



EMN Ad-Hoc Query on The decision-making practice on Syrians avoiding military service as conscientious objectors

Requested by Adolfo SOMMARRIBAS on 8th August 2018

Protection

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom, Norway (22 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:

According to the established case law of the German Higher Administrative Courts, draft evasion by itself does not constitute sufficient reason to establish a connection with a reason for persecution on an across-the-board basis (Article 9 §3 of the Qualification Directive). It is regularly emphasised here that, according to the conviction of the judges, no factual evidence is considered to exist that conscripts returning to Syria who have evaded military service through their stay abroad are highly likely to be at risk from persecution solely in connection with this because of their (alleged) political conviction.

Based on the above case law, it corresponds to the decision-making practice of the Federal Migration Office that, in addition to the risk of an act of persecution, a plausible case must be made for the existence of a cause of persecution to be individually presumed in order to determine refugee status. Investigations are carried out in individual cases.

The Federal Migration Office We would be grateful for any information regarding your decision-making practice in cases in which Syrian nationals argued in their applications that they have evaded the draft.


Questions

1. Do you award refugee protection to Syrian draft evaders?
 - a) If so, under what conditions?
 - b) If not, do you award a different protection status?
 - c) Which protection status might you assign as an alternative to granting refugee status?
2. Do you distinguish between draft evaders who left Syria before or after becoming liable for compulsory military service? Yes/No
If yes, please explain
3. Do your Member State distinguishes between draft evasion and desertion? Yes/No
If yes, can you please describe the different decision practice.




4. Are the decisions of your administrative authorities on this issue upheld by the courts? Yes/No



If no, what are the reasons or derogatory evaluations mentioned in the court rulings in order to revoke the administrative decision?



Responses


	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Yes, according to the settled case law of the Supreme Administrative Court asylum can be granted in such cases (cf. Supreme Administrative Court 99/20/0401 from 21 March 2002 or Supreme Administrative Court Ra 2016/18/0203 from 21 February 2017). According to the case law of the Supreme Administrative Court the risk of punishment that all conscientious objectors or deserters in the country of origin are facing is sufficient for granting asylum, if the conduct of the affected person is based on political or religious convictions or if the state, due to this conduct, insinuates that the affected person holds an oppositional attitude and the sanctions, for example practice of torture, lack proportionality. Also a “simple” prison sentence can be considered asylum-relevant persecution, if a person is forced to take military actions contrary to international law (Supreme Administrative Court Ra 2016/18/0203 from 21 February 2017). --- Source: Ministry of the Interior</p> <p>2. No. --- Source: Ministry of the Interior</p> <p>3. No (cf. Supreme Administrative Court Ra 2016/18/0203 from 21 February 2017). --- Source: Ministry of the Interior</p> <p>4. At this point, some amended or revoked decisions by the Federal Administrative Court are listed for the purpose of exemplification. These decisions are based on initially negative asylum decisions by the Federal Office for Immigration and Asylum: - W 199 2137893-1/7E: In this case the Federal Office for Immigration and Asylum assumed, that the conditions for granting refugee status were not</p>





			<p>met and that the threat of persecution as defined in the Convention Relating to the Status of Refugees was not made plausible. However, the beneficiary of subsidiary protection status was granted. According to the decision of the Federal Administrative Court the asylum status had to be granted since the complainant succeeded in making a (threatening) persecution credible. This persecution that the applicant had to fear was considered to be rooted in one of the reasons mentioned in the Geneva Refugee Convention, namely in the at least insinuated oppositional political view. Summing up, it followed that the applicant was outside Syria due to well-founded fear of persecution given his at least insinuated oppositional political views and hence, must be granted asylum. - W 199 2100614-1/9E: In this decision, the Federal Office for Immigration and Asylum concluded that the asylum seeker had not demonstrated that he should have been called up by the military. He has not been exposed to concrete acts of persecution, and neither were these to be expected. No persecution was considered to arise from his departure, his filed application for asylum or other circumstances. The beneficiary of subsidiary protection status was granted. This administrative decision was revoked by the Federal Administrative Court and referred back to the Federal Office for Immigration and Asylum for reassessment and deciding, given that the Federal Office had provided untenable consideration of evidence, only pursued insufficient investigations and investigated just fragmentarily. Further, it had not considered what fate would await the complainant upon return to Syria. - W221 2170729-1/8E: The Federal Office for Immigration and Asylum assumed that no conscription order from the Syrian army exists. According to the Federal Office for Immigration and Asylum the claim that it had come to the knowledge of a cousin of an employee that the asylum seeker (complainant) should have been called up by the military was not considered credible. From the information available to the Federal Office for Immigration and Asylum no individual threat to Syrian nationals could be deduced from a stay abroad, even if this stay had lasted longer. The beneficiary of subsidiary protection status was granted. According to the decision by the Federal Administrative Court the asylum status had to be granted as it was assumed with regard to the above cited decision by the Supreme Administrative Court that the complainant would be subject to disproportionate punishment and sanctions by the Syrian government. These sanctions were to be considered as consequences based on the state's general insinuation of oppositional views of accused persons. Hence, an asylum-relevant persecution was evident, since the potential punishment for the complainant's "conscientious objection" was considered to be an impending infringement of substantial intensity, that was connected to a Convention reason, namely regarding one's "political</p>
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			opinion”. --- Source: Ministry of the Interior
	Belgium	Yes	<p>1. a) It is possible to grant a refugee status on this ground, however the statements of the applicant must be assessed as credible to be granted refugee status. Evidently a refugee status is not granted if exclusion in accordance with Article 12 of the Asylum Qualification Directive (2011/95/EU) is applied. b) and c) 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.</p> <p>2. No</p> <p>3. No</p> <p>4. 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 court rulings is therefore limited.</p>
	Croatia	Yes	<p>1. 1.a) Yes. Ministry of Interior individually assess each case, and if there are no conditions for exclusion, asylum is granted under conditions appointed in Article 20., Law on International and Temporary Protection; political opinion. b) N/A c) If a person does not meet the conditions to be granted asylum referred to in Article 20. of LITP, and there are no conditions for exclusion case, Syrians are granted subsidiary protection.</p> <p>2. 2. No.</p> <p>3. 3. No.</p> <p>4. 4. N/a.</p>
	Cyprus	Yes	<p>1. Each case is examined on an individual basis. Draft evasion is not a reason to lead to refugee status unless the draft evasion is connected to the 5 reasons of refugee definition. If the applicant</p>



			<p>avoided army service or orders to appear for military service because of fear of battle or fear to be killed or kill, then the application is rejected in respect to refugee status. Subsidiary protection is then granted upon article 15(c) of the QD. In general, refugee status is not granted upon imputed political opinion.</p> <p>2. No</p> <p>3. Yes, depending on the merits and evidences of each case.</p> <p>4. No such data available</p>
	Czech Republic	Yes	<p>1. a) No, the Czech Republic does not grant refugee protection to Syrians who have evaded military service or deserted. In these cases we respect the handbook of the UNHCR where is stated that evasion of military service or desertion is not a reason for granting refugee status if the reason for evasion etc. is not based on affiliation to race, nationality etc. but it is based only on the fear and unwillingness to war. The Czech Republic de facto does not receive these kind applications from Syria. Syrian nationals refer to the war (armed conflict) in general in their applications. The Czech Republic grant them the subsidiary protection based on presence of armed conflict in their country of origin. Therefore, Syrian nationals do not need to refer to fear of the consequences of the desertion etc. b) No, the Czech Republic does not grant any other protection status for the reason of desertion or evasion of the military service. c) See above.</p> <p>2. No, we do not. Please see above.</p> <p>3. No, it does not. Please see above.</p> <p>4. Yes, courts do accept decisions of the Ministry of the Interior of the Czech Republic which are based on above mentioned practise.</p>
	Estonia	Yes	<p>1. a) Yes, Estonia grants refugee status to Syrian draft evaders if after individual assessment the grounds for persecution exist and there are no grounds for exclusion. b) and c) In case there are no</p>

			<p>grounds to grant refugee status, subsidiary protection may be granted.</p> <p>2. No.</p> <p>3. No.</p> <p>4. There have not been any court decisions on this matter.</p>
	Finland	Yes	<p>1. Yes a) If a draft evader is of age of compulsory military service (18-42). Also, male asylum seekers, who have just passed the age of 42 (for example 44-years-olds) may be granted refugee protection if it is clearly shown that he possesses such (occupational) skills, which may lead to compulsory military service if returned to Syria. This is based on the COI. Likewise, a young male close to reaching 18 may be granted refugee protection on the basis of future threat. b) - c) There are no alternatives.</p> <p>2. No</p> <p>3. No, Finland regards both of these actions as political opinion. It depends on the legislation and practices of a country of origin, whether both of these political opinions are considered to lead to acts of persecution.</p> <p>4. Yes</p>
	Germany	Yes	<p>1. a) Yes, if a reason for persecution (Article 10 of the Qualification Directive) is established after an individual examination in connection with an act of persecution (Article 9 of the Qualification Directive), and there is no reason for exclusion (Article 12 of the Qualification Directive). b) Yes c) In the absence of refugee status without grounds for exclusion, subsidiary protection is granted. In the absence of refugee status with a reason for exclusion, a national ban on deportation is established if a violation of Art. 3 ECHR is probable (compliance with the non-refoulement requirement).</p> <p>2. Yes. In connection with draft evasion, Syrian men of military service age are assumed to be in</p>


			<p>imminent danger to life or physical integrity in the event of a (fictitious) return.</p> <p>3. No. The likelihood of establishing a reason for persecution is however higher as a rule in cases of desertion.</p> <p>4. See the statements preceding the questions.</p>
	Greece	Yes	<p>1. YES. As mentioned above, draft evasion by itself does not constitute a sufficient reason to establish a connection with a reason for persecution on an across-the-board basis (Article 9 §3 of the Qualification Directive). Moreover, not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution (UNHCR Handbook, para 171). In cases of draft evaders in Syria, according to relevant coi, punishment of draft evaders entails measures that are disproportionate to the legally imposed measures. Taking under consideration the above, refugee status is granted due to reasons of politically imputed opinion (if all inclusion criteria are in place).</p> <p>2. YES. Draft evaders and persons of age liable for compulsory military service are examined as separate claims. According to relevant coi, similar to the aforementioned, those persons are eligible for refugee status due to imputed political opinion (if all the criteria for inclusion are in place).</p> <p>3. YES. Draft evaders and deserters are examined as separate claims. According to relevant coi, similar to the aforementioned, those persons are eligible for refugee status due to imputed political opinion (if all the criteria for inclusion are in place).</p> <p>4. YES in general (to our knowledge).</p>

	Hungary	Yes	<ol style="list-style-type: none"> 1. Between 2014 and 2015 the asylum authority recognized Syrians of military age (age 18-42 years old) as refugees belong to a particular social group, irrespective of whether they left Syria under their military obligation or even before they left. Between 2012 and 2013 also 2015 and 2018 the asylum authority recognizes Syrians of military age as beneficiary of subsidiary protection. 2. In case of recognition it could be important whether they left their country before or during the compulsory military service. Depending on whether or not the applicants have left their home before or during the compulsory military service, the reasons for the recognition as beneficiary of subsidiary protection are different. 3. Both groups are awarded with a subsidiary protection status; just the grounds are different in their cases. 4. The decisions, which provide subsidiary protection, have been approved by the courts.
	Ireland	No	
	Italy	Yes	<ol style="list-style-type: none"> 1. This type of motivation is not detected by the monitoring system 2. This type of motivation is not detected by the monitoring system 3. This type of motivation is not detected by the monitoring system 4. n/a
	Latvia	Yes	<ol style="list-style-type: none"> 1. No. There were received applications where asylum claims were based on ground of persecution due to the draft evasion, however these claims were evaluated together with information on: place of origin, who is controlling particular region, possibilities to travel without crossing checkpoints and consequently refugee status was rejected. a) N/A b) Yes. Applicants were granted subsidiary form of protection. c) See point b)


			<p>2. No.</p> <p>3. Theoretically we consider that the consequences for deserters are harsher comparing with draft evaders, however in practice we haven't faced cases based on persecution due to the desertion. There were asylum requests from the individuals who have previously served and faced risk of being drafted as reservists.</p> <p>4. Yes.</p>
	Lithuania	Yes	<p>1. LT does not evaluate the aspect of desertion or draft evasion. However, it is assessed whether a person, should s/he return to the country of origin, would be obliged to perform military service (according to local laws and COI). If this is the case, and if a person might be forced to perform war crimes (according to COI) while in military service, refugee status would be awarded.</p> <p>2. N/a</p> <p>3. N/a</p> <p>4. There was no court practice.</p>
	Luxembourg	Yes	<p>1. Yes, a) Luxembourg does award refugee protection to Syrian draft evaders. Age of conscription, evidence of Syrian nationality, credible statements about military service and national conscription formalities and any evidence providing documents are essential for decision-taking about awarding international protection to Syrian draft evaders. b) Yes. c) 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) of the law of 18 December 2015 on international protection and temporary protection</p> <p>2. No.</p> <p>3. No.</p>



			4. So far, none of the decisions taken by our administrative authority has been reversed by the courts.
	Malta	Yes	<p>1. No. Applications lodged by Syrian nationals on the sole basis that they evaded military service are not deemed to meet the criteria to be granted Refugee status. However, they are considered to meet the criteria to be granted Subsidiary Protection status in accordance with Article 15(b) of the Qualification Directive. a) If so, under what conditions? Please refer to answer provided above. b) If not, do you award a different protection status? Idem. c) Which protection status might you assign as an alternative to granting refugee status? Idem.</p> <p>2. No. If yes, please explain N/A</p> <p>3. The Office of the Refugee Commissioner does distinguish between draft evasion and desertion. Indeed, desertion is generally seen as being a more serious offence compared to draft evasion. A further distinction is made between low level deserters and high ranking officials who deserted from the Syrian regime. Whereas the former are not generally found to meet the criteria to be granted Refugee status, depending on the particular circumstances of the case, the latter (i.e. high ranking officials) could meet the criteria to be granted refugee status on political grounds (i.e. they would be perceived by the Syrian government as being politically opposed to the Regime). This distinction is based on relevant and available COI regarding the treatment of deserters by the Syrian regime which would indicate that whereas low level deserters would in most cases be sent back to the military if caught by the Regime, high ranking officials would be at risk of indefinite imprisonment or execution. It should also be pointed out that similarly to draft evaders, low level deserters are considered to meet the criteria to be granted Subsidiary Protection status in accordance with Article 15(b) of the Qualification Directive.</p> <p>4. Yes.</p>
	Netherlands	Yes	<p>1. Yes. a) If so, under what conditions? The general laws and regulations in The Netherlands determine the following: The Immigration and Naturalisation Service (IND) grants a temporary asylum residence permit, under article 3.36 of the Aliens Regulation to an alien who appeals to desertion or draft evasion, if that person meets at least one of the following conditions: 1: the alien</p>

			<p>has a well-founded fear for a disproportionate or discriminatory punishment, the execution of the punishment, or another discriminatory treatment because of his desertion or draft evasion on the basis of one of the grounds of article 1A of the Geneva Convention; 2: the alien has a serious, insurmountable scruple due to his religious or other deep-seated conviction, that led to his desertion or draft evasion, while there was no possibility to replace his military service with a non-military service; 3: the alien has refused to participate in a military action that has been condemned by the international community as in conflict with the basic rules of human conduct or that is in conflict with the fundamental norms that apply during an armed conflict. This also applies if the alien has a well-founded fear to be deployed against his own people or family. The IND does not grant a temporary asylum residence permit, if the alien fears for a punishment due to his desertion or draft evasion (see Handbook UNHCR, paragraphs 167 to 172) without the existence of a discriminatory treatment. The IND does not grant a temporary asylum residence permit, if the alien has not substantiated his refusal to take part in a conflict against his own people. For Syrian cases, the following applies: In principle, all men between the age of 18 and 50 years are eligible for a residence permit, because it is plausible that they run the risk of being forced to be deployed in a conflict that is condemned by the international community and in which human rights violations are committed on a large scale (this is the third condition as stressed above). Thus, individual objections in Syrian cases are not a condition to grant the application on the basis of desertion or draft evasion. However, the reason of the desertion or draft evasion should be asked for, since it is important to have a brief explanation of the motive. This could be important of a possible reassessment of that case in the future, if the Syrian conflict would be terminated. When verifying the application, the risk of conscription upon return to Syria needs to be considered. It can be assumed that the return to Syria will almost always go via government area/Damascus. The fact that an alien has never completed military service upon departure or has departed before becoming liable for compulsory military service, is in principle not a reason to assume the alien will not be conscripted upon return. This also applies to Syrian asylum seekers from areas that are not controlled by the government and who appeal to the fear of recruitment in the Syrian government army. If the fear for a call to fulfill military service and/or for conscription is not made plausible, it is still possible that the application for a residence permit on the basis of the Refugee Status can be rejected. An example of such a situation: a Syrian of 45 years old who legally departed from Syria with his own passport and who indicated himself that the chance of being conscripted for military service is not substantial. Another</p>
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			<p>example: a Syrian who belongs to a category where a ground of exemption applies. The application in this case is possible under article 29.1B of the Aliens Act, unless there are contraindications. b) If not, do you award a different protection status? If there is no likelihood that the applicant will be drafted and he does not qualify for refugee status on another ground, he will qualify in principle still for subsidiary protection status. c) Which protection status might you assign as an alternative to granting refugee status? Please see answer above.</p> <p>2. No. If yes, please explain. We grant refugee status only if it is likely that the applicant is going to be drafter. His age is relevant in this respect. For young men from the age of 16/17 it will be considered likely that they are drafted.</p> <p>3. No.</p> <p>4. Yes.</p>
	Poland	Yes	<p>1. a) As a rule, Poland grants Syrian refugees who refer to military service refugee status pursuant to art. 13 section 1 and 4 point 5 of the Act on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2018, item 1109). Based on the studies developed by the Department of Information on Countries of Origin, the condition that fulfils the abovementioned condition is that the applicant has a service record, or the fact that he is 18-42 years old. The exceptions are people who have been released from military service, ie the only sons in the family, people with health problems and Syrian citizens born and living abroad, who have dual citizenship and who have proved that they did military service in a country of permanent residence. b) n/a c) To persons who have been released from the military service shall be granted, as a rule, subsidiary protection.</p> <p>2. The assessment of the premise to grant protection to persons evading military service is made on the basis of the age of the applicant. The division is not made on the basis of the date of departure from Syria, but the on the basis of the date of submission of the application for international protection. Accordingly, Poland distinguishes between applicants who, at the time of submitting the application, did not reach 18 years of age or exceed 42 years of age and those who are within the</p>

			<p>specified age range, which is the basis for military service.</p> <p>3. Poland does not use the division into Syrians who evade military service and deserters. According to the information provided by the Department of Information on Countries of Origin, persons evading military service are forcibly recruited into the army and sent to the front, which will be contrary to the goals and principles of the United Nations as set out in the Preamble and Art. 1 and 2 of the Charter of the United Nations, while deserters may be affected by severe punishments, ie imprisonment and even death.</p> <p>4. Poland had no negative decisions in the case of Syrians who were evading military service, and therefore no such matters were considered by the Refugee Board or the court.</p>
	Slovak Republic	Yes	<p>1. SK does not grant refugee status to the persons evading draft. Draft evasion does not constitute a reasonable ground for granting such status. In case of return, persons who evaded draft do not face such danger of persecution which could be considered asylum-relevant. In general, draft evasion is not considered as a manifestation of political opinion, not even in Syria. However, after the individual assessment of each application SK grants subsidiary protection to Syrian citizens due to serious and individual threat to life or personal integrity by nonselective violence, which can be subsumed under the term significant harm (not due to the grounds of draft evasion itself).</p> <p>2. As draft evasion is not considered a ground for granting refugee status we do not distinguish between the two.</p> <p>3. We distinguishes between draft evasion and desertion when considering individual risks of each applicant. Desertion is more serious than draft evasion and in such cases we assess the reasons and circumstances of the desertion. In case of draft evasion we experience cases of convenience when the asylum seekers were not even summoned for the military service itself. This means desertion under certain circumstances can constitute grounds for granting the refugee status however this is not the case with draft evasion, as it is not possible to expect that a person would be drafted into military service or how would the service be conducted. Thus the individual aspect of threat of prosecution of such persons and its individual reasons necessary for granting refugee status are absent.</p>

			<p>4. Courts in the SR apply different attitude in these issues and do not proceed uniformly. In some decisions issued by the Supreme Court draft evasion is not a reason for granting refugee status. Similarly, some decisions of the Supreme Court state that not even desertion itself is a sufficient reason for granting refugee status. Same court however also issued a decision stating quite the opposite with regards to the draft evasion. This means that while decision-making practice of first instance courts is unified and shows that draft evasion as well as desertion do not constitute reasons for granting refugee status, it is not possible to draw the same specific conclusion from the inconsistent and contradictory practice of Supreme Court in this case.</p>
	Sweden	Yes	<p>1. The Swedish Migration Agency (SMA) would at first like to point out that a decision on whether a Syrian is a refugee depends on the merits of each case. It is always an individual assessment. 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 of 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. Depending on the individual case, a Syrian draft evader can be considered a refugee. a) It depends on the particular case; e.g. the reasons for and the circumstances concerning the evasion and with regards to that person's profile and the other merits of the case. c) Subsidiary protection. 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. Yes, it could have effect in the individual case. If yes, please explain The circumstances of the persons evasion and other merits of the case could be decisive in the assessment of whether the person is at risk of persecution upon return to Syria. The decision in the individual case must be in accordance with relevant COI.</p> <p>3. See the answer under question 2.</p> <p>4. We have no statistics on these matters from the Migration Courts. However, as stated under question 1, the Migration Court of Appeal has confirmed that the outcome of whether a Syrian should be awarded refugee status depends on the merits of each case.</p>

	United Kingdom	Yes	<ol style="list-style-type: none"> 1. The UK’s position on asylum seekers from Syria can be found in our Country Information and Guidance (now called Country Policy Information Notes) on Syria: the Syrian Civil War. The document concludes that all Syrians are likely to qualify for asylum (unless Excluded) on the basis of perceived political affiliation to either the Government or rebel forces. Since this covers all Syrians, we do not have a policy on specific claim types such as draft evaders. 2. Please see Q1. 3. Please see Q1. 4. Please see Q1.
	Norway	Yes	<ol style="list-style-type: none"> 1. Norway grants international protection to anyone from Syria, regardless of the grounds for their application (Norwegian Immigration Law § 28 1 a). We are however, aware that anyone who evades military duty, or who has deserted, would be especially vulnerable for persecution on these grounds alone. Men eligible for compulsory draft into military service are as a point of departure considered to fall into this category. Since Norway grants protection based on the refugee convention and as a result of their political views, we do not differentiate between these different grounds. In addition, deserters can be considered for exclusion, based on their rank and what kind of activities they have participated in. 2. N/A 3. N/A 4. YES