



## **EMN Ad-Hoc Query on Appeal procedure and reception conditions after first instance decision for nationals of safe countries of origin**

Requested by Dennis WINKEL on 31st May 2017

### **Protection**

Responses from Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, Slovak Republic, Slovenia, United Kingdom, Norway (16 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:**


In your answer to AHQ no. 2016.1118 your NCP stated that you have a list of safe countries of origin, or in the case of Norway and Finland, that you have a national practice similar to this. With this ad-hoc query we would like to obtain more information on appeal procedures, the right on shelter and reception conditions. The replies of this and other AHQs will be used as input for the inform on Safe Countries of Origin

### **Questions**

1. Are there any differences in the appeal procedure for nationals of safe countries of origin compared to nationals of other countries? Possible differences are for example: • the instance/court responsible for handling an appeal • the number of appeal instances (first and second instance appeal) • the appeal period (the time limit until when the applicant can launch an appeal) • the decision period (the time limit for the court to decide on a case)• the suspensive effect (whether the applicant is allowed to await the decision on their appeal in your country)Please answer with yes/no.
2. If yes, what are the differences? Please describe the differences (if any) for each of the five above-mentioned points.
3. After the first instance decision on an asylum application from a national of a safe country of origin has been negative, does the right on shelter remain or does the applicant have to leave immediately or find his/her own shelter?
4. If this right remains, do you apply different reception conditions for such persons than for other asylum seekers (e.g. less pocket money, more austere/basic reception conditions)? Please answer with yes/no.
5. If so, please describe how the reception conditions after the first instance decision differ.
6. According to article 46, paragraph 8, of the procedure directive (2013/32/EU) member states shall allow the applicant to remain in the territory pending the outcome of a procedure to rule whether or not the applicant may remain in the territory during the appeal. Do you grant (continuation) of reception to nationals of safe countries during the procedure as described in aforementioned paragraph?

### **Responses**



	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	1. Yes.

			<p><b>2.</b> Suspensive effect: If an asylum seeker is from a safe country of origin, the asylum authority may lift the suspensive effect of a complaint against a negative decision on an asylum application (Art. 18 para 1 sub-para 1 Federal Office for Immigration and Asylum Procedures Act).</p> <p><b>3.</b> Until a final decision on the asylum application is taken, rejected asylum seekers are generally entitled to accommodation within the framework of basic welfare support ("Grundversorgung"). After a negative final decision, rejected applicants in general are entitled to basic welfare support if for legal or factual reasons they cannot be removed. This is not the case where the third-country national could have been expected to remove existing obstacles to a deportation. Furthermore, reception benefits may be reduced or withdrawn if beneficiaries do not comply with obligations to cooperate. In practice, after a final decision rejecting their asylum application, third-country nationals usually keep receiving basic welfare support as long as basic welfare support is not actively withdrawn due to lacking cooperation (see Lukits, The return of rejected asylum seekers from Austria, 2016:26–27). This also applies to rejected applicants from safe countries of origin.</p> <p><b>4.</b> No.</p> <p><b>5.</b> N/A.</p> <p><b>6.</b> If the suspensive effect of a complaint has been lifted by the asylum authority and a complaint is filed with the Federal Administrative Court, the court may grant suspensive effect within one week from reception of the file (Art. 18 para 5 Federal Office for Immigration and Asylum Procedures Act). Until the decision on the complaint, the applicant in general is entitled to reception benefits within the framework of basic welfare support (see the response to question 3).</p>
	Belgium	Yes	<p><b>1.</b> Yes, there are some differences.</p> <p><b>2.</b> Note that if the applicant is a national of a safe country of origin, the Office of the Commissioner General for Stateless Persons (CGVS) first examines whether to take the application into consideration. For this, an accelerated procedure is in place. According to Article 57/6/1 of the Immigration Act, the CGRS has to take a decision for applicants from safe</p>


countries of origin within 15 working days following the transfer of the asylum application to the CGRS by the Immigration Office. (If the CGRS takes the asylum application in consideration, the application will be further treated according the regular procedure.) There are no differences concerning the instance/court responsible for handling an appeal and the number of appeal instances (first and second instance appeal). Concerning the appeal period (the time limit until when the applicant can launch an appeal): After a refusal to consider the asylum application by the CGRS, the applicant has 15 calendar days to submit an appeal before the Council for Aliens Law Litigation (CALL) instead of 30 days in the regular procedure. The appeal is suspensive and the applicant may add new elements. The CALL will process the appeal as soon as possible. (Note that if the asylum application was taken in consideration by the CGRS, but afterwards a refusal to recognise the refugee status and a refusal to grant subsidiary protection status was taken by the CGRS: the applicant has 30 days after this notice to submit an appeal before the CALL). Concerning the decision period (the time limit for the court to decide on a case): The appeal after a refusal to consider the asylum application will be treated by the CALL 'as soon as possible', no exact time limit is specified. Concerning the suspensive effect (whether the applicant is allowed to await the decision on their appeal in your country): an applicant can appeal in full jurisdiction against the decisions taken by the CGRS to refuse the recognition of refugee status, to refuse the granting of the subsidiary protection status and the decision to refuse to consider the application in case of a safe country of origin. An appeal in full jurisdiction is always suspensive: the applicant cannot be forcibly repatriated during the appeal procedure.


**3.** The applicant retains his right to reception during the suspensive appeal procedure pending before the CALL (Council for Alien Law Litigation). However, an appeal against the not taking into consideration of the application by the CGRS during a third asylum demand (multiple asylum application) and during a second asylum demand, if the second demand was lodged within the 48 hours before the scheduled repatriation with the only reason to slow or to hinder the repatriation, will not have a suspensive character on the condition that the CGRS estimates that the applicant does not risk refoulement. Thus, there will be no postponement of execution, i.e. the applicant can be forcibly repatriated and does not retain the right to reception.

**4.** No



			<p><b>5.</b> /</p> <p><b>6.</b> The request for suspension mentioned in question 3 can be done by means of urgent suspension proceedings in case the applicant is subject to an expulsion or refoulement measure. The execution of these measures will be suspended and the right to reception will be retained until the Council of State responds the request for suspension.</p>
	Croatia	Yes	<p><b>1.</b> 1. Yes</p> <p><b>2.</b> 2. Application of institute of safe countries of origin is ground for application of accelerated procedure with duration of 2 months. Giving that fact time limit for appeal before the Administrative court is 8 days. Appeal does not have automatically suspensive effect but upon the request of applicant. The Administrative court shall decide on suspensive effect first instance decision within 8 days.</p> <p><b>3.</b> 3. An applicant is allowed to remain on the territory until the Administrative court decided on suspensive effect.</p> <p><b>4.</b> 4. No.</p> <p><b>5.</b> 5. N/a.</p> <p><b>6.</b> 6. Yes. Please see answer to Question 3.</p>
	Czech Republic	Yes	<p><b>1.</b> NO</p> <p><b>2.</b> N/A</p> <p><b>3.</b> After the first instance decision on an asylum application has been negative, the applicant can still launch an appeal with an automatic suspensive effect and pending the court review he keeps</p>


			<p>the status of applicant for international protection - so he possesses all rights as during administrative level (shelter, food and basic hygiene....) until the end of the procedure.</p> <p><b>4. NO</b></p> <p><b>5. N/A</b></p> <p><b>6. Yes.</b> The applicant has the right to remain until the very end of the procedure at the court level. The applicant that submitted an appeal that has an automatic suspensive effect keeps the status of applicant for international protection - so he possesses all rights as during administrative level (shelter, food and basic hygiene....) until the end of the procedure. Note: CZ has low numbers of applicants coming from safe countries so we are not in need to establish special measures in order to tackle this issue.</p>
+	Finland	Yes	<p><b>1. Yes.</b></p> <p><b>2. Court/instance responsible for handling an appeal - No difference. Number of appeal instances - No difference. Appeal period - No difference. The decision period - No difference. The suspensive effect - There is a difference:</b> Appeals on negative asylum decisions which are made in the standard asylum procedure have a suspensive effect. I.e. a return decision made in conjunction with a negative asylum decision in a standard procedure is not enforceable until the decision is legally binding. The person in question is allowed to await the decision on their appeal in Finland. On the other hand, appeals on asylum decisions which are made in the accelerated procedure do not have a suspensive effect unless the Administrative Court specifically orders a suspension of the enforcement of the return decision. Return decisions made in conjunction with negative asylum decision made in the accelerated procedure are enforceable eight days after serving the decision to the applicant. The eight days must include five working days.</p> <p><b>3. If the asylum seeker from a safe country of origin is a national of a European Union Member State, Ice-land, Liechtenstein, Norway or Switzerland, their reception services will terminate as soon as they have been notified of the negative decision of the Finnish Immigration Service. If</b></p>


			<p>the person in question agrees to return, reception services may be continued until the person in question leaves the country, however for up to 7 days. If the asylum seeker has come from another safe country of origin (apart from the ones mentioned above), their reception services will in principle continue until they leave the country. However, if the person in question does not leave voluntarily and cannot be removed from the country by the police, their reception services will be terminated 30 days after the return decision has become enforceable and the police has informed the reception centre of being unable to remove the person in question from the country. Despite the general rules set out above, the director of the reception centre may decide to continue reception services for a maximum of 90 days even after the cut-off date. After the reception services are discontinued, the person in question can resort to municipalities in order to have their basic needs met.</p> <p><b>4.</b> No difference in the reception conditions for as long as the reception services are continued.</p> <p><b>5.</b> -</p> <p><b>6.</b> Yes.</p>
	France	Yes	<p><b>1.</b> Yes</p> <p><b>2.</b> In first Instance, applications lodged by asylum seekers from safe countries of origin are examined under the accelerated procedure (article L.723-2 of the Code on Entry and Residence of Foreigners and Right of Asylum - CESEDA). Regarding asylum seekers from safe countries of origin, the appeal procedure to the National Court for Right of Asylum (CNDA) re-examine the application in a period of five weeks with the court constituted by a single judge. (Whereas in the regular procedure with nationals of other countries, where the court rules in a period of five months in a collegial way according to article L731-2 of CESEDA)</p> <p><b>3.</b> The right on shelter for asylum seekers remains until the final decision of the appeal court (the National Court for Right of Asylum).</p>


			<p><b>4.</b> No</p> <p><b>5.</b> N/A</p> <p><b>6.</b> France grants a certificate that proves asylum application after the application is registered by administrative authorities. This certificate allows residence for the applicant during the processing of his application. This “certificate proving asylum application” has a validity period of one month and is renewable. When the applicant appeals a first instance decision to the National Court for Right of Asylum, the court sends him an appeal receipt proving that the appeal to the court has been registered. The applicant can renew the “certificate proving asylum application” that allows temporary residence by presenting to the administrative authorities this appeal receipt, a proof a residence and two ID photos. For the first renewal, the “certificate proving asylum application” has a validity period of 6 months and 3 months at the next renewal for nationals of safe countries. The certificate allowing residence can be renewed until the final decision of the appeal court.</p>
	Germany	Yes	<p><b>1.</b> No. • The instance/court responsible for handling an Appeal: No. • The number of appeal instances (first and second instance appeal): No. • The appeal period (the time limit until when the applicant can launch an appeal): No. Only depending on the content of the decision. • The decision period (the time limit for the court to decide on a case): No. In general, the German courts in asylum cases, and also regardless of the origin of the applicant, set their deadlines independently. • The suspensive effect (whether the applicant is allowed to await the decision on their appeal in your country): No.</p> <p><b>2.</b> n/a</p> <p><b>3.</b> The right to accommodation continues; Obligation to leave the country only after administrative finality or legal force. The need for accommodation is covered by the state for asylum seekers whose application for asylum has been rejected even after the first instance court decision. If for asylum seekers from a safe country of origin the refusal of their asylum application by the Federal Office for Migration and Refugees is regarded as manifestly</p>




			<p>unfounded or irrelevant, they have the duty to dwell in the assigned accommodation facility until voluntary departure or removal.</p> <p><b>4.</b> No.</p> <p><b>5.</b> n/a</p> <p><b>6.</b> The suspensive effect of the action is ordered by the Court of First Instance on separate application from the asylum seeker if there are serious doubts as to the correctness of the asylum application challenged by an action.</p>
	Hungary	Yes	<p><b>1.</b> Yes.</p> <p><b>2.</b> The appeal period is shortened from 8 days (regular procedure) to 3 days (accelerated procedure). The court prioritizes appeals from accelerated procedures.</p> <p><b>3.</b> If the appeal is rejected by the court the decision of the immigration authority enters into force and becomes final. A negative decision to an application includes a return decision and the right of residence is terminated.</p> <p><b>4.</b> N/A</p> <p><b>5.</b> N/A</p> <p><b>6.</b> No. The appeal does not have suspensive effect in the case of nationals of safe countries.</p>
	Ireland	Yes	<p><b>1.</b> Yes.</p> <p><b>2.</b> Section 43 of the International Protection Act 2015 provides for an accelerated appeals procedure for applicants in certain circumstances including that they are from safe countries of origin, i.e. the appeal will be processed without holding an oral hearing.</p>


			<p><b>3.</b> In Ireland, rejected applicants for international protection can, in practice, continue to reside in State-provided accommodation under the direct provision system, until they leave the State voluntarily, or are removed.</p> <p><b>4.</b> N/A</p> <p><b>5.</b> N/A</p> <p><b>6.</b> Ireland does not participate in Directive 2013/32/EU. The answer to question 3 above applies.</p>
	Lithuania	Yes	<p><b>1.</b> Yes.</p> <p><b>2.</b> The enforcement of the decision appealed against is suspended in the cases when: an application for asylum lodged by an alien who has entered Lithuania from a safe third country is not examined, and he is returned or expelled from Lithuania to the safe third country; the alien is refused asylum, except for the case when the decision is taken upon examining the application for asylum within the framework of accelerated procedure (an application for asylum is examined within the framework of accelerated procedure, when an asylum applicant inter alia has entered from a safe country of origin). The enforcement of these decisions appealed against may be suspended by a ruling of a relevant administrative court regarding interim measures.</p> <p><b>3.</b> The first instance decision taken may be appealed against to the Supreme Administrative Court of Lithuania within 14 days from the publication of the decision and the asylum applicant keeps the status of applicant of international protection.</p> <p><b>4.</b> No.</p> <p><b>5.</b> N/A</p> <p><b>6.</b> Yes. Aliens have the right to remain in the Republic of Lithuania, while asylum applicants can also remain at the border and in the transit zones, during the application period; and if applied,</p>


			also while pending the outcome of a procedure. If a relevant administrative court adopts decision to apply interim measures applicant is admitted into the territory of the Republic of Lithuania.
	Luxembourg	Yes	<p><b>1.</b> Yes.</p> <p><b>2.</b> Deadline for appealing a negative decision in the standard procedure: The IPA can file an appeal against a negative decision before the First instance Administrative Court within a deadline of one month after the decision is notified. If the decision of the First instance Administrative Court is negative, the IPA can file an appeal before the Administrative Court within a deadline of one month of the notification of the decision. In case of a negative decision of the accelerated procedure, the decision can only be appealed before the First instance Administrative Court and the deadline for the appeal is reduced to 15 days instead of 30 days in the standard procedure.</p> <p><b>3.</b> As mentioned above, after the decision of the First instance Administrative Court the decision becomes final so in accordance with the article 1 (1) Law of 18 December 2015 on reception of applicants for international protection and temporary protection the right of accommodation is terminated. In Luxembourg, article 34 (1) and (2) of the Law of 18 December 2015 on international protection and temporary protection (Asylum Law) establishes that a negative decision to an international protection application comprehends a return decision and that the applicant has 30 days to leave the country voluntarily.</p> <p><b>4.</b> N/A.</p> <p><b>5.</b> N/A.</p> <p><b>6.</b> Yes. The applicant cannot be removed from the territory until the appeal procedure is terminated because article 36 (1) of the Asylum Law establishes that the appeal has suspensive effect.</p>

	Netherlands	Yes	<ol style="list-style-type: none"><li><b>1.</b> Yes.</li><li><b>2.</b> Yes.</li><li><b>3.</b> The main differences within the procedure of applicants of other countries is the short time of the procedure. Safe country procedure is a combination of registration and notification interview, initial interview and detailed interview. All these interviews will take place in one day. As soon as possible and in a period of 8 days after the interview has the court the ability to decide. The applicant have a deadline of 2 days to institute an appeal procedure by a negative decision. Appeal against rejection has no suspensive effect and rejected applicant therefore, the outcome of his appeal cannot await in the Netherlands. The applicant is also obliged immediately To leave the Netherlands (0-day departure) and will gets an entry ban into the entire Schengen area for two years.</li><li><b>4.</b> The main differences within the procedure of applicants of other countries is the short time of the procedure. Safe country procedure is a combination of registration and notification interview, initial interview and detailed interview. All these interviews will take place in one day. As soon as possible and in a period of 8 days after the interview has the court the ability to decide. The applicant have a deadline of 2 days to institute an appeal procedure by a negative decision. Appeal against rejection has no suspensive effect and rejected applicant therefore, the outcome of his appeal cannot await in the Netherlands. The applicant is also obliged immediately To leave the Netherlands (0-day departure) and will gets an entry ban into the entire Schengen area for two years.</li><li><b>5.</b> If an applicant from a safe country of origin, gets a negative decision, the applicant must then leave the Netherlands immediately and get an entry ban into the entire Schengen area for two years.</li><li><b>6.</b> If an applicant from a safe country of origin, gets a negative decision, the applicant must then leave the Netherlands immediately and get an entry ban into the entire Schengen area for two years.</li></ol>
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			<p><b>7.</b> No.</p> <p><b>8.</b> No.</p> <p><b>9.</b> n/a</p> <p><b>10.</b> n/a</p> <p><b>11.</b> If the conclusion is that the applicant is from a safe country of origin, then this will have the effect that the appeal against rejection does not have a suspensive effect and rejected applicant therefore, in principle, cannot await the outcome of his profession in the Netherlands. Basically is the outcome of accelerated procedure a negative decision and must the applicant immediately leave the country? There will be no further receptions top stay longer. Zero-day departure will be forced. In case off individual exceptional situation of an applicant from a safe country, the applicant will be transferred to the regular procedure and is entitled to facilities.</p> <p><b>12.</b> If the conclusion is that the applicant is from a safe country of origin, then this will have the effect that the appeal against rejection does not have a suspensive effect and rejected applicant therefore, in principle, cannot await the outcome of his profession in the Netherlands. Basically is the outcome of accelerated procedure a negative decision and must the applicant immediately leave the country? There will be no further receptions top stay longer. Zero-day departure will be forced. In case off individual exceptional situation of an applicant from a safe country, the applicant will be transferred to the regular procedure and is entitled to facilities.</p>
	Slovak Republic	Yes	<p><b>1.</b> Differences in the appeal procedure: The appeal period – yes, partially but only due to the fact that in their case there is a special reason for rejection of their asylum application as manifestly unfounded. It should be noted that they have the same status as other third-country nationals whose application has been rejected as manifestly unfounded based on other reasons. Suspensive effect – yes, partially but only due to the fact in their case there is a special reason for rejection of their asylum application as manifestly unfounded. It should be noted that they have the same</p>

			<p>status as other third-country nationals whose application has been rejected as manifestly unfounded based on other reasons (with the exception mentioned in 2).</p> <p><b>2.</b> Appeal period – It is possible to file a an administrative action within 20 days from the notification of the Ministry of Interior’s decision about the rejection of asylum application as manifestly unfounded due to the fact that the applicant comes from a safe country of origin. The same period for filing an administrative action (of 20 days) applies also in other cases of asylum applications rejected as manifestly unfounded, cases of asylum applications rejected as inadmissible, and cases of suspended asylum procedure. Other Ministry of Interior’s decisions on asylum applications can be appealed within 30 days after the notification of the decision. Suspensive effect – Filing an administrative action against the Ministry of Interior’s decision rejecting an asylum application as manifestly unfounded due to the fact the applicant comes from a safe country of origin does not have a suspensive effect, if the court does not rule about the suspensive effect following the applicant’s request. However, the same applies in other cases of asylum applications rejected as manifestly unfounded (except for the rejection due to the fact that the applicant comes from a safe country of origin – in such case filing an administrative action has a suspensive effect). Filing an administrative action against the Ministry of Interior’s decision on the rejection of asylum application has a suspensive effect.</p> <p><b>3.</b> The asylum seeker has right to be accommodated in the asylum facility.</p> <p><b>4.</b> No, the asylum seeker is entitled to the same reception conditions as other asylum seekers who are accommodated in the asylum facilities.</p> <p><b>5.</b> N/A</p> <p><b>6.</b> The asylum seeker is entitled to the same reception conditions also during this procedure.</p>
	Slovenia	Yes	<p><b>1.</b> Yes.</p> <p><b>2.</b> According to the Article 70 of International Protection Act an appeal against a decision issued in the accelerated procedure may be filed within 8 days following delivery. In Article 71 is also</p>

			<p>specified that the Administrative Court must decide on an appeal against a decision rejecting an application in the accelerated procedure, in seven days after appeal is received.</p> <p><b>3.</b> The right on shelter remain until the decision of the competent authority on the application becomes final.</p> <p><b>4.</b> No.</p> <p><b>5.</b> N/A</p> <p><b>6.</b> Yes.</p>
	United Kingdom	Yes	<p><b>1.</b> Yes</p> <p><b>2.</b> Most asylum-seekers have a right of appeal if their claim is refused. They will be allowed to remain in the UK while they wait for their appeal. However, some applicants do not automatically have a right to an appeal inside the UK, for example if they come from a designated state or the claim is otherwise certified as ‘clearly unfounded’. These applicants are usually only allowed to make an appeal after they have been removed from the UK. Applicants may additionally, on a case-by-case basis, be refused a right to appeal inside the UK. Applicants who can appeal within the UK must submit their appeal within 14 days. Applicants who can only appeal from outside the UK have 28 days to submit their appeal.</p> <p><b>3.</b> No. The applicant from a safe country of origin is required to leave the UK upon being given a negative first instance decision.</p> <p><b>4.</b> N/A</p> <p><b>5.</b> N/A</p>

			<p><b>6.</b> The UK is not part of the Procedure Directive (2013/32/EU). The applicants from Safe Country of Origin will only be able to appeal from abroad as stated above.</p>
	Norway	Yes	<p><b>1.</b> No, the appeals procedure is the same for the accelerated and the standard procedures. An appeal against a negative decision may lead to a suspension of the forced return to the country of origin, but that is the exception.</p> <p><b>2.</b> Se above answer.</p> <p><b>3.</b> S/he main remain in the reception centre.</p> <p><b>4.</b> Yes</p> <p><b>5.</b> The pocket money is reduced.</p> <p><b>6.</b> If a stay is granted in the execution of the order to return to the country of origin, following a rejection of the application for protection, the former applicant may stay in a reception centre.</p>