



Ad-Hoc Query on Return of failed asylum seekers from North Korea to South Korea

Requested by FI EMN NCP on 3rd of September 2014

Compilation produced on 17th of November 2014

Responses from Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Spain, Sweden, United Kingdom plus Norway (23 in Total)

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1. Background Information

The Asylum unit of the Finnish Immigration Service has an urgent request for information regarding the return of citizens of North Korea (Democratic Republic of Korea) to South Korea (Republic of Korea) following an unsuccessful application for international protection in an EU Member State. A case is awaiting a decision, therefore the need for information is urgent; Finland has not had similar cases before.





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Questions:







1. Do you return citizens of North Korea to South Korea?
If yes, please elaborate in which cases?
E.g. do you return citizens of North Korea to South Korea, even if they have never been in South Korea and if they do not have any ties to South Korea?
2. Do you return persons to South Korea, who previously were citizens of North Korea, but who according to the legislation of South Korea have been issued the nationality of South Korea, after they arrived to South Korea (e.g. as defectors/refugees)?
3. Do you consider that defectors from North Korea can safely reside in South Korea, i.e. is South Korea considered to be a safe country of origin for them? What is your decision policy in general in these cases?

The responses are requested by the **10th of September**.









2. Responses

		Wider Dissemination?	
	Austria	Yes	1. No, Austria does not return citizens of North Korea to South Korea. 2. Such procedures/occurrences are not known. 3. Due to the fact that South Korea has not abolished the death penalty, it is not generally considered a safe country of origin. Source: Federal Ministry of the Interior.
	Belgium	Yes	In principle the BE Immigration Office does not remove North-Koreans, so consequently also not to South Korea.
	Bulgaria	Yes	There are not cases of returns of citizens of North Korea.
	Czech Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.





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	Estonia	Yes	Estonia has no experiences with asylum seekers from North Korea.
	Finland	Yes	Finland has no previous experience of these cases; therefore we request the information on how the other Member States have dealt with the issue.
	France	Yes	<p>1. As France does not maintain diplomatic relations with North Korea, if a foreign national claiming to be from North Korea is taken in for questioning in France, public bodies are advised to approach other countries for the return process – mainly South Korea, China or Mongolia – as it is very unlikely for a citizen of North Korea to leave his/her country. As a matter of fact, it happened that foreigners in an irregular situation had claimed to be citizens of North Korea, whereas they were in fact from South Korea, China or Mongolia.</p> <p>If the South Korean Embassy recognises a foreigner claiming to be from North Korea as one of its citizens and provides this person with a consular laissez-passer, then France returns him/her to South Korea. However, if this person has not been recognised as South Korean, he/she cannot be returned to South Korea. Similarly, if someone holds an authentic North Korean passport – which is very unlikely – France does not return this person neither to North Korea nor to South Korea. Nevertheless, if South Korea accepts the readmission of this person, the return process to South Korea is possible, but only under this circumstance.</p> <p>2. If someone, whose North Korean citizenship is established, is legally permissible in South Korea and if South Korea accepts the return of this person on its territory, France can carry out his/her return.</p> <p>3. As there are no asylum seekers from South Korea (or recognised as citizens of South Korea) in France, the consideration of South Korea as a safe country of origin is not applicable.</p>
	Germany	Yes	<p>1. In principle citizens of North Korea can be returned to South Korea, as South Korea generally takes charge of North Korean citizens. In the year 2013 we have returned 17 persons to South Korea; no details about citizenship and the background available.</p> <p>2. Basically, yes.</p> <p>3. In South Korea there is a great community of (former) North Koreans. So South Korea is a safe country of residence for North Koreans, there might be individual exceptions.</p>
	Greece	Yes	<p>1. Greece has no experience in returns to South Korea.</p> <p>2. No</p> <p>3. We don't have aspect for this case, because lack of experience</p>
	Hungary	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.


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	Ireland	Yes	The Irish Department of Justice and Equality have responded to say that Ireland has never returned anyone to either North or South Korea.
	Italy	Yes	1. No.
	Latvia	Yes	Latvia has not had such cases before. Citizens of North Korea (Democratic Republic of Korea) have not submitted any asylum application in Latvia.
	Lithuania	Yes	Lithuania hasn't had such situation recently.
	Luxembourg	Yes	1. No. In Luxembourg there has not been any case of returns of North Koreans to South Korea and that the issue has not been raised yet. 2. No. 3. Luxembourg does not have previous experience on these cases, so there is no specific policy.
	Malta	Yes	MT has no experience to share on these nationals.
	Netherlands	Yes	There is no specific policy regarding asylum seekers from North Korea included in the Dutch Aliens Act. This means that all applications are assessed on their individual merits, applying the general asylum policy. In response to the increased North Korean inflow, in January 2013 the department of decisions at the IND (Immigration and Naturalization Department) was informed that people from North Korea can also be eligible for South Korean citizenship. For this purpose, it needs to be assessed whether protection is needed in the Netherlands, which also tests whether it can be expected that the alien will ask for protection in South Korea. Future cases will be assessed similarly. Forced return is possible. North Koreans who claim not to want to be returned to North Korea but South Korea instead, are also accepted. Basically, for South Korea each North Korean is a "Korean", who in advance holds the (South) Korean nationality. Using the Constitution and Nationality Act, South Korea first determines whether a person is actually a North Korean. If so, the Special Act is effective, which among other things deals with the integration in South Korea. A specific group (people who have a particular criminal record or are a danger to the South Korean state) would not be entitled admission to South Korea. South Korea, however, does not give specific details about this group (could be classified information). North Korean claimants (in the Netherlands) who voluntarily give their fingerprints to the South Korean Embassy, who are already known in South Korea (ie came from South Korea to the Netherlands with often a fake North Korean passport) are (according to the embassy) taken back by South Korea.
	Portugal	Yes	Portugal has no registration of asylum seekers from North Korea.

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	Slovak Republic	Yes	The Slovak Republic has no experience with such cases. In case of third-country nationals staying illegally on the territory of the Slovak Republic who cannot be returned to their country of origin (in this case North Korea), the Slovak Republic can expel them to any other country to which they decide to return and which would admit them. Therefore, it could be also South Korea.
	Spain	Yes	Spain has not ever dealt with a situation similar to the requested information.
	Sweden	Yes	<p>1. Yes, but we have had very few cases. We try their application against South Korea since they are also citizens there, if they can show some proof of being from the Korean peninsula.</p> <p>2. Yes.</p> <p>3. We don't use the term safe country per se, but if they cannot show proof of grounds for international protection against South Korea, they can be returned there.</p> <p>We have very little experience in returning North Koreans to South Korea. In the end, they either present their South Korean passport or they abscond.</p>
	United Kingdom	Yes	<p>1. Yes. Korean nationals may return voluntarily to any region of Korea at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.</p> <p>2. Yes. North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship. An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal and certification as being clearly unfounded as there is reason to believe that the applicant will be admitted to South Korea on the basis that:</p> <p>(i) Such refusal will not result in the applicant being required to go to a country in breach of the Refugee Convention (para 334(v) Immigration Rules) and,</p> <p>(ii) The applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (para 339J(iv))</p> <p>Where North Korean applicants are able to demonstrate that they are not entitled to South Korean citizenship or cannot acquire it, the asylum case should be decided on the basis of their North Korean nationality. A grant of refugee status is likely to be appropriate if return to North Korea is proposed.</p> <p>3. Yes (see question 2 above).</p> <p>For more information on the UK policy please see the link below https://www.gov.uk/government/publications/north-korea-country-information-and-guidance</p>

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	Norway	Yes	<p>Norway has not had asylum seekers from North-Korea since 2011:</p> <table border="0"> <thead> <tr> <th>Year</th> <th>Total</th> </tr> </thead> <tbody> <tr><td>2002</td><td>2</td></tr> <tr><td>2004</td><td>1</td></tr> <tr><td>2005</td><td>1</td></tr> <tr><td>2006</td><td>26</td></tr> <tr><td>2007</td><td>72</td></tr> <tr><td>2008</td><td>23</td></tr> <tr><td>2009</td><td>2</td></tr> <tr><td>2010</td><td>2</td></tr> <tr><td>2011</td><td>3</td></tr> <tr><td>Total</td><td>132</td></tr> </tbody> </table> <p>Asylum decisions the past years: 2 persons from North-Korea received negative decisions in 2010, 2 in 2011, 3 in 2012. Assisted voluntary returns: 1 person from North-Korea returned to South-Korea in 2010, 1 in 2011, 1 in 2013. (1 from North-Korea (from 2011) returned to North-Korea in 2013)</p>	Year	Total	2002	2	2004	1	2005	1	2006	26	2007	72	2008	23	2009	2	2010	2	2011	3	Total	132
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