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3.7.1.3. Detention pending a return

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The Czech Supreme Administrative Court reiterated the provisions of detention pending a return and the assessment of the principle of non-r*efoulement*, even in cases when the person did not apply for international protection.

The rules on the duration of detention pending a return changed in Poland in April 2023. After the expiration of the 6-month period of a foreigner's stay in a guarded centre or detention centre for foreigners, the stay may be extended for a specified period of time, not exceeding another 12 months if there is a reason to believe that the period for the execution of the decision on the foreigner's obligation to return will be extended, if the person under the obligation to return does not cooperate with the Border Guard authority in implementing the decision, or if it is temporarily impossible to implement the decision due to delays in obtaining documents from a third country. The decision to extend the period of stay may be issued for a maximum of 3 months. These timeframes do not include the period of stay of a foreigner in a guarded centre or in custody for foreigners in connection with the application for international protection. Each extension is subject to control by the centre’s authority and by the court, which considers the cases on an individual basis and informs the foreigner in an understandable language about the reasons for the prolongation.654Still under the previous legislative framework, the ECtHR condemned Polish authorities for the unlawful detention of a mother with three children pending their return. The length of the detention indicated that it was not a measure of last resort. In addition, the extensions of the detention measure were only communicated orally and were not sufficiently explained, thus the family did not have a fair opportunity to challenge the legality of their detention.

In Greece, an administrative court ordered the release of a rejected applicant who was detained pending a return to Türkiye, which was deemed to be a safe third country for him. The court found that there was no reasonable prospect of a removal in his case (*see Section 3.3.2*).

In Sweden, the Migration Court of Appeal confirmed the Migration Agency’s decision to detain a foreigner pending a return under the provisions of the so-called “probability detention”, even though the period for appealing the rejection of his application for international protection was still running, as the conditions for detention were otherwise met.

The District Court of Frankfurt am Main concluded that, despite the existence of grounds for detention, the detention order was unlawful as the local court failed to sufficiently investigate the medical opinions and the severe deterioration of the mental health of the person’s wife as a

result of her husband’s detention prior to deportation.

The Regional Court in Košice concluded that a foreigner’s detention pending a return was unlawful, as the authorities did not sufficiently investigate the consequences of a return to the country of origin, which included potential violations of the ECHR, Article 3. In another case, the same court recalled that a detention pending a return requires not only an enforceable return decision but also prospects for implementing the return.

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