

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

### **Recommendation Rec(2005)6 of the Committee of Ministers to member states on exclusion from refugee status in the context of Article 1 F of the Convention relating to the Status of Refugees of 28 July 1951**

*(Adopted by the Committee of Ministers on 23 March 2005  
at the 920th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Stressing the need for humane treatment of asylum-seekers by member states of the Council of Europe, in conformity with relevant international instruments dealing with human rights;

Recalling the liberal and humanitarian attitude of the member states of the Council of Europe with regard to asylum-seekers, and bearing in mind the importance of preserving the integrity of the asylum system established by the Geneva Convention of 28 July 1951 and its 1967 Protocol relating to the Status of Refugees (hereinafter "the 1951 Convention");

Anxious to provide refugees with adequate international protection and to exclude from such protection those persons who have perpetrated acts of such gravity that they do not deserve this protection;

Believing that a scrupulous and appropriate application of the exclusion clauses contained in Article 1.F of the 1951 Convention would lead to such a result;

Recalling the absolute nature of the rights protected under Article 3 of the European Convention on Human Rights;

Having in mind that exclusion from refugee status is a different issue than removal of foreigners, in the sense that exclusion does not automatically lead to the removal of a foreigner from the asylum country;

Considering that Article 1.F of the 1951 Convention provides that:

"The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- a. he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b. he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- c. he has been guilty of acts contrary to the purposes and principles of the United Nations",

Recommends that member states take into account the following principles while applying Article 1.F of the 1951 Convention:

1. With regard to the interpretation of Article 1.F:

- a. as an exception to the refugee protection regime provided by the 1951 Convention, whose application can have very serious consequences for a person in fear of persecution, the exclusion clauses contained in Article 1.F should be interpreted restrictively;

*b.* the words “serious reasons for considering” in the heading of Article 1.F refer to the standard of proof required. Exclusion does not require a determination of guilt in the criminal sense. However, clear and credible information is required to satisfy the “serious reasons” standard;

*c.* in interpreting “crimes against peace, war crimes and crimes against humanity” in Article 1.F.a, due consideration should be given to the developments in international law that have taken place since the drafting of the 1951 Convention;

*d.* with respect to Article 1.F.b, a crime should be considered “non-political” if it was committed for personal reasons or gain rather than for political reasons, if there is no clear link between the crime and the political goal pursued or if the act was disproportionate to the political objective. Egregious acts of violence, including for example acts that involve random killing and other physical assaults carried out indiscriminately on the population, should also be considered to be non-political. For a crime to be regarded as political in nature, the political objectives should be consistent with human rights principles. International anti-terrorism instruments adopted within the framework of the United Nations and the Council of Europe which specify certain crimes as non-political should provide guidance for determining the political element of a crime;

*e.* while examining the “seriousness” of a non-political crime in the context of Article 1.F.b the nature of the crime and the harm inflicted are relevant factors. Other relevant factors could be whether most jurisdictions of the member states of the Council of Europe would consider the act in question as a serious crime, the form of procedure used to prosecute the crime, and the severity of punishment in case of a conviction;

*f.* Article 1.F.c relates to the purposes and principles of the United Nations as contained in Articles 1 and 2 of the United Nations Charter. It is primarily aimed at persons who have been in a position of power;

*g.* exclusion from refugee status can only be decided on the basis of individual responsibility. The degree of involvement of a person who is linked by virtue of his or her position, action or inaction, to particular parties and entities who commit crimes or advocate violence must be subject to careful analysis. Consideration must be given to grounds for the exemption from individual responsibility, such as psychological or factual circumstances under which the acts were committed;

2. With regard to procedural aspects in relation with Article 1.F:

*a.* traditional procedural safeguards especially those concerning asylum procedures apply for the application of exclusion clauses;

*b.* the applicability of the exclusion clauses should be dealt with individually within the regular refugee status determination procedure;

3. With regard to particular issues in connection with the exclusion clauses:

*a.* where a family member is excluded from refugee status, dependants' and other family members' possible qualification for refugee status would need to be considered on an individual basis. Where family members have been granted refugee status, the excluded applicant cannot be recognised as a refugee by application of the principle of family unity;

*b.* in cases involving the possible exclusion of minors from refugee status, primary consideration needs to be given to the best interests of the child. Exclusion clauses should normally only apply to minors who, at the time of committing a crime, have reached the age of criminal responsibility within the country of asylum and who possess the mental capacity and maturity to be held responsible for the act committed. Other possible extenuating circumstances need to be carefully assessed.