



**AD HOC QUERY ON 2019.62 Possible detention of asylum seekers pending the appeal procedure**

**Requested by Dylano de Wilde on 14 June 2019**

**Compilation produced on 8 August 2019**

**Responses from EMN NCP Austria, EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Cyprus, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Italy, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Slovakia, EMN NCP Spain, EMN NCP United Kingdom plus EMN NCP Norway (22 in Total)**

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**1. Background information**

In the Netherlands there is some (legal) debate on the possible detention of asylum seekers pending their appeal procedure. The legal debate focusses on the detention of asylum seekers during the appeal procedure against the rejection of their asylum request. The question is if during that phase of the procedure, the circumstances specified as a ground for detention in article 8, paragraph 3, under letter a and the ground under letter b (of the Receptions Directive, 2013/33 EU) can be applied as a ground for the (continued) detention.

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Under upcoming legal cases the policy of the Netherlands is under review. Therefore, the Netherlands would like to know how other Member States have implemented any policy in this regard and if they have encountered legal difficulties. The Netherlands is especially interested if your Member State current national practice would allow to use article 8, third limb under b of the Receptions Directive as a basis for detention pending the appeal procedure.

## **2. Questions**

**1. Can the detention of an asylum seeker continue in your Member State pending the appeal procedure after the rejection of his/her application? Yes/No**

**2. If you answer yes to question 1: can the detention of an asylum seeker continue pending the appeal procedure after the rejection of his/her application in order to determine or verify his or her identity or nationality (based on article 8 third limb under a of the Receptions Directive (2013/33 EU)? Yes/No, please elaborate.**

**3. If you answer yes to question 1: can the detention of the asylum seeker continue pending the appeal procedure after the rejection of his/her application in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant (based on article 8 third limb under b of the Receptions Directive (2013/33 EU)?**

**4. If you answer yes to question 1: are there any other grounds on which an asylum seeker can be detained in your Member State pending the appeal procedure after the rejection of his/her application?**

We would very much appreciate your responses by **12 July 2019**.

## **3. Responses**



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<sup>1</sup> 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.

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		Wider Dissemination <sup>2</sup>	
	EMN NCP Austria	No	
	EMN NCP Belgium	Yes	<p>1. Yes. The legislative changes of 21 November 2017 which came into force on 22 March 2018, explicitly stipulate that no foreigner can be put in detention for the mere reason he has applied for asylum and outlines the possible grounds for detention for applicants for international protection, at the border (law of 21 November 2017, article 56) and on the Belgian territory (law of 21 November 2017, article 57). As regards to detention on the territory the law of 21 November 2017 stipulates an exhaustive list of a limited number of grounds mentioned in the Reception Conditions Directive.</p> <p>2. Yes (article 74/6 1° of the Immigration Act).</p> <p>3. Yes (article 74/6 2° of the Immigration Act)</p> <p>4. Yes. All grounds of Art. 8 of Dir. 2013/33.</p>

<sup>2</sup> 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>EMN NCP Bulgaria</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. Third country nationals who are in the process of appealing against a decision refusing international protection are not accommodated in the Specialized Homes for Temporary Accommodation of Foreigners (detention) which are part of the Migration Directorate – MoI. When regarding a foreigner there is a decision on refusal, termination or revocation of international protection or asylum or the proceeding under the Asylum and Refugees Act has been terminated by an enforced decision, the foreigner may be forcibly accommodated.</li> <li>2.</li> <li>3.</li> <li>4.</li> </ol>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. YES, restriction of freedom of movement shall be imposed for as long as there are reasons for this as referred to in Q4, but for no longer than 3 months. As an exception, for justified reasons, the application of the measure of restriction of freedom of movement may be extended for no longer than three more months.</li> <li>2. NO, The freedom of movement of applicants may be restricted for establishing and verifying identity or nationality but rejection of application implies that identity and nationality has already been established or it has been established that there are no means to determine asylum seekers identity or nationality.</li> <li>3. YES, The freedom of movement of applicants may be restricted for establishing the facts and circumstances on which the application for international protection is based, and which cannot be established without restriction of movement, especially if it is assessed that there is a risk of flight.</li> <li>4. Restrictions shall be imposed as long as there are reasons for it. whether in first instance procedure or appeal procedure. Restriction of freedom of movement of applicants is regulated by article 54. paragraphs 2-4. of International and temporary protection act. The freedom of movement of applicants</li> </ol>



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			<p>may be restricted if, on the basis of all the facts and circumstances of the specific case, it is deemed to be necessary for the purpose of: 1. establishing the facts and circumstances on which the application for international protection is based, and which cannot be established without restriction of movement, especially if it is assessed that there is a risk of flight; 2. establishing and verifying identity or nationality; 3. protection of the national security or public order of the Republic of Croatia; 4. prevention of abuse of the procedure if, on the basis of objective criteria, which include the possibility of access to the procedure of approval of international protection, there is a well-founded suspicion that the intention to apply for international protection expressed during the procedure of expulsion was aimed at preventing the procedure from continuing. (3) The movements of a foreigner under transfer may be restricted only in order to ensure the enforcement of handover to another member state of the European Economic Area if it is assessed that a risk of flight exists. (4) The risk of flight is assessed on the basis of all the facts and circumstances of the specific case, especially in view of earlier attempts to leave the Republic of Croatia, the refusal to submit to verification and establishment of identity, concealment of information or providing false information on identity and/or nationality, violations of the provisions of the house rules of the Reception Centre, the results from the Eurodac system, and opposition to transfer.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. Yes</li> <li>2. Yes, however, detention on this ground is of limited duration.</li> <li>3. Yes, the risk of absconding is a ground which could justify the detention of an asylum seeker pending appeal, however, in practice its use is limited. For continuance of the detention, that particular reason must be accompanied with other of more serious nature, i.e. public security.</li> <li>4. All grounds of Art. 8 of Dir. 2013/33.</li> </ol>

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	EMN NCP Czech Republic	No	
	EMN NCP Estonia	Yes	<p>1. Yes. An asylum seeker may be detained also pending the appeal procedure after the rejection of his or her application. Detention is possible only if the efficient application of the surveillance measures are impossible, it is in accordance with the principle of proportionality and all the relevant circumstance related to the application are taken into account. It should be noted that according to the Act on Granting International Protection to Alien (AGIPA) the status of an asylum seeker and his/her automatic right to be on the territory are not connected with throughout the all 3 appeal stages. The status of an applicant with an automatic right to remain lasts until the final decision on his or her asylum application has been made. A final decision is a decision of the Police and Border Guard Board with regard to the dismissal of an application or revocation of international protection, the appeal against which has been dismissed by the Administrative Court. Hence, the right of an applicant to appeal in higher court instances remains but in case the third-country national decides to further appeal the decision of the Administrative Court, he or she is no longer considered an asylum seeker and the grounds of detention stipulated in the AGIPA do not apply. The detention may only be possible on the grounds stipulated in the Obligation to Leave and Prohibition to Entry Act (OLPEA). According to the OLPEA the grounds for detaining a persons without grounds to remain in the territory are: 1) there is a risk of absconding; 2) non compliance with the obligation to co-operate or 3) absence of documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed.</p> <p>2. Yes. According to the AGIPA asylum seeker may be detained if it is unavoidably necessary for identification of the person or verification of the identity and also for verification or identification of the citizenship of the person. The detention can continue pending the appeal procedure if the maximum time limit for detention has not been reached yet, if it is proportional and if is not possible to efficiently apply surveillance measures.</p> <p>3. Yes. According to the AGIPA asylum seeker may be detained to identify the circumstances relevant to the proceedings of the application for international protection, primarily in the case when there is a risk of</p>


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			<p>absconding. The detention can continue pending the appeal procedure if the maximum time limit for detention has not been reached yet, if it is proportional and if is not possible to efficiently apply surveillance measures.</p> <p>4. According to the AGIPA the grounds for detention of asylum seekers are provided for as follows: An applicant for international protection may be detained on the following basis if the efficient application of the surveillance measures provided for in this Act is impossible. The detention shall be in accordance with the principle of proportionality and upon detention the essential circumstances related to the applicant for international protection shall be taken account of in every single case. An applicant for international protection may be detained if it is unavoidably necessary on the following bases: 1) identification of the person or verification of the identity; 2) verification or identification of the citizenship of the person; 3) verification of the legal bases of the entry into and the stay in the state of a person; 4) identification of the circumstances relevant to the proceedings of the application for international protection, primarily in the case when there is a risk of escape; 5) there is a reason to believe that the person has submitted an application for international protection to postpone the obligation to leave or prevent expulsion; 6) protection of the security of state or public order; 7) transfer of a person in the procedure provided for in Regulation (EU) No 604/2013 of the European Parliament and of the Council, if there is a risk of absconding of a person. A risk of absconding is interpreted as specified in the Obligation to Leave and Prohibition on Entry Act (OLPEA) or if a person has left another Member State of the European Union without a permission. OLPEA provides for that the risk of absconding of an alien occurs if: 1) the alien has not left Estonia or a member state of the Schengen Convention after the term has expired for voluntary compliance with the obligation to leave imposed by the precept to leave; 2) the alien has submitted false information or falsified documents upon application for the legal basis for the stay in Estonia or the extension thereof, for the Estonian citizenship, international protection or identity document; 3) there is a reasoned doubt regarding the identity or citizenship of the alien; 4) the alien has repeatedly committed intentional criminal offences or has committed a criminal offence for which he or she has been sentenced to imprisonment; 5) the alien has not complied with the surveillance measures applied with regard to him or her to ensure compliance with the precept to leave; 6) the alien has notified the Police and Border Guard Board or the Estonian Internal Security Service of his or her non-compliance with the obligation to leave; 7) the alien has entered into Estonia during the period of validity of the prohibition on entry applied with regard to him or her; 8) the alien has been detained due to illegally crossing the external border of Estonia and he or she has not been issued the permit or right to stay in</p>
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			<p>Estonia;9) an alien has left without permission the residence, assigned to him or her, or another member state of the Schengen Convention.10) the obligation to leave of an alien has been enforced by a court judgment.</p>
	<p>EMN NCP Finland</p>	<p>Yes</p>	<p>1. Yes. Usually only asylum seekers who have received a “fast track” deportation order are detained during their appeal procedure, because such persons can be removed from country before their appeal process has been concluded. Such “fast track” cases include manifestly unfounded asylum applications, persons arriving from countries which are considered safe and so-called Dublin-cases.</p> <p>2. Yes, but detention decisions on this particular ground are rare.</p> <p>3. Yes, but detention decisions on this particular ground are quite rare.</p> <p>4. Yes. The general requirements for any security measures (obligations to report, detention etc) are: 1) establishing that he or she meets the requirements for entry into the country; or 2) preparing or ensuring the enforcement of a decision on removing the alien from the country, or for otherwise supervising that the alien leaves the country. In addition, in order to detain the individual, also at least one of the following criteria has to fulfill:1) taking account of the alien’s personal and other circumstances, there are reasonable grounds to believe that the alien will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way; 2) holding an alien in detention is necessary for establishing his or her identity; 3) the alien has committed or is suspected of having committed a crime and detention is deemed necessary for preparing or ensuring the enforcement of a decision on removing the alien from the country;4) the alien has lodged a renewed application for asylum while being detained with a perceivable purpose of hindering the enforcement of a deportation order;5) detaining the alien is based on article 28 of EU Regulation No. 604/2013 (the Dublin regulation)6) taking account of the alien’s personal and other circumstances, there are reasonable grounds to believe that he or she presents a threat to national security</p>




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	EMN NCP France	No	
	EMN NCP Germany	Yes	<p>1. No. During the asylum procedure, including the appeal procedure, there is no detention under current German law to establish or verify the nationality or identity of the applicant or to preserve evidence. The relevant specifications of the Reception Directive have not yet been transposed into German law. The new provisions of the Second Act to Improve the Enforcement of the Obligation to Exit the Territory (Ordered Return Act), which will enter into force in Germany shortly, provide for the extension of the possibilities of detaining foreigners, in particular also so-called "identity fraudsters" (§§ 62, 62b of the Residence Act). However, the extensions relate to securing deportation. The foreigner is to be detained "for the purpose of deportation". The new regulation of § 47 of the Asylum Act, which is also contained in the Ordered Return Act, provides, among other things, for so-called "identity fraudsters" to be obliged to live in the reception centre for more than 18 months in the case of an enforceable obligation to leave the country.</p> <p>2. ./.</p> <p>3. ./.</p> <p>4. ./.</p>
	EMN NCP Greece	Yes	<p>1. 1. Yes. The detention of an asylum seeker in Greece can continue for up to three (3) months, starting from the date of the expression of the will to submit an application for international protection. If the application is rejected during this period and the migrant uses his/her right to appeal against the asylum rejection decision, his/her detention continues also during the appeal stage for the remaining time of the above mentioned three (3) months and under the condition that the reason for detention is still existing. Of course, alternatives to detention are examined separately according to the details of each</p>


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			<p>case.</p> <p>2. 2. Yes. In this case, the Head of the responsible Asylum Office must consent to the continuation of the detention of these migrants on an individual basis, after assessing the details of each case. If this reason is still valid during the appeal stage, since no documents have been provided to the responsible Authority, that will be useful for the examination of the case, or a logical explanation has not been presented for not having done so, the detention continues.</p> <p>3. 3. Yes. Again, the Head of the responsible Asylum Office must consent to the continuation of the detention of these migrants on an individual basis. The examination of the appeal may require that the migrant presents before the committee once more or in greater detail the facts that led him/her to claim international protection, which are directly linked with the elements on which the international protection is based. This requires that he/she does not abscond and detention prevents this, thus meeting also the purpose of the appeal procedure.</p> <p>4. 4. Yes. Same rationale lies behind the adoption of detention for the rest of the reasons mentioned in the Reception of Asylum Seekers Directive, with the only difference being that no consent from the Head of the responsible Asylum Office is needed for the continuation of detention for cases in which the national security or public order are at stake.</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. According to the national law it can be continued, but the national court is the competent to decide on the prolongation of the detention. In practice the applicants are held in the transit zones, which is not a detention.</p> <p>2. The basis of the detention is the risk of absconding. In Hungary even the courts have the assumption that those whose application was rejected, would try to escape, to move forward to another country, thus the courts decide on the basis of the risk of absconding.</p> <p>3. See Q2.</p>


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			4. Currently there is no relevant practice regarding the detention after the rejection.
	EMN NCP Italy	Yes	<p>1. Detention of an asylum seeker during the appeal procedure against a rejection of his application is not automatic, but it is possible only if, in the case in point, there are the requirements established by law for the detention. Indeed, the applicant (who has the right - within 30 days from the notification of the negative administrative decision - to appeal to the judge for the recognition of the international protection) shall not be detained for the sole purpose of examining the asylum claim (art. 6 comma 1 law 142/2015). So, detention is allowed only in certain cases established by art. 6 of law 142/2015, such as: flight risk, reasons of public order and security, terrorism, serious reasons for considering the foreigner guilty of a crime against peace, a war crime and a crime against humanity (para. 2 and 3). It may be useful to highlight that in these same cases (apart from flight risk), according to the law 251/2007 (art. 12), the international protection (refugee status and subsidiary protection) can not be recognized.</p> <p>2. First at all, it is appropriate to point out that the law 132/2018 (art. 3) has introduced the paragraph 3-bis of article 6 of law 142/2015, which provides a new case of detention for asylum seekers, in line with art. 8 para. 3 lett. D) of Receptions Directive (2013/33 EU). In particular, apart from cases of detention already provided by art. 6 of law 142/2015 (see Q. 1), now the applicant can be detained for the time strictly necessary (not exceeding 30 days) to determine or verify his identity or citizenship. The detention takes place in "hotspots" set up within centres for first assistance and reception and, if during this period, the identity or the nationality of the applicant was not possible to determine, the detention continues in Return Centres for maximum 180 days. So, considered that – when an asylum seeker is detained- the procedure for recognition of international protection is accelerated (art. 28 c. 1 lett.c of law 25/2008) and it must be defined within a period of no more than six months (art. 28 bis c. 3 of law 25/2008), the decision of first instance may be notified pending the detention. In this case, after appealing the rejection within 15 days (not 30 days as normally), the applicant remains in the return centres until the Court decides if suspend or not the enforceability of the previous decision, according to art. 6, c. 7 of law 142/2015 (in case of detained applicant, the suspension is not automatic). If the Court suspend the enforceability of the rejection, the foreigner loses the state of asylum seeker and he can be expelled and,</p>


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			<p>eventually, detained for other 180 days because the reason of his detention is changed (art. 6 c. 6 of law 142/2015). Otherwise, if the enforceability of the rejection is suspended, the applicant must not be expelled, but he remains in the Return Centers until the publication of the outcome of the appeal. Anyway, if the Court rejects the appeal, the foreigner is no more considered an asylum seeker and he can be expelled or detained again for 6 months.</p> <p>3. As said in Q.1, if there is a flight risk, the applicant can be detained (art. 6 para2, lett. c)), also in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention. Moreover, according to letter d of the same article, the assessment of the existence of flight risk can be assumed from previous and systematic false misrepresentation or certificates aimed to avoid the adoption or the execution of an expulsion order.</p> <p>4. See. Q.1</p>
	<p>EMN NCP Latvia</p>	<p>Yes</p>	<p>1. Yes. During the asylum procedure an asylum seeker may be detained, if necessary and in conformity with the principle of proportionality. According to the Asylum Law of Latvia asylum procedure lasts from the time of submission of asylum application until the time when the administrative proceedings, including pending the appeal procedure, regarding his or her application have ended.</p> <p>2. Yes. According to the legislation of Latvia the State Border Guard identifies the asylum seeker and ascertain his or her nationality. After evaluating every single case individually and if regular registration at the unit of the State Border Guard is not sufficient, the State Border Guard can detain an asylum seeker in order to ascertain or verify his or her identity or nationality. The initial detention may last up to six days. An asylum seeker may be detained for more than six days only on the basis of a decision of the district (city) court, therefore the State Border Guard shall submit a justified proposal to the district (city) court to detain the asylum seeker for more than six days, not later than 48 hours before expiry of the time period for initial detention.</p> <p>3. Yes. As mentioned above, the State Border Guard can detain as asylum seeker during any stage of</p>


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			<p>the asylum procedure. One of the main conditions for detention is the situation, when it is necessary to ascertain the facts, on which the application is based and which may be ascertained only by detention, particularly if escaping is possible (the person crossed the State border without an obvious reason evading border controls, previously evaded removal, hid his or her identity, provided false or conflicting information, there are other facts pointing to the likelihood of escape). In our practice this condition for detention is usually applied at the initial stage of asylum procedure, when an asylum seeker submits his or her asylum application. However, the same conditions can be met, when new circumstances are presented for the first time in the appeal phase. Consequently, an asylum seeker can be detained in conformity with the principle of proportionality.</p> <p>4. Yes. The circumstances specified as a ground for detention in article 8, paragraph 3, under letter c through e of the Reception Directive are fully implemented in the Asylum Law of Latvia. Application of these grounds are applied in cases of border procedure, cases with severe public order threats, cases, where a return procedure was already started, and transfer procedure in accordance with the provisions of Dublin Regulation.</p>
	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. Yes. An asylum seeker may be detained at any stage of the procedure if a ground for detention is established.</p> <p>2. Yes. An asylum seeker may be detained for the purpose of identifying and/or verifying his/her identity and/or nationality. An alien may not be detained for more than 6 months except in cases when he/she does not cooperate (refuses to provide his personal data, provides misleading information, etc.) or when the documents required for the expulsion of such an alien from the State's territory are not received (in such cases the period of detention may be extended for an additional period not exceeding 12 months). The detention of an asylum seeker shall be as short as possible and no longer than is necessary considering the grounds for detention.</p> <p>3. Yes. Asylum seeker may be detained to identify the grounds for his/her application for asylum (in case the information on the grounds could not be obtained without detaining the asylum applicant) and there</p>


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			<p>are reasonable grounds for believing that he/she may abscond to avoid return to a foreign state or expulsion from the Republic of Lithuania.</p> <p>4. Apart from cases mentioned in questions 2 and 3, asylum seeker may be detained: - when an alien has been arrested on the basis of Article 113(2) of the Law on the Legal Status of Aliens: when deciding on the return of an alien to a foreign state, the obligation of the alien to leave the Republic of Lithuania or the transfer of an asylum applicant to another EU Member State responsible for examining asylum application; alien may be detained only if the detention is necessary for the adoption and/or enforcement of the relevant decision (if the alien hampers the adoption and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer), when deciding on the return of an alien to a foreign state, he applies for asylum and there are serious grounds for believing that this application was filed only in order to postpone or hinder the enforcement of the decision to return him to a foreign state, and the alien already exercised the procedure for granting asylum;- According to Article 28 of the Regulation (EU) No 604/2013.- When asylum seeker constitutes a threat to national security and public order.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Yes. Even though detention is a measure of last resort that is applied when other less restrictive measures cannot be applied, it can be extended during the appeal procedures if it is proportional and respects the deadlines (three months and extended three more times up to 12 months) established by article 22 (4) of the amended law of 18 December 2015 on international protection and temporary protection (Asylum Law). The decision to extend the detention period during an appeal procedure can be reviewed by the First instance Administrative Court in accordance with article 22 (6) of the Asylum Law.</p> <p>2. Yes. If during the international protection procedure, the identity of the applicant could not be established, because s/he did not collaborate and therefore s/he has been placed in detention in accordance with article 22 (2) a) of the Asylum Law, the detention can continue pending the appeal procedure after the rejection of his/her application. However, the detention can only continue if the maximum time of detention (article 22 (4)) has not been reached yet.</p> <p>3. Yes. Detention can be continued in accordance with article 22 (2) b) of the Asylum Law in order to</p>


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			<p>determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding. However, the detention has to be analyzed on a case-by-case basis (it cannot be systematically extended in accordance with article 22 (3)) of the Asylum Law.</p> <p>4. Yes. In accordance with article 22 (2) c) of the Asylum Law the detention of an applicant can be extended during the appeal procedure if the applicant is a threat to public order or national security and/or if the applicant introduced his/her application in order to obstruct an order of removal (article 22 (2) d) of the Asylum Law.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. Yes, the detention of an asylum seeker can be continued pending the appeal procedure.</p> <p>2. Yes. The fact that no travel or identity documents are submitted, for which no plausible explanation has been provided, can be sufficient to accept that there is further need to determine or verify his or her identity or nationality. Detention will however only be proportional, if other measures cannot be effective. It is our practice that at the very least a risk of absconding must be established as well, in order to accept this ground for detention.</p> <p>3. Yes. The ground for detention listed in Article 8, third paragraph, under b, of the Reception Directive can be used pending the appeal procedure, as the need 'to obtain data' may still exist in that stage of the proceedings. In this regard see CoJEU 25 July 2018, C-585/16 (Alheto) en 4 October 2018, C 652/16 (Almedbekova). According to which the deciding authority is required to take into account new circumstances that are presented for the first time in in the appeal phase. likewise, this would require the person of the applicant in order to determine those elements on which the application for international protection, and fulfill the requirements set out in the receptions directive. Also we fear that the effet utile of the provision would be compromised if detention, must be lifted after the rejection of his application, especially if there a risk of absconding. However, given the wording of Article 8, third paragraph, under b, of the Reception Directive, an argument can be made that could not be relied upon to support a detention during the appeal procedure. The wording "in order to determine those elements on which the</p>

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			<p>application for international protection is based...", can imply this ground for detention is intended solely for the duration of the processing of the asylum application, up to the decision by the determining authority. Our courts seem to lean towards this interpretation.</p> <p>4. Yes. The circumstances specified as a ground for detention in article 8, paragraph 3, under letter c through e are sufficiently clear to be continued pending the appeal procedure and remain unchallenged, however application of these grounds are limited to border cases, cases with severe public order threats and cases where a return procedure was already started.</p>
	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. A foreigner applying for international protection is placed in a detention center based on a court decision. The court issues a decision on placing the applicant or a person on behalf of which the application was lodged in a detention center for a period of up to 60 days. If before the expiry of the period of placing the foreigner in the detention center, the procedure for granting international protection has not been terminated by a final decision and still there are circumstances justifying the detention of the foreigner (in this case the need to establish or verify the identity of the foreigner) the court pursuant to art. 89 paragraph 4 of the Act on granting protection to foreigners on the territory of the Republic of Poland may issue a decision to extend the period of stay of the applicant or the person in whose name the application was lodged in a detention center for a definite period of time, necessary to issue such a decision. Pursuant to art. 16 of the Code of Administrative Procedure, final decisions are decisions that are not subject to appeal in the administrative course of the instance or a request for reconsideration of the case. Final decisions are generally not enforceable decisions. Since the decision of the first instance authority to refuse international protection from which the foreigner appealed is not a final decision, the court is entitled to extend the stay of the foreigner in the detention center, provided that there are grounds for detaining the foreigner (in this case the need to establish or verification of the identity of the foreigner). It should be pointed out that each case is assessed by the court individually, taking into account all the circumstances of the case and the entire evidence collected in the case. In addition, the court, when examining the application for the extension of the applicant's or the person's stay on behalf of which the</p>




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			<p>application was logged in the detention center, assesses whether it is possible to apply alternative measures to detention, this is :1) reporting at specified time intervals to the indicated body,2) payment of cash collateral in a specified amount, not lower than twice the minimum wage provided for in the provisions on minimum wages,3) living in a designated place - until the decision on granting international protection becomes final.If, in the opinion of the court, it is possible to apply the abovementioned alternative means to detention, the court issues a decision on their application in place of a decision on extending the stay of a foreigner in a detention center.</p> <p>3. In the case when before the expiry of the period of placing the foreigner in the detention center, the procedure for granting international protection has not been terminated by a final decision and still there are circumstances justifying the detention of the foreigner (in this case, whether it is necessary to gather information with the participation of the foreigner on which an application for international protection is based, and obtaining it without detention would be impossible - if there is a significant likelihood of escape), the court may, pursuant to art. 89 paragraph 4 of the Act on granting protection to foreigners on the territory of the Republic of Poland to extend the period of stay of the applicant or the person in whose name the application was logged, in a detention center for a definite period of time, necessary to issue such decision.Therefore, also in this case, when a party appealed against the decision on refusal of international protection, the court is entitled to extend the stay of the foreigner in the detention center, if there are grounds justifying the detention of the foreigner (in this case, if there is a need to gather with the participation of foreigner all information on which the application for international protection is based, and which obtaining without a detention would be impossible - if there is a significant likelihood of escape).As indicated in the answer to question 2, the court examines the case individually and makes an assessment on the basis of all the evidence and all circumstances of the case. In situations where it is possible, the court issues a decision on applying alternative measures to detention (indicated in the answer to question 2) instead of a decision on extending the stay of the foreigner in the guarded center.</p> <p>4. According to art. 89 section 4 of the Act on granting protection to foreigners on the territory of the Republic of Poland in cases when before the expiry of the period of placing the foreigner in a detention center, the procedure for granting international protection has not been completed with a final decision and any of the circumstances referred to in art. 87 par. 1, the court may extend the period of stay of the applicant or the person on whose behalf the application was logged in the detention center for foreigners for a definite period, necessary to issue such a decision (this is: the decision of the second instance</p>
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			<p>authority, which will be the final decision).According to art. 87 par. 1 the applicant or the person on behalf of which the application was logged may be detained only:1) to establish or verify his/her identity;2) in order to collect with a foreigner's participation the information on which the application for international protection is based and which could not be obtained without detention - if there is a significant likelihood of escape;3) for the purpose of issuing or implementing a decision obliging a foreigner to return when the applicant or the person on whose behalf the application was logged is undergoing the proceedings regarding the obligation to return or if the applicant or the person on whose behalf the applicant applies is the subject of a decision about the obligation to return, and the applicant had previously the opportunity to submit an application for international protection and there is a reasonable presumption that the application was submitted only to delay the issuance of the decision obliging a foreigner to return;4) if it is required by the defense or security of the state or the protection of public safety and order;5) in accordance with art. 28 of Regulation 604/2013 - where there is a significant probability that the applicant will escape, and it is not possible to transfer hie/her to another Member State immediately. Therefore, when a foreigner who is in a detention center is not finalized with a final decision (this is: the foreigner has not yet received a decision of the first instance authority or received a decision of the first instance authority and appealed against, which did not result in the decision) the court is entitled to prolong the stay of the foreigner in the detention center for a definite period, necessary to issue such decision. premises resulting from art. 87 par. 1 of the Act on granting protection to foreigners on the territory of the Republic of Poland.</p>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. Yes, detention of asylum seeker can continue due to reasons stated in the Article 8 para 3 letter a) and b) of the Directive 2013/33/EU also pending the appeal procedure after the application for asylum has been rejected. If the applicant was detained due to the abovementioned reasons and these reasons remain, the appeal procedure itself is not a ground for releasing the applicant from detention. During the whole period of detention however, the competent authorities in SK assess whether the purpose of detention persists.</p>



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			<p>3. Yes, the detention of the applicant can continue further due to reasons stated in the Article 8 para 3 letter a) and b) of the Directive 2013/33/EU, especially when the risk of absconding is present.</p> <p>4. Yes. The reasons are stated in Art. 88 para 1 of the Act on Residence of Aliens (these reasons are based on the Art. 8 para 3 of the Directive 2013/33/EU.) Art. 88a:(1) The police officer is entitled to detain the asylum seeker, if the purpose of detention cannot be achieved by other less serious means:a) For the purpose of establishing or verifying his/her identity or nationality,b) For the purpose of identifying the grounds which his/her asylum application is based on, (that would be impossible to obtain otherwise without the detention, especially when the risk of absconding exists),c) If this is the case of a third-country national detained in line with art. 88 para 1 letter a) or b) who applied for asylum and reasonable suspicion exists that the application was lodged solely with the purpose of delaying or obstruct the administrative expulsion,d) If this is necessary due to endangering the state security or public safety,e) Due to reasons of art. 88 para 1 letter c) which is the preparation or execution of transfer within the Dublin procedure.</p>
	<p>EMN NCP Spain</p>	<p>Yes</p>	<p>1. See case described in 4. The general rule is that the applicant can request interim measures during the judicial procedure to avoid the execution of a return decision should there be one prior to the asylum claim.</p> <p>2. No</p> <p>3. No</p> <p>4. The person cannot be detained pending the appeal, but the person may already be detained (e.g. in an aliens detention centre after a return order has been issued, and subsequently requests asylum in the last minute). In that case, please note that the duration of the asylum admissibility claim is of four days- the same duration as in the border procedure. Under general aliens law, detention cannot exceed under any circumstance a period of 60 days and must be authorised by a judge. Beyond that time-limit, if the person has not been returned he/she shall be released.</p>

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	EMN NCP United Kingdom	Yes	<p>1. Most asylum claims in the UK are processed in the non-detained system, with individuals remaining in the community whilst their application, and any appeal, is processed. Only a small minority of individuals are detained whilst their asylum claim is considered. Such detention is always in full accordance with published Home Office detention policy and related guidance, including the Home Office's Detained Asylum Casework instruction. Some individuals detained in such circumstances whose asylum claim is refused may also remain in detention whilst their appeal is dealt with. This is not automatic and will depend on the circumstances of the individual case.</p> <p>2. Published Home Office immigration detention policy is clear that individuals may be detained to verify their identity or basis of their claim. Aspects of redocumentation processes may also be undertaken when an individual is detained for removal.</p> <p>3. Some individuals detained may also remain in detention whilst their appeal is dealt with.</p> <p>4. As indicated in the response to question 1 individuals whose asylum claim has been refused may remain in detention whilst their appeal is dealt with, if it is believed that their removal is prospective, but the detention is not automatic (and nor is the outcome of any appeal predetermined).</p>
	EMN NCP Norway	Yes	<p>1. Yes. Coercive measures such as detention may be applied to ensure the implementation of an administrative decision that requires a foreign national to leave the realm, and during the processing of a case which may lead to such an administrative decision, cf. Immigration Act section 99, second paragraph.</p> <p>2. Yes. When a foreign national is not cooperating on clarifying his or her identity or there are specific grounds for suspecting that the foreign national has given a false identity, he or she can be detained in</p>

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			<p>order to determine or verify his or her identity, cf. Immigration Act section 106, first paragraph, letter a, cf. third paragraph. This also applies during the appeal procedure.</p> <p>3. No, not if the only purpose of the detention is to determine those elements on which the application for international protection is based. See answer to question 4 a and b for a list of the different grounds on which a foreign national may be detained in accordance with the Norwegian Immigration Act section 106.</p> <p>4. Assessment criteria in order to protect national security or public order A foreign national may be detained under section 106 to 106c if he or she poses a threat to fundamental national interests and this has been established in an administrative decision in the immigration case and measures are taken in respect of the foreign national with a view to removal, cf. Immigration Act section 130 second paragraph. See answer to question 4 b for a list of the different grounds for detention in section 106. Other ground(s) for detention and the respective criteria/indicators considered in the assessment: Section 106(1) of the Immigration The immigration Act section 106 first paragraph contains the different grounds for detention: a) the foreign national is not cooperating on clarifying his or her identity in accordance with section 21 or section 83 of the Act, or there are specific grounds for suspecting that the foreign national has given a false identity, (b) there are specific grounds for suspecting that the foreign national will evade implementation of an administrative decision requiring the foreign national to leave the realm. The foreign national may also be arrested and detained if there is a significant risk that the foreign national will evade implementation of an administrative decision providing for transfer of the foreign national to another European country in accordance with the Dublin cooperation; see section 32, fourth paragraph, (c) the foreign national fails to comply with a duty to report or an order to stay in a specific place under section 105, first paragraph, (c), and the foreign national is involved in a case that is being processed and has not been finally decided, or the time limit for exit has not yet occurred, (d) an administrative decision on expulsion has been made and the administrative decision is final or suspensive effect has not been granted in connection with appeal, see section 90, and measures are adopted in respect of the foreign national with a view to removal. It is a condition that the foreign national has been expelled on account of being sentenced to a penalty and that there is a risk, in view of the foreign national's personal circumstances, that the foreign national will commit new criminal acts, (e) the foreign national does not do what is necessary to fulfil his or her obligation to procure a valid travel document, and the purpose is to bring the foreign national to the foreign service mission of the country concerned so that he or she can be issued a travel document, (f) the foreign national is in transit at a Norwegian airport, with a view to</p>
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			<p>removal, (g) the foreign national's application for protection is most likely to be refused after being examined on its merits under section 32, first paragraph, (a) or (d), or fifth paragraph. This does not apply if the foreign national is a minor or has minor children who have also applied for protection, or (h) the foreign national's application for protection is deemed to be manifestly unfounded and will be processed within 48 hours. This does not apply if the foreign national is a minor or has minor children who have also applied for protection(i) the foreign national has been or most likely will be refused entry and rejected or expelled. This does not apply if the foreign national has applied for asylum, is a minor or brings with him or her minor children who do not satisfy the conditions for entry. The Immigration Act section 106d, lists a number of objective criteria that may be given weight in assessing the risk of absconding. The list is not exhaustive. • Whether the foreign national has evaded implementation of an administrative decision requiring the foreign national to leave the realm; this includes not complying with a time limit for exit, • Whether the foreign national has explicitly refused to leave the realm, • Whether the foreign national has been expelled from the realm, • Whether the foreign national has been sentenced to a penalty or a special sanction in the realm, • Whether the foreign national has demonstrated a lack of cooperation in connection with doubt about his or her identity, • Whether the foreign national is avoiding or complicating preparations for removal, • Whether the foreign national has given false information to the Norwegian authorities in connection with an application for a permit, • Whether the foreign national has failed to notify a change of address, • Whether the foreign national is responsible for serious disturbances of the peace at a residential centre for asylum seekers, etc., • Whether the foreign national has been found to pose a threat to fundamental national interests, • Whether the foreign national's application for protection has been refused examined on its merits under section 32, first paragraph, (a) or (d), or fifth paragraph, or • Whether the foreign national's application for a residence permit has been rejected as manifestly unfounded; see section 90, sixth paragraph, (b). • General experience relating to absconding may also be given weight.</p> <p>no_response._nl_emn_ahq_201962_possible_detention_of_asylumseekers_pending_the_appeal_procedure.docx</p>
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