



EMN Ad-Hoc Query on 2019.38 Detention of persons awaiting return

Requested by Gabor Veto on 19 March 2019

Protection

Responses from EMN NCP Luxembourg, EMN NCP Latvia, EMN NCP Sweden, EMN NCP Spain, EMN NCP Austria, EMN NCP Lithuania, EMN NCP Estonia, EMN NCP Slovakia, EMN NCP Germany (9 in total)

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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:

Hungary would like to improve its practice on the detention of third country nationals awaiting return. To compare the relevant practices of EU Member States, NCPs are requested to provide answers to the following questions.

Questions

- 1. How many third-country nationals have been detained prior to expulsion in 2014, 2015, 2016, 2017 and 2018?**
- 2. How many third-country nationals awaiting removal can be detained at detention centres at the same time?**
- 3. How many days is the maximum detention period?**
- 4. How many days before the deportation can the detention be ordered?**
- 5. What are the best practices that can make the expulsion procedure faster?**

Responses

EMN NCP Luxembourg

Wider Dissemination: Yes

Adolfo SOMMARRIBAS, EMN statelessness platform

1. 1. In Luxembourg the number of detainees who were later returned were: 2014: 169 were forced returns and 8 were voluntary returns; 2015: 170 were forced returns and 4 were voluntary returns; 2016: 117 were forced returns and 2 were voluntary returns; 2017: 133 were forced returns and 1 was voluntary returns; 2018: 84 were forced returns and 7 were voluntary returns.
2. In Luxembourg, there is only one detention centre which maximum theoretical capacity is 88. There are 32 single rooms and 28 double rooms, however, in practice, the double rooms are used as individual rooms so the maximum capacity is 60 but there are two that are not used (to deal with any contingency or to be used in case another room is going repaired). In conclusion, the maximum capacity is 58.
3. 3. In case of irregular migrants, the maximum detention period is of 6 months: The initial detention period is of 1 month. This period can be extended for 3 further periods of 1 month each. If it is likely that the return procedure will take longer than 4 months because of a lack of cooperation from the concerned person or his/her diplomatic or consular representatives, the detention can be prolonged for 2 further periods of 1 month each (see article 120 (3) of the amended law of 29 August 2008 on free movement of persons and immigration).
4. See answer to Q.3. When families with children are going to be returned the law allows a maximum period of detention of 7 days.
5. 5. The timeframe always depends on a number of factors: namely where the file is complete, whether the police has to undergo further investigation but also the relation with the consular services of the third-country of origin. The Luxembourg Return Policy is based on the EU rules on return. It is necessary to strengthen

the exchange of information and overall mutual cooperation of MS in order to overcome common challenges experienced in implementing the effective return of third-country nationals. Some of the best practices are: a) try to obtain the necessary identity documents from the diplomatic or consular authorities of the country of origin of the returnee from the beginning of the detention; b) the implementation of a video conference system for the identification of returnees which was initially developed as a pilot project between Belgium, Luxembourg and Poland.

EMN NCP Latvia

Wider Dissemination: No

EMN NCP Sweden

Wider Dissemination: Yes

Marie BENGTTSSON, EMN NCP Sweden

1. In Sweden a third country national can be detained throughout the whole asylum process, the grounds may vary. There is no statistics that answers to the question on how many of the third country nationals that was detained in the return process. The most common however, is that detention is used in the return process.
2. The capacity is 417.
3. A detention period is maximum two months in the return process. The period can, after an oral hearing be prolonged with regular two month intervals if there is ground for detention. A person can not be detained for more than maximum 12 months.
4. There is no such time limit in the Swedish Aliens Act.
5. According to our experience it is important to have an asylum process, from the moment a person applies for asylum, til the moment he/she departs, where the applicant/returnee has an understanding for the process as a whole and always knows what to expect in the next step. It is also generally easier to carry out the removal order if the applicant/returnee has been in the country for a short period of time, and vice versa. What is very important is also if there are readmission agreements in place with the countries of origin.

EMN NCP Spain

Wider Dissemination: Yes

Gladys Roy Chicharro, EMN NCP Spain

1. 2014: 7286 2015: 6930 2016: 7597 2017: 8814 2018: 7855
2. 851
3. 60 days
4. At any moment.

5. Start obtaining the travel documents as soon as possible, even before the return order has been issued if the readmission agreement/arrangement with the country of origin allows to.

EMN NCP Austria

Wider Dissemination: Yes

Martin Stiller, Wider Group

1. - --- Source: Ministry of the Interior

2. For the exclusive execution of detention pending removal there is a total capacity for 416 male (in two different institutions) and 50 female (in one additional institution) detainees. --- Source: Ministry of the Interior

3. In Austria, detention pending removal has in principle to last for the shortest possible time but may be maintained until the reason for its imposition ceases to exist or until its objective can no longer be achieved (Art 80 para 1 Aliens Police Act). However, detention pending removal shall not exceed three months if it is ordered on an under-age person over 14 years; it shall not exceed six months if it is ordered on an alien aged over 18 years (Art. 80 para 2 Aliens Police Act). If it is not possible to remove an alien because of certain reasons (it is not possible to verify the identity, the other state has not granted the necessary permit, resistance against coercive force, removal is jeopardized by the alien for reasons of his/her own making) detention pending removal may be maintained for a maximum of 18 months (Art. 80 para 4 Aliens Police Act). In derogation from the rules mentioned above, detention pending removal shall not exceed 10 months running up to the time when the measure which terminates residence becomes able to be executed, if it is ordered in relation to an asylum seeker or an alien who has applied for international protection (Art. 80 Para 5 Aliens Police Act). --- Source: Ministry of the Interior

4. In Austria, no such deadline exists. There is only a maximum duration of detention pending removal varying according to the circumstances. If the maximum duration of detention pending removal (see Q3) is exceeded due to a lack of execution of the removal, detention pending removal has to be repealed informally by releasing the alien (Art. 81 para 1 Aliens Police Act). --- Source: Ministry of the Interior

5. - --- Source: Ministry of the Interior

EMN NCP Lithuania

Wider Dissemination: Yes

Vytautas EŽERSKIS, EMN NCP Lithuania

1. Number of persons detained prior to expulsion (Year) Total. (2013) 275; (2014) 364; (2015) 482; (2016) 272; (2017) 135; (2018) 141.

2. The capacity for in the Foreigner Registration Center (FRC) - 94 TCN persons in detention.

3. Detention period may not exceed 6 months, except in the cases when: • a TCN refuses to cooperate in the process of his / her expulsion from Lithuania; • the documents required for the expulsion of the TCN 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.

4. An alien is detained when there are grounds for detention. Therefore, it depends on the grounds and other conditions different to each case. Detention lasts as long as it is necessary to best prepare for the expulsion procedure.

5. According to the FRC, assigning one officer responsible for handling case of a foreigner should be considered as a good practice. I.e. (Same) Officer communicating directly with a foreigner, makes it possible and easier to organize the travel plan and execute procedures more efficiently and quickly.

EMN NCP Estonia

Wider Dissemination: Yes

Barbara ORLOFF, EMN NCP Estonia

1. 2014 – 49 (excluding detention of asylum seekers and less than 48-hours detention) 2015 – 92 (excluding detention of asylum seekers and less than 48-hours detention) 2016 – 67 (excluding detention of asylum seekers and less than 48-hours detention) 2017 – 41 (excluding detention of asylum seekers and less than 48-hours detention) 2018 – 18 (excluding detention of asylum seekers and less than 48-hours detention)

2. 123 persons.

3. It is possible to detain a TCN for 48 hours without the authorization from the administrative court. If it is necessary to detain a TCN longer than 48 hours, The Police and Border Guard Board may apply from the administrative court for the permission to detain the TCN and place him or her into the detention centre for up to two months if the efficient application of the surveillance measures mentioned above is impossible, and especially if the TCN may abscond, the TCN does not fulfil the duty to cooperate, or the TCN does not have the documents necessary for the return or there is a delay in obtaining these documents from the host or transit country. Detention must be in accordance with the principle of proportionality, and in each case of detention the relevant facts relating to a TCN must be taken into consideration. At the request of the Police and Border Guard Board the administrative court shall extend the term of detention of a person to be expelled in the detention centre by four months at a time but for no longer than for six months as of the day of detention of the person to be expelled if the basis for detention still exist. Altogether the TCN may be detained for up to 18 months under the Obligation to Leave and Prohibition to Entry Act. This does not include the detention time foreseen under the Act on Granting International Protection to Aliens.

4. It is possible to detain a TCN for 48 hours without the authorization from the administrative court before the deportation. With the court's permission the TCN may not be detained longer than 18 months before the deportation.

5. Encouraging voluntary return; Efficient cooperation with the officials in transit countries and country of origin; Efficient cooperation with embassies; Return counselling; Shorter time in detention center;

EMN NCP Slovakia

Wider Dissemination: Yes

Simona MESZAROSOVA, EMN NCP Slovakia

1. The following number of persons has been placed in the Police Detention Facilities for Foreigners in the years 2014-2018: 2014 – 411; 2015 – 1058; 2016 – 412; 2017 – 269; 2018 – 196.

2. Currently, SR has two Police Detention Facilities for Foreigners: in Medveďov – western Slovakia and in Sečovce – eastern Slovakia. Capacity of Medveďov PDCA in the Western Slovakia remained at 152 persons (112 men and 40 women). If needed, the premises of the centre allow for the creation of a further 30 places. The capacity of Sečovce PDCA in the Eastern Slovakia which is adjusted also to accommodating families with children, remained at 176 persons (36 women and/or families with children, 104 men). The centre has an alternative space for 36 persons which can be adjusted for men, women and families with children.

3. A third-country national may be in detention for as long as necessary, for a maximum period of six months. During this period, the police department is entitled to prolong the detention of a third-country national repeatedly while the total detention period can not exceed 6 months. If there is a presupposition that despite actions taken to execute AE, or penalty of expulsion of the TCN, the duration of the process of execution of this AE will be prolonged due to the fact that the TCN cooperates insufficiently, or the diplomatic mission failed to provide the Emergency Travel Documents within 6 months, the police department can repeatedly decide to prolong the detention period. The total length of prolongation of the detention period cannot exceed 12 months. The period of detention cannot be extended if it is a family with children or a vulnerable person. The TCN is secured on the date of issuance of the detention decision.

4. Slovak Republic does not have legally set the period or the number of days for how long before the execution of the expulsion the detention can be ordered. Decision on detention can be issued at any time, if legal preconditions are met.

5. The Slovak Republic - notwithstanding the relatively low number of returns - does not have specific procedures to accelerate the expulsion process. Standard practices common in other Member States are used. However, we consider the most important elements in the return process to be: 1. Exact identification of a TCN; 2. Provision of a replacement travel document in cooperation with the relevant embassy; 3. acceptance of the third country national by the recipient country.

EMN NCP Germany

Wider Dissemination: Yes

Jens Radeke,

1. This question cannot be answered as such a statistical recording does not take place.

2. There are currently 487 places available nationwide in the detention facility.

3. The legal basis is § 62 (3) sentences 3, 4 in conjunction with § 62 (4) German alien law (AufenthG). Preventive detention shall not exceed three months. In special cases it may be ordered for up to 18 months.

4. See answer to question 3. Preventive detention is ordered before execution.

5. On 17.4.19, the Cabinet adopted a draft of a second law for better enforcement of the obligation to leave the country (Ordered Return Act). It contains regulations which facilitate expulsion: on the one hand by lowering the thresholds for the interest in expulsion, on the other hand by regulations which make the process of expulsion more manageable for the immigration authorities. Under certain conditions, in the case of bodily injury or sexual offences with a reduced penalty of one year, a particularly serious interest in expulsion is established. The same applies to social benefit fraud and drug offences. According to the draft law, a sentence of six months imprisonment would already result in a serious interest in expulsion. So far, the minimum sentence has been one year. Expulsion thresholds for refugees and persons granted subsidiary protection will be lowered. There are no qualifying conditions for the particularly serious interest in expulsion in § 54 Para. 1a German alien law (AufenthG). Instead of the previously mentioned offences of violence, threat with danger to life or limb or trickery, a final catalogue of criminal offences will be incorporated which reflects the normative nature of the protection of legal interests which justifies the assumption of a

particularly serious interest in expulsion. The new version relieves the foreigners authorities of the burden of reviewing extensive criminal sentences to determine whether the convicted offences were committed using the aforementioned means of committing violence, threats of danger to life or limb or trickery. This means a clear relief for the foreigners authorities, because the determination as to whether the prerequisite was fulfilled under the previous legal situation does not generally result from the operative part of the judgment, but requires a detailed study of the reasons for the judgment.