



## **EMN Ad-Hoc Query on Ad-hoc query on exclusion from the refugee status**

Requested by Martina KAMENICKA on 3rd May 2016

### **Protection**

Responses from Austria, Czech Republic, Germany, Hungary, Slovak Republic (5 in total)

#### *Disclaimer:*

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*


### **Background information:**


Following CZ Ad-Hoc Query related to Article 14 of the Qualification Directive (2011/95/EU) which was launched on April 21, 2016 we would like to ask some Member States (AT, DE, HU and SK) for further specifications as regards exclusion from the refugee status. As the Ministry of the Interior of the Czech Republic has been asked by the Chamber of Deputies of the Parliament of the Czech Republic to submit the analysis of the legislation regulating the exclusion in other Member States, we would be very grateful if you could provide us with following information.

### **Questions**

1. Current text of the exclusion clauses (Article 1F of the Geneva Convention) from your national legislation (we would really appreciate the wording of relevant provisions or the reference where to find the text in English).
2. Information regarding possible forthcoming changes in this issue, i. e. whether you plan any changes in national legislation regarding the exclusion according to Article 1F of the Geneva Convention.

### **Responses**

	Country	Wider Dissemination	Response
	Austria	Yes	<b>1.</b> Ineligibility for asylum status Article 6. (1) An alien shall be rendered ineligible for asylum status if: 1. and for as long as he enjoys protection pursuant to article 1, section D, of the Geneva Convention on Refugees; 2. any of the grounds set forth in the exclusion clauses in article 1, section F, of the Geneva Convention on Refugees exists; 3. there are valid reasons for considering that the alien constitutes a danger to the security of the Republic of Austria or 4. he has been convicted, by final judgment of an Austrian court, of a particularly serious crime and, by reason of such punishable act, represents a danger to the community. A conviction by a foreign court which meets the requirements set out in article 73 of the Penal Code, FLG No. 60/1974, shall be deemed equivalent to a conviction by an Austrian court. (2) In cases where a reason for ineligibility as referred to in paragraph (1) above exists, an application for international protection may be dismissed in regard to the granting of asylum status without further examination. Article 8 shall


			<p>apply. English translation: <a href="http://www.unhcr.at/english/austrian-asylum-legislation.html">http://www.unhcr.at/english/austrian-asylum-legislation.html</a> Source: Federal Ministry of the Interior.</p> <p><b>2.</b> No, at the moment no changes of the national legislation regarding the exclusion according to Art. 1F of the Geneva Convention are planned. Source: Federal Ministry of the Interior.</p>
	Czech Republic	Yes	<p><b>1.</b> Section 15 of the Act No. 325/1999 Coll., on Asylum, as amended (1) Asylum cannot be granted if there exist reasonable grounds for suspicion that a foreign national who has filed an application for international protection a) has committed a crime against peace, a war crime or a crime against humanity within the meaning of international documents which contain provisions on such crimes, b) has committed a serious non-political crime outside the Territory prior to the filing of the application for international protection, or c) has committed acts that are contrary to the principles and goals of the United Nations Organisation. (2) Subsection 1 applies mutatis mutandis to a foreign national inciting another person to commit the crimes listed in subsection 1 or participating in committing such crimes. (3) Furthermore, asylum cannot be granted if a) the foreign national is enjoying the protection or support from other bodies or professional organisations of the United Nations Organisation other than the Office of the High Commissioner; if for any reason the protection or support ceases to be granted to persons for whom the final decision on their status has not yet been made pursuant to the provisions of the relevant resolutions made by the United Nations General Assembly, the provisions of this Act shall apply to him/her, b) the foreign national is recognized by the relevant authorities of the country in which he/she has settled as the place of permanent residence to be a person who has been granted the rights and obligations equivalent to the citizenship of such country; this shall not apply if this country is a country in which he/she faces the threat of persecution pursuant to Section 12.</p> <p><b>2.</b> The Chamber of Deputies of the Parliament of the Czech Republic is currently discussing the draft law proposed by the group of deputies. The draft law concerns the extension of the grounds for the exclusion from being a refugee under the Article 14 paragraph 5 of the Qualification Directive (2011/95/EU).</p>



Germany

Yes

**1.** The reasons for exclusion under Article 1F Geneva Convention in German law figure under § 3 para 2 AsylG (Asylum Act). In § 4 para. 2 AsylG, the corresponding reasons for exclusion for subsidiary protection are regulated. Other reasons for exclusion in accordance with Article 33 no. 2 Geneva Convention (exceptions of the non-refoulement ) are included in the AufenthG (Residence Act) in § 60 para 8. § 3 AsylG (sec. 1 + 2): Recognition of refugee status (1) A foreigner is a refugee within the meaning of the Convention related to the status of refugees if in the country of his citizenship or in which he habitually resided as a stateless person he faces the threats listed in Section 60 (1) of the Residence Act. (2) A foreigner shall not be recognized as a refugee under (1) if there is good reason to believe that he 1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments drawn up for the purpose of establishing provisions regarding such crimes, 2. committed a serious non-political crime outside the Federal territory before being admitted as a refugee, in particular a brutal act, even if it was supposedly intended to pursue political aims, or 3. acted in violation of the aims and principles of the United Nations. Sentence 1 shall apply also to foreigners who have incited others to commit the crimes or acts listed there or otherwise been involved in such crimes or acts. § 4 AsylG (sec 1 +2): Subsidiary protection (1) A foreigner shall be eligible for subsidiary protection if he has shown substantial grounds for believing that he would face a real risk of suffering serious harm in his country of origin. Serious harm consists of: torture or inhuman or degrading treatment or punishment, or 3. serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. (2) A foreigner shall be excluded from being eligible for subsidiary protection pursuant to paragraph 1, if there are serious grounds to believe that he 1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes, 2. has committed a serious crime, 3. is guilty of acts contrary to the objectives and principles of the United Nations, as enshrined in the Preamble and Articles 1 and 2 of the Charter of the United Nations (Federal Law Gazette 1973 II, pp. 430, 431), or 4. represents a risk to the general public or to the security of the Federal Republic of Germany. These grounds for exclusion shall apply also to foreigners who incite others to commit the crimes or acts listed above or are otherwise involved in such crimes or acts. § 60 AufenthG (sec. 1 + 8): Prohibition of deportation (1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), a foreigner may not be deported to a state

			<p>in which his or her life or liberty is under threat on account of his or her race, religion, nationality, membership of a certain social group or political convictions. This shall also apply to persons who are entitled to asylum and to foreigners who have been incontestably granted refugee status or who enjoy the legal status of foreign refugees on other grounds in the Federal territory or who have been granted foreign refugee status outside of the Federal territory in accordance with the Convention relating to the Status of Refugees. When a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group. Persecution within the meaning of sentence 1 may emanate from a) the state, b) parties or organisations which control the state or substantial parts of the national territory, or c) non-state parties, if the parties stated under letters a and b, including international organisations, are demonstrably unable or unwilling to offer protection from the persecution, irrespective of whether a power exercising state rule exists in the country, unless an alternative means of escape is available within the state concerned. Article 4 (4) and Articles 7 to 10 of Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) shall additionally be applied in establishing whether a case of persecution pursuant to sentence 1 applies. Where the foreigner cites the ban on deportation pursuant to this sub-section, the Federal Office for Migration and Refugees shall establish in an asylum procedure whether the conditions stated in sentence 1 apply and the foreigner is to be granted refugee status, except in cases covered by sentence (8) Sub-section 1 shall not apply if, for serious reasons, the foreigner is to be regarded as a risk to the security of the Federal Republic of Germany or constitutes a risk to the general public because he or she has been unappeasably sentenced to a prison term of at least three years for a crime or a particularly serious offence. The same shall apply if the foreigner meets the conditions stipulated in Section 3 (2) of the Asylum Procedure Act.</p> <p>2. No findings about forthcoming changes. (§ 60 sec. 8 AufenthG has been expanded in the last amendment in the wake of tighter laws for offenders).</p>
	Hungary	Yes	<p>1. According to Article 8 § of Act LXXX on Asylum: Reasons for Exclusion from Recognition as Refugee 8 § (1) A foreigner shall not be recognised as refugee in respect of whom any of the</p>

			<p>exclusion clauses stipulated in Article 1 D, E or F of the Geneva Convention prevails. (2) In the course of the application of Article 1 F b) of the Geneva Convention, an act shall qualify as a serious non-political criminal act upon the commission of which, with regard to the totality of the circumstances, including the objective intended to be attained through the crime, the motivation of the crime, the method of commission and the means used or intended to be used, the ordinary legal aspect of the crime dominates over the political aspect and it is punishable by a term of five or more years imprisonment according to the relevant Hungarian rules of law. (3) In the application of Article 1 F c) of the Geneva Convention, the following in particular shall be contrary to the purposes and principles of the United Nations a) acts of terrorism, b) financing terrorism, and c) incitement to the acts in points a) and b). (4) No refugee status shall be granted to a foreigner whose stay in Hungary is a risk to national security.</p> <p><b>2.</b> There are no plans at the moment for any further change in national legislation in this regard. National legislation has been amended, more precisely, the above referred provisions were added and entered into force in August 2015.</p>
	Slovak Republic	Yes	<p><b>1.</b> Art. 13 (2) of the Act no. 480/2002 Z.z. Coll on Asylum and on the Changes and Amendments of Some Legal Acts: The Ministry shall also deny granting of asylum, if there is a well-founded suspicion that the applicant a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments, b) has committed a serious non-political crime outside the territory of the Slovak Republic prior to applying for asylum or subsidiary protection, c) has been guilty of acts contrary to the purposes and principles of the United Nations Organisation.</p> <p><b>2.</b> No changes are planned in the national legislation regarding exclusion from the international protection.</p>