EMN Ad-Hoc Query on Ill TCN invoking their state of health

Requested by FR EMN NCP on 5th June 2018

Return

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom (17 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:

As from 1 January 2017, France modified the legislative process for the issuance of residence permits for ill TCNS invoking their state of health. TCNs shall be protected against a removal order if they suffer from a disease which, if not treated, would have serious consequences for them and for which they cannot have access to the right treatment in their home country.
The implementation of the new process has raised some legal questions in France, especially related to the protection of applicants against removal orders and the legal basis of the decision.
France would like to receive some information from the other Member States regarding their experience and applicable regulation regarding (1) the legal basis of the removal order for TCNs invoking their state of health in order to avoid a removal order and (2) the cooperation between the different national authorities which have to process such a request.
// Information for Question 1 : In France, a TCN under a removal order may subsequently invoke his/her health status to prevent the execution of this order. In that case, the Prefect issues a medical certificate which must be completed by his/her treating doctor (or the doctor competent for the detention center) in order to allow the French office for immigration and integration (OFII) medical college or a single doctor to rule on the basis of his/her claims concerning his/her health status and the availability of health care provision in his/her country of origin.
// Information for Question 2 : In France, the judicial appeal against a removal order following the rejection of an application for a residence permit for medical grounds is generally accompanied by means of internal legality (substance) which implies that the administrative judge must take a decision on medical issues (existence of the treatment in the country of origin, effective access to health care for the entire population, severity of the disease, etc.). The principle of compliance with medical confidentiality prevents the OFII medical college, which has considered the medical file of the applicant, to provide its analysis to the Prefect who must therefore answer TCN's arguments without being able to check these medical elements.

Questions

1. Has your country implemented a dedicated process allowing a TCN to invoke his/her health status when s/he is subject to a removal order?
2. Does your country have a particular process to qualify this request as a delaying tactic and to dismiss it without examining its merits when it appears that the invocation of the health status is for the sole purpose of defeating the removal order?
3. If yes, which medical and/or administrative authority delivers an opinion on the merits of the application?
4. In case of rejection, is a new decision taken by the administrative authority? If yes, what are the legal rights of appeal (administrative and/or jurisdictional)?
5. How does the administrative authority of your country defend its decision in case of judicial appeal?
6. Does the medical authority to whom the case was presented send information on the applicant's pathology?
7. Who is in charge of defending the medical decision in case of judicial appeal: policy officers or doctors?

8. Does the medical authority which examined the applicant's file provide its assessment criteria to the administration on the issue of access to health care in the country of origin?

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	**1.** No, in Austria there is no procedure in this regard. However, in Austria a return decision interfering with the private or family life of the alien may only be issued if it is imperative for the accomplishment of the objectives outlined in Art. 8 para 2 ECHR (Art. 9 para 1 Federal Office for Immigration and Asylum Procedures Act). Para 2 outlines several criteria to be in particular considered for the assessment of the private and family life according to Art. 8 ECHR. However, these criteria are not conclusively regulated, consequently the state of health and medical supply in the country of origin may also be taken into account (Peyrl J., T. Neugschwendtner und C. Schmaus, Fremdenrecht, p. 247). In the case of an expulsion of privileged third-country nationals, the law explicitly requires the consideration of the health state (Art. 66 Aliens Police Act). Based on the return decision, which also constitutes if the removal of the TCN to a specific third country is admissible, the removal is executed as an act of direct orders and coercive measures, hence there is no administrative order of removal. The authority has to consider the respective circumstances of the individual case (Art. 46 para 3 Aliens Police Act). 24 hours before the planned removal by plane, the fitness for flying of the person of concern is medically evaluated and medical documents presented by the person of concern may affect the de-facto removal, as in practice, removals are postponed due to medical reasons, e.g. pregnancy of the person of concern (National Report “The Effectiveness of Return in Austria”, p. 59). The return decision is not affected by this postponement. **2.** No, in Austria there is no procedure in this regard. However, medical officers are available to examine alleged health impairments (e.g. prior to removals; national report “The Effectiveness of Return in Austria”, p. 59). If no health impairments are determined, the removal is executed.

			Otherwise the removal may be postponed. **3.** n/a **4.** The return decision serves as a basis for the removal. If a return decision is issued, no further administrative decisions will be issued. A postponed removal does not require a re-issuance of a return decision. **5.** Within a legal remedial procedure, the authority is party of the proceedings before the administrative court (Art. 18 Proceedings of Administrative Courts Act). Hence, the authority is able to contribute to the legal remedial procedure and to defend its decisions. **6.** Health data is special category of personal data according to Art. 9 GDPR and may only be shared if the data subject has given explicit consent to the processing. Regarding third countries: No information of the applicant's pathology is shared with third countries unless the applicant explicitly agrees on sharing the data. Regarding national authorities: The medical assessment is carried out by the department for medical and health matters of the Austrian Interior Ministry which only shares the results with the Federal Office for Immigration and Asylum (BFA). **7.** Concerning the removal decision: The BFA takes the decision based on the medical assessment of the medical officer. Therefore, the BFA has to defend the decision in case of judicial appeal. Concerning the removal: The removal is conducted by the Federal Police Directorate (LPD) on order of the BFA. In case of a judicial appeal, claiming the TCN was unfit to be transported, the LPD has to defend the decision. **8.** The general assessment about the access to health care in the country of origin is done by the BFA. The assessment also includes an information about the criteria and methodology used by the BFA. Source: Ministry of the Interior; AT EMN NCP

	Belgium	Yes	**1.** Yes. Before deciding whether or not a return decision should be issued, the file of the TCN is analysed. If there are elements in his file that suggest he has health problems, they will be taken into account when deciding whether or not a return decision will be issued or how this return will be organized (already prior to the return decision in some cases). If necessary inquiries will be made in the third country about the possibilities of medical treatment with regard of the illness of the concerned person, and arrangements may be taken in order to ensure a follow up in the third country. If necessary the treatment and / or medication will be financed (maximum 1 year) ; this can be through an AVRR scheme (voluntary return with possibility of medical treatment) or on the basis of the "special needs" scheme (in case of forced return) (see infra). Arrangements are sometimes taken and prepared in advance because they need to be mentioned in the return decision, in order to show to the appeal instances that the necessary precautions have been taken, in order to guarantee a humane return. When an illegally staying TCN is intercepted, the police will in principle ask three short questions (Why haven't you returned? Do you have family in Belgium? How is your health?). The answers of the TCN will be taken into account when deciding whether or not to issue a return decision. After a return decision is issued, a TCN can still invoke his alleged health problems, whether he is detained or not. • In detention: Upon arrival in the detention center or in the alternative to detention (family units), a medical doctor who is contracted by the Immigration Office will decide after examination whether or not a resident is fit to stay in the center or in the family unit. An assessment will also be made by the medical doctor, under which conditions the return is possible, if an illness is detected or confirmed (in compliance with the PAPOSHVILI v Belgium ECHR decision of 13 December 2016 - https://hudoc.echr.coe.int/eng#{"itemid":["001-169662"]}) . Before removal the medical doctor must examine the resident again to determine whether or not he is fit-to-fly. If the resident is (temporarily) not fit-to-fly the removal will be annulled or postponed. As soon as possible after arrival in the detention center, the TCN will fill in a questionnaire in its native language. One of the questions is 'Do you have a disease that makes it difficult for you to return?'. Other questions are inter alia about travel documents, alleged problems in the country of return, and family residing in Belgium. After translating the questionnaire, an official of the Immigration Office must decide whether or not the decision to return and detain needs to be altered. If the decision is maintained, this will be motivated in a short note, which will be put in the TCN's file. • Not detained: The TCN can always ask to prolong the term of his removal order on the basis of medical grounds (through

			certificates issued by a medical doctor). This is not suspensive. Whether or not the TCN is detained, he can always introduce an application for authorization to stay for medical reasons (this procedure is not suspensive). Also, if he has never received a return decision. It's possible that because of this procedure he will be granted a residence permit. Regarding the return of TCNs with health issues, the Belgian NCP would like to mention the AMAAR-project (AVR) and the special needs-project (forced return): • Fedasil (the Belgian federal reception agency) has developed the AMAAR-project in cooperation with a medical doctor of Fedasils' medical unit, IOM and Caritas International Belgium. AMAAR stands for 'Adapted Medical Assistance After Arrival'. It consists of three components: analysis of medical treatment available in the country of origin, maximal referral to already existing healthcare, and financing of medical costs (if necessary) for a period of six months (exceptionally 12 months). The aim is to minimize the obstacles to make a voluntary return feasible. In 2016 19 TCNs returned with the help of the AMAAR-project. • The 'special needs' unit aims at humanizing the forced return of vulnerable TCN's with special needs. The aim of the project is to provide these persons with tailored support before, during and after their forced return. It is implemented by the Immigration Office in cooperation with local partners in the countries of origin. Before return, support is provided in the closed detention centers (e.g. urgent psychiatric admissions of residents and the purchase of medication). During the return procedure, a tailored medical/social escort is provided. After return, reintegration assistance and monitoring activities are organized in certain cases (e.g. medical follow-up). This depends on the availability and accessibility of medical care in the country of return, which is assessed by the MedCOI-unit (MedCOI stands for Medical Country of Origin Information). In 2016 44 persons returned with some form of assistance by special needs. **2.** No. You can't really qualify invoked health problems as a tactic to defeat the removal order, if you haven't examined these invoked health problems. Introducing an application for authorization to stay for medical reasons and asking to prolong a return decision is not suspensive. **3.** Medical doctors who work for the Immigration Office are responsible for the assessment of the medical elements in the application. If necessary, the Immigration Office can ask the opinion of an external (specialist) medical doctor. Caseworkers, who are representatives of the Minister, usually

			follow the medical advice of the medical doctors. It is them who take the decision concerning the application for authorization to stay. However, they may sometimes deviate from the medical doctor's advice due to reasons of public order and security. **4.** When the TCN his request to prolong the term of his removal order is rejected, the TCN is of course informed about this in writing. It's possible to appeal to the Council for Alien Law Litigation ("Conseil du Contentieux des Etrangers") against this decision. The Council for Alien Law Litigation is a judicial authority. As mentioned above, the detained TCN will fill in a questionnaire in its native language after arrival in the detention center. One of the questions is 'Do you have a disease that makes it difficult for you to return?'. An official of the Immigration Office must decide whether or not the decision needs to be altered. If the decision is maintained, this will be motivated in a short note, which will be put in the TCN's file. Technically this is not a decision. So it's not possible to launch an appeal against this short note. The appeal to the Council for Alien Law Litigation against a negative decision in an application for authorization to stay for medical reasons is not suspensive. But if the TCN is in detention and will be forcibly removed in a short time, he has the possibility to file an urgent suspension appeal, which has a suspensive nature. Of course, it is possible to launch an appeal against return decisions (to the Council for Alien law Litigation) or detention (to the Court of first Instance) and evoking alleged health issues in this appeal. **5.** Please see below. **6.** Yes. Medical documents are secured for privacy reasons. Only a very few staff members of the Immigration Office can consult these documents. When the TCN files an appeal against a decision of refusal of an application for authorization to stay for medical reasons, the medical documents are sent to the Council for Alien Law Litigation and to the lawyer who will defend the Immigration Office. **7.** Staff of the Litigation Unit of the Immigration Office, or lawyers appointed by the Immigration Office. In case of an appeal against a refusal of an application for authorization to stay for medical reasons, the Council for Alien law Litigation will only verify the legality of the decision to refuse. So, the Council can only verify if the medical doctor of the Immigration Office has taken into

			account all the medical documents and if the decision of refusal is duly justified. **8.** Yes. In Belgium the medical authority which examines the applicant's file (medical doctors working at the Medical Section of the Immigration Office) is part of the administrative authority (Immigration Office). In a decision of refusal of an application for authorization to stay for medical reasons it is indicated why the TCN will have access to health care after return (or why he doesn't need access to health care).
	**Bulgaria**	Yes	**1.** Yes, before the removal order is issued, it's taken in consideration the health status of the TCN. This can be found in our national legislation (Law for foreigners in Republic Bulgaria). **2.** Yes **3.** Medical Institute of the Ministry of Interior Sofia **4.** No **5.** Relaying of the documents which competent medical authority issued. **6.** We inform the embassy of which TCN belong to, and if necessary the case with medical information is sent to the applicant's pathology. **7.** Policy officers. **8.** Yes
	**Croatia**	Yes	**1.** Yes, Article 110 of the Aliens Act stipulates that the health status of the third country national shall be considered when deciding whether a return decision will be issued. **2.** No, there is no such a specific procedure. The decision is done during the process of deciding on the return decision. If the medical state would become worse during the removal process, the return

			of TCN shall be stopped and required medical treatment shall be provided. **3.** N/A. **4.** In case of rejection, a new decision will not be set out. However, the person has a right to appeal within the time limits set for judicial review. The time counts from the communication of the decision to the person in concern. **5.** The Ministry of the Interior defends all decisions at the court. Please see below. **6.** Yes. The physician makes his/her diagnosis and provides opinion on the health status of the person. The medical documents with the results are submitted to the Ministry of the Interior. Based on that medical results, MoI provides the decision. **7.** Ministry of the Interior. **8.** Yes, both the Ministry of Health and the Institute of Public Health monitor the situation in third countries related to the level of health care and the appearance of diseases that could pose a threat to public health.
	Cyprus	Yes	**1.** Each case it's been examined according to its merits. A medical opinion is required for a removal order to be postponed indicating the time required for medical treatment **2.** No there is no particular process indicating the delay. As stated above each case is examined according to its merits, however, in practice is not possible to have a person removed when a medical report certifies that he/she is not in a position to travel. It might be possible to have a person remove upon his/her own request, but with escort, when necessary. **3.** N/A **4.** In case of rejection, it is not considered a new decision. However, the person has a right to appeal

			within the time limits set for judicial review. The time counts from the communication of the decision to the person in concern. **5.** No such cases are reported. **6.** N/A **7.** N/A **8.** N/A
	**Czech Republic**	Yes	**1.** No. A TCN can invoke his/her health status but there is no official procedure regarding solely this issue. 1. A TCN can invoke his/her health status already during the administrative procedure on return and the police is obliged to assess all circumstances of the case. Moreover, there is an obligation for the police to ask the Ministry of the Interior for the so-called binding opinion on the TCN´s possibility to be returned. If there are proofs submitted by the TCN of his/her bad health status the police may still issue a return decision. However, the decision will state that its enforceability is postponed. The TCN is subsequently issued a tolerated visa. In the process of this visa prolongation the TCN is obliged to prove that the health status reasons are still pending otherwise the return decision will become active. 2. A TCN can invoke his health status also during the period for departure or during appeal process. He can ask for a prolongation of period for voluntary return due to his health status. If approved, return decision is still valid, partial decision on stating new period for departure is issued. **2.** It is not a particular process. It will be assessed in the procedure either during issuing return decision or during application for prolongation of period for voluntary departure. See above. **3.** No such specific procedure. **4.** In situation no.1 there is only classic return decision issued. There is a classic appeal with suspensive effect. In situation no.2 there is a decision on dismissing the application. There is a right

			to appeal but without suspensive effect. **5.** See below **6.** N/A. CZ does not send applicants anywhere, it is their responsibility. **7.** Police officers **8.** N/A
	France	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Germany	Yes	**1.** The Federal Office for Migration and Refugees (BAMF) decides exclusively on the situation of the foreigner in the hypothetical case of his return to the country of origin. This decision includes an assessment of his survival upon return and, if necessary, of the required medical treatment and its availability. **2.** The BAMF decision is the final decision on this matter. No entity involved in the return of the foreigner has to evaluate this matter in any way for a second time. **3.** The BAMF decision can be appealed before an administrative court together with the rejection of the asylum application. Once the court reaches a decision, there will be no further handling of the question of the applicant's situation upon return. **4.** see above **5.** The municipal foreigner's office is in charge of the return of the foreigner, availing itself of the services of the Federal Police. In order to execute the actual return, the foreigner's office has to examine the foreigner's situation in the process of return, thus his ability to be transported. All medical assessment is now solely focused on this question. The foreigner's office's decision is not an

			administrative act in itself and can therefore not be challenged in court. But the foreigner can file for an 'interlocutory injunction' preventing his removal. In that case, the foreigner's office's decision will not be reviewed by the court but only balanced against the interest/needs of the foreigner. To allow for a swift procedure, the foreigner's office will supply the court with a caveat containing its medical assessment and arguments for the feasibility of the removal – beforehand and even though it is not sure at this point whether the foreigner would file for an interlocutory injunction. In some cases, a removal may only be possible with a medical escort. **6.** see above **7.** see above **8.** see above
	Greece	Yes	**1.** There is no any special process. TCNS either declare suffering from a disease and undergo medical examination or during medical examination an illness is diagnosed, and we examine the case. **2.** Regarding the possibility of a particular process to qualify the request as a delaying tactic, there is no any specific process in Greece. We examine each case on an individual basis and then decide if it is included in the cases of protection against the removal order. **3.** TCNS are escorted to a state hospital operating under the umbrella of the ministry of health. **4.** No. **5.** No. What we present to the court is data from the migrant's folder including the medical data from the hospital **6.** -

			7. - **8.** -
	Hungary	Yes	**1.** According to the Act II of 2007 on Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as: Act) the alien policing authority has to examine during the alien policing procedure, whether the TCN is a person eligible for preferential treatment, or not. As stated in the Section 113 and Section 141 of Government Decree 114/2007 (V. 24.) (hereinafter referred to as: Decree) on the Implementation of the Act, the authority may avail itself of the assistance provided by a medical expert or a psychologist in determining whether the person expelled is eligible for preferential treatment. Examination by an expert may be conducted subject to the consent of the person affected. Section 13 of the Act states that entry and intended stay of more than ninety days within any one hundred eighty-day period shall not be permitted if the TCN is subject to expulsion or exclusion. The Act states that application for residence permit shall be rejected without any examination within 8 days if the TCN failed to comply with an expulsion ordered before submitting the application. According to the Section 24 of the Act residence permits may be issued for the purpose of medical treatment to third-country nationals. The validity period of a residence permit issued for the purpose of medical treatment shall correspond to the duration of treatment not to exceed two years, and it may be extended by the duration corresponding to any extension of the treatment, not to exceed two years. According to Subsection 4 of Section 42 of the Act, if the authority ordered the expulsion with prescribing the time limit for voluntary departure, the time limit can be extended with 30 days according to the personal circumstances of the TCN (i.e. preparation for departure, health situation) upon request or on the authority's own motion. In case the authority ordered the expulsion to be executed with official escort (deportation), the authority shall thoroughly examine the health conditions of the TCN, for example, if she/he can travel in a sitting position or on a plane. According to the Subsection 8 of Section 65 of the Act, the deportation shall be abandoned if the person deported requires urgent medical attention. Before the deportation, in every case a 'fit to fly' medical form is issued. **2.** If a TCN invokes his/her health status during the procedure in order to present to the authority that

			the expulsion order in non-enforceable, the authority shall examine all the documents presented, including the TCN's own statements regarding his/her health during the procedure. The medical documents are presented by the TCN, by his/her own treating doctor or the doctor competent for the detention centre (upon the authority's request). **3.** Based on the relevant information (statements, medical documents), the authority which ordered the expulsion delivers the opinion on the merits of such application. **4.** We cannot interpret this question in relation with the questions above. **5.** In Hungary regarding alien policing procedures, an administrative judge decides. All relevant documents shall be presented at the court hearing. **6.** The medical authority sends information on the TCN's pathology to the authority which ordered his/her expulsion minding the relevant data protection regulations. The documents shall be presented during the judicial proceedings. **7.** The authority (policy officers) shall defend the decision in case of judicial appeal based on the medical documentation. **8.** According to the Subsection 51 of the Act and the Subsection 124 of the Decree the authority shall examine the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures. If the question arises regarding the TCN's medical condition, the alien policing authority shall request the opinion of the refugee authority attaching all the relevant documents. The refugee authority shall comply with the request without delay. In this opinion – if needed – the refugee authority provides information about health care in the country of origin of the TCN, or on the treatment of a specific disease in the country of origin. The alien policing authority shall not derogate from the opinion of the refugee authority. If the opinion states that the health care system is not adequate in the home country of the TCN, the expulsion order shall be reviewed and the expulsion order could be deemed as non-enforceable.

	**Italy**	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	**Luxembourg**	Yes	**1.** Yes. Article 130 of the amended law of 29 August 2008 on the free movement of persons and immigration (Immigration Law) expressly establishes a procedure that has to be followed in case the TCN invokes health issues when s/he is subject to a removal order. The TCN shall not be expelled from the territory if s/he does not constitute a threat to public policy or public security, and if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which s/he would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot, in practice, receive appropriate treatment in the country to which s/he may be returned. According to article 131 of the Immigration Law, the return can be postponed. The TCN may obtain a suspension of her/his removal for a period not exceeding six months. Such a suspension shall be renewable, but may not exceed a period of two years (article 131(1)). After the two years if the person cannot be removed, s/he can apply for an authorisation of stay for medical reasons for the duration of the treatment, with a maximum duration up to one year. This authorisation may be renewed after a review of the situation. The decisions are taken by the Minister in charge of Immigration. They are based on the reasoned opinion issued by the doctor delegated under Article 130 et seq. of the Immigration Law. In practice and as a general rule, these opinions are followed by the minister. **2.** Yes. Article 130 of the amended law of 29 August 2008 on the free movement of persons and immigration (Immigration Law) expressly establishes a procedure that has to be followed in case the TCN invokes health issues when s/he is subject to a removal order. The TCN shall not be expelled from the territory if s/he does not constitute a threat to public policy or public security, and if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which s/he would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot, in practice, receive appropriate treatment in the country to which s/he may be returned. According to article 131 of the Immigration Law, the return can be postponed. The TCN may obtain a suspension of her/his removal for a period not exceeding six months. Such a suspension shall be renewable, but may not exceed a period of two years (article

			131(1)). After the two years if the person cannot be removed, s/he can apply for an authorisation of stay for medical reasons for the duration of the treatment, with a maximum duration up to one year. This authorisation may be renewed after a review of the situation. The decisions are taken by the Minister in charge of Immigration. They are based on the reasoned opinion issued by the doctor delegated under Article 130 et seq. of the Immigration Law. In practice and as a general rule, these opinions are followed by the minister. **3.** Yes. Article 130 of the amended law of 29 August 2008 on the free movement of persons and immigration (Immigration Law) expressly establishes a procedure that has to be followed in case the TCN invokes health issues when s/he is subject to a removal order. The TCN shall not be expelled from the territory if s/he does not constitute a threat to public policy or public security, and if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which s/he would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot, in practice, receive appropriate treatment in the country to which s/he may be returned. According to article 131 of the Immigration Law, the return can be postponed. The TCN may obtain a suspension of her/his removal for a period not exceeding six months. Such a suspension shall be renewable, but may not exceed a period of two years (article 131(1)). After the two years if the person cannot be removed, s/he can apply for an authorisation of stay for medical reasons for the duration of the treatment, with a maximum duration up to one year. This authorisation may be renewed after a review of the situation. The decisions are taken by the Minister in charge of Immigration. They are based on the reasoned opinion issued by the doctor delegated under Article 130 et seq. of the Immigration Law. In practice and as a general rule, these opinions are followed by the minister. **4.** No. Article 130 expressly requires that for obtaining the suspension of the removal, the applicant must present medical certificates of a registered physician that certifies the medical condition of the applicant. Without the medical certificate the claim will be considered a delaying tactic and it can be dismissed without examining its merits. **5.** No. Article 130 expressly requires that for obtaining the suspension of the removal, the applicant must present medical certificates of a registered physician that certifies the medical condition of the

			applicant. Without the medical certificate the claim will be considered a delaying tactic and it can be dismissed without examining its merits. **6.** No. Article 130 expressly requires that for obtaining the suspension of the removal, the applicant must present medical certificates of a registered physician that certifies the medical condition of the applicant. Without the medical certificate the claim will be considered a delaying tactic and it can be dismissed without examining its merits. **7.** Article 131 (3) expressly establishes that in order to grant or reject the application on health issues, the Minister in charge of Immigration will only take the decision, after a reasoned opinion has been given to her/him by the delegated doctor, the delegated doctor shall carry out such examinations as he may deem necessary. The opinion of the delegated doctor shall deal with the alien's need for medical treatment, the consequences of exceptional gravity and the possibility of receiving appropriate treatment in the country to which s/he may be removed. **8.** Article 131 (3) expressly establishes that in order to grant or reject the application on health issues, the Minister in charge of Immigration will only take the decision, after a reasoned opinion has been given to her/him by the delegated doctor. The delegated doctor shall carry out such examinations as he may deem necessary. The opinion of the delegated doctor shall deal with the alien's need for medical treatment, the consequences of exceptional gravity and the possibility of receiving appropriate treatment in the country to which s/he may be removed. **9.** Article 131 (3) expressly establishes that in order to grant or reject the application on health issues, the Minister in charge of Immigration will only take the decision, after a reasoned opinion has been given to her/him by the delegated doctor, the delegated doctor shall carry out such examinations as he may deem necessary. The opinion of the delegated doctor shall deal with the alien's need for medical treatment, the consequences of exceptional gravity and the possibility of receiving appropriate treatment in the country to which s/he may be removed. **10.** Yes. The Minister in charge of Immigration will take a decision based on the opinion of the delegated doctor. This decision can be appealed before the First Instance Administrative Court in a

			deadline of 40 days after the decision was notified to the applicant. Also against a negative decision from the First Instance Administrative Court the applicant can file an appeal before the Administrative Court 40 days after the notification of the First Instance Administrative Court's decision. **11.** Yes. The Minister in charge of Immigration will take a decision based on the opinion of the delegated doctor. This decision can be appealed before the First Instance Administrative Court in a deadline of 40 days after the decision was notified to the applicant. Also against a negative decision from the First Instance Administrative Court the applicant can file an appeal before the Administrative Court 40 days after the notification of the First Instance Administrative Court's decision. **12.** Yes. The Minister in charge of Immigration will take a decision based on the opinion of the delegated doctor. This decision can be appealed before the First Instance Administrative Court in a deadline of 40 days after the decision was notified to the applicant. Also against a negative decision from the First Instance Administrative Court the applicant can file an appeal before the Administrative Court 40 days after the notification of the First Instance Administrative Court's decision. **13.** The lawyers for the government will defend their case based on the medical opinion rendered by the delegated doctor on the applicant's pathology and the rest of the documents and evidence that are in the file. **14.** The lawyers for the government will defend their case based on the medical opinion rendered by the delegated doctor on the applicant's pathology and the rest of the documents and evidence that are in the file. **15.** The lawyers for the government will defend their case based on the medical opinion rendered by the delegated doctor on the applicant's pathology and the rest of the documents and evidence that are in the file.

			16. See answer to Q.2. **17.** See answer to Q.2. **18.** See answer to Q.2. **19.** See answer to Q.2. The First Instance Administrative Court or the Administrative Court can order another medical expertise if they consider it is necessary for deciding on the case. **20.** See answer to Q.2. The First Instance Administrative Court or the Administrative Court can order another medical expertise if they consider it is necessary for deciding on the case. **21.** See answer to Q.2. The First Instance Administrative Court or the Administrative Court can order another medical expertise if they consider it is necessary for deciding on the case. **22.** Article 131 (3) expressly indicates that the opinion of the delegated doctor shall deal with the alien's need for medical treatment, the consequences of exceptional gravity and the possibility of receiving appropriate treatment in the country to which he/she may be removed. **23.** Article 131 (3) expressly indicates that the opinion of the delegated doctor shall deal with the alien's need for medical treatment, the consequences of exceptional gravity and the possibility of receiving appropriate treatment in the country to which he/she may be removed. **24.** Article 131 (3) expressly indicates that the opinion of the delegated doctor shall deal with the alien's need for medical treatment, the consequences of exceptional gravity and the possibility of receiving appropriate treatment in the country to which he/she may be removed.
	Netherlands	Yes	**1.** Article 64 of the Dutch Aliens Act provides that a TCN cannot be removed when his/her state of health does not allow to travel or when the absence of treatment in his country of origin will lead to death, disability or another form of serious mental or physical damage within a period of three months This also applies for family members of the TCN. The Aliens Act Implementation

			Guidelines (A, 7) state that the Immigration and Naturalisation Service can postpone the removal, based on article 64 Aliens Act, in two cases: - The TCN is medically not able to travel - There is a real risk that article 3 of the ECHR will be violated because of medical reasons The removal will only be postponed if the Medical Assessment Department (BMA) of the Ministry of Justice and Security confirms that the TCNs health status (or his/her family member's health status) is in line with the above definition. There is only real risk of an article 3 violation in one of the following cases: - The lack of medical treatment will most probably lead to a medical emergency situation, according to the advice of the BMA. An emergency situation is defined as a situation in which a TCN will die, will become disabled or will face other forms of severe mental or physical damage within three months in case (s)he has no access to medical treatment. - The necessary medical treatment is not available in the country of origin or destination. - Necessary medical treatment is available in the country of origin or destination, but it is proven that this treatment is in practice not accessible for the TCN concerned. The Implementation Guidelines further elaborates in section 7.1.4. and 7.1.5. how the lack of availability of and accessibility to medical treatment can be demonstrated. It should be noted here that the TCN is not automatically granted a residence permit if article 64 of the Aliens Act is applied. Only if the TCN has legally resided in the Netherlands for 12 consecutive months on the basis of article 64 of the Aliens Act, (s)he is able to apply for a residence permit. **2.** No **3.** N/A **4.** The TCN can invoke his/her health status during several procedures. 1. In the first asylum procedure, it is officially tested ('ambtshalve'), with a few exceptions, whether the TCN can qualify for the postponement of his/her removal due to the health status. 2. In some specific cases of procedures for a non-asylum residence permit (so-called 'regular residence permits'), it is also officially tested ('ambtshalve') whether the TCN can qualify for the postponement of his/her removal due to the health status. 3. Also in cases of procedures in which residence permits (only temporary permits) are revoked. This both applies for asylum residence permits and non-asylum residence permits (so-called 'regular residence permits'). 4. The TCN can at any time issue a request

			to postpone the removal due to medical reasons/health status. 5. If a return decision is issued, without an entry ban, the TCN can apply for the review of the return decision and can refer to the health status in order to (try to) revise the return decision. If this application for review is denied, a new return decision will not be issued. The TCN can appeal this decision. The TCN always has a right to a remedy in case of a rejection. Depending on the procedure this remedy takes the form of either a review or an appeal (without a review period). Only in case of the third procedure described above, the TCN can await the decision of the appeal by law. Depending on the grounds of refusal this also applies for the first described procedure above. In all other cases, the TCN must apply for a provisional ruling to await the substantive proceeding (review or appeal) by law. **5.** See below **6.** It is the responsibility of the TCN to send all available and requested medical information to the Immigration and Naturalisation Service. The Medical Assessment Department sends an advice report to the Immigration and Naturalisation Service in which it states whether it is medically acceptable to execute the removal order, based on the evidence and/or information that is adduced by the TCN. The normal approach is as follows: the medical advisor of the Immigration and Naturalisation Service (IND) receives all information on the applicant's pathology and all other IND civil servants do not receive this information, unless the TCN intentionally sends the information to the other civil servants. **7.** The Legal Affairs Department of the Dutch Immigration and Naturalisation Service. **8.** No. The medical advisor only delivers an advice about the availability of necessary medical treatment in the country of origin and does not give advice about the accessibility of the necassary medical treatment.
	**Poland**	Yes	**1.** No. However, the foreigner may at any stage present materials regarding his situation, including his/her health, affecting the implementation/execution of the return decision.

			2. No. However, the foreigner may at any stage present materials regarding his situation, including his/her health, affecting the implementation/execution of the return decision. **3.** No. The foreigner's situation, including the state of his/her health, is subject to analysis during the administrative proceedings regarding his/her obligation to return. The situation in the country of origin is also analysed. Notwithstanding the above, medical examination of a returnee is carried out before removal (fit-to-fly check). **4.** No. The foreigner's situation, including the state of his/her health, is subject to analysis during the administrative proceedings regarding his/her obligation to return. The situation in the country of origin is also analysed. Notwithstanding the above, medical examination of a returnee is carried out before removal (fit-to-fly check). **5.** n/a **6.** n/a **7.** n/a **8.** n/a **9.** The court analyses the collected evidence. In case of doubt, it may submit the case for reconsideration. **10.** The court analyses the collected evidence. In case of doubt, it may submit the case for reconsideration. **11.** n/a **12.** n/a

			13. Policy officers. **14.** Policy officers. **15.** no **16.** no
	Slovak Republic	Yes	**1.** In case a removal order is issued, the health status of the foreigner is always assessed; in the sense of whether s/he is capable and fit to undergo the removal. Current physical and mental state of the foreigner and overall health state of the returnees is assessed by a doctor in the detention centre. Each case is assessed individually depending on specific circumstances. If the physical or psychic state of the TCN is objectively worsened and his life functions or social role are significantly influenced in a negative sense and thus it is not possible to carry out the removal, or it would be a lot more difficult or carrying out removal would be connected to inadequate costs, the removal can be postponed for the time necessary. This is however up to assessment and responsibility of the examining doctor. **2.** No **3.** N/A **4.** N/A **5.** N/A **6.** N/A **7.** N/A **8.** N/A

	Sweden	Yes	**1.** No **2.** No, we don´t have such a particular process. **3.** NA **4.** Yes, according to Chapter 12, Section 18 in the Swedish Aliens Act (2005:716) there is a possibility to take a new decision which is taken by the administrative authority, the Swedish Migration Agency (SMA). Chapter 12, Section 18 states that if, in a case concerning enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new medical circumstances arise, the SMA may decide to examine whether the new circumstances that have arisen would result in an impediment of removal of Sweden or not. An alien cannot himself/herself invoke new circumstances with reference to this section. Section 18 is only for the administrative authority, that is SMA, and is a kind of safety measure. The alien must refer to Chapter 12, Section 19 Aliens Act, see below. This decision from SMA is not appealable, but it is possible for the alien to invoke similar medical circumstances again. According to Chapter 12, Section 19 Aliens Act it is also possible in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, for an alien to invoke new circumstances that can be assumed to constitute a lasting impediment to enforcement. A prerequisite to grant a re-examination is that the alien could not previously have invoked the circumstances, or he/she shows a valid reason for not having invoked the circumstances previously. **5.** See answers on the following questions. **6.** Yes, this is possible. If an alien for example invokes a specific medical condition and present a medical certificate from a physician, but the SMA suspect that the certificate not fully reflects the aliens medical condition, the SMA could request medical journal entries from, for example a hospital where the alien has been attended. **7.** A Litigation Officer from the SMA.

			8. No. We don't have a medical authority involved. The civil servants from the SMA runs the entire process with due support from individual, public or private physicians, who issues medical certificates.
	United Kingdom	Yes	**1.** Yes. The return would be re-arranged once the returnee was fit to fly or barriers had been resolved. A medical transfer can be arranged if required. **2.** It is for the individual to put forward evidence in the form of letters from their own doctor if they are claiming that a medical condition should have an impact on their removal. However, if a detained person raises healthcare concerns as a reason for removal to be delayed or halted, an assessment will be made by the immigration removal centre's healthcare provider as to whether the person is fit to be removed or equally not fit to be removed. **3.** As above – if the individual is detained then an assessment will be made by the immigration removal centre's healthcare provider. **4.** Judicial review (JR) is the legal process that allows a person to challenge the lawfulness of a decision, action or failure to act of a public body such as a government department. Immigration Enforcement cases, where there has been an asylum or human rights claim, should not usually reach the stage of JR until after they have had access to the appeals system or had an administrative review. The Immigration Act 2014 limited the number of appeal rights so there are now more cases in which people have no appeal right but can submit a JR against a decision. The types of event that could be subject to JR include, for example: • The setting of removal directions, which is usually on the basis that the removal would infringe a person's rights (under the Refugee Convention, European Convention of Human Rights or European Community instruments) **5.** See responses below **6.** The Home Office may request a medical opinion from a relevant health professional but there is no legal requirement for them to comply even if the patient has given their consent for disclosure.

			7. Home Office although, presumably, if a medical professional has offered a written opinion, it is a matter for the court whether they call them as witness. **8.** No. The Home Office maintains records of current 'country information' including medical access. We may ask the medical professional's opinion of the potential risk to the patient given our understanding of available medical provision, but they are under no obligation to offer an opinion.