



EMN Ad-Hoc Query on The Return Directive (2008/115/EC) and the obligation to respect the non-refoulement principle in the return procedure

Requested by Adolfo SOMMARRIBAS on 13th August 2018

Return

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Spain, Sweden, United Kingdom (21 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:


The Return Directive (2008/115/EC) states in Article 5 the obligation to respect the non – refoulement principle in the “return procedure”. Discussions with the other relevant national stakeholders about the possible improvements of the national system related to the returns of third country nationals are taking place at the moment in the Czech Republic.


The Czech Republic authorities would like to ask MS:



Questions



1. **How does your MS ensure the non- refoulement principle in the return procedure to be respected?**
2. **Is an unsuccessful asylum procedure a reason why a new non-refoulement check is not made within the return procedure? Are there any other situations when non-refoulement check is not made?**
3. **If there are non-refoulement related obstacles for return, what type of stay is granted to such person? Is there any link to new asylum procedure?**

Responses



	Country	Wider Dissemination	Response
	Austria	Yes	1. In Austria, the non-refoulement principle with regards to removals is codified in Art. 50 Aliens Police Act. Accordingly removals are inadmissible, inter alia, if Art. 2 or 3 of the European Convention on Human Rights or Protocols No. 6 or No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty would be violated or if there would be a serious and individual threat to the civilian’s life or integrity by reason of indiscriminate violence in situations of international or internal armed conflict. Together with the return decision, which is, inter alia, the basis for the removal (Art. 46 Aliens Police Act), it has to be determined, whether the removal of the third-country national to one specific country or some specific countries is admissible according to Art. 46 (Art. 52 para 9 Aliens Police Act). Furthermore, by legislative materials and in particular by jurisdiction, the aliens police authority is obliged to ensure the non-refoulement principle ex officio at any time (cf. Administrative High Court, AW


			<p>2010/21/0203, 6.9.2010 and 330 Supplement to the Stenographic Protocols of the National Council 24. Legislation Period 31).</p> <p>2. No, as the admissibility of the removal is to be rendered within the return decision (Art. 52 para 9 Aliens Police Act) and as the aliens police authority is obliged to ensure the non-refoulement principle ex officio at any time (see question 1).</p> <p>3. If the removal is inadmissible according to, inter alia, Art. 50 or 52 para 9 sentence 1 Aliens Police Act, the residence of aliens in the federal territory shall be tolerated (provided that the removal is not admissible to another country). The removal is permitted, inter alia, only after the conclusion of the asylum procedure and after the return decision has been issued. After the asylum procedure has concluded, a new application for asylum may be filed (Subsequent Application, Art. 2 para 1 subpara 23, Asylum Act 2005). However, in the subsequent application new reasons for granting asylum must be pleaded, as the application is otherwise rejected because of res judicata (Art. 68 para 1 General Administrative Procedures Act).</p>
	Belgium	Yes	<p>1. The general principle provides that the article 3 of the European Convention on Human Rights is always checked prior to the removal. To this end, it is assessed whether there is an imminent risk for the life or the physical integrity of the individual or a risk of inhuman and degrading treatment. Following the Paposhvili judgment of the European Court for Human Rights, the Immigration Office (responsible for the removal) has recently decided to adapt its procedures regarding the respect of the article 3 of the ECHR when there are medical concerns. Besides the systematic check of the article 3 of the ECHR, the foreseeable medical consequences must also be assessed if the individual is subject to an illness for which the lack of treatment could have as consequence either an imminent risk of death or a swift, serious and irreversible decline of the health's condition. The possible suffering as well as the possible reduction of the life expectancy is therefore scrutinised.</p> <p>2. No, an unsuccessful asylum application is not a reason for not taking into account the article 3 of the ECHR ahead of the removal. The article 57/6, § 1 of the Immigration Act foresees the possibility for the authority in charge of the examination of applications for international protection (the Office of the Commissioner General for Refugees and Stateless persons, hereafter CGRS) to render an opinion on the compatibility of a potential removal order with the principle of non-refoulement.</p>

			<p>Some decisions taken by the CGRS may be accompanied with a provision of non-removal. In this case, the Belgian law only authorises the removal if a detailed decision proving the nullity of the opinion made by CGRS is provided (article 74/17, § 1). Although the opinion of the CGRS doesn't bind the authority in charge of the removal, it must be taken into account when assessing the risk of violation of the principle of non-refoulement.</p> <p>3. In case of a medical issue, it must be assessed whether the medication is available in the country of return. If the medication is not available or not accessible, the individual concerned will be released with an extendable removal order. He will therefore have the possibility to request a temporary regularisation. The length of the regularisation will be based on the potential length of the treatment.</p>
	Croatia	Yes	<p>1. 1. In the process of issuing or executing a decision on return, a foreigner may express his/her intention to apply for the international protection. At the same time, the officials who carry out the procedure on deciding and executing a return decision are obliged to assess during the administrative return procedure whether there are grounds to grant a foreigner the international protection. The return decision shall be suspended in such cases.</p> <p>2. 2. The check for the new non-refoulement shall not be made. However, if a foreigner has a grounds for non-refoulement, that should be well known to the officials during the administrative return procedure, he/she shall not be expelled or in any way returned.</p> <p>3. 3. Residence permit for humanitarian reasons.</p>
	Cyprus	Yes	<p>1. This is done mostly through the asylum procedure.</p> <p>2. Yes. A non-refoulement check is generally not made, unless through an asylum procedure.</p> <p>3. Not necessarily. There could be humanitarian reasons, e.g. family members or children at school, or any other relationships established in the Republic that would allow the stay.</p>

	Czech Republic	Yes	<ol style="list-style-type: none"> 1. The principle of non – refoulement is respected. The police are obliged to ask Ministry of the Interior for the binding written opinion on non-refoulement (non-refoulement check) within the procedure on administrative expulsion. 2. The principle of non – refoulement is respected. The police are obliged to ask Ministry of the Interior for the binding written opinion on non-refoulement (non-refoulement check) within the procedure on administrative expulsion. 3. The previous unsuccessful asylum procedure is not a reason for not doing non-refoulement check within the return procedure. Non-refoulement check has to be made in all cases except the situation on the external border when a person is leaving the country. 4. The previous unsuccessful asylum procedure is not a reason for not doing non-refoulement check within the return procedure. Non-refoulement check has to be made in all cases except the situation on the external border when a person is leaving the country. 5. It is possible to grant a toleration visa when there are non-refoulement obstacles. In this case, the decision on expulsion is still issued but it is not enforceable until the obstacles last. Person with a tolerated stay is required to apply for international protection within the 2 months. However failure to comply with this obligation does not result to withdrawing a tolerated stay. 6. It is possible to grant a toleration visa when there are non-refoulement obstacles. In this case, the decision on expulsion is still issued but it is not enforceable until the obstacles last. Person with a tolerated stay is required to apply for international protection within the 2 months. However failure to comply with this obligation does not result to withdrawing a tolerated stay.
	Estonia	Yes	<ol style="list-style-type: none"> 1. According to the legislation a TCN may not be expelled to a state to which expulsion may result in consequences specified in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty. The expulsion of an alien shall comply with Articles 32 and 33 of the United Nations Convention relating to the Status of Refugees (together with the Protocol relating to the Status of Refugees of 31 January



			<p>1967) Individual circumstances and changes in individual situation are taken into account before issuing a return decision as well as enforcing removal. Screening is carried out regularly. Return is postponed immediately if the circumstances indicating that removal is not possible, appear. The authorities carrying out return procedure are required to suspend the removal of a third-country national, if it would violate the principle of non-refoulement. If the person concerned asks for asylum, the return procedure is suspended until a decision on his/her asylum application has been made at the court.</p> <p>2. The principle of non-refoulement is assessed as part of the asylum procedure. In case during the return procedure new circumstances arise, a new assessment is made.</p> <p>3. Removal shall be suspended if temporary stay is justified due to humanitarian consideration or force majeure. In case of non-refoulement related obstacle the removal is not applied. In this case pursuant to the Aliens Act, it is possible to issue as an exception a temporary residence permit on humanitarian grounds to a TCN. This provision states that in exceptional circumstances a TCN may be granted a temporary residence permit if in the course of the proceedings relating to the entry of a TCN into Estonia, his or her temporary stay, residence and employment in Estonia or the obligation to leave Estonia of a TCN it has become evident that the refusal of entry or requiring a TCN to leave Estonia would be unduly burdensome to him or her, the TCN lacks the possibility of getting the residence permit in Estonia on another basis, TCN's permanent residence in Estonia is in accordance with public interests and the TCN does not constitute a threat to public order and national security. Granting of a residence permit on these grounds is exceptional, and a person cannot apply himself or herself for such a residence permit, but a TCN can emphasize the circumstances why s/he needs the Estonian residence permit during another procedure performed by the Police and Border Guard Board. This postponement of removal is not directly linked to a new international protection procedure. A subsequent application for international protection can be lodged at any time.</p>
+	Finland	Yes	<p>1. In Finland, the situation regarding non-refoulement is monitored up until the actual implementation of the return.</p> <p>2. No, the non-refoulement check is always made and as mentioned in the response to Q.1 monitored</p>


			<p>until the returnee actually leaves the territory.</p> <p>3. The person has the possibility to launch another asylum application in that case.</p>
	Germany	Yes	<p>1. In Germany, the non-refoulement principle is respected and fully examined within the asylum procedure. The Federal Office examines each asylum application on the basis of the German Asylum Act as to whether one of the forms of protection applies (entitlement to asylum, refugee protection, subsidiary protection or a ban on deportation). If none of the forms of protection can be considered the asylum application is rejected. In this case the local alien authority responsible for the expulsion is bound by the decision rendered by the Federal Office. Once the asylum proceedings have been finally completed, a renewed asylum application may be filed. This follow-up application claims that there has been a change to the factual or legal situation once the non-appealable decision has been handed down. A further asylum procedure is only to be carried out in this procedure if certain preconditions apply, known as the grounds for resumption. These for instance include a considerable change to the circumstances in the country of origin, or new evidence becoming available which may lead to the individual in question being placed in danger should they be returned to their country of origin.</p> <p>2. In case of an unsuccessful asylum procedure, the return decision is rendered by the Federal Office together with the rejection on the asylum application. The local alien authority responsible for the return procedure is bound by this decision.</p> <p>3. In case of non-refoulement related obstacles for return resulting in a positive asylum procedure the person can receive a residence permit, which is issued for one or three years depending on the status granted within the asylum procedure.</p>
	Greece	Yes	<p>1. Greece has incorporated in our national legislation the Return Directive (2008/115/EC). Especially in the Greek law 3907/2011, is predicted all the obligations of the return directive. The article 5 of the Return Directive is mentioned at the article 41 of the law 3907/2011 in which it is predicted all the parameters of a third country national protection from the return. In particular it refers to the following: 1.- A foreign national shall be banned from returning, if: a.- He/she is a minor and</p>


			<p>studying in a Greek school, his/her parents or custodians permanently reside in Greece. b.- He/she is the parent of a national minor and is assigned with such minor's custody or maintenance, which he/she performs. c.- He/she has attained the age of 80. d.- He/she is provided with international protection status or he/she has requested for the provision of such a status but his/her request has not been definitely settled, without prejudice to articles 32 and 33, Geneva Convention 1951. e.- He/she is a minor who has been charged with penitentiary measures, under a Minors Court Judgment. f.- His/her Greek origin is verified. The return ban also includes pregnant women during pregnancy and six months after delivery. 2.- Return is not banned in cases b, c and f of the previous paragraph, when the foreign national concerned may pose risk for public order or national security or public health. 3.- In cases of unaccompanied minors the provisions of article 32 and 25 shall apply. 4.- Protection provided under the articles hereof, shall also include persons who do not fall within the scope of Chapter C hereof.</p> <p>2. In Greece an unsuccessful asylum procedure does not constitute a problem for the implementation of the article 5 of the directive (art. 41 of law 3907/2011).</p> <p>3. In the cases of non-refoulement, there are suitable places – apartments for the third country nationals which are under the responsibility of the Ministry for Migration Policy and the National Center of Social Solidarity.</p>
	Hungary	Yes	<p>1. Based upon the international law and the treaty obligations, Article XIV (3) of The Fundamental Law of Hungary guarantees that no one shall be expelled or extradited to a State where there is a risk that he or she would be sentenced to death, tortured or subjected to other inhuman treatment or punishment (non-refoulement). In line with the principle of non-refoulement, the dispositions of the Hungarian immigration laws Article 34 of Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence and Article 51 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals provides that „Third-country nationals/foreign nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national is likely to be subjected to persecution on the grounds of his/her race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier</p>



of a country where there is substantial reason to believe that the expelled third-country national is likely to be subjected to the actions or conduct defined in Article XIV(2) of the Fundamental Law (non-refoulement)". According to the immigration law of Hungary the immigration authority shall take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures. In order to comply with the obligation of respecting the principle of non-refoulement, the Hungarian law designates the exclusive competency for the inquiry of non-refoulement to - a body other than the immigration authorities ordering or enforcing return - the refugee authority. The refugee authority comply it's task by providing opinion of the non-refoulement, based on actual and adequate information of the country in question and the individual circumstances of the third-country national concerned. The immigration authority shall not vary from the opinion about non-refoulement of the refugee authority. At the ordering phase of the return procedure in order to determine the country of destination of return the immigration authority interviews the third-country national concerned, he or she shall inform the immigration authority about his/her country of origin (the country in which the third-country national in question has a citizenship), or about the country where the third-country national's permanent or temporary residence is located, and if she/he is holding a valid residence permit issued by any MS. The client shall also inform the immigration authority about all his/her personal circumstances. The country designated as the destination of expulsion will be determined according to the above mentioned sequences. When the country designated as the destination of expulsion is clarified, the immigration authority shall request the opinion of the refugee authority to determine as to whether the principle of non-refoulement applies as regards the proceedings for ordering expulsion or for carrying out an expulsion measure. The refugee authority shall comply with the request without delay. In case the refugee authority informs the immigration authority that the principle of non-refoulement applies, and if there is no safe third country offering refuge to the third-country national affected, the refugee authority shall grant refugee status to the third-country national concerned, and shall issue a humanitarian residence permit.


2. If according to the opinion of the refugee authority the principle of non-refoulement does not apply, the immigration authority shall adopt it's – individualized – return decision. The return decision must consist the individual circumstances of the third-country national concerned (especially the nationality, country of origin, the date (year) when he/she left the country of origin, other main and relevant elements of his/her statements during the personal interview); prove of


			<p>identity and prove of nationality (passport/identity card number, date of issue, other data of other documents). The non-refoulement opinion (the main findings) of the refugee authority shall also be part of the return decision.</p> <p>3. If during the identification and travel obtain procedure of undocumented person, there is new information about the real nationality and real country of origin of the third-country national concerned, the immigration authority shall request the refugee authority to examine the principle of non-refoulement regarding this „new” country. Before the execution of the removal decision, the Hungarian immigration authority shall request the refugee authority to examine once again the principle of non-refoulement.</p>
	Italy	Yes	<p>1. According to the art. 19 of the Italian immigration code, return procedures to a State where the person may be the victim of persecution (and enforced execution is only effective if a court validates it) can never be put in place.</p> <p>2. At the end of an unsuccessful asylum procedure a residence permit may be issued for humanitarian reasons if repatriation could be dangerous for the person. Indeed, in 2017 the competent committees proposed the issue of such a permit in about 25% of the examined cases.</p> <p>3. See question 2</p>
	Latvia	Yes	<p>1. When issuing a return decision, the circumstances of the individual case are evaluated, namely, whether there is a reason to believe that a person may be exposed to serious harm after returning to the country of origin. During the removal process it is also assessed, whether the return is in accordance with the principle of non – refoulement. Return procedure is suspended in cases in which there are substantial grounds for believing that the person, if returned, will be exposed to a real risk of ill-treatment. If there is a reason to believe that a person may be exposed to serious harm after returning to the country of origin, with the consent of the person, he/she may be expelled to the third country in which he/she is entitled to reside or to the safe region of the country of origin.</p> <p>2. If the return decision is taken directly after unsuccessful asylum procedure, taking into account the</p>


			<p>Return Handbook recommendations (namely, a repetitive assessment of the risk of breach of the principle of non-refoulement is not required if the respect of that principle was already assessed in previous procedures, if the assessment is final and if there is no change in the individual situation of the third-country national concerned) a new non – refoulement check is not made. Non – refoulement check is not made in cases when illegally staying foreigner arrives to the competent authority and expresses a wish to voluntarily leave the country.</p> <p>3. If there is a reason to believe that a person may be exposed to serious harm after returning to the country of origin, the return procedure is suspended. A question about issuance a residence permit on the basis of humanitarian or other grounds (if such exist) can be considered. A person is entitled to submit an application regarding granting refugee or alternative status to the State Border Guard.</p>
	Lithuania	Yes	<p>1. In case of the non-refoulement principle an alien is not returned. Article 130 of the Law stipulates the cases when it is prohibited to expel or return an alien: - It is prohibited to expel or return the alien to a state where his life or freedom is in danger or where he may be subjected to persecution on grounds of race, religion, nationality, membership of a certain social group or political opinion or to a state from where he may later be expelled to such a state. It should be noted that this provision shall not apply to an alien who, for serious reasons, represents a threat to the security of the Republic of Lithuania or who has been convicted by an effective court judgment of a grave crime and constitutes a threat to the community. - The alien is not expelled or returned to a state where there are serious grounds for believing that in that state the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment; the alien is not expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off period in accordance with the procedure established by the Government of the Republic of Lithuania, during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court.</p> <p>2. The principle of non-refoulement is assessed as part of the asylum procedure and thus is not repeated during the return procedure.</p> <p>3. In Lithuania, a temporary residence permit may be issued to the aliens to whom the principle of non-refoulement applies. There have also been isolated cases when an alien could not be returned to</p>

			<p>the country of origin in accordance with the principle of non-refoulement and could neither be issued a temporary residence permit in Lithuania on grounds of representing a threat to national security. At the moment, these are isolated cases, but the number of such cases may increase in the future.</p>
	Luxembourg	Yes	<p>1. Article 124 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) states that: a return decision involving, for the alien concerned, a time-limit (generally 30 days) in which to comply voluntarily with an obligation to leave the territory may not be enforced until after the expiry of the time granted, unless there appears in the interim to be a risk of the alien. Where an alien fails to comply with the obligation to leave the territory within the time granted, the order to leave the territory may be enforced as a matter of course and the alien may be forcibly removed from the territory. Coercive measures to remove from the territory an alien who resists removal must be proportionate, and must not go beyond the use of reasonable force. Such measures shall be applied in accordance with fundamental rights and with respect for the dignity of the person concerned. In the course of enforcement of an expulsion decision, due regard shall be had to the best interests of the child, family life, the state of health of the third-country national and the principle of non-refoulement.</p> <p>2. The fact that the third-country national had filed another unsuccessful international protection application is not enough reason to not conduct a non-refoulement check because the situation could have changed from the time the first check was conducted.</p> <p>3. Article 125bis (1) of the Immigration Law states that where an alien shows that he/she is unable to leave the territory for reasons not of his/her own making, or if he/she is unable either to return to his/her country of origin or to travel to any other country, the Minister may postpone the removal of the alien for a period determined in accordance with the particular circumstances to each case and until such time as there exists a reasonable prospect of performance of his/her obligation. The alien may remain on the territory on a provisional basis, without being authorised to reside there. The decision to postpone the removal may be accompanied by an order for house arrest. This postponement of removal is not linked to a new international protection procedure. An application for international protection can be lodged at any time regardless of the person's legal status.</p>

	Malta	Yes	<ol style="list-style-type: none"> 1. An assessment of every case is made before removal proceedings commence. 2. An assessment is always carried out but an unsuccessful asylum claim is also taken into consideration during such an assessment. 3. The permit granted would depend on the nature of the case. Rather than a new asylum procedure initiated, one would consider the request as a subsequent application.
	Netherlands	Yes	<ol style="list-style-type: none"> 1. The non-refoulement principle is assessed in the return procedure. This assessment may be performed in different instances: -If a decision on return is also part of a decision upon an application for an asylum residence permit and only after the substantial assessment of the application. -In a situation in which a third-country national is found to be staying irregularly and received a return decision, they would be heard on grounds of the Boudjlida ruling 195 (C-249/13) on matters such as their health situation, children's best interest, family life, and the principle of non-refoulement. -In addition, if the third-country national, whose departure is imminent, would claim that his return would be in violation of the principle of non-refoulement, this would be interpreted as a request for protection and handled under the Asylum Procedure Directive. - In addition, an effective remedy is available to the third-country national, whose departure/expulsion is imminent. He may object to the expulsion and ask a court for an injunctive relief on the grounds of 3 ECHR in order to prevent the expulsion. Moreover, the return process is surrounded with adequate safeguards. The Repatriation and Departure Service (DT&V) is responsible for the return process. A caseworker, the supervisor departure, supervises the third-country national (TCN) until the moment of return. The supervisor departure conducts departure interviews with the third-country national. The supervisor departure does not carry out a non-refoulement check him/herself. The Immigration and Naturalisation Service (IND) is responsible for the assessment of the asylum application of the TCN and performs in this context a check on whether Article 3 of the European Convention on Human Rights (ECPHR) is applicable. However, the supervisor departure does perform two checks to make sure that the TCN is removable and has no ongoing asylum procedures. There are two moments when the IND is requested to perform a check on ongoing asylum procedures. The first check is carried out when the TCN is about to be presented with his/her diplomatic representation. This only applies when the TCN can only leave the Netherlands on a laissez passer. The other moment is just before the actual

			<p>departure of the TCN. This, again, is to make sure that there are no last-minute applications for asylum.</p> <p>2. As explained under 1, the IND assesses whether the claim to asylum is successful or not. The TCN will enter his/her return procedure once the claim for asylum is rejected. During the return procedure, there is no ex officio assessment of 3 ECHR, but there are several possibilities for the TCN to raise the issue of 3 ECHR (a subsequent application for asylum, or the request for an injunctive relief short before the expulsion). The TCN can at all stages of the return procedure make a subsequent application for international protection, even on the day a return flight to the country of origin is scheduled. A special team of the IND stands ready for just such an occasion (the so called ‘Last Minute’ team) to assess whether the subsequent application is made because of new elements or findings (see articles 9 and 41 of the Procedures Directive). In case Article 1F Geneva Refugee Convention is applicable to a TCN whose claim is rejected and the TCN cannot return because of Article 3 ECPHR, the supervisor departure will carry out continuous checks whether Article 3 ECPHR still applies.</p> <p>3. Such obstacle could lead to an asylum permit, which will only be granted after an application. NB: it is also possible that the non-refoulement risk is not related to asylum and the Qualification Directive. In such cases other permits or a temporary postponement of departure may be granted, for example when medical reasons lead to the conclusion that the non-refoulement principle applies. In the case where article 1F of the Geneva Convention applies and the TCN cannot return because of Article 3 ECPHR, the TCN is not allowed to stay in the Netherlands but at the same time will not be removed to his country of origin. The TCN is expected to find another country to go to, where he is not at risk.</p>
	Poland	Yes	<p>1. According to national legislation the authority conducting the proceedings regarding the foreigner's return shall instruct the foreigner about the possibility of submitting an application for international protection. The proceedings regarding the foreigner's return shall be suspended in the case of the initiation of proceedings on granting international protection to the foreigner. Proceedings regarding the foreigner's return shall not be suspended if the foreigner has submitted subsequent application for international protection. A return decision shall not be executed (enforced) when</p>

			<p>proceedings on granting international protection to the foreigner are pending. As a rule, this does not apply to proceedings initiated on the basis of a second subsequent application. Moreover, the Polish Border Guard authority is obliged to assess during the administrative return procedure whether there are grounds to grant a foreigner a residence permit for humanitarian reasons or a tolerated stay, based on the European Convention on Human Rights and Fundamental Freedoms. The return decision shall not be issued in such cases.</p> <p>2. In case of rejected asylum seekers, a new non-refoulement check based on Geneva Convention is not made. Nevertheless, as indicated in the answer to question 1, the Polish Border Guard authority is obliged to assess during the administrative return procedure whether there are grounds to grant a foreigner a residence permit for humanitarian reasons or a tolerated stay, based on the European Convention on Human Rights and Fundamental Freedoms.</p> <p>3. For the types of stay granted to such persons, see answers to question 1 and 2 (residence permit for humanitarian reasons or tolerated stay). In such cases there is no link to new asylum procedure.</p>
	Slovak Republic	Yes	<p>1. In return procedure the non-refoulement principle is assessed in each case individually based on all the identified circumstances. This is regulated also in our law (Act on Residence of Aliens) as obstacles to administrative expulsion.</p> <p>2. The police authority does not assess the obstacles of the administrative expulsion in the return procedure if other state authority already lawfully decided upon the reasons for which it was not possible to expel the TCN in another proceedings and no change of individual situation of the TCN occurred.</p> <p>3. In case the obstacles to administrative expulsion persist, TCN can remain in the territory of the SR (“remaining in the territory of the SR under the Act on Residence of Aliens). Remaining as the Act states, however, is not a “residence status” per se but is not considered unauthorised either.</p>
	Spain	Yes	<p>1. Every case is individually assessed by the instructing officer before asking from the judge a</p>

			<p>detention order and/or by the executing officer before removal</p> <p>2. Is an unsuccessful asylum procedure a reason why a new non-refoulement check is not made within the return procedure? NO Are there any other situations when non-refoulement check is not made? NO</p> <p>3. If there are non-refoulement related obstacles for return, what type of stay is granted to such person? It depends on the duration in time of those obstacles and on the obstacles having prevented legal stay Is there any link to new asylum procedure? No</p>
	Sweden	Yes	<p>1. Aliens Act 12 chapter, section 1-3 and 17-18, the mechanism in place is impediments to enforcement. The authorities responsible for the enforcement examine if there are any obstacles to enforce the return decision after the decision has entered into force and before the removal.</p> <p>2. There is always a non-refoulement check during the asylum procedure, after the return decision has entered into force and before the removal.</p> <p>3. According to Aliens Act, chapter 12, section 19, if new circumstances have emerged since the issuance of the return decision that might imply a permanent impediment to enforcement and there are sound reasons why the person in question could not present the circumstances earlier, a new asylum procedure is opened. Since July 2016, there is a temporary act restricting the possibility of being granted a residence permit in Sweden. The temporary law is scheduled to expire in 2019 and imply that most people in need of protection will be granted temporary residence permits instead of permanent residence permits. Those who are refugees will be granted a residence permit for three years, and those who are considered eligible for protection for another reason will be granted a residence permit for 13 months. When the residence permits expire, an application for an extension can be lodged. If there is still a need of protection, a residence permit is granted for another two years. If the person in question is between 17 and 24 years old and is studying at the upper secondary school level, there is the possibility to be granted a longer temporary residence permit to complete his/her studies.</p>



United Kingdom

Yes

- 1.** All asylum claims are carefully considered on their individual merits in accordance with our obligations under the Refugee Convention, which includes the principle of non-refoulement. Where a fear of persecution or serious harm is raised during the returns procedure that claim or further submission is carefully considered before removal takes place.
- 2.** In part, yes. Where an asylum claim has been refused and any appeal against that decision has been dismissed the person becomes liable for removal if they do not qualify to stay in the UK on any other grounds. There will be no further need to consider protection / non-refoulement issues unless the individual raises further evidence or new grounds for asylum. Where they do so that further evidence will be considered prior to removal.
- 3.** Where someone establishes a well-founded fear of persecution or serious harm at any stage prior to removal they are normally granted protection status (that is refugee status or humanitarian protection).