



Ad-Hoc Query on Safe third country

Requested by BE EMN NCP on 30/11/2010

Compilation produced on 09/02/2011

Responses from [Austria](#), [Belgium](#), [Cyprus](#), [Czech Republic](#), [Estonia](#), [Finland](#), [Germany](#), [Latvia](#), [Lithuania](#), [Netherlands](#), [Slovak Republic](#), [Slovenia](#), [Sweden](#), [United Kingdom](#) (14 in Total)

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1. Background Information

According to article 1 A of the Geneva Convention, an asylum application has to be assessed towards the country of which the asylum applicant has the nationality (or country of habitual residence in case of a stateless person). It happens that an asylum seeker who has left the country of which he has the nationality has been living for a long time on a legal basis in another non-EU country before applying for asylum in a member state. So in fact he has developed a flight alternative in this third country. It could be the case that your country is not applying the concept of “safe third country- principle” (art. 27 2005/85/EG) nor article 26 of this Directive. Or that the specific third country where the applicant has been living is not on your list of safe third countries. In this situation, could the fact that an applicant has been living for years without any problems in a third country still be a ground for refusal?

(for example: a Tibetan asylum applicant with the Chinese nationality has been living for 10 years legally in India without any serious problems before coming to Europe. Could this long during stay in India be a ground for refusal or does his fear for persecution in your country merely is to be assessed towards the country of which he has the nationality.)

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2. Responses¹

		Wider Dissemination?²	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Cyprus	Yes	<ol style="list-style-type: none"> 1. Yes, articles 26 and 27 of the Procedures Directive have been transposed into national legislation. 2. Every case is been decided according to its merits. For a person to be returned there shouldn't be any threat to the life or liberty or any other violations of serious human rights, e.g. torture, or by any means the provisions of the Geneva Convention not to be infringed. If a person has been living in a country which is not considered to be safe but nevertheless has been residing there without any problems, then the claim will be examined on the grounds that the applicant has declared in the application. This is a very theoretical question, to our view, because our approach is very certain for every case/application. 3. That ground by itself is not considered on its own as a ground for refusal. There must be an assessment of all relevant facts and grounds that the applicant is stating. 4. A. 1 E Geneva Convention: This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country. n/a.
	Czech Republic	Yes	<ol style="list-style-type: none"> 1. The articles have been transposed into Czech law, but are seldom applied. 2. Each case is dealt with comprehensively. The fact that an applicant has been living for years without any problems in a third country may constitute an important element in judging on whether the applicant's fear of persecution or serious harm is justified.

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "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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			<p>Applications for international protection are decided on pursuant to the Asylum Act and the Act on Administrative Procedure.</p> <p>3. We do not have any recent relevant case law. Older case laws date back to before Czech accession to the EU and involved mostly our neighboring states, now covered by the Dublin Regulation.</p> <p>4. Article 1 E is not applied in the Czech Republic.</p>
	Estonia	Yes	<p>1) Yes, EE has transposed article 26 and 27 into national law (Act on Granting International Protection to Aliens). Hereby you can find evaluation report of the Directive 2005/85/EC which was published 09.09.2010 (see chapters 5.2.3 and 5.2.4):</p> <p></p> <p>2010.09.09_Evaluati on report_ST13404_E</p> <p>2) Only the fact that an applicant has been living for years and without problems in a third country does not provide a legal ground for refusal. Regarding the concepts of the first country of asylum and the safe third country we use case by case approach and we assess:</p> <ul style="list-style-type: none"> - whether another country can be considered the principal asylum country from the point of view of the applicant, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant; - whether the third country principles are guaranteed in a country (according to the Directive 2005/85/EC) and whether the asylum seeker has connections with the country which provides grounds for the conviction that it is reasonable for the asylum seeker to settle in that country. <p>3) We don't have any case law about the concepts of the first country of asylum and the safe third country.</p> <p>4) In our practice we have never used article 1E of the Geneva Convention. The national law (Act on Granting International Protection to Aliens) does not provide such an opportunity.</p>
	Finland	Yes	<p>1. According to the Section 87 of the Aliens Act, Aliens residing in the country are granted asylum if they reside outside their home country or <u>country of permanent residence</u> owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.</p> <p>According to the Legislative Bill (28/2003) however, the notion of country of permanent residence will only be applied to a stateless person. If a national of particular country resides in another country and is being persecuted in this country, he should primarily seek protection from his home country and the asylum application can not be successful in a third country.</p> <p>Thus, the part of the Section giving the right to return an asylum seeker to his country of permanent residence is not applied in the sense of the exact wording of the Section 87. If an asylum seeker has a residence permit in a non-EU third country and if he still has a valid residence permit or other legal right to reside in that country, the Finnish Immigration Service might after careful consideration regard that he can return to that country. However, the need for protection is always assessed in relation to the home country. Often however, the applicant does not legally reside in his country of permanent residence and this consideration cannot be made at all.</p> <p>If return to a country of permanent residence is considered, it is necessary to also consider whether it is possible that the country of permanent residence would return the applicant to his home in case of a well-founded fear of persecution in this particular home country. It is noteworthy that it is quite rare for these cases to occur especially taking into account that around 85 % of the applicants do not</p>

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			<p>provide any identification documents, such as passports. The Finnish Immigration Service would have to have proof that the person actually has a residence permit in his country of permanent residence. Otherwise return there is not an option.</p> <p>2. Finland does not consider any non-EU country to be a safe third country <i>per se</i>.</p> <p>If the applicant has problems in his home country and his country of permanent residence, he cannot be returned to either.</p> <p>3. No. A valid residence permit is a prerequisite for returning an applicant to a non-EU third country where the applicant has permanent residence according to the praxis of the Finnish Immigration Service.</p> <p>4. These cases rarely occur. Each case is assessed individually taking into account e.g. the given country of permanent residence and the actual situation of the applicant were he to return to a country which is not his home country.</p>
	Germany	Yes	<p>1. Yes, Article 26 and 27 of the Directive have been transposed into national law. Section 29 of the German Asylum Procedure Act states: <i>“An asylum application shall be unfounded if it is obvious that the foreigner was already safe from political persecution in another third country and if it is possible to return him to this country or to another country where he is safe from political persecution. If it is impossible to return him within a period of three months, the asylum procedure shall be continued. The foreigners authority shall inform the Federal Office without delay.”</i></p> <p>2. --</p> <p>3. --</p> <p>4. There have been no recent cases in which we applied the exclusion clause article 1 E of the Geneva Convention.</p>
	Latvia	Yes	<p>1. Yes, the provisions of article 26 and 27 of the Directive 2005/85/EC have been transposed into Asylum Law.</p> <p>2. According to the Asylum Law the concept of safe third country can be applied in case when after the individual examination it has been established that the country is safe for a particular applicant taking into account the principles mentioned in article 27 of the Directive 2005/85/EC.</p> <p>3. No, there is no case law on application the concept of safe third country where the clarification relating the refusal grounds has been given.</p> <p>4. Till now we have not had any cases where the article 1E of the Geneva Convention has been applied.</p>
	Lithuania	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Netherlands	Yes	<p>1. Yes, but not directly. Art. 26 and 27 of Directive 2005/85/EG are (already before the production of the Directive) put down in national law (section 31, 2, h and i of the Aliens Act).</p> <p>2. If the question sees to the situation that an asylum seeker has been living in a country after having left his country of origin and before coming to The Netherlands, the answer is yes, section 31, 2, i of the Aliens Act is applicable.</p> <p>3. Yes, the Council of State in specific case law approved the application of section 31, 2, h and i of the Aliens Act.</p> <p>4. Article 1 E of the Geneva Convention is not applied directly in the assesment of asylumrequests. The content and background of this exclusionclause is put down in articles 30 and 31 of he Aliens Act.</p>
	Slovak 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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	Slovenia	Yes	<p>1. The International Protection Act - IPA (Official Gazette of the Republic of Slovenia No. 111/2007, 111/2008 - Constitutional Court's Decision, 58/2009 and 99/2010) transposed both Articles of the Directive 2005/85/EC, with some differences:</p>								
			<table border="1" style="width: 100%;"> <thead> <tr> <th data-bbox="607 347 1301 379" style="text-align: center;">The IPA of the Republic of Slovenia</th> <th data-bbox="1301 347 2072 379" style="text-align: center;">The Council Directive 2005/85/EC</th> </tr> </thead> <tbody> <tr> <td data-bbox="607 379 1301 751"> <p><u>Article 67 (the concept of first country of asylum):</u> "(1) A country of the first asylum is the country where: - the applicant has been granted refugee status which still applies; or - the refugee enjoys actual protection, including the non-refoulement principle. (2) The requirement to implement this concept is that he/she will be re-admitted to that country. 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			<p>the country in question is not a safe country for him/her."</p> <p>Up to this time, only the Republic of Croatia has been proclaimed as a safe third country by the Government of the Republic of Slovenia (in 2008), but only recently this was implemented in practice. During the December of 2010 14 applications for IP has been dismissed on this ground.</p> <p>2. No by itself, but this fact is sometimes (when appropriate) used in the credibility and risk assessment.</p> <p>3. No relevant case law in Slovenia. There is the judgement of England and Wales Court of Appeal (Civil Division) : (2010 EWCA Civ 643; Case No: C4/2009/2272) of the date 09/06/2010). In the judgment there is mentioned that: "not every person who fears persecution in his country of nationality is in need of refuge. An obvious example is a person who flees his country of nationality through fear of persecution and is given refuge, including a right of residence, in a safe country". (see answer UK) We are acquainted only with "UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the status of Refugees", available on internet.</p> <p>4. Article 1 E of the Convention relating to the Status of Refugees or the Article 12, 1(b) of the Council Directive 2004/83/EC has been only partially transposed into Slovenian legislation (restriction to the Republic of Slovenia). <u>The IPA in the article 5 (exclusion), p. 1, indent 2, provides:</u> "(1) Refugee status shall not be recognised if: - (2) the competent authorities of the Republic of Slovenia have granted him/her the same rights and obligations as the Slovene citizens have;" This provision has never been used in the practise, so far.</p>
	Sweden	Yes	<p>1. Yes, both article 26 and 27 of the Directive have been transposed into the Swedish national law.</p> <p>2. No, there is no legal ground in the current national legislation.</p> <p>3. No, not according to the new Swedish regulations that gained force 1.1.2010.</p> <p>4. Article 1 E is applied in Sweden. Whether an alien prior has been granted sufficient protection and therefore not in need of protection in Sweden is a factor that must be considered when examining the question whether he or she risks persecution. This assessment is done within the legal wording of the refugee definition in the current Swedish Aliens Act. <i>In this Act 'refugee' means an alien who</i> <i>- is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and</i> <i>- is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.</i></p>
	United Kingdom	Yes	<p>1. Yes, we have provisions in our national law that reflect the concepts in Articles 26 and 27 of the Asylum procedures Directive 2005/85/EC. The provisions are set out in Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and are</p>

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			<p>expanded upon in the Immigration Rules paragraph 345.</p> <p>2. In order for us to declare (“certify”) that an asylum claim is not to be considered by the UK Border Agency but by the asylum authorities in another third country it is necessary to be satisfied that it is a safe third country for the applicant i.e. the points in either Article 26 (if the applicant has already been recognised as a refugee in that third country) or in Article 27(1) are met. If the person has been living there legally for some time but there is objective evidence to show, for example, that the person would be at risk of refoulement if (s)he were to be returned there then it could not be possible to apply our national rules to “certify” the case on safe third country grounds (in the UK cases that involve the “first country of asylum” concept are considered as a sub-group of the overall “safe third country” concept).</p> <p>3. Paragraph 334(v) of the Immigration Rules allows the UK to deny asylum to someone who, even though a refugee, has another country where they can go and would be safe. The UK is fighting a case (<i>ST(Eritrea) aka Tesfamichael</i>) on this issue through to the Supreme Court at the moment, the highest court in the UK. The UK lost in the High Court, then won an appeal against that decision in the Court of Appeal, and the case is going through to a hearing at the Supreme Court next year.</p> <p>4. Article 1E is rarely applied in the UK, if ever. This is because an asylum application will normally be refused where there is a safe country where the individual has been previously resident and can be returned to, and it is not usually necessary to enquire closely as to whether the individual’s status in that country corresponds to that of nationals of the country of residence.</p>
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