



EMN Ad-Hoc Query on Assessing the applications of Syrian asylum seekers based on participation on the demonstrations 2011-2012

Requested by Adolfo SOMMARRIBAS on 15th August 2018

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom, Norway (21 in total)

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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:


In the Slovak Republic, applications for asylum of Syrians nationals make a significant share of all asylum applications. A common ground provided when applying for asylum is beside the effort to avoid military service in Syria also the participation in peaceful demonstrations against President Assad in 2011 and 2012. With regards to assessing these applications we would like to collect more information on similar handling of such applications in other MS during asylum procedure as well as in the appellate proceedings.



Questions




1. How does your MS assess applications of asylum seekers based exclusively on the reason of participating in the peaceful anti-government demonstrations in 2011-2012, whereas no other political activity was carried out? Is this a reason for granting asylum/subsidiary protection?
2. How do the courts in appellate proceedings approach the applications of Syrian asylum seekers, based exclusively on the reasons of participating in the peaceful anti-government demonstrations in 2011-2012, whereas no other political activity was carried out?





Responses





	Country	Wider Dissemination	Response
	Austria	Yes	1. The decision on granting asylum or subsidiary protection is always based on the individual case and is taken as part of an individual preliminary proceeding. Therein a number of criteria are considered, however, the asserted reasons for flight, as well as the credibility of the claim are decisive. Accordingly, it is assessed whether the necessary criteria are met by an asylum seeker and whether he can be granted the asylum status or the beneficiary of subsidiary protection status. The statements by the asylum seeker are examined for plausibility and conclusiveness, a comparison with reports regarding the country of origin is undertaken, contradictions within or (later) changes of the claim, the level of description details as well as the individual behavior during the testimony are considered. Hence, applications for asylum are regularly rejected by the Federal Office for Immigration and Asylum on the grounds of insufficient credibility of a claim. Subsidiary protection has to be granted, whenever the rejection, forcible return or removal to the country of origin is considered (at least temporarily) unlawful for human rights reasons, because it would cause serious


			<p>harm particularly to that person (danger of torture, death penalty or serious threat to life as a consequence of indiscriminate violence within international or internal conflicts). Political activities and corresponding consequences caused for the foreigner by this activity can, in principle, be considered a reason for flight. However, no generalized statements on the asylum-relevance of the participation in specific events can be made, considering the individual examination for the need of protection that takes into account the concrete participation and consequences in the individual case. --- Source: Ministry of the Interior</p> <p>2. Also in appeal procedures, in principle, a case-by-case assessment has to be carried out. However, the Federal Administrative Court has pronounced for individual cases that country guidance on Syria reveals a higher risk profile for persons, who actually or supposedly are in opposition to the government. Further, the government actively attacks and arbitrarily arrests family members of critics of the government as well as members of human rights organizations. In addition, persons who have filed an application for asylum in another country without success are persecuted when returning, on the grounds of insinuated political convictions considered oppositional. Under these conditions the appeal against a decision by the Federal Office for Immigration and Asylum was allowed and the asylum status granted (cf. Federal Administrative Court W224 2114820-1 of 13 December 2016). Further, the threat of persecution due to participation in demonstrations against the Syrian regime and further grounds have been accepted as asylum-relevant reasons for flight (cf. Federal Administrative Court W214 2009222-1/11E of 29 June 2015). --- Source: Ministry of the Interior</p>
	Belgium	Yes	<p>1. Every case will be assessed on its own merits taking into account all statements of the applicant for international protection and elements in the administrative file, but in principle refugee status will be granted if the participation in the anti-government demonstrations and the risk on persecution is considered as credible. In case refugee status is not granted, and there are no grounds for exclusion, subsidiary protection is granted in accordance with Article 15c of the Asylum Qualification Directive (2011/95/EU).</p> <p>2. N/A (Due to the fact that most applicants from Syria obtain a protection status, not many appeals are lodged with the Council for Aliens Law Litigation (CALL) for these decisions and the number of</p>


			court rulings is therefore limited.)
	Bulgaria	Yes	<p>1. Applications of asylum seekers based on the reason of participating in the anti-government demonstrations, started in 2011, were filed from Syrians during 2012 and 2013. Cases, for which sufficient evidence is gathered, of which it is undoubtedly established, that the applicant participated in anti-government demonstrations, as a result of which there is a risk of prosecution or he has a well-founded fear of persecution because of his political views, are considered relevant for granting refugee status within the meaning of art.1 A of the Geneva Convention. In addition, any application for international protection is considered in accordance with the principle laid down in art. 10, p. 3, a of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, paying special attention to the exclusion clauses as set out in Article 12(2) of Directive 2011/95/EC. In this regard, ascertainment of realised or potential persecution does not lead obligatory to granting refugee status.</p> <p>2. In view of the fact that the bigger part of the applications for protection, filed by Syrians, is accepted, to date, there is not a wealth of case law with regard to appeals of Syrians against the decision of the administrative body. In the vast majority of these cases, the administrative courts share the motives of the State Agency for Refugees and reject the complaints of foreigners.</p>
	Croatia	Yes	<p>1. 1.) Cases where participation in 2011-2012 demonstrations is the exclusive basis for an asylum claim are not familiar to us. Asylum seekers from Syria who mention participation in 2011-2012 demonstrations in their asylum application usually mention reasons related to demonstration as well, such as politically controversial post on social networks and draft evasion for political reason. Such applicants generally have well-founded fear of persecutions on – at least – one basis and are therefore granted refugee status.</p> <p>2. 2.) Since most above-mentioned applicants are granted refugee status, cases that end up in courts are usually very complex and specific. Participation in 2011-2012 demonstrations isn't central to such appellate proceedings.</p>



	Cyprus	Yes	<p>1. During the interview, the personal profile of the applicant is examined in order to justify the motive of participation in an anti-government demonstration. There is an extensive examination of issues like, family and extended family's profile, job description, possible problems that the applicant faced during his army service, job opportunities, studies, access to basic rights such as medical, education, employment, movement, passport, ID etc. If the applicant has enjoyed all these elements/rights, then there is an indication of lack of motive (good reasons) to participate in an anti-government demonstration. The applicant is confronted and if it is established that there is no such profile, which in turn can create a negative interest towards the applicant from the Syrian authorities, the application is rejected in regards to refugee status and subsidiary protection is provided based on the security situation in accordance to article 15 (c) of the QD. It should also be noted that the Assad's government has given amnesty to those who participated in demonstrations in May 2011. Furthermore, the applicant's credibility is examined in order to justify if the applicant indeed had participated in demonstrations and if YES, as it was mentioned above, it is examined whether this action may lead to any future interest from the Syrian authorities so to accept that the applicant may be still a wanted person. The mere participation in a demonstration alone, does not suffice that international protection shall be granted.</p> <p>2. No such data available</p>
	Czech Republic	No	
	Estonia	Yes	<p>1. In Estonia, there have been no such applications, which are based solely on participation in the demonstrations in 2011-2012. If the applicant has participated in the demonstrations in 2011-2012, the applicant's views, the causes and consequences of participating in demonstrations and the persistence of the views of participation in the demonstration must be evaluated. Also it should be evaluated whether the views were reported to the authorities either during the events that took place 6 years ago.</p> <p>2. N/A</p>

	Finland	Yes	<p>1. In general, a mere participation in demonstration without any other political activity is normally not considered a reason for granting asylum/subsidiary protection. However, if the applicant can show that his participation has profiled him as an opponent of the Syrian government, then it can be a reason for granting protection. This normally means that the applicant has had a specific role in the demonstrations (for example organising demonstrations) rather than just participating without further activity.</p> <p>2. In general, Syrian applicants have either been granted asylum due to participation in demonstration or (adding to this reason) because of compulsory conscription. Otherwise, subsidiary protection has been granted on the basis of general conditions in Syria. Hence, the courts have not dealt with appeals based on this issue.</p>
	Germany	Yes	<p>1. Generally, the protection rate for Syrian applicants is rather high (91.5% in 2017, thereof 56% subsidiary protection according to art. 15 c Qualification Directive due to the conflict in Syria). 1. In Germany, no specific guidance is available on this topic. Therefore, every case would be assessed on its own merits taking into account all individual circumstances of the applicant concerned.</p> <p>2. Current jurisprudence of Higher Administrative Courts on this topic is not available (see also introductory remark). Most judgments with regard to Syria refer to draft evaders / deserters.</p>
	Greece	Yes	<p>1. According to data available to us, there were no cases of Syrian applicants claiming their participation in the demonstrations of 2011 – 2012 as a sole reason for applying for international protection. In any case, all relevant elements would be examined in order to decide on the inclusion of the applicant in the refugee status or not (ex.religion, military service etc).</p> <p>2. answer still pending, will be added in due course</p>
	Hungary	Yes	<p>1. There is no such practice in Hungary where we automatically grant a status to Syrians because of the above mentioned reason. The Hungarian authority assesses all cases individually, and decides after the individual examination. However the Syrian applications are generally considered as well-</p>

			<p>founded due to the circumstances in the country rather than the individual political actions.</p> <p>2. We haven't detected such phenomena, or practice here in Hungary in the above mention case. The court decides on individual basis.</p>
	Italy	Yes	<p>1. This type of motivation is not detected by the monitoring system. In 2016 and 2017, over 90% of the applications delivered by Syrian asylum-seekers has been granted with a refugee status.</p> <p>2. See question 1</p>
	Latvia	Yes	<p>1. There were cases where Syrian asylum applications were based on participation in the anti-government demonstrations and general security situation. Subsidiary protection was granted because of serious threat by reason of indiscriminate violence. According to our assessment, only participation in the peaceful anti-government demonstrations (in the context of further development of situation) does not constitute a sufficient basis for granting refugee status.</p> <p>2. There were no Syrian cases based exclusively on the reason of participating in the anti-government demonstrations proceeded in the court.</p>
	Lithuania	Yes	<p>1. In LT there have been no applications received based exclusively on participation in the demonstrations 2011-2012. It is also worth mentioning, that each application is examined individually, therefore no conclusions can be made.</p> <p>2. N/A</p>
	Luxembourg	Yes	<p>1. Luxembourg treats every international protection application on a case-by-case basis analysing the facts described by the applicant as well as the evidence provided and taking into consideration the general situation of the country of origin. Article 2 f) of the Law of 18 December 2015 on international protection and temporary protection clearly states that a refugee is a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group. Article 42 (1) also requires</p>

			<p>that the acts of persecution have to be sufficiently serious in order to grant the international protection. The credibility of the account of the applicant is important. Refugee status will be granted if the Syrian national can provide: - Evidence of Syrian nationality, - Credible statements and, if possible, evidence of having participated in a pacific anti-governmental demonstration, - Credible statements and, if possible, evidence of having been persecuted by the Syrian authorities or of a well-founded fear of persecution in case of return to the country (article 37 (4)). Subsidiary protection: In case that the issue is not a direct risk for the individual, but can be considered inhuman and degrading treatment, subsidiary protection can be granted in accordance with article 48 b).</p> <p>2. So far, none of the decisions taken by our administrative authority concerning Syrian nationals having participated in peaceful anti-government demonstrations has been reversed by the courts.</p>
	Netherlands	Yes	<p>1. General policy: In the Netherlands each asylum application is viewed and assessed separately. In case the alien claims that because of his political views he fears persecution of the de facto authorities, he could qualify for a temporary asylum residence permit, on the grounds of Article 29, first paragraph, under a, Aliens Regulation. Also, an alien who claims that he has grounded motives to assume that he runs an actual risk to be submitted to torture, inhumane or humiliating treatment or punishment when expelled, could obtain a temporary residence permit as referred to in Article 28 (Article 29, first paragraph, under a, Aliens Regulation). General asylum policy in connection with Syria: In each individual case it is assessed whether it is plausible that a person should fear persecution. Given the poor human rights situation in Syria, this is therefore relatively quickly assessed. The persecution can be based on the Syrian authorities or other actors, such as one of the many militias in Syria. This can happen because of various reasons, for example political activities that are opposed to Syrian authorities or a different actor. For all men who are old enough to be called for military service (between 16 and 50 years old) it is generally assumed – unless it turns out that they are exempted from military service – that they have to serve during the Syrian war and refugee status (a-ground) is determined, because the war in Syria has been condemned by the international community and serious human rights violations have been committed during this war. In cases whereby refugee status (a-ground) is not granted, the general subsidiary protection status (b-ground) is granted. This is based on the assumption of the Immigration and Naturalisation Service that aliens from Syria who return from abroad, run an actual risk of severe damage during or after</p>

			<p>their return. An alien from Syria qualifies for a temporary asylum residence permit on the grounds of article 29, first paragraph, chapeau, and under b Aliens Regulation if the alien is no active supporter of the regime. In general Syrian asylum seekers therefore qualify for a residence permit on the grounds of refugee status or subsidiary protection status. With the exception of cases to which article 1F applies, i.e. cases that are declared inadmissible on the grounds of a safe third country, cases in which a different country has already offered protection, such as Greece, or cases that are eligible for transfer to a different EU country on the grounds of the Dublin Regulation. Participation in the demonstrations in 2011-2012: When this is the case, it should be assessed whether there are other elements. Furthermore it is important where the person concerned has resided in the meantime (between 2011/12 and 2018), for instance if the person concerned has resided in governmental area in the meantime without experiencing further problems or that he has resided in areas of the opposition, or that he has resided abroad. Moreover, all other elements need to be involved. If the person concerned has resided in the governmental area in the meantime and has not experienced any trouble since 2011-12, it is – in the case of no other elements – not very likely that he is currently in the negative interest of the authorities. This is different when he has resided in the areas of the opposition or abroad.</p> <p>2. There is no information available.</p>
	Poland	Yes	<p>1. The Office for Foreigners has not proceeded cases based on aforementioned claims, although if such participation was well-founded a refugee status would be granted.</p> <p>2. n/a</p>
	Slovak Republic	Yes	<p>1. 1) In such case SR assesses that the well-founded fear of being persecuted exclusively because of the reasons mentioned is absent, thus the applications cannot be assessed as relevant for granting asylum. The participation in peaceful demonstrations of 2011 and 2012 became irrelevant for Syrian government after the military conflict broke out and according to our sources persons who previously participated in such demonstrations are not persecuted. Still subsidiary protection is granted as the persons can be subjected to inhuman treatment or become victims of nonselective violence because</p>

			<p>of the situation in Syria, which can be subsumed under the term „serious harm“.</p> <p>2. Courts in the SR apply different attitude in these issues and do not proceed uniformly. Some judgements issued are in line with the answer to Q1 however some state that the sole participation in the demonstration against government in 2011 and 2012 without any additional reasons means that these people could be persecuted because of political opinions and it is necessary to grant them asylum.</p>
	Sweden	Yes	<p>1. The Swedish Migration Agency (SMA) decide on every case with regards to the individual merits. Therefore, to evaluate whether a person is at risk upon return depends on e.g. that persons activities, the personal profile, area of residence, family background etc. Thus, it is not possible to say whether a person participating in demonstrations in 2011-2012 would be at a specific risk upon return. However, the established practice concerning Syria from the Director of legal affairs of the SMA, is that all persons from Syria (unless there are reasons for exclusion), are eligible for subsidiary protection. This practice was confirmed in a legal position from 2 February 2018.</p> <p>2. In two precedent cases from the Migration Court of Appeal on 25 April 2018 (MIG 2018:7 and MIG 2018:8), the court confirmed that a decision on whether a Syrian is at risk of persecution because of (imputed) political opinion must be based on a full evaluation of the individual merits of each case.</p>
	United Kingdom	Yes	<p>1. In the scenario outlined above, the applicant must show that they genuinely hold such political beliefs and that they will face persecution for taking part in peaceful protests. The standard of proof needed to establish a well-founded fear of persecution or serious harm is a relatively low one – that of a reasonable degree of likelihood. However, the level and nature of information provided by the claimant should demonstrate a reasonable depth of personal experience and knowledge. Regulation 6(1)(f) of the Refugee or Person in Need of International Protection (Qualification) 2006 Regulations states that ‘The concept of political opinion shall include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon [by the claimant]’. In RT Zimbabwe our Supreme Court held that the Refugee Convention affords no less protection to the right to express, or</p>

not to express, political opinion openly than it does to the right to live openly as a homosexual (for example). The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights (paragraph 25), including the right to hold an opinion or not to do so. The Supreme Court held that the HJ (Iran) principle applies to any person who has political beliefs and is obliged to conceal them to avoid persecution, irrespective of the strength of those views or the absence of them. There is no basis in principle for treating the right to hold and not to hold political beliefs differently from sexual orientation (or religious beliefs). The expression of a political opinion or the absence of one, contrary to that of the authorities will not usually be enough to engage the protection of the Convention. A person must establish that they have a well-founded fear of persecution for reasons of their opinion, usually an openly expressed opinion directed against and not tolerated by the authorities of the country in question. However, it is not necessary for a political opinion to be openly expressed. There may be situations, envisaged in RT Zimbabwe, where the absence of an opinion is interpreted as opposition to the ruling party and be a cause for persecution on the principle of ‘those who are not for us are against us’. In the context of Syria, the case of KB (Failed asylum seekers and forced returnees) Syria CG [2012] UKUT 426 (IAC) (21 December 2012), the UK Upper Tribunal found that ‘in the context of the extremely high level of human rights abuses currently occurring in Syria, a regime which appears increasingly concerned to crush any sign of resistance, it is likely that a failed asylum seeker or forced returnee would, in general, on arrival face a real risk of arrest and detention and of serious mistreatment during that detention as a result of imputed political opinion. That is sufficient to qualify for refugee protection. The position might be otherwise in the case of someone who, notwithstanding a failed claim for asylum, would still be perceived on return to Syria as a supporter of the Assad regime’ (paragraph (b)).

2. This situation would not occur in the UK as caselaw dictates that it is likely that a failed asylum seeker or forced returnee would, in general, on arrival face a real risk of arrest and detention and of serious mistreatment during that detention as a result of imputed political opinion. That is sufficient to qualify for refugee protection. The courts would therefore not see cases of this nature.



Norway

Yes

1. In Norway, all the Syrian asylum seekers are granted international protection (Norwegian Immigration Act § 28 1 a) with a few exceptions. The exceptions include those who are excluded according to the Refugee Convention 1F (These provisions exclude a person from being a refugee where there are serious reasons for considering that she/he has committed certain heinous acts.) as well as those that fall under the Dublin Regulation, etc. Some applicants are granted international protection because several grounds apply to them, but all of these applicants have a shared political belief. For this reason, those who took part in peaceful demonstrations and no other political activity, will be granted international protection (Norwegian Immigration Act § 28 1a - well founded fear of being persecuted). Norway has always considered participation in politics in Syria, also participation in peaceful demonstrations, to constitute grounds for international protection.
2. Since these cases in Norway are granted protection, there has been no reason to take them to court.