionally confirmed a number of orders that cannot be taken against Union citizens (i.e. exclusion order). It also defined national security, ensuring an exception in many situations. According to Article 27(2) "the personal conduct of the individual concerned must present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."[52]

[49] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 386.
[50] Ibid.
[51] Ibid, p. 387
[52] Ibid, pp. 418-419

Directive 2004/38/EC "breaks down boundaries between the traditional Treaty freedoms, pulling together in one place the rights conferred by different free movement provisions as they apply to persons – to the EU citizens".[53]

The question of EU Citizenship re-appeared after the "eastern enlargement" when the condition of a "transition period" was introduced. A German-Austrian initiative, the proposal was to give citizens of the new Member States five to seven years after accession before they could fully exercise their free movement rights. This basically meant that a citizen of the "new" member state did not profit from the work right in the EU-15 and therefore would not be treated equally as EU citizens. According to Guiraudon this was another side effect of the "multi-speed" EU, in which not all the Member States and citizens are treated equally.[54]

The concept of Union Citizenship that was discussed in the Constitutional Treaty of 2004 emphasised its democratic nature – according to Jo Shaw – somewhat grandiosely. Closa points out that this concept emanates from the vision of "citizens as bearers of rights that provide them protection from public authorities, grant them some reduced scope of participation in the policy process but […] does not establish a solid connection between the citizens and the exercise of their political rights".[55] The democratic aspect was acknowledged by the opportunity of citizens' initiatives integrated into the Treaty.

Adding to that, according to the Commission Report on EU Citizenship, after the 2007 enlargement, there were approximately 8,2 m EU citizens residing in third Member State.[56]

The Lisbon Treaty introduced a new approach towards Union Citizenship and mentioned the new role of the citizen as a political actor within the EU (versus emphasis on the democratic nature of the concept in the Constitutional Treaty), and commenced to introduce more political content into the citizenship provisions.

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[53] SHUIBNE, N. Niamh (2009). The Outer Limits of EU Citizenship. In: BARNARD, Catherine, OKEOGHENE, Odudu. *The Outer Limits of European Union Law*, p. 168.
[54] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.175.
[55] CLOSA, Carlos (2007). Constitutional Prospects of European Citizenship and New Forms of Democracy. In: AMATO, Giuliano, BRIBOSIA, Hervé, DE WITTE, Bruno. *Génèse et Destinée de la Constitution européenne*, p. 1037.
[56] SHAW, Jo (2009). Citizenship and Enlargement: The Other Limits of EU Political Citizenship. In: BARNARD, Catherine, OKEOGHENE, Odudu. *The Outer Limits of European Union Law*, p. 63.

As an aftermath of the enlargements of 2004 and 2007 the range of opportunities for EU citizens has been widened in terms of political citizenship. As Jo Shaw points out, 12 additional Member States with EU citizens (vs. the pre-2004 state) having a right to stand for the EP election and a right to vote on the basis of residence, not nationality, received their rights confirmation through the Article 19 EC that had, to date, applied to EU-15.

Electoral rights can be exercised according to the EU Citizenship principle in any Member State by another Member State's national. It is Council Directive 93/109/EC that deals with detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the EP for Union citizens residing in a MS of which they are not nationals. According to Article 19 electoral and other political rights were now expanded to other MSs' nationals, whereas previously they were treated as TCNs.[57]

The changes that were brought forward by the Lisbon Treaty have confirmed the significance of the Union Citizenship decision and developed as a "more than a cosmetic exercise". Regardless, the construction of a "defensible and legitimate concept of citizenship on the EU level" was not achieved as anticipated, also due to the needed "hollowing out" of national competences, existing in relation to citizenship rights.[58]

The idea of EU Citizenship, soon after the Lisbon treaty came into effect, did not encounter particular acceptance, as highlighted by various surveys (including Eurobarometer), which emphasized the widespread ignorance about the citizens' rights under EU law, especially in the new Member States. The majority of respondents could rarely find a correlation between their national citizenship and the citizenship of the EU and were unable to identify correctly which rights are attached to Union citizens specifically. According to Article 17 EC European Citizenship was defined as a *complementary* citizenship, and it remains such for the majority of MS citizens. Shaw concludes that "citizenship of the Union has – for most people – a Cinderella status".[59]

[57] Ibid, p. 64.
[58] SHAW, Jo (2011). Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism. In: CRAIG, Paul, DE BÚRCA, Gráinne. *The Evolution of EU Law.* Second Edition, p. 608.
[59] Ibid, p. 605.

The system of citizenship functioning hitherto since the TFEU ratification is considered to be “multi-level and pluralistic”, combining different local, regional, national, supranational and international sources of law. According to Jo Shaw this makes it hard sometimes to mark the outer limits of EU political citizenship “with any degree of certainty”.[60]

EU Citizenship is still determined by the limits of national laws at the Member State level, which leads to so-called “nationalisation” of Union Citizenship. At the same time, the aspects of national citizenship progressively become “Europeanised”.[61]

[60] SHAW, Jo (2009). Citizenship and Enlargement: The Other Limits of EU Political Citizenship. In: BARNARD, Catherine, OKEOGHENE, Odudu. *The Outer Limits of European Union Law*, p. 66.
[61] Ibid.

3. Classification, Rights and Limitations of Legal TCN Residents as Outlined by European Law

The Member States shifted their focus to the third-country nationals entering the territory of the Union shortly after the TEU ratification. The Council formulated common rules regarding employment and education, and also recommended common rules for the expulsion of TCNs. It was also then when the "bilateral readmission agreements" between the EU Member States and third countries were signed. In 1997, the Member States concluded an "extradition convention", as well as uniform visa and visa requirements for certain nationals.[62]

Legal immigrants' rights were expanded noticeably by the Treaty of Amsterdam (for more read 2.2.). It has done so by granting additional rights to the migrant workers with long-term residence permit, as well as their family members in secondary legislation following the Amsterdam (i.e. via Council Directive 2003/109/EC and Council Directive 2003/86/EC). Their rights have, however, remained only of an approximate nature, which means similar, but not entirely identical to the rights of Union citizens.

3.1. Secondary Legislation on Third-Country Residents

Before I proceed in defining third-country legal residents' categories, we need to take a closer look at a number of acts and directives that accommodated the rights of foreigners within the Union and outlined their residence rights. In this chapter I will outline the most pertinent EU Directives in regards to the topic of my analysis.

3.1.1. Directive 2004/38/EC[63]

As mentioned in Chapter 2, this Directive aims to capture and demarcate the rights and the limits of EU Citizenship, sets rules for residence permits and targets Union citizens, but also their TCN family members.

[62] UÇARER, M. Emek (2007). Justice and Home Affairs. In: CINI, Michelle. *European Union Politics*, p. 316.
[63] Full name: 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 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.

Directive 2004/38/EC summarized a number of single secondary legal acts on the free movement for workers and persons adopted after the TEU and at the same time abolished these acts that were referred to prior to the Directive ratification. It also set rules for residence permits, both for Union citizens themselves and their family members. As emphasized by Niamh Nic Shuibhne the enactment of this Directive, however, "marked a disruption in institutional ownership".[64]

The Directive defined two wider categories of rights:

- The right of exit and entry (Chapter II);
- The right of residence (Chapter III) that includes:
    - the right of residence for up to three months (that applies to all EU citizens without any further requirements);
    - the right of residence for more than three months.
- The right of permanent residence in related situations (Chapter IV).

Right of residence for a period longer than three months time is granted according to Chapter III, Article 7 of the Directive to all Union citizens who:

- are economically active (workers or self-employed);
- have sufficient resources to support themselves and their family members ("not to become a burden on the social assistant system of the host Member State during their period of residence"[65]);
- are students enrolled at a private or public establishment, who also are obliged to have comprehensive sickness insurance cover in the host Member State;
- are family members accompanying or joining a Union citizen who complies with the conditions above.

The Directive indirectly confirmed that the right to move and reside freely within the EU is a fundamental right.

[64] SHUIBNE, N. Niamh (2009). The Outer Limits of EU Citizenship. In: BARNARD, Catherine, OKEOGHENE, Odudu. *The Outer Limits of European Union Law*, p. 167.
[65] Directive 2004/38/EC, Article 7 (3) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on: 1.4.2016].

3.1.2. Council Directive 2003/86/EC[66]

This Directive is grounded on the principle that the right to create a family is a fundamental human right. Family reunification is, therefore, "a necessary way of making family life possible".[67] Council Directive 2003/86/EC describes the concept of reunification as an opportunity for TCN's integration into the MS, as well as a tool to promote a fundamental Community objective – economic and social cohesion. "To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria."[68]

The reunification should only apply to members of a "nuclear" family (as opposed to the application of Directive 2004/38/EC where the consideration of a "family member" is of a wider regard), which includes just the spouse and the minor children. In the context of this Directive, family reunification is consequently defined as "entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry".[69]

In comparison with Directive 2004/38/EC and Council Directive 2003/109/EC this Directive provides quite extensive rights to the Member States, both to expand and limit the rights of family reunification of those to whom it applies. Nonetheless, the EU grants itself a prerogative to adopt measures within European legislation in this regard, since "the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States": the measures adopted should be in accordance with the principle of subsidiarity, the principle of proportionality and would not "go beyond what is necessary in order to achieve those objectives".[70]

[66] Full name: Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
[67] Council Directive 2003/86/EC [online], Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted on: 12.4.2016].
[68] Ibid.
[69] Council Directive 2003/86/EC, Article 2 [online], Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted on: 12.4.2016].
[70] Council Directive 2003/86/EC [online], Preamble (16), Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted on: 12.4.2016].

3.1.3. Council Directive 2003/109/EC[71]

This Directive will be the subject of my analysis in regard to those TCNs who pursue the right of long-term residence, and will be more closely addressed in chapter 3.5.

Similarly to Directive 2004/38/EC, it is grounded on the idea of the "approximation" of rights (as opposed to the rights held by MS nationals) and that a person "who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union".[72] To attain these rights it is the duration of legal and continuous residence that outlines the entitlement to long-term residence, and requirements can differ from MS to MS.

Chapter II of the Directive focuses on long-term resident status in a Member State, whereas Chapter III of this Directive discusses residence in other Member States (other than the one which granted him/her the long-term residence status).

In comparison with other related Directives, the MSs are not granted the expulsion right (except in the situation of threat to public policy or public security), however additional requirements or benefits for the applicant are considered MSs' prerogative. Still, they have at their disposal a possibility to grant residence permits of permanent or unlimited validity on terms "more favourable than those laid down by this Directive".[73]

Further secondary legislative documents that will be discussed below are as follows:

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as

[71] Full name: Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. This Directive was later amended by Directive 2011/51/EU that extended its scope to beneficiaries of international protection.
[72] Council Directive 2003/109/EC, Preamble (2) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en
[consulted on: 13.4.2016].
[73] Council Directive 2003/109/EC, Article 13 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en
[consulted on: 13.4.2016].

refugees or as persons who otherwise need international protection and the content of the protection granted;

- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange. Unremunerated training or voluntary service;
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;
- Council Directive 2009/50/EC of May 29 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment;
- Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;
- Directive 2011/98/EU of the European Parliament and the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

It is note-worthy that all these legal acts in the preamble of the Council Directive 2003/109/EC refer to the Tampere Programme (and the latter ones to the Stockholm Programme from December 2009) and conclusions arising from it.

3.2. Extension of Legal Immigrants' Rights within the EU

Firstly, it is important to mention that the EU has made a commitment to respect human rights in accordance with the European Convention on Human Rights. The development of the common rules for the fair treatment of TCNs was also introduced through the Tampere Programme. The latter included guidelines for dealing with racism and xenophobia and the fostering of transparency and democratic control.

As mentioned in the introduction to this chapter, the Treaty of Amsterdam brought the first expansion of the TCNs' rights within the Union: their rights, however, remained

"approximated" to those of the Union citizens. According to Dr. Julia Mourão Permoser who focuses on third-country legal residents in her dissertation (and further on, in her numerous scientific articles and contributions), this "limited" and "approximated" right of the third-country nationals has become a matter of concern and disagreement in the Union, triggering the "strong activism" of the Commission supporting immigrants' rights. The concept of "civic citizenship" was introduced in order to customize the Commission's proposals in the Green Paper – Communication on a Community Immigration Policy (2000).[74] The motivation of the Commission seemed to be of a normative substance, leading to the main objective: to expand the idea of Union Citizenship beyond nationality. It was in line with the idea of naturalisation and created a theoretical "superstructure" covering this paradigm. The process of "naturalisation" differs between individual MSs, however, the Union was liable for creating one umbrella piece of legislation.[75]

Expanding rights of legal third-country immigrants was supposed to outline and create policies of integration within the EU. The idea was to adopt one comprehensive Directive that would cover the broad category of legal immigrants with the main condition for granting them more rights being their time of residence.

Permoser mentions the so-called "framing contest" between the Commission and several MSs (represented by Germany, the Netherlands and Austria), who pushed for different understanding of integration, covering the adoption of values, sharing culture and learning language. Since some other MSs had a conflicting idea of naturalization, the final draft of the Directive granted wider rights than initially pushed for. According to the German commissioner, the status of legal residents was getting too close to citizenship in this context.[76]

Under the new commissioner – Frattini – the struggle continued with a new approach: granting immigrants more rights in order to make immigration to the Union attractive. Now, it was developed through the sectoral approach, where the legal immigrants were divided into two categories: those who are in the interest of MSs (highly skilled

[74] Communication from the Commission to the Council and European Parliament on a Community Immigration Policy /COM 2000/0757/final/ [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1460911289720&uri=CELEX%3A52000DC0757 [consulted on 13.4.2016].
[75] MOURÃO PERMOSER, Julia (2010). *Redifining Membership: European Union Policy on the Rights of Third-Country Nationals.*
[76] MOURÃO PERMOSER, Julia (2013). *Expansion of the rights of third-country nationals in the EU*. Brussels: Université Libre de Bruxelles, Département de Sciences Politiques, 11.4.2013.

individuals, researchers, students) and others. It was a rather pragmatic strategy with an objective to move the Directive forward. This is when family reunification was decided to be used as an incentive.

The outcome of these negotiations were covered in three Directives:

- Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research;
- Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (so-called "Blue Card" Directive).

In contrast to the simplification of the residential status acquisition for many legal third-country residents, the visa policy for non-residents has been tightened. It is not the scope of my analysis, but it is note-worthy that from the early 2000s applying for a Schengen visa stopped being a mere formality. According to Guiraudon the major European airlines "prevent around 5,000 people from boarding each year."[77]

Further development of TCN rights was the adoption of Amendment 2011/51/EU to the Council Directive 2003/109/EC extending its scope to beneficiaries of international protection. It granted them a set of rights that had not been specifically accessible in the past, with the goal of full integration of these beneficiaries in mind.

3.3. Classification of Residence Status and Associated Terminology, as Outlined by European Law

To be able to conduct a thorough analysis of the residential status of third-country nationals it is key to define and grasp the difference in legal terminology. I will base this on definitions provided by the Directives outlined in 3.1., and create a classification for the further chapters of this thesis.

[77] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.177.

Council Directive 2003/109/EC introduces the following categories in Chapter I, Article 2:

- "third-country national" as "any person who is not a citizen of the Union within the meaning of Article 17 (1) of the Treaty";
- "long-term resident" as "any third-country national who has long-term resident status as provided for under Articles 4 to 7";
- "family members" as "the third-country nationals who reside in the Member State concerned in accordance with Council Directive 2003/86/EC";
- "refugee" as "any third-country national enjoying refugee status within the meaning of the Geneva Convention […]".[78]

In order to answer the research questions for this thesis, the first 3 categories should be a main focus as refugee status is not within the scope of it. Additionally, in the Directive following definitions are given for terms that help to grasp its full scope and application:

- "first Member State" as "the Member State which for the first time granted long-term resident status as provided for under Articles 4 to 7";
- "second Member State" as "any Member State which for the first time granted long-term resident status to a third-country national";
- "long term-resident's EC residence permit" as a "residence permit issued by the Member State concerned upon the acquisition of long-term resident status".[79]

A term "residence permit" is outlined in a number of the Directives discussed below. For instance, Council Directive 2003/86/EC describes it as "any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third countries nationals".[80]

[78] Council Directive 2003/109/EC, Article 2 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on 4.4.2016].
[79] Council Directive 2003/109/EC, Article 2 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on 4.4.2016].
[80] Council Directive 2003/86/EC, Article 2 [online], Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted: 12.4.2016]

Directive 2004/38/EC adds to the terminology a more in-depth definition of "family member":

- the spouse;
- the direct descendants under the age of 21 and those of a spouse/registered partner as defined above (it is important to note that those who have reached the age of 21 but are financially dependent on their Union citizen family member – i.e. students – will exercise this right too);
- the dependent direct relatives in the ascending line and those of a spouse/registered partner as defined above (this category covers financially or in another way dependent parents/grandparents);
- "the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State if the legislation of the host Member State treats registered partnerships as equivalent to marriage […]".[81]

In Article 3 (2) (b) the consideration of a "family member" is further expanded to "the partner with whom the Union citizen has a durable relationship, duly attested".[82]

The next category is outlined by **Council Directive 2004/114/EC** and involves TCNs seeking residence for the purpose of studies, pupil/study exchange, unremunerated training and voluntary service. Alongside general categories it introduces more specified concepts in relation to non-profit study activity.

- a student as a TCN accepted by an establishment of higher education and admitted to the MS's territory "to pursue his/her main activity a full-time course of study leading to a higher education qualification recognized by the Member State";
- a school pupil as a TCN admitted to the territory of a MS "to follow a recognised programme of secondary education in the context of an exchange scheme" operated by an organisation recognised by the MS;

[81] Directive 2004/38/EC, Article 2(2) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].
[82] Directive 2004/38/EC, Article 3(2) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].

- an “unremunerated trainee” as a TCN admitted to the territory of a MS “for a training period without remuneration” in accordance with its national legislation.[83]

Council Directive 2005/71/EC sets up a category of a “researcher” (introduced in context of general terms of “research” and “research organisation”). “Researcher” is further described as a TCN “holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required”. According to the definition and the attached privileges, this category could rest between a “student” as outlined by Council Directive 2004/114/EC and a “highly qualified worker” as outlined by Council Directive 2009/50/EC, and is, therefore, considered one of the categories that are viewed by the Union to be in a “MSs interest” (for more read 3.2.).

Council Directive 2009/50/EC (known as “EU Blue Card” Directive) outlines a category of highly qualified workers, whose admission into the Union should be facilitated and admission procedures simplified. The Directive affects those highly qualified third-country nationals seeking to be admitted to the territory of a Member State for more than three months for the purpose of employment and also includes provisions for their family members. According to the Directive, the category of “highly qualified employment” is outlined as employment of a person who:

- “in the Member State concerned is protected as an employee under national employment law and/or in connection with the national employment practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else”;
- is paid;
- has the required adequate and specified competence, proven by higher professional qualifications.[84]

Workers are viewed as a separate category that is, somewhat more than others, under the jurisdiction of the Member States. The general set of rules is outlined in

[83] Council Directive 2004/114/EC, Article 2 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0114 [consulted on 14.4.2016].
[84] Council Directive 2009//50/EC, Article 2 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0050 [consulted on 14.4.2016].

Directive 2011/98/EU. This Directive, however, only touches on an application procedure for a single permit for TCNs who want to reside and work in the territory of a Member State. It also lays down a common set of rights to TCN workers legally residing in a MS, irrespective of the purpose they were originally admitted for. Additionally, "all third-country nationals who are legally residing and working in Member States should enjoy at least a common set of rights based on equal treatment with the nationals of their respective host Member State".[85]

This Directive introduces the category of "third-country worker" as a "third-country national who has been admitted to the territory of a Member State and who is legally residing and is allowed to work in a context of a paid relationship in that Member State in accordance with national law or practice".[86]

In summary, according to what the legal documents referred to above provide, we can divide all TCN legal residents in the Union into the following categories:

- refugees
- family members
    - spouse
    - registered partner
    - partner in a "durable relationship, duly attested"
    - direct descendant under the age of 21
    - direct descendant older than 21 but financially or otherwise dependent
    - dependent direct relatives
- an individual acquiring studies or traineeship
    - student
    - school pupil
    - unremunerated trainee
    - volunteer
- a highly qualified employee
- a researcher
- a worker

[85] Directive 2011/98/EU [online], Preamble (20). Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461076509668&uri=CELEX%3A32011L0098 [consulted on 10.4.2016].
[86] Directive 2011/98/EU [online], Article 2(b). Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461076509668&uri=CELEX%3A32011L0098 [consulted on 10.4.2016].

These are the categories I am going to focus on in the next subchapters.[87] I will outline the conditions of legal residence in the Union for individuals who belong in these categories, as stated by European law.

A separate category not mentioned in legal documents, but worth consideration for the sake of further analysis could be minorities resulting from the break-up of former states. In the case of the Soviet Union and Yugoslavia, some nationals of Baltic countries or Slovenia/Croatia respectively are usually not citizens of the "host" state. This group is often termed "alien suffrage" group, and its presence very often results in debates about the political participation that they are excluded from.

3.4. Paths of Third-Country Nationals to Residential Status

Horspool outlines the definition of a residence permit as an "evidence of the Union right of residence" and adds that a "failure to obtain one is not sufficient reason to expel a Union national".[88] It is important to mention that for all the categories described and outlined below the common condition under which their right to reside in one of the EU MSs might be re-considered is the situation in which they are considered to pose a threat to public policy, public security or public health. This condition is the only one required on the communitarian level and it affects all entries, regardless of the MSs in consideration. Further conditions and restrictions are presented by the Member States themselves, as discussed separately in each of the Directives mentioned below.

3.4.1. Obtaining Residence via Marriage/as a Family Member

Marriage or family reunification is considered perhaps one of the most typical reasons for granting legal residence, and consequently long-term residence status. According to Virginie Guiraudon cultural and family ties, as well as good economic prospects, are the main determinates of immigration into the EU.[89]

[87] With the exception of the refugee category that is not a subject of this thesis; due to its complexity it deserves separate research.
[88] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 392.
[89] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.178.

Both Directives 2004/38/EC and 2003/86/EC focus on the rights of family members reunited with the Union residents within one of the MSs. It is, however, crucial to outline the difference between these two Directives. Whereas Directive 2004/38/EC focuses on TCN family members of Union nationals, Council Directive 2003/86/EC targets family members of TCNs who had previously acquired residence in the EU ("this Directive shall not apply to members of the family of a Union citizen"[90]).

As mentioned in Chapter 3.3. the term 'spouse' (originally defined in Regulation 1612/68) was extended by Article 2 of Directive 2004/38/EC to include registered partners, "if such partnership is considered by the host country to be equivalent to marriage."[91] In Article 3 (2) (b) of the same Directive the rights are further expanded to "the partner with whom the Union citizen has a durable relationship, duly attested."[92] This relationship should be thoroughly examined by the Member State's officials and, consequently, any denial of entry should be justified. There are no further conditions given by the Directive, however, the national legislation of certain MSs might require an expected verifiable period of time, i.e. 2 years in the United Kingdom.[93]

The developments incorporated into Directive 2004/38/EC could be considered an outcome of *Case 59/85 Netherlands v Reed (1986)*[94] where the term 'spouse' was reconsidered as follows: "it must be recognized that the possibility for a migrant worker of obtaining permission for his unmarried companion to reside with him, where this companion is not a national of the host member state, can assist his integration in the host State and thus contribute to the freedom of movement of workers."[95]

As stated in Article 13 (2) of Directive 2004/38/EC the "annulment of a marriage or partnership will not entail the loss of the right of residence for a Union citizen's family who are not nationals of an EU Member State as long as the registered partnership

[90] Council Directive 2003/86/EC, Article 3(3). [online], Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted: 12.4.2016]
[91] Directive 2004/38/EC, Article 2 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].
[92] Directive 2004/38/EC, Article 3(2)(b) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].
[93] LEJNAR, Oldrich (2012). *Právo voľného pohybu štátnych príslušnikov tretích krajin, ktorí sú rodinnými príslušníkmi občanov Európskej únie – voľný pohyb osôb*, p. 54.
[94] A British citizen was denied right of residence in the Netherlands, for the reason that she was in an unmarried relationship with her British partner who was working there.
[95] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 398.

lasted for at least three years prior to annulment, with at least one of these being in the host Member State."[96]

In Case C-109/01 Akrich (2003) a Moroccan national returned illegally to the United Kingdom, where he was twice deported from, and married a British citizen. He applied for entry clearance into the UK. Horspool argues, that if the marriage was genuine, even if the spouse was not a legal resident upon his return, "regard should nevertheless be had to Article 8 of the ECHR which expresses the article to respect for family life which was one of the fundamental Union rights".[97]

Case C-127/08 Metock (2008) has questioned a significant concern regarding the legal status of a spouse before joining the marriage, which Directive 2004/38/EC did not provide an explicit answer to. The question remained as follows: is there a condition that the family members of a Union citizen in the host Member State "must have previously been lawfully resident in another Member State"?[98] Does the Directive apply only to marriages established in a MS before moving to another MS? This Case abolished the ruling of Case Akrich mentioned above and abandoned the condition of "lawful residence" prior to marriage. As well as the legal residence of a TCN family member in one of the MSs as a condition to acquire residence permit in a host MS. The free movement preamble would be considerably diminished if the opposite applies (according to the understanding that the EU citizen would be discouraged to move to a host MS for that reason). The same applies to when and where (before or after entering a host MS) a TCN joined a marriage – it remains irrelevant for the same reason.

The immigration status of the third-country family member of a Union citizen will be assigned to a given TCN by the fact of marriage (or other similarly interpreted legal conditions as described above, i.e. registered partnership or "durable relationship"). The only condition that might be required from a third-country national is a valid visa for entering the MS, however, in this case as per Article 5 (2) of Directive 2004/38/EC

[96] Directive 2004/38/EC, Article 13(2) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].
[97] HORSPOOL, Margot (2010). *European Union Law.* 6th Edition, p. 398.
[98] C-127/08 Metock and others [online]. Available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-127/08 [consulted on 12.4.2016].

MSs "shall grant such persons every facility to obtain the necessary visas", free of charge and on the basis of an accelerated procedure.[99]

In the case of death of the Union citizen, divorce or annulment of marriage/registered partnership, "family members should be legally safeguarded", as stated by Article 15.[100] It discusses the conditions and circumstances under which the TCN family members' right of residence is not affected. In the case of "abuse of rights or fraud", however, it is a prerogative of MSs to adopt necessary measures that might lead to refusal, withdrawal or termination of any right.[101]

According to Siofra O'Leary the Court in Metock "demolished the sequence of reasoning by underlining that that Directive [2008/38/EC] was merely an instrument of secondary legislation designed to implement the free movement rights guaranteed by primary law".[102] This decision once again emphasised that the rights of TCN family members are not entirely independent, but rather are considered "derivates" from the rights of their Union nationals family members. While the rights of third-country residents may be regulated by secondary legislation as well, they primarily derive from the Treaty.

As noted by Oldrich Lejnar, the consideration or definition of "family" differs between the Member States: he focuses on the concept of "registered partnership" as recognized by certain MSs, but contested by others.[103] The same principle is stated in Council Directive 2003/86/EC: "the right to family reunification should be exercised in proper compliance with the values and principles recognized by Member States."[104]

It is also important to note that Directive 2004/38/EC is a Directive on free movement to begin with, hence all the consequences arising from it are only valid in the case that the free movement right was employed. When a Union citizen has not been

[99] Directive 2004/38/EC, Article 5(2) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].
[100] Directive 2004/38/EC, Article 15 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 1.4.2016].
[101] Directive 2004/38/EC, Article 35 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on 11.4.2016].
[102] O'LEARY, Siofra (20110. Free Movement of Persons and Services. In: CRAIG, Paul, DE BÚRCA, Gráinne. *The Evolution of EU Law.* Second Edition, p. 542.
[103] LEJNAR, Oldrich (2012). *Právo vol'neho pohybu štátnych príslušnikov tretích krajin, ktorí sú rodinnými príslušníkmi občanov Európskej únie – vol'ný pohyb osôb*, p. 4.
[104] Council Directive 2003/86/EC [online], Preamble (11), Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted: 12.4.2016].

employing his right of free movement, both himself and his TCN family member are subjected to national legislation and immigration law, not to European law.

3.4.2. Obtaining Residence as a Highly Qualified Specialist/Researcher

Council Directive 2009/50/EC, also known as the "EU Blue Card" Directive was the first Directive to be adopted in a series of Directives on economic migration following the Green Paper of 2005 on the approach of the EU to managing Economic Migration (COM(2004)811 final).[105] This Directive introduced common rules of admission and stay for non-EU nationals for the purposes of highly qualified employment.

According to Chapter II, Article 5 an applicant for residence is required to provide:

- a work contract or binding job offer "with a salary of at least 1,5 times the average gross annual salary paid in the Member State concerned";
- a valid travel document;
- proof of sickness insurance;
- documents establishing the fact an applicant meets the legal requirements (for regulated professions) or documents establishing the relevant higher professional qualifications (for unregulated professions).[106]

The transportation of this Directive into national law was approximated for June 2011. The first implementation report of the Commission followed in May 2014 and assessed 25 participating MSs. The most recent development is directed towards a review of Council Directive 2009/50/EC: with the main aim being to improve its effectiveness and make Europe more attractive for highly qualified TCNs ("at least as attractive as the favourite migration destinations such as Australia, Canada and the USA"[107]). As a major shortcoming of the Directive an issue of intra EU mobility for Blue Card Holders was mentioned. The review of the Directive that was confirmed by the European Agenda on Migration of May 13th 2015 outlined two categories of TCNs

[105] Green Paper on an EU Approach to Managing Economic Migration. [online]. Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=celex%3A52004DC0811 [consulted on: 9.5.2016].
[106] Council Directive 2009/50/EC, Article 15(1) [online]. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0050 [consulted on 12.4.2016].
[107] Inception Impact Assessment: Review of Directive 2009/50/EC [online]. Available at: http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_home_025_review_eu_blue_card_directive_en.pdf [consulted on 5.4.2016].

that needed to be included into the scope of the Blue Card: entrepreneurs and service providers.

Similar provisions (to highly qualified employees) apply to TCN researchers according to Council Directive 2005/71/EC. They are requested to present:

- a valid travel document;
- a hosting agreement signed with a research organisation;
- a statement of financial responsibility (if needed).[108]

3.4.3. Obtaining Residence via Studies/Traineeship/Volunteering

Rights for students, pupils, volunteers and unremunerated trainees from third countries were summarized in Council Directive 2004/114/EC. Legislation towards these groups was adjusted in regards to the nature of their status, being in direct interest of the Union and MSs. As stated in Chapter II, Article 2 a TCN resident who applies to be admitted for the purposes set in this Directive shall provide:

- a valid travel document (a MS might apply further requirements regarding the period of validity of the given document);
- a parental authorisation (if an applicant is a minor);
- sickness insurance.

Upon a MS's request the applicant might be asked to provide a confirmation of a payment of a fee for the processing of their application.

In Articles 7-11 specific conditions for each group covered by this Directive are described.[109]

3.4.4. Obtaining Residence as a Worker/Service Provider

As mentioned in the chapter 3.3., the role of a third-country worker is roughly outlined by Directive 2011/98/EU, which applies to:

- TCNs who apply to reside in a MS for the purpose of work;

[108] Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ai23023 [consulted on: 21.4.2016].
[109] Council Directive 2004/114/EC, Article 6 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0114 [consulted on: 15.4.2016].

- TCNs who have been admitted to a MS for purposes other than work but are allowed to work and who hold a residence permit;
- TCNs who have been admitted to a MS for a purpose of work in accordance with Union or national law.[110]

Substantive law provisions for a permit as a worker or service provider are left within the Member States' jurisdiction and are outlined by national law. Directive 2011/98/EU remains a residual legal adaptation and procedural prescription that unifies the process of handling the applications. This Directive also introduces the process of a "single application procedure", which is a procedure on a basis of a single application made by a TCN or his employer that leads to the authorisation of residence and work in the territory of a MS. The single permit is adjusted by European law and would be issued by a MS using the uniform format according to the Regulation (EC) No 1030/2002.

As mentioned above, the role of a "Service Provider" is now being reconsidered by the European Agenda on Migration and is potentially going to become a part of a new proposal of the Blue Card Directive.

3.4.5. Loss of Residential Status

The conditions under which a legally-residing TCN will lose his/her status are outlined in Articles 16-17 of Council Directive 2003/86/EC, Article 16 of Council Directive 2004/114/EC and Articles 8-9 of Council Directive 2009/50/EU. They are stated as follows:

- Submission of false or misleading information/false or falsified documents (this applies to all cases outlined by the Directives);
- When conditions laid down by the Directive are no longer satisfied from the claimant's side
- In the case of family reunification:
    - When the sponsor is married or in a stable long-term relationship with another person;

[110] Directive 2011/98/EU, Article 3 (1) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461076509668&uri=CELEX%3A32011L0098 [consulted on 10.4.2016].

- When the sponsor and his family member who unifies with him are no longer in a marriage, family relationship or other long-term relationship;
- When the sponsor's residence comes to an end and the family member has not yet acquired an autonomous right of residence;
- When the marriage, partnership or adoption "was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State".[111]

- In the case of the Blue Card:
  - When an applicant is considered "inadmissible";
  - When "ethical recruitment" shall be ensured in sectors suffering from the lack of qualified workers in the countries of origin;
  - When an employer has been sanctioned for undeclared work in conformity with national law.[112]

All the mentioned Directives refer to the condition on grounds of public policy, public security or public health, under which the prerogative to withdraw or refuse to renew a residence permit is left for a Member State.

3.5. The Obtaining of Long-Term Residence by TCNs

It is essential to define the scope of long-term residence as outlined by European Law and by MS legislation. The Long-Term Residence institution is present in both cases, however that of MS legislation it is expanded to an institution of permanent residence, per unique requirements of national immigration laws. Long-term residence is limited in terms of duration and can (but must not) be automatically prolonged upon the applicant's request. Permanent residence is, from the legal point of view, of unlimited duration and is always tied with residency in a certain MS. Hence, a permanent residence permit is considered the next step of the foreigner's integration into the MS, and a precursor to citizenship.

Council Directive 2003/109/EC specifically targets TCNs who are long-term residents and guarantees the conditions under which they are granted this type of residence.

[111] Council Directive 2003/86/EC, Article 16 [online]. Available at: http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32003L0086 [consulted on: 21.4.2016].
[112] Council Directive 2009/50/EU, Article 8 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al14573 [consulted on: 23.4.2016].

The Directive is quite emphatic in regards to naturalisation and integration: by emphasising that special right for a resident who "has put down roots in the country" it regards duration of stay as the main criterion for acquiring long-term residence.[113] The integrative role of long-term residents as well as their economic contribution is repetitively highlighted in the preamble of the Directive: "the integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty".[114] Therefore economic considerations should not be grounds for refusing resident status to a long-term resident and shall not be categorized as relevant.

In Article 4 it states that a long-term resident status shall be guaranteed by the Member States to TCNs who "have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application".[115]

Consequently, Directive 2004/38/EC adds that the same applies to Union citizens in a host MS. All EU legal residents shall have the right to obtain permanent residence in any host Member State after they have resided legally in the given state for a "continuous period of 5 years". [116] Within Directive 2004/38/EC this right is approximated from EU citizens towards their family members who are not nationals of a Member State. Continuality, in this regard, is viewed as a period of time not affected by "temporary absences not exceeding a total of six months a year", absences for military service, or absences of a maximum of twelve months for "important reasons" (such as pregnancy, childbirth, serious illness etc.). According to Article 17 (3) of Directive 2004/38/EC, the family member of a Union citizen residing in a host state "shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired the right of permanent residence".[117]

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[113] Council Directive 2003/109/EC, Preamble (6) [online] Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en
[consulted: 13.4.2016].
[114] Ibid.
[115] Council Directive 2003/109/EC, Article 4(1) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en
[consulted on: 13.4.2016].
[116] Directive 2004/38/EC, Article 16 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on: 1.4.2016].
[117] Directive 2004/38/EC, Article 17(3) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al33152 [consulted on: 1.4.2016].

Articles 5-7 of Council Directive 2003/109/EC provide details on, conditions for, and the process of acquisition of long-term residence. According to Article 5 the MSs shall require a TCN to provide sickness insurance and evidence of "stable and regular resources that are sufficient to maintain himself/herself and the members of his/her family without resource to the social assistance system of the Member State concerned". The MSs take into consideration the level of minimum wages and pensions prior to the application. The Member States might also request applicants to comply with integration conditions (this condition will be more thoroughly discussed in chapters 4 and 5 of this thesis).[118]

The application process is described in Article 7 and should be conducted through the competent authorities of the Member State of residence. The application should be accompanied by documentary evidence required by national law, in addition to the conditions stated in Articles 4 (where the duration of residence is discussed) and 5 of Council Directive 2003/109/EC. The deadline for national authorities' final resolution in regard to the application is, however, also prescribed by European law: written notification should be given to the applicant "as soon as possible and in any event no later than six months from the date on which the application was lodged" (with consideration for possible extension due to the complexity of examination).[119]

Article 8 of Council Directive 2003/109/EC discusses residence permits, when one issued by a MS shall be valid at least for five years and shall, upon application if required, be automatically renewable upon expiration. It may be issued in a form of a sticker or a separate document and shall enter "long-term resident – EC" under the heading "type of permit". According to Article 8 (1) of Council Directive 2003/109/EC "the status as long-term resident shall be permanent, subject to Article 9".[120] Article 9 of this Directive states the conditions for withdrawal or loss of status of long-term resident.

Importantly, Article 11 discusses the matter of equal treatment, according to which "long-term residents shall enjoy equal treatment with nationals" in regards to:

[118] Council Directive 2003/109/EC, Article 5 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on: 13.4.2016].
[119] Council Directive 2003/109/EC, Article 7 [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on: 13.4.2016].
[120] Council Directive 2003/109/EC, Article 8(1) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on: 13.4.2016].

- access to employment and self-employed activity (a);
- educational and vocational training (including study grants guaranteed by law) (b);
- recognition of professional diplomas, certificates and other qualifications (c);
- social security, social assistance and social protection (d);
- tax benefits (e);
- access to goods and services, also to procedures for obtaining housing (f);
- freedom of association, affiliation and membership in any organisation representing workers or employers (g);
- free access to the entire territory of the Member State concerned (h).

Whereas European law grants TCN long-term residents quite a vast range of rights and benefits, similar to those enjoyed by the Union nationals, the Member States have a great autonomy in restricting them in a wide range of activities, specifically (b), (d), (e), (f) and (g) where "the registered or usual place of residence […] lies within the territory of the Member State concerned".[121]

Both (a) and (d) mentioned above could be restricted by a MS according to Article 11 (3) and Article 11 (4). Consequently, it is only (c) and (h) that cannot be restricted by MSs (except in the case of a public policy, public security or public health threat), which demonstrates quite significantly the subsidiarity dilemma.

The conditions, under which a TCN can lose his long-term resident status are outlined in Article 9 of Council Directive 2003/109/EC. The main conditions involve fraudulent acquisition of the permit and absence from the territory of the Community for 12 consecutive months (apart from the absences for specific or exceptional reasons, as defined by the Member States). A threat to public policy as described in Article 9 (3) is also considered a condition that can potentially lead to the loss of residence, but also remains subject to the Member States' consideration.

The Directive also outlines conditions pertaining to residents of the EU: when a TCN is a long-term resident of one MS, he/she can no longer be entitled to his/her permanent residence in another MS, which is valid only for a maximum of 6 years of continuous residence in the said MS, as per Article 9 (4). For those TCNs who have

[121] Council Directive 2003/109/EC, Article 11 [online]. Available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on: 13.4.2016].

been residing in another MS for the purpose of studies, the facilitated procedure of re-acquisition of the long-term residence permit in the initial state of residence shall be provided.

The expiry of a long-term resident's EC residence permit, however, shall "in no case entail withdrawal or loss of long-term resident status".[122]

[122] Council Directive 2003/109/EC, Article 9(6) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on 23.4.2016].

PART II

In this portion of the thesis, the issue of residence in the European Union will be explored and the extent to which it is applied will be measured through an example of two Member States – Germany and the Czech Republic.

Jo Shaw in his chapter on Citizenship and Enlargement conducted research on political citizenship in a number of post-2004 Member States where he outlined the interconnected practices of the transnational political citizenship including granting rights under EU law as well as national law. The author took into consideration the question of national sovereignty in regard to the concept of newly gained citizenship. In my further analysis I will elaborate on Shaw's concept of outlining the accordance/difference between EU law and national laws, but unlike Shaw I will not focus my attention on polity formation and re-formation concept. While Shaw focuses on the 2004 and 2007 enlargement Member States, I will investigate the "two poles". While Shaw focuses on the concept of citizenship, I will take into consideration the status recognition of legal TCNs. The inspiration for this type of analysis, however, has been found in Shaw's research, and it needs to be admitted.

What was the incentive for the choice of Member States? There are several reasons why I decided to limit my research to the Czech Republic and Germany.

First, we are facing an "old" Member State, the Union "driving force", one of the Treaty of Rome signatories vs. a "new" Member State, who does not have decades of experience and policies coordination under the Union's umbrella.

Second, the history of immigration in these MSs differs quite significantly, as well as the tools and legal rights that the legislation of the mentioned countries has provided. While Germany is considered to be a country with higher "absorption" policies, seeking residence in the Czech Republic often involves a higher level of obstacles.

Third, in the light of recent events, when Germany is being "blamed" for its lack of integrated migration policy and controversial re-definition of its already generous policies, migration to the Czech Republic remains on its minimal level. The approach of two countries towards migrants and the immigration policy seems to be a trigger for understanding the connotations and context of European politics in a larger scope.

As mentioned in Chapter 3.3. the Union's Directives have adopted and provided quite a wide range of rights for third-country residents, according to some MSs, even granting them rights close to the rights of citizens. At the same time, security and cultural concerns were brought to the Directives from those MSs, who had a more restricting concept both of long-term and permanent resident status.

I will proceed in Chapter 4 and 5 by more specifically analysing national residence law for TCNs who legally reside in each country in comparison with European law, and with particular Directives discussed above. These two chapters will serve as a measurement and analysis of acts put into law by the Federal Republic of Germany and the Czech Republic alongside EC/EU Directives relevant to determining Member States' expected standards for national law in terms of residence of third-country nationals.

A distinction is to be made in this case between temporary and long-term (alternatively, long-term and permanent) residents, as the conditions (both on national and EU levels) vary greatly between these categories. For the reason that short-stay visas may be given for a wide range of individualised purposes and with varying conditions, they will not be explored. The issue of citizenship will not be discussed either, as it is not essential for the frame of this thesis. Residence and long-term residence fall in between, and hence, they remain the most relevant categories to this thesis.

4. Recognition of the Legal TCNs' Rights by the Immigration Law of Germany

In this chapter I analyse more specifically German residence law for TCNs who reside legally in Germany and its compliance with European legislation. I apply a technique of analysis of legal acts put into law by the Federal Republic of Germany in comparison with Directives relevant to determining the Member States' expected standards for national law in terms of residence of TCNs (as mentioned in Chapter 3).

4.1. Germany's Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory as an application of EC Directives in Germany

The purpose of Germany's "Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory" issued on February 25th 2008 (henceforth referred to as Germany's Residence Act), is listed in its Section 1.[123] According to this, it serves to "control and restrict the influx of foreigners into the Federal Republic of Germany", but also to organize immigration, fulfil the Federal Republic of Germany's humanitarian obligations, and finally, to regulate the entry, stay and economic activity of foreigners as well as their integration.[124] Limited to foreigners whose legal status is not regulated by the Act on the General Freedom of movement for the EU citizens, it covers the specific obligations that Germany has towards its foreigners, as well as the obligations that foreigners who reside in Germany have towards the country as both a sovereign nation and a Member State.[125] Due to the fact that – in many cases (directly referencing the agreements and regulations that apply[126]) – it cites the legislation of the Union, this Act provides a clear sense of the

[123] Last amended by Article 3 of the Act of 6 September 2013 (Federal Law Gazette I p. 3556) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 21.3.2016].
[124] Ibid.
[125] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 1 (1) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[126] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders; Regulation (EC) no. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of

boundary between national and European legislation in relation to residence. Continuing with the Definitions Section (2), the Act cites the following terms that are shared with other EU legislation:

- temporary protection;[127]
- long-term resident;[128]
- international protection status.[129] [130]

As the recognition, application and use of these definitions is covered in Chapter 3.3., an investigation of how they are used shall be deemed redundant here. Consequently, the more relevant analysis, which will take place in this chapter, is conducted as a comparison of the legislation of EU and a MS's legislation, and to what extent it has adopted, applied and carried out its obligations as a host country in making residence, long-term residence and citizenship available to those who reside in Germany. As citizenship is governed by the German Nationality Act, it will be treated separately, only as a comparison to the rights and conditions pertaining to residents and long-term residents of Germany.[131] A comparison of citizens' rights will not take place here, despite the movements towards community policy and "civic citizenship" (see 3.2.).

The issues of immigration, residence and integration in Germany are to be handled by the Federal Office for Migration and Refugees, which is subordinate to the definitions, stipulations and regulations put in place by the Federal Ministry of Interior.

persons across borders; Regulation (EC) no. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas

[127] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for the granting of temporary protection in the case of the mass influx of displaced foreigners and on measures to promote the balanced distribution of the burdens associated with the admission of these persons and the consequences of such admission among the Member States, Section 2 (6) [online]. Available at: http://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex:32001L0055 [consulted on 12.4.2016].

[128] Council Directive 2003/109/EC of 25 November 2003 concerning the legal status of third-country nationals who are long-term residents, Article 2(b) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on: 15.4.2016].

[129] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on 12.4.2016].

[130] Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al14574 [consulted on: 14.4.2016].

[131] German Nationality Act, Section 3 (1-2) [online]. Available at: http://www.gesetze-im-internet.de/englisch_rustag/englisch_stag.html [consulted on: 12.4.2016].

Germany's Residence Act introduces the word "foreigner" in its Definition Chapter, and continues with this term throughout the document. For the sake of this thesis the wider term "foreigner", which also includes EU nationals, will be limited to the "TCN" in all relevant cases.

4.2. The Residence Title Requirements

Where contradictions to European law[132] do not exist, the Federal Republic of Germany recognizes the following residence titles (in addition to MS citizenship, which is not considered a residence title)[133]:

- visa;
- residence permit
    - EU Blue Card;
    - Residence permits for other reasons;
- settlement permit;
- EU long-term residence permit.

The German Residence permit is a temporary residence title which in the Residence Act does not directly cite any EC Directives or Regulations, except in connection with each individual purpose for residence in the territory.[134] Its issuance and extension are "subject to a time limit which takes due account of the intended purpose of residence", hence offering a degree of divergence when it comes to specific conditions for each purpose of residence when compared with both visas and long-term residence.[135]

[132] As a result of the agreement of 12 September 1963 establishing an association between the European Economic Community and Turkey (Federal Law Gazette 1964 II, p. 509) (EEC/Turkey Association Agreement)
[133] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 4 (1). [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[134] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Sections 7-8. [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[135] Ibid.

4.2.1. Temporary Residence Permits

German Residence Permits (temporary residence permits) may manifest themselves as Residence for educational purposes[136], Residence for economic activity[137], Residence under international law or on humanitarian or political grounds[138] and Residence for family reasons[139].

a) Residence for educational purposes

Foreigners may pursue studies in Germany at a state or state-recognised university or a comparable educational establishment, and they may also take language courses and preparation courses before studying at these qualified institutions. With admission to the relevant institution (or conditional admission), these preparation courses, language courses and studies qualify as a purpose for residence in Germany. Residence permits, in these cases, are first valid for one year upon issuance; with the maximum validity period for one permit being two years.[140]

This residence permit entitles the holder to 120 days (or 240 half days) of employment per year, except during preparatory measures for a course of study.[141] TCN residents whose temporary residence is for educational purposes may extend residence up to 18 months upon completion of studies under required conditions for employment, with the entitlement to pursue economic activity during this period.[142] Under conditions of Section 18b of the Residence Act, foreigners who are graduates of German universities may even pursue a Settlement permit. Other major principles are guided by Council Directive 2004/114/EC of December 13th 2004 on the conditions of

[136] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Part 3 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[137] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Part 4 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[138] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Part 5 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[139] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Part 6 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[140] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 16 (1) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[141] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 16 (3) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[142] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 16 (4) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

Germany also allows temporary residence permits for the purpose of basic and advanced industrial training under the advisement of the Federal Employment Agency and inter-governmental agreements.[143]

b) Residence for economic activity

Economic activity, as a reason for a TCN's temporary stay in the Federal Republic of Germany, can be divided into the following categories: Employment, Research and Self-employment. For the purposes of this thesis, Employment remains the most relevant due to the fact that Germany offers several types of conditions for TCN employees in both temporary and permanent forms. European legislation outlines the procedural rules and conditions, leaving the prerogative of providing privileges and limitations to the Member States.

Section 18 (1) of the Residence Act states that "the admission of foreign employees shall be geared to the requirements of the German economy, according due consideration to the labour market situation and the need to combat unemployment effectively […] International treaties shall remain unaffected." [144] Although this statement does not directly impose any limits or goals regarding quantity and qualifications of TCNs who wish to reside in Germany, it does set a rather economy-focused, restrictive tone in relation to foreign employees. This does not reference an intended category for restriction, though. Because of the word "admission" it seems to be geared for current non-residents who seek residence in Germany, visa holders who seek residence in Germany, and TCNs who are residents of Germany under other conditions. It can or should not refer to current long-term residents (nor applicants for permanent residence), as they have the right to be employed in Germany, and also because Preamble (9) of Council Directive 2003/109/EC states that "economic considerations should not be a ground for refusing to grant long-term

[143] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 17 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[144] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 18 (1) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

resident status and shall not be considered as interfering with the relevant conditions".[145]

Self-employment

The Residence Act indicates economic conditions as they are related to residence for the purpose of self-employment. In Section 21 it states that "a foreigner may be granted a residence permit for the purpose of self-employment if an economic interest or a regional need applies", which highlights, yet again (as with Employment), a division that lies between residence permits and permanent residence permits.[146] This could simply be a regional issue (working in one area versus another) more than a question of admission/denial, however, the "economic conditions" stated in Preamble (9) of Council Directive 2003/109/EC do seem to suggest that temporary residence is more subject to the economy than permanent residence.

Highly qualified foreigners

Even though Council Directive 2009/50/EC considers highly qualified foreigners subject to the relevant conditions for holding a Blue Card, the Residence Act has its own conditions for foreigners who are highly qualified. "Highly qualified foreigners" (as they are defined in Section 19 of the Residence Act) could have the right, in special cases if approved by the Federal Employment Agency, to be granted a settlement permit. In this way, special considerations above and beyond those given to other TCNs are given to those who are highly qualified.

EU Blue Card Holders

The EU Blue Card holders who wish to enter the German territory for the purpose of employment are able to work under similar conditions to those who are considered highly qualified foreigners under the Residence Act.[147] Their European rights are covered in Council Directive 2009/50/EC as discussed in 3.3 of this thesis. One specific extension of rights that exists for EU Blue Card holders in Germany is that

[145] Council Directive 2003/109/EC, Preamble (9) [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=en [consulted on: 15.4.2016].
[146] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 21 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 22.3.2016].
[147] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 19(a)(1) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016]/

after 21 months of qualified residence, they may be issued a settlement permit (again needing to meet necessary language requirements).[148]

Scientific Research

One who seeks residence in Germany for research purposes is subject to special procedures and conditions under Directive 2005/71/EC. This is covered in Section 20 of the Residence Act as well, and is mentioned only in relations to this EC Directive, except when concerning refugee status, subsidiary protection or international protection.[149]

c) Residence under international law or on humanitarian or political grounds

In this thesis, residence based on humanitarian grounds will not be covered, as legislation connected with this topic is highly dynamic and complex to date. Residents who qualify for this are subject to conventions, directives and conditions that are not closely connected with those of other TCNs.

d) Residence for Family Reasons

In Germany, it is possible for foreigners who are residents to be joined in the federal territory by their foreign dependents via a residence permit (allowing them to pursue an economic activity), which does not exceed the validity of the residence permit of the person on which they depend.[150] The principle of family is closely guarded by German law, being stated and defended in Article 6 of the German Constitution.[151] In Section 27 of the Residence Act, it is stated that the subsequent immigration of dependents shall not be permitted if it is established that the marriage or kinship exists solely for this purpose, or if one of the spouses has been forced into marriage.[152] Another exception to granting this residence permit exists when the person to be joined by dependents is reliant on benefits for the maintenance of

[148] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 19(a)(6. [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[149] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 20 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[150] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 27 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[151] Basic Law for the Federal Republic of Germany, Article 6 [online]. Available at: http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p003 [consulted on: 24.4.2016].
[152] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 27(1)(a) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

members of his/her household. Related conditions for the MSs according to Directive 2003/109/EC are discussed in 3.4.1 of this thesis.

Specifically for foreigners in Germany, if dependents are to obtain residence to join a TCN, the party must possess a settlement permit, an EU long-term residence permit, a residence permit or an EU Blue Card, and sufficient living space.[153] Similar conditions are granted for spouses, minor, unmarried children, and (for care and custody) parents of minor, unmarried children of German nationals whose ordinary residence is in the federal territory.[154] More specific, exceptional conditions for the families of foreigners are covered extensively in Sections 30-36 (subsequent immigration of spouses, independent right of residence of spouses, subsequent immigration of children, birth of a child in the federal territory, children's right of residence, children's independent, permanent right of residence, subsequent immigration of parents and other dependants). No EU secondary legislation is referred to in these sections.

4.2.2. Long-Term Residence Permits

In a given Member State, the main criterion for acquiring long-term resident status should be the duration of residence in such State, emphasising 'putting down roots' as another important criterion, as stated in 3.5 of this thesis. This leaves some interpretation to the government of each MS. As such, "roots" may come to be a clear item of legal investigation. And the way in which time is counted being another key factor in the consideration of each state.

The German Residence Act does not directly address the concern of equal treatment of TCNs, similarly to EU nationals, as emphasised by the Union Directives. It does, however, specifically outline many rights to stay in the territory of the country such as protections from deportation (Section 60). One passage which even contradicts the "equality of treatment" is found in Section 106, where it is stated that "the fundamental rights of physical integrity" (Article 2 (2), sentence 1 of the German Constitution) and

[153] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 29 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[154] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 28 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

"freedom of the person" (Article 2 (2), sentence 2 of the German Constitution) "shall be curtailed under the terms of this Act".[155] It does go on to specify the conditions under which these fundamental rights may be curtailed, and explain the due process involved.

One condition that is not stated in Directive 2003/109/EC, which is applicable to those pursuing long-term residence and naturalisation in Germany, is the condition of integration. As stated earlier, roots may be a criterion in determining whether a foreigner qualifies for long-term residence. The integration course and Integration programme seem to be the methods through which this is done.

Integration Course for Residents

As a contrast to basic requirements set forth by EC Visa Code[156] and Directive 2003/109/EC, a resident must fulfil an obligation to duly attend an integration course or furnish evidence that he/she has achieved integration into the community and society by other means.[157] In Section 8 of the Residence Act this is directly addressed as a priority. The residence permit can be extended for at most one year without completion of the integration course, or furnishing evidence of integration into German society.

According to Section 44 (paragraph 1 and 3), the integration course is an entitlement to certain residents and long-term residents (not applying to those in the German education system, those who have a "discernibly minimal" need for integration, or those who possess a "sufficient command" of the German language).[158] In this way, the integration course presents itself as a right and extension of what the German state offers to TCNs under Council Directive 2003/109/EC.

On the other hand, the integration course could also be seen as an obligation and requirement above and beyond what is required by the EU. According to Section 44a

[155] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 106 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[156] Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas [online]. Available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0810 [consulted on 1.4.2016].
[157] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 8(3) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[158] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 44 (1,3) [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

of the Residence Act, those who cannot communicate at a basic level in, or do not possess a sufficient command of the German language while being issued the residence title (pursuant to Section 23 (2), Section 28 (1), sentence 1, or Section 30 of the German Social Code), according to 44a, may also require individuals to attend the immigration course, as may the foreigners authority for special integration needs (thus extending the scope of integration efforts beyond just TCN residents). Other specific conditions, obligations and consequences for individuals are outlined in the Residence Act as well as the Nationality Act [159] (for progression towards naturalisation). Section 45 of the Residence Act goes on to state the authorities responsible for integration and an Integration programme to complement the integration course.

The entitlements and obligations connected with the integration course upon receiving the status of resident are clear evidence that expectations of foreigners are not only administrative, but cultural and linguistic.

Crediting of Residence Periods in Germany

Time, which is considered and credited as legal residence in Germany is largely counted according to EU standards as they are discussed in 3.1.3 of this thesis. This could be interpreted as a deviation from or extension of the way in which EU standards credit those periods:

- "half of any periods of lawful stay for the purposes of study or vocational training in the federal territory".[160]

Further information on what qualifies as "study or vocational training" is outlined in 5.2.1.(a) section of this chapter.

a) Acquisition of the EU Long-Term Residence Permit in Germany

In order to move from temporary residence to long-term residence in Germany, a TCN resident must either attain a settlement permit or an EU long-term resident permit (which behave similarly, but are neither legally interconnected nor

[159] German Nationality Act [online]. Available at: http://www.gesetze-im-internet.de/englisch_rustag/englisch_stag.html [consulted on: 12.4.2016].
[160] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 9b [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

overlapping). Where the residence permit is a temporary residence title, permanent residence is not. European legislation is considered in German law, stating that an EU long-term residence permit may be attained if the applicant has met the following conditions (Section 9a – Residence Act):

- "he or she has been resident in the federal territory with a residence title for five years,
- his or her subsistence and the subsistence of his or her dependants whom he or she is required to support is ensured by a fixed and regular income,
- he or she has sufficient command of the German language,
- he or she possesses a basic knowledge of the legal and social system and the way of life in the federal territory,
- the granting of such a residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the federal territory and
- he or she possesses sufficient living space for himself or herself and the members of his or her family forming part of his or her household."[161]

b) Acquisition of the Settlement Permit in Germany

In addition to standard EU long-term residence permits for permanent residence in Germany, the Federal Republic of Germany also features a "Settlement Permit". The settlement permit offers many of the same domestic rights as the EU long-term residence permit, although the conditions for attaining the EU long-term residence permit are not entirely the same as those for a German Settlement permit (the specific requirements for each are compared side-by-side in an Appendix 1).

„The settlement permit is legally interconnected with the immigration law of Germany as a residence status alongside the long-term residence permit. However, in contrast to the long-term residence permit, the settlement permit is of permanent nature. It

[161] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 9a [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

allows the carrying out of profitable activity, is unlimited in terms of location, and in cases not outlined by the immigration law, is not subject to additional regulations."[162]

The German settlement permit specifies several conditions which do not fall under the requirements for the EU long-term residence permit.[163] Specifically, as economic considerations are put under the prerogative of the MSs, the applicant for a settlement permit is required by the Residence Act to be permitted to be employed (if employed), and to have any other necessary permits for pursuit of permanent economic activity. Compulsory or voluntary contributions to the statutory pension scheme (or to a similarly-considered pension scheme) are also required. The German settlement permit is also given only under conditions that sufficient integration of the TCN has taken place, again proving that the TCN is within the expectations of the Federal Republic of Germany. The settlement permit, as with other residence permits discussed in this chapter, is not given to residents of other Member States unless they meet the necessary conditions.

While the settlement permit is oriented towards expectations to which Germany holds legal residents of five years or more who wish to become permanent residents, the EU long-term residence permit provides similar conditions within the scope of European law. As listed in the "Acquisition of Permanent Residence" section of this thesis, the requirements are more general and fewer in number than those of attaining the settlement permit. Shared requirements can be consulted in the table (Appendix 1).

Citing fewer economic concerns, the EU long-term residence permit looks much like a simplified or more general path to permanent residence in Germany. One stricter requirement for the EU permit is found in Section 9a of the Residence Act, stating that "his or her subsistence and the subsistence of his or her dependants whom he

[162] Bundesministerium des Innern. Häufig gestellte Fragen zum Thema: Ausländerrecht [online]. Available at: http://www.bmi.bund.de/SharedDocs/FAQs/DE/Themen/Migration/Auslaenderrecht/04.html [consulted on: 1.5.2016].
[163] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 9 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

or she is required to support is ensured by a fixed and regular income".[164] The settlement permit simply requires that "his or her subsistence is secure".[165]

An EU long-term residence permit is not connected with people who are in Germany for inherently temporary reasons, but rather is geared towards any "long-term" residence that is not of an inherently temporary nature, giving a more specific framework as to what long-term residence should be (i.e. excluding studying in the country for four or five years).

[164] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 9a (2) No. 2 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].
[165] Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Section 9 (2) No. 2 [online]. Available at: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html [consulted on: 25.3.2016].

5. Recognition of the Legal TCNs' Rights by the Immigration Law of the Czech Republic

In this chapter I analyse more specifically the residence law of the Czech Republic and its compliance with European legislation in regards to TCNs who reside legally in the territory of the Czech Republic. I apply a technique of analysis of legal acts put into law by the Czech Republic in comparison with Directives relevant to determining the Member States' expected standards for national law in terms of residence of TCNs (as mentioned in Chapter 3).

5.1. Act No. 326/1999 Coll., On the Residence of Foreigners in the Territory of the Czech Republic and amending Certain Acts

The purpose of Czech Act No. 326/1999 Coll. (henceforth "Residence Act") issued on November 30th 1999[166] is defined in Chapter 1, Section 1: to outline the conditions of entry of the foreigner into the Czech Republic (henceforth also "territory), departure from the Czech republic, as well as the terms of residence within the territory of the state and the scope of jurisdiction of the Police of the Czech republic, Ministry of Interior and Ministry of Foreign Affairs. The act is not solely limited to TCNs, but applies to all foreigners, who are, according to Section 1, defined as any natural person "who is not a citizen of the Czech republic".[167] [168] This Act does also apply to claimants of international protection, asylum seekers, foreigners residing in the territory under a special regulation (i.e. armed forces), and temporary protection seekers. These categories have been deemed irrelevant to this thesis, as with their counterparts in the German Residence Act.

The Act discusses types of residence as follows:

[166]The quoted version is valid as of 1 January 2016, available only in Czech language at: http://www.mvcr.cz/ ; the English version of Act (lastly updated 13.2.2009) is available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

[167] Act No. 326/1999 Coll, Chapter 1, Section 1 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

[168] Several English translations of the Czech Residence Act offer different terms in connection with foreigners: "foreigner", "foreign national" and "alien" can be found. In order to follow the same format and address the law similarly to Germany's Residence Act in Chapter 4, I will limit my wording to "foreigner" and "TCN" in the cases discussed in this thesis.

- Temporary stay (Chapter III);
    - Temporary Stay on the Basis of a Short-Term Visa;
    - Temporary Stay on the Basis of a Long-Term Visa or a Long-Term Residence Permit.
- Permanent Stay (Chapter IV).

Chapter II outlines the entry into the territory of the Czech Republic and border control, which are not relevant to the purpose of this thesis. It needs to be mentioned, however, that immigration control in the Czech Republic is subordinated to the police officers of foreign police who are subject to the Ministry of Interior. Both conditions of entry and border control are subject to European Community legislation.[169]

For stays not exceeding 90 days the Act is also subject to European legislation, namely Regulation (EC) 810/2009 establishing a Community Code on Visas.[170]

Chapter IVa of the Residence Act discusses EU citizens, and the following Chapters outline additional conditions and requirements in relation to certain sections of the first three chapters.

5.2. The Residence Title Requirements

Where contradictions to European law[171] do not exist, the Czech Republic recognizes the following residence titles (in addition to MS citizenship):

- short-term visa[172];
- long-term visa;
- long-term residence permit
    - EU Blue Card;
    - Employee Card;

[169] Act No. 326/1999 Coll, Chapter 2, Sections 4-5 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[170] Act No. 326/1999 Coll, Chapter 2, Section 15 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[171] As a result of the agreement of 12 September 1963 establishing an association between the European Economic Community and Turkey (Federal Law Gazette 1964 II, p. 509) (EEC/Turkey Association Agreement).
[172] The short-term visas institution that had been previously outlined in Section 17a was repealed in the last amendment of the Act. Thus, short-term visas and conditions of their acquisition, use and cancellation are not covered by immigration law of the Czech Republic, but instead, according to Section 20 (1) are regulated by European legislation. According to Section 20 (2) it is the responsibility of the Police to provide a short-term visa on the border crossing on the basis of a foreigner's request.

- Residence permit for scientific research;
- Residence permits for other reasons;

– permanent residence permit.

5.2.1. Temporary Residence Permits

As stated in Section 16 a foreigner stays in the territory of the Czech Republic with the status of a temporary resident:

- after crossing the national border and after the border check, unless the Police refuse to permit the TCN to enter the territory;
- after crossing the national border if no border check is carried out;
- from the date of birth in the Czech Republic (further adjusted in the Section 88).[173]

The institution of short-term visas outlined in Section 17a, and then 22-29b was cancelled (by Act 427/2010 Coll., in effect from January 1st, 2011).[174] Section 17b introduces the long-term visa, which is a visa for a stay exceeding 90 days.

A long-term visa is issued to a TCN who intends to reside in the territory of the Czech Republic for more than three months. This type of visa is issued by the Ministry of Interior upon the foreigner's request, excluding a visa for the purposes of employment. As outlined in Section 30 (2) this type of visa shall also be granted to a TCN "for the purposes of receipt of a permanent residence permit, a long-term residence permit for the purpose of family reunification, studies or scientific research".[175] A visa according to Section 30 (1) shall be granted for a period of one year, according to the Section 30 (2) – for a period of six months.

A "Long-term Visa" is defined in Section 51 as a permit, which "during its validity period, entitles a foreign national to enter and stay in the Czech Republic and to leave

[173] Act No. 326/1999 Coll, Chapter 2, Section 16 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[174] Act 427/2010 Coll. [online]. Available at: http://www.psp.cz/sqw/sbirka.sqw?r=2010&cz=427 [consulted on: 1.5.2016]
[175] Act No. 326/1999 Coll, Chapter 3, Section 30(2) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

the Czech Republic unless provided otherwise herein".[176] It is further stated that this type of visa may not be legally claimed by and may not be granted to a citizen of the EU.

Section 37 outlines conditions under which a TCN can lose their residence right under a long-term visa. The three main conditions are that the foreign resident:

- has been sentenced for having committed a wilful criminal act;
- does not fulfill the purpose for which the visa was granted;
- requests the visa's cancellation him/herself.

Further conditions, as per Section 37 (2) mention:

- false information in the visa application or falsified documents submitted with the application;
- ceasing to meet any of the conditions specified for the visa type;
- absence of a document proving the application of a new travel document to be assured;
- an invalid or stolen travel document that had not been reported and thus, was not provided during police control;
- another State of the EU or a Contracting State having decided to expel a TCN from its territory;
- absence of valid health insurance during police control, even within the deadline set by the police during control.[177]

Section 42 discusses long-term residence permits. It is important to mention that long-term residence permits in Czech legislation are considered a temporary type of residence, in contrast to the European Union long-term residence permits, which are granted on basis of longevity of stay, and are allowing a TCN to acquire permanent residence on the national level. Hence, even though in Czech language the section uses the term "long-term residence", it can be translated into English as "temporary residence permit on the basis of long-term residence".[178] Here, it is also important to

[176] Act No. 326/1999 Coll, Chapter 3, Section 51(1) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[177] Act No. 326/1999 Coll, Chapter 3, Section 37(2) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[178] Act No/ 326/1999 Coll., Chapter 3, Section 42 [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].

note parallels with the German Residence Act, in which the long-term residence permit, similarly to the EU terminology, applies to foreigners residing in the territory for more than 5 years' time.

According to Section 42 (1) a TCN, who is residing in the territory on a visa for a stay over 90 days, may apply for a long-term residence permit. Another reason for this application would be the case of a foreigner residing in the territory for tolerated stay, as outlined in Section 33, but this is outside the scope of my thesis. The next category is a family member (as outlined in Section 42 (3)) of a scientific researcher residing or applying for residence in the territory.

The application for a long-term residence shall be submitted to the Ministry of Interior, unless the applicant is a family member of a scientific researcher, in which case the application is submitted at the consulate/embassy on the official form. Another case is the situation when a family member of a researcher resides in the territory on the basis of a long-term visa or long-term residence for a different purpose than the purpose applied for. Then, the application may be submitted to a Ministry of Interior in the territory of the Czech Republic.[179]

A long-term residence permit card is issued by the Ministry of Interior with the maximum validity being one year. The period of validity shall be one year in the case of temporary residence for the purpose of studies with an expected period of stay exceeding one year. Two years is the limit in the case of family reunification when a sponsor holds the permanent residence permit.

Conditions in which a TCN can lose his right of residence are outlined in Sections 46a-46f with separate sections and regulations dedicated to residents in possession of an Employee Card, the EU Blue Card or a researcher's residence permit (46d, 46e, 46f respectively).

In the following paragraphs I will discuss the purposes of residence as they relate to temporary residence on the basis of long-term residence permits.

[179] Act No. 326/1999 Coll, Chapter 3, Section 42 (5) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016]

a) Residence for educational purposes

A TCN who resides in the territory for study purposes is obligated to provide proof of the availability of funds either covered by a state authority/legal entity at least equal to the amount of the subsistence minimum for one month of the expected stay or provide a document confirming that all costs associated with his/her studies shall be covered by the educational receiving organisation. If the referred amount does not reach the required sum, a TCN shall submit a document providing proof he/she is "in possession of funds amounting to the difference between the subsistence minimum and the amount of the commitment for the period of his/her expected stay, nonetheless, not less than six times the subsistence minimum".[180] Another possibility of financial proof is an allocation of a grant obtained under the international agreement the Czech Republic is entitled to.

According to Section 42d a TCN shall be entitled to apply for a long-term residence permit for a purpose of studies if he/she intends to study in the territory for a period longer than 3 months, with the exception of education at primary school, secondary school or conservatory.

b) Residence for the purpose of employment

Unlike in the German Residence Act, conditions of the residence permit for the purpose of employment are outlined separately in Section 42g of the Czech Act.

The "Employee Card" is a rather new instrument in immigration law of the Czech Republic, which partially derives from Directive 2011/98/EU, but as it is specific for the purpose of employment is regulated by national legislation.

The employee card is a type of long-term residence permit that allows a TCN to reside temporarily for a period exceeding 3 months and to carry out employment in the position for which the employee card was issued. For this purpose a TCN is allowed to apply for one of the positions specified for "employee card" holders. A TCN who has signed a job contract or a contract of a future contract is allowed to apply for this type of residence as well. The equal rights condition, as stated by the Preamble (7), (19) of Directive 2011/98/EU is preserved in Section 42g (2b), where it is stated that

[180] Act No. 326/1999 Coll, Chapter 2, Section 13(3) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

the compensation of a TCN shall not be lower than the monthly minimum wage in the Czech Republic. In all cases, a TCN applying for an "employee card" is obliged to have the required qualification or sufficient education, as requested for the work performance.

In contrast to the German Residence Act, the case of self-employment is also covered in Section 42g, under paragraph 3.

A change of employer or work position on the part of a TCN who is a holder of an employee card should be approved by the Ministry of Interior prior to the new job application. The Ministry shall approve the change if the conditions outlined in paragraph 2 of the Section are complied with.[181]

According to Section 44 (6) the employee card is issued for the duration of a work contract, with the maximum period being 2 years.

The predecessor of the employee card used to be the "Green Card", which was abolished by Czech immigration law as of June 25th 2014. With the introduction of the unified Employee Card regulation, the Czech government achieved the simplification of immigration law, mainly by discontinuing three types of permits ("A", "B" and "C") incorporated under the Green card.

c) Residence for the purpose of scientific research

A foreigner who seeks residence in the Czech Republic for research purposes is subject to special procedures and conditions under Directive 2005/71/EC. According to Section 30 (5) a TCN who is a holder of a long-term residence permit for the purpose of scientific research in one of the EU MS "shall be entitled to file an application for a visa for a stay for over 90 days for the purpose of research in the Czech Republic if the purpose of such residence requires the foreign national to stay in the Czech Republic for a period exceeding three months".[182]

[181] Act No. 326/1999 Coll, Chapter 3, Section 42g(2) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].
[182] Act No. 326/1999 Coll, Chapter 3, Section 30(5) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

Section 42a (3) mentions the right of a spouse, minor child or adult dependent child of a scientific researcher (who applies for a residence or already resides in the territory) to acquire a temporary residence on the basis of long-term residence.

Section 42f then outlines further conditions under which a TCN who is a "researcher" shall be entitled to long-term residence for the purpose of scientific research. For the purpose of the Czech Residence Act a "research organisation" means a public research institute, a higher education institution or any other research organisation recorded in the list of those that are approved for accepting researchers from third-countries and maintained in compliance with the special legal regulation. The category of research also implies the activity of an academic worker or a hosting professor at a public research institute.[183]

The special status of a researcher in the Czech Republic is confirmed by Section 42f (5) when it states that "for the period of validity of the long-term residence permit for the purpose of scientific research a holder of such residence shall be deemed, for the purposes of healthcare, to be a foreign national in possession of the permanent residence permit".[184]

d) Residence for EU Blue Card Holders

Conditions for a long-term residence permit for a highly skilled TCN, known as a "Blue Card holder", as now outlined in Section 42i, were added to the Residence Act rather recently, as a consequence of Directive 2009/50/EC. According to paragraph 2 of this section, "highly skilled" is characterised by a finished university education or higher technical education, when its duration was at least 3 years. The application can be denied, according to paragraph 6, if the work position requiring high qualification may not be occupied by a TCN. Paragraph 5, however, lays down the prerogative of the Ministry of Interior to decide whether the work position requiring high qualification is in accordance with the qualification a TCN holds (i.e. in the case of a regulated job it should be a document confirming the compliance with the conditions for performing such a job).

[183] Act No/ 326/1999 Coll., Chapter 3, Section 42f [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].
[184] Act No. 326/1999 Coll, Chapter 3, Section 42f(5) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].

The right to hold a Blue Card does not apply to the EU citizen's family member if the EU citizen resides in the Czech Republic nor to a foreigner residing in the territory on the basis of a residence permit for seasonal workers.[185]

Similarly to the residence permit based on an "Employee Card" the change of an employer of a work position of a Blue Card holder is subjected to Ministry of Interior approval during the first two years of stay. The Ministry approves such a stay upon application if a holder meets the conditions outlined in paragraph 1.

A family member of a Blue Card holder, who resided in another MS before entering the Czech Republic, is entitled to apply for temporary residence in the form of long-term residence for the purpose of family reunification, as stated in Section 42a (2).

According to Section 44 (7) the Blue Card is issued for a period of time, exceeding the duration of a work contract by 3 months.[186]

e) Residence under international law or on humanitarian or political grounds

In this thesis, residence based on humanitarian grounds will not be covered, as legislation connected with this topic is highly dynamic and complex to date. Residents who qualify for this are subject to conventions, directives and conditions that are not closely connected with those of other TCNs.

f) Residence for family reasons

A family member of an EU citizen according to the Section 15a is outlined similarly to Directive 2004/38/EC. This chapter was modified several times in the last five years, and to date the Residence Act develops the category further when it extends it towards a relative of the EU citizen who is:

- a TCN who shared the household with an EU citizen in the state where he/she was a national or has been permitted a long-term/permanent residence;
- a TCN who is dependent on an EU citizen's care or alimentation in the context of its essential needs;

[185] Act No/ 326/1999 Coll., Chapter 3, Section 42i [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].
[186] Act No/ 326/1999 Coll., Chapter 3, Section 44(7) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].

- a TCN who is unable to take care of him/herself due to a long-term unfavourable health condition.

Section 42a outlines the conditions of acquisition of the temporary residence on the basis of a long-term residence permit for the purpose of family reunification. Czech legislation in this case complies with the categories outlined by Council Directive 2003/86/EC and Directive 2004/38/EC, however it specifies the condition of a "dependent direct relative in an ascending line, who are dependent on a national" as "solitary foreign nationals older than 65 years or regardless the age foreign nationals who are objectively unable to provide for their own needs on account of their state of health if family reunification with a parent or a child having a residence permit in the Czech Republic is taken into account".[187]

Further conditions stated by the Residence Act that are more specific in contrast to EU legislation are developed in Section 42a (6). A TCN may acquire a long-term residence permit for the purpose of family reunification if:

- a TCN (sponsor) with a residence permit (long-term or permanent) resides in the territory for more than 15 months; in the case of reunification of spouses, each of them must be at least 20 years of age;
- a TCN (sponsor) resides in the territory for at least 6 months and is a holder of a residence permit issued according to Section 42g (worker license);
- a TCN who is a Blue Card holder.[188]

Section 42a (7) discusses a situation of polygamous marriage where the sponsor already has one spouse living with him in the Czech Republic, a residence permit for a purpose of family reunification shall not be issued for the second and further spouses.[189]

[187] Act No/ 326/1999 Coll., Chapter 3, Section 42a [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 25.4.2016].
[188] Act No/ 326/1999 Coll., Chapter 3, Section 42(6) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].
[189] Act No/ 326/1999 Coll., Chapter 3, Section 42a(7) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].

According to Section 42b, for an application for the purpose of family reunification a TCN is always obliged to provide documentary evidence of the family relationship. In the case of a minor's stay in the territory, parental consent is needed.[190]

According to Section 44a (d) the permit can be issued for a maximum duration of 5 years in the case of family reunification when a sponsor disposes a permanent residence permit. However, Section 42 (4d) states the validity of a single permit for up to two years.[191]

Section 45 (3) discusses the situation when a TCN with a long-term residence permit for the reason of family reunification is a survivor of a sponsor: in the case of death of the sponsor a TCN family member shall be entitled to file an application for a long-term residence permit for a different purpose. He has to comply with the condition of having resided in the territory continuously for at least two years as of the date of the death of the sponsor, or the condition when the death of the sponsor "was caused by a severe work injury or occupational disease".[192] In the case of divorce, the condition of 2 years of continuous residence remains, however, additionally, a marriage should have lasted for at least 5 years, as per Section 45 (4).

The residence of foreigners who are family members of the EU citizens is regulated by Chapter IVa and is in compliance with Directive 2004/38/EC. Upon a TCN family member's request, in the case of complying to the conditions stated in Section 87a (2) the Ministry of Interior shall provide him/her a temporary residence permit in the form of a residence card for a *family member of the citizen of the European Union.*[193]

[190] Act No/ 326/1999 Coll., Chapter 3, Section 42b [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].
[191] Act No/ 326/1999 Coll., Chapter 3, Section 44a(d) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].
[192] Act No/ 326/1999 Coll., Chapter 3, Section 45(3) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].
[193] Act No. 326/1999 Coll, Chapter 4a, Section 87b(3) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

5.2.2. Long-Term Residence Permits

Chapter IV of the Act No. 326/1999 covers all cases of permanent residence permits issued in the territory of the Czech Republic. Significantly, it is important to underline once again that the Czech permanent residence title is an equivalent of the EU Long-Term Residence Permit (a detailed comparison can be found in the Appendix 2). However, within the institution of permanent residence a TCN may be granted wider scope of rights in contrast to the EU Long-Term Residence institution.

Similarly to the conditions outlined in Directive 2003/109/EC, the main requirement for issuance of a permanent residence permit is the longevity of stay in the territory of the Czech Republic. A permanent residence permit can exceptionally be issued for an applicant with less than 5 years residence, as stated in Section 66:

- for humanitarian reasons (asylum seekers, family members of asylum seekers, a former citizen of the Czech Republic);
- for reasons which are in the direct interest of the Czech Republic;
- for a minor or dependent adult child of the TCN who is a permanent resident of the Czech Republic in the case of family reunification;
- for other reasons worth consideration.[194]

The application shall be submitted at the Consulate/Embassy, or in the case of a TCN residing in the territory it can also be submitted at the Ministry of Interior.

Crediting of Residence Periods in the Czech Republic

Permanent residence, as per Section 67, shall be issued to a TCN who has resided in the territory of the Czech Republic continuously for four years in the case of temporary residence for reasons of international protection. In other cases a TCN is allowed to apply for a permanent residence permit after 5 years of continuous residence in the territory, when during these 5 years he/she resided in the Czech Republic on a long-term visa, long-term residence permit (issued by the Czech Republic) or as an asylum seeker. In the case of studies or residence for a reason of

[194] Act No. 326/1999 Coll, Chapter 4, Section 66 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

international protection the residence duration shall be twice the duration stated in Section 68 (1).[195]

For the EU Blue Card holder a permanent residence permit shall be issued after 5 years of continuous residence in the European Union with at least 2 years of continuous residence in the Czech Republic. Absence from the territory is included in the crediting of residence periods if the absence did not exceed 12 consequent months and 18 months all together. This applies to family members of the EU Blue Card holder who are in disposal of a long-term residence permit for the reason of family reunification.[196]

a) Acquisition of the Permanent Residence Permit in the Czech Republic

Further conditions and requirements for permanent residence title acquisition are outlined in Section 70, and in comparison to the German Residence Act are of a more specified nature. Among generic requirements it mentions:

- a certified document confirming the purpose of residence in the Czech Republic;
- a document confirming the availability of funds "to cover the foreigner's permanent residence in the Czech Republic" (apart from those applying for humanitarian reasons);
- a document similar to a copy of a Criminal Record issued by a country of which the TCN is a citizen or has his/her permanent residence in;
- a document confirming the arranged accommodation in the Czech Republic;
- the consent of a parent for the permanent residence of a child in the territory;
- a document proving the TCN's required knowledge of the Czech language (except a TCN who is:
    - under 15 years of age;

[195] Act No. 326/1999 Coll, Chapter 4, Section 68(3) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].
[196] Act No. 326/1999 Coll, Chapter 4, Section 68(4) [online]. Available at: http://www.mvcr.cz/clanek/aktualni-zneni-zakona-c-326-1999-sb-o-pobytu-cizincu-na-uzemi-ceske-republiky-580539.aspx [consulted on 26.4.2016].

- can prove that he/she has been a pupil of basic or secondary Czech school for at least 1 continuous year or a student of a university in the Czech language for at least 1 year in the last 20 years;
- can prove that he/she completed a recognized Czech language exam;
- can prove physical or mental disability that affects his/her communication ability;
- has reached the age of 60 years).[197]

In this case, integration via language has been emphasised in recent years and regulations in accordance to the proof of Czech language ability have been updated (i.e. added paragraph 6 of Section 71).

Similarly to European legislation, a TCN's residence permit will be denied or cancelled under conditions outlined in Section 75:

- In the case of false information or falsified documents;
- In the case of a polygamous marriage, a sponsor has resided in the territory with one wife already;
- If a TCN is recorded in the register of persona non grata.

In the last amendments the condition of failing to present necessary documents outlined in Section 70 was abolished.[198] Further conditions are mentioned in Paragraph 2 of Section 75 and include the situations when:

- a TCN has been entered in the Information System of contracting states;
- a TCN fails to provide proof of the availability of funds;
- a TCN fails to satisfy the condition of clean criminal record.

The validity of a permanent residence permit shall cease to be valid as per Section 76 upon acquiring nationality in the Czech Republic, approved residency in another MS of the EU or upon the death of a foreigner.

[197] Act No. 326/1999 Coll, Chapter 4, Section 70 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[198] Act No. 326/1999 Coll, Chapter 4, Section 75 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

b) Acquisition of the EU Long-Term Residence Permit in the Czech Republic

Section 83 mentions the status of the EU long-term resident. Similarly to Section 9a of the German Residence Act it guarantees a TCN the legal status of a EU long-term resident with his/her acquisition of a permanent residence permit in the territory of the Czech Republic. The conditions are similar to those in German law, as well as those in Directive 2003/109/EC:

- 5 years of continuous residence in the territory;
- Public order or the security of a state or any other MS shall not be disrupted by a TCN;
- Proof of availability of funds, as stated in Section 71.[199]

As per Section 84 (in correlation with Article 8 of Council Directive 2003/109/EC) such a foreigner shall acquire a note in his/her residence permit card, saying "a permit for a long-term residence - EC".[200] Additionally, as per 83 (3) the status of EU long-term residence shall be granted to an EU Blue Card holder under similar conditions as in the case of permanent residence (he/she meets the condition of 5 years of continuous residence in the territory of MSs of the EU and 2 years of continuous residence in the Czech Republic).

[199] Act No. 326/1999 Coll, Chapter 4, Section 83(1) [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].
[200] Act No. 326/1999 Coll, Chapter 4, Section 84 [online]. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/act_no_326_on_residence_of_foreign_nationals_en_1.pdf [consulted on 20.4.2016].

The analysis conducted in Part II of this thesis should by no means be considered as comparative analysis, though it does contain a minimal element of comparison (the categories of residence titles for German, Czech and European legislation are compared side-by-side in Appendix 3). By outlining the respective national legislations its main objective was to draw a line of compliance, or rather emphasise the national conditions that exceed mentioned Directives and outline the political direction of Germany and the Czech Republic. Nonetheless, within the analysis, I have managed, in the analysis of the residence acts of these MSs, to provide a framework for understanding their compliance to and their application of the EU Directives mentioned in Chapter 2.

Germany, in the context of this thesis, proves in its legislation on residence that expectations for long-term residence gravitate in the direction of integration and citizenship. Through the requirement of integration for permanent residence and provision/requirement of language courses and German language proficiency for permanent residence, it soon becomes clear that those who are legal long-term residents are expected to integrate and participate. The Czech Republic, on the contrary, does not mention integration into society. Because of interconnected and lengthy passages regarding conditions, the Czech immigration law seems to be of a more constructed and limiting nature than Germany's Residence Act.

The Czech Residence Act is considered a very complicated legal document, which, with a number of amended and cancelled sections, might become a first obstacle for a TCN's legal residence in the territory of the country. Whereas the German Residence Act is structured and might serve as a guide for a foreigner, the Czech immigration law comes across as a fragmented document with more than 200 Sections, which are intermingled with one another through references. Also, due to the lengthy and entangled passages regarding residence conditions, the Czech Residence Act might be seen as a more complex document with a more limiting nature.

The main concept, however, remains similar: as EU legislation has developed throughout the years granting rights to more groups of foreigners/TCNs, the MSs' legislation developed and expanded with it. Similarly to European legislation, both German and Czech residence acts expanded their texts granting rights initially to workers, then, to family members of permanently residing TCNs (who work, and

hence, reside in the MS). Consequently, these expanded to family members of the EU citizens (which correlated with the conception of Union Citizenship idea), later to the highly qualified specialists and researchers. The development in the Union was triggered by demographic change, as well as competitiveness, as it was outlined in Chapter 3 ("at least as attractive as the favourite migration destinations such as Australia, Canada and the USA"[201]). The Member States have appropriately reacted to each Directive by introducing new chapters, sections or paragraphs into their immigration laws. By doing that, they fulfilled their obligation to comply and subordinate to European law and follow the direction of the integration.

[201] Inception Impact Assessment: Review of Directive 2009/50/EC [online]. Available at: http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_home_025_review_eu_blue_card_directive_en.pdf [consulted on 5.4.2016].

Conclusion

The immigration policy of the EU has come a long way since the drafting of its precursors in the late 1970s. It has been developing, fostered by the constantly growing role of the European institutions in the decision-making process. It had been consequently developed and was finally brought to a new scale with the shift provided by the Amsterdam treaty, when the immigration policy was transferred into the first pillar and thus received a more expansive interpretation in the decision-making procedure on the EU level. Soon after, 'immigration and asylum' policy of the EU rapidly became a top priority in the aftermath of the 9/11 events. In the first decade of the 2000s Justice and Home Affairs became as significant as the common market in the early years of the Community, and in return, more deeply interconnected with the Union's success in achieving its internal market goals.

In 2004, Guiraudon argued that it was "difficult to assess the direct impact of EU policy on immigration".[202] Now, 12 years later, we are able to assess this with a higher certainty. Whereas the major concern at that time was to address the danger of raising a wall around the external borders, nowadays it seems to be quite the opposite.

European law guarantees the same conditions to all EU citizens and TCNs, and the conditions do not differ in regard to various MSs. The Member States, however, have the right to apply local regulations through national law and limit these conditions – these would differ from MS to MS. Viewed in that light, they will be applied solely to the extent that European law would provide.

As much as the main development of the immigration policy of the EU took place through the TEU and the Amsterdam Treaty, the development in the Union's approach towards legally residing third-country nationals took place via secondary legislation throughout the first decade of the 2000s. As the European Community developed into the European Union, it gradually expanded TCNs' rights, which started with the category of workers. Interconnected with demographic development, economic concern and the idea of competitiveness, the EU commenced with

[202] GUIRAUDON, Virginie (2004). Immigration and Asylum: A High Politics Agenda. In: GREEN COWLES, Maria, DINAN, Desmond. *Developments in the European Union*, p.179.

introducing new categories of foreigners throughout the 2000s and ratified several Directives that were created towards the expansion of these foreigners' rights. Council Directive 2003/109/EC granted the right of long-term residence to foreigners, and subsequently, Council Directive 2003/86/EC ensured that these foreigners with residence would be able to unify with their families in the territory of the Union MSs. Later, Directive 2004/38/EC elaborated on the free movement principle and granted more rights to the family members of Union citizens, while outlining the foundation of the concept of European Citizenship. Directives 2005/71/EC and 2009/50/EC introduced further categories, and in doing that expanded the rights towards a new group of TCNs – being highly specialized foreigners and researchers. The introduction of these new categories of resident foreigners has clearly emphasized the Union's long-term international goal of becoming a desirable and sought-out region, competitive to the typical "brain drain" destinations, as the USA, Canada or Australia.

The need for integration has been passed from the European level to the level of Member States who, by becoming the Member States of the EU, made a commitment to follow its direction and to be subordinate to European legislation. Throughout the decision-making process each Member State brings its results, experiences, national priorities and expectations to the table. The outcome of negotiation, an EU legal act (Directive or Resolution), often involves a compromise in these national priorities and traditions. Nowadays we can talk about a compromise of 28 Member States, 28 approaches, 28 often opposing regards. It is evident that the final draft, which results in European legislation, involves institutions that are non-existent in the certain MSs legislation.

Hence, consequently to each Directive approval, the Member States introduce relevant chapters and paragraphs into their national legislation. By doing that they follow a general framework outlined in EU legislation, and incorporate certain limitations and regulations of rights in accordance with the Constitution of the country and existing institutions. These limitations, as noted above, cannot exceed the scope of limitations allowed by European legislation, and shall only work as a "precision tool" in certain aspects and towards local institutions.

As I have sought to demonstrate through the cases presented in Part II of this thesis, the MSs, indeed, always find a way to incorporate local experience, traditions and

scope of rights while introducing European law into national legislation. One of many examples could be the institution of long-term residence, which is introduced via the institution of permanent residence in the Czech Republic and the institution of the settlement permit in Germany, while preserving a EU Long-Term Residence institution as a parallel entity.

Czech and German immigration laws have, however, proved to be of a different structure and legal manner: while German legislation provides a constructed and brief outline of statuses and ways to obtain certain permits, Czech Residence Act has proven to be an example of immensely complicated legislative document, which stays so both for potential applicants, and often also for the immigration administrators. A certain extent of legal experience in the field of immigration law is required to be able to plough through the Czech Residence Act, which is not automatic for an ordinary applicant. The Czech Residence Act has been only changed through numerous amendments and paragraph recalling since 1999, therefore presenting the first obstacle of a TCN in the territory and fuelling the perennial private visa services industry.

Through the process of writing this thesis I have reached my main objective: in Chapters 2 and 3 I outlined the development of the EU immigration policy and examined TCNs' legal status in the Union, whereas in Chapters 4 and 5 I analysed the TCNs' legal status in two Member States – Germany and the Czech Republic. These countries with quite diverse history and development within the Union, as well as dissimilar approaches towards immigrants have proven to utilise different methods of Union's Directive transposition. In the end, each of the two MSs have applied them correctly and sufficiently.

Consequently, my research Q1 was addressed throughout Chapter 2. Q2 was outlined and fulfilled in Chapter 3. Q3 was explored through Chapters 4 and 5, emphasising the quality and ease of the fit between the EU and the receiving Member States. The analysis I conducted in Chapters 4 and 5 should not be viewed as a comparison: these chapters aimed to draw a line of compliance and describe national conditions and fractures that have been introduced in the immigration law of a given country via the transposition of European law. I, however, incorporated a side-by-side

residence titles comparison as provided by EU secondary legislation, German immigration law and Czech immigration law into a table that can be found in Appendix 3. Through this analysis I have created a structured framework, through which the expansion of the TCNs' rights on the MS level can be explained.

The intent of this thesis was to add to the body of work on the topic of legal immigration and serve as a transparent and structured analysis of the application of EU Directives in regard to legal TCNs who are residents of the MSs, as it has seemed to be a rather neglected area in recent years, when the focus of the academic work and discussion has been shifted towards the more up-to-date concerns and policies including international protection and asylum.

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The department of Justice of the European Commission: http://ec.europa.eu/justice/index_en.htm

Migration policy group: http://www.migpolgroup.com

Ministry of Interior of the Czech Republic: www.mvcr.cz

European Law database: http://eur-lex.europa.eu/

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List of Appendices:

Appendix 1:

Comparison of Requirements for the Settlement Permit as outlined by the German Residence Act, Section 9 (2), and for the EU Long-Term Residence Permit as outlined by the German Residence Act, Section 9a (2)

Settlement Permit, as prescribed in Germany's Residence Act	**EU Long-Term Residence Permit, as prescribed in Germany's Residence Act**
= a permanent residence title, in the Federal Republic of Germany	= pursuant to Article 2, letter b of Directive 2003/109/EC
(1) he or she has held a residence permit for five years	he or she has been resident in the federal territory with a residence title for 5 years
(2) his or her subsistence is secure	his or her subsistence is secure and the subsistence of his or her dependents who he or she is required to support is ensured by a fixed and regular income
(3) he or she has paid compulsory or voluntary contributions into the statutory pension scheme for at least 60 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company; time off for the purposes of child care or nursing at home shall be duly taken into account,	
(4) the granting of such a residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the federal territory	(5) the granting of such a residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the federal territory
(5) he or she is permitted to be in employment, if he or she is in employment	
(6) he or she is in possession of the other permits which are required for the purpose of the permanent pursuit of his or her economic activity	
(7) he or she has a sufficient command of the German language	(3) he or she has a sufficient command of the German language
(8) he or she possesses a basic knowledge of the legal and social system and the way of life in the federal territory	(4) he or she possesses a basic knowledge of the legal and social system and the way of life in the federal territory
(9) he or she possesses sufficient living space for himself or herself and the members of his or her family forming part of his or her household	(6) he or she possesses sufficient living space for himself or herself and the members of his or her family forming part of his or her household
The requirements of sentence 1, nos. 7 and 8 shall be deemed to be fulfilled if an integration course has been successfully completed. These requirements shall be waived if the foreigner is unable to fulfil them on account of a physical, mental or psychological illness or handicap. The requirements of sentence 1, nos. 7 and 8 may also be waived in order to avoid hardship. The aforesaid requirements shall further be waived if the foreigner is able to communicate verbally in the German language at a basic level and has not been entitled to participate in an integration course pursuant to Section 44 (3), no. 2 or has not been obliged to participate in an integration course pursuant to Section 44a (2), no. 3. The requirements of sentence 1, nos. 2 and 3 shall also be waived if the foreigner is unable to fulfil them due to the grounds stated in sentence 3.	

*it may be noted that the requirements of the Settlement Permit are, in cases, stricter and more expansive than those of the EU Long-Term Residence Permit. The correlated requirements have been paired accordingly, with their initial paragraph numbers preserved.

Appendix 2:

Comparison of Requirements for the Permanent Residence Permit as outlined by the Czech Act of Residence, Sections 68-72, and for the EU Long-Term Residence Permit as outlined by the Czech Act of Residence, Sections 83-85

Czech Permanent Residence Permit, as prescribed in the Czech Act of Residence	**EU Long-term Residence Permit, as prescribed in the Czech Act of Residence**
	Section 83 - "The Ministry in its decision on a permanent residence permit shall confer on the foreign national the status of a long-term resident in the European Community residing in the Czech Republic7c) (hereinafter referred to as a 'resident in the Czech Republic') if a foreign national:
Section 68 - (1) "A permanent residence permit shall be issued to a foreign national, at his/her request, who has resided continuously in the Czech Republic for five years." This includes residence in the Czech Republic on a Long-term visa, Long-term residence permit, or other conditional terms[203].	a) has satisfied the condition of five year continuous residence in the Czech Republic
	b) has not seriously disrupted public order or has not endangered the security of the state or any other Member State of the European Union
Section 71 (1) A foreign national must submit proof that his or her monthly aggregate income will not be lower than the subsistence minimum (or the foreign national calculated together with all persons assessed with him/her).	c) has proven the availability of funds to cover his/her permanent residence in the Czech Republic
	Section 85 - "By its decision the Ministry shall cancel the validity of the previous decision on conferring on a foreign national a legal status of a resident in the Czech Republic unless there are reasons for cancelling validity of a permanent residence permit, if":
	a) the resident in the Czech Republic seriously disrupted public order or endangered the security of the state;
	b) a Member State of the European Union has decided to terminate temporary residence of the resident in the Czech Republic in its territory due to serious disturbance of public order.
Section 70 (2) Accommodation in the Czech Republic must have been arranged for the foreign national (as directed in Section 71 (2).	
Section 68 - The foreigner must have a Czech language exam certificate, or proof of at least 1 year of education at a primary or secondary school, as well as at the University in the Czech language.	

[203] http://www.mvcr.cz/mvcren/article/third-country-nationals-permanent-residence.aspx?q=Y2hudW09Mg%3d%3d

Appendix 3:

Residence Title Counterparts as outlined by Czech Immigration law, German immigration law and European immigration law

Residence Title Term of Validity	Czech Residence Titles	German Residence Titles	EU Residence Titles
less than 90 days	short-term visa (krátkodobé vízum)	(not outlined as a category in the Residence Act)	Schengen visa (less than 90 days)
more than 90 days (can be extended?)	long-term visa (dlouhodobé vízum)	(not outlined as a category in the Residence Act)	Schengen visa (over 90 days)
temporary, renewable validity	long-term residence permit (povolení k dlouhodobému pobytu)	temporary residence permit (Aufenthaltserlaubnis)	
temporary, renewable validity (for the purpose of employment)	Employee Card (Zaměstnanecká karta)	temporary residence permit (Aufenthaltserlaubnis)	
temporary, renewable validity (for the purpose of highly-qualified employment)	EU Blue Card (Modrá karta)	EU Blue Card (Blaue Karte EU)	EU Blue card
permanent residence title	permanent residence permit (povolení k trvalému pobytu)	settlement permit (Niederlassungserlaubnis)	EU long-term residence permit The EU long-term residence permit is recognised as a permanent residence title by member states, superceding the specific conditions for a MS-specific permanent residence title.

Summary

It is only the matter of the last two decades of the 20th century that issues and complex decisions falling within the mandate of justice and interior became a collective concern of the European Union. Initially, a prerogative of the nation-state, the immigration and asylum policy started to develop towards the more supranational approach within the 1990s. EU competence in immigration policy officially started only in 1992, and since then it has been an often challenging development and negotiation between the Union and the Member States. The area of immigration and asylum has been always considered politically sensitive and hence has been viewed as a matter of national sovereignty. Prior to the Amsterdam treaty, immigration and asylum were solely a responsibility of respected Member States and were only adjusted via the individual court processes within the ECJ.

The right of residence and free movement within the European Union is considered a fundamental right. It is provided to all EU citizens, as well as TCNs by the Member States, and is expanded by a number of Directives (Directive 2003/109/EC, Directive 2004/38, Directive 2005/71/EC, Directive 2009/50/EC and others). Execution of the MSs' sovereignty is partially diminished by the Union Directives. By joining the EU, the MSs inherently agree with transferring a certain extent of their rights (as granted by international law) to the Union level. Since the 1990s, but mainly in the last 15 years, this scope of rights also involves immigration policy and free movement, first under the Schengen agreement, and then in context of the Directives. In signing, a MS commits to obey the Directives, and through this its sovereignty becomes partially limited – however, signing is a free decision of that given Member State.

This master thesis sought will be to outline the development of the immigration policy of the EU that is aimed towards expanding rights of TCNs and to examine TCNs' legal status in the Union in general, and in the Member States in particular. The analysis was constituted on outlining the most recent legal development in relation to TCNs and on summarising the crucial milestones towards the expansion of their rights.

The first part of this thesis outlines the theoretical background and indicates the main theoretical concepts behind the research, alongside introducing the historical overview of the EU development from the very start of the European Community, through the 1990s with a shift towards immigration and asylum, concluding with the

TFEU ratification and the introduction of the European Citizenship principle. Last Chapter of the Part I serves as Directive analysis, while mentioning the development of the TCNs' rights over time and outlining the way their rights have been expanded through the related Directives.

The second part of the analysis introduces the German and Czech residence acts: in a non-comparative analysis it outlines the content of the national legislation in relation to TCNs and creates a parallel with relevant EU Directives.

This analysis seeks to demonstrate through the cases presented in Part, that the MSs, indeed, always find a way to incorporate local experience, traditions and scope of rights while introducing European law into national legislation. One of many examples could be the institution of long-term residence, which is introduced via the institution of permanent residence in the Czech Republic and the institution of the settlement permit in Germany, while preserving a EU Long-Term Residence institution as a parallel entity. This part of the analysis aimed to draw a line of compliance and describe national conditions and fractures that have been introduced in the immigration law of a given country via the transposition of European law.

The research concludes on example of Germany and the Czech Republic that these Member States with quite diverse history and development within the Union, as well as dissimilar approaches towards immigrants have proven to utilise different methods of Union's Directive transposition. In the end, each of the two MSs have applied them correctly and sufficiently.

The intent of this master thesis was to add to the body of work on the topic of legal immigration and serve as a transparent and structured analysis of the application of EU Directives in regard to legal TCNs who are residents of the MSs, as it has seemed to be a rather neglected area in recent years, when the focus of the academic work and discussion has been shifted towards the more up-to-date concerns and policies including international protection and asylum.

CHARLES UNIVERSITY IN PRAGUE

Faculty of Social Sciences

Institute of Political Studies

Immigration Policy of the European Union: Legal Status of Third-Country Residents

Master Thesis Proposal

Author: Bc. Yana Krivenkaya
Major: International Relations
Supervisor: JUDr. Miroslav Pulgret, Ph.D.
Submission date:
I agree to supervise this thesis:

.....

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Prague

This master thesis deals with the issue of European immigration policy and explains different levels of immigrants' rights within the EU. The main objective of this work is to inquire into the categories of the legal immigrants in the EU and the national legal outcomes that imply their status within society – through the examples of Germany and the Czech Republic.

General Overview of the Topic and its Rationales

Immigration policy of the EU as a part of the Home Affairs DG is of a broader nature. It expands rights, that were before only given to the citizens, towards immigrants. Its main role, however, is drawing a line of belonging that, in turn, establishes the right of belonging and defines who is a member of the society. The trend towards expanding rights to non-citizens commenced in the early 1990s, but the process of their integration was decelerated by the end of the decade. Several directives were adopted in the period of time since 1999, all of them focused on broadening the rights of immigrants and simplification of the migration processes. The number of categories of immigrants has been increasing as well.

Nowadays the EU emphasizes that its policies of immigration are built "upon solidarity and responsibility"[204] and promotes immigrants' integration; there is nonetheless a gap between this perception and the way member states comply to this general perspective of the Union, which makes the immigration policy one of the most complex policies of the EU. Since there are member states with a longer history of non-European integration, as well as the states that have barely experienced any migration of the third countries nationals, the compliance of the countries to the joint immigration policy of the EU is not similar. To which extent is the Union capable of participating in the process of naturalization and integration of the third countries nationals?

The issue of non-European migration to the EU has become increasingly important during the last decade. It was partly caused by the EU membership extension and undeniably by the simplification of the migration legislature as well. The issue is therefore up-to-date, as it presents the current trend and in the context of current political situation offers a possible prediction how the EU will deal with another wave of migration that could be expected. The empirical research in this area seems to be limited, and, therefore, necessary.

Research Method:

[204] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/index_en.htm

In my research I am prevailingly going to be using case study method based on the detailed examination of the EU legislature, i.e. European directives and regulations implying on immigrants within the European law, as well as national legislatures of the Czech Republic and Germany. I am going to employ descriptive content analysis of the official documents combined with the meta-analysis of the secondary literature.

Research Questions:

The main goal of my thesis is to illustrate how the immigration policy of the EU is targeted towards the broadening of the European Citizenship concept and to examine the development of the third countries legal immigrants' status within the member states throughout the time.

My main research questions are as follows:

Q1: How has the immigration policy of the EU developed throughout the last two decades, and which directives contributed to the broadening of legal immigrants' rights?

Q2: What are the categories of legal third country residents that are currently defined by the European law? How is their legal status comparable within this categorization?

Q3: How do Germany and the Czech republic comply with the extension of the rights provided by the EU, and how deeply are the supranational regulations introduced into the national policies?

Variables and Operationalization:

The main dependent variable of my research is the membership of the Czech Republic and Germany in the European Union. The independent variable is going to be the European law (directives, regulations etc.) and national legislations. I will also introduce the control variable – a degree of harmonisation of the Czech and German national legislation. I will base my research on two types of sources: official documents (legislations, governmental papers etc.) and secondary literature.

Approximate Concept of the Research:

First, I will focus on the background of the European Union's Immigration Policy and its principal milestones. Second, I will introduce the most important EC directives that contributed to the broadening of immigrants' rights and simplification of the migration processes since the late 1990s. I will also deal with the issue of the European Citizenship

concept and examine how it is congruent to the immigration policies. Later on, I will introduce the categories of the legal third countries residents and non-residents defined by the European law. In the same chapter I will focus on how the legal status of non-residents is guaranteed by the EU legislature and what opportunities does the European Union provide for immigrants to obtain the status of the resident (Residency Permit, Green Card, Blue Card etc.). In the following chapters I will conduct the non-comparative research of the MS legislatures – through the examples of the Czech Republic and Germany – in order to monitor how the European regulations were adopted/limited by the national policies. Finally, I will discuss how the broadening of the concept of immigrants' rights and introducing the new tools and categorization of third countries nationals will be applicable within the European Union and its Member States.

1. Introduction.
2. Immigration Policy of the EU: Historical Background
    a. Introduction of the Policy
    b. Free Movement of Persons, Asylum and Immigration
    c. Schengen Area as a Broadening of the Free Movement Principle
    d. Towards the European Citizenship: Normative Perception
3. Classification of legal third countries residents and non-residents according to the European Law
    a. Initial classification
    b. Extension of the legal immigrants' rights within the EU
    c. Legal status of non-residents, comparison
    d. Obtaining the residential status/citizenship
4. Recognition of the legal immigrants' rights by the European law in the Czech Republic
5. Recognition of the legal immigrants' rights by the European law in Germany
6. Summary of the Outcomes and Conclusions

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