



Ad-Hoc Query on the Article 35 (2) (a) of the Convention relating to the Status of Refugees

Requested by SK EMN NCP on 18 October 2013

Compilation produced on 25 November 2013

Responses from Belgium, Bulgaria, Cyprus, Finland, Germany, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (16 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.

1. Background Information



The Article 35 (2) (a) of the 1951 Convention relating to the Status of Refugees says: “In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning: (a) The condition of refugees....”

The Slovak Republic would be interested in knowing how this particular provision of the 1951 Convention is being implemented in other EU Members States, as the Slovak Republic has been invited to change its practice with a reasoning based on a specific interpretation of Article 35 (2) (a) of the 1951 Convention.

- 1. Do you report to UNHCR each individual case of apprehension, detention, or other official act involving a person already granted asylum (including granted by another country) even if this person did not request that UNHCR be notified?**
- 2. On the basis of Article 35 (2) (a) of the 1951 Convention, do you provide UNHCR only with statistical data or other depersonalized data or do your reports also contain personal data of refugees?**







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2. Responses¹



	<p>Belgium</p>	<p>Yes</p>	<p>1. No. 2.</p> <ul style="list-style-type: none"> - The statistical data provided to the UNHCR are depersonalized data. The statistical data on apprehensions, detention and removals concern in principle failed asylum seekers (obviously a person who has been granted the refugee status or another protection status will not be apprehended or detained to be returned to the country of origin). - The personal data of an asylum seeker can also be transferred towards the UNHCR, but only if the person gives the approval to provide the UNHCR the information. Article 57/23 bis of the Belgian Immigration Act specifies that the representative of the UNHCR in Belgium can obtain all the documents of the asylum file, including confidential documents. He can consult these documents during the whole course of the asylum procedure, with the exception of the procedure for the Council of State, and only if the asylum applicant agrees. Article 57/23 bis of the Immigration Act further prescribes that the UNHCR can provide an oral or written advice to the Minister, The Commissioner General for Refugees and Stateless Persons (CGRS – first instance asylum instance) and the Council for Aliens Law Litigation (CALL - asylum appeal board) regarding the asylum claim. The advice of the UNHCR is not binding, but the CGRS has to motivate in the asylum decision when it decides not to follow the recommendation of the UNHCR.
	<p>Bulgaria</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Apprehension and detention are not within the competences of the State Agency for Refugees. 2. Article 3 of the Law on Asylum and Refugees stipulates that the Republic of Bulgaria fulfils its obligations under the Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967 through its state authorities in cooperation with the United Nations High Commissioner for Refugees. The United Nations High Commissioner for Refugees, through his/her representative in the Republic of Bulgaria, has the right to information, as well as to access to any stage of the procedure for granting refugee status, humanitarian status and temporary protection. He/she may get acquainted with any file and give a written or oral opinion on each specific case.

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.







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	Cyprus	Yes	<ol style="list-style-type: none"> 1. No 2. Yes, statistical data is provided to UNHCR that also include personalised data (a copy of the decision letter is notified to UNHCR)
	Finland	Yes	1+2. No. The Finnish Immigration Service provides UNHCR with general statistics on asylum and vice versa UNHCR utilizes statistical data published on national website but the FIS does not report individual cases.
	Germany	Yes	<ol style="list-style-type: none"> 1. No. Germany does not report to UNHCR each case of apprehension, detention, or any other official activity against a person granted asylum, unless that person requests that UNHCR be notified. 2. UNHCR receives on request permanently all in merit decisions, all negative decisions in cases of single women, unaccompanied minors, elderly people over 60, gender-specific cases and from 10 countries. All these decisions are depersonalized, saved on a CD and sent to UNHCR. These are more than 1.500 decisions every month. The criterias may change. Additionally within the same procedure UNHCR requests time by time other specific decisions for monitoring or own researches. On request UNHCR receives not depersonalized asylum files when UNHCR presents an authorisation by the applicant. In 2013 (until Oct.) this have been about 100 files. As far as possible on base of a confidential cooperation there is an exchange of statistical data and information.
	Italy	Yes	No. Italy does not automatically report to UNHCR each individual case of apprehension, detention, or other official act involving a person already granted asylum if the person concern did not request such notification. However UNHCR representatives participate in the sessions of the Territorial Commission (authority in charge of deciding on the international protection status) as regular members, carrying out interviews of individual cases as well as an active role in the decision-making process, as per art.1-quarter, para.1 of Law no.189/02. Moreover, UNHCR may liaise with NGOs, lawyers and other practitioners or bodies working in the asylum field in matters regarding individual cases.
	Latvia	Yes	<ol style="list-style-type: none"> 1. The Latvian authorities do not report to UNHCR on particular asylum seeker or the fact of submitting an application. Nonetheless if asylum seeker agrees the authorities provide UNHCR (according to the request) information on application, procedure which has been applied in particular case and on the decisions taken. 2. The Office of Citizenship and Migration Affairs (the 1st instance in asylum procedure) regularly provides only depersonalized data about asylum applications and decisions which have been taken.
	Lithuania	Yes	<p>The implementation of the mentioned provision of the Convention is provided for in the Article 91 of the Law on the Legal Status of Aliens. The mentioned article states that:</p> <ol style="list-style-type: none"> I. When addressing the problems of asylum applicants and aliens granted asylum, state institutions and agencies of the Republic of Lithuania shall cooperate with the Office of the UNHCR, provide conditions for the Office to fulfil the duties of supervising the application in the Republic of Lithuania of the 1951 Convention Relating to the Status of

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			<p>Refugees and the 1967 Protocol Relating to the Status of Refugees, furnish it with the necessary information and statistical data on asylum applicants and aliens who have been granted asylum, on the implementation of the Convention and the Protocol and the regulations on asylum which are effective or about to come into effect.</p> <p>II. Representatives of the Office of the UNHCR shall be allowed to immediately contact the asylum applicants. The Office of the UNHCR shall be entitled to receive information connected with asylum applications.</p> <p>III. Representatives of the Office of the UNHCR must be granted access to places of detention and transit zones of airports and sea ports where asylum applicants are kept.</p> <p>IV. In the course of examination of an asylum application, representatives of the Office of the UNHCR may submit their opinions on certain asylum applications to the competent institutions and agencies as well as courts of the Republic of Lithuania.</p> <p>Responses:</p> <p>1. Within what is said above, UNHCR is informed about the first applications on asylum as well as about the decisions on granting/not granting status (asylum or subsidiary protection), on rejection, on termination of examination of application and on transfer to another EU member state pursuant to Dublin II. However, if the person does not request that UNHCR be notified about him being in the process of examination of his/her application there is no notification.</p> <p>2. In addition to the information provided for in the answer No. 1 only statistical information is provided.</p>
	Malta	Yes	<p>1. The Office of the Refugee Commissioner within the Ministry for Home Affairs and National Security responsible from receiving, assessing and determining applications for international protection in Malta, does not report or inform UNHCR of persons that have applied for asylum in Malta. The Office informs the asylum-seekers at the first stage of his/her application that s/he has the right to consult with the UNHCR.</p> <p>2. The Office of the Refugee Commissioner provides statistical information on a monthly basis to the UNHCR Office in Malta. The statistical information provided does not include personal data on applicants for international protection. The information provided includes the number of applications received by country and gender/minors and the decisions reached by this Office by country.</p>
	Netherlands	Yes	<p>1. No. The Immigration and Naturalisation Service does not report to UNHCR each case of apprehension, detention, or any other official activity against a person granted asylum.</p>

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			<ol style="list-style-type: none"> The Immigration and Naturalisation Service provides UNHCR upon request statistical data and (personalized) information in individual asylum cases.
	Poland	Yes	<ol style="list-style-type: none"> No. Poland does not report to UNHCR each case of detention, apprehension or any other official activity against a person granted asylum. Poland provides UNHCR only with depersonalized statistical data of foreigners.
	Portugal	Yes	<ol style="list-style-type: none"> Portugal does not report to UNHCR each case of apprehension, detention, or any other official activity against a person granted asylum. If the refugee asks UNHCR to be notified, then that information is provided. Portugal only provides statistical and other depersonalized data.
	Slovak Republic	Yes	<ol style="list-style-type: none"> No. The Slovak Republic does not report to UNHCR each case of apprehension, detention, or any other official activity against a person granted asylum, unless that person requests that UNHCR be notified. The Slovak Republic only provides statistical and other depersonalized data.
	Slovenia	Yes	<ol style="list-style-type: none"> We are sending to the UNHCR only depersonalized statistical data (gender, citizenship, minors) without any specifications such as name, surname, date of birth etc. Data which are sending each month to the UNHCR are the following; numbers of unfinished requests for granting international status by the end of each month; numbers of requests for granting international status; number of renewed requests for granting international status; numbers of requests for granting international status which are return to the renewed procedure; numbers of granting refugee status; numbers of granting subsidiary status; numbers of issuing decision for returning into the first third save country; numbers of issuing Dublin decisions and other data which are connected in order to implement Dublin regulation; numbers of refused decisions in regular procedure; numbers of decisions on restriction of movements (by citizenship); numbers of groundless requests; numbers of standstill procedures. As we already mentioned we are sending only statistical data without specific personal data such as name, surname, date of birth, etc. In case the UNHCR asked for any reasons to get information about particular decision we are sending decision to the UNHCR but only when applicant for granting asylum status in Slovenia was previous inform and he agreed with written permission.
	Sweden	Yes	<ol style="list-style-type: none"> No such information provided. Yes when it comes to depersonalized statistics.
	United Kingdom	Yes	<ol style="list-style-type: none"> The Home Office does not report to the UNHCR each individual case of apprehension, detention, or other official act involving a person already granted asylum. There are some cases where the UNHCR are informed if a person has had their asylum revoked.

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			<p>For more information on guidance for individuals granted asylum and revocation under immigration rule 334 (UKBA website), see Section 4.2: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/refugeeleave.pdf?view=Binary</p> <p>2. If information is provided to UNHCR, statistical data is depersonalised and in an aggregated form.</p>
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