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Act on Granting International Protection to Aliens

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09.12.2009	RT I 2010, 3, 4	01.10.2010
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28.03.2013	RT I, 18.04.2013, 2	28.04.2013
13.06.2013	RT I, 02.07.2013, 3	01.09.2013
12.06.2013	RT I, 03.07.2013, 2	01.10.2013

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of Act

(1) This Act regulates the bases for granting international protection to an alien, the legal status of an alien who is applying for international protection and of an alien who has been granted international protection and the legal bases for his or her temporary stay, residence and employment in Estonia on the basis of treaties and the legislation of the European Union.

[RT I 2010, 3, 4 - entry into force 01.10.2010]

(2) International protection is granted to an alien with regard to whom refugee status or supplementary protection status is established or to an alien with regard to whom it is established that he or she belongs to the category of persons in need of temporary protection as defined in a decision of the Council of the European Union.

(3) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

§ 2. Alien and third-country national

(1) An alien is a third-country national or a stateless person.

(2) A third-country national is an alien who is a national of a country other than a Member State of the European Union, a Member State of the European Economic Area or the Swiss Confederation.

§ 3. Asylum seeker and application for asylum

(1) An asylum seeker is an alien who has submitted an application for asylum in respect to which the Police and Border Guard Board has not made a decision.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

(2) An alien who contests a decision concerning an application for asylum in court has the same rights and obligations as an asylum seeker during the term for contestation. An alien has the same rights and obligations as an asylum seeker during judicial proceedings if the court has suspended the compulsory execution of the precept to leave concerning the alien.

(3) An application for asylum is an application submitted by an alien with a view to be recognised as a refugee or as a person enjoying subsidiary protection and to be granted international protection.

§ 4. Refugee and refugee status; person enjoying subsidiary protection and subsidiary protection status

(1) A refugee is an alien who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country and with regard to whom no circumstance exists precluding recognition as a refugee.

(2) Refugee status is the status granted to an alien who is recognised as a refugee.

(3) A person enjoying subsidiary protection is an alien who does not qualify as a refugee and with regard to whom no circumstance exists which would preclude granting of subsidiary protection and in respect of whom substantial grounds have shown for believing that his or her return or expulsion to his or her country of origin may result in a serious risk in the specified country, including:

- 1) imposition or execution of death penalty to him or her, or
- 2) torture or inhuman or degrading treatment or punishment of him or her, or
- 3) individual threat to his or her life or the lives of civilians or violence towards him or her or civilians by reason of international or internal armed conflict.

(4) Subsidiary protection status is the status granted to an alien who is recognised as a person enjoying subsidiary protection.

§ 5. Temporary protection and person enjoying temporary protection

(1) Temporary protection is a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of aliens who are unable to return to their country of origin, immediate and temporary protection to aliens, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of aliens requesting temporary protection.

(2) A person enjoying temporary protection is an alien who has had to leave his or her country or region of origin, or has been evacuated, in particular in response to an appeal by international organisations, and is unable to return in safe and durable conditions because of the situation prevailing in that country and who may fall within the scope of provisions regulating international protection, and

- 1) who has fled an area of armed conflict or endemic violence;
- 2) who is at serious risk of, or who has been the victim of, systematic or generalised violations of his or her human rights.

(3) Mass influx is the arrival of a large number of aliens, who come from a specific country or geographical area, whether their arrival was spontaneous or prescribed by an evacuation programme.

§ 6. Unaccompanied minor alien

(1) An unaccompanied minor alien is an alien less than 18 years of age who arrives or has arrived in Estonia without a parent, guardian or other responsible adult person or who loses a parent, guardian or other responsible person while staying in Estonia.

(2) A parent, guardian or another adult responsible person who is staying in Estonia together with a minor alien is presumed to have the right of custody. At the request of the Police and Border Guard Board or the Security Police a parent, guardian or another responsible adult person is required to certify the existence of the right of custody.

(3) A minor specified in subsection (1) of this section for whom a natural person has been appointed as a guardian by the court in Estonia is not deemed to be an unaccompanied minor alien.

[RT I, 18.04.2013, 2 - entry into force 28.04.2013]

§ 6¹. Representation of applicant for and person enjoying international protection who is unaccompanied minor and adult with restricted active legal capacity

(1) An unaccompanied minor may not perform the procedural acts arising from this Act without a legal representative unless otherwise provided for by this Act.

(2) The provisions of the Family Law Act shall be applied to the representation of an alien who is an unaccompanied minor and adult with restricted active legal capacity, taking account of the specifications provided for in this section.

(3) An unaccompanied minor may be represented by a natural or legal person specified in subsection (4) of this section who is reliable and has the knowledge and skills needed for representing an unaccompanied minor.

(4) The Police and Border Guard Board may enter into a contract with a natural or legal person for the representation of the unaccompanied minor in the proceedings provided for in this Act.

[RT I, 18.04.2013, 2 - entry into force 28.04.2013]

§ 6². Services offered for the applicant for and person enjoying international protection who is unaccompanied minor

(1) The services provided for in subsection 12 (2) of this Act shall be provided by the Ministry of Social Affairs or an agency within the area of government thereof for an applicant for or person enjoying international protection who is an unaccompanied minor during his or her stay in Estonia.

(2) An applicant for or person enjoying international protection who is an unaccompanied minor shall be placed in the accommodation centre for asylum seekers or referred to substitute home service or foster care.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) Upon the assignment of a place of stay of the applicant for or person enjoying international protection who is an unaccompanied minor and the provision of services for him or her the priority shall be given to the rights and interests of the minor. Unaccompanied minors who are siblings shall not be separated from one another where possible.

[RT I, 18.04.2013, 2 - entry into force 28.04.2013]

§ 7. Family member

(1) Family members of an asylum seeker are:

- 1) his or her spouse;
- 2) his or her unmarried minor child, including an adopted child;
- 3) his or her and his or her spouse's unmarried minor child, including an adopted child.

(2) Family members of a refugee and of a person enjoying subsidiary protection are:

- 1) his or her spouse;
- 2) his or her and his or her spouse's unmarried minor child, including an adopted child;
- 3) unmarried minor child under his or her or his or her spouse's custody and maintained by him or her or his or her spouse, including an adopted child. In case of shared custody the agreement of the other party sharing custody is required;
- 4) his or her or his or her spouse's unmarried adult child if the child is unable to cope independently due to his or her state of health or disability;
- 5) a parent or grandparent maintained by him or her or his or her spouse if the country of origin does not provide support resulting from other family ties.

(3) Family members of an unaccompanied minor refugee and unaccompanied minor of enjoying subsidiary protection are:

- 1) his or her parent;
- 2) his or her guardian or other family member if he or she has no parents or if the parents cannot be traced unless this is contrary to the rights and interests of the minor.

(4) Family members of a person enjoying subsidiary protection are:

- 1) his or her spouse;
- 2) his or her or his or her spouse's unmarried minor child, including an adopted child;
- 3) a close relative not mentioned in clauses (1) and (2) of this section who lived with him or her in the country of origin and was dependent on him or her.

(5) Family members specified in this Act shall be considered a family if the family existed in the country of origin, including the marriage that was contracted before entry into Estonia.

§ 8. Country of origin, safe third country and safe country of origin

(1) A country of origin is the country of nationality or former country of habitual residence.

(2) A country where the following principles are guaranteed is considered a safe third country:

- 1) the life and freedom of an alien who is seeking asylum is not at risk on the grounds of his or her race, religion, nationality, membership of a particular social group or political opinions;
- 2) the principle of prohibition of expulsion or return is observed in the country pursuant to the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (RT II 1997, 6, 26) (hereinafter Geneva Convention);

3) the country observes the principle of non-refoulement established in international legislation if he or she is threatened by torture or other cruel, inhuman or degrading treatment;

4) an alien has the possibility to apply for refugee status and upon recognition as a refugee, to receive protection pursuant to the Geneva Convention.

(3) A safe country of origin is a country where an alien is not faced with a serious risk specified in subsection 4 (3) of this Act.

§ 9. Determining of safe third country and safe country of origin

(1) When determining a safe third country, it shall be taken into account and assessed whether or not the asylum seeker has connections with the country that provide grounds for the conviction that it is reasonable for the asylum seeker to settle in that country. When assessing the safety of a safe third country, the asylum seeker shall be given a possibility to justify as to why that country cannot be considered a safe third country.

(2) If a safe third country does not allow an asylum seeker to enter its territory, the Police and Border Guard Board must ensure access to the proceedings for asylum for the asylum seeker.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(3) A country shall be considered a safe country of origin if it can be proved on the basis of legal situation, the application of legislation in a democratic system and the general political climate that there is no general and persistent persecution specified in § 19 of this Act.

(4) The following circumstances shall be taken into account and assessed in determining a safe country of origin:

1) to what extent the legislation of the country and the application thereof guarantees the protection of persons from persecution and abuse, the principle of prohibition of expulsion or return provided for in the Geneva Convention and a system of efficient legal protection instruments against the violation of the said rights and freedoms;

2) whether or not the country has acceded to the main treaties concerning human rights and if, as a general rule, it adheres to the provisions thereof.

(5) A country can be considered a safe country of origin for a specific asylum seeker if the asylum seeker has not presented substantial reasons as to why the country cannot be considered a safe country of origin for him or her and the asylum seeker has the citizenship of that country or he or she last resided in that country as a stateless person.

(6) The Police and Border Guard Board shall determine a safe third country and a safe country of origin.

(7) The Police and Border Guard Board may recognise as safe a part of a third country.

§ 10. Rights of asylum seeker and applicant for residence permit on basis of temporary protection

(1) An asylum seeker and an applicant for residence permit on the basis of temporary protection (hereinafter applicant) shall be guaranteed the rights and freedoms arising from the Constitution of the Republic of Estonia, laws and other legislation and treaties, European Union legislation, and generally recognised norms of international law and international customs.

(2) An applicant has the right to:

1) receive within fifteen days as of the submission of the application for asylum or for residence permit oral and written information in a language which he or she understands concerning his or her rights and obligations and the consequences of the failure to perform the obligations in the asylum proceedings, the proceedings of the residence permit on the basis of temporary protection and during the period of validity of international protection;

2) be in contact with the Office of the United Nations High Commissioner for Refugees (UNCHR)

3) victim support services, if necessary, pursuant to the procedure provided for in the Victim Support Act;

4) legal aid guaranteed by the state pursuant to the procedure provided for in the State Legal Aid Act;

5) have recourse to the courts if his or her rights and freedoms are violated.

(3) An asylum seeker has the right to have a representative during asylum proceedings, except upon provision of explanations or performance of other procedural acts that, arising from their nature, must be carried out personally.

(4) [Repealed – RT I 2006, 21, 159 - entry into force 01.07.2006]

§ 10¹. Right for employment of asylum seeker

(1) An asylum seeker may take employment in Estonia if the Police and Border Guard Board have not made a decision on his or her application for asylum within one year as of the submission of the application for asylum due to reasons beyond the asylum seeker's control.

(2) The permission to take employment in Estonia granted to an asylum seeker shall be valid until the termination of the asylum proceedings. Upon contestation of the decision on an application for asylum in court the permission for employment in Estonia granted to an asylum seeker shall be valid until termination of judicial proceedings.

(3) An asylum seeker shall submit an application for employment in Estonia to the Police and Border Guard Board, which shall grant or refuse to grant such permission within one month as of submission of the application. A corresponding notation about being granted the permission for employment in Estonia shall be entered on the asylum seeker's certificate by the Police and Border Guard Board.

(4) The Police and Border Guard Board shall refuse to grant permission to take employment in Estonia if the conditions provided for in subsection (1) of this section are not met.

(5) The procedure and the format of an application for the permission for employment in Estonia shall be established by a regulation of the Minister of the Interior.

§ 11. Duties of applicants

(1) Applicants are required to observe the constitutional order of Estonia and to comply with the legislation of Estonia.

(2) An asylum seeker is required to co-operate in every way in the clarification of the circumstances of the application for asylum, among others:

1) to submit a standard format application for asylum at the request of the Police and Border Guard Board; [RT I 2009, 62, 405 - entry into force 01.01.2010]

2) to provide government agencies performing acts with oral and written information and explanations;

3) to submit all information and documents in his or her possession and other evidence which are relevant to the proceedings relating to the application for asylum;

4) to enable the examination of his or her personal effects and his or her person, the performance of radiograph, the performance of a test for establishing his or her age and the admission for deposit of documents and personal effects;

5) to co-operate in the obtainment of the documents in evidence of the circumstances presented in the application for asylum;

6) to enable the examination his or her state of health;

7) to enable photographing, fingerprinting and taking of DNA probes;

8) to co-operate in the collection of information needed for identification of his or her person, and for verification purposes;

9) to comply with the surveillance measures provided by law;

10) to appear at the Police and Border Guard Board for performance of procedural acts.

(3) The duty to co-operate specified in clause (2) 3) of this section also extends to the representative of the asylum seeker in asylum proceedings.

(4) If at the time of using the services specified in subsection 32 (1) of this Act, except emergency care, an asylum seeker had sufficient financial resources to pay for the said services, he or she is required to compensate for corresponding expenses.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(5) An applicant for residence permit on the basis of temporary protection is required to co-operate in every way in the clarification of the circumstances of the refusal to issue a residence permit.

(6) An applicant is required to notify the Police and Border Guard Board of changes in marital status and data on the place of residence and of the birth of a child.

(7) An applicant is prohibited from taking employment in Estonia or engaging in enterprise in Estonia during asylum proceedings or application for residence permit on the basis of temporary protection except in the case provided for in § 10¹ of this Act. An applicant who violates the prohibition of taking employment or engaging in enterprise shall be held liable pursuant to the provisions of the Aliens Act.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(8) The extent and procedure of funding from the state budget the medical screening of an asylum seeker and necessary health services provided to him or her shall be established by the Minister of Social Affairs.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(9) At the request of the Police and Border Guard Board an applicant is required to deposit his or her identity document until the termination of asylum proceedings.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(10) Upon the admission for deposit of the identity document of an asylum seeker the provisions of the Obligation to Leave and Prohibition on Entry Act regarding the depositing of the travel document issued by a foreign state and identity document shall be applied.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 12. Initial reception centre and reception centre

[Repealed - RT I, 03.07.2013, 2 – entry into force 01.10.2013]

§ 13. Protection of information in asylum proceedings and proceedings of temporary protection

(1) Asylum proceedings and proceedings of temporary protection shall not be public.

(2) The Police and Border Guard Board, the Ministry of Social Affairs and the agencies within the area of government thereof, the detention centre, the accommodation centre for asylum seekers, as well as the translator and other relevant persons shall maintain the confidentiality of information related to applicants and adhere to the requirements for the protection of personal data in the processing of the personal data of the said alien.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) Information containing the personal data of applicants is classified as information intended for internal use. The processing of information containing the personal data of such aliens is permitted solely for the performance of duties prescribed by law.

(4) Information collected with respect to an applicant may be forwarded to a foreign state in order to ensure the performance of duties arising from a treaty or European Union legislation whereas it shall be ensured that such information is not passed on to the country of origin of such alien where he or she is threatened by a consequence specified in § 4 and subsection 5 (2) of this Act.

(5) If information collected during asylum proceedings is forwarded to agencies other than those specified in this Act, the duties arising from subsections (2)-(4) of this section also apply to such agencies and officials thereof.

§ 13¹. Processing of personal data

(1) In the proceedings provided for in this Act the Police and Border Guard Board, the Ministry of Social Affairs and the agencies within the area of government thereof, the detention centre and the accommodation centre for asylum seekers may process personal data, including delicate personal data, without the consent of a person.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) An alien is required to provide the competent government authorities with the data specified in subsection (1) for the performance of the functions provided for in this Act.

[RT I 2007, 24, 127 - entry into force 01.01.2008]

§ 13². Identification and verification of identity

(1) Upon performance of proceedings arising from this Act the administrative authority is required to identify a person or verify his or her identity.

(2) A person is required to enable identification of his or her person and verification of his or her identity.

(3) If it is impossible to identify an alien or other relevant person or verify his or her identity, an administrative act conferring a benefit shall not be issued or the proceeding that was applied for not performed.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 13³. Identification of person on basis of identity document

(1) A person is required to present a document certifying his or her identity at the request of the administrative authority for identification of his or her person and verification of the identity.

(2) A person is identified and his or her identity verified on the basis of a document provided for in subsection 2 (2) of the Identity Documents Act or a travel document issued by a foreign state.

(3) An alien under 15 years of age is identified on the basis of the statements of his or her legal representative and other evidence if he or she has not been issued a document specified in subsection (2) of this section.

(4) If an alien does not have a document specified in subsection (2) of this section, then, as necessary, he or she shall be identified or his or her identity verified on the basis of other evidence.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 13⁴. Identification of person on basis of biometric data

(1) Biometric data may be obtained from an alien and other relevant person and such data may be processed for the identification of a person and verification of the identity.

(2) A person is required to enable being taken biometric data at the request of an administrative authority.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 13⁵. Identification of person on basis of DNA data

(1) An alien may be taken DNA probes and the respective data may be processed for identification of a person and verification of the identity if identification of a person or verification of his or her identity is impossible.

(2) Upon deciding of the taking of DNA probes of a minor alien, the rights and interests of a minor shall be taken into consideration in particular.

(3) A person shall enable being taken DNA probes at the request of the administrative authority.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 13⁶. Identification of person on basis of other evidence

An administrative authority may identify a person or verify his or her identity on the basis of the data known to an administrative authority that are not specified in this Act, including the data collected in the proceedings with regard to the person performed before or processed in databases.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

Chapter 2 REFUGEE STATUS AND SUBSIDIARY PROTECTION STATUS

Division 1 Asylum Proceedings

§ 14. Submission of application for asylum

(1) An application for asylum shall be submitted to the Police and Border Guard Board immediately after entering Estonia.

(2) If an alien who is at a border checkpoint has no legal bases for entry in Estonia provided for in the Aliens Act and he or she wishes to apply for asylum in Estonia, the alien shall submit the application for asylum immediately to the Police and Border Guard Board.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(3) An alien apprehended by the Police and Border Guard Board in the unauthorised entry who wishes to apply for asylum in Estonia shall submit an application for asylum to the Police and Border Guard Board.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(4) An application for asylum shall be submitted in person.

(5) An asylum seeker (hereinafter in this Chapter applicant) is required to submit all of the following documents in his or her possession immediately after submission of an application for asylum:

- 1) identification documents and proof of nationality and other documents that may facilitate verification of identity and nationality;
- 2) visas, residence permits or other documents concerning the crossing of borders;
- 3) documents in evidence of the circumstances of arrival in Estonia and stay in other countries after departure from the country of origin (documents in evidence of travel, transportation, accommodation and other received services);
- 4) documents and other evidence to demonstrate that application for asylum is justified.

(6) An applicant is required to submit a standard format application for asylum at the demand of the Police and Border Guard Board.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(7) In an application for asylum an applicant shall submit data on his or her race, religion, nationality, political opinion or membership of a particular social group for identification of the circumstances specified in subsections 4 (1) and (3) of this Act. For identification of the right to family reunification of the applicant, the applicant shall submit data about his or her family ties, including about his or her partner,
[RT I 2007, 19, 92 - entry into force 11.03.2007]

§ 15. Acts after submission of application for asylum

(1) The body conducting the asylum proceedings shall immediately perform the following acts after the submission of an application for asylum:

- 1) receipt of a standard format application for asylum;
- 2) examination of the person and his or her personal effects;
- 3) admission for deposit of personal effects and documents;
- 4) identification;
- 5) collection of explanations concerning arrival in Estonia or at the Estonian border and concerning the circumstances which constitute the basis for application for asylum;
- 6) photographing and, in case of aliens of at least fourteen years of age, fingerprinting;
- 7) the forwarding of data concerning asylum seekers of at least fourteen years of age to the Central Unit of the "Eurodac"-system for comparison purposes pursuant to Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, pp. 1-10) and pursuant to Council Regulation (EC) No 407/2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 062, 5.03.2002, pp. 1-5);
- 8) arrangement for medical examination, if necessary;
- 9) taking of DNA probes and in case of an alien under fourteen years of age, fingerprinting, if the person cannot be identified or his or her filiation cannot be established otherwise.

(2) Upon deciding of the fingerprinting of an alien under fourteen years of age and the taking of DNA probes of him or her, the rights and interests of such person shall be taken into consideration in particular.

(3) A person shall be examined by a person of the same sex.

(4) The acts specified in subsection (1) of this section shall be performed even if an applicant withdraws his or her application for asylum.

(5) If the acts specified in subsection (1) of this section have been performed with regard to the applicant in the course of infringement proceedings, the information gathered during infringement proceedings may be used in asylum proceedings.

(6) An applicant shall be detained for the time of performance of the acts established in subsection (1) of this section, and he or she is required to stay in the premises assigned to him or her. If the performance of the acts continues for longer than forty-eight hours, the applicant shall be detained with the permission of an administrative court.

(7) The data collected during fingerprinting shall be entered into the national fingerprint register and the data obtained as a result of DNA probes shall be entered into the national DNA register.

(8) After performance of the acts provided for in subsection (1) of this section, the Police and Border Guard Board shall refer the applicant to the accommodation centre for asylum seekers or the detention centre.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(9) [Repealed – RT I 2009, 62, 405 - entry into force 01.01.2010]

(10) Acts performed on the basis of this Act shall not prevent the performance of other acts by competent authorities in infringement proceedings, acts to ensure satisfaction of international applications for legal assistance, and acts to prevent offences.

§ 16. Specifications of acts upon submission of application for asylum at border

If a basis for rejecting an application for asylum provided in clauses 20 1) and 2) and in clause 21 (1) 2) of this Act becomes evident, the alien shall be refused entry with the approval of the Police and Border Guard Board, and the alien shall be immediately sent back from the border, informing him or her of the reasons for refusal of entry into the state.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 17. Specifications of asylum application proceedings involving unaccompanied minor applicant and adult applicant with restricted active legal capacity

(1) [Repealed – RT I, 18.04.2013, 2 – entry into force 28.04.2013]

(2) In the case provided for in subsection 14 (2) of this Act, an unaccompanied minor applicant or adult applicant with restricted active legal capacity shall be allowed to enter Estonia.
[RT I, 18.04.2013, 2 - entry into force 28.04.2013]

(3) An unaccompanied minor may perform the acts provided by law independently, if he or she is likely to become of age before the Police and Border Guard Board makes a decision on the application for asylum or if the unaccompanied minor is or has been married.

(4) [Repealed – RT I, 18.04.2013, 2 – entry into force 28.04.2013]

(5) Where necessary, a person with relevant professional expertise shall be involved in the performance of procedural acts involving minors.

(6) In asylum proceedings involving an unaccompanied minor, the rights and interests of the minor shall be taken into consideration above all.

(7) An alien's active legal capacity pursuant to the law of his or her country of origin shall not be considered in the asylum proceedings if the definition of active legal capacity provided by the law of the alien's country of origin differs from the corresponding definition provided by Estonian law.

(8) If the Police and Border Guard Board have reasoned doubts regarding the information provided by the applicant in respect of his or her age, medical examination for establishing his or her age may be conducted with the consent of the applicant or his or her representative.

(9) The Police and Border Guard Board shall inform the applicant of the performance of medical examination specified in subsection (8) of this section, of the manner of the performance thereof and of the consequences that may follow if the applicant refuses to undergo medical examination.

(10) If the age of an alien is unknown and there is good reason to believe that the person is less than 18 years of age, the alien is deemed to be a minor. The Police and Border Guard Board shall decide on treating an alien as a minor or an adult.
[RT I, 18.04.2013, 2 - entry into force 28.04.2013]

(11) The decision on determining the age can only be contested together with an administrative act or performed proceeding during which the decision on determining the age was made.
[RT I, 18.04.2013, 2 - entry into force 28.04.2013]

§ 18. Review of application for asylum

(1) The Police and Border Guard Board shall review applications for asylum which have been assigned as reviewing responsibility of the Republic of Estonia in accordance with treaties or Council Regulation (EC) 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 050, 25.02.2003, pp. 1-10).

(2) The Police and Border Guard Board shall review each application for asylum individually and impartially and verify the correctness of provided evidence and information, assess the credibility of the statements made by the applicant and the existence of the circumstance provided for in subsections 4 (1) and (3), § 20, subsection 21 (1) and subsections 22(1) and (3) of this Act, and perform the procedural acts necessary for such purpose.

(3) The Police and Border Guard Board shall determine a safe country of origin and a safe third country and verify if the asylum seeker can be sent to the said countries.

(4) In the process of reviewing an application for asylum, the applicant is provided with an opportunity to present, orally or in written form, facts and give explanations, in person, concerning circumstances that may have essential importance in the review of his or her application for asylum, including the circumstances that may prevent the applicant's expulsion from the country.

(5) The possibility specified in subsection (4) of this section shall be granted to a minor of at least ten years of age or to a younger minor if the level of development of the minor so permits.

(6) An applicant need not be granted the right specified in subsection (4) of this section if:
1) the asylum proceedings are terminated in cases provided for in clauses 20 1)- 4) and 10)-11) or clauses 21 (1) 1) and 2);
2) it is possible to make the decision on the granting of asylum on the basis of existing evidence;
3) the applicant is unable to use the said right due to persistent circumstances independent of him or her.

(7) Failure by the applicant to provide facts or give explanations provided for in subsection (4) of this section or waiver by the applicant to perform these acts or refusal to grant to the applicant the right provided for in subsection (6) does not prevent the termination of asylum proceedings.

(8) If technical equipment is used in the course of performing procedural acts, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them.

(9) If it is not possible for the Police and Border Guard Board to make a decision concerning an application for asylum within six months as of submission of the application for asylum, the Police and Border Guard Board shall notify the applicant of the delay and if requested, of the expected time the decision is to be made.

(10) The Police and Border Guard Board may give priority to reviewing the applications of applicants with special needs or applicants who are unaccompanied minors or well-founded applications.

(11) The Police and Border Guard Board may review a clearly unfounded application by a rapid procedure.

§ 19. Bases for establishing persecution and serious risk

(1) Persecution specified in subsection 4 (1) of this Act must be serious and continuous and violating human rights except in the case provided for in clause 15 2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (RT II 1996, 11/12, 34).

(2) Among others, the following circumstances observable in a state shall be considered to be persecution:

- 1) physical or mental violence, including sexual abuse;
- 2) discriminatory measures of legislative, executive or judicial power or implementation of measures by the said powers in a discriminatory manner;
- 3) discriminatory or disproportional prosecution or punishment;
- 4) dismissal of a claim for compensation for acts specified in clause 3) of this section;
- 5) convicting or punishment for refusal to perform military service in a situation which results in commission of criminal offences or acts specified in § 22 of this Act;
- 6) gender-specific acts and acts directed against minors.

(3) When assessing the reasons for persecution, the Police and Border Guard Board shall take into account the concepts of race, religion and nationality recognised in a country and discrimination on the basis of political opinions or membership of a particular a social group.

(4) Fear of persecution and serious risk may be based on events which have taken place in the country of origin of the applicant after the applicant left the country.

(5) Authorities governing a state or part thereof or other institutions which are not able to offer protection from persecution or serious risk shall be considered sources of persecution or serious risk.

§ 20. Clearly unfounded application for asylum

An application for asylum shall be considered clearly unfounded if:

- 1) another country can be considered the principal asylum country from the point of view of the applicant, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;
- 2) there is reason to consider the applicant's country of origin a safe country of origin;
- 3) the applicant holds a residence permit in Estonia;
- 4) he applicant has been refused asylum on the basis of this Act or the applicant's application for asylum has been rejected on the basis of this Act and no new circumstances exist which were not known during previous asylum proceedings;
- 5) the applicant has submitted the application for asylum under a false name or has destroyed, damaged or failed to present a document or other evidence of essential importance to the processing of his or her application for asylum, or has presented, without good reason, falsified documents or other false evidence;
- 6) the applicant has knowingly provided incorrect information or given incorrect explanations upon the processing of his or her application for asylum, or has knowingly failed to provide information or give explanations which are of essential importance to the processing of his or her application for asylum;
- 7) the applicant has submitted the application for asylum in order to avoid the enforcement of return, expulsion or extradition procedure, provided that earlier application for asylum had been possible;
- 8) the applicant has knowingly ignored the duties provided by this Act, has refused or refuses to be photographed and fingerprinted or give DNA probes, or fails to comply with surveillance measures;
- 9) the alien's actual objective is to settle in Estonia for other reasons, including to find employment or improve his or her living conditions;
- 10) the applicant is unable to provide credible evidence proving that his or her fear of persecution is well-founded;
- 11) the applicant's explanations are inconsistent, conflicting, improbable or lacking in circumstantial or personal details;
- 12) it is obvious that the applicant cannot be considered a refugee pursuant to law;
- 13) the applicant has submitted a new application for asylum with new personal data;

- 14) the applicant has failed to submit an application earlier without good reason, even though he or she had an opportunity to do so;
- 15) the applicant has without good reason failed to fulfil the obligations provided for in clauses 11 (2) 1)-3), 10) and/or subsection 23 (1) of this Act;
- 16) the applicant arrived in Estonia illegally and failed to contact the Police and Border Guard Board and/or to submit an application for asylum as soon as possible;
- 17) the applicant poses a threat to national security or public order or he or she has been expelled from Estonia for the said reasons;
- 18) the application for asylum of the parent of an applicant who is a minor has been rejected;
- 19) an applicant who is a minor independently submits an application for asylum that his or her legal representative has already submitted for him or her.

§ 21. Bases for rejection of applications for asylum

- (1) Asylum proceedings are terminated by a decision to reject the application for asylum if:
 - 1) another country is responsible for reviewing the application for asylum according to a treaty or Council Regulation (EC) 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 050, 25.02.2003, pp 1-10).
 - 2) the applicant has arrived in Estonia through a country which can be considered a safe third country;
 - 3) a circumstance provided for in § 22 of this Act which precludes recognition as refugee or person enjoying subsidiary protection exists in respect of the applicant;
 - 4) a circumstance provided for in clauses 20 1)-3), 12), 13) or 16)-19) of this Act becomes evident and the application for asylum shall be deemed to be unfounded;
 - 5) a basis for refusal to review the application provided for in the Administrative Procedure Act becomes evident;
 - 6) the persecution and serious risk threatening the applicant as specified in subsections 4 (1) and (3) of this Act is limited to a particular geographical area, and sufficient protection can be accorded to the applicant in another area of his or her country of origin;
 - 7) the applicant withdraws the application for asylum;
 - 8) there is reason to believe that the applicant has withdrawn the application indirectly or has waived it.
- (2) Asylum proceedings may be terminated by a decision to reject the application for asylum if a circumstance provided for in clauses 20 4)-11), 14) or 15) becomes evident.
- (3) If a basis provided for in clauses (1) 1), 2), 5) of this section and clauses 20 1), 3), 16) or 19) of this Act becomes evident, the contents of the application for asylum shall not be reviewed.
- (4) An alien shall be expelled from Estonia to a safe third country pursuant to the decision to reject his or her application for asylum made on the basis of clause (1) 2) of this section.
- (5) If an unaccompanied minor refuses to undergo medical examination specified in subsection 17 (8) of this Act, his or her application for asylum may not be rejected solely on such grounds.

§ 22. Circumstances precluding recognition as refugee or person enjoying subsidiary protection

- (1) An alien shall not be recognised as refugee if:
 - 1) he or she falls within the scope of Article 1 D) of the Geneva Convention;
 - 2) he or she is a permanent resident of Estonia;
 - 3) there is good reason to believe that he or she has committed a crime against peace or humanity or a war crime as defined in international instruments;
 - 4) there is good reason to believe that he or she has committed a serious non-political crime outside Estonia before arrival in Estonia;
 - 5) there is good reason to believe that he or she is guilty of committing an act contrary to the purposes and principles of the United Nations.
- (2) Amongst other acts, a particularly cruel act committed with an allegedly political objective shall be deemed to be a serious non-political crime as specified in clause (1) 4) of this section.
- (3) An alien shall not be recognised as person eligible for subsidiary protection if:
 - 1) there is good reason to believe that he or she has committed a crime against peace or humanity or a war crime as defined in international instruments;
 - 2) there is good reason to believe that he or she has committed a serious crime;
 - 3) there is good reason to believe that he or she is guilty of committing an act contrary to the purposes and principles of the United Nations;
 - 4) there is good reason to believe that he or she may pose a threat to public order or national security;
 - 5) he or she has left the country of origin on the ground that he or she has committed an act other than those specified in clauses 1)-4) of this subsection for which imprisonment is prescribed.

(4) The bases provided for in clauses (1) 3)-5) and (3) 1)-4) of this section apply for aliens who participated in the specified acts in whatever manner.

§ 23. Indirect withdrawal of application for asylum or waiver of application for asylum

(1) The Police and Border Guard Board presumes that the application for asylum has been withdrawn indirectly or waived if:

1) the applicant has not fulfilled the obligation provided for in clauses 11 (2) 2) and 3) or subsection 18 (4) of this Act unless he or she proves within a reasonable period of time that he or she was unable to fulfil the specified obligations with good reason;

2) the applicant is in hiding or has left his or her residence or the detention centre or the accommodation centre for asylum seekers without permission without having informed the Police and Border Guard Board, the detention centre or the accommodation centre for asylum seekers thereof within a reasonable period of time; [RT I, 03.07.2013, 2 - entry into force 01.10.2013]

3) the applicant has not appeared at the Police and Border Guard Board for performance of a procedural act within one month without good reason.

(2) If the Police and Border Guard Board has made a decision on the rejection of the application for asylum pursuant to clause 21 (1) 8) of this Act and the applicant contacts the Police and Border Guard Board, the applicant has the right to request a new review of the application for asylum, except if the application for asylum was reviewed pursuant to the procedure provided for in § 24.

(3) If the right provided for in subsection (2) of this section exists, the Police and Border Guard Board shall continue reviewing the application for asylum.

§ 24. Specifications of reviewing repeated applications for asylum

(1) The Police and Border Guard Board shall review a repeated application for asylum within the framework of reviewing the previous application for asylum as a continuation of previous asylum proceedings.

(2) A repeated application for asylum means additional explanations, new facts or new evidence submitted by the applicant:

- 1) after the decision specified in subsection 23 (2) of this Act is made;
- 2) after the decision on the application for asylum is made.

§ 25. Decision to reject application for asylum

(1) The decision to reject an application for asylum shall be prepared in writing.

(2) A precept to leave Estonia (hereinafter precept to leave) shall be issued to an alien by the decision to reject the application for asylum, except if the alien has a legal basis for staying in Estonia.

(3) The decision to reject an application for asylum shall be communicated to an alien without delay.

(4) If an application for asylum is rejected on the basis specified in clauses 20 1), 3), 16), 19) or clauses 21 (1) 1), 2), and 5) of this Act, it shall be indicated in the decision that the content of the application has not been reviewed.

§ 26. Compulsory execution of precept to leave

(1) A precept to leave issued to an alien by the decision to reject the application for asylum on a basis specified in clauses 20 1) and 2) and 21 (1) 2) of this Act is subject to immediate execution, and the alien is expelled from Estonia pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act without prior permission of an administrative court.

(2) A precept to leave issued to an alien whose asylum proceedings are terminated on the basis to reject the application for asylum provided for in clauses 21 (1) 5), 7) and 8) and subsection 21 (2) of this Act is subject to compulsory execution by expelling the alien from Estonia with the permission of an administrative court pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act.

(3) The decision to reject an application for asylum and to expel an alien may be contested with an administrative court within ten days as of the date of notification of the decision. The said decisions shall not be contested by way of challenge procedure.

(4) The contestation of the decision to expel an alien or the permission of an administrative court shall not postpone expulsion. Contestation of the decision to reject an application for asylum shall not postpone expulsion, unless the court has suspended the execution of the precept to leave.

§ 27. Transfer of applicant on basis of international agreement or EU legislation

(1) The performance of acts arising from treaties or Council Regulation (EC) 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, shall be organised by the Police and Border Guard Board, unless otherwise provided by a treaty or EU legislation.

(2) Based on the decision to reject an application for asylum provided for in clause 21 (1) 1) of this Act, an alien shall be expelled from Estonia without prior issue of a precept to leave and without prior permission by an administrative court, and shall be sent to a country responsible, pursuant to a treaty or EU legislation, for reviewing the application for asylum.

(3) The acts related to expulsion provided for in subsection (2) of this section shall be performed pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act, unless otherwise provided by a treaty or EU legislation.

§ 28. Suspension of asylum proceedings

The Police and Border Guard Board shall suspend asylum proceedings for the period of validity of temporary protection.

§ 29. Surveillance measures

(1) For the purposeful and efficient, simple and expedient conduct of asylum proceedings, the Police and Border Guard Board may apply the following surveillance measures with respect to applicants:

- 1) residing in a determined place of residence;
 - 2) appearing for registration at the Police and Border Guard Board at prescribed intervals;
 - 3) notifying the Police and Border Guard Board of the absence from the place of residence for a period longer than three days;
 - 4) depositing the travel document issued by a foreign state at the Police and Border Guard Board.
- [RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) The Police and Border Guard Board and the Security Police have the right to verify the compliance of applicants with the surveillance measures at any time.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(3) An applicant shall be informed in writing of the application of surveillance measures.

§ 30. Language of asylum proceedings

(1) Asylum proceedings shall be conducted in Estonian. With the consent of the official performing a procedural act, the act may be performed in another language in which the alien is able to express him or herself orally in an understandable manner.

(2) If an applicant is not sufficiently proficient in Estonian, an interpreter shall be asked to be present at the procedural acts directly related to the applicant, and the interpreter shall translate the circumstances relevant to the procedure into a language in which the alien is able to express himself or herself orally in an understandable manner. An interpreter need not be involved if the procedural act is conducted in a language in which the alien is able to express him or herself orally in an understandable manner.

(3) The Police and Border Guard Board may involve an interpreter in the translation of procedural acts by using means of communications.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(4) An alien has the right to ask at his or her expense an interpreter of his or her choice to be present at a procedural act provided that this is possible without delay and the objectivity of the interpretation can be guaranteed.

(5) Where necessary, the evidence provided by an applicant shall be translated into Estonian. The evidence provided by an applicant shall not be translated into Estonian if it has no direct relevance to the asylum proceedings.

(6) The decision to reject an application for asylum, to issue a residence permit or to refuse issue of a residence permit shall be translated to the applicant wholly unless the applicant has a representative.

§ 31. Delivery of documents

(1) A decision, summons, notice or other document is deemed to be delivered to an applicant staying at the detention centre or accommodation centre for asylum seekers as of the date on which such document is received at the detention centre or accommodation centre for asylum seekers.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) If an applicant resides outside the accommodation centre for asylum seekers, a decision, summons, notice or other document is deemed to be delivered to an applicant as of the date on which such document is forwarded to the applicant at the address of the applicant's residence indicated by him or her, or forwarded to the representative of the applicant.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) The detention centre or accommodation centre for asylum seekers shall immediately deliver the decision, summons, notice or other document to the applicant against a signature.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

Division 2 Admission of Applicant

§ 32. Accommodation centre for asylum seekers

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(1) The function of the accommodation centre for asylum seekers is to arrange, as necessary, for the provision of the following services in assistance to applicants during asylum proceedings or proceedings of temporary protection:

- 1) accommodation;
- 2) supply of foodstuffs or provision of food, supply of essential clothing and other necessities and toiletries, and supply of money for urgent small expenses within the limits provided for in subsection 36 (6) of this Act to applicants residing in the accommodation centre for asylum seekers and to applicants residing outside the accommodation centre for asylum seekers on the basis of clause 34 (2) 3) or clause 62 (2) 3) of this Act;
- 3) access to medical examinations and necessary health services;
- 4) essential translation services and Estonian language instruction;
- 5) information regarding their rights and duties;
- 6) transportation necessary for the performance of procedural acts pursuant to this Act;
- 7) other essential services

(2) The performance of the functions of the accommodation centre for asylum seekers shall be ensured by the Ministry of Social Affairs or an agency in the area of government thereof.

(3) The Minister of Social Affairs may transfer the performance of the functions of the accommodation centre for asylum seekers to a sole proprietor or a legal person (hereinafter the accommodation centre for asylum seekers service provider) on the basis of a contract under public law concluded in the procedure provided for in the Administrative Co-operation Act.

(4) The accommodation centre for asylum seekers service provider may perform the functions of the accommodation centre for asylum seekers through a person who is an Estonian citizen with active legal capacity whose Estonian language proficiency is at least at the level of B2 provided for in the Language Act or a level corresponding thereto, who is not serving a sentence for the commission of a criminal offence.
[RT I 2009, 4, 26 - entry into force 26.01.2009]

(5) The functions transferred on the basis of the contract under public law shall bring about the rights, obligations and liability provided for in this Act.

(6) The Minister of Social Affairs shall exercise state supervision over the accommodation centre for asylum seekers service provider.

(7) It is prohibited to hold items that may endanger the life or health of a person himself or herself or other persons or the security of the accommodation centre for asylum seekers.

(8) The internal procedure rules of the accommodation centre for asylum seekers shall be established by a regulation of the Minister of Social Affairs.
[RT I 2007, 19, 92 - entry into force 11.03.2007]

(9) The internal procedure rules of the accommodation centre for asylum seekers shall at least provide for the following:

- 1) the procedure for accommodation of an applicant in the accommodation centre for asylum seekers;
- 2) the procedure for staying in the territory and buildings of the accommodation centre for asylum seekers;
- 3) the procedure for the staying away of the accommodation centre for asylum seekers during night time;
- 4) the procedure for the visiting of an applicant in the accommodation centre for asylum seekers;

- 5) the procedure for the using of the property and rooms of the accommodation centre for asylum seekers;
 - 6) a list of items which are prohibited in the accommodation centre for asylum seekers on the ground that they may endanger the life and health of the person himself or herself or other persons or the security of the accommodation centre for asylum seekers;
 - 7) the procedure for the conduct of supervision over the accommodation centre for asylum seekers;
 - 8) the procedure for the submission of complaints;
 - 9) the procedure for the payment of financial support provided for in §§ 32 and 64 of this Act.
- [RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 33. Accommodation of applicant in offices of Police and Border Guard Board

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(1) An asylum seeker may be temporarily accommodated in the offices of the Police and Border Guard Board if this is necessary for the performance of acts in the asylum proceedings.

(2) The Police and Border Guard Board shall, as necessary, arrange for providing the services as assistance for applicants accommodated in the office rooms as follows:

- 1) conduct of medical examination and ensuring of the access to necessary health services;
- 2) supply of necessities and toiletries;
- 3) essential translation service;
- 4) informing of his or her rights and obligations;
- 5) provision of food allowance.

(3) The procedure for the payment and the rates of food allowance specified in clause (2) 5) of this section shall be established by a regulation of the Minister of the Interior.

(4) It is prohibited to hold items in the offices which may endanger the life and health of the person himself or herself or other persons or the security of the offices.

(5) The internal procedure rules of the offices shall be established by a regulation of the Minister of the Interior.

(6) The internal procedure rules of the offices shall at least provide for the following:

- 1) the procedure for accommodation of an applicant in the offices;
- 2) the procedure for staying in the territory and buildings of the offices;
- 3) the procedure for staying away from the offices during night time;
- 4) the procedure for the visiting of an applicant in the offices;
- 5) the procedure for using the property and rooms of the offices;
- 6) a list of items that are prohibited in the offices on the ground that they may endanger the life and health of the person himself or herself or other persons or the security of the offices;
- 7) the procedure for the conduct of supervision over the offices;
- 8) the procedure for the submission of complaints;

(7) The Director General of the Police and Border Guard Board may transfer the performance of the functions provided for in subsection (2) of this section to a sole proprietor or a legal person on the basis of the contract under public law concluded in the procedure provided for in the Administrative Co-operation Act.

(8) The functions transferred on the basis of the contract under public law bring about the rights, obligations and liability provided for in this Act.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 34. Stay of applicant at accommodation centre for asylum seekers and outside thereof

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(1) An applicant is required to reside at the accommodation centre for asylum seekers during the asylum proceedings.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) With the written permission of the Police and Border Guard Board, an applicant may reside outside the accommodation centre for asylum seekers if:

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

- 1) the accommodation and support of the applicant is ensured by a person legally residing in Estonia;
- 2) the applicant has sufficient financial resources to ensure his or her accommodation and support;
- 3) it is necessary for the applicant to reside outside the accommodation centre for asylum seekers in order to ensure his or her safety.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) An applicant is required to provide evidence in proof of the circumstances specified in clauses (2) 1) and 2) of this section.

(4) The Police and Border Guard Board shall withdraw the permission specified in subsection (2) of this section if the circumstances which constituted the basis for granting the permission have ceased to exist, the applicant fails to comply with the surveillance measures applied with respect to him or her, or fails to perform other duties provided by law.

(5) An applicant residing at the accommodation centre for asylum seekers during asylum proceedings is required to stay at the accommodation centre for asylum seekers during night time. The period of time from 22.00 to 6.00 is considered night time.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(6) The accommodation centre for asylum seekers may grant a permission to an applicant to stay away from the accommodation centre for asylum seekers during night time in the following cases:

- 1) to receive medical care;
- 2) to stay with a family member who needs emergency medical care;
- 3) on the basis of a reasoned application of a person staying in Estonia legally.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(7) An applicant residing outside the accommodation centre for asylum seekers during asylum proceedings is required to inform the Police and Border Guard Board of the address of his or her residence and any changes thereto.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 35. Conditions for stay in Estonia for applicants who are unaccompanied minors

[Repealed – RT I, 18.04.2013, 1 – entry into force 28.04.2013]

§ 36. Monetary benefit and rates thereof

(1) The services offered by the accommodation centre for asylum seekers specified in clause 32 (1) 2) of this Act, except the supply of essential clothing and other necessities, may be substituted by a monetary benefit at the rate specified in subsections (4) and (5) of this section.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) An applicant residing outside the accommodation centre for asylum seekers on the basis of clauses 34 (2) 1) and 2) of this Act shall not be paid the monetary benefit or provided with the services offered by the accommodation centre for asylum seekers on the basis of clauses 32 (1) 1), 2), 4) and 6).

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) An applicant residing in the accommodation centre for asylum seekers, who is employed in Estonia on the basis of § 10¹ of this Act shall not be paid the monetary benefit or provided with the services offered by the accommodation centre for asylum seekers on the basis of clauses 32 (1) 2) and 6).

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(4) Monetary benefit paid to an applicant shall be equal to the applicable subsistence limit established on the basis of the minimum consumption expenditure.

(5) The amount of benefit paid to the second and each subsequent member of a family is 80 per cent of the amount of benefit paid to the first member of the family. Only those family members who are applicants are entitled to receive a benefit.

(6) An applicant residing at the accommodation centre for asylum seekers shall be paid a monetary benefit for urgent small expenses in the amount of 10 per cent of the rate specified in subsection (4) of this section.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 36¹. Basis for detention

(1) An asylum seeker may be detained on the basis provided for in subsection (2) of this section if the efficient application of the surveillance measures provided for in this Act is impossible. The detention shall be in accordance with the principle of proportionality and upon detention the essential circumstances related to the asylum seeker shall be taken account of in every single case.

(2) An asylum seeker may be detained if it is unavoidably necessary on the following bases:

- 1) identification of the person or verification of the identity;
- 2) verification or identification of the citizenship of the person;
- 3) verification of the legal bases of the entry into and the stay in the state of a person;
- 4) identification of the circumstances relevant to the proceedings of the asylum application, primarily in the case when there is a risk of escape;
- 5) there is a reason to believe that the person has submitted the application for asylum to postpone the obligation to leave or prevent expulsion;
- 6) protection of the security of state or public order;

7) transfer of a person in the procedure provided for in the Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, pp. 1-10).

(3) The bases for detention provided for in subsection (2) of this section shall not restrict the detention of a person on other bases provided by law unless otherwise provided for in this Act.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 36². Deciding on detention of asylum seeker and extension thereof

(1) The Police and Border Guard Board or the Estonian Internal Security Service may detain the asylum seeker on the basis provided for in subsection 36¹(2) of this Act and taking account of the principles specified in subsection (1) without the permission of an administrative court for up to 48 hours in a detention centre or offices.

(2) If it is necessary to detain the asylum seeker on the basis provided for in subsection 36¹(2) of this Act and taking account of the principles specified in subsection (1) for longer than 48 hours, the Police and Border Guard Board or the Estonian Internal Security Service shall apply to the administrative court for the permission to detain the asylum seeker and place him or her into the detention centre for up to two months.

(3) If an alien lodges an application for asylum during the detention in the detention centre or in the course of expulsion, the Police and Border Guard Board or the Estonian Internal Security Service shall detain him or her and apply for the permission from the administrative court to detain the asylum seeker for up to two months within 48 hours as of the lodging of the application for asylum if the basis of the detention of the asylum seeker provided for in subsection 36¹(2) of this Act or the principles specified in subsection (2) occur.

(4) The detention of an alien with the purpose of expulsion in the case provided for in subsection (3) of this section shall be suspended until the decision with regard to the application for asylum has been taken.

(5) The administrative court shall extend the term provided for in subsection (2) of this section by up to two months in the case the basis provided for in subsection 36¹(2) of this Act and the principles specified in subsection (1) occur.

(6) The detention of the asylum seeker and the extension of the term thereof shall be decided by the administrative court pursuant to the provisions of the Code of Administrative Court Procedure on deciding the grant of permission for administrative measure.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 36³. Arrangement of detention of asylum seeker

(1) The provisions of the Obligation to Leave and Prohibition on Entry Act with regard to the detention of a person to be expelled at a detention centre shall be applied to the detention of an asylum seeker at the detention centre, taking account of the specifications provided for in this Act.

(2) In addition to the services provided to a person to be expelled at the detention centre, the asylum seeker shall be ensured the translation and transportation services necessary for the performance of procedural acts provided for in this Act.

(3) If the detention of an asylum seeker at the detention centre is impossible for the security or health protection purposes or for other reasons or is materially complicated the asylum seeker may be accommodated at the police detention house or under surveillance outside the detention centre on the decision of the head of the detention centre.

(4) Upon detention of the minors, disabled persons, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence their special needs shall be taken account of and the Police and Border Guard Board shall ensure regular monitoring of the detention thereof.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 36⁴. Release of asylum seeker from detention centre

(1) If the basis for detention provided for in subsection 36¹(2) of this Act ceases to exist, the head of the detention centre shall immediately release the asylum seeker from the detention centre.

(2) If the asylum seeker is taken into custody as a suspect or accused in a criminal matter, he or she shall be released from the detention centre on the basis of the arrest warrant.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

Division 3 Residence Permit

[RT I, 02.07.2013, 3 - entry into force 01.09.2013]

§ 37. Issue of residence permit

An applicant with regard to whom refugee status or subsidiary protection status is established and who is recognised as a refugee or person enjoying subsidiary protection shall be granted international protection and a temporary residence permit unless circumstances precluding recognition as a refugee or person enjoying subsidiary protection or a basis for rejecting the application for asylum become evident.

§ 38. Period of validity of residence permit

- (1) A residence permit shall be issued to a refugee for three years.
- (2) A residence permit shall be issued to a person enjoying subsidiary protection for one year.

§ 39. Extension of residence permit

The Police and Border Guard Board may extend a residence permit if the circumstances due to which the residence permit was issued have not ceased to exist and no circumstance exists which constitutes the basis for revocation thereof.

§ 40. Refusal to issue residence permit

The Police and Border Guard Board shall not issue a residence permit to an applicant:

- 1) in the case provided for in § 21 of this Act;
- 2) in the case provided for in § 22 of this Act;
- 3) if he or she has committed a criminal offence in the first degree in Estonia, or otherwise poses a threat to national security, public safety or public order.

§ 41. Decision to issue residence permit and decision to refuse issue of residence permit

(1) After review of an application for asylum, the Police and Border Guard Board shall adopt a reasoned written decision to issue a residence permit to the applicant or to refuse the issue of a residence permit.

(2) If the issue of a residence permit is refused, the alien shall be issued, by the same decision, a precept to leave.

(3) The decision to refuse the issue of a residence permit and a precept to leave issued thereby may be contested with an administrative court within ten days as of the date of notification of the decision. The said decision and the precept to leave shall not be contested by way of challenge procedure.

§ 42. Compulsory execution of precept to leave issued by decision to refuse issue of residence permit

(1) A precept to leave issued by the decision to refuse the issue of a residence permit is subject to compulsory execution pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act.

(2) If the decision to refuse the issue of a residence permit and a precept to leave issued thereby is contested with an administrative court, the precept to leave shall not be subject to compulsory execution before the adoption of a decision by an administrative court of first instance.

(3) If there is good reason to believe that an alien shall not voluntarily comply with the precept to leave issued by the decision to refuse the issue of a residence permit, he or she shall be placed, with the permission of an administrative court, in a detention centre until expulsion.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 43. Revocation of residence permit

(1) The Police and Border Guard Board shall revoke a residence permit issued to an alien, if:

- 1) circumstances which constitute a basis for revoking refugee status or subsidiary protection status become known in respect of the alien;
- 2) circumstances which constitute a basis for refusal to issue or extend a residence permit become known in respect of the alien;
- 3) the alien poses a threat to national security, public safety or public order.

(2) If a residence permit issued to an alien on the basis of refugee status is revoked on the grounds that the basis for the issue thereof has ceased to exist, the alien may be issued a residence permit based on subsidiary protection status on the basis of his or her application for a residence permit, provided that no circumstance exists which constitutes the basis for refusal to issue such residence permit.

(3) A precept to leave shall be issued pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act to an alien whose residence permit is revoked.

§ 44. Issue of permanent resident's residence permit

An alien who has been issued a temporary residence permit shall be issued a permanent resident's residence permit on the basis of and pursuant to the procedure provided in the Aliens Act.
[RT I 2006, 21, 159 - entry into force 01.07.2006]

§ 45. Employment in Estonia of alien holding residence permit

An alien who has been issued a residence permit on the basis of this Act may take employment in Estonia without a specific permission therefor.
[RT I, 02.07.2013, 3 - entry into force 01.09.2013]

§ 46. Residence permits of family members of aliens who have been granted international protection

(1) If an alien has been issued a residence permit on the basis provided for in § 37 of this Act, the Police and Border Guard Board shall issue a residence permit of a family member to a family member specified in § 7 of this Act.

(2) If a family member of an alien needs international protection, he or she shall also be granted international protection together with the residence permit of a family member on the same basis and with the same period of validity as to an alien.

(3) A residence permit of a family member shall be extended for up to the same period of validity as an alien's residence permit.

(4) If upon extension of a residence permit it appears that a family member who has been granted international protection in addition to the residence permit of a family member does not need international protection any more, his or her residence permit shall be extended without granting international protection.

(5) A family member shall submit an application for a residence permit at the earliest opportunity but not later than six months as of the date of issuing a residence permit to the alien.

(6) Where family reunification is possible in another country, the Police and Border Guard Board may require that upon application for a residence permit of a family member an alien with whom the family member wishes to reside is required to have, at the time of applying for a residence permit of a family member, permanent legal income which shall ensure that the family be maintained in Estonia, the family shall have an actual dwelling in Estonia and the family member of the alien shall have a valid health insurance policy which guarantees the payment, during the period of validity of the residence permit, of the medical expenses incurred by him or her as a result of illness or injury.

(7) If a family member submits an application for a residence permit later than within the term provided for in subsection (3) of this section, the Police and Border Guard Board may demand compliance with the requirements provided for in subsection (4). In the event of a failure to comply with the requirements, the Police and Border Guard Board may refuse to issue a residence permit to a family member.

(8) A family member shall be refused the issue or extension of a residence permit, or a residence permit shall be revoked, if:

- 1) the family member poses a threat to national security, public safety or public order;
- 2) in the case provided for in subsection 22 (1) or (3) of this Act;
- 3) if family reunification is possible in another country and the conditions provided for in subsection (4) of this section are not complied with.

(9) The following additional conditions apply to a residence permit issued to a family member:

- 1) the validity of the temporary residence permit issued to him or her shall not exceed the validity of the temporary residence permit of an alien;
- 2) the extension of his or her temporary residence permit shall be refused if the temporary residence permit of an alien is not extended;
- 3) the temporary residence permit issued to him or her shall be revoked at the same time with the revocation of the residence permit of an alien;

4) the temporary residence permit issued to him or her shall be revoked if the circumstance which constituted the basis for issue thereof ceases to exist.

(10) If a family member has been issued a residence permit of a family member and the circumstance that constituted a basis for granting the residence permit has ceased to exist but the obligation to leave Estonia would be clearly too burdensome for him or her, he or she may be issued a residence permit to settle with his or her spouse or a residence permit to settle with a close relative under the circumstances and conditions provided for in the Aliens Act.

(11) The residence permit of a minor child shall not be revoked and extension thereof shall not be refused if this does not correspond to the rights and interests of the child.

(12) Subsection (9) of this section shall not apply to an alien who has been issued a residence permit as a minor child after he or she reaches the age of majority.

(13) An alien for the purposes of settling with whom a residence permit was issued to a family member shall have the obligations of a sponsor provided for in the Aliens Act. An unaccompanied minor alien shall have no obligations of a sponsor until he or she reaches the age of majority.

(14) If a residence permit issued to a family member expires and the family member has lodged a new application for a residence permit on the basis provided for in the Aliens Act or this Act, he or she is permitted to stay in the state until a decision has been passed with regard to his or her application for a residence permit.

(15) If the application for a residence permit lodged by a family member is clearly unfounded or there is reason to believe that it is lodged for the purpose of postponing the performance of the obligation to leave the country or for non-compliance with the obligation, the family member may not be allowed to stay in the state until the decision with regard to his or her residence permit has been passed.

(16) A precept to leave Estonia shall be issued, pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act, to a family member in the case specified in subsection (15) of this section which may become immediately subject to compulsory execution.
[RT I 2010, 3, 4 - entry into force 01.10.2010]

§ 47. Format of application for asylum and residence permit and information provided therein, and format of residence permit and organisation of issue of residence permit

(1) The residence permit of a refugee, a person enjoying subsidiary protection and his or her family member shall be prepared by entering data of the residence permit onto a residence permit card on the basis of the data of the decision on the granting or extension of the residence permit.
[RT I, 09.12.2010, 1 - entry into force 01.01.2011]

(1¹) If a residence permit has been issued to a refugee, a person enjoying subsidiary protection and his or her family member, they are required to submit an application for a residence permit card and their fingerprints shall be taken during the processing of the residence permit card.
[RT I, 09.12.2010, 1 - entry into force 01.01.2011]

(2) The procedure of application for, issue, extension and revocation of a residence permits of a refugee and a person enjoying subsidiary protection and their family members, the list of certificates and information to be submitted upon application for a residence permit and the procedure for entering data of the residence permit on a residence permit card shall be established by a regulation of the Government of the Republic.
[RT I, 09.12.2010, 1 - entry into force 01.01.2011]

(3) The format of applications for asylum and residence permits and extension of residence permits shall be established by a regulation of the Minister of the Interior.

Division 4

End and revocation of refugee status and subsidiary protection status

§ 48. End of refugee status and subsidiary protection status

(1) Refugee status shall end if:

- 1) an alien has voluntarily re-availed himself or herself of the protection of the country of his or her nationality;
- 2) having lost his or her nationality, an alien is voluntarily applying for restoration thereof;
- 3) an alien applies for the citizenship of a country other than Estonia and receives protection from that country;
- 4) an alien voluntarily returns to his or her country of origin;
- 5) circumstances for recognition as a refugee have ceased to exist;
- 6) an alien refuses, without reason, to return to the country of origin where he or she is no longer faced with persecution;

(2) Subsidiary protection status shall end if:

- 1) circumstances which constituted the basis for subsidiary protection have ceased to exist;
- 2) the circumstances which constituted the basis for subsidiary protection have changed to such extent that the implementation of protection ceases to be necessary.

(3) In the cases provided for in clause (1) 6) and subsection (2) of this section, the Police and Border Guard Board shall verify that the democratic situation in the country of origin is not temporary and that the alien is not faced with actual persecution or serious threat.

§ 49. Revocation of refugee status and subsidiary protection status

(1) The Police and Border Guard Board shall notify an alien of the initiation of proceedings for revocation of his or her refugee status or subsidiary protection status and of the reasons for initiating thereof and shall grant the alien an opportunity to submit objections.

(2) The Police and Border Guard Board shall revoke refugee status:

- 1) in the case provided for in subsection 48 (1) of this Act;
- 2) if the circumstance specified in subsection 22 (1) of this Act becomes evident;
- 3) if an alien has knowingly provided incorrect information or given incorrect explanations, or has knowingly failed to provide information or give explanations which were of essential importance to the processing of his or her application for asylum, taking into account the specific alien and his or her case;

(3) The Police and Border Guard Board may revoke refugee status, if:

- 1) there is good reason to believe that an alien poses a threat to national security;
- 2) a judgement of conviction of a particularly serious criminal offence has entered into force with regard to an alien and therefore he or she is dangerous to society.

(4) In the cases provided for in subsection (3) of this section and clauses 22 (1) 3)-5) of this Act, the Police and Border Guard Board may revoke the refugee status also if the decision confirming the corresponding justified reason has not entered into force.

(5) Upon revocation of refugee status in the cases provided for in subsections (3) and (4) of this section, an alien shall be guaranteed the rights prescribed in Articles 3, 4, 16, 22 and 31-33 of the Geneva Convention.

(6) The Police and Border Guard Board shall revoke subsidiary protection status:

- 1) in the case provided for in subsection 48 (2) of this Act;
- 2) if a circumstance specified in clauses 22 (3) 1)-4) of this Act becomes evident;
- 3) if an alien has knowingly provided incorrect information or given incorrect explanations, or has knowingly failed to provide information or give explanations which were of essential importance to the processing of his or her application for asylum.

(7) The Police and Border Guard Board may revoke the subsidiary protection status if the circumstance specified in clause 22 (3) 5) of this Act becomes evident.

(8) The decision to revoke refugee status or subsidiary protection status may be contested with an administrative court within ten days as of the date of notification of the decision. Neither of the said decisions shall be contested by way of challenge procedure.

§ 50. Prohibition of expulsion or return of refugee

(1) The Police and Border Guard Board shall not expel or return a refugee to a state where his or her life or freedom would be threatened on account of race, nationality or religion or membership of a particular social group or political opinions.

(2) The Police and Border Guard Board may expel or return an alien without applying the specifications of subsection (1) of this section, if:

- 1) there is good reason to believe that the alien poses a threat to national security;
- 2) a judgement of conviction of a particularly serious criminal offence has entered into force with regard to the alien and therefore he or she is dangerous to society.

Division 5

Asylum Seeker's Certificate

§ 51. Asylum seeker's certificate

(1) The Police and Border Guard Board shall issue, within three days as of the submission of an application for asylum, an asylum seeker's certificate to an applicant, which certifies that the alien is applying for asylum in Estonia. If the applicant has the right to take employment in Estonia pursuant to the provisions of § 10¹ of this Act, a corresponding notation shall be made on the asylum seeker's certificate.

(2) An applicant who is staying outside the accommodation centre for asylum seekers is required to, at the request of the Police and Border Guard Board and the Estonian Internal Security Service present his or her certificate for verification thereof and identification of his or her person.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) The Police and Border Guard Board shall revoke an asylum seeker's certificate in the following cases:
1) upon termination of asylum proceedings;
2) if the document itself, an entry made or information contained therein is incorrect;
3) if the document becomes unusable or an entry contained therein is illegible;
4) upon the death of the holder of the document;
5) if the document is lost or destroyed.

(4) The Police and Border Guard Board shall not revoke an asylum seeker's certificate until the compulsory execution of the precept to leave issued by the decision to reject an application for asylum or to refuse the issue of a residence permit.

(5) If possible, the Police and Border Guard Board shall confiscate an asylum seeker's certificate, which has been revoked, from the alien.

(6) The format of the asylum seeker's certificate and a list of information entered therein shall be established by a regulation of the Minister of the Interior.
[RT I 2006, 21, 159 - entry into force 01.07.2006]

Chapter 3 TEMPORARY PROTECTION

Division 1 Application of temporary protection and duration of temporary protection

§ 52. Decision on application of temporary protection

(1) The existence of a mass influx of displaced aliens and the need for application of temporary protection shall be established by the Council of the European Union.

(2) The Government of the Republic shall decide the admission of displaced aliens to Estonia from a danger area or from a Member State of the European Union on the proposal of competent government agencies. The Government of the Republic may decide that temporary protection be applied in respect to asylum seekers staying in Estonia who belongs to the category of aliens covered by the decision specified in subsection (1) of this section.

(3) Temporary protection shall be applied on the basis of a decision of the Government of the Republic in respect to aliens specified in the decision, unless a basis for refusal to apply temporary protection exists.

(4) After the decision specified in subsection (2) of this section is made about organisation of emergency response provided for in the Emergency Act.
[RT I 2009, 39, 262 - entry into force 24.07.2009]

§ 53. Duration of temporary protection

(1) The duration of temporary protection shall be one year.

(2) Unless the duration of temporary protection is terminated by the Council of the European Union, it may be extended by six monthly periods for up to a maximum of one year.

(3) Where reasons for the application of temporary protection persist, the Council of the European Union may extend the duration provided for in subsections (1) and (2) of this section by up to one year.

Division 2

Proceedings of Temporary Protection and Residence Permit

[RT I, 02.07.2013, 3 - entry into force 01.09.2013]

§ 54. Application for residence permit on basis of temporary protection

(1) A person enjoying temporary protection shall submit an application for a residence permit to the Police and Border Guard Board immediately after entering Estonia.

(2) If a person enjoying temporary protection who is staying at a border checkpoint has no legal bases for entry in Estonia provided for in the Aliens Act and he or she wishes to apply for a residence permit in Estonia on the basis of temporary protection, the person enjoying temporary protection shall submit the application for a residence permit on the basis of temporary protection immediately to the Police and Border Guard Board.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(3) A person enjoying temporary protection apprehended by the Police and Border Guard Board in unauthorised entry who wishes to apply for residence permit in Estonia on the basis of temporary protection shall submit an application for residence permit on the basis of temporary protection to the Police and Border Guard Board.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

(4) An application for a residence permit shall be submitted in person.

(4¹) In an application for residence permit a person eligible for temporary protection shall submit, among other, the data about his or her religion and nationality for identification of the circumstances specified in subsection 5 (2) of this Act. For identification of the right to family reunification the applicant shall submit data concerning family ties, including about partners.
[RT I 2007, 19, 92 - entry into force 11.03.2007]

(5) A person eligible for temporary protection is required to submit the following documents after the submission of an application for a residence permit if they are in his or her possession:

- 1) identification documents and proof of nationality and other documents to facilitate identification and verification of nationality;
- 2) visas and residence permits or decisions on refusal of a residence permit and documents forming the basis thereof and other documents concerning the crossing of borders;
- 3) documents concerning the evidence of family ties.

(6) [Repealed – RT I, 18.04.2013, 1 – entry into force 28.04.2013]

(7) [Repealed – RT I, 18.04.2013, 1 – entry into force 28.04.2013]

(8) The Police and Border Guard Board shall issue a certificate to a person enjoying temporary protection for the period of the processing of the residence permit, confirming that his or her application for residence permit is being processed.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 55. Issue and extension of residence permit

(1) The Police and Border Guard Board shall issue a temporary residence permit to an alien with regard to whom temporary protection is applied.

(2) The Police and Border Guard Board shall extend a residence permit specified in subsection (1) of this section on the basis of a standard format application in accordance with the decision specified in subsection 53 (2) of this Act if no circumstance exists which constitutes a basis for the revocation of the residence permit.

§ 56. Period of validity of residence permit

A residence permit specified in subsection 55 (1) of this Act shall be issued for the period of validity of temporary protection but for not longer than three years.

§ 57. Refusal to apply temporary protection and refusal to issue or extend residence permit

(1) The Police and Border Guard Board shall refuse to apply temporary protection and shall not issue a residence permit or extend the residence permit to an alien:

- 1) with respect to whom there is good reason to believe that he or she has committed a crime against peace or humanity or a war crime, as provided for by law or in international instruments;

- 2) with respect to whom there is good reason to believe that he or she has committed a serious non-political crime outside Estonia prior to his or her admission to Estonia as an alien enjoying temporary protection;
- 3) with respect to whom there is good reason to believe that he or she is guilty of committing an act contrary to the purposes and principles of the United Nations Organisation;
- 4) with respect to whom there is a reason to suspect that his or her arrival in Estonia may pose a threat to national security;
- 5) who has been finally convicted of a serious crime and poses a threat to public safety;
- 6) who is not a person enjoying temporary protection.

(2) Upon application of the grounds provided for in subsection (1) of this section, the Police and Border Guard Board shall proceed from the principle of proportionality and take into account the acts of a particular alien.

(3) Among other, a particularly cruel act committed with an allegedly political objective shall be deemed to be a serious non-political crime as specified in clause (1) 2) of this section. This provision shall apply both to principal offenders and accomplices.

(4) A precept to leave shall be issued pursuant to the procedure provided by the Obligation to Leave and Prohibition on Entry Act to a person enjoying temporary protection who is refused the grant or extension of a residence permit.

(5) An appeal against the decision to refuse to grant temporary protection and to refuse to issue a residence permit or to refuse to extend a residence permit may be filed with an administrative court within ten days as of the date of notification of the decision. The said decisions shall not be contested by way of challenge procedure.

§ 58. Revocation of residence permit

(1) The Police and Border Guard Board shall revoke the residence permit of a person enjoying temporary protection, if:

- 1) the term of temporary protection expires;
- 2) the person enjoying temporary protection is transferred to another Member State of the European Union;
- 3) a person enjoying temporary protection voluntarily settles in another country;
- 4) a circumstance which constitutes the basis for refusal to issue or extend a residence permit provided for in § 57 of this Act becomes known in respect of a person enjoying temporary protection;

(2) A precept to leave shall be issued pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act to a person enjoying temporary protection whose residence permit is revoked, if such alien has not submitted an application for residence permit pursuant to the procedure provided for in the Aliens Act or Chapter 2 of this Act.

§ 59. Residence permit of family member of person enjoying temporary protection

(1) The Police and Border Guard Board shall issue a residence permit to a family member of a person enjoying temporary protection to whom a residence permit has been issued on the same basis and with the same period of validity as that of the person enjoying temporary protection.

(2) The residence permit of a family member of a person enjoying temporary protection (hereinafter in this section family member) shall be extended on the same basis and with the same period of validity as the residence permit of the person enjoying temporary protection.

(3) The Police and Border Guard Board shall not issue a residence permit or extend a residence permit of a family member in the cases provided for in subsection 57 (1) and subsection 58 (1) of this Act.

(4) The Police and Border Guard Board shall revoke a resident permit of a family member if:

- 1) the residence permit of a person enjoying temporary protection is revoked;
- 2) the basis for revoking the residence permit specified in clauses 58 (1) 2)-4) of this Act becomes known.

(5) A precept to leave shall be issued pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act to a family member whose residence permit is revoked if such alien has not submitted an application for a residence permit pursuant to the procedure provided for in the Aliens Act or Chapter 2 of this Act.

§ 60. Format of application for residence permit submitted on basis of temporary protection and information provided therein and format of residence permit and organisation of issue of residence permit

(1) A residence permit of a person enjoying temporary protection and of his or her family member shall be prepared by entering residence permit data to a residence permit card on the basis of the information of the decision on the issue or extension of the residence permit.

[RT I, 09.12.2010, 1 - entry into force 01.01.2011]

(1¹) If a residence permit has been issued to a person enjoying temporary protection and his or her family member, they are required to lodge an application for a residence permit card and their fingerprints shall be taken in the course of the processing of the application for a residence permit.
[RT I, 09.12.2010, 1 - entry into force 01.01.2011]

(2) The procedure of application for, issue, extension and revocation of a residence permit of a person enjoying temporary protection and his or her family member, the list of certificates and information to be submitted upon application for a residence permit and the procedure for entering residence permit data to a residence permit cards shall be established by a regulation of the Government of the Republic.
[RT I, 09.12.2010, 1 - entry into force 01.01.2011]

(3) The format of an application for the issue and extension of a residence permit submitted on the basis of temporary protection shall be established by a regulation of the Minister of the Interior.

§ 61. Employment

[RT I, 02.07.2013, 3 - entry into force 01.09.2013]

A person enjoying temporary protection and his or her family member to whom a residence permit has been issued on the basis of temporary protection may take employment in Estonia on the conditions provided for in the Aliens Act.

Division 3

Admission of Applicant for Residence Permit on Basis of Temporary Protection

§ 62. Stay of applicant for residence permit on basis of temporary protection at a designated place

(1) An applicant for a residence permit on the basis of temporary protection (hereinafter in this Chapter applicant for residence permit) is required to reside in the initial reception centre specified in § 12 of this Act or in a place designated by the Ministry of Social Affairs during the period of the processing of the residence permit.

(2) With the written permission of the Police and Border Guard Board, an applicant for a residence permit may reside outside the accommodation centre for asylum seekers or the place designated by the Ministry of Social Affairs if:

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

- 1) the accommodation and support of the applicant for a residence permit is ensured by a person who is legally residing in Estonia;
- 2) the applicant for a residence permit has sufficient financial resources to ensure his or her accommodation and support;
- 3) it is necessary for the applicant for a residence permit to reside outside the accommodation centre for asylum seekers or the place designated by the Ministry of Social Affairs in order to ensure his or her safety.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) An applicant for a residence permit is required to provide evidence of the circumstances specified in clauses (2) 1) and 2) of this section.

(4) The Police and Border Guard Board shall withdraw the permission specified in subsection (2) of this section if the circumstances that constitute the basis for granting the permission have ceased to exist.

(5) An applicant for a residence permit who resides at the accommodation centre for asylum seekers during the period of the processing of the residence permit is required to comply with the provisions of subsections 34 (5) and (6) of this Act.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(6) With the permission of an administrative court judge, an applicant for a residence permit may be detained and be required to stay at the initial reception centre specified in § 12 of this Act in the following cases:

- 1) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre or the place designated by the Ministry of Social Affairs;
- 2) the staying of the applicant for a residence permit at the initial reception centre is necessary in the interests of the protection of national security and public order.

§ 63. Conditions for stay in Estonia for applicants for residence permit who are unaccompanied minors

[Repealed – RT I, 18.04.2013, 2 – entry into force 28.04.2013]

§ 64. Financial support of applicant for residence permit and rates thereof

(1) The services offered by the accommodation centre for asylum seekers specified in clause 32 (1) 2) of this Act, except the supply of essential clothing and other necessities, may be substituted by a financial support at the rates specified in subsections (3) and (4) of this section.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) An applicant for a residence permit who resides outside the accommodation centre for asylum seekers or the place designated by the Ministry of Social Affairs on the basis of clauses 62 (2) 1) and 2) of this Act shall not be paid financial support or provided with the services offered by the accommodation centre for asylum seekers on the basis of clauses 32 (1) 1) and 2).
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(3) Financial support paid to an applicant for a residence permit shall be equal to the current subsistence limit established on the basis of the minimum consumption expenditure.

(4) The amount of support paid to the second and each subsequent member of a family is 80 per cent of the amount of support paid to the first member of the family. The support shall be paid only to a family member staying in Estonia.

(5) An applicant for a residence permit residing at the accommodation centre for asylum seekers shall be paid financial support for urgent small expenses in the amount of 10 per cent of the rate specified in subsection (3) of this section.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

Division 4

Reunification of Families, Transfer to Another Country, Laissez-Passer and Readmission

§ 65. Reunification of families

(1) The Police and Border Guard Board shall decide on the reunification of families who were separated due to circumstances surrounding mass influx on the basis of the following circumstances:

- 1) if family members enjoy temporary protection in different Member States of the European Union, the wish of the family members shall be taken into account when reuniting the family members specified in clauses 7 (4) 1) and 2) of this Act;
- 2) if family members enjoy temporary protection in different Member States of the European Union, the family members specified in clause 7 (4) 3) of this Act may be reunited, taking into account the specific circumstances on a case by case basis;
- 3) if an alien is enjoying temporary protection in Estonia and a family member specified in clauses 7 (4) 1) or 2) of this Act is not staying in Estonia, the reunification shall be allowed in Estonia;
- 4) if an alien enjoys temporary protection in Estonia and the family member specified in clause 7 (4) 3) of this Act is not staying in Estonia, they may be reunited in Estonia, taking into account the specific circumstances on a case by case basis.

(2) Upon reunification of families, the rights and interests of minors shall be taken into consideration above all.

(3) An appeal against the decision to refuse to reunite families may be filed with an administrative court within ten days as of the date of notification of the decision. The said decision shall not be contested by way of challenge procedure.

§ 66. Transfer to another country

Upon transfer of an alien to another country, a residence permit shall be revoked and the obligations of Estonia towards the specified alien relating to temporary protection shall come to an end.

§ 67. Laissez-passer

(1) The Police and Border Guard Board shall issue a laissez-passer to a person enjoying temporary protection who is transferred from Estonia to another Member State of European Union.

(2) The format of the laissez-passer and a list of information entered therein shall be established by a regulation of the Minister of the Interior.

§ 68. Readmission

Unless otherwise provided by a treaty, Estonia is required to readmit a person enjoying temporary protection who holds a valid residence permit issued in Estonia and who is illegally staying in another Member State of the European Union or who has illegally entered another Member State of the European Union.

Division 5

Temporary Protection and Asylum Proceedings

§ 69. Temporary protection and asylum proceedings

- (1) A person enjoying temporary protection has the right to submit an application for asylum at any time.
- (2) An application for asylum specified in subsection (1) of this section shall be accepted for proceedings but the processing thereof shall be suspended. The processing of the application for asylum shall be continued at the request of an alien three months before the period of validity of temporary protection expires. If the alien does not desire continuation of the processing of the application for asylum or if the alien has left Estonia, the asylum proceedings shall be terminated.
- (3) An application for asylum specified in subsection (1) of this section may be processed during the period of validity of temporary protection if there is good reason.
- (4) Only the provisions of this Chapter shall be applied during the period of validity of temporary protection, regardless of the fact that a person enjoying temporary protection has submitted an application for asylum. When the temporary protection ends, the provisions of Chapter 2 of this Act shall apply if the alien submits or has submitted an application for asylum.
- (5) The Police and Border Guard Board shall accept for proceedings and process an application for asylum submitted by a person enjoying temporary protection who is staying in Estonia.

Division 6

End of Temporary Protection and Return

§ 70. End of temporary protection

- (1) Temporary protection shall come to an end:
 - 1) when the maximum duration of protection has been reached; or
 - 2) at any time, by a decision of the Council of the European Union.
- (2) If a person enjoying temporary protection is transferred to another Member State of the European Union, the obligations of Estonia towards the specified alien relating to temporary protection shall come to an end.
- (3) At the end of temporary protection the Police and Border Guard Board shall revoke the residence permit.

§ 71. Stay of an alien in Estonia after end of temporary protection

- (1) At the end of temporary protection, the stay of a person enjoying temporary protection and his or her family members in Estonia shall be legal during the review of an application for a residence permit submitted pursuant to the procedure provided for in Chapter 2 of this Act or the Aliens Act.
- (2) An application for a residence permit specified in subsection (1) of this section shall be submitted not later than three months before the expiry of the period of validity of a residence permit specified in § 56 of this Act.
- (3) After the end of the temporary protection and revocation of a residence permit, an alien is required to leave Estonia and a precept to leave shall be issued to him or her pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act, if the alien has not submitted an application for a residence permit specified in subsection (1) of this section or an application for asylum or if no circumstance of the suspension of return provided for in § 72 of this Act exists.

§ 72. Suspension of return

- (1) When the temporary protection ends, the return of an alien shall be suspended, if:
 - 1) there are humanitarian reasons therefor;
 - 2) the state of health of the alien does not allow him or her to travel and returning would result in serious consequences for his or her health.
- (2) After the end of temporary protection, the return of an alien may be suspended until the end of the school year of a minor child of the alien or his or her spouse.

Chapter 4

ADMISSION AND SOCIAL RIGHTS OF PERSONS ENJOYING INTERNATIONAL PROTECTION

§ 73. Organisation of admission

(1) A person enjoying international protection may stay at the accommodation centre for asylum seekers or a place designated by the Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs until settling in the territory of the local government.
[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(2) The Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs shall organise the settlement of a person enjoying international protection in the territory of a local government in an agreement with the local government, taking into account the state of health of a person enjoying international protection, the place of the residence of the relatives by blood or marriage and other significant circumstances, and considering the housing and employment opportunities, including the proportional allocation of beneficiaries of international protection among the local governments. Where necessary, the Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs has the right to involve a representative of the Ministry of the Interior in the proceedings for agreement with a local government. A person enjoying international protection may participate in the selection of the local government most suited to him or her.

(3) The Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs shall organise the settlement of a person enjoying international protection in the territory of a local government within four months as of the date of the issue of a residence permit to the alien. If agreement is not reached with the local government within this term, the services specified in subsection (4) of this section shall be thereafter provided to the person enjoying international protection by the Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs.

(3¹) The Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs shall conclude a contract under public law with the local government or a legal person governed by private law for the admission of the person enjoying international protection and the provision of services listed in subsection (4) of this section.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(4) The local government shall arrange for the admission of a person enjoying international protection and, if necessary, assist him or her in:

- 1) finding housing, renting, repairing or furnishing thereof;
[RT I 2007, 19, 92 - entry into force 11.03.2007]
- 2) obtaining social and health services;
- 3) organising for translation and the Estonian language instruction;
- 4) obtaining information concerning his or her rights and duties;
- 5) resolving other issues.

(5) The local government or a legal person governed by private law incurring the corresponding costs shall be covered the following costs from the state budget:

- 1) the rental and accessory expenses of the dwelling granted for use to a person enjoying international protection and once the expenses related to the conclusion of the rental contract with the private owner within two years;
- 2) the repair costs of the social housing granted for use to a person enjoying international protection;
- 3) the cost of furnishing of the dwelling granted for use to a person enjoying international protection;
- 4) the costs of the Estonian language learning offered to the person enjoying international protection within up to two years;
- 5) the cost of translation services offered to a person enjoying international protection within up to two years.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(5¹) The period of covering the expenses provided for in subsection (5) of this section may be extended on the basis of the reasoned request of the local government or the legal person governed by private law.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

(6) [Repealed - RT I, 03.07.2013, 2 – entry into force 01.10.2013]

(7) A person enjoying international protection who refuses to settle in the territory of the local government that has agreed to admit him or her shall himself or herself find a place of residence and bear the costs related thereto. The accommodation centre for asylum seekers shall provide accommodation to a person enjoying international protection for the period of two months as of the said refusal.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 73¹. Rates of covering expenses incurred upon settlement of person enjoying international protection in local government

(1) The expenses of the services provided to a person enjoying international protection shall be covered to a local government or a legal person governed by private law pursuant to the following rates:

- 1) rental costs of the housing - within the limits of the socially justified standard for dwellings established on the basis of clause 7 (1) 2) of the Dwelling Act at a rate of up to 0.3 of the subsistence level per square meter;
- 2) a one-time cost of repairs to social housing - within the limits of the socially justified standard for dwellings established on the basis of clause 7 (1) 2) of the Dwelling Act at a rate of up to 1.5 times the subsistence level per square meter;
- 3) a one-time furnishing costs of the dwelling – at a rate of up to 13 times of the subsistence levels per person;
- 4) costs of Estonian language learning – at a rate of up to 12 times the subsistence level per person;
- 5) costs of translation services – at a rate of up to 8 times the subsistence level per person.

(2) In the case of a justified necessity the rates established in subsection (1) of this section may be increased by the agreement between the Ministry of Social Affairs and the local government or a legal person governed by private law to the extent of 20 per cent to cover the administrative expenses arising to the local government or a legal person governed by private law.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 73². Procedure for covering expenses arising upon settlement of person enjoying international protection in local government

(1) A local government or legal person governed by private law shall submit a report to the Ministry of Social Affairs by the 15th day of the month following each quarter with regard to the services and aid provided to the person enjoying international protection together with the invoice to which the copies of the documents giving evidence of the provision of services and expenses are appended.

(2) The ministry of Social Affairs shall pay to a local government or legal person governed by private law for the services and aid provided to a person enjoying international protection within 15 days as of the receipt of the invoice.

(3) In the case of a justified necessity the local government or a legal person governed by private law may request advance payment for up to 30 per cent of the expenses related to the admission of the person enjoying international protection.

(4) The Ministry of Social Affairs shall have the right to check the provision of the services and aid and the purposeful use of the amount allocated and determine the term for the elimination of the faults. The invoice specified in subsection (1) of this section shall be paid after the elimination of the faults.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 74. Organisation of admission of unaccompanied minor person enjoying international protection

[Repealed – RT I, 18.04.2013, 2 – entry into force 28.04.2013].

§ 75. Social rights of beneficiaries of international protection and access to education and labour market

(1) During his or her stay in Estonia, a person enjoying international protection has the right to receive state pensions, family support, employment services and employment subsidies, social benefits and other assistance on the same grounds provided by legislation as permanent residents of Estonia.

(2) A local government may pay subsistence benefit to a person enjoying international protection whose financial status does not allow him or her to support himself or herself.

(3) A one-time benefit may be paid from the state budget to a person enjoying international protection who returns to his or her country of origin or resettles to another country, in an amount which partially or totally covers his or her travel expenses, and in the case where he or she is unable to cover these expenses.

(4) The procedure for payment of the benefit specified in subsection (3) of this section shall be established by a regulation of the Government of the Republic.

(5) A natural persons or legal person may participate in referring a person enjoying international protection to the territory of a local government and supporting him or her by providing economic or other assistance.

Provision of assistance shall be co-ordinated by a local government and in the cases provided in subsection 73 (3) of this Act, by the Ministry of Social Affairs or an agency within the area of government of the Ministry of Social Affairs.

(6) During his or her stay in Estonia, a person enjoying international protection has the right to education and the right to take employment in Estonia on the bases and pursuant to the procedure provided by law.

(7) A family member of a person enjoying international protection to whom a residence permit has been issued on the basis of this Act as to a beneficiary international protection has the rights provided for in this section.

Chapter 4¹ **STATE SURVEILLANCE**

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 75¹. Implementation of state surveillance

(1) The Police and Border Guard Board and the Security Police have the right to verify whether an asylum seeker, a refugee, a person enjoying subsidiary protection, a person enjoying temporary protection, a family member and other relevant person is staying, residing and being employed in Estonia pursuant to the requirements provided for in this Act and complies with the obligations and conditions provided therein.

(2) Upon identification of the circumstances regarding the stay, residence and employment in Estonia of an asylum seeker, a refugee, a person enjoying subsidiary protection, a person enjoying temporary protection, a family member and other relevant person is required to co-operate, be subject to the surveillance measures applied with regard to him or her and submit, at the request of the Police and Border Guard Board and the Security Police, documents and other evidence in his or her possession which may be relevant upon clarification of the circumstances related to the stay, residence and employment in Estonia of an asylum seeker, a refugee, a person enjoying subsidiary protection, a person enjoying temporary protection and a family member, and give oral and written explanations.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 75². Application of surveillance measures

(1) Upon implementation of surveillance over the circumstances of the stay, residence and employment in Estonia of an asylum seeker, a refugee, a person enjoying subsidiary protection, a person enjoying temporary protection and a family member the Police and Border Guard Board may apply measures provided for in §§ 7¹², 7^{16-7¹⁹} and 7^{32-7⁴⁰} of the Police and Border Guard Act, taking account of the specifications provided for in this Act.

(2) The measures provided for in §§ 7³⁷ and 7³⁸ of the Police and Border Guard Act may only be applied in a case when there is a reason to believe that without applying such measures the prevention of the alleged illegal stay and employment in Estonia of an asylum seeker, a refugee, a person enjoying subsidiary protection, a person enjoying temporary protection and a family member is not efficient and other measures have been depleted.

(3) A measure provided in § 7³² of the Police and Border Guard Act may only be applied by a police officer.
[RT I 2009, 62, 405 - entry into force 01.01.2010]

Chapter 5 **FINAL PROVISIONS**

§ 76. Co-operation with international organisations, institutions of the European Union and Member States of the European Union

(1) In resolving problems relating to beneficiaries of international protection, the Ministry of the Interior, the Ministry of Social Affairs and the Police and Border Guard Board shall co-operate with the Office of the United Nations High Commissioner for Refugees and facilitate its duty of supervising the application of laws, treaties and legislation of the European Union.

(2) The Ministry of the Interior, the Ministry of Social Affairs and the Police and Border Guard Board shall ensure performance of the duties set out in the legislation specified in subsection (1) of this section and provide the Office of the United Nations High Commissioner for Refugees with information and statistical data concerning the following:

- 1) the condition of beneficiaries of international protection;
- 2) the application of legislation;
- 3) the legislation which is, or may hereafter be, in force relating to beneficiaries of international protection.

(3) The Government of the Republic shall, on the proposal of the Minister of the Interior and the Minister of Social Affairs, inform the Council of the European Union of the ability of Estonia to admit aliens in need of temporary protection.

(4) The Ministry of Social Affairs, the Police and Border Guard Board shall organise exchange of information and co-operate with other countries according to their competence for the implementation of temporary protection.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 77. Register of granting international protection

(1) The state register of granting international protection shall be maintained concerning asylum seekers, applicants for a residence permit on the basis of temporary protection, refugees, persons enjoying subsidiary protection and persons enjoying temporary protection for the purpose of processing the personal data of persons who have submitted an application for a residence permit and to whom a residence permit has been issued on the basis of this Act and the data related to asylum proceedings or proceedings for temporary protection conducted on the basis of this Act.

(2) The state register specified in subsection (1) of this section shall be established by a regulation of the Government of the Republic.

Chapter 6 IMPLEMENTING PROVISIONS

§ 78.–§ 85.[Omitted from this text]

§ 86. Transitional provision

(1) Applications for asylum submitted prior to the entry into force of this Act shall be reviewed in accordance with the provisions in force at the time of submission of an application for asylum.

(2) The state register of refugees established on the basis of § 23¹ of the Refugees Act is reorganised into the state register of granting international protection.

(3) The Government of the Republic shall bring the statutes for the maintenance of the state register of refugees into conformity with this Act by 1 July 2006.

§ 87. [Omitted from this text]

§ 87¹. Renaming of expulsion centre to detention centre

Instead of the name “detention centre” provided for in this Act, the name “expulsion centre” may be used until 1 July 2015.

[RT I, 03.07.2013, 2 - entry into force 01.10.2013]

§ 88. Entry into force of Act

This Act enters into force on 1 July 2006.

¹Directives:

2001/55/EC (OJ L 212, 07.08.2001, pp. 12-23);

2003/9/EC (OJ L 031, 06.02.2003, pp. 18-25);

2003/86/EC (OJ L 251, 03.10.2003, pp. 12-18);

2004/83/EC (OJ L 304, 30.09.2004, pp. 12-23).