



## **EMN Ad-Hoc Query on Extradition of the TCN who is beneficiary of international protection in other Member State**

Requested by Ludmila TOUŠKOVÁ on 21st November 2017

### **Miscellaneous**

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (21 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:**

The Czech Constitutional Court in its ruling from 15.8.2017 clearly stated that international protection granted by one Member State is relevant also for the Member State where a beneficiary of international protection is subject to extradition procedure i.e. the extradition is not possible. This ruling focused primarily on the length of pre-extradition custody.

However, the Court has ruled clearly that international protection status granted by other Member State of the EU shall be taken into account in the extradition procedure hold in the Czech Republic.

The Czech Republic would like to point out our experience that some persons granted by international protection in our territory were also subject of international arrest warrant and were subsequently apprehended by other Member State when travelling there and their extradition to the third country was a real option. The return of these persons from respective Member State back to the Czech Republic was solved via diplomatic cooperation.

Following the situation described above the Czech Republic would appreciate responses on the following questions:

### **Questions**

1. What is the consistent practice of your Member State with regard to possibility/impossibility of the extradition of the third country national or stateless person who is a beneficiary of international protection in the other (different) Member State to third country?
2. Does a national law of your Member State include an explicit provision (a ban) to extradite a person – a beneficiary of international protection - in other Member State?

### **Responses**

	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<b>1.</b> During the extradition process the courts are to judge the question of extradition asylum (see § 19 Z 3 Extradition and Mutual Legal Assistance Act – ARHG), which are in principal independent from a possibly pending asylum procedure. The decision of the asylum authorities does not create a legal

bound for the extradition procedure. However, the granting of political asylum in respect to the country of origin requesting extradition by the responsible domestic authority or another EU Member State constitutes a grave indication that the person affected is indeed being politically persecuted in the country of origin requesting extradition.

**2.** During the extradition process the courts are to judge the question of extradition asylum (see § 19 Z 3 Extradition and Mutual Legal Assistance Act – ARHG), which are in principal independent from a possibly pending asylum procedure. The decision of the asylum authorities does not create a legal bound for the extradition procedure. However, the granting of political asylum in respect to the country of origin requesting extradition by the responsible domestic authority or another EU Member State constitutes a grave indication that the person affected is indeed being politically persecuted in the country of origin requesting extradition.

**3.** A possibly granted international protection creates legal effect only in respect to the country persecuting the person/country of origin. The extradition to another EU Member State because of a European arrest warrant is therefore not regularly affected. The limited significance of a refusal to extradite a person to EU Member States on this ground also becomes apparent in the fact that the Council Framework Decision 2002/584/JHA on the European arrest warrant states, that refusing the execution of a European arrest warrant is only possible within the scope of the consideration that there are objective indications that the arrest warrant has been issued for prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that the person's position may be compromised for any of these reasons (see the national implementation in § 19 Art. 4 EU-JZG). --- Source:Ministry of the Interior.

**4.** A possibly granted international protection creates legal effect only in respect to the country persecuting the person/country of origin. The extradition to another EU Member State because of a European arrest warrant is therefore not regularly affected. The limited significance of a refusal to extradite a person to EU Member States on this ground also becomes apparent in the fact that the Council Framework Decision 2002/584/JHA on the European arrest warrant states, that refusing the execution of a European arrest warrant is only possible within the scope of the consideration that there are objective indications that the arrest warrant has been issued for prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political

			opinions or sexual orientation, or that the person's position may be compromised for any of these reasons (see the national implementation in § 19 Art. 4 EU-JZG). --- Source:Ministry of the Interior.
	Belgium	Yes	<p><b>1.</b> Belgium respects Article 9 point 3 of the Asylum Procedures Directive which states that “A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect refoulement in violation of the international and Union obligations of that Member State.” (no violation of Art 3 ECHR).</p> <p><b>2.</b> There is no explicit reference in our national legislation regarding the extradition of persons holding a protection status in other EU Member State. However, Article 2bis of the Belgian Extradition Law states that extradition can not take place if there are serious reasons to believe that the extradition request was made with the intention to prosecute or punish a person on the basis of his race, religion, nationality or political opinion, or that the situation of the person concerned for one of these reasons is likely to be unfavorably affected. Nor can extradition take place where there are serious risks for the person being subjected to a flagrant denial of justice, torture or inhuman and degrading treatment in the state requesting the extradition. Article 2bis of the Belgian Extradition Law also stipulates that if the offense for which the extradition is requested is punishable by the death penalty in the requesting state, the government will only allow extradition if the requesting State gives explicit guarantees that the death penalty will not be executed. The first paragraph of Article 2bis of the Belgian Extradition Law obviously refers to a person eligible for refugee status, while the second paragraph of Article 2bis refers to the conditions to be granted subsidiary protection status. However, if it is clear that the person for whom extradition is requested will not be prosecuted for one of the grounds of the Geneva Convention and where there are guarantees that there will be no violation of Article 3 ECHR, the person can be extradited. A case by case assessment will take place, taking all relevant elements into account.</p>
	Croatia	Yes	<p><b>1.</b> 1. The decision on the extradition is taken by the Court. Croatia has signed Bilateral International Agreements with Macedonia, Montenegro, Slovenia, Bosnia and Herzegovina and Serbia. According to the Aliens Act (Article 100, paragraph 3), third-country nationals who are to be extradited on the basis of an international treaty (so-called extradition) do not apply the provisions of the Aliens Act</p>

			<p>on measures to ensure return. If a person has been granted international protection by another member state, the Court can still order the persons extradition to a third country. The extradition will not be ordered in cases related to the principle of non-refoulement as defined by the Article 6 of the International and Provisional Protection Act.</p> <p>2. 2. Please see Q1.</p>
	Czech Republic	Yes	<p>1. The judicial authorities who are responsible to decide whether the extradition is possible usually take into account the fact that the person in question is a beneficiary of international protection in other Member State (in case the information regarding the status granted is available). The status granted in the other Member State could show that the person in question would be in a risk of the treatment which wouldn't be in line with Article 3 of ECHR and in this case the extradition would not be possible.</p> <p>2. Czech national law does not provide any explicit ban to extradite a person with an international protection status from a different Member State. Czech authorities are not allowed to extradite only a beneficiary of international protection granted by the Czech Republic.</p>
	Estonia	Yes	<p>1. Estonia does not have a consistent practice in regards to the above mentioned topic since such cases have not occurred.</p> <p>2. No, there are no such provisions in the national law.</p>
	Finland	Yes	<p>1. These cases are seldom in Finland, but the practice is that a TCN, who is a beneficiary of international protection in another Member State, is not extradited to a third country. According to section 149 b § of the Aliens' Act (301/2004), a TCN who has a residence permit in another Member State is ordered to go back to the Member State in question. If the TCN does not follow that order or if he/she is considered a threat to public order and safety a return decision is issued.</p> <p>2. There are no other specific provisions, than Aliens' Act 149 b § mentioned above, that stipulate that the TCN:s has to go back to the Member State where he/she has been issued a residence permit</p>

			(e.g. for international protection).
	France	Yes	<p><b>1.</b> As a general rule, the basic principles recognized by the French Republic laws do not authorize the extradition for political purposes. Thus extradition of a TCN beneficiary of international protection to his/her country of nationality is not possible. Extradition to his/her country of origin for a TCN beneficiary of the refugee status granted by French or other EU member state is also not possible. The extradition to a third country is possible if this country gives guarantees of non-expulsion to the country of nationality for this person. If a person has been granted international protection by French authorities and if his/her extradition is required, this information on his/her status can be easily obtained by French authorities in charge of extradition. However, there is no communication on such status between the various EU member states and the French authorities in charge of extraditions have a lot of difficulties in obtaining the information of an international protection granted by another EU member state. If French authorities in charge of extradition could ask for the withdrawal of the asylum status to the French authorities in charge of asylum requests (although this has never happened so far), such possibility should not be possible for an asylum status granted in another EU Member state. Moreover the withdrawal of international protection by another EU member state is also an information which is not easily accessible by French authorities and could not be considered as such by these authorities when processing an extradition request.</p> <p><b>2.</b> this principle of non extradition for this category has been recognized by the French Council of State (decisions n°85234 of 1 April 1988, n°334454 of 11 June 2010, n°394399 of 9 december 2016, n°394172 of 30 January 2017).</p>
	Germany	Yes	<p><b>1.</b> International protection granted to a third country national or stateless person in another (different) Member State must be taken into account, i.e. foreigners may not be deported to a state where they face serious harm or where there is a general danger they may face prosecution and punishment (Section 60 subsection 1 sentence 2 and subsection 2 of the Residence Act (Aufenthaltsgesetz)).</p> <p><b>2.</b> No.</p>

	Ireland	No	
	Italy	Yes	<p><b>1.</b> Extradition is regulated by the Italian code of criminal procedure (D.P.R. 22 September 1988, n.477), by international agreements and international unwritten laws. Specifically, art. 696 and 697 of the abovementioned Italian Code, state that extradition is generally not allowed if the subject of the extradition's request is not recognized as an offence by both Italian and foreign law, as well as if the request can compromise state sovereignty, security or other fundamental interests. More particularly, art. 705 provides that: a) in the absence of any convention or if convention doesn't provide otherwise, the Italian Court of Appeal pronounces a favorable sentence to extradition if there are: • serious indications of guilt; • there is an irrevocable conviction; • as regards the person for whom the extradition is requested, no criminal proceedings are in progress or an irrevocable sentence has been pronounced in Italy. b) However, the Court of Appeal, may pronounce a judgment against the extradition if: • according to the offense for which the extradition was requested, the person has been or will be subjected to procedures, which does not ensure the respect for fundamental rights; • extradition has been requested to execute a sentence containing provisions that are contrary to the fundamental principles of Italian legal system; • there is reason to believe that the person will be subjected to i) persecutory or discriminatory acts for reasons of race, religion, sex, nationality, language, political opinions, personal or social conditions, ii) death penalty, punishment or cruel, inhuman or degrading treatment or iii) acts that constitute a violation of one of the fundamental rights of the person; • reasons of health or age entail the risk of exceptional severity consequences for the requested person. As regards the cases of extradition of third country national or stateless person who is a beneficiary of international protection in the other (different) Member State to third country, Italy reserves the right to assess case-by-case, deciding downstream of the results of such assessment.</p> <p><b>2.</b> See answer above.</p>
	Latvia	Yes	<p><b>1.</b> There is no consistent practice in Latvia with regard to the mentioned cases as such cases have not been experienced so far. If this would happen each case would be evaluated individually by the Prosecution Office.</p>

			2. No explicit provisions have been included in the national law.
	Lithuania	Yes	<p>1. There are no examples from Lithuanian judicial practice regarding the said legal situation. All actions related to handling the requests for extradition of such persons to a third country shall be carried out with a view of all international obligations (including the principle of non-refoulement) which have been undertaken both on the grounds of the right of asylum and on international human rights documents. Article 9 of the Criminal Law of the Republic of Lithuania provides, inter alia, the following grounds for non-extradition of a person: - the person is being prosecuted for a crime of political nature; - the person may be subject to capital punishment for the committed crime in another state; - there exist other grounds provided for by treaties to which the Republic of Lithuania is party.</p> <p>2. No. Article 9(4) of the Criminal Law of the Republic of Lithuania stipulates as follows: „persons who have been granted asylum or temporary protection in accordance with the laws of the Republic of Lithuania shall not be punishable under a criminal law of the Republic of Lithuania for the criminal acts for which they were prosecuted abroad and shall not be extradited to foreign states&lt;...&gt;.”</p>
	Luxembourg	Yes	<p>1. Recognized refugees and beneficiaries of subsidiary protection are not exempted from criminal prosecution and there is no general bar to extradition in all circumstances. Nevertheless, the principle of non-refoulement applies in the extradition context according to article 9 (3) of the Law of 18 December 2015 on international protection and temporary protection. However, when travelling to another country, the BPI faces the risk of not being protected from further persecution. If there is an Interpol Red Notice or Diffusion issued on him/her, he/she can be arrested, expelled or extradited. Nevertheless, in Luxembourg if there is an extradition request issued by the country of origin for a third-country national (who was granted the international protection status in other Member State (MS)) and was arrested in Luxembourg based on a Red Notice of Interpol, the Minister of Justice will reject the extradition request of the country of origin based on the fact that the risk of persecution was already established by the other MS in accordance with article 4 (2) (there are substantial grounds for believing that the extradition request was made with the purpose of prosecuting or punishing the requested person for considerations of race, religion, nationality, political opinion or for being part of a certain social group) or 12 (the requested person risks to be</p>

			<p>subject to the capital punishment or acts of torture or cruel, degrading and inhuman treatment) of the amended law of 20 June 2001 on extradition. This will avoid that the TCN has to file a new application in Luxembourg based on the same facts outlined in the first MS where he/she was granted the international protection status. Because in accordance with article 28 (2) a) of the Law of 18 December 2015 on international protection and temporary protection the Minister in charge of Asylum and Immigration can declare inadmissible an international protection application if the person has already been granted the international protection in another MS. In those cases, the BPI is returned to the country where he/she has obtained the international protection status. The situation is different if the extradition request comes from a third-country other than the country of origin. In this case, the Court of Appeals sitting in chambers (Chambre du conseil de la Cour d'appel) will provide its legal opinion to the Minister of Justice after having given full consideration to the protection needs of the BPI, and if the assurances made by this other country are suitable and reliable and fully respect the principle of non-refoulement.</p> <p><b>2.</b> No. There is no explicit provision in the law which bans the extradition of a person which was granted international protection by another MS. However, the refusal of extradition can be decided on basis of the aforementioned articles 4 (2), 12 or 14 (extradition would be incompatible with humanitarian considerations such as the age or state of health of the requested person) of the amended law of 20 June 2001 on extradition.</p>
	Malta	Yes	<p><b>1.</b> When being faced with the extradition of a third country national or stateless person who is a beneficiary of international protection, each case is dealt with in its own merits. Other cases involving the execution of an International Arrest Warrant (excluding any third country national or stateless person who is a beneficiary of international protection) , same is first taken to Court and it is the Court which decrees whether the subject is extradited or not unless he/she consents voluntarily in front of the Magistrate.</p> <p><b>2.</b> When being faced with the extradition of a third country national or stateless person who is a beneficiary of international protection, each case is dealt with in its own merits. Other cases involving the execution of an International Arrest Warrant (excluding any third country national or stateless person who is a beneficiary of international protection) , same is first taken to Court and it is</p>

			<p>the Court which decrees whether the subject is extradited or not unless he/she consents voluntarily in front of the Magistrate.</p> <p><b>3.</b> All rights of a third country national or stateless person who is a beneficiary of international protection are safeguarded by Maltese legislation namely Chapter 420 of the Laws of Malta titled Refugee Act.</p> <p><b>4.</b> All rights of a third country national or stateless person who is a beneficiary of international protection are safeguarded by Maltese legislation namely Chapter 420 of the Laws of Malta titled Refugee Act.</p>
	Netherlands	No	
	Portugal	Yes	<p><b>1.</b> A request for extradition must be subject of a judicial decision by the Court of Appeal, which considers the specific circumstances in relation to the applicable legal regimes. The granting of asylum or subsidiary protection prevents the implementation of any request to extradite the beneficiary, based on the facts on which the international protection was granted. The final decision on any process to extradite the applicant which is pending is suspended while the application for international protection is being assessed, during the administrative phase as well as during the jurisdictional phase (see Asylum Law art. 48 (attached)).</p> <p><b>2.</b> No. The admissibility of extradition, particularly if Portugal is the requested State (passive extradition), is governed by the relevant international treaties and conventions and, in its absence or insufficiency, by the Law on International Cooperation (Law 144/99 of 31 -08) article 3, paragraph 1, and by the Criminal Procedure Code (article 229). The application of Portuguese internal law is subsidiary.</p>
	Slovak Republic	Yes	<p><b>1.</b> It is not regulated by the Slovak legislation that judicial authorities which decide on the extradition have to take into account whether the person was granted international protection in another Member State. However, based on the practice and jurisdiction, the responsible courts do take into account the fact that the person was granted international protection as well as the reason which they consider in</p>

			<p>the decision.</p> <p><b>2.</b> No, Slovak legislation does not include an explicit ban to such extradition. The extradition is not possible only in case when the person was granted international protection in the Slovak Republic.</p>
	Slovenia	Yes	<p><b>1.</b> We had at least one case, where Ministry of Justice denied extradition of a person citizen of China to China, based on International Arrest Warrant, because person was a subject of International protection in Italy.</p> <p><b>2.</b> Yes - Second Paragraph of Article 530. of Criminal Procedure Act (2) The Minister of Justice shall not permit the extradition of a foreigner if the latter enjoys the right of asylum in the Republic of Slovenia, if a political or military offense is involved or an international treaty with the country demanding the extradition does not exist. He may decline extradition if a criminal offense punishable by up to three years imprisonment is involved, or if a foreign court had imposed a sentence for a prison term of up to one year.</p>
	Sweden	Yes	<p><b>1.</b> We have no consistent practice that explicit prohibit the extradition to a third country of a person that already have international protection in another MS. However, as the Czech Constitutional Court ruled, we will also most likely take into consideration that another MS already have granted the person in question international protection.</p> <p><b>2.</b> No, we have no such legislation.</p>
	United Kingdom	Yes	<p><b>1.</b> Where a person's extradition is requested, the UK courts must be satisfied that extradition would be compatible with the European Convention on Human Rights, and that the request has not been made for the purpose of prosecuting or punishing the requested person on account of his or her race, religion, nationality, gender, sexual orientation or political opinions, or that the person will not be prejudiced, detained or restricted on account of those characteristics. In deciding whether these bars to extradition apply, the UK courts may take into account the basis on which the requested person was recognised as a refugee/IP by another Member State.</p>

			2. No, there is no ban on extradition.
	Norway	Yes	<p><b>1.</b> There is no explicit practice in regards to extradition of TCN or stateless persons who are beneficiaries of protection in another MS: Norway makes a case by case assessment based on the rules referred to below: Norway understands this question to concern extradition of criminals. In Norway, this falls in under criminal law and not immigration law. •Norwegian citizens can not be extradited. (Extradition laws § 2) •The action that forms the basis for the extradition must also be considered punishable by law in Norway carrying a minimum sentence of 1 year (Extradition law § 3) •A person can not be extradited for crimes of a political nature or if there is a serious risk that the person in question will be subjected to persecution in the receiving country. (Extradition law §§ 5 og 6) •A person can not be extradited if extradition would violate basic human rights. (Extradition law § 7) •A person can only be extradited if there is good reason to believe that the person is guilty of the crime in question. (Extradition law § 10 nr. 2) •A person can not be extradited if there is a serious risk of capital punishment upon return. (Extradition law § 12)</p> <p><b>2.</b> NO – Norway makes a case by case assessment based on the rules referred to below. Section 73 Absolute protection against refoulement (1)A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph (a) (see text in yellow below), unless (a) the foreign national is excluded from protection under section 31, or (b) the foreign national is on reasonable grounds deemed to be a danger to national security or has received an unappealable judgment for a particularly serious crime and for that reason represents a danger to Norwegian society. (2)A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph (b). The protection under this provision shall also apply in situations as mentioned in the first paragraph (a) and (b). (3)The protection under the first and second paragraphs shall also apply to refoulement to an area where the person concerned would not be secure against subsequent refoulement to such an area as mentioned in section 28, first paragraph. (4)The protection under the first to third paragraphs applies in respect of all forms of decision under this Act. Section 28 Residence permit for foreign nationals in need of protection (asylum) (1)A foreign national who is in the realm or at the Norwegian border shall, upon application, be recognised as a refugee if the foreign national (a) has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a</p>

			<p>particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin, see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or (b) without falling within the scope of (a) nevertheless faces a real risk of being subjected to a death penalty, torture or other inhuman or degrading treatment or punishment upon return to his or her country of origin. (2)A foreign national who is recognised as a refugee under the first paragraph shall be entitled to a residence permit (asylum). (3)Where an assessment is made under the first paragraph, account shall be taken of whether the applicant is a child. (4)The applicant shall normally also be recognised as a refugee under the first paragraph when his or her need for protection has arisen since the applicant left his or her country of origin, and is a result of the applicant's own acts. When assessing whether an exemption shall be made from the general rule, particular importance shall be attached to whether the need for protection is due to acts that are punishable under Norwegian law, or whether it seems most likely that the main purpose of the acts was to obtain a residence permit. (5)The right to be recognised as a refugee under the first paragraph shall not apply if the foreign national may obtain effective protection in other parts of his or her country of origin than the area from which the applicant has fled, and it is not unreasonable to direct the applicant to seek protection in those parts of his or her country of origin. (6)Subject to the exemptions laid down in regulations made by the King, the spouse or cohabitant of a foreign national who is granted a residence permit as a refugee under the second paragraph, and the refugee's children under the age of 18 who have no spouse or cohabitant, shall also be entitled to a residence permit as refugees. (7)When a foreign national's application for a residence permit under this provision has been rejected, the decision-making authority shall on its own initiative consider whether the provisions of section 38 shall be applied. (8)The King may by regulations make further provisions in respect of the application of this section and sections 29 and 30.</p>
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