



# **European Migration Network**

## **AD-HOC QUERY on entitlement to the benefits of subsidiary protection holder during the asylum appellate procedure**

**Requested by SK EMN NCP on 16<sup>th</sup> June 2009**

**Compilation produced on 25 August 2009**

### **WIDER DISSEMINATION**

**Responses from Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom (20 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.*

#### **1. Background Information**









Member of the Slovak National Migration Network - Human Rights League (NGO) is looking for information on the practices of EU MS regarding the entitlement to the benefits of the subsidiary protection holder to those asylum seekers who were granted subsidiary protection but not asylum and decide to challenge the specific part of the decision on non - granting the asylum. The SK EMN NCP would appreciate your reply by 30 June 2009.

#### **2. Responses**

		<b>Wider Dissemination?<sup>1</sup></b>	<b>What is the practice in the Member States in cases when in the asylum procedure an asylum seeker is granted subsidiary protection but not asylum, and s/he decides to challenge the specific part of the decision on non - granting the asylum. Is it possible in such case that during the appellate procedure (regarding the asylum part) s/he would be entitled to the benefits of subsidiary</b>
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**SK EMN Ad-Hoc Query: Entitlement to the benefits of subsidiary protection holder during the asylum appellate procedure**

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			<b>protection holder?</b>
	<b>Austria</b>	<b>No</b>	"This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."
	<b>Belgium</b>	<b>Yes</b>	The status of refugee and also of subsidiary protection is granted by the Office of the Commissioner general on Refugees and Stateless Persons (CGRS). One can appeal the decision of the CGRS with the Aliens Litigation Council (ALC). This appeal suspends the positive decision of the CGRS. So the person will not enjoy the status nor the benefits.
	<b>Bulgaria</b>	<b>Yes</b>	In Bulgaria there are isolated cases when an asylum seeker appeals the decision on granting subsidiary protection but not asylum. During the appeal procedure the person who appeals enjoys the rights and obligations of a TCN, seeking asylum.
	<b>Cyprus</b>	<b>Yes</b>	In Cyprus, the single procedure applies as to the examination of asylum claims. When the decision is for subsidiary protection to be granted but the applicant is rejected for the refugee status, the person concerned is entitled to all benefits granted to persons of subsidiary protection, according to article 19 of the Refugee Laws of 2000 – 2007. In any case though, an applicant (in this case a beneficiary of subsidiary protection) can lodge an appeal on the first instance decision by the Head of the Asylum Service to the Reviewing Authority, which is an independent body examining the administrative appeals. It is also possible to file an appeal to the Supreme Court according to article 146 of the Constitution. Anyhow, during the appellate procedure, the person/s concerned is entitled of the benefits of the subsidiary protection as holder.
	<b>Czech Republic</b>	<b>Yes</b>	During the appeal procedure, the person who challenged the decision on granting the subsidiary protection has the rights and duties of an asylum seeker, and is not regarded a subsidiary protection holder.  If the court upholds the decision on granting the subsidiary protection and the person still lodges a cassation appeal, he/she is regarded since as a foreign national entitled to visa to permit leave to remain.
	<b>Estonia</b>	<b>Yes</b>	No. An alien who contests a decision concerning an application for asylum in court has the same rights and obligations as an asylum seeker during the term for contestation.
	<b>France</b>	<b>Yes</b>	An applicant for asylum who has received by the French Office of Asylum (OFPRA) the subsidiary protection guards the rights of subsidiary protection if he is appealing to get refugee status. During the appellate procedure, he is entitled to the benefits of subsidiary protection. The appeal is made to the Court of Appeals for the asylum (CNDA). If this Court gives refugee status to the applicant, his status changes and the applicant becomes a refugee. If the Court refuses refugee status, the applicant retains the benefit of subsidiary protection, granted earlier by the OFPRA.
	<b>Germany</b>	<b>Yes</b>	When, in the course of the asylum procedure, the Federal Office for Migration and Refugees has established that the conditions for subsidiary protection within the meaning of Council Regulation 2004/83/EC are present, the person in question is entitled to obtain a residence permit, subject to proof that none of the grounds for exclusion listed in Article 17(1) of the Regulation are applicable. In this context, it is immaterial whether the decision on the asylum application or on the qualification as refugee, respectively, has already become definite or not.






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	<b>Hungary</b>	<b>Yes</b>	If an asylum seeker has been granted the status of beneficiary of subsidiary protection, he /she will not lose this status during the appeal procedure and will not be regarded as an applicant again. Therefore, he /she is still entitled to the benefits granted to beneficiaries of subsidiary protection. There are several reasons set down in the Act on Asylum when the status of beneficiary of subsidiary protection shall be terminated; one of them is when the holder of the status is granted refugee status by the refugee authority but the status of beneficiary of subsidiary protection will not be withdrawn just because an appeal has been lodged.
	<b>Ireland</b>	<b>Yes</b>	Ireland does not currently operate a single procedure in respect of Asylum/Subsidiary Protection applications. The basis for making an application for Subsidiary Protection is that the person applying has been refused refugee status and the application is considered where there are no outstanding appeals against the refusal decision. Therefore where a person is granted Subsidiary Protection (normally for a period of 3 years) they would continue to be entitled to the benefits once the conditions under which SP was granted are met.
	<b>Italy</b>	<b>Yes</b>	In Italy the Directive 2005/85/CE was implemented by Legislative Decree no. 25/2008. Chapter V regulates the challenge procedures and, specifically, art. 35, par. 6 refers: <i>“The action against the decision rejecting the application for recognition of refugee status or which person is granted subsidiary protection will suspend the effectiveness of the measure challenged”.</i> However, it should be added that it still lacks a practical application of art. 35, par 6 of the Lgs. Decree and therefore the current question represents a case of study. <a href="http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/immigrazione/0984_2008_02_15_Dlgs_28_1_2008_25.html">http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/immigrazione/0984_2008_02_15_Dlgs_28_1_2008_25.html</a>
	<b>Latvia</b>	<b>Yes</b>	No. Asylum seeker does not receive benefits of subsidiary protection holder in case if he/she submits an appeal on decision on granting subsidiary protection - until final decision is taken.
	<b>Lithuania</b>	<b>Yes</b>	Yes. If the alien, who is granted subsidiary protection in the Republic of Lithuania, but not asylum, challenges the part of the decision on not granting asylum, during the period of the examination of such complaint he or she is already enjoying the subsidiary protection, therefore she or he has all the rights deriving from the status of the subsidiary protection.
	<b>Netherlands</b>	<b>Yes</b>	An asylum-seeker can be granted an asylum residence permit when he/she: - is considered to be a "refugee" within the meaning of the Geneva Convention on Refugees (when he/she persecuted in his/her country because of race, religion, nationality, political conviction or because he/she belongs to a specific social group); - is in danger of inhumane treatment, such as torture; - has had traumatic experiences in his/her country of origin; - comes from a country which the Dutch government believes is not safe enough to return to; - has a family member that was recently granted an asylum residence permit. In all these cases the residence permit is the same and gives the same rights and benefits to the holder of it. So it does not make a difference whether the asylum-seeker is a "real" refugee, or whether he/she is granted subsidiary protection. Therefore it is not possible (and there is no need for it) to challenge a positive decision on an application for asylum. Only when the residence permit is redrawn (for example when the ground for granting the residence permit does not exist anymore and no other ground applies), it is possible to challenge this decision.
	<b>Portugal</b>	<b>Yes</b>	Yes. A third-country national who was refused asylum and granted subsidiary protection, may appeal the refusal of asylum and benefit of the

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			subsidiary protection that was granted.
	<b>Slovak Republic</b>	<b>Yes</b>	No, during the appellate procedure an asylum seeker can not enjoy status and benefits of the subsidiary protection.
	<b>Slovenia</b>	<b>Yes</b>	Yes, all the persons who have been granted the international protection start enjoying the rights that originate from this status when they receive the decision by which this status has been recognised.  A person granted the subsidiary protection would enjoy all the rights originating from this status even if a suit has been filed against the decision.
	<b>Spain</b>	<b>Yes</b>	Yes, during the appellate procedure an asylum seeker enjoy status and benefits of the subsidiary protection.
	<b>Sweden</b>	<b>Yes</b>	"Yes, in Sweden if an asylum seeker is granted subsidiary protection he/she will have his residence permit and the same right no matter if he/she is appealing the part of not granting him refugee status. So, yes, he will enjoy the benefits of holding subsidiary protection during the appellate procedure"
	<b>United Kingdom</b>	<b>Yes</b>	“Where an asylum applicant does not qualify for refugee status, the United Kingdom Border Agency (UKBA) will go on to consider whether the applicant qualifies for a grant of Humanitarian Protection (HP) and, if not, whether they would qualify for a grant of Discretionary Leave (DL).  In all cases where it is determined that the applicant qualifies for HP or DL, the applicant will be issued with a full reasons for refusal letter (RFRL) setting out why asylum (and where applicable HP) was refused and a brief explanation as to why HP or DL is being granted. The applicant will be notified of his right to appeal against the decision to refuse asylum but will have the benefits of their subsidiary protection immediately.  Persons granted HP or DL have immediate access to public funds and are entitled to work. Additionally those granted HP after 30 August 2005 have the right to family immediate family reunion”

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