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Ad-Hoc Query on 2023.2 Medical claims and return of vulnerable third-country nationals

Requested by EMN Netherlands on 13 January 2023

Compilation produced on 6 March 2023

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (23 in Total)

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1. BACKGROUND INFORMATION

Return of third-country nationals does not take place as long as it is not safe to travel in view of the health condition of the foreign national or that of one of his family members.

The main law dealing with migration in the Netherlands is the Aliens Act 2000 (Vreemdelingenwet, Vw). In this law, Article 64 provides for the legal framework of medical migration cases, allowing for a temporary legal stay on humanitarian grounds called “postponement of departure”. This temporary legal stay will be granted if it is not safe to travel in view of the health condition and if there is a risk of violating article 3 of ECHR on the grounds of medical reasons.

In this procedure, the Dutch authorities (medical advisors) assess whether medical treatment of medication is available and accessible in the country of origin (before proceeding with the return of a rejected applicant).

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The Netherlands has been confronted with third-country nationals (TCN) who have a residence status in a different Member State, who claim that they are not able to return to that Member State due to their medical health conditions and the lack of medical treatment available. The Dutch Immigration and Naturalisation Service would like to know whether other Member States are confronted with a similar situation and if so, how these situations are dealt with.

We would like to ask the following questions:

1. Have you encountered cases in your Member State concerning TCNs with a residence status in another Member State, and who claim they cannot be returned to that Member State because it does not provide the appropriate medical treatment or medication? Yes/No. If you answer yes, could you indicate how many cases you have encountered?

Yes. We are only aware of a few cases so far. Among others there are 2 cases of TCN with a residence status in Hungary and Bulgaria who successfully claim they cannot be returned to those Member States because they do not provide the appropriate medical treatment or medication. There are also a few cases concerning return to Greece. However, we do not have full information on the number of cases in the Netherlands.

2. When confronted with this situation does your Member State carry out the return to the other Member State or does it postpone the return until an assessment of the claim is done?

In the Netherlands we wait until the assessment of the claim is done.

3. If you carry out an assessment of the claim, does the applicant have the burden of proof? Yes/No. If you answer YES, what kind of proof does your administration accept?

In the Netherlands the applicant has the burden of proof.

4. If you answer NO to question 3 and there is a shared burden of proof, do you try to obtain information about the availability of the medical treatment or medication in the relevant Member State? Yes/No. If you answer YES, how do you obtain it?

Not applicable.


We would very much appreciate your responses by **10 February 2023**.

2. RESPONSES

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		Wider Dissemination²	
	EMN NCP Austria	Yes	<p>1. No information was provided by the Ministry of the Interior.</p> <p>2. If the removal of a TCN to another country than his or her country of origin is inadmissible for specific reasons set out in the law, among others, because the removal would violate Article 3 ECHR, the stay of the TCN in Austria is tolerated (Article 46a para 1 subpara 1 Aliens Police Act). In view of Article 3 ECHR, the Constitutional Court (VfGH) and the Supreme Administrative Court (VwGH) have ruled that generally TCNs do not have a right to remain in the country merely to receive medical treatments, even if he or she is suffering from a serious illness. The fact that treatment in the country of destination is not equivalent, more difficult to access or more cost-intensive is irrelevant, but the person concerned must actually have access to the necessary treatment, taking into account the cost of treatment and medication, the existence of a social and family network and the distance to be covered to access care. Only in the presence of exceptional circumstances the return leads to a violation of Article 3 ECHR (VfGH 6.3.2008, B2400/07), for example, if valid reasons are presented that a seriously ill person would be confronted with a real risk of being exposed to a serious, rapid and irreversible deterioration of his or her state of health due to the lack of adequate treatment in the country of destination or the lack of access to such treatment, leading to intense suffering or a considerable shortening of life expectancy (VwGH 16.11.2022, Ra 2022/20/0002; 27.7.2022, Ra 2022/14/0195; 25.4.2022, Ra 2022/20/0044). Concerning an applicant for international protection and in the context of the Dublin system, the Constitutional Court has emphasized that Member States (MS) are obliged under the Reception Directive to provide medical care for applicants for international protection. Nevertheless,</p>

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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			<p>the return of an applicant for international protection to a MS could constitute a violation of Article 3 ECHR temporarily or permanently, for example in cases of advanced pregnancy or the need for continuous inpatient stay (VfGH 6.3.2008, B2400/07).</p> <p>According to Article 46a para 1 subpara 4 Aliens Police Act, the stay of a TCN is further (temporarily) tolerated if a return decision is (for the time being) inadmissible pursuant to Article 9 Federal Office for Immigration and Asylum Procedures Act. This may apply due to a necessary medical treatment (e.g. a necessary follow-up treatment after a thigh injury, VwGH 16.12.2015, Ra 2015/21/0119; or in case of a risk-pregnancy, VwGH 28.4.2015, Ra 2014/18/0146). Article 9 para 1 Federal Office for Immigration and Asylum Procedures Act regulates that, if a return decision (Article 52 Aliens Police Act), an order of removal from the country (Article 61 Aliens Police Act), an expulsion (Article 66 Aliens Police Act) or an exclusion order (Article 67 Aliens Police Act) interfere with the private or family life of a TCN, the issuance of the decision is permissible if this is urgently required in order to achieve the objectives stated in Article 8 para 2 ECHR. However, if the balancing of interests shows that the private or family interests of the TCN outweigh the public interest in an (immediate) termination of residence, the return decision must (for the time being) be omitted (VwGH 22.08.2019, Ra 2019/21/0026). According to the jurisdiction of the Supreme Administrative Court (VwGH), medical treatments carried out in Austria can, in individual cases, significantly strengthen a TCN's personal interests in remaining in Austria. The decisive factor is whether this medical treatment can also be carried out or continued outside of Austria (for example: VwGH 22.08.2019, Ra 2019/21/0026; 23.3.2017, Ra 2017/21/0004).</p> <p>3.</p> <p>According to the Supreme Administrative Court, the TCN has to substantiate on the basis of which circumstances a certain medical treatment is necessary for him or her and that this could only be carried out in Austria (for example: VwGH 25.1.2022, Ra 2021/19/0128; 15.10.2021, Ra 2021/19/035).</p> <p>In the context of Article 3 ECHR, the Supreme Administrative Court has referred to the case law of the European Court of Human Rights (ECtHR, Savran vs Denmark, no. 57467/15, 7 December 2021) in which the Court emphasized that it is up to the TCN to present evidence showing that there are valid reasons to believe that he or she would be subjected to a real risk of treatment contrary to Article 3 ECHR if a measure terminating residence were to be implemented. Only when such evidence is provided, is it up to the authorities of the expelling state, in the course of domestic proceedings, to dispel any doubt thereby raised and to subject the alleged risk to a detailed examination, in the course of which the authorities in the expelling state must consider the foreseeable consequences of the expulsion on the person concerned in the receiving State in the light of the general situation prevailing there and the personal circumstances of the person concerned. The</p>
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			<p>obligations of the expelling state to carry out a more detailed examination are thus only triggered when the above-mentioned (high) threshold has been overcome (VwGH 22.08.2019, Ra 2019/21/0026; 23.3.2017, Ra 2017/21/0004).</p> <p>4. No information was provided by the Ministry of the Interior.</p>
	EMN NCP Belgium	Yes	<p>1. YES. Individual Case Management (ICAM) Coaches of the Belgian Migration Office have been confronted with some people claiming they cannot be returned because the concerned MS does not provide appropriate medical treatment/medication.</p> <p>2. The Belgian Immigration Office can contact a medical doctor to make an assessment based on the information and medical proof submitted by the applicant. The Belgian Immigration Office will postpone the return if a doctor assesses that the person concerned is <u>not fit to fly</u>. In case of a medical regularisation (9ter procedure) in Belgium, the persons concerned will not be returned. In addition, the jurisprudence of the Council for Alien Law Litigation (and the collected general and specific information on reception conditions in MS) will be considered in returning TCNs to other MS.</p> <p>3. No.</p> <p>4. YES. The Belgian Immigration Office only assesses the claim when the applicant submits proof of his medical condition. In that case, the Belgian Immigration Office tries to answer the following questions:</p> <ul style="list-style-type: none"> • Do the records show that the medical condition cited makes travel (temporarily) impossible? If so, does this period exceed xx (supplement) months? • Is the medical treatment cited in the documents indispensable? • Is it available in the responsible Member State? • Is it accessible in the responsible Member State? • The Belgian Immigration Office tries to obtain information via internet sources.



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			<ul style="list-style-type: none"> The Belgian Immigration Office will try to contact the concerned EU MS - as much as possible - to provide follow-up on-site. The Belgian Immigration Office also has a “special needs” project that monitors people with specific concerns regarding their return.
	EMN NCP Bulgaria	Yes	<ol style="list-style-type: none"> No. N/A N/A N/A
	EMN NCP Croatia	Yes	<ol style="list-style-type: none"> No. In Croatia we haven't had such a cases. According to Croatian Aliens Act, forcible removal may be temporarily suspended if serious difficulties could arise during the enforcement due to the medical condition of the third country national. Generally, applicant has the burden of proof, but also administrative body in charge for removal procedure is required to establish all the facts relevant to the matter. Not applicable.
	EMN NCP Cyprus	Yes	<ol style="list-style-type: none"> No An evaluation of the case will be conducted if such a case occurs.

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			<p>3. No</p> <p>4. Yes. Health services will assess the claim and collect any relevant information on medical treatment or medication in the relevant Member State. In addition, the applicant shall be asked to provide any relevant information she/he might have.</p>
	EMN NCP Czech Republic	Yes	<p>1. Yes, few cases a year. (5maximum).</p> <p>2. These cases are considered individually based on claimed health problems. In all cases the Czech authorities are in contact with health facility usually situated in asylum centres, medical staff is asked whether the person is fit to travel. And only competent medical staff can declare the health status of the person. If the person is not fit to travel, the subsequent examination of health status is carried out and therefore the return is postponed.</p> <p>3. Yes, usually medical report is required.</p> <p>4. N/A</p>
	EMN NCP Estonia	Yes	<p>1. No, in Estonia we haven't had cases concerning TCNs with a residence status in another Member State, and who claim they cannot be returned to that Member State because it does not provide the appropriate medical treatment or medication.</p> <p>2. According to the Obligation to Leave and Prohibition on Entry Act § 7'2 Art'. 5 p 4 the term for voluntary compliance with the obligation to leave stipulated in the return decision may be extended by up to 30 days at a time if the compliance with the obligation to leave turns out to be too disproportionately burdensome for a third country national within the term stipulated, taking account of other relevant circumstances. According to the same Act § 14 Art. 5 p 4 the expulsion shall be suspended upon the decision of the Police and Border Guard Board if the temporary stay in Estonia of a third country national is justified due to humanitarian considerations</p>


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			<p>or 'force majeure'. Upon the issue of a return decision, all the relevant circumstances shall be taken account of in every single case and the reasoned interests shall be considered.</p> <p>Taking into consideration, that MSs have the same or at least minimum requirements for medical treatment or medication, there is an expectation, that a third country national would receive a similar treatment in every MS. Based on information provided by another MS and as a generalization, the Police and Border Guard Board wouldn't consider an alleged lack of treatment or medications as a reason to extend the term of a voluntary compliance or as a reason to postpone a forced return to a MS.</p> <p>According to the Obligation to Leave and Prohibition on Entry Act § 13 Art. 3 an appeal against issuance of a return decision may be filed by a person to an administrative court within ten days as. According to the Code of Administrative Court Procedure § 249 the court may, at any stage of the proceedings, on the basis of an application of the applicant which states its reasons, or of its own motion, give provisional protection to the applicant's rights. Then it would be the court decision weather there are circumstances to extend the term of voluntary compliance or postpone the expulsion.</p> <p>3.</p> <p>In Estonia the applicant has the burden of proof but also the Police and Border Guard Board is required to establish the facts relevant to the matter and, if necessary, collect evidence on its own initiative for such purpose.</p> <p>4. Not applicable.</p>
+	EMN NCP Finland	Yes	<p>1. Yes, the Finnish Immigration Service has encountered such cases. However, there are no statistics available on these claims.</p> <p>2. If such a claim is made, the claim is assessed in the decision on the matter (i.e. before carrying out the return).</p> <p>3. In Finland the burden of proof is shared between the applicant and the authority, but it rests primarily on the applicant. According to Aliens Act, Section 7, Subsection 2: "the person concerned shall provide evidence of the grounds for their claims, and also, in other respects, cooperate in the examination of their matter. The</p>



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			<p>authorities shall tell the person concerned what further evidence needs to be presented in the matter. A request for evidence shall be specified and proportionate to the means available to the person concerned, considering his or her circumstances.”</p> <p>4. Not applicable.</p>
	EMN NCP France	Yes	<p>1. Yes. In that case the applicant will apply for a residence permit on medical grounds and French authorities will apply this legislation which only takes into account the country of origin of the third-country national, and not the country of residence. Indeed, during the procedure for a residence permit on medical grounds, the AGDREF application (application for managing the files of foreign nationals in France) only takes into account the nationality and country of origin. As a result, it is not possible to count EU residents from third countries. EU/EEA residents from third countries can only be identified by reading the medical record but this information is not formatted to provide statistics. The legislation would need to be changed to take into account the country of residence and not only the country of origin. But currently, the assessment of accessibility to medical care only concerns the country of origin, and not the country of residence (i.e. a EU Member State in the case of this Ad Hoc Query).</p> <p>2. A third-country national holding a residence permit in a EU Member State and subject to a return decision, must be subject to Schengen or bilateral readmission. The authorities must ensure that the third-country national is able to travel. However, if a foreign national applies for a residence permit on medical grounds, under the so-called "ill foreign national" procedure (Article L 425-9 of the Code on Entry and Residence of Foreign Nationals and Right of Asylum - CESEDA), the OFII (French Office for Immigration and Integration) will examine the application, based on information provided by the medical service.</p> <p>3. YES - The applicant must provide a medical certificate drafted by the hospital doctor, or the doctor who usually</p>



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			<p>treats the applicant, and his/her medical file. Doctors from the OFII are then responsible for determining whether the absence of this medical care would lead to exceptionally serious consequences for the applicant and for deciding on the accessibility of care in the country of origin (and not the country of residence).</p> <p>4. As explained above the OFII collects information about the availability of the medical treatment or medication in the country of origin and not the country of residence. The OFII uses international reference data sources such as UNAIDS, WHO, the country's essential medicines list, the MedCOI database (EASO), scientific publications, various official reports, etc.</p>
	EMN NCP Germany	Yes	<p>1. Federal Office for Migration and Refugees cannot provide information about such cases since these cases are not captured in the statistics of the authority.</p> <p>2. In cases of a claimed illness, a transfer will only take place after the completion of the health status assessment.</p> <p>3. Yes, the applicant has the burden of proof to substantiate a claimed illness. This must be proven by a medical certificate that meets the formal requirements.</p> <p>4. Not applicable.</p>
	EMN NCP Greece	Yes	<p>1. NO. According to the Hellenic Police, Greece has not encountered cases of third country nationals with residence status in another member state, who claim that they cannot be returned to it, due to health conditions and lack of medical treatment. In case it concurs, the provisions of articles 20, 21, 24 and 41 "on postponement of removal and protection against return" of Law 3907/2011 are applied.</p> <p>2. N/A</p>



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			<p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Hungary	Yes	<p>1. N/A.</p> <p>2. In case the third country national has a serious illness, which can be dangerous to her/his life or physical safety, the submission of an appeal against the return decision has an automatic suspensive effect for the return procedure until the final decision of the administrative court. In case the third country national has a serious illness, which can be dangerous to her/his life or physical safety, it is always examined under the non-refoulement procedure by the asylum authority whether the illness can be treated in the origin country or not, before the issuance of a return decision,.</p> <p>In these cases the return is always postponed until the court decision on the appeal is issued. Generally, during the aliens policing interview the third-country nationals shall state whether they suffer from an illness or not.</p> <p>3. Yes, the third country national has to prove it with a medical certificate. The court decides whether the medical certificate is acceptable or not.</p> <p>4. -</p>
	EMN NCP Italy	Yes	<p>1. NO</p> <p>2. No such cases have occurred.</p> <p>3. No such cases have occurred.</p> <p>4. No such cases have occurred.</p>


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	EMN NCP Latvia	Yes	<p>1. No, there were no such cases in Latvia.</p> <p>2. In Latvia, prior to the implementation of the return, a medical examination (inspection) of a third-country national shall be performed only in order to ensure that his or her state of health permits travel. Drawing attention to the fact that the European Commission recommendation establishing a common “Return manual” states that MS fully respect the right to health and, given that the Directive does not impose an obligation to carry out systematic health checks or issue an opinion “fit-to-fly” for all third-country nationals to be expelled. European Commission recommends that Member States take measures to prevent potential irregularities related to false medical claims submitted by third-country nationals, which would result in an unjustified delay or postponement of removal for medical reasons. In the opinion of the European Commission, if it is not a matter of causing irreparable harm to life or of serious risks to severely and permanently deteriorating health, the Member State may decide not to automatically suspend the execution of the decision.</p> <p>3. No. There were no such cases in Latvia and there is no relevant regulation in the national regulatory acts.</p> <p>4. No.</p>
	EMN NCP Lithuania	Yes	<p>1. The Migration Department has never encountered such cases. According to Article 125 of the Law on the Legal Status of Foreigners, if there are grounds for returning a foreigner to a foreign state but the foreigner possesses a valid document giving him/her the right to reside or stay in another EU Member State or a member state of the European Free Trade Association, the foreigner would be obliged to leave the Republic of Lithuania voluntarily. The Law on the Legal Status of Foreigners does not contain provisions that would prevent taking a return decision regarding a foreigner on the grounds of the lack of medical treatment or medication. The foreigner could in principle appeal against a return decision and ask the court to suspend its implementation. However, there have been no such cases so far.</p> <p>2. N/A</p> <p>3. N/A</p>



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			4. N/A
	EMN NCP Luxembourg	Yes	<p>1. No.</p> <p>2. Article 100 (2) of the amended law of 28 August 2008 on free movement of persons and immigration (Immigration Law) expressly states that "foreign nationals residing illegally on Luxembourg territory who hold a valid residence permit or other authorisation conferring a right of residence issued by another Member State are obliged to go immediately to the territory of that other Member State. In case of non-compliance with this obligation or when immediate departure is required for reasons of public order or national security, a return decision is issued."</p> <p>If the third country national disregards the invitation to leave the territory and a decision is issued against him/her they can be removed by force. However, the applicant can try to postpone the removal and the Return Department of the Directorate of Immigration will conduct the assessment.</p> <p>If the applicant tries to postpone the removal for medical reasons arguing that the other Member State cannot provide them the necessary treatment based on article 130 and 131 of the Immigration Law, this argument will be very difficult to take into account as the administrative courts, when interpreting articles 130 and 131 of the Immigration Law, had indicated that in order to benefit from a postponement of removal for medical reasons, the foreigner, who does not present a threat to public order or public safety, has to meet two cumulative conditions, namely to establish, firstly, by means of medical certificates, that their state of health requires medical care, the lack of which would entail exceptionally serious consequences for them and, secondly, that they cannot effectively benefit from appropriate and sufficiently accessible treatment in the country to which they are being sent (See First instance Administrative Court, 3rd Chamber, n° 45.330 of 28 September 2022).</p> <p>3. Yes. As it was mentioned above, the applicant has to fulfil two cumulative conditions: a) that their state of health requires medical care, the lack of which would entail exceptionally serious consequences for them; and b) that they cannot effectively benefit from appropriate and sufficiently accessible treatment in the country to which they are being sent. The first condition has to be proved by medical certificates issued by a medical doctor in Luxembourg. The</p>



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			<p>second requirement is verified on the basis of reports from international organisations that prove that treatment is not available in the country of return. However the Directorate of Immigration may request an expert opinion from the physician appointed by the Ministry of Health who may contest the medical certificates issued by the treating doctor.</p> <p>4. N/A.</p>
	EMN NCP Netherlands	Yes	<p>1. Yes. We are only aware of a few cases so far. Among others there are 2 cases of TCN with a residence status in Hungary and Bulgaria who successfully claim they cannot be returned to those Member States because they do not provide the appropriate medical treatment or medication. There are also a few cases concerning return to Greece. However, we do not have full information on the number of cases in the Netherlands.</p> <p>2. In the Netherlands we wait until the assessment of the claim is done.</p> <p>3. In the Netherlands the applicant has the burden of proof.</p> <p>4. Not applicable.</p>
	EMN NCP Poland	Yes	<p>1. No. Border Guard encounter cases when TCNs claim they cannot to be returned to their country of origin because of lack of medical treatment there. However these are very rare cases.</p> <p>2. In such situation Border Guard would assess the claim in the frame of running administrative procedure (if this would be a readmission case, but if this would be a Dublin case, the authority appropriate for issuing Dublin decisions would make an assessment). Of course, Border Guard should consider whether the return to the country of origin is not possible, if the TCN does not want to be handed over to the other Member State.</p>



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			<p>3. There have been no such cases but if encountered the burden of proof would be only partly on the TCN. Border Guard would have to confirm or deny (obtain some kind of guarantee of that Member State).</p> <p>4. Hypothetically (as there were no such situations) Border Guard would try to obtain information about the availability of medical treatment in that Member State.</p>
	EMN NCP Portugal	Yes	<p>1. No.</p> <p>2.</p> <p>3.</p> <p>4.</p>
	EMN NCP Slovakia	Yes	<p>1. No.</p> <p>2. Each situation is assessed at that particular given time. Article 81 of the Act on the Residence of Foreigners defines the obstacles to administrative expulsion. (A foreigner cannot be administratively expelled to a state in which his/her life would be threatened for the reasons of his/her race, nationality, religion, membership in a particular social group or for his/her political conviction, or in which he/she would be threatened by torture, cruel, inhuman or degrading treatment or punishment. Similarly, a foreigner cannot be administratively expelled to a state in which he/she was imposed the death penalty or it may be assumed that he/she may be imposed such a penalty in the ongoing criminal proceedings. A foreigner cannot be administratively expelled to a state in which his/her freedom would be threatened for the reasons of his/her race, nationality, religion, membership in a particular social group or for his/her political</p>


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			<p>conviction; this shall not apply if a foreigner threatens the state security by his/her actions or if he/she was sentenced for crime and represents a threat for the Slovak Republic.)</p> <p>3. NA</p> <p>4. NA</p>
	EMN NCP Slovenia	Yes	<p>1. So far, no such cases have been recorded.</p> <p>2. According to Article 73 of the Aliens Act, in such a case the Police would be obliged to initiate an ex officio procedure for granting permission to stay (up to 6 months that can be prolonged), if it turns out that, due to his life-threatening health condition, he/she could be exposed to a serious and irreversible deterioration of his health condition during the removal phase. The same procedure would be followed if there is a risk of violating article 3 of ECHR on the grounds of medical reasons.</p> <p>3. Yes, In such cases, an administrative procedure is carried out in accordance with the General Administrative Procedure Act. It is the TCN's responsibility to provide evidence, which may be documentary or material evidence, as well as statements made at the hearing. The official person authorised to conduct the procedure and decide in an administrative case, shall assess which facts are to be considered proven in accordance with their belief, based on a conscientious and careful evaluation of each piece of evidence separately and all evidence together, and based on the outcome of the procedure as a whole.</p> <p>4. We have no practical experience.</p>
	EMN NCP Spain	Yes	<p>1. No. We have a very limited caseload of TCN returns to other Member States, and we haven't been faced with such a situation yet.</p> <p>2.</p>

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			3. 4.
	EMN NCP Sweden	Yes	<p>1. Yes, however we do not know the number of cases as there are no statistics on these specific cases.</p> <p>2. A residence permit may be refused to an asylum seeker who has been declared a refugee or being granted subsidiary protection status in another Member State according to the Aliens Act (2005:716) chap. 5, section 1b. However if there are medical or other special grounds why the return decision should not be enforced, the competent authority may grant a permanent residence permit if the impediment is of lasting nature and in case of a temporary impediment, a temporary residence permit. Impediments of enforcement are outlined in the Aliens Act (2005:716) chap. 12, section 18. The duty to investigate the impediment to enforcement lies both on the applicant and the competent authority. The return is postponed until an assessment of the impediment to enforcement has been carried out. An enforcement of a return decision is considered to contravene the Article 3 of the European Convention if the applicant is subjected to inhumane treatment such as developing a life-threatening illness or not being able to obtain medical care in the country of destination, according to a legal position paper established by the Swedish Migration Agency (Rättsligt ställningstagande Tillämpning av 12 kap. 18 - 19 §§ UtIL då Migrationsverket har beslutat att avvisa ansökan om asyl enligt 5 akp. 1b samma lag RS/045/2021).</p> <p>3. The burden of proof lies on the applicant. The requirement is set high and the proof must be concrete according to a legal position paper established by the Swedish Migration Agency (Rättsligt ställningstagande Praktiska verkställighetshinder m.m. RS/048/2021).</p> <p>4. N/A</p>
