

**National law and practice regarding the weight given by states
to UNHCR mandate recognition
Annex to UNHCR intervention in
*I. A. v. Secretary of State for the Home Department***

1. This annex to UNHCR's submission in the case of *I. A. v. Secretary for State for the Home Department* before the Supreme Court sets out applicable national legislation (where this exists), as well as decisions and practice in national jurisdictions regarding the situation of persons previously recognised under UNHCR's mandate who seek asylum in another country.
2. As the paragraphs below outline in greater detail, States adopt a variety of approaches. Nevertheless, the fact of recognition by UNHCR can generally be seen to carry considerable weight. Most clearly, legislation in Bulgaria¹ and France² stipulates that a refugee recognised under UNHCR's mandate is automatically to be recognised as a refugee. In the Netherlands, the Aliens Circular provides protection from removal to the country of origin for individuals whom UNHCR's representation in the Netherlands confirms to be refugees under its mandate. In a recent decision, the Finnish Supreme Administrative Court found that UNHCR mandate recognition must be given due weight and its significance assessed adequately.
3. The fact of mandate recognition by UNHCR is used in some countries to screen cases into substantive rather than more summary procedures. In others, it is regularly used in the context of credibility assessments. States appear most often to assess cases differently from UNHCR where circumstances have changed in the country of origin since UNHCR's original recognition of status, or where concerns about credibility and/or exclusion arise. Several countries grant UNHCR mandate refugees some form of subsidiary protection if they are not confirmed as refugees as such.
4. The paragraphs which follow provide information on national legislation and practice. They are organised by country and listed in alphabetical order.
5. In Albania, the Albanian Office for Refugees (at the Ministry of Interior),

¹ For actual state practice, see paragraph 9 below.

² In the case of France, a specific reference is made to include only recognitions under UNHCR's mandate as contained in the 1950 UNHCR Statute, thereby excluding extensions of the refugee definition by subsequent UN General Assembly resolutions.

which is responsible for assessing asylum claims at first instance, in practice acknowledges that mandate recognition by UNHCR creates a rebuttable presumption of a need for international protection. In such cases, UNHCR is asked either informally for expert advice or the office provides a formal submission on a specific case in accordance with the Law on Asylum (Nos. 8432 and 10060) which stipulates:

Article 17(3): UNHCR may offer to the Office for Refugees and the National Commission for Refugees proposals of a general character as well as recommendations concerning specific cases or cases of mass influx.

Article (17(4): UNHCR can participate as an observer in the meetings of the Directorate for Nationality and Refugees on the determination of refugee status.

Article 29(3): The Directorate for Nationality and Refugees grounds its decision on the respective statements of the refugee, taken as per the stipulations of this law. When taking its decision, the Directorate for Nationality and Refugees is based on the principle of the benefit of the doubt and the presumption that the asylum seeker is right. It also takes into consideration the recommendations given by UNHCR.

6. In Australia, immigration officials undertaking refugee status determination are required by legislation (section 36 of the Migration Act 1958, as amended, and its regulations) to make a fresh determination of refugee status to ensure Australia's protection obligations are engaged at the time of the decision. However, according to procedural advice to decision makers, the fact that the person is a UNHCR mandate refugee should be taken into account and be given appropriate weight in the decision making process, including on screening decisions, credibility assessment and the considerations of the merits of an individual case. If a decision maker is considering refusing a protection visa, there are provisions for referral to the Sensitive Case Register and, if appropriate, for liaison with UNHCR, prior to a final decision being made.
7. In Austria, in assessing whether asylum-seekers admitted to the procedure qualify for some form of international protection, the authorities regularly

approach UNHCR to verify the status of persons claiming to be mandate refugees. If the applicant agrees and the authorities ask for verification of his/her mandate refugee status or the applicant or his/her lawyers asks, UNHCR routinely provides this information. The authorities and courts regularly pay due consideration to mandate refugee status and UNHCR knows of many cases in which persons concerned were granted international protection based in part on UNHCR's prior recognition. However, UNHCR is aware of two cases where mandate refugees have received a final expulsion order from Austria to their country of origin because of lack of credibility.

8. In Belgium, UNHCR mandate recognition is not per se seen as binding on the authorities. When asylum-seekers themselves submit "convincing evidence" that they have been granted refugee status by UNHCR or when UNHCR confirms mandate refugee status at the request of the national authorities, lawyers or non-governmental organizations, the information provided is used in the context of the credibility assessment and in the context of the assessment of the substance of the application. Whether the asserted fear of persecution is, or continues to be, well-founded is always assessed with regard to the country of nationality or habitual residence of the applicant.
9. In Bulgaria, Article 10 of the Law on Asylum and Refugees provides that 'refugee status shall also be provided to a foreigner staying on the territory of the Republic of Bulgaria, recognised as a refugee by the mandate of the United Nations High Commissioner for Refugees'.³
10. In Canada, there is no legal provision with regard to UNHCR mandate status. However, there are several court rulings, which deal with the weight that should be given to a prior refugee determination by UNHCR or by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In EI-Bahisi v. Canada (Minister of Employment & Immigration)(1994) (Fed. T.D.) (1999) the Federal Court found that the Immigration and Refugee Board (IRB) had erred in not taking into account the applicant's UNRWA document and held that previous recognition as a refugee by the UNRWA was relevant to the applicant's status under the Convention.

³ Law on Asylum and Refugees (as amended in 2007) [Bulgaria], 16 May 2002, at <http://www.unhcr.org/refworld/docid/47f1faca2.html>.

11. In Canagasuriam v. Canada (Minister of Citizenship & Immigration) (1999) the Federal Court found that "the visa officer erred in not considering that the applicant was recognized as a UNHCR mandate refugee. By not acknowledging this, or making an effort to distinguish it, he made an error in law." He further explained that: "In this regard, the visa officer's failure to consider the cumulative effect of the applicant's past experiences in assessing the well-foundedness of his claimed fear of persecution is particularly critical." The Federal Court noted that "although the High Commissioner will normally deal with groups and categories of refugees rather than with individuals, he will from time to time decide that an individual comes under the protection of his Mandate. Given Canada's long standing support for the work of UNHCR, individuals mandated by him will be given the same consideration in our selection process as are individuals who have received Convention refugee status from another signatory state."
12. In Kim v. Canada (Minister of Citizenship and Immigration) (2005), concerning a Cambodian national who was recognised by UNHCR, though never declared a refugee in Canada, and who was resettled in Canada in 1984 at the age of 12, the Federal Court found that the appellant was not protected from refoulement by his status as a mandate refugee:

[42] The most persuasive part of Mr. Kim's argument, it seems to me, is the idea that once recognized by the UNHCR as a refugee, he should be recognized internationally as such, including by the Government of Canada. The UNHCR Statute definition that creates the concept of mandate refugees is nearly identical to the Refugee Convention definition. Although they are substantially similar, mandate refugees are not treated in the same way as Convention refugees under Canadian law and this is, arguably, not fair.

[43] I think the answer to this objection is that it is up to Parliament to define how certain categories of non-citizens will be dealt with in terms of a right of non-refoulement. Convention refugees must not be refouled because Canada has signed the Refugee Convention, and likewise, those in danger of torture cannot be refouled because of Canada's commitments under the Convention Against Torture. There is

*no such obligation with respect to mandate refugees. In any case, mandate refugees are only declared refugees for the purpose of allowing the UNHCR to provide help. Once the mandate refugee has been resettled, the UNHCR's mandate no longer applies to that person.*⁴

13. In Elyasi v. Canada (Minister of Citizenship & Immigration) (2010) Federal Court, the applicant submitted that the officer erred by failing to refer to Mr. Elyasi's refugee status from UNHCR while the respondent argued that the officer was not under an obligation to make the same refugee determination as was made by UNHCR; rather, the officer was only required to assess the applicant's claim with regard to Canadian legislation. The application was allowed and was sent for redetermination. The Federal Court noted that the file notes (Computer Assisted Immigration Processing System – CAIPS) relating to the officer's decision does not mention UNHCR's recognition of the applicant as a Convention refugee. Based on the ruling in Canagasuriam, the Court found the applicant's status to be a highly relevant, material piece of contrary evidence which should have been considered by the officer. It further noted that "based on the background material specifically on the Hazara minority in Afghanistan, the applicant fits the profile of a person at risk of persecution and the officer had the duty to examine all the evidence of the claim. The officer did not appear to have regard to all of the evidence and, more particularly, key elements of that evidence."

14. In Denmark, the authorities frequently request UNHCR to provide information about persons recognised under UNHCR's mandate, in particular Iranian Kurds from Northern Iraq (Kurdish Regional Government – KRG). The recognition rate by state authorities for this particular group for whom mandate status has been verified by UNHCR is currently at 100 per cent. The recognition is, however, not solely based on UNHCR's refugee status determination, but also in view of the problems with return of Iranian Kurds to KRG.⁵ In 2013 the Appeal Board found that the circumstances which had led to the flight of an Iraqi refugee recognised by UNHCR Syria were no longer present in Iraq and therefore upheld negative decision by the first

⁴ Kim v. Canada (Minister of Citizenship and Immigration), 2005 FC 437 (CanLII), 1 April 2005, at <http://www.canlii.org/en/ca/fct/doc/2005/2005fc437/2005fc437.html>, paras. 42–43. *To UNHCR's knowledge, the case did not proceed to the Federal Court of Appeal.*

⁵ Iraqi authorities did not permit the return of Iranian Kurds to KRG.

instance body.

15. In Finland, in a 2013 case the Supreme Administrative Court looked into the question of “what significance the refugee status granted by UNHCR has for the conditions for granting international protection”.⁶ The applicants were two Iranian Kurds who had been recognized by UNHCR in Turkey in 2007. Upon request by the applicants, UNHCR confirmed the authenticity of their UNHCR documentation. The Finnish Immigration Service, assessing the asylum application at first instance, only referred shortly to the refugee status granted by UNHCR. Similarly, the Administrative Court did not, according to the Supreme Administrative Court, investigate “in detail the value as evidence of the refugee status granted by UNHCR [...] for example in an oral hearing”.

16. The Supreme Administrative Court further found that:

According to international law, states have the right to control entry, sojourn and return of aliens. Also, the refugee status granted by UNHCR cannot as such be binding to a state party to the 1951 convention. However, the mandate refugee status granted by UNHCR to a certain person in an individual refugee status determination procedure must be given due weight and the reasons why it has been granted must, if possible, be investigated. Especially the possible danger or serious harm that the person could encounter upon return to the country of origin must here be assessed.

The Supreme Administrative Court concluded that since these questions have not been adequately examined, the decision of the Administrative Court and the Finnish Immigration Service must be set aside and the case referred back to the Finnish Immigration Service for renewed proceedings.

17. In France, the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) provides in its Article 711-1:

Anyone persecuted for their action in support of liberty is recognised as a refugee, as is anyone who falls within the mandate of the United

⁶ Supreme Administrative Court, 24 June 2013, case number KHO/2013/113.

*Nations High Commissioner for Refugees as set out in Articles 6 and 7 of its Statute adopted by the General Assembly of the United Nations on 14 December 1950, or who fulfills the definition set out in Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees. Their situation is regulated by the provisions of the abovementioned Geneva Convention which are applicable to refugees.*⁷ (unofficial translation)

18. The applicability of this provision has been reaffirmed by the French *Commission des recours des réfugiés* (CRR, Refugee Appeals Commission) in its decision in *Mbingo Borongo*, Appeal No. 345064, of 5 June 2000.⁸ In this case, the CRR overturned a decision of the *Office français de protection des réfugiés et apatrides* (French Office for the Protection of Refugees and Stateless Persons, OFPRA) which had denied the applicant refugee status on the grounds that he was excluded under Article 1F(c). The CRR found that UNHCR had originally recognised the applicant in May 1998 in Brazzaville, that the Office had re-examined the applicant's case and found that he was not excluded under Article 1F(c) which referred to "acts contrary to the purposes and principles of the United Nations", and that OFPRA's decision should be overturned.
19. In 2011 OFPRA once again rejected an application for refugee status by an asylum-seeker who had been recognized by UNHCR as a mandate refugee in application of the refugee definition contained in the 1950 UNHCR Statute. OFPRA rejected the case based on the application of an exclusion clause, i.e. Article 1F(c). The *Cour Nationale du Droit d'Asile* (CNDA, National Court of Asylum), overturned OFPRA's decision in *Mehrdad Fathi*, Appeal No. 11022879, of 9 March 2012.⁹ The CNDA argued that UNHCR had originally

⁷ «Livre VII Le droit d'asile, Titre 1 Généralités, Chapitre 1 La qualité de réfugié (PA II alinéa 7 de l'article 2 de la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile): Article L. 711-1 - La qualité de réfugié est reconnue à toute personne persécutée en raison de son action en faveur de la liberté ainsi qu'à toute personne sur laquelle le haut-commissariat des Nations unies pour les réfugiés exerce son mandat aux termes des articles 6 et 7 de son statut tel qu'adopté par l'Assemblée générale des Nations unies le 14 décembre 1950 ou qui répond aux définitions de l'article 1er de la convention de Genève du 28 juillet 1951 relative au statut des réfugiés. Ces personnes sont régies par les dispositions applicables aux réfugiés en vertu de la convention de Genève susmentionnée. »

⁸ Commission des recours des réfugiés, Sections réunies, No. 345064, M. M., 5 June 2000, at <http://www.unhcr.org/refworld/docid/4a54bbc80.html>. (As of January 2008, the CRR was replaced by the Cour nationale du droit d'asile, (National Court of Asylum.)

⁹ Cour Nationale du Droit d'Asile, No. 11022879, M. F., 9 mars 2012, at <http://www.refworld.org/docid/52569b604.html>

recognised the applicant in August 2006 in Iraq on the basis of the 1950 Statute refugee definition and that even after OFPRA's decision, UNHCR confirmed the applicant's refugee status. CNDA ruled that OFPRA was therefore bound to respect article L. 711-1 of the above mentioned CESEDA and recognise the asylum-seeker as a Convention refugee.

20. In Germany, there is no legal obligation under national law to grant refugee status to asylum seekers recognised by UNHCR under its mandate or to take mandate refugee status into account in the German asylum procedure.¹⁰ Relevant jurisprudence, however, recognizes that while UNHCR mandate status is not binding on Germany it nevertheless provides a strong indication that the person concerned is in need of international protection.
21. In Greece, legislation does not refer explicitly to mandate refugees who seek international protection in Greece. All third country nationals, including UNHCR mandate refugees, have to go through the State procedure for the recognition of refugee status or the granting of subsidiary protection status. In practice, however, UNHCR's mandate recognition is taken into account in the asylum procedures, at least for the purposes of credibility assessment. The new Asylum Service, which is the responsible authority to register and examine asylum applications in Greece since June 2013, has so far not provided any specific guidance as to whether UNHCR mandate status should be taken into account when examining asylum applicants and new decisions by the Asylum Service are yet to be issued.
22. In Ireland, there is no specific legislation on UNHCR mandate status. However, there is some limited case-law on the area. In one particular appeal to the second-instance RSD body, substantial weight was placed on the fact that the Liberian appellant was recognised by UNHCR as a refugee in Guinea before coming to Ireland. As the second-instance decision maker "accepted the evidence of the Applicant to the effect that she [was] regarded as a refugee as part of the UNHCR programme for refugees in Guinea", and taking into account the situation as it stood in Liberia at the time, the decision-maker was "prepared to accept that the Applicant [was] a refugee...".¹¹

¹⁰ Marx, Reinhard, Kommentar zum Asylverfahrensgesetz, 7. Auflage, 2009, § 9, para. 7.

¹¹ Decisions by the Irish Refugee Appeals Tribunal are not made public.

23. In Italy, where UNHCR participates by law in the asylum procedure, refugee status recognised by UNHCR under its mandate carries considerable weight in practice in the assessment of the claim. In most cases, the refugee status of mandate refugees seeking asylum in Italy is confirmed after an interview aiming at assessing the continued need for protection, although in some cases complementary forms of protection are granted.
24. Since 2001, Malta has been assessing asylum claims through its own determination procedure. A small group of refugees who were recognised by UNHCR before 2001 remain in Malta with mandate refugee status which is also recognised by the Maltese authorities. Adjudicators take mandate recognition by UNHCR in other countries into account when assessing the asylum claim on a case-by-case basis.¹² There are, however, cases where asylum applicants granted mandate refugee status in African countries, such as Libya, had their asylum application rejected in Malta. In some other cases, the previous appeal body has found that the fact that an asylum-seeker had already been recognised by UNHCR was a reason to reject the claim in Malta on the grounds that the individual had found protection elsewhere (even if mandate recognition did not in fact offer effective protection in that country). In principle, however, the Maltese authorities do recognise mandate refugee status, as for instance in the recent relocation exercise, where applicants already recognised by UNHCR were recognised and referred for relocation to another EU country.
25. In the Netherlands, C2/3.2 of the Aliens Circular, as amended on 1 April 2013, provides:

In case UNHCR has recognized the person as a refugee the Immigration Service assesses all applications for a temporary asylum permit individually even in case the person has already been recognized as a refugee by UNHCR. Removal to the country of origin will not take place in case UNHCR's representation in The Netherlands is of the opinion that the alien is a refugee in the sense of Article 1A Refugee Convention

¹² The only reference in Maltese law to mandate refugee status is a transitory provision stating that holders of this status prior to the establishment of the Refugee Commission in Malta (i.e. before 2002) shall continue to be regarded as such, upon their request.

on the grounds of his/her individual statement.¹³ The Immigration Service does not grant a temporary residence permit to the alien if removal to another country, for example on the basis of Article 30, under (a) or (d), Aliens Act or Article 31, second indent, under (h) or (i) Aliens Act will remain possible. (unofficial translation)

26. The Immigration and Naturalisation Directorate (IND) in the Netherlands regularly asks UNHCR to verify mandate recognitions from all over the world. Mandate refugees usually receive some form of status in the Netherlands. UNHCR is aware of more than fifteen individuals mostly originating from Iran who had been recognised as refugees by UNHCR, who later claimed asylum in the Netherlands, and were granted either refugee status or subsidiary protection in 2009-2013.

27. In New Zealand, decision makers are required by legislation (sections 125-126 of the Immigration Act 2009) to determine whether to grant refugee status in accordance with the terms of the Refugee Convention after consideration of claims of people who, upon arrival to New Zealand or at some later date, claim refugee status. A statutory exception is made for persons recognized as refugees outside New Zealand who have been brought to New Zealand under a government mandated programme on the basis of that recognition. There is no formal mention or discussion of how decision makers are to regard UNHCR mandate status in legislation, procedural guidance or in jurisprudence, but in practice UNHCR mandate status will be taken into account by decision makers as a matter of evidence in considering different aspects of claims for asylum, including screening and assessing credibility and the merits of the facts.

28. In Poland, when a mandate refugee seeks asylum, the national authorities determining international protection needs usually to take this fact into account. While there is no specific provision in Polish law regarding mandate refugees,¹⁴ Articles 7 and 77 of the Code of Administrative Proceedings require

¹³ Although the language of the Aliens Circular refers to the individual statement of the asylum-seeker, in practice mandate refugees who have been recognized on a *prima facie* bases benefit from the same considerations.

¹⁴ The situation of mandate refugees is not specifically mentioned in the law, but Article 39.6 of the Law on granting protection to aliens on the territory of the Republic of Poland of 13 June 2003 states: 'Opinions, documents and materials issued by a representative of the

the relevant administrative body to take into account all the circumstances of the case, including legal opinions and documents. Failure to do so, or interpreting them in an inappropriate way, would violate the relevant provisions of the Code and result in the appellate instance quashing the asylum decision. Thus, a failure of the relevant asylum body to take into account a UNHCR decision recognising mandate refugee status can be seen to violate the relevant provisions of the Code of Administrative Proceedings.

29. In Romania, according to national legislation, all relevant facts have to be taken into consideration when assessing asylum applications. UNHCR is aware of several cases where mandate refugees have been recognized by the national asylum procedure after their status had been verified with UNHCR and where their mandate status has been given due consideration in the national procedures.

30. In Sweden, the authorities frequently request UNHCR to provide information about persons recognised under UNHCR's mandate. The information appears to be used mainly for credibility assessment purposes. On 28 September 2013, the Migration Court of Appeal (MCA) in Sweden adjudicated on a case concerning a resettled refugee from Cameroon.¹⁵ The question at hand was whether the appellant was entitled to a Swedish mandate travel document based on his previous recognition as a refugee by UNHCR. The MCA held that a State is not bound by a prior recognition of mandate refugee status by UNHCR, however Sweden, in assessing whether a person is to be considered a refugee, shall have regard to any prior refugee status determination or statements made by UNHCR. In this case, the MCA found that the fact that UNHCR had recognised the appellant as a refugee must be weighed against any developments since he left his country of origin. The MCA in conclusion held that the appellant could not be found to be a refugee and his appeal was dismissed.

31. In Switzerland, UNHCR is regularly asked to provide information regarding the situation of persons seeking asylum who are UNHCR mandate refugees as well as on the grounds of the recognition. This information seems to then be

United Nations High Commissioner for Refugees shall be attached to files of the case.' This provision allows UNHCR, inter alia, to present documents confirming that an applicant was granted a refugee status.

¹⁵ Migration Court of Appeal, 2013 case number UM 9565-11.

mainly used in the context of credibility assessment. In some cases, mandate refugees who sought asylum in Swiss embassies abroad (when this possibility was still provided for under Swiss law) found their claim refused on the ground that they would be protected by UNHCR in the country where UNHCR's status determination took place. There was therefore no need for Switzerland to grant an entry permit. This was also the position of the Federal Administrative Court. At the same time, for applicants physically present in Switzerland, the court recognises UNHCR mandate refugee status as non-binding, but weighty evidence for the existence of persecution in the country of origin.

32. In the United States of America, there is no legal provision or case law which provides guidance on whether or what weight UNHCR mandate status should be accorded in the national asylum procedures. UNHCR is, however, regularly approached by lawyers to verify the mandate status of asylum-seekers in order to support their submission before the national asylum adjudicators.

UNHCR, 29 October 2013