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4.15.9 Implementing a return

Period for voluntary departure



Several legislative changes and similar initiatives were implemented by EU+ countries concerning the period of time for a voluntary departure when a return decision was issued. In Estonia, this is closely linked to the obligation to cooperate. If a person obstructs the obligation to leave (for example, does not take part in proceedings, refuses to provide fingerprints, etc.), it might be a ground to remove the period of voluntary departure and to consequently detain a person.

In Ireland, the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process published a report which recommended that the 5-day period for unsuccessful applicants to consider a voluntary return should be extended to 30 days, and children and students should be allowed to finish the school year before departure. This recommendation was being examined by the Department of Justice in 2021. An amendment to the International Protection Act 2015, Section 51C was also adopted, which sets out the timeframe for the validity of a return order made in respect of a person whose application for international protection is determined as inadmissible. If the period of validity expires and the person has not been returned, it will be assumed that the person would like to apply for international protection, which will be notified in writing with an invitation to complete the form.

In the Netherlands, the Aliens Circular was amended[1232] and clarified that when a child is born after the parents have received a return decision, even though the child is subject to an independent return decision, the period of voluntary return is linked to the parents' decision and expires at the same time. Consequently, when considering the risk of absconding, the fact that the parents did not comply with the obligation to leave the country brings the child's return decision under this scope, and the parents' action may be attributed to the child as well.

According to amended legislation in Denmark,[1233] the Refugee Appeals Board now has explicit authority to extend the deadline for a departure on individual grounds.

Appeal against a return decision



In Bulgaria, a draft bill to amend the Law on Foreigners[1234] introduced an automatic suspensive effect for an appeal which is filed against an expulsion order issued on the grounds of serious threat to public order. The amendment was issued as a result of the ECtHR judgment in *C. G. and Others* v *Bulgaria.*

Civil society organisations in Spain raised concern about the lack of an automatic suspensive effect on a return during an appeal and the limited application of interim measures that would prevent return.[1235]

Forced return/removal



The minimum period in which the Dutch DT&V has to announce a departure has been established in the Aliens Circular.[1236] While the DT&V to generally notify a returnee about the planned departure up to 48 hours beforehand, this has been regularised by the introduction of guidelines and shortened to 36 hours before the actual departure.

Civil society organisations urged that an effective and independent system of monitoring forced returns should be implemented in Slovakia[1237] and reported that the monitoring system in Norway was insufficiently independent.[1238] They also reported on forced returns in Switzerland, where the legal representative is not informed about the date of a foreseen return.[lxv]

Return management databases



A new legislation[1239] adopted in Germany formed the legal basis for centralised data collection in the area of voluntary return and reintegration programmes. According to the new regulations, data on funding received for voluntary returns and reintegration are stored in the Central Register of Foreigners.

In Switzerland, an amendment to the “Ordinance on implementation of return and expulsion of foreigners”[1240] stipulates access rights, data security and data retention of the new information system, eRetour.

Rejected applicants who temporarily cannot return or be returned

The Netherlands clarified legal provisions on the ’no-fault’ policy,[1241] which applies when a third-country national subject to a return decision is unable to return for reasons that cannot be attributed to him/her.

Civil society organisations reported that Syrians were held in prolonged detention in Greece when returns to Turkey under the readmission agreement were suspended due to the COVID-19 outbreak.[lxvi]

Implementation of the non-refoulement[lxvii] principle and other fundamental rights



Italy extended the list of circumstances in which protection against refoulement applies.[1242] In addition to cases where a foreigner is at risk of being subjected to torture in the country of origin, the list includes cases where a person may be subjected to inhuman or degrading treatment and cases where there is a risk of a violation of the right to respect for private and family life.

According to the amended legislation in Bulgaria, if it is established by a judicial act that a

foreigner subject to a removal order cannot be returned due to a risk to the person's life and liberty or persecution, torture, inhuman or degrading treatment, an order must be issued which explicitly states the prohibition of return and the state to which the foreigner should not be returned. This order is not subject to an appeal.

The Netherlands amended its legislation[1243] on the pronouncement of undesirability (e.g. entry ban on national grounds) to ensure full compliance with fundamental rights, specifically the ECHR, Article 8 (right to respect for private and family life). Explicit reference to the respect for private life was included in the provision.

Similarly in Sweden, a new legal position was issued to provide guidance on the assessment of the right to private and family life in the application of the temporary law, and specifically when assessing whether a decision on a foreigner's return infringes the right prescribed in Article 8.[lxviii] In addition, the Swedish Migration Agency adopted a new legal position on the application of the ECHR, Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) when considering the expulsion of a sick person.[1244] The Swedish Migration Court of Appeal considered the lawfulness of expelling a child born in Sweden to rejected applicants from Lebanon. It assessed that the removal from Sweden was not proportional and was in breach of Article 8 and with the best interests of the child.

The Federal Administrative Court in Austria granted a suspensive effect on a return decision during an appeal by a Hindu family from Afghanistan, claiming that upon return they would be exposed to a real threat to their life and physical integrity due to the COVID-19 pandemic. The court held that both applicants would fall into the risk group due to their age and previous illnesses.

In Luxembourg, in a removal case of a rejected applicant from Tunisia, the Administrative Tribunal ruled that COVID-19 measures were temporary and there was no evidence that a removal could not eventually take place in the medium term.

Civil society organisations reported on a practice in Switzerland of returning third-country nationals to countries tormented by conflict and persecution, for example Afghanistan, Ethiopia, Sri Lanka and Turkey, and they highlighted the occurrence of returns by the police at the alpine border between France and Italy.[1245], [1246]

[lxv] Upon the request of Asylex, in January 2021, the UN Committee on the Elimination of Discrimination against Women (CEDAW) and CAT issued interim measures to immediately stop the deportation of two clients who were to be returned to Ethiopia. Despite the verdict by international organisations, Swiss authorities proceeded with the deportation of other Ethiopian deportees. In addition, rejected asylum seekers subject to deportation are regularly picked up without notice in the middle of the night by policemen. AsyLex Legal Advisory. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/AsyLex.docx

[lxvi] Since March 2020, no readmission to Turkey took place within the framework of the EU-Turkey Statement, while the Greek authorities noted that they have not received any reply for requests submitted since June 2020. It was also observed that asylum claims submitted on the

islands by Syrians while in detention were rejected as inadmissible by the Appeals Committees on the grounds of the safe third country concept. While the decision of the committees was to order their readmission to Turkey, the applicants were released after the notification of the decision and given a police note asking them to leave voluntarily within a deadline of 15-30 days. Some of these rejected applicants, who could not leave Greece, moved on their own initiative to the mainland, and a few managed to submit a subsequent asylum application requesting authorities to examine their claims on the merits. Danish Refugee Council Greece. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/Danish-Refugee-Council-Greece_Input.pdf

[lxvii] See the definition: European Migration Network. (2021, May 12). *Glossary: non-refoulement*. https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/non-refoulement_en

[lxviii] The legal position was adopted on 27 March 2020, but was replaced on 21 April 2021 by: Swedish Migration Agency | Migrationsverket. (2021, April 21). *Rättsligt ställningstagande. Innebörden av svenskt konventionsåtagande och artikel 8 i Europakonventionen vid tillämpningen av 11 och 13 §§ i den tillfälliga lagen - RS/061/2021 [Legal position. The meaning of the Swedish convention obligation and Article 8 of the European Convention in the application of Sections 11 and 13 of the Temporary Act - RS/061/2021]* . https://lifos.migrationsverket.se/dokument?documentSummaryId=45466

[1232] Besluit van de Staatssecretaris van Justitie en Veiligheid van 7 december 2020, nummer WBV 2020/23, houdende wijziging van de Vreemdelingencirculaire 2000 [[Decision of the State Secretary for Justice and Security of 7 December 2020, number WBV 2020/23, concerning the amendment of the Aliens Circular 2000]. https://zoek.officielebekendmakingen.nl/stcrt-2020-64256.html

[1233] Lov nr 821 af 09/06/2020, Lov om ændring af udlændingeloven, integrationsloven og forskellige andre love (Forenkling af regler, herunder om klageadgangen til Udlændingenævnet og indrejseforbud, indførelse af en bagatelgrænse for tilbagebetaling af gebyr, præcisering af adgangen og ændring af kompetencen til at forlænge en udrejsefrist, opfølgning på evaluering af Danmarks anvendelse af Schengenreglerne om bl.a. tilbagesendelse og præcisering af rækkevidden af indrejseforbud omfattet af udsendelsesdirektivet m.v.) [Act No 821 of 09/06/2020, Act amending the Aliens Act, the Integration Act and various other acts Simplification of rules, including on the right of appeal to the Immigration Appeals Board and entry ban, introduction of a de minimis limit for fee refund, clarification of access and change of competence to extend a return deadline, follow-up on evaluation of Denmark's application of the Schengen rules on return and clarification of the scope of entry bans covered by the Return Directive, etc.)]. https://www.retsinformation.dk/eli/lta/2020/821

[1234] ????????????? ?? ????????? ? ?????????? ?? ?????? ?? ?????????? ? ????????? ????????, ???????? ??????? ???? 21 / 2021 ? [Bill amending and supplementing the Law on Foreigners in the Republic of Bulgaria, State Gazette number 21/2021], February 26, 2021. https://www.parliament.bg/bg/laws/ID/163303

[1235] Foundation Cepaim | Fundación Cepaim. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/Cepaim.pdf

[1236] Besluit van de Staatssecretaris van Justitie en Veiligheid van 28 september 2020, nummer WBV 2020/21, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the State Secretary for Justice and Security of 28 September 2020, number WBV 2020/21, concerning the amendment of the Aliens Circular 2000], September 28, 2020. https://zoek.officielebekendmakingen.nl/stcrt-2020-48461.html

[1237] Human Rights League | Liga za ?udské práva. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/HumanRights-League.pdf

[1238] Norwegian Organisation for Asylum Seekers | Norsk organisasjon for asylsøkere. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/NOAS.docx

[1239] 2. DAVG, Zweites Datenaustauschverbesserungsgesetz, Zweites Gesetz zur Verbesserung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichen Zwecken vom 4. August 2019 [2. DAVG, Second Data Exchange Improvement Act, Second Act for the Improvement of Registration and of Data Exchange for the Purposes of Residence and Asylum Affairs of 4 August 2019], August 4, 2019. http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl119s1131.pdf

[1240] Ordonnance sur l'exécution du renvoi et de l'expulsion d'étrangers (OERE), RO 2020 887 [Ordinance on the implementation of foreigners' return and expulsion (OERE)]. https://www.fedlex.admin.ch/eli/oc/2020/172/fr

[1241] Besluit van de Staatssecretaris van Justitie en Veiligheid van 25 maart 2020, nummer WBV 2020/7, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the State Secretary for Justice and Security of 25 March 2020, number WBV 2020/7, amending the Aliens Circular 2000], March 25, 2020. https://zoek.officielebekendmakingen.nl/stcrt-2020-15932.html

[1242] Legge 18 dicembre 2020, n. 173 Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130, recante disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonche' misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della liberta' personale. (20G00195) [Law No 173 of 18 December 2020, Conversion into law, with amendments, of Decree-Law No 130 of 21 October 2020 laying down urgent provisions on immigration, international protection and supplementary protection, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures concerning the prohibition of access to public establishments and premises of public detention, combating the misuse of the web and regulating the rights of persons deprived of personal freedom. (20G00195)], December 18, 2020. https://www.gazzettaufficiale.it/eli/id/2020/12/19/20G00195/sg

[1243] Besluit van de Staatssecretaris van Justitie en Veiligheid van 28 september 2020, nummer WBV 2020/21, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the State Secretary for Justice and Security of 28 September 2020, number WBV 2020/21, concerning the amendment of the Aliens Circular 2000]. https://zoek.officielebekendmakingen.nl/stcrt-2020-48461.html

[1244] Swedish Migration Agency | Migrationsverket. (2020, June 17). *Rättsligt ställningstagande. Tillämpning av artikel 3 i Europakonventionen då sjukdom åberopas - RS/008/2020 [Legal position. Application of Article 3, ECHR when illness is invoked - RS/008/2020]* . https://lifos.migrationsverket.se/dokument?documentSummaryId=44462

[1245] AsyLex Legal Advisory. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/AsyLex.docx

[1246] European Union Agency for Fundamental Rights. (2020). *Migration: Key fundamental rights concerns - Quarterly Bulletin - 2020: 1 July - 30 September 2020*. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-4_en.pdf