

**Summary of the legal opinion by  
Dr. Reinhard Marx, professor of asylum law  
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**"The interstate effects of Council Decision 2002/460/EC of 17 June 2002 on the legal status of members of the organisation Mujahedin-e-Khalq with regard to the laws governing asylum, deportation, residence, refugee and national status"**, is the topic of the 61-page expert opinion by Dr. Reinhard Marx. He summarised this expert opinion as follows:

1. The fact that an individual entitled to political asylum in Germany belongs to the MEK (Mujehedin-e-Khalq) or has any links with the MEK whatsoever, does not justify the application of Section 60, sub-section 8, clause 1 of the AufenthG (German residence law) nor Section 60, sub-section 8, clause 2 of the AufenthG and hence does *not* justify the *cancellation* of asylum or refugee status, unless the individual has committed actual terrorist acts. This is quite separate from the fact that the revocation of a decision on asylum status is only permitted if the grounds for recognition of that status no longer exist.
2. For this reason, simply belonging to the MEK or having any links with the MEK does not justify the *rejection of a request for asylum*.
3. *Deportation* of members of the MEK in accordance with Section 54 Nr. 5 of the AufenthG simply because of their membership of this organisation is illegal, because in itself this membership does not represent the commission of a terrorist act. As far as the nature and objectives of the organisation is concerned, the MEK cannot be classified as an organisation that supports international terrorism. Further, in view of the classification of the MEK personnel in Ashraf camp, Iraq as 'protected persons' under the Fourth Geneva Convention, the accusations levelled against the organisation of involvement in terrorist activities cannot be maintained from the point of view of international law.

4. Mere membership of the MEK does not justify a restriction of *the legal right to residence protection* in accordance with Section 25, sub-section 3, clause 2 of the third amendment to the AufenthG.
5. Independent of the individual's profile within this organisation, simply belonging to the organisation Volksmujahedin Iran does not fulfil the requirements of "compelling reasons" in accordance with Article 28 (1) of the 1951 Geneva Convention Relating to the Status of Refugees, unless the authorities can prove that the individual has committed acts entitling the state to invoke compelling reasons of national security or public order. Therefore, unless the authorities can prove that the individual has committed such acts, they are not allowed to refuse *to hand over the passport* to an individual entitled to refugee status in accordance with Section 16a, sub-section 1 of the German Basic Law or Section 51, sub-section 1 of the Ausländergesetz (law concerning immigration, residence, deportation, etc.) 1990 (Section 60 sub-section 1 AufenthG).
6. The *naturalisation of foreigners* in accordance with Sections 10 and 11 StAG (German Citizenship Act) cannot be refused simply on the grounds of membership of the MEK. If the applicant for naturalisation presents a loyalty statement in accordance with Section 10, sub-section 1, no. 1 of the StAG, the mere membership of the MEK does not justify the assumption of doubts concerning the accuracy of this statement.

### **Dr. Reinhard Marx**

Dr. Reinhard Marx (58) studied general theory of law in Hamburg and received his doctorate on asylum law under Prof. Dr. Erhard Denninger (Frankfurt) in 1983. Since 1983 he is a lawyer specialised in Asylum Law and Alien's Law. He is a lecturer at the German Lawyers' Association (DAV) and the German Lawyers Academy (DAA). Since 1976 he writes scientific contributions and publishes works on Asylum Law and Human Rights. In addition to writing numerous contributions for German and international publications, Dr. Marx has cooperated in producing commentaries on the German law governing asylum application (AsylVfG) and wrote the specialist book "Ausländer- und Asylrecht in der anwaltlichen Praxis" (Aliens and Asylum Law in Lawyers' Practice). He has also taken part in several hearings in the Bundestag (German Parliament) on issues relating to asylum law.