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Züri City-Card

**Implementation of the City Council's
position paper on the subject of
Sans-Papiers (undocumented migrants)**

Possibilities and limits of a Züri City-Card

Introduction of a Züri City-Card

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1

Introduction and summary

The City of Zurich can and will introduce a Züri City-Card. It will be possible for the City to confirm the identity and residence of both its official resident population and Sans-Papiers living in Zurich by means of an official identity card.

The investigations that have taken place also showed that introduction of a Züri City-Card will be laborious, complicated and relatively expensive and that the usefulness for Sans-Papiers of such a card remains limited. Expectations associated with referred motion GR no. 2018/278 can only be partly met. Superordinate law makes it impossible for Zurich to create greater security legally for Sans-Papiers, as has happened in the city of New York.

This City Council is producing this report to provide information on its work to date. It sets out the facts, its findings and conclusions on the possibilities and limits of a Züri City-Card. As the motion's grounds were primarily directed towards improving the situation of Sans-Papiers living in Zurich, the City Council is taking this opportunity to also provide information about implementation of the measures defined in its position paper dated 7 September 2018 (STRB no. 750/2018).

The City Council's report provides a survey of Sans-Papiers in the City of Zurich and is structured as follows:

- Section 2 contains key facts and figures about Sans-Papiers living in Zurich and their living situation. Based on an up-to-date cantonal estimate, the City Council is assuming some 10,000 people whose lives centre on the City of Zurich, despite being resident illegally.
- Section 3 presents the position paper published by the City Council in September 2018 and section 4 sets out how it has been implemented so far. Amongst other things, it emerges that various problems can be ascribed to cantonal or federal regulations and that access by Sans-Papiers to municipal offerings and services is relatively good in the City of Zurich. It would not be decisively improved by any Züri City-Card.

- Section 5 summarises the legal opinion's results and findings on introduction of a Züri City-Card. Introduction of a municipal identity card, which officially confirms identity and residence, is admissible in jurisdiction law. There are, however, restrictions on its use by Sans-Papiers. A City-Card does not justify an initial suspicion of illegal residence per se, but in the event of illegal residence does not protect against an inspection. The opinion also contains the legal and structural requirements for issue and acceptance of the City-Card.

- Finally, in section 6 the City Council evaluates the overall situation. It comes to the conclusion that a Züri City-Card makes sense only if it is embedded in a concept aimed at strengthening the city's society and produces concrete benefits for all residents. It is anticipated that the work to prepare for introduction of a Züri City-Card will take four to five years. The City Council will commence the work after the associated costs have been approved and the early stages will include activities and measures intended to clarify as yet unanswered legal, organisational and technical issues, and to improve the quality of access to municipal services and offerings.

2

Sans-Papiers in the City of Zurich

2.1 Facts and figures

There are people who live and work in the City of Zurich whose residence in Switzerland is not valid under the Federal law on foreign nationals. They have never had a regular residence status («primary Sans-Papiers») or they have lost the residence status they had as a result of a refused asylum application, a divorce, or loss of work («secondary Sans-Papiers»). It should be borne in mind that these terminological distinctions are not universally used. European discussions often refer to «migrants with irregular status» and primarily, in terms of content, to rejected asylum applications.

It is not known how many people reside in the City of Zurich as Sans-Papiers. The best current estimate ensues from the «Sans-Papiers in the canton of Zurich: number, profiles and situation» study published in March 2020 by Ecoplan and KEK on behalf of the Office for Economy and Labour and the Migration Office of the canton of Zurich. The City of Zurich was represented in the advisory group.

The study is based on analysis of various statistics, on interviews with relevant specialists and cantonal agencies concerned, and on discussion of an interim report as part of focus group interviews. Without taking into account the some 700 people who are making use of emergency assistance, the study estimates the number of Sans-Papiers in the canton of Zurich to be a minimum of 13,500 and maximum 24,900. This results in an average of 19,000 people.

Assuming that a good half of the Sans-Papiers living in the canton of Zurich live in the City due to the anonymity of a major city and the opportunities for work, the City Council calculates around 10,000 Sans-Papiers in the City of Zurich.

With reference to the canton as a whole, the study contains the following partial estimates:

– **Primary Sans-Papiers:** The biggest Sans-Papiers subgroup in the canton of Zurich has never had a residence permit. Around half of them are women from Latin America who mainly work in private households. Men from European non-EU and non-EFTA states who work in, inter alia, construction, transport and cleaning, are also significant. The total number of primary Sans-Papiers is estimated at 11,500 to 19,500 people.

– **Sans-Papiers who have previously had a residence permit:** This Sans-Papiers' subgroup includes people who remain in the canton of Zurich, although they have been barred due to a divorce, a crime, or claiming social

assistance, or their stay has not been extended. They come predominantly from south-east Europe, Turkey and Asia. The total number of Sans-Papiers who have previously had a residence permit is estimated at 1,100 to 3,100 people.

– **Sans-Papiers who are asylum seekers:** This is the smallest subgroup of Sans-Papiers, who have remained in the canton of Zurich following rejection of their asylum applications. Despite being set a deadline for emigration they have not returned and have not travelled to a third country either. They tend to be younger and come from African countries in particular. In addition to those claiming emergency aid, currently a little over 600 people, the number of asylum-seeking Sans-Papiers is estimated at 1,100 to 2,200.

The study estimates that between 2,000 and 3,700 Sans-Papiers, in other words 20%, have been living in the canton of Zurich for more than 10 years and would therefore fulfil the time criterion for a hardship case, without taking into account the other requirements.

With reference to the age groups, the study assumes that the vast majority must be aged between 18 and 45, 20% are over 45 and a maximum of 10% are minors. A good three quarters of all Sans-Papiers in the canton of Zurich are alone in Switzerland, but often have children or dependent family members whom they support in the country of origin.

2.2 Living situation

The vast majority of Sans-Papiers living in the City of Zurich work. This is also confirmed by the cantonal study. Amongst other reasons, they are here because they are offered work outside the regular structures by individuals or companies (including illegal employment). This intrinsically leads to precarious economic circumstances. It is rare for Sans-Papiers to be adequately and fairly paid and they have little protection from exploitation and dependency. On the contrary.

Sans-Papiers generally try not to attract attention and move within very small networks. These are decisive for their «quality of life», in good times and bad. This may prevent them suffering from existential crises such as homelessness or starvation, but not infrequently leads to abuse, exploitation and isolation, and routinely to violation of their dignity and integrity.

Sans-Papiers cannot open bank or post office accounts, they cannot rent accommodation, take out third-party liability or household contents insurance, apply for a driving licence or register a vehicle. This restricts their day-to-day lives and leads to various subsequent problems. If Sans-Papiers do not possess current, valid papers from another state, they cannot collect a registered letter or cash cheques either. The reasons why access to such services, which are perceived to be mundane, is impossible, lie in the statutory rules and internal regulations of private third parties, on whom the City has little positive influence and which the advice centres can only «contain» to a certain extent. In addition, Sans-Papiers cannot report a crime either as a victim or a witness without a great risk of themselves being subsequently reported, arrested and expelled from the country.

As the City of Zurich has very many publicly available sociocultural, cultural or sporting offerings (cf. section 4.2) that are rarely policed, Sans-Papiers actually have good opportunities to participate in daily social life. The fact that they frequently do not, however, is due on the one hand to a general avoidance of public spaces for fear of police patrols and on the other to lack of time and financial means. It should be noted in this regard that in Zurich the-

re are platforms that direct the public to free offers, and that Sans-Papiers can apply for and use a KulturLegi discount card through the Sans-Papier Drop-in Centre (SPAZ).

With the exception of the «Colectivo sin papeles» (which is closely linked to the Spanish-language mission and primarily brings together women from South America), «Solinetz» and the «Autonome Schule Zürich» (which are both used by asylum seekers who have been refused in particular), some (free) churches and mosques, as well as specialist advice and drop-in centres, there are very few structures or meeting places in Zurich that are used regularly by Sans-Papiers. Their days are predominantly lived in a small circle in which municipal agencies play very little part. These are usually involved only at a late stage and indirectly by the advice centres when a crisis becomes apparent. This may concern specific individual cases or hundreds, as in spring 2020 when lockdown seriously worsened the precarious living situation of very many Sans-Papiers (cf. sections 4.3 and 4.5).

3

The City Council's position paper of 2018

3.1 Previous municipal action on Sans-Papiers

It is to be assumed that people who are resident illegally have always lived in the City of Zurich. Yet «irregular» migration only appeared in the 20th century, at least in Europe, when the nation states regulated immigration and residence more strictly after the First World War. The debates became particularly relevant and attracted more media attention in Switzerland in 2001, when civil society structures mobilised and various motions on regularisation were discussed (and rejected) by the National Councils. The first national studies were published in subsequent years and non-governmental structures developed at local level to advise and support Sans-Papiers.

The changed perception and assessment was also apparent in the City of Zurich. Back in 1985, the City Council noted that it wanted to seize the initiative if the available apparatus was inadequate to manage the Federal law on foreign nationals (STRB no. 2762/1985). In 1994 the City Council endeavoured to «counteract the nuisance of people residing in Zurich illegally» (STRB no. 950/1994), primarily with regard to drug dealing. And in 2002 the City Council emphasised that where many public facilities were concerned «no-one is excluded from use based on their specific residence status» (STRB no. 516/2002) and that «account should be taken of the particular disadvantages that Sans-Papiers' experience (STRB no. 853/2002).

In 2005 the Sans-Papiers Drop-in Centre Zurich (SPAZ) was founded in the City of Zurich and the Meditrina medical practice, specialising in patients without health insurance. So far both structures have been financed with municipal aid, but are in practised, regular contact with municipal agencies. This has resulted in pragmatic co-operation, during which constructive solutions - which have often been possible - are sought to specific questions. Apart from access to primary school for children that do not have a regular place of residence, which is guaranteed in Zurich (cf. section 4.4), this informal procedure is not communicated publicly as a rule.

The City Council did not take a more direct political stance again on the subject of Sans-Papiers until September 2016. An initial survey is contained in the response to written proposal GR no. 2016/144 «Living situation of people without a residence permit in the City («Sans-Papiers»), information about their circumstances and on safeguarding of their rights». The City Council also proposes examining the situation of Sans-Papiers living in Zurich in greater depth and clarifying how better exercise of their basic rights can be facilitated within the scope of applicable law. The City Council's Integration Office also established an

interdepartmental working group for this purpose. At the same time, in its letter of May 2017, the City Council asked the governing council to implement a project similar to that in the canton of Geneva to regularise the Sans-Papiers living in the canton of Zurich for many years. The governing council refused.

The provisional report of February 2018 by the working group specifically considered the areas of civil status regulations, healthcare, social insurance, education, employment market, day-to-day administration, social integration, inner-city cooperation, police checks and access to law and justice, with a legal opinion being commissioned from the University of Zurich's Chair of Public Law to clarify the last two points.

The opinion dated 25 January 2018 on «Access to justice by Sans-Papiers» by Kiener/Breitenbücher has been published on the Integration Office's website (www.stadt-zuerich.ch/sans-papiers). It confirms Sans-Papiers' entitlement to legal protection and access to justice, but notes that due to cantonal and Federal law provisions, this is associated with a very high risk of expulsion and is not exercised in practice. The right of access to justice remains theoretical, which is problematic from both the constitutional viewpoint and that of protection of victims.

The working group noted a contradictory overall situation. On the one hand Sans-Papiers have good access to basic services used every day and enjoy basic rights, thanks to a high level of civil society commitment, pragmatic work by the administration and municipal organisations and well-attuned processes. On the other, superordinate laws or private jurisdictions make recourse to services or assertion of important basic rights difficult or impossible. The greatest loophole in this respect is the de facto absence of access to law and justice.

3.2 Position paper content and measures

In September 2018 the City Council published the legal opinion and the short report by the working group and, at the same time, adopted a position paper in STRB 750/2018. It noted that in the City of Zurich even people without a legal residence according to the Federal law on foreign nationals are part of the population and have rights and obligations, that long-term Sans-Papiers should be regularised and integrated into the regulated employment market under transparent conditions and that Sans-Papiers should be able to exercise their central constitutional and human rights without danger. The Confederation and canton are specifically responsible for this.

But the City of Zurich also assumes responsibility. Insofar as possible, and within the scope of its competence, it makes a contribution to improving the situation of Sans-Papiers in the City of Zurich. The municipal measures set out in the City Council's position paper relate to the following areas:

- Review and facilitation of access to municipal services
- Improvement and safeguarding of healthcare
- Facilitation of the right to education before and after primary school
- Examination and adaptation of municipal identification practice
- Support for private sponsors who provide services for Sans-Papiers
- Increased internal and external cooperation
- Discussion of an «urban citizenship» relating to Zurich

As part of its 2018 positioning, the City Council was sceptical of the idea of a Züri City-Card, as it could not meet some of the expectations associated with it. It held out the prospect of a second legal opinion. This was supposed to clarify whether, and to what extent a municipal identity card can contribute to improvement of municipal identification practice. The interdepartmental Sans-Papiers working group was entrusted with coordinating implementation of the municipal measures. In so doing account was taken of the fact that at the end of October 2018, the City Parliament referred motion GR no. 2018/278 which commissioned the City Council to introduce an official identity card or a Züri City-Card. Implementation of the position paper was therefore systematically associated with any possibilities offered by a City-Card.

Section 4 of this report provides information about implementation to date by the City of the measures adopted in the position paper and the following section shows the possibilities and limits of a Züri City-Card.

4

Implementation of the position paper

4.1 Integrative and political activities

Both the canton of Zurich and the Confederation commissioned studies on Sans-Papiers shortly after publication of the municipal position paper. The City Council has so far dispensed with formal contact with the Confederation and canton regarding the concerns that for it are uppermost, assuming that political concerns can only be introduced productively once these studies have been completed. The City has succeeded, however, in at least partly introducing these through cooperation with the respective advisory groups. In the case of the «Sans-Papiers in the canton of Zurich: number, profiles and situation» study, this was possible following a direct request from the cantonal Migration Office (cf. section 2).

In contrast, it was only possible to have a minor say in the preparatory work for the Federal Council report, expected in December 2020, on «Global examination of the problem of Sans-Papiers» as a result of good cooperation with the Schweizerischer Städteverband (Union of Swiss Cities). In terms of content, on the one hand it concerned critical responses to current parliamentary motions aimed at additional tightening of laws. On the other, it was suggested that topics important to the City of Zurich, such as access to law and justice, or access to post-compulsory education, be taken into consideration.

On the subject of Sans-Papiers, the City of Zurich is maintaining an active dialogue with other cities and with stakeholders from civil society and science. Section 4.6 provides information about some of these contacts. In this respect, cooperation with the European «City Initiative on Migrants with Irregular Status in Europe C-MISE», project, headed by the University of Oxford, was particularly significant. Important results of this cooperation included publication of a manual for European cities, or taking account of the need for access to justice regardless of residence status in the «European Union's Strategy for Victims of Crime for 2020–2022». The City of Zurich is contributing to the follow-up C-MISE 2 project, which commenced in 2020, as part of the steering group.

4.2 Access to municipal services

Implementation of the measure on «Examination and adaptation of municipal identification practices» for which the City Council made provision was discussed in a workshop with lawyers from various municipal organisations in December 2018. It turned out that establishment of the corresponding facts of the situation usefully took place as part of the «Review and facilitation of access to municipal services». The office of the Mayor of the City of Zurich subsequently conducted a survey of the departments.

Some 200 offerings and services were recorded. These can be subdivided into four categories of varying access to municipal offerings and services by Sans-Papiers. Whether personal information is requested, which information and, if so, how rigorously this is checked is decisive. If official documents are requested for checking, this can take place by means of passport, identity card, residence permit, driver's licence or by means of the residents' register.

1. Full access available: as a rule no details about name, address or residence status were recorded in the offerings and services that the departments did **not** report in the survey. No checks are carried out.

Examples of these include sociocultural and cultural offerings, basic information and brief consultations, use of public spaces and some fee-paying sports facilities or access to municipal information (including newsletters).

2. Good level of access: in the case of various municipal offerings and services, personal data is recorded but not checked on the basis of official documents. If a check is carried out, it is sufficient to give an invoice address, for example.

Examples of this are events and courses requiring registration, various municipal advice and education offerings, certain healthcare services and room hire, or day permits for parking spaces.

3. Potential access: for some offerings and services for which name and place of residence are checked officially, these checks are not required by superordinate law. In these cases the City generally has sufficient scope to facilitate access for Sans-Papiers.

Examples of this are access to childrens' day care centres, after-school care or discounted premiums, certain municipal services in the fields of health and age, and access to municipal grants or emergency accommodation. It must also be borne in mind that even routine enquiries of the residents' register by the administration can lead to Sans-Papiers being excluded.

4. No access: if, due to superordinate law, it is necessary to check status under the Federal law on foreign nationals for offerings and services, the City generally has no scope to facilitate access for Sans-Papiers.

Examples of this are registration with the City, marriage, renting accommodation, recourse to social assistance or access to services that require a work permit. These also include apprenticeships, charitable jobs and even honorary activities

Subject to the police checks which are effectively possible at any time in the public sphere, it can be stated in conclusion that access to the offerings and services listed in categories 1 and 2 is easy and possible for Sans-Papiers living in Zurich without the risk of consequences under the Federal law on foreign nationals. In contrast, the City has no opportunity to grant them access to category 4 services. This is why the scope that the City of Zurich has with regard to category 3 offerings and services is particularly important. Access in this area on the one hand requires appropriate decisions by the competent agencies. On the other the information required must be checked in an «alternative» way.

The enhanced check for municipal services in category 3 shows that for some years they have been well accessible to Sans-Papiers to a certain extent. As a result, for some years a tried-and-tested practice has come into play for access to subsidised crèche or after-school care places, for access to discounts on health insurance fund premiums, or recourse to a care place or inpatient treatment in the city hospital. The review also identified gaps, however, such as access to emergency accommodation and municipal grants, for example. The City Council is currently examining how to fill these gaps. Non-municipal alternative offerings which Sans-Papiers can use are also being taken into consideration in the process.

The City Council assumes that access to these services could be somewhat facilitated by a Züri City-Card, but this is not a prerequisite. The Züri City-Card would have virtually no direct impact, on the other hand, on category 1 and 2 services, as access to these is available anyway. Also, due to superordinate law, a Züri City-Card could not facilitate access to category 4 services. Overall, the City Council determines that currently, municipal offerings and services are available to the whole population, wherever legally possible. It is prepared, however, to review any new loopholes that appear and to close them if necessary.

4.3 Healthcare

Urgent motion GR no. 2017/376, referred on 27 June 2018, commissioned the City Council to submit a pilot project based on the Geneva CAMSCO model, which safeguards medical provision for people without access to healthcare. This specifically meant Sans-Papiers. The City Council acted on this request with STRB no. 1015/2020. It applied to the City Parliament for a little over CHF 4.5 million for implementation of a three-year pilot project. The binding basis for the project is formed by the supplement to the directive «People without health insurance in the City of Zurich – concept for assured medical care for Sans-Papiers and uninsured people».

The City Council noted that an offering comparable to that in the canton of Geneva is available to people without health insurance and Sans-Papiers in the City of Zurich. This is ensured by a practised division of labour by the Meditrina medical practice, supported by the canton of Zurich's Swiss Red Cross (SRC), the SPAZ Drop-in Advice Centre, and the medical and social outpatients services of the City Medical Services, the City Health Services (CHS), and the city and university hospitals, but is partly structurally weak and, in particular, inadequately financed.

Measures that are solely influenced by and the responsibility of the City have been derived from the need for action identified. Implementation thereof is to be evaluated, based on the findings obtained, and transferred to regular operation after the pilot phase has concluded. The measures have three approaches:

– **Structural stabilisation:** the Waid and Triemli city hospital will become the official treatment hospital for people without health insurance living in the City of Zurich. Health insurance cover should be taken out, whenever possible, for both out-patient and in-patient treatment. Fixed-term jobs will be created at CHS to keep costs under control and clarify patients' personal share of the costs.

– **Financing of medical treatment:** as in the past, the intention is that SPAZ will support conclusion of health insurance policies and applications for premium discounts will be checked by the CHS or, from 2021, passed to the newly competent Social Security department. If it does not make sufficient sense to conclude health insurance, or it is not possible to cover all the expenses, CHS will assume the costs. The corresponding paying agent was already established in spring 2020 due to Covid-19. The Meditrina medical practice, which specialises in Sans-Papiers and has a wide network, will be financed by the City of Zurich from 2021 by means of a performance agreement.

– **Information about medical services:** the intention is that Sans-Papiers, or other people living in the City without health insurance should be better informed than previously about the medical care options available. A periodic meeting, led by the CHS, of all the stakeholders should identify and resolve any problems.

4.4 Right to education

Following consultations with the Conference of Cantonal Ministers of Education (EDK), in March 1991 the canton of Zurich Department of Education and Police Department informed the municipalities that children without a residence permit should be included in school and parents informed that this would not lead to official recognition of residential status. This clarification, issued against the background of the Yugoslavian civil war, was implemented by the City of Zurich (cf. STRB no. 3396/1991), with decisions being taken in cases of doubt in accordance with the Federal Constitution and the United Nations Convention on the Rights of the Child (cf. STRB no. 516/2002). This generally resulted in a well-oiled practice, which guaranteed attendance of children without legal residence at primary school. Both parents and advisory services in the City of Zurich have confidence in this practice.

The right of pre-school children to education, as stated in section 4.2, is facilitated in the City of Zurich by access to subsidised places in children's day care centres also being available to children of Sans-Papiers. In comparison, however, the outlook is still bleak in non-school, post-compulsory education. It requires a work permit, in respect of which the City has no authority to act. It was possible, however, for the City to point out in conjunction with the SSV, in the responses to the National Council's report (cf. section 4.1), that the current hardship case options would not achieve the associated aims.

4.5 Assistance from private sponsors

The two most important civil society structures for Sans-Papiers living in the Zurich area have to date been the Meditrina medical practice financed by the Swiss Red Cross and the Sans-Papiers Drop-in Centre Zurich, which is organised as an association and is financed by donations. The City held discussions with both with regard to any joint financing which would safeguard operation in the future too. The resulting municipal assistance has not yet progressed as far.

Whilst it is expected that municipal financing of Meditrina as envisaged by the City Council can be arranged from 2021 - subject to approval by the City Parliament - (cf. section 4.3), the Board of the SPAZ drop-in centre initially proved to be reluctant and worried that municipal financing of additional advisory services could prejudice structural independence. It preferred one-off or project-related assistance, as in the past. Such cooperation ensued as a result of the coronavirus pandemic. On the one hand the City made funds available which, in addition to its donations, allowed SPAZ to provide Sans-Papiers with urgently required emergency aid. On the other hand there was discussion of whether and how the City can help SPAZ to manage the major additional administrative and organisational effort.

4.6 Internal and external cooperation

The composition of the Sans-Papiers working group deployed by the City Council's Integration Office and its working method proved its worth for coordinating and carrying out the position paper implementation work. Apart from specific inclusion of other municipal departments there was no need for wider support. External cooperation was also limited, particularly due to the ongoing political process concerning any Züri City-Card. Apart from participation in the cantonal and national advisory groups as mentioned in section 4.1, and in the C-MISE project, the issues surrounding a City-Card were also to the fore of many of the contacts and opportunities for dialogue used by the working group.

There was dialogue on this with, amongst others, the city of Bern, where creation of a City-Card forms part of the executive legislature planning, with the city of New York, whose concept of a sanctuary city and introduction of a city card was clarified in greater detail, and with the city of Sheffield, which describes itself as the first European City of Sanctuary. There was also a variety of contact with academia, generally contributions at conferences and, in particular, a working meeting with representatives from the Züri City-Card association, which was able to put forward its concerns and proposals, focussing on access to justice, directly.

4.7 Further implementation work

The second legal opinion envisaged by the City Council with the position paper has again been commissioned from the Chair for Public Law at the University of Zurich. The questions were prepared by the Mayor's Department's legal department, the working group and as a result of discussions with lawyers from various departments. They focussed on the legal requirements for introduction of a Züri City-Card (cf. section 5).

In conjunction with the Swiss representative from the International Organisation for Migration (IOM), a possible City of Zurich project that permits or facilitates return to their home country for vulnerable Sans-Papiers on a voluntary basis was examined. Like the tried-and-tested procedure for refugees, in addition to the advice on returning, the project would also include a jump start, project financing and follow-up medical care, as required. The preliminary project work was suspended due to restricted international mobility since spring 2020 and should resume again at a later date.

5

Legal opinion on a Züri City-Card

5.1 Questions

Many municipalities and cities worldwide are making a type of identification available to their inhabitants in the form of a card. These cards differ in design, function and safeguards against forgery, but are not regarded as official documents in Switzerland. In Switzerland they neither confirm identity nor residence at community level and cannot be issued to people who are resident illegally either. In other countries there are cities, however, which issue official identity cards to the entire population. The best known are in the USA and Spain

Motion GR no. 2018/278 referred by the City Parliament commissions the City Council to introduce a city identity card. Following the example of New York, the Züri City-Card is supposed to be issued to «all inhabitants regardless of origin and residence status and to serve as proof of identity to the authorities (especially the police) and individuals». Whether official city identification within the terms of the motion is compatible with superordinate law remain unclear in the «Access to justice by Sans-Papiers» legal opinion (cf. section 3.1). This is why the University of Zurich's Chair for Public Law was asked to produce a second opinion.

The request for the legal opinion covered four areas:

- **Identity card (Züri City-Card):** is the City of Zurich authorised to create an official form of identification which confirms identity and residence and to give it to Sans-Papiers? Which information is required for this and which can be dispensed with? At what level of legislation must introduction be regulated? Which municipal department would logically be responsible for issuing a Züri City-Card? Could issue be outsourced to private third parties?
- **Correlation of residents' registration law and Federal law on foreign nationals:** is residential status under the Federal law on foreign nationals a mandatory requirement for registration under residents' registration law? If not, is it mandatory for foreign national status to be checked and reported, or is there scope for discretion? Would a delegation of authority from the canton to the City of Zurich regarding issue of the residence permit according to the Federal law on foreign nationals simplify introduction of a Züri City-Card?

- **Identity checks by the police:** does the Züri City-Card give rise to an initial suspicion of illegal residence in Switzerland? Which requirements have to be met so that it does not give rise to an initial suspicion? Is the Züri City-Card sufficient for an identity check during a check by the City or cantonal police? Do the police make themselves criminally liable if they accept the Züri City-Card?
- **Access to police justice:** could the option practised in the Netherlands lead to protected reporting («free in and free out») in the City of Zurich in the sense of weighing of legal interests between enforcement of the Federal law on foreign nationals and victim protection? If yes, which conditions and legal principles would be necessary?

The legal opinion produced by Prof. Regina Kiener and lawyer Danielle Breitenbücher on 23 February 2020, «Introduction of a Züri City Card (ZCC)», answers the first three questions. As agreed, the opinion on the fourth question followed on 18 May 2020 and was co-authored by doctoral candidate Roman Schuppli. Both parts of this report are available on the Integration Office website.

Due to the complexity of the subject matter, the opinion is organised according to the experts' structure. It concludes with a synthesis and brief answers to the questions. Section 5.2 only takes account of the legal opinion's results that are particularly significant for implementation of the motion.

5.2 Selected results and findings

Compatibility of a Züri City-Card with superordinate law

Issue of a Zurich City-Card (ZCC) to all inhabitants of the city, which officially confirms identity («I am me») and residence («I live in the City of Zurich»), without simultaneously disclosing residence status, is compatible with superordinate cantonal and Federal law. This project is not opposed by the law on personal identification, the law on personal registration, or the Federal law on foreign nationals.

The ZCC does not pursue any objectives under the Federal law on foreign nationals, but is intended to ensure exercise of rights that are also due to Sans-Papiers. It does not affect residence status and can be issued to Sans-Papiers. There is, however, a closely interwoven network of Federal and canton regulations, into which issue of a ZCC and use thereof in practice must fit. Various legal requirements must be met, so that use of the ZCC is admissible and effective.

Legal requirements for effective use of the Züri City-Card

The ZCC can only achieve its aim of improving the situation of Sans-Papiers if holders can trust that the authorities or individuals will rely solely on the ZCC for identification and residence status will not, therefore, be disclosed. It must be possible to predict in which situations the ZCC ought to, or even must be accepted by authorities and individuals.

Use of the ZCC by Sans-Papiers is restricted in practice to identification by authorities or individuals who are legally obliged to accept the ZCC, or who give a binding undertaking to do so and who are not subject to a legal obligation to record residence status, to establish identity by means of other documents, or to pass personal data to third parties.

The City of Zurich can only oblige authorities and administrative bodies in the City itself to accept the ZCC as proof of identity and residence. It can also champion voluntary acceptance of the ZCC by public enterprises and individuals operating in the urban area and communicate this clearly externally.

Introduction of a ZCC requires a legal basis. The main features of the necessary regulations must be governed by an order of the City Parliament. In particular this includes the obligation by municipal authorities and administration entities to recognise the ZCC, responsibility for its issue, and regulation of the duties of data protection and confidentiality. The details can be set out in a City Council regulation.

Issuing authority for a Züri City-Card

An administrative entity entrusted with issuing a ZCC must check the bearer's identity and residence. In the process it will rely on various existing sources of data. If it does not ask about residence status, there is a certain probability that potential illegal residence can be concluded from comparison of the data.

The ZCC can only be issued by an administrative entity that is not subject to a reporting duty under the Federal law on foreign nationals. Employees must not be subject to either an obligation to record residence status or to notify personal data - in particular residence status - to third parties. Due to the existing duties of notification under criminal law, it is important that the people responsible for issuing the ZCC to Sans-Papiers establish a trusting relationship as a result of this task.

As a result, the legal opinion notes that issue of a ZCC should first and foremost be conferred on an administrative unit organised separately and with separate staff (service department), which is exclusively responsible for this task. Secondly, an administrative unit should be used whose existing activities offer as few touch points as possible with duties under the Federal law on foreign nationals and not give rise to any obligations to report personal data. In any case, the issuing authority should be subject legally to a particular duty of secrecy, which obliges them to keep the data they are processing secret.

Use of the Züri City-Card in the case of police checks

If the ZCC contains the necessary information, it can be used by the City or cantonal police to determine identity. The Senior Prosecutor's Office can fundamentally amend its instructions in this regard at any time though. Also, the City cannot demand that the cantonal police operating in its area accept the ZCC as proof of identity. It should also be noted that depending on the situation, identification as part of a police task requiring a check under the Federal law on foreign nationals must be carried out.

Production of a ZCC does not give rise to an initial suspicion of illegal residence per se. If the police have other reasons to suspect commission of an offence under the Federal law on foreign nationals, however, they must pursue this and make further enquiries. Otherwise, the police officer carrying out the check is punishable for aiding and

abetting the offence. The more the ZCC is widespread amongst the urban residents and actively used, the fewer corresponding suspicions there are likely to be. The aims sought by introducing a ZCC therefore require corresponding efforts by the City of Zurich.

Content and design of a Züri City-Card

The ZCC must contain the following information to prove identity and place of residence: issuing authority (city of Zurich, possibly with coat of arms), identification type (ZCC), document number, issue date, expiry date, facial image, surname(s), first name(s), date of birth, sex (possibly with more options than m/f), signature. Residence status and place of origin are not required.

Depending on the type of use, other features could be listed, such as height, nationality, city district, residential address, emergency contacts, etc. These are not necessary and each is associated with certain advantages and disadvantages that are worth considering.

Issue of the ZCC with machine-readable type or a data chip would be associated with increased costs and could encounter resistance from some residents for reasons of data privacy. The question also arises as to which departments could read this data. According to the legal opinion, the customary card format and contents in normal script ought to be sufficient for the ZCC, formatting in machine-readable script or the addition of a data chip is not required.

Further findings and guidance

Transfer of issue of a ZCC to private organisations is legally possible and remains largely a political decision. A private institution commissioned by the City to issue a ZCC would, however, be subject to the same reporting and notification duties as a municipal agency. It is therefore questionable whether transfer to a private institution is appropriate. The legal opinion advises against transfer to private institutions.

When conceiving a ZCC, there are areas of conflict between distribution that is as low as possible on the one hand and high quality requirements and broad applications on the other. A ZCC that is kept simple, with long validity, is likely to be straightforward and cheap to issue. A ZCC with a high level of security against forgery and broad application options, on the other, is much more laborious and cost-intensive to produce and issue. In the case of a card with a data chip, the accepting agencies must also be equipped with the corresponding reader devices. The question of data protection also arises.

With regard to question 4, «Access to police justice», continuing on from the first legal opinion on access to justice (cf. information in section 3.1), the second opinion determines that the «free in, free out» system practised in the Netherlands cannot be implemented as such in the City of Zurich. When reporting an offence and participating in subsequent criminal proceedings, due to superordinate law *Sans-Papiers* cannot be protected such that notification to the migration authorities and, as a possible consequence, expulsion from Switzerland, can be prevented in any case. Legislation would have to be amended at Federal level for legally secure protection of *Sans-Papiers* in criminal proceedings. A certain protection could be achieved by issue of cantonal directives and policies, as well as sensitization of the authorities. The City's options for action are limited.

6

Introduction of a Züri City-Card

6.1 Appraisal of the initial situation: summary

The City Council notes the legal opinion on «Introduction of a Züri City Card». Despite questions still to be addressed in greater depth, the opinion provides a substantiated starting point and basis for political discussion and decision making.

The City Council primarily determines that within the scope of superordinate law, the City of Zurich can introduce a Züri City-Card, which officially confirms the identity and residence of the City's inhabitants. It further determines that a Züri City-Card can also be made accessible to Sans-Papiers living in the City.

Direct use will, however, remain limited for Sans-Papiers. As the legal opinion states, the Züri City-Card does not change anything with regard to their position and can only meet some of the expectations associated with Motion GR no. 2018/278. In particular, it will not prevent the need for residence status to be checked during police checks, depending on the situation. Furthermore, access to municipal offerings and services for Sans-Papiers, which is already well developed, will scarcely be improved by the Züri City-Card (cf. section 4.2). Whether private organisations or individuals would accept such a city identity card also remains unclear.

More than the Züri City-Card is needed in order for Sans-Papiers to be able to exercise their central and constitutional human rights. The Confederation and canton in particular are responsible for this. The City Council therefore abides by its demands issued in its position paper (cf. section 3.2): on the one hand appropriate improvements are to be reviewed and implemented insofar as possible and, on the other, the Federal Council and Governing Council should introduce the measures necessary to regularise Sans-Papiers who have been living here for several years, on transparent terms, and to integrate them into the regulated employment market.

Wide dissemination in the total population is decisive for a successful Züri City-Card. Possession and use must therefore be appealing to all the City of Zurich's inhabitants and add value. This may include financial aspects, but should ensue for the City Council from other opportunities for use that are taken into consideration when designing the City identity card.

The City Council not only associates the Züri City-Card with official confirmation of identity and residence, but also in particular with the potential that it also offers. First and foremost are visible expression of a diverse and unified City, simplified access to offerings and participation

opportunities, as well as creation of a platform onto which municipal and, insofar as possible, private services can be loaded. In order for this to be feasible, unlike the «basic» card prioritised in the legal opinion, the City Council is focussing on a City identity card which can store data digitally, which can replace several previous cards, which provides interfaces and which can be linked to the «Mein Konto» municipal online service and potentially used as an app too.

The City Council is aware that extensive legal, technical and organisational clarification is required for introduction of a pioneering City identity card in this format. It requires preparatory work which will be expensive. Following introduction of the Züri City-Card, considerable recurring personnel and material costs are to be expected for the card's issue and management. These include expenditure on direct and indirect financial benefits intended to make use of the card attractive to the residents.

The City Council is currently undecided whether creation of a specialised service department as proposed by the legal opinion is the best possible structure for issue of the Züri City-Card. It could imagine, for example, that this task would be performed better and in a legally more secure way by two departments: The Residents' Office would be responsible for registered residents and a new department for Sans-Papiers to be created which, like the City Magistrate's Office, would not be subject to the City Council's direct supervision, responsible for managing the necessary database.

The City Council is also currently undecided whether the term «Züri City-Card» should be retained during the preparatory and implementation work. Reasons for another label could on the one hand ensue from previous history (residents strongly associate a City-Card with «protection» during police checks) and, on the other, from the publicity work yet to be devised (cf. section 6.3).

6.2 The Züri City-Card

The City Council wants the City of Zurich to be positioned and perceived as a unified, diverse and cosmopolitan city. All residents should feel at home here and participate in the social, cultural, scientific and political life insofar as possible and according to their interests. They should benefit from municipal services and offerings regardless of their individual requirements.

The City Council brings these objectives together under one roof, which can be provisionally termed «urban citizenship». On the basis of the many activities and measures that already exist in Zurich it is worth bundling such an understanding of an active city society, and to hone the concept, continually develop it and strengthen it by including various groups of residents.

Introduction of the Züri City-Card envisaged by the City Council is part of this process. It is not only intended to be a municipal identity card which confirms residents' identity and residence, but also to help to strengthen cohabitation in the City and residents' identification with the City. The intention is that the Züri City-Card should give people living in Zurich easier and, for some, discounted access to information, services, opportunities for cooperation and cultural offerings. Insofar as possible it should replace other identity cards, act as an interface bringing together various opportunities for use and last, but not least, be designed such that even residents of Zurich who are not legally resident can benefit from it.

6.3 Preparatory and implementation work

There must be good preparations for introduction of the Züri City-Card. Various legal and technical issues have to be clarified. Political decisions are required to create the necessary legal basis. The organisational and technical structures required for production and issue of the City identity card have to be developed and the benefits and discounts associated with use specified. It is also necessary to introduce measures to publicise the Züri City-Card to residents and accepting agencies and to contribute to a Zurich Urban Citizenship, in which the card is embedded strategically and conceptually.

The City Council envisages achieving the preparatory and implementation work in five, partly overlapping phases. Initially these can be planned to a limited extent, but should take a good four to five years according to a provisional assessment.

- **Phase 1 Commissioning (approx. 6 months):** following approval of the line of credit required for the next steps, the City Council will design the overall project in greater detail, specify the organisational structure and award the contracts for the activities and measures envisaged in phase 2.
- **Phase 2 Preparation and implementation planning (approx. 18 to 24 months):** the activities and measures currently envisaged for introduction of a Züri City-Card will be outlined more specifically below. In addition to preparation for the legal, organisational and technical requirements for introduction of the Züri City-Card, they include accompanying activities aimed at improving the quality of access to municipal services and offerings.
- **Phase 3 Creation of the legal basis (approx. 9 to 12 months):** the City Parliament (or the municipality) and the City Council will decide on the legal, organisational and financial conditions for introduction of the Züri City-Card as part of their responsibilities.
- **Phase 4 Provision of the Züri City-Card (approx. 12 to 24 months):** the technical, administrative and organisational structures for production, issue and use of the Züri City-Card will be provided. Invitations to tender will be issued and contracts concluded. Also, effective publicity will be prepared for introduction of the Züri City-Card with regard to the overarching aim of a strong urban society through participative processes and communication of a yet-to-be-defined label.

- **Phase 5 Introduction of the Züri City-Card:** the Züri City-Card will be issued and accepted. As soon as a certain degree of dissemination within the total population has been achieved, Sans-Papiers living in Zurich will be issued with City identity cards too

The City Council is aware that changes may occur and further clarification or decisions required to achieve the objective may be necessary during the preparatory and implementation work. In this report the City Council therefore confines itself to outlining the aims, content and questions in Phase 2.

Direct work to prepare for the Züri City-Card

There are various questions which arise from the legal opinion's findings and previous considerations by the City Council which have to be clarified and partly decided upon ahead of the political and legal decisions on introduction of a Züri City-Card. They differ in complexity and the categorisation given here is provisional:

- **Appearance and production of the Züri City-Card:** which information will be taken into account? How will the Züri City-Card be designed? How can a high level of security against forgery be ensured? Which requirements must be met to make digital interfaces (to be determined) possible? What should the Züri City-Card be called? How can it be produced, and at what cost
- **Züri City-Card holders:** which residents of the City of Zurich will be able to obtain a Züri City-Card and on what conditions? Is it free? How long is it valid? How can it be extended? What happens if it is lost or the resident moves away? Can it be taken away from the resident?
- **Issue of the Züri City-Card:** where and how can the Züri City-Card be obtained? How will identity and resi-

dence be checked? Which structural and staffing requirements must the issuing bodies meet? Which requirements must the database meet? What do the structures required to issue and manage the Züri City-Card cost?

- **Züri City-Card data and interfaces:** which data will be stored, and how? Which should it be possible to upload additionally, as required? How can this data be protected from abuse? Which existing cards can be integrated? Is an app also possible? Are payments also possible?
- **Acceptance of the Züri City-Card:** with which municipal and non-municipal bodies can the Züri City-Card be used? What are the requirements for this and what are the associated costs? Can Sans-Papiers be protected adequately? Which uses can be subject to binding regulations?
- **Benefits and discounts associated with the Züri City-Card:** which benefits for users can be linked to the City-Card, which for the accepting agencies? How can acceptance of the Züri City-Card be increased? What will be the cost of the various benefits and discounts?
- **Development of the legal basis necessary for the Züri City-Card:** what must this include? How is data privacy ensured and what regulations are needed for this? What must the regulations look like so that

Services in the practical test

The basic thought behind the envisaged activities and measures is that access to municipal offerings and services should be tested by representatives from target groups concerned. In each case a small team, which will use the offering in practice with professional support, will be put together for a concrete review, its experiences analysed and feedback, which also includes suggested improvements, provided to the competent department. Any opportunities to use a Züri City-Card are also to be taken into consideration in the process. The municipal department tested can discuss the report with the test team and should discuss this internally. As a minimum it will be obliged to provide a written response. Such reviews should be «ordered» by the municipal institutions, but can also be carried out «voluntarily» in consultation with the respective service department.

The examination of access by the total resident population to municipal offerings and services described in section 4.2 shows that this is good in Zurich. Possible access does not, however, mean that it is also used. In practice various constraints and obstacles are also revealed. These may ensue from the costs associated with use. It may also be that there is a lack of the necessary information, that the offering's purpose and benefit is not adequately understood, or that access is still only possible with digital competence.

The City Council presumes that it is mainly older, foreign language-speaking, poorer and digitally less experienced people who have some difficulty in benefitting from the City's constantly developing information and service offering in the same way as other groups of residents. Official language can be complex and long forms complicated. The move to digitalised ways of conveying information or registration procedures, which is in many respects sensible and expedient, entails the risk of excluding or disadvantaging some residents.

The City administration is very aware of this risk. The municipal institutions are aware of their duty to reach the whole population or, specifically, the primary target groups, with their offerings and services. They check whether they actually do this in practice and, if necessary, introduce measures to create easier and better access for groups of residents who, initially, are not well enough served. It happens, though, that in the City of Zurich the time for these processes is lacking, that the satisfaction of the customers reached leads to blind spots, or that individual, unintentionally excluded groups of people are never even thought of.

This is what the activities and measures envisaged by the City Council address. They are intended to help providers of municipal services further improve the quality of their activities and, in the process, exploit the opportunities presented by introduction of the Züri City-Card. Any existing disadvantages for certain groups of the population should be identified, made apparent and, insofar as possible, rectified, with the focus on vulnerable people. A project is planned that on the one hand addresses the City administration's verbal and digital communication and, on the other, reviews selected processes for their customer friendliness. Sans-Papiers living in the City of Zurich are taken into consideration as part of the City's population.

6.4 Implementation of the «Züri City-Card» motion

On 31 October 2018 the City Parliament passed urgent motion GR no. 2018/278 by 64 votes to 41 (with 12 abstentions). It instructed the City Council to submit a credible template for introduction of a municipal identity card for all residents of the City, a so-called Züri City-Card. This card is supposed to be issued regardless of origin and residence status, to serve as proof of identity to the authorities (especially the police) and individuals, and simplify access to municipal or private services. The card should also facilitate discounted access to cultural institutions, sporting offers, libraries, etc. for the card to be attractive. Like the city of New York, the intention is that with the City-Card the City of Zurich shows that it is a city for all its residents.

Introduction of a Züri City-Card as envisaged by the City Council fulfils this request. This Zurich City identity card is only comparable to a very limited extent with the city of New York identity card described as an example in the grounds to the motion. This is not due to the card per se, but the fact that many residents of New York do not have any other form of identification and that, regardless of identification, New York considers itself to be a «Sanctuary City».

Whilst municipalities implement cantonal and Federal law directly in Switzerland, or at least cannot impede its implementation, according to US law the cities are not obliged to enforce national law. Therefore the city of New York can prohibit its employees from assisting the national immigration authorities in their duties. As a result, they generally facilitate protection for people without a legal residence from being reported, notified or arrested. An analogous regulation is impossible in the City of Zurich.

As noted in section 6.1, the benefit of the Züri City-Card for Sans-Papiers living in Zurich remains limited. The expectations associated with it of the Züri City-Card association and the proposers of the motion can only be partly met. In particular, the Züri City-Card will not create the prerequisites for Sans-Papiers to be able to move about the city without fear and obtain better access to law and justice. Yet Zurich City Council sees much potential in a Züri City-Card. Embedded in a superordinate objective of a stronger urban society (cf. sections 6.1 to 6.3), it can strengthen solidarity and coexistence in the City and make it possible for the entire population to participate in the social, cultural and political life of Zurich better than before.

Implementation of motion GR no. 2018/278 envisaged by the City Council fulfils the mission conferred. It requests that the City Parliament adopt the motion.

