



UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees

Article 1E of the 1951 Convention

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

A. BACKGROUND

1. The 1951 Convention relating to the Status of Refugees (hereafter “1951 Convention”)¹ contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1A, are excluded from the benefits of this Convention. This Note addresses the question of the interpretation and scope of one such provision – that set out in Article 1E concerning persons not considered to be in need of international protection.²

2. The object and purpose of this Article is to exclude from refugee status those persons who do not require refugee protection because they already enjoy a status which, possibly with limited exceptions, corresponds to that of nationals.³ A strict test is, therefore, called for in order to be excludable under Article 1E.

¹ Available at <http://www.unhcr.org/refworld/docid/3be01b964.html>.

² Guidance on the interpretation and application of other exclusion clauses can be found in UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 3 September 2004, available at <http://www.unhcr.org/refworld/docid/3f5857684.html>, and in its accompanying *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at <http://www.unhcr.org/refworld/docid/3f5857d24.html>. As regards the applicability of Article 1D to Palestinian refugees, see: UNHCR, *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, 2 October 2002, available at <http://www.unhcr.org/refworld/docid/3da192be4.html>.

³ The Handbook defines Article 1E as concerning “persons who might otherwise qualify for refugee status and who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship”. See: UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, HCR/1P/4/Eng/Rev.2, 1979 reedited 1992 (hereafter “Handbook”), para. 144, available at <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. See also, generally, UNHCR, *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees*, April 2001, para. 40, available at <http://www.unhcr.org/refworld/docid/3b20a3914.html>.

3. The drafters of the Convention included this Article primarily with refugees of German extraction (*Volksdeutsche*) in mind, who, having arrived in the Federal Republic of Germany, were recognized under the German Constitution⁴ as possessing the rights and obligations attaching to German nationality. Article 1E has subsequently also been applied in other circumstances, notably to refugees of Turkish origin from Bulgaria who, on entering Turkey, signed applications for Turkish nationality and were granted naturalization normally within a year.⁵ Until that time, their status was already largely assimilated to that of Turkish nationals, although, for example, they had no right to vote and stand in elections and were exempted from military service.

4. A person to whom Article 1E applies is excluded from being recognized as a refugee by the country in which he or she has taken residence. The same person may, however, also be excluded, if he or she submits an application in a third country. While the requirements for the application of Article 1 E are the same in both cases, the latter situation also requires the examination of possible bars to removal to the country of residence based on the principle of *non-refoulement*.

5. The provision contained in Article 1E can also be found in paragraph 7(b) of UNHCR's Statute.⁶ Therefore, a person falling under the scope of Article 1E is also excluded from UNHCR's mandate.

B. REQUIREMENTS FOR APPLICATION OF ARTICLE 1E

6. For Article 1E to apply, a person who fulfills the requirements of Article 1A must:

- a) have taken residence in the country with respect to which the application of Article 1E is being examined, and

⁴ See: Article 116 of the Basic Law for the Federal Republic of Germany promulgated by the Parliamentary Council on 23 May 1949, available as amended in 2002 at <http://www.unhcr.org/refworld/docid/3ae6b5a90.html>. The Basic Law provides, *inter alia*, that: "Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person." With the 1955 German nationality law, *Volksdeutsche* and their spouses could claim naturalization as a right, subject only to considerations of national security; see: *Gesetz zur Regelung von Fragen der Staatsangehörigkeit*, 22 February 1955, para. 8 and 13, available at <http://www.gesetze-im-internet.de/bundesrecht/stangregg/gesamt.pdf>. See also Grahl-Madsen, *The Status of Refugees in International Law*, A.W. Sijthoff-Leyden, 1966, Volume 1, p. 268).

⁵ In 1952, the High Commissioner's Advisory Committee on Refugees endorsed the recommendation by UNHCR that refugees from Bulgaria in Turkey did not fall under the High Commissioner's mandate (see: *Report of the Second Session of the Advisory Committee*, Geneva 15–19 September 1952, UN Doc. A/AC.36/20, 23 September 1952, para. 31). This conclusion was based on the fact that Turkey had granted to them rights largely assimilating them to Turkish nationals (see: *Report on the Status and Conditions in Turkey of Refugees from Bulgaria*, UN Doc. A/AC.36/12/Rev.1, 6 November 1952).

⁶ Paragraph 7 of UNHCR's Statute, available at <http://www.unhcr.org/refworld/docid/3ae6b3628.html>, provides that "the competence of the High Commissioner ... shall not extend to a person: ... (b) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country".

- b) be recognized by the competent authorities of that country as having the rights and obligations attached to possession of the nationality of that country.

7. A central issue is that Article 1E applies only to cases where the person is *currently* recognized by the country concerned as having these “rights and obligations”. If the competent authorities of the country concerned recognized the person as having such rights in the past but no longer endorse this recognition, Article 1E is inapplicable.

8. A more detailed examination of the core requirements of Article 1E follows.

“Has taken residence”

9. The wording of Article 1E limits its application to a person who “has taken residence” in the country under consideration. It does therefore not apply to individuals who could take up residence in that country, but who have not done so.

10. The phrase “has taken residence” means that temporary or short-term stay, mere transit or visit is not sufficient.⁷ The person concerned must benefit from a residency status which is secure and hence include the rights accorded to nationals to return to, re-enter and remain in the country concerned.⁸ These rights must be available in practice. Voluntary renunciation of residence does not render Article 1E inapplicable, provided the person remains entitled to a secure residency status, including the right to re-entry, and is recognized as having the rights and obligations attached to the possession of nationality.

11. The name of the status which an individual is holding under national law is not the critical issue. Different rights may be attached to similarly named statuses in

⁷ UNHCR, *Handbook*, para. 146, see above footnote 3. See also the *travaux préparatoires* of the 1951 Convention, wherein, the UK delegate stated that for the purposes of Article 1E “the idea of taking up residence was equivalent to taking up permanent stay”; the French text of Article 1E was also explicitly changed from “*élu domicile*” to “*a établi sa résidence*” following interventions by the Belgian and French delegates (see: Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Summary Record of the Twenty-third Meeting*, UN doc. A/CONF.2/SR.23, 26 November 1951, available at <http://www.unhcr.org/refworld/docid/3ae68cda10.html>, statements by Messrs Hoare, Herment, Rochefort).

The explanatory memorandum of the European Commission’s proposal for a Directive on the refugee definition likewise notes that “[m]ere transit or purely temporary presence in such a state is not a basis for exclusion”. See: *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*, COM(2001) 510 final, 12 September 2001, Explanatory Memorandum, available at <http://www.unhcr.org/refworld/docid/47fdfb1ad.html>, Article 14 (which became Article 12 in the final version of the Directive of 29 April 2004, published in OJ L 304/12 of 30 September 2004, available at <http://www.unhcr.org/refworld/docid/4157e75e4.html>).

⁸ Article 12(4) of the 1966 International Covenant on Civil and Political Rights, available at <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>, provides: “No one shall be arbitrarily deprived on the right to enter his own country.” In its General Comment No. 27 (“Article 12 (Freedom of Movement)”) of 2 November 1999, the UN Human Rights Committee clarified that: “The scope of “his own country” is broader than the concept “country of his nationality”. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien.” See: CCPR/C/21/Rev.1/Add.9, para. 20, available at <http://www.unhcr.org/refworld/docid/45139c394.html>.

different countries and at different times. It is the rights attaching to that status in practice in the individual case that are determinative and whether these rights are currently effective and available.

“Rights and obligations”

12. For a person to be excluded under Article 1E, it is not enough that he or she merely enjoys better treatment than that provided for by the 1951 Convention. Rather, the person concerned must satisfy the much more stringent test of being recognized by the competent authorities of the country in which he or she has taken residence as “having the rights and obligations which are attached to the possession of the nationality of that country.”

13. “Rights and obligations” is a reference to rights and obligations generally, not just to “fundamental” rights and obligations such as those mentioned, for instance, in a national Constitution.⁹ The rights and obligations need not be identical in every respect to those enjoyed by nationals of the country in question, but divergences should be few in number and only minor in character. For example, being barred from certain public positions of high office might be acceptable for purposes of the application of Article 1E, but being barred from public positions generally would not. Similarly, an exemption from the obligation to perform military service would also be admissible.

14. No difference is allowed as regards protection from forced removal. Persons to whom the application of Article 1E is considered must like nationals be protected against deportation and expulsion.¹⁰ Like nationals, they should also enjoy freedom of movement, including the right to receive a document, enabling them to leave and re-enter the country concerned. In order to protect a person excluded under Article 1E from *refoulement* while travelling abroad, it is recommended to mention the existence of a bar to removal to the country of origin in such travel document.

15. A difference in treatment with nationals that would not normally be deemed minor in character might in certain cases be considered as such if it is only of short duration. For example, denial of the right to vote or stand in elections might be so considered if, after a reasonably short period of residence the person concerned has the right to acquire the nationality of the country with respect to which the application of Article 1E is being examined. If, on the other hand, one of these rights was to be denied for a period of some years the person’s status could not be considered as being assimilated to that of a national for purposes of the application of article 1E. The status envisaged in Article 1E should normally only be temporary,¹¹ followed by formal

⁹ The comment of the Chilean representative in the Third Committee of the UN General Assembly that the exclusion clause should be confined to “fundamental rights and obligations” was not taken up in the 1951 Convention or UNHCR’s Statute (see statement by Mr. Valenzuela, UN General Assembly, Fifth Session, Third Committee, 334th meeting, 4 December 1950, para. 24).

¹⁰ UNHCR states, in its *Handbook* at para. 145, that “he [or she] must, like a national, be fully protected against deportation or expulsion”. See also the Explanatory Memorandum of the European Commission’s proposal for a Directive on the refugee definition (see above footnote 7, Article 14 b), which states that: “An applicant shall be excluded only if there is guaranteed full protection against deportation or expulsion.”

¹¹ See the statement by the representative of the USA at the twenty-third meeting of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: “The intention was to take care of *de facto* citizenship. It had been thought that a grant of citizenship might take place in certain

acquisition of the nationality of the country concerned. The longer the period required for acquisition of nationality, the larger the assimilation to the rights of nationals should be.

16. In conclusion, exclusion under Article 1E can only apply if the person – with the exception of minor divergences – in essence enjoys the same civil, political, economic, social and cultural rights and has on the whole the same obligations as nationals.

C. NON-REFOULEMENT CONSIDERATIONS ARISING FOR PERSONS EXCLUDED ON THE BASIS OF ARTICLE 1E IN A THIRD COUNTRY

17. Although the competent authorities of the country in which the individual has taken residence may consider that he or she has the rights and obligations attached to the possession of the nationality of that country, this does not exclude the possibility that when outside that country the individual may nevertheless have a well-founded fear of being persecuted if returned there. To apply Article 1E to such an individual, especially when a national of that country who is in the same circumstances, would not be excluded from being recognized as a refugee, would undermine the object and purpose of the 1951 Convention. Thus, before applying Article 1E to such an individual, if he or she claims a fear of persecution or of other serious harm in the country of residence, such claim should be assessed vis-à-vis that country.¹²

D. PROCEDURAL ISSUES

18. Normally, an examination of the circumstances described in Article 1E would be undertaken during the process of refugee status determination, generally after having determined that the person fulfils the requirements of Article 1A. If such circumstances become known after refugee status is granted, this may lead to cancellation of refugee status in accordance with international standards.¹³

circumstances, and that, *while that status was being legally confirmed* [emphasis added], the refugees in question should to all intents and purposes have the rights and obligations of nationals” (see: UN doc. A/CONF.2/SR.23, 26 November 1951, see above footnote 7). This view is confirmed by State practice: both *Volksdeutsche* and ethnic Turks from Bulgaria later acquired full citizenship.

¹² This situation is similar to that envisaged in Article 1A(2), second paragraph, of the 1951 Convention, which states that a person who has more than one nationality “shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national”. If a person is to be excluded under Article 1E based on the consideration that he or she enjoys a status which corresponds to that of nationals, it follows that before doing so, there is an obligation to examine the existence of any fear claimed vis-à-vis the 1E country.

¹³ UNHCR, *Handbook*, para. 141, see above footnote 3. For more details on international standards regarding cancellation, see UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, available at <http://www.unhcr.org/refworld/docid/41a5dfd94.html>.

19. The principle of *non-refoulement* embedded in customary international law, bars the return of an individual excluded under 1E to his/her country of nationality. In order to prevent a removal to that country, the decision rejecting the refugee claim should clarify the grounds on which it was taken and explicitly indicate the existence of a bar to return the person to the country of nationality.

E. CONCLUSION

20. For Article 1E to apply, it would therefore be necessary *inter alia* to examine in the individual case:

- a) whether the person has been granted secure residence in the country concerned including the right to return to and re-enter that country;
- b) whether, with the exception of minor divergences, the person basically has the same civil, political, economic, social and cultural rights as well as obligations as nationals;
- c) whether in particular the person is fully protected against deportation and expulsion;
- d) the current and future availability and effectiveness of this status in practice;
- e) whether, if outside the above-mentioned country, the person has a well-founded fear of being persecuted there.

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