



EMN Ad-Hoc Query on URGENT FI Ad hoc -query Update of ES AHQ on abuses in requests for Asylum (October 2015)

Requested by Rafael BÄRLUND on 12th December 2017

Protection

Responses from Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Sweden, United Kingdom, Norway (18 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.

Background information:

Finland would like to ask for an update of the ES Ad hoc -query on abuses in requests for asylum launched in October 2015. The responses provided for the EMN Study on the Return of Rejected Asylum Seekers from 2016 has also been consulted.

Finland has encountered an increasing number of subsequent applications. Many of which have been lodged only to prevent execution of expulsion decision. The subsequent application(s) do severely hinder the execution of expulsion and burden the Finnish Immigration Service and the Police. In this context we would like to check if any changes have been done to legislation in order to prevent misuse of asylum procedure.

Please find enclosed the compilation of the ES Ad hoc -query and we would kindly ask you to either update your response if there has been any changes or notify if the legislation and procedures are the same as in the previous response to the ES-query.

There is an urgent need for the information to the Finnish government before the Christmas season, although responses are welcome even after the deadline.

Summary

Responses were received from 18 member states: Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Sweden, United Kingdom, Norway.

All Member States except Norway indicated that their answers were for wider dissemination. The summary is based on the answers of the 17 countries whose answers are for public dissemination.

1. If a foreign national has been notified of an express decision to refuse asylum, can the execution of an expulsion decision be suspended by

virtue of a fresh application for asylum?

Five countries (EE, FI, MT, NL, SK) responded yes. Six countries (BG, DE, LT, LU, SE, UK) responded yes, however a preliminary examination determines if the subsequent application is admissible.

Belgium responded yes, however according to the new legislation when the applicant is being held in a closed centre, the appeal will not suspend the expulsion if the subsequent asylum application is lodged within a year after a final decision was taken regarding the previous asylum application (If there is no violation of the non-refoulement principle). Also from a third asylum application onwards the appeal procedure is non-suspensive.

Two countries (HR, LV) responded yes, however if an applicant makes another subsequent application (a third asylum application) following a decision considering a first subsequent application the asylum seeker can be returned to his/her country of origin. The exception from the right to remain in the territory can be made if there is no violation of the non-refoulement principle.

Two countries (CZ, FR) responded no. (If there is no violation of the non-refoulement principle.)

Hungary responded no. The subsequent application will not suspend expulsion. However, the applicant may request the court to suspend the execution of the expulsion.

2. If the failed asylum seeker is held at an internment centre, may he or she resubmit an application for asylum such that it will be processed afresh, suspending the execution of expulsion until a decision is made on it?

Four countries (EE, FI, MT, NL) responded yes. Seven countries (BG, DE, LT, LV, SE, SK, UK) responded yes, however a preliminary examination determines if the subsequent application is admissible.

Two countries (HR, LV) responded yes, however if an applicant makes another subsequent application (a third asylum application) following decision considering a first subsequent application the asylum seeker can be returned to his/her country of origin. The exception from the right to remain in the territory can be made if there is no violation of the non-refoulement principle

Belgium referred to the answer of question 1.

Two countries (CZ, FR) responded no. (If there is no violation of the non-refoulement principle.)

Hungary responded no. The subsequent application will not suspend expulsion. However, the applicant may request the court to suspend the execution of the expulsion.

3. Would he or she be entitled to launch a fresh application immediately after the failure of the original one if the grounds of the asylum decision are different? Would that fresh application have a suspensive effect?

Two countries (EE, FI) responded yes and yes, Finland referred to questions 1 and 5.

Belgium responded yes, and the appeal is not suspensive in certain situations (ref. question 1)

Seven countries (DE, HU, LV, LT, LU, SE, UK) responded yes, however a preliminary examination determines if the subsequent application is admissible. If it is, the application has suspensive effect.

Four countries (BG, MT, NL, SK) responded yes, however a preliminary examination determines if the subsequent application is admissible. Depending of the resulting procedure the applicant may or may not have a right to remain in the country until application is solved.

Croatia responded yes, however after the first subsequent application is rejected the applicant does not have right to remain in the country.

Two countries (CZ, FR) responded yes and there is no suspensive effect (If there is no violation of the non-refoulement principle).

4. In case of a fresh application for asylum, is it the asylum body which must refuse leave to proceed and make a decision, or can the police themselves, being in charge of passing on the application, notify and refuse leave to proceed since there is an earlier decision in negative?

Sixteen countries (BE, BG, CZ, FI, FR, DE, HR, HU, LV, LT, LU, MT, NL, SE, SK, UK) responded that the asylum body has the authority. In Estonia the Estonian Police and Border Guard Board is responsible for making the asylum as well as refusing leave to proceed decisions.

5. If there is no change of circumstances in the applicant's country of origin, at what intervals may he or she resubmit an application for asylum such that the fresh application engages the principle?

Nine countries (BG, CZ, EE, DE, HR, LT, LV, MT, SE) responded there are no limitations to resubmit an application.

Belgium responded there are no limitations to resubmit an application, and referred to question 1 for the situations when a subsequent application does not have a suspensive effect.

Two countries (FR, LV) referred to question 3.

Two countries (NL, UK) responded there are no limitations to resubmit an application, however a preliminary examination determines if the subsequent application is admissible.


Two countries (FI, SK) responded there are no limitations to resubmit an application, however there are situations when there are exceptions for the right of the applicant to remain in the country.


Hungary did not respond to the question.


Questions


1. If a foreign national has been notified of an express decision to refuse asylum, can the execution of an expulsion decision be suspended by virtue of a fresh application for asylum?
2. If the failed asylum seeker is held at an internment centre, may he or she resubmit an application for asylum such that it will be processed afresh, suspending the execution of expulsion until a decision is made on it?
3. Would he or she be entitled to launch a fresh application immediately after the failure of the original one if the grounds of the asylum decision are different? Would that fresh application have a suspensive effect?
4. In case of a fresh application for asylum, is it the asylum body which must refuse leave to proceed and make a decision, or can the police themselves, being in charge of passing on the application, notify and refuse leave to proceed since there is an earlier decision in negative?
5. If there is no change of circumstances in the applicant's country of origin, at what intervals may he or she resubmit an application for asylum such that the fresh application engages the principle?


Responses

	Country	Wider Dissemination	Response
	Belgium	Yes	<p>1. A subsequent asylum application will in principle suspend the implementation of the return decision. However when the person in irregular stay is being held in a closed centre and he lodges a (subsequent) asylum application within the 48 hours preceding the return (merely to hamper the return procedure), this asylum application will in principle be rejected and the appeal at the Council for Aliens Law Litigation (CALL) will not be suspensive (Article 39/70 of the Immigration Act) and the person can be returned during the appeal procedure if there is no violation of the non-refoulement principle (Art. 3 ECHR). Besides, when the person submits a third asylum application after a final decision was taken regarding the previous application, the appeal lodged with the CALL is also not suspensive. A recent legislative change adopted in the Parliament on 9 November 2017 (expected to come into force begin 2018) tightens the rules as regards subsequent asylum applications. Article 39/70 of the Immigration Act will stipulate that for the person in irregular stay and being held in a closed centre the appeal with the CALL will no longer be suspensive if the subsequent asylum application is lodged within a year after a final decision was taken regarding the previous asylum application. This will replace the regulation that an appeal procedure for applicants in a closed centre is non suspensive, if the asylum application is lodged 48 hours preceding the return. The provision</p>



			<p>that from a third asylum application onwards the appeal procedure with the CALL is non-suspensive either remains unaltered.</p> <p>2. See reply to question 1, a subsequent application can be lodged, but the appeal against a negative decision will in certain cases not be suspensive.</p> <p>3. Yes, but the appeal with the CALL is not suspensive in certain situations (see reply to question 1)</p> <p>4. It are the asylum authorities who will issue the decision, the police is not involved in the assessment of the subsequent application.</p> <p>5. There is no determined interval during which a subsequent application can not be lodged, however if the person is being held in a closed centre and the appeal is lodged within 48 hours preceding the return, the appeal procedure is not suspensive. In the near future, for what concerns persons being held in a closed centre, the appeal procedure will not be suspensive if the subsequent application is lodged within a year after a final decision was issued regarding the previous asylum application. (See also reply to question 1).</p>
	Bulgaria	Yes	<p>1. In December 2015 the Law on Asylum and Refugees was amended. One of the amendments was the introduction of a procedure for preliminary examination of a subsequent application. The Law provides the opportunity to consider a subsequent application as inadmissible if no new elements or findings have arisen or have not been presented by the applicant relating to his personal situation or country of origin. Within 14 days the interviewing authority takes a decision authorising or not allowing the subsequent application to the procedure for the granting international protection. If the application is admitted to the procedure for granting international protection the applicant is registered as asylum seeker and then the coercive administrative measures, such as "deprivation of the right of residence", "return", "expulsion" and "prohibition to enter the country" are not enforced before the procedure is completed with a final decision. In carrying out the procedure for preliminary examination of a subsequent application, the right to remain on the territory is not granted to a foreigner where: 1. the foreigner is filing a first subsequent application for international protection only in order to delay or to prevent the execution of the applied enforcement administrative measure of withdrawal of the right of stay, return or expulsion, or 2. the foreigner files another subsequent</p>



			<p>application for international protection, and the previous subsequent application has been considered inadmissible or has been considered by the merits, and for whom returning to his country of origin or to a third safe country will not endanger his life or freedom for reasons of race, religion, nationality, membership of a particular social group or political opinion or exposure to a risk of torture or other forms of cruel, inhuman or degrading treatment or punishment.</p> <p>2. The failed asylum seeker may resubmit an application for asylum which would be considered as a subsequent application. The application is subject first to preliminary examination in the procedure for preliminary examination of a subsequent application, as said in answer 1.</p> <p>3. There are no limitations in relation to the grounds on which a subsequent application is lodged and to the timeframe within which a subsequent application can be lodged. As said above in carrying out the procedure for preliminary examination of a subsequent application, the right to remain on the territory is not granted to a foreigner where: 1. the foreigner is filing a first subsequent application for international protection only in order to delay or to prevent the execution of the applied enforcement administrative measure of withdrawal of the right of stay, return or expulsion, or 2. the foreigner files another subsequent application for international protection, and the previous subsequent application has been considered inadmissible or has been considered by the merits, and for whom returning to his country of origin or to a third safe country will not endanger his life or freedom for reasons of race, religion, nationality, membership of a particular social group or political opinion or exposure to a risk of torture or other forms of cruel, inhuman or degrading treatment or punishment.</p> <p>4. Regarding applications for international protection only the asylum body is competent.</p> <p>5. There are no limitations in relation to the intervals for lodging of subsequent asylum applications.</p>
	Croatia	Yes	<p>1. 1. The subsequent application can be lodged by the third-country national or a stateless person after receiving the notification on the asylum refusal, and it postpones the execution of the removal until the Ministry render a decision to dismiss or approve application. However, in cases of the expressed decision to refuse asylum, the examination of the subsequent application will normally be finalized in the framework of accelerated procedure. Applicants who lodge a new subsequent</p>


			<p>application after a decision has already been rendered on a previous subsequent application, pursuant to Article 47, paragraph 6 of the Act on International and Temporary Protection, shall not have right of residence in the Republic of Croatia.</p> <p>2. 2. Yes, see answer to Q1.</p> <p>3. 3. -Yes. According to the Article 47 of the Act on International and Temporary Protection the subsequent application can contain the relevant facts and evidence which arose the finality of the decision or which the applicant for justified reasons did not present during the previous procedure relating to establishing the meeting of the conditions for approval of international protection. -Yes. The new application would have suspensive effect on the first return decision. However, after the first subsequent application is rejected, the applicant no longer has right to reside in the Republic of Croatia.</p> <p>4. 4. The decision is taken by the asylum body of the Ministry of the Interior.</p> <p>5. 5. There are no limitations in relation to the number of subsequent applications that can be lodged, the ground on which a subsequent application is lodged, or the time frame within which a subsequent application can be lodged. Therefore, once an asylum seeker has been rejected following a final decision, he or she can lodge a subsequent application at any point in time.</p>
	Czech Republic	Yes	<p>1. No. If the removal is imminent, subsequent asylum application cannot postpone the execution of the removal – this situation concerns mainly detained asylum applicants. There is an exception respecting non-refoulement principle – if there are very serious new circumstances in the application, the removal will be postponed.</p> <p>2. Czech Republic has no relevant experience in this field as it does not occur in practice. Such subsequent application will be considered in the same regime as described in Q1 – it will postpone the removal only if there are very serious new circumstances.</p> <p>3. See Q2: Detained applicant is entitled to present new circumstances. However, such subsequent application will be considered in the same regime as described in Q1 – it will postpone the removal</p>


			<p>only if there are very serious new circumstances.</p> <p>4. All new circumstances related to asylum application are considered by the asylum authority (Ministry of the Interior), even those addressed to the Police.</p> <p>5. The question is not very clear – there is no time limit after which subsequent application can be made. Principle mentioned in Q1 and further applies: in case of detained asylum applicants, they can submit new circumstances all the time but only in case they are new and of very serious nature, they can have impact on removal execution.</p>
	Estonia	Yes	<p>1. Yes, in Estonia the submission of a new application for asylum can entail the suspension of expulsion of the third country national.</p> <p>2. According to the Estonian Act on Granting International Protection to Aliens, if an applicant submits additional explanations or a subsequent application the Police and Border Guard Board shall review additional explanations or documents accompanying the subsequent application within the framework of reviewing the previous application for international protection, renewing the previous proceedings for granting international protection. If an alien lodges an application for international protection during the detention in the detention centre or in the course of expulsion, the Police and Border Guard Board or the Estonian Internal Security Service shall detain him or her and apply for the permission from the administrative court to detain the applicant for international protection for up to two months within 48 hours as of the lodging of the application for international protection if the basis for the detention of the applicant for international protection are provided in the Act. In such case, the detention of an alien with the purpose of expulsion shall be suspended until the decision with regard to the application for international protection has been taken.</p> <p>3. Yes, it is possible to launch a fresh application immediately after the failure of the original one. The application is treated as a subsequent application, however the applicant is entitled to present new circumstances or evidence, which have not been assessed before. Also the applicant has to give a reasonable explanation, why the circumstances were not presented in the initial procedure.</p> <p>4. The Estonian Police and Border Guard Board is responsible for making the asylum as well as</p>


			<p>refusing leave to proceed decisions.</p> <p>5. There is no specific interval or time limit for resubmitting an asylum application.</p>
+	Finland	Yes	<p>1. Yes, a new asylum application suspends the enforcement of the original negative decision. The application is considered to be a subsequent application if the decision to the previous application has entered into legal force and the applicant still remains in Finland or has left Finland only for a short period of time. (Aliens Act, Section 102) If the subsequent application is made only in order to delay the enforcement of the previous return decision, it can be processed in an accelerated procedure. In this situation, a return decision can be enforced after 8 days of serving the decision to the applicant. If the subsequent application does not contain any new grounds for remaining in the country, it can be dismissed. In this situation, a return decision can be enforced immediately after it has been served to the applicant. In both situations, the administrative court can be requested to prohibit the enforcement of the decision. (Aliens Act, Section 201)</p> <p>2. Yes, as long as the asylum seeker is in Finland (s)he has right to resubmit an application for asylum. However, recurring applications from the same applicant can ultimately be dismissed and the return enforced. For more information, please see responses to questions 1 and 5.</p> <p>3. Yes, he/she would be entitled to submit a new asylum application if the decision on the previous application has entered into legal force. A new application will generally suspend the enforcement of the original return decision. Please also see responses to questions 1 and 5.</p> <p>4. The Finnish Immigration Service (the asylum body) makes the decision.</p> <p>5. A new application can always be submitted if the decision to the previous application has entered into legal force. (If the new application is made while the previous application is still being processed, the information presented by the applicant is forwarded to the authority processing the case to be taken into account in the decision to the original application. Aliens Act, Section 102) There is no time-limit as to how many times, or how often, a person can submit a new asylum application. However, recurring applications from the same applicant can ultimately be dismissed and the return of the applicant enforced despite of lodging a new application. As it was noted in</p>

			<p>response to question 1, lodging a (first) subsequent application prevents the enforcement of the return decision made on the original application, but the subsequent application can either be processed in an accelerated manner or dismissed. Lodging a second subsequent application does not prevent the enforcement of the return decision which was made on a dismissed (first) subsequent application. (Aliens Act, Section 201)</p>
	France	Yes	<ol style="list-style-type: none"> 1. NO : no suspension of the expulsion decision if filing of a fresh application for asylum 2. S/he can file a subsequent application but no suspension of the expulsion decision in this case. 3. An asylum applicant can file a new application if the first one was refused, provided s/he can provide new elements which s/he was not aware of for the first application or if new elements / facts have occurred after the first decision. S/he can file a subsequent application once a definite decision is given for the first application (i.e. after the second instance negative decisions by the CNDA - National court of Asylum, after the first instance negative decision by the OFPRA - French office for the protection of refugees and stateless persons- if no appeal was filed within one month or within 9 months after the termination decision by OFPRA). No suspension of the expulsion decision if filing of a fresh application for asylum. 4. Only the OFPRA (French office for the protection of refugees and stateless persons) can make a decision on subsequent applications. 5. see Q3
	Germany	Yes	<ol style="list-style-type: none"> 1. 1. If the first decision has become effective (for example, when there is a binding (final) judgment of a court that confirms the negative decision of the Federal Office for Migration and Refugees) under certain conditions (see also question 2) an execution of an expulsion decision might be suspended by a fresh application. 2. 2. For the procedure it is not relevant if an applicant is held in an internment centre or is accommodated otherwise. If a subsequent application will be processed afresh (if a new procedure is


			<p>admissible and a decision is to be taken on material grounds) a subsequent application would have suspensive effect.</p> <p>3. 3. There is no time limit to submit a subsequent application. Such application would have suspensive effect under the conditions described above.</p> <p>4. 4. Only the Federal Office is responsible for decisions on asylum applications. Therefore, the Federal Office also decides on subsequent applications regardless if the former decision was negative or not.</p> <p>5. 5. Such time limits are not to be applied.</p>
	Hungary	Yes	<p>1. No, in such cases the applicant has the right to request the court to suspend the execution of the expulsion decision, or the court also has the power to decide on this matter ex officio.</p> <p>2. No, submitting a new application doesn't suspend the execution of the expulsion decision. Only the court has the power to suspend the execution. The execution is automatically suspended only when it is a first application, if the applicant resubmits it and the grounds of the application are the same there is no suspension.</p> <p>3. In such cases, the determining authority first decides whether the application is well-founded or not. If the application is unfounded the application is either inadmissible or the authority can decide in an accelerated procedure, on these grounds we don't suspend the execution of the expulsion decision. If the application is well-founded the authority may decide to suspend the execution.</p> <p>4. No, only the asylum authority can decide on applications, the police or the alien policy authority don't have the power to make such decision</p> <p>5. .</p>
	Latvia	Yes	<p>1. Yes. According to the Asylum Law a person has the right to submit a new application (subsequent application) when the final decision on the previous application has been taken. If the first</p>

			<p>subsequent application has been lodged, merely in order to delay or frustrate the enforcement of a decision which result his/her imminent removal the expulsion decision is suspended until the claim to the Administrative Court is submitted against the decision on inadmissibility of subsequent application. If an applicant makes another subsequent application following decision considering a first subsequent application the asylum seeker can be return to his/her country of origin. In both situations exception from the right to remain in the territory can be made if a return decision will not violate the Member State International and Union obligations.</p> <p>2. Yes, relating to the right to submit a subsequent application there is no difference whether the failed asylum seeker is held at an internment centre or staying somewhere else. Please see the answer above.</p> <p>3. There are no specific time limits in the Asylum Law neither for submission of the first nor subsequent application. In order the new (subsequent) application to be accepted for the new procedure an asylum seeker has an obligation to indicate proof, confirming that circumstances, on which the previous decision on refusal to grant refugee or alternative status (subsidiary form of protection according to the national law) was based, have changed significantly (new facts and findings which had not been known by him during the previous examination of application have arisen).</p> <p>4. According to the Asylum Law the Office of Citizenship and Migration Affairs is taking all kinds of decisions in relation to asylum application (except - detention).</p> <p>5. Please see the answer on question 3.</p>
	Lithuania	Yes	<p>1. According to the applicable national law, a decision to refuse asylum may be appealed against to the court in 14 days after notification. The court procedures (at two instances) may take several months or even up to a year. If a subsequent application is submitted during the appeals procedures (i.e. before the initial decision to refuse asylum becomes final), all those “fresh” claims are forwarded to the court as additional argumentation and are not proceeded as new applications. In case a subsequent application is submitted after the initial decision becomes final and before the actual expulsion (which is extremely rare), the execution of expulsion decision is suspended until a</p>

			<p>new decision is taken on a subsequent application. Depending on the substantiation of a subsequent application, it may be either examined in the framework of the regular procedure, accelerated procedure or deemed inadmissible. Where it's examined under the accelerated procedure or deemed inadmissible, there's no automatic suspensive effect, unless ordered by court. Thus, as soon as the administrative decision on the subsequent application is taken, the expulsion can be executed.</p> <p>2. See answer to the 1st question, the same principles apply here.</p> <p>3. See answer to the 1st question. It's not an entitlement per se, but rather a lack of restriction on this kind of abuse. A "fresh" application, submitted after the initial decision becomes final, must be processed and would have a suspensive effect on expulsion. If substantiation (grounds) of the fresh application is different (and sound), it would be examined under regular procedure.</p> <p>4. The police / border guards, who are in charge of passing on the application, have no authority on deciding whether an application, either subsequent or not, is admissible, thus only the asylum authority may decide on that.</p> <p>5. Currently there are no provisions in our national legislation which would regulate intervals for lodging of subsequent asylum applications or provide for any effective restrictions on admissibility of those, except for instances where subsequent application is based on the same essential grounds as the previous one (then it's deemed inadmissible).</p>
	Luxembourg	Yes	<p>1. 1. In Luxembourg, if there is a negative administrative decision during the normal international protection procedure in the framework of the examination of the merits of the application and the applicant files an appeal against the decision, the return decision is suspended until the First instance Administrative Court decides upon the case (article 35 (1) of the Law of 18 December 2015 on international protection and temporary protection – Asylum Law). If the First instance Administrative Court upholds the administrative decision, the applicant can file an appeal before the Administrative Court (article 35 (1) paragraph 2) which has a suspensive effect (article 36 (1)). If the Administrative Court rejects the appeal, the return decision can be executed. If in such a case the applicant files a new application in order to stop the execution of a return decision, article 9 (derogation to the right to stay) applies if the application is considered as inadmissible. Article 28 (2)</p>

			<p>d) establishes that the Minister in charge of immigration shall consider inadmissible an application for international protection made by a person who has been definitely refused international protection, unless new evidence of facts emerge or are presented by the applicant which significantly add to the likelihood of the applicant qualifying for international protection (article 32 (2) (4)). If the inadmissible subsequent application has been lodged to delay or to avoid the execution of the return's decision according to article 9, then the applicant has no right stay on the territory. He can be returned immediately even if he appeals against the inadmissible decision, as there is no suspensive effect and no way to suspend the execution of the return's decision.</p> <p>2. Yes, but an interview is immediately conducted and a decision taken within few hours See also answer to Q.1</p> <p>3. a) Yes. Article 32 (2) (4) establishes that the Minister in charge of immigration will not consider a new application inadmissible if new evidence or facts emerge or are presented by the applicant which significantly add to the likelihood of the applicant qualifying for international protection. b) Yes. The new application would have suspensive effect on the first return decision.</p> <p>4. No. In Luxembourg, only the Minister in charge of immigration can take the decision refusing international protection (see articles 3 (1), 26 (1), 28 (2) and 34 (1) and (2)).</p> <p>5. 5. The Asylum Law does not establish any periods for filing applications in cases where the decision cannot be executed because the situation in the country of origin has not changed and the third-country national cannot be returned. However, article 125bis (1) of the Law of 29 August 2008 on free movement of persons and immigration establishes that if the third-country national proves that s/he cannot return to his/her country of origin for reasons that are not imputable to him/her, the Minister in charge of immigration can grant a postponement of removal for a certain period until there is a reasonable perspective to executing the return decision.</p>
	Malta	Yes	<p>1. If a third country national or stateless person lodges a subsequent application with the Office of the Refugee Commissioner, the execution of an expulsion decision is suspended till a decision on the subsequent application has been taken. FYI in order to minimise abuse, first instance applications and subsequent applications lodged to delay a deportation order are prioritized by the Office and seen</p>

			<p>to as soon as possible.</p> <p>2. Yes, a failed asylum seeker who is being detained pending deportation can resubmit an application for asylum which would be considered as a subsequent application.</p> <p>3. There are no limitations in relation to the number of subsequent applications that can be lodged, the ground on which a subsequent application is lodged, or the timeframe within which a subsequent application can be lodged. Therefore, once an asylum seeker has been rejected following a final decision, he or she can lodge a subsequent application at any point in time. Regarding the suspensive effect in case of a subsequent application, it should be noted that national legislation provides for the following exceptions: (3) An exception from the right to remain in the territory may be made where a person: (a) has lodged a subsequent application, which is not further examined pursuant to article 7A of the Act, merely in order to delay or frustrate the enforcement of a decision which would result in his imminent removal; (b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to article 24 of the Act or after a final decision to reject that application as unfounded: Provided that the exception referred to in this regulation may only be made where the Commissioner, and confirmed by the Refugees Appeals Board, considers that a return decision will not lead to a direct or indirect refoulement.</p> <p>4. Once a failed asylum seeker who has been handed a return order lodges a subsequent application, the return order is suspended until a decision on the subsequent application is taken by the Office of the Refugee Commissioner and reconfirmed by the Refugee Appeals Board.</p> <p>5. As indicated in a previous answer, there are no limitations in relation to the number of subsequent applications that can be lodged, the ground on which a subsequent application is lodged, or the time frame within which a subsequent application can be lodged. Therefore, once an asylum seeker has been rejected following a final decision, he or she can lodge a subsequent application at any point in time.</p>
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	Netherlands	Yes	<p>1. Nothing has changed to the answers given in 2015. Yes, but only as described in the DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Procedure Directive.</p> <p>2. Nothing has changed to the answers given in 2015. Yes, but only as described in the DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Procedure Directive.</p> <p>3. Nothing has changed to the answers given in 2015. Yes, but only as described in the DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Procedure Directive.</p> <p>4. Nothing has changed to the answers given in 2015. Yes. If an asylum seeker has a negative decision upon his/her request, and he/she will be returned to his/her country of origin, the Immigration and Naturalisation Service already scans the file of the asylum seeker before the flight. If there are indications that the asylum seeker might apply for asylum again, an employee of the Immigration and Naturalisation Service will walk the third country national to the airplane, together with the border police. If the TCN then asks for asylum, the DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Procedure Directive is applicable.</p> <p>5. Nothing has changed to the answers given in 2015. E.g. new grounds</p>
	Slovak Republic	Yes	<p>1. According to the Slovak legislation, a subsequent application for asylum can be submitted only if the previous asylum procedure was concluded. In the Slovak Republic if the applicant is refused (he/she is not granted asylum or subsidiary protection, the application is refused as manifestly unfounded or inadmissible) and they lodge a new asylum application during the process of the administrative expulsion and before the execution of the return decision, the execution of the return decision is suspended until the decision about the subsequent asylum application is made. However,</p>



this does not apply if the foreigner stays in the territory of the Slovak Republic illegally.

2. Yes. A rejected asylum seeker who is detained can suspend the execution of the decision by a subsequent asylum application. In the case that from the start of the legal effect of the previous decision there was no substantial change of the factual situation, the Ministry of Interior of the Slovak Republic can refuse the asylum application as inadmissible and at the same time decide whether the application was lodged with the aim to avert the imminent execution of expulsion from the Slovak Republic. In the case the factual situation substantially changed but the application does not fulfil the conditions neither for granting the asylum nor for granting the subsidiary protection, the Ministry of Interior of the Slovak Republic will refuse the application as manifestly unfounded.

3. A foreigner who is not an asylum seeker anymore (according to the Slovak legislation), can lodge a new asylum application anytime. It is important to consider during the process whether there has been any substantial change of factual situation. If the subsequent application is refused as manifestly unfounded or inadmissible, the appeal (in the Slovak context it is specifically a cassation complaint) has no suspensive effect (however, the suspensive effect can be recognised by an administrative court at the proposal of a rejected asylum seeker after the decision of an administrative body). I.e. in case the appeal does not have a suspensive effect or if the suspensive effect was not recognised by the court, the Police does not have to await the final decision on the asylum application (the decision of the court about the appeal (the cassation complaint). However, if the asylum/subsidiary protection was rejected during the examination of the new asylum application (i.e. it would not be just refused as manifestly unfounded or inadmissible), an appeal against such decision has a suspensive effect.

4. In case of a subsequent application for asylum, it is only the Ministry of Interior of the Slovak Republic (The Migration Office of the Ministry of Interior of the Slovak Republic) which decides.

5. In the Slovak Republic, there are no time intervals specified in which the applicant can lodge a subsequent asylum application. It is important whether there has been a change of the situation in the country of origin. In cases where a second subsequent asylum application (i.e. the third asylum application) was lodged and the Ministry of Interior of the Slovak Republic refused the application as inadmissible (as it was a subsequent asylum application and there has not been any substantial change in the factual situation) or manifestly unfounded (as it was a subsequent asylum application

			<p>and although there has been change in the factual situation, the asylum seeker does not meet the criteria for being granted asylum or subsidiary protection) in the past, the asylum seeker is not entitled to stay in the territory of the Slovak Republic and it is possible to execute their administrative expulsion (according to relevant Slovak legislation). However, if the asylum seeker lodges together with the appeal (cassation complaint) also a proposal for suspensive effect of the decision, they are entitled to stay in the territory of the Slovak Republic until the decision of the court. It is not necessary to await the decision of the court if the Ministry of Interior of the Slovak Republic rejected the asylum application as inadmissible and decided that the asylum application was lodged solely with the aim to avert the execution of the decision on the expulsion from the territory of the Slovak Republic (in such case the asylum seeker is not entitled to stay in the territory already after the decision on their application).</p>
	Sweden	Yes	<ol style="list-style-type: none"> 1. As there has been no major changes in this regard since the previous ad-hoc query - please see our answer to the ES query. 2. As there has been no major changes in this regard since the previous ad-hoc query - please see our answer to the ES query. 3. As there has been no major changes in this regard since the previous ad-hoc query - please see our answer to the ES query. 4. As there has been no major changes in this regard since the previous ad-hoc query - please see our answer to the ES query. 5. As there has been no major changes in this regard since the previous ad-hoc query - please see our answer to the ES query.
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. Yes. Repeat asylum claims are referred to as 'Further Submissions' in the UK and we have a published policy on dealing with 'Further Submissions, which is available on Gov.UK. Broadly, if a failed asylum seeker lodges further submissions on protection grounds this needs to be considered before removal. We aim to consider further submissions within five working days and where the


additional evidence simply repeats previous information already considered they can be refused without a further right of appeal. Caseworkers only need to decide if further submissions amount to a fresh claim on asylum or human rights grounds when they have already considered the additional evidence and decided to refuse outright without granting any leave. In such cases, caseworkers must decide whether the further submissions amount to a fresh claim – that is notwithstanding refusal it is considered that the new evidence provided creates a realistic prospect of success before an immigration judge. The claimant will only be entitled to an in-country right of appeal if it is accepted that there is a fresh claim. Further submissions are considered in accordance with the policy and paragraph 353 of the Immigration Rules

2. Yes – further submissions can be lodged by someone in detention. Where an individual is detained pending removal, and wishes to make further submissions, they should immediately contact the team handling their case who will advise them on the action to take. It will usually be appropriate for the removals caseworker to obtain the further submissions by fax or e-mail and assess whether a decision can be made quickly, usually within 5 working days, so that the late claim can be resolved and the individual granted leave or removed as planned.

3. A further submission would only be treated as fresh claim if significantly different from material that has already been considered. Submissions will only be significantly different if the content has not already been considered and taken together with previously considered material, creates a realistic prospect of success before an immigration judge on asylum or human rights grounds, including claims under Family or Private Life Rules (Article 8 ECHR). Caseworkers must consider the further submissions against this ‘two part test’. A fresh application would have a suspensive effect.

4. Only caseworkers trained in considering asylum issues may consider further submissions on protection grounds. The unit deciding the claim must make the decision.

5. In cases where a claimant’s further submissions are entirely different to their original asylum claim. For example, someone may initially claim asylum due to a fear of persecution on political grounds which is refused and dismissed at appeal, but subsequently claim on religious or Article 8 grounds. Despite the clear differences this is still treated as a further submission and not a fresh claim

			unless the further submissions meet the two part test noted above.
	Norway	No	