EMN Ad-Hoc Query on Seekers for international protection who lost the right to reside in a state - procedure

Requested by Adolfo SOMMARRIBAS on 16th October 2018

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Spain, Sweden, United Kingdom, Norway (24 in total)

Background information:

In the Republic of Croatia, third-country nationals whose applications for international protection have been rejected for the second and final time, in many cases apply for international protection for a third time, although they no longer enjoy the right to reside in the Republic of Croatia in accordance with the Law on International and Temporary Protection.
Their residence is after second and final rejection of application for international protection illegal, and they have the obligation to leave the Republic of Croatia and the EEA. For such TCNs, a return decision with a deadline for a voluntary return from EEA is issued. If they do not leave the EEA within the set deadline, a forced removal shall be implemented.
In the process of forced removal, the border police shall contact the diplomatic mission of the third country for obtaining a travel document. Since these TCNs are still international protection applicants, the question remains whether the requirement for issuing a travel document to a third country of origin violates the principle of non-refoulment.

Questions

1. Does your MS start with a return procedure of rejected applicants for the international protection although the applicant has submitted another application apart from the fact he/she received the final decision rejecting the application for international protection, and considering the fact he/she do not longer have a right to reside legally during the new process?
2. If yes, do you in such cases contact the diplomatic representations of the third countries for issuing a travel document.

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	**1.** The starting point of every return procedure is a return decision that is issued, amongst others, with an adverse decision on the application for international protection (Art. 10 para 1 subpara 3 Asylum Act 2005, Art. 52 para 2 subpara 2 Aliens Police Act 2005). After the decision has come into legal force, the Federal Office for Immigration and Asylum starts with the return procedure, even if the person has filed a subsequent application for international protection. --- Source: Ministry of the Interior

			2. As soon as the return procedure has started, and whenever the person does not possess a valid passport, the Federal Office for Immigration and Asylum, Department BII/1 contacts the diplomatic mission of the third country for the issuing of return travel certificates. Subsequently, open cases are urged in regular bilateral meetings. --- Source: Ministry of the Interior
	Belgium	Yes	**1.** The possibility to return an individual who subsequently applied for international protection (for the third time or more), before a decision has been taken, is possible under very strict conditions. To meet the preconditions, the individual has to be detained before its request and this continuously; its last request for international protection must have been declared inadmissible by the Commissioner General for Refugees and Stateless Persons (CGRS) (the authority responsible for granting international protection); the CGRS must have declared that the removal of this individual does not violate the non-refoulement principle. If all those conditions are met, the Immigration Office can proceed to the forced return of the individual before the CGRS has taken a decision on the (in-)admissibility of the request. Regarding the removal of an individual making an application for international protection, a new law of 21 November 2017 has introduced changes regarding the procedure for issuing a removal order. If the application for international protection is rejected, the suspension of the removal order is lifted. The possibility to appeal against the removal order is only possible one time. Therefore, once the suspension of the removal order is lifted, it is often no longer possible to appeal against it (as the delay for appeal has lapsed since then). A new removal order will be only issued if new elements are available to justify the removal. **2.** If the removal concerns an individual who has already been detained with a view to its removal, travel documents have probably been already requested to the competent authorities.
	Bulgaria	Yes	**1.** Where a final decision is taken to reject an application for international protection, steps are taken for removal from the country. In the event that a subsequent application is filed, an admissibility procedure is conducted to ascertain whether there are new facts regarding the applicant's personal situation or the country of origin. If a subsequent application is filed, the procedure for returning candidates with applications for international protection, already examined, does not start before there is a ruling on the admissibility of the subsequent application. Within 14 days of filing, the interviewing authority, only on the basis of written evidence submitted by the foreigner, without a

			personal interview, takes a decision whereby: 1. allows the subsequent application to a procedure for granting international protection; 2. does not allow the subsequent application to a procedure for granting international protection. If the subsequent application is ruled out as inadmissible, this decision can be appealed within 7 days. The appeal has no suspensive effect. **2.** N/A
	Croatia	Yes	**1.** 1. Yes. Once application for international protection is rejected for the second and final time, return procedure will be immediately initiated regardless the fact that applicant seeks for international protection for the third time. **2.** 2. Yes.
	Cyprus	Yes	**1.** Once a final decision, which is a judicial one, is taken by the Court of the Republic, a return decision is been issued requesting the departure of the person in concern. In cases where the person in concern has a criminal record of convictions against him, the removal is carried out immediately and the person is not released. Following the final judicial decision of a rejected applicant, provided that the case was examined by the Court in its substance, then refoulement is not violated if the person is send to his/her country of origin. In cases of detention, the provisions of the Return Directive are applied. **2.** Where removal is pending due the lack of travel documents, diplomatic respresentations are contacted, however, this will not be done pending an asylum application.
	Czech Republic	Yes	**1.** The definition of repeat and further repeat application for international protection in the Czech Republic is quite precisely regulated by the Act on Asylum. In general, during the proceeding of the first application for international protection, realization of return procedure is not possible and it is not possible to contact competent authorities of the country of origin until the final decision is issued and until the decision of the court (Supreme Administrative Court) gains legal effect, if complaint against decision was lodged. In the case of a repeat application, the Act on Asylum specifies in which cases is not considered foreign national’s will as an application for international protection.

			Furthermore, the Act on Asylum determines what facts are examined when assessing the admissibility of the application. If the application is inadmissible, the expression of foreign national's will is not perceived as an application for international protection and the realization of return procedure is possible. In the case of the second and each subsequent repeat application, the Ministry of the Interior has 10 days to assess the admissibility of the application. During the assessing the applicant does not have the right to reside legally in the territory and therefore it is possible to return him/her to the country of origin (if he/she possesses a valid travel document). **2.** If the application for international protection is found to be admissible, the realization of return procedure, including verification of the identity and issuing a travel document through diplomatic representations of the third countries is not possible. If the application is found to be inadmissible, proceeding on international protection is suspended. An appeal may be lodged against the decision, but it has no suspensory effect and therefore the realization of the return is possible. However in practice, the realization of return of foreign national is possible only if he/she possess a valid travel document because, in order to contact the diplomatic representations of the third countries to verify the identity and issuing of the emergency travel document, the EU legislation gives a clear framework and these acts cannot be done if the foreign national is in the position of an asylum seeker.
	Estonia	Yes	**1.** It is possible to start with the return procedure pursuant to the Obligation to Leave and Prohibition to Entry Act when the final negative decision has been reached. That means, when the Administrative Court has upheld the negative decision taken by the Police and Border Guard Board. A person has the right to submit further appeals to the District Court and Supreme Court, but the right to remain in the territory is not guaranteed and is decided by the court. In case the person submits a new application (after exhaustion of the appeals system) the regulation on the subsequent application will apply. According to Article 24 of the Act on Granting International Protection to Alien where 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. Where new facts have been identified or an applicant has submitted new documents or evidence which he or she, for

			reasons beyond his or her control, was unable to submit or prove in the course of the previous proceedings and which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection, the application shall be further examined. In this case the applicant has the right to stay in Estonian for the time of the proceedings of a subsequent application if that subsequent application is submitted for the first time, but the right to stay does not automatically include the contestation proceedings at the court. As of a second subsequent application, the applicant no longer has the right to remain. Where it has been established that there are no new facts and the applicant has failed to submit new documents or evidence which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection, the procedure shall not be renewed. If an application has been dismissed for at least one of the following grounds, a new application shall not be deemed as a subsequent application. The grounds are as follows: 1) another country may be considered as a first country of asylum for the applicant for the purposes of Article 35 of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection 2) another Member State has granted international protection to the applicant and this protection is still accessible; 3) the applicant has arrived in Estonia through a country which can be considered a safe third country; 4) the application is subsequent and there are no new facts, evidence or documents submitted. 5) a dependent family member of the applicant lodges an application, after he or she consented to have his or her case be part of the proceedings of an application lodged on his or her behalf and there are no facts which would justify submission of a separate application; 6) another country is responsible for examination of an application for international protection pursuant to Regulation (EU) No 604/2013 of the European Parliament and of the Council. In these cases the return decision is considered enforceable even though the rejected asylum applicant has submitted a new application. **2.** Please see the above answer. The diplomatic representations of the third countries can be contacted only once the return decision is considered enforceable.
+	Finland	Yes	**1.** It depends: what is crucial here is not only the number of asylum applications the person has made but also the grounds on which the previous applications have been dismissed. What is of importance is whether the subsequent applications repeat the same claim which has already been resolved or whether the new application contains new elements due to which it is necessary to make a material

			investigation of the new application for international protection. (NB: regarding terms, by subsequent application we mean subsequent application as described in Procedures Directive (2013/32/EU Art. 40). As I understand from your background information, you would probably call it “second application”. And similarly what you have called “third application”, we would call another subsequent application as described in Asylum Procedures Directive Art. 41.) According to the current legislation, when a person makes a subsequent application (“second application”) which does not contain new elements relating to the examination of whether the applicant qualifies as a beneficiary of international protection, the application may be dismissed. (However, if the subsequent application does contain new elements, a new asylum interview must be organised and the asylum investigation begins again. This will halt the return procedure until the new application has been resolved and the new decision is legally enforceable.) The Finnish Immigration Service makes the decision of dismissal of an application. If a subsequent application is dismissed, the return decision may be enforced after it has been served to the applicant, unless otherwise ordered by an administrative court (Finnish Aliens Act, Section 201, Subsection 2). The returnee may apply for a prohibition of enforcement from an administrative court within seven days of having been served the decision (Aliens Act, Section 198 b). The return decision may not be enforced before the administrative court has made a decision on the application regarding prohibition of enforcement (Aliens Act, Section 201, Subsection 4). The administrative court must make a decision on the prohibition of enforcement within seven days of having received the application (Aliens Act, Section 199). Hence, in effect a first subsequent application (“second application”) means that the enforcement of the original return decision is put on hold. The current legislation states that a second subsequent application (“third application”), however, does not prevent the enforcement of a legally binding return decision, if the return decision is related to an earlier asylum application which has been dismissed (i.e. what has been described above: the first subsequent application did not contain new elements to consider. Aliens Act, Section 201, Subsection 5.). However, even in these cases, the Finnish Immigration Service attempts to solve the second subsequent application before the return is enforced, and in any case the Finnish Immigration Service must make an initial examination of the application in order to assess whether there are non-refoulement grounds, which would prevent the enforcement of the return decision. In situations where the second subsequent application is submitted at the last moment when the return is already being enforced, the Finnish Immigration Service does not necessarily make a decision before the enforcement of the return. The Police is in

			charge of the removal contacts a duty officer at the Finnish Immigration Service, who makes a preliminary assessment, whether there are such grounds presented in the new application, which would necessitate further investigation of the application and whether the return of the applicant would be in breach of the principle of non-refoulement. Therefore, the return may be enforced after a second subsequent application ("third application") given that the following conditions are met: 1) the first subsequent application was dismissed as inadmissible and 2) the initial investigation of the most recent application shows that there are no non-refoulement grounds which would prevent the enforcement of the return decision. NB: In Finland changes are expected in the near future regarding the enforcement of return decisions related to subsequent applications. A recent draft legislative proposal (from October 2018) proposes some changes to the abovementioned practice. The aim of the legislative amendment is to prevent misuse of subsequent applications. It has been noted that some applicants make subsequent applications just to postpone the enforcement of their return decision. Even though these applications are generally dismissed, unfounded subsequent applications generate expenses and cause an adminisrative strain. It has to be noted that some of the subsequent applications contain new grounds which must be assessed in order to assess the need for international protection of the applicant. Justified subsequent applications, for example if the situation of the applicant has changed after the previous decision on international protection, are not a problem but instead they are necessary legal safeguards. However, the growing number of unfounded subsequent applications undermines the credibility of the asylum procedure and generate expenses. The current Finnish legislation does not make use of all the possible derogations provided for in the Asylum Procedures Directive (2013/32/EU), regarding the right of the applicant to remain on the territory during the processing of subsequent applications. It is being proposed that a new derogation is included in the Finnish legislation, stating that a previous return decision can be enforced if the subsequent application is made in order to postpone the enforcement of the return decision. However, as stated above, question is only of a legislative proposal at this point, and it remains to be seen whether these legislative amendments will enter into force some time in the future. **2.** Please see above: the diplomatic representations of the third countries can be contacted once the return decision is considered enforceable. As long as the decision is considered non-enforceable, all the return procedures (including contacting the diplomatic representations of the country of origin for issuing a travel document) will be on hold. Therefore it depends on whether the decision is

			enforceable.
	France	No	
	Germany	Yes	**1.** The local aliens authority is responsible for the repatriation of applicants. The submission of a first follow-up application results in the right of the applicant to remain in the Member State. This is mandated by Art. 41 of the Asylum Procedures Directive. This is not the case if an application is submitted solely with a view to delaying or preventing deportation. As of a second follow-up application, the applicant no longer has the right to remain. Once an examination has been performed pursuant to Art. 40(2) Asylum Procedures Directive as to whether a follow-up application contains new elements or findings, the federal office responsible for examining the application notifies the relevant Aliens authority as to whether an asylum procedure can be executed or whether termination of the applicant's residence can be enforced. As no new follow-up application can afford the right to remain, no number of subsequent applications can stand in the way of the termination of residence. An examination must simply always be performed in accordance with Art. 40(2) Asylum Procedures Directive. This is usually possible within a matter of hours. The process of procuring passport replacement documents can therefore already be initiated regardless of whether a subsequent follow-up application is still pending. The only proviso is that this may not be initiated while the examination in accordance with Art. 40(2) Asylum Procedures Directive is still being conducted. There is no risk of the violation of the principle of non-refoulement here as there is already a legally binding rejection of an application and new reasons are always considered during the examination in accordance with Art. 40(2) Asylum Procedures Directive. **2.** see answers to question 1
	Hungary	Yes	**1.** Regarding the relevant national and EU law, the Hungarian authorities start the return procedure when a final decision is issued by the competent authority or judicial body. After a final decision , according to the relevant EU law (Asylum Procedure Directive 2013/32/EU) the TCN has no right to stay in the country of application, thus a return procedure can be started. The Hungarian law and practice follows the above mentioned rule. However the removal of the TCN can be suspended by

			the competent judicial body, it does not affect the return procedure, just the physical removal of the TCN. **2.** Since the return procedure requires an assistance from the country of origin (e. g. issuing a travel document) the relevant authority contacts the diplomatic representation of the applicant's country of origin. If there is another asylum application pending after a final decision has been issued, the return procedure continues regardless of the suspension of the removal, since it is just suspending the physical removal, not the whole return procedure. Since the TCN has a final decision this practice doesn't violate the principle of non-refoulment
	Ireland	No	
	Italy	Yes	**1.** Yes, Italy starts with a return procedure of rejected applicants for the international protection when they received a final decision, because their stay within the territory has become illegal. In fact, a temporary residence permit is issued only until the resolution of the recognition procedure (art. 32 of Law 189/2002 and Law 142/2015). A negative final decision means that the absence of risk to return in their country of origin has been verified both by administrative and judicial authorities, so a violation of principle of non-refoulement can't be identified. The administrative expulsion is regulated by art. 13 of Law 286/1998. The expulsion order (given by Prefect, except in case of risk for the public order and the national security for which the Minister of Interior is competent) is immediately executive and it mainly consists in forced removal from the police. When the conditions required for a forced accompaniment to the border do not occur (residual cases), the foreign should ask a period for a voluntary return (art 13, par. 5 of Law 286/1998). **2.** According to art. 14 paragraph 1 of Law 286/1998, when an immediate forced removal order can not be executed, the police commissioner (Questore) commands the detention in centers for return for at least 180 days. Among reasons of this detention, there is the uncertainty about identity and nationality of the foreign and the consequent need to carry out additional verifications or the necessity to obtain a valid travel document. Therefore, the police commissioner contacts the diplomatic representation of the third country to initiate the identification procedure or to request the

			issuing of the travel document (par. 5, art. 14 Law 286/1998).
	Latvia	Yes	**1.** In case if a foreigner applied for another asylum immediately after he/she has received a final decision on rejection of asylum application the return procedure during the asylum procedure is not started. In case if a foreigner has received a return decision after the final decision on rejection of asylum application and submitted another asylum application the return procedure is suspended. The foreigner who has submitted asylum application is considered to be staying legally until the decision in asylum procedure is taken. In accordance to Asylum Law another asylum application submitted by a foreigner shall include a new circumstances that has significantly changed for the benefit of a foreigner and might serve as a justification for granting international protection. The authority responsible for examination of asylum application can take a decision to leave the repeated application for asylum without examination if such new circumstances are not mentioned in this new application. **2.** The authority responsible for organization of forced return of a foreigner shall contact the diplomatic or consular mission for obtaining of a travel document only within the framework of forced return procedure.
	Lithuania	Yes	**1.** No. An alien who has submitted asylum application is considered to be staying legally until the decision of asylum procedure is taken. **2.** N/a
	Luxembourg	Yes	**1.** In Luxembourg, the international protection applicant whose application for international protection was definitely rejected and who introduces a subsequent international protection application in order to avoid or delay the return, loses his/her right to stay in the country in accordance with article 9 (2) b) and c) of the law of 18 December 2015 on international protection and temporary protection. However, as the subsequent application is declared inadmissible in accordance with article 28 (2) d) then the applicant can file an annulment appeal before the First instance Administrative Court which has to be filed 15 days after the notification of the inadmissibility decision (article 35 (3)). The appeal does not have a suspensive effect. A second

			possibility is if the second application is not declared inadmissible, the Minister in charge of Asylum and Immigration can decide to treat the application in the fast-track procedure (article 27 (1) f)). In this case the return procedure has to wait until the application is rejected. If the applicant files an appeal before the First instance Administrative Court, the return procedure has to wait until the negative final decision of the First instance Administrative Court. **2.** Yes.
	Malta	Yes	**1.** In Malta, no return procedures commence until the third country national would have exhausted all the asylum process. **2.** N/A
	Netherlands	Yes	**1.** Yes, a return procedure is started if the application for international protection by an asylum seeker has been rejected. However, if the asylum seeker appeals this decision, he/she is allowed to wait for this decision on Dutch territory. If an asylum seeker submits a subsequent application which is not based on any new elements or findings or in which no new elements or findings have been brought up that could be relevant to the assessment of the application, the application may be declared inadmissible and the return decision can be enforced. **2.** Yes. However, the diplomatic representation is not informed of (the rejection of) an asylum application. No asylum-related information is provided in any way to diplomatic representations. The foreign national is also informed in advance about the content and purpose of the presentation to the diplomatic representations and an information bulletin is issued. In addition, the foreign national is asked to provide feedback on the presentation after the presentation.
	Poland	Yes	**1.** Yes, if all the conditions are met Polish Border Guard start the return procedure. **2.** Polish Border Guard in all cases contact the diplomatic representation of the third countries for issuing the Travel document, however not all the representations are able to / willing to issue the document. In case of difficulties Polish Border Guard issued the EU Letter for the purpose of return

			[if accepted by the third country].
	Slovak Republic	Yes	**1.** Based on the Act on Residence of Aliens, if a foreigner is not granted asylum nor subsidiary protection, the police unit that has suspended the administrative expulsion procedure, resumes the procedure; the police unit resumes the administrative expulsion procedure also in the cases when a foreigner is not entitled to stay in the territory of the Slovak Republic in line with the specific regulation – in this case it means Act on Asylum which stipulates that an applicant is not entitled to stay in the territory of the SR if this is his/her repeated application for asylum and Ministry (of Interior) has already rejected his asylum application in the past. **2.** Yes.
	Spain	Yes	**1.** The appeal procedure in Spain is different, so it is difficult to find a parallelism. Normally, no return procedure is initiated as long as an asylum application is pending. **2.** In such a case, a separate non-refoulement assessment would be carried out as part of the return procedure before contacting the third country's authorities.
	Sweden	Yes	**1.** A subsequent application for asylum can only be lodged after the statutory limitation period of the return decision has expired which is four years in Sweden. However, the Swedish Migration Agency can examine if there are impediments to enforcement, if the Swedish Migration Agency receives new information after a person has received his/her final return decision. Examples of new information that may lead to the previous decision being amended or changed are that the political conditions in the country of origin have changed and this means that the person cannot return, the person has a life-threatening illness and is unable to receive healthcare in the country of origin or finally the authorities in person's country of origin do not permit him/her to return (Aliens Act, chapter 12, section 18). A return procedure however, always start after a return decision has entered into legal force that is after the final decision of a rejected application for asylum. What differs is the measures taken depending on the circumstances of the return. All cases are screened to determine the necessary steps ahead.

			2. Authorities in the countries of return are contacted for the issuance of travel documents if the enforcement of the return decision is not suspended. There is a suspension of measures if there are impediments to enforcement and new circumstances have occurred that need to be examined (Aliens Act, chapter 12, section 19). No contacts are undertaken with authorities in the countries of the return in these cases. However, the asylum seeker is informed during the whole asylum process of his or her individual responsibilities to have travel documents in place in case of a rejection of the application of asylum. This information is given no matter the circumstances of the return.
	United Kingdom	Yes	**1.** In the UK, unless an applicant is detained, someone with a failed claim will be on immigration bail, which is not the same as having a legal right to reside removed during the consideration of further submissions. **2.** N/A
	Norway	Yes	**1.** If a rejected applicant submits another application after a final decision to reject the application for international protection has been issued, the second application will as a general rule be rejected as well, but the applicant might submit a petition to reverse the final decision. Second applications that might not be rejected are: - Some applications rejected under the Dublin-procedure - Applications where the person has been in the home country after the final rejection - Some cases of human trafficking - Cases where the Immigration Appeals Board (UNE) requests the Directorate of Immigration (UDI) to consider the second application The handling of second applications are described in our guidelines RS 2014-019 «Retningslinjer for politiets registrering og UDIs behandling av nye anførsler i asylsaker». In considering the petition to reverse a decision, the immigration authorities will consider the immigration act section 73 on absolute protection against removal: “A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph, (a), unless (a) the foreign national is excluded from protection under section 31, or (b) the foreign national is on reasonable grounds deemed to pose a threat to national security or has been finally convicted of a particularly serious crime and therefore poses a threat to Norwegian society. A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph, (b). The protection under this provision also applies in situations as mentioned in the first paragraph, (a) and (b). The protection

			under the first and second paragraphs also applies to removal to an area where the person concerned would not be safe from subsequent removal to an area as mentioned in section 28, first paragraph. The protection under the first to third paragraphs applies in respect of all forms of administrative decision under the Norwegian Immigration Act." The responsibility to consider section 73 is regulated in section 90 last paragraph: "Where a foreign national invokes circumstances as mentioned in section 28 at the time of implementation of an administrative decision providing that the foreign national must leave the realm, and it is not apparent that the circumstances invoked have already been taken into consideration, the police shall refer the question of suspensive effect to the authority that has made the administrative decision." **2.** The persons are obliged to assist in clarifying their identity to the extent that the immigration authorities require. The immigration authorities may also subsequently impose such an obligation on a foreign national if there is reason to presume that the registered identity is not the correct identity. A foreign national may not be ordered to assist in clarifying his or her identity in a manner which comes into conflict with a need for protection (see the Immigration Act Section 83 (cited below)). "Section 83.Obligation of foreign nationals to appear and to provide information In connection with a case under the Act, the police and the Directorate of Immigration may order the foreign national involved in the case to appear in person to provide information that may be of significance to the administrative decision; see section 93, fourth paragraph. Upon entry, and until correct identity is registered, foreign nationals are obliged to assist in clarifying their identity to the extent that the immigration authorities require. The immigration authorities may also subsequently impose such an obligation on a foreign national if there is reason to presume that the registered identity is not the correct identity. A foreign national may not be ordered to assist in clarifying his or her identity in a manner which comes into conflict with a need for protection."