Chapter 8

Secondary rights

In this Chapter I discuss the ‘secondary rights’ that are attached to the CEAS protection statuses. The term ‘secondary rights’ is not applied by European asylum law; I subsume under this heading all claims apart from those concerned with qualification for international protection or with procedures for such protection.

8.1 Introduction

[541] The present discussion of ‘secondary rights’ includes standards referred to in European asylum law as the “conditions for residence”1 or the “content of the status” of refugee and subsidiary protection,2 the standards for “reception” of asylum seekers (or applicants),3 and standards for “treatment” of temporary protection beneficiaries.4 Moreover, the discussion includes rules concerning family unity (for reasons to be set out below). As in the previous Chapters, I focus on the systematic aspects of relevant legislation, and on their relation with international law.

European asylum law attributes to each protection status its own set of secondary rights. We saw in Chapter 5 that five CEAS protection statuses can be distinguished: refugee status, Article 14(6) refugee status (the status of persons who qualify as a refugee, but may be expelled pursuant to Article 33(2) RC – cf. numbers [341] and [342]), subsidiary protection status, applicant status and, finally, temporary protection status. The sets of secondary rights attached to these statuses are discussed in paragraphs 8.4 – 8.8.

In paragraphs 8.2 and 8.3, I address relevant international law. The only instrument of international law addressing in particular the secondary rights of persons in need of protection is the Refugee Convention; no instrument specifically applies to “subsidiary protection” or “temporary protection beneficiaries” or “applicants”.5 Scope of application of Refugee Convention benefits will be discussed in paragraph 8.2.

As stated in paragraph 1.4, implementation and application of rules of international law on family unity are informed by the predicament of persons in need of protection. The relevant rules are discussed under paragraph 8.3. Finally, conditions on restrictions on the freedom of movement are briefly addressed. As the issue is primarily relevant for applicants, I discuss relevant international law in that context (paragraph 8.7.2.1).
8.2 Refugee Convention Rights

8.2.1 Introduction

[542] In Articles 2 to 34, the Refugee Convention sets out a variety of secondary rights of refugees. It is obvious that the personal scope of these provisions encompasses beneficiaries of Directive “refugee status” (cf. number [274]). It is less obvious whether “applicants” or “temporary protection beneficiaries” are entitled to those Convention benefits as well. Therefore, I will discuss the scope of application of Refugee Convention benefits at some length.

The scope of beneficiaries of Refugee Convention benefits is conditioned in three ways. To begin with, by means of qualifications of “refugees” in the relevant provisions (such as “lawfully present” or “resident” refugees). These qualifications are discussed in paragraph 8.2.2.

Secondly, some benefits apply only to refugees whose refugee status has been acknowledged or “recognised” by the host state, whereas other provisions may be relied upon by refugees whose status has not yet been determined. The nature of refugee status determination will be discussed in paragraph 8.2.3, the obligation to determine refugee status in paragraph 8.2.4. The consequences of the findings on these issues for CEAS statuses will be addressed in paragraphs 8.4 to 8.8.

Thirdly, the benefits themselves are qualified in various ways. Thus, some Convention provisions bestow “absolute” rights on refugees, that is, without making a comparison with nationals or aliens. But in other respects, refugees (however qualified) must be treated as nationals, as nationals of the state of their habitual residence, as most favoured aliens, as favourably as possible or, the weakest category, as aliens generally “in the same circumstances”. These qualifications are not discussed separately, but in the context of the various CEAS statuses in paragraphs 8.4 to 8.8.

8.2.2 Qualifications of refugees

The incremental “system” of Refugee Convention benefits

[543] Articles 2 to 34 apply to refugees qualified in various ways – to “refugees” tout court, to refugees “lawfully in the territory” of the state and so on. These qualifications are not defined in the Convention. Most authors on