



EMN Ad-Hoc Query on 2019.25 Administrative or judicial review of appeals against administrative expulsion decisions

Requested by Ludmila Touskova on 18 February 2019

Protection

Responses from EMN NCP Austria, EMN NCP Norway, EMN NCP Italy, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Belgium, EMN NCP Slovakia, EMN NCP Estonia, EMN NCP Finland, EMN NCP Spain (10 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:

With this ad-hoc query, we would like to obtain more information on appeals procedures concerning the administrative expulsion decisions in other EU Member States. The replies of this AHQ will be used as an input for reflections as regards possible reform of Administrative Courts System in migration matters in the Czech Republic.

Questions

- 1. Does your Member State provides administrative or judicial review of appeals against administrative expulsion decisions, or both?**
- 2. How many instances are available in a case of judicial review?**

Responses

EMN NCP Austria

Wider Dissemination: Yes

Martin Stiller, Wider Group

1. Yes, expulsion decisions (Art 66 Aliens Police Act 2005) may be challenged by appeal. The Federal Administrative Court is competent to decide in such cases (Art 7 para 1 Federal Office for Immigration and Asylum Procedures Act). This applies to return decisions as well (Art 52 Aliens Police Act 2005).
2. The Federal Administrative Court is the first instance appeal court (Art 7 para 1 Federal Office for Immigration and Asylum Procedures Act). Furthermore, the Constitutional Court can be called upon if constitutionally guaranteed rights have been violated (Article 144 Para 1 Federal Constitutional Act). Also, under certain circumstances the Supreme Administrative Court can be invoked by reason of unlawfulness (Article 130 Para 1 Subpara 1 Federal Constitutional Act). Therefore, there are up to two review instances in Austria.

EMN NCP Norway

Wider Dissemination: Yes

Anonymous,

1. According to the Norwegian Public Administration Act, a judicial review of appeals against an administrative expulsion decision is possible. Chapter VI. Concerning appeal against and reversal of administrative decisions Section 28.(Administrative decisions which may be appealed, the appellate instance) https://lovdata.no/dokument/NLE/lov/1967-02-10/KAPITTEL_6 Act relating to procedure in cases concerning the public administration (Public Administration Act) (last update: 27.12.2018) It is important to note that Norway has an administratively independent Immigration Appeals Board (UNE). Any decisions made by the Norwegian Directorate of Immigration can be appealed with this board. The board's decision is considered final (in terms of immigration application processing). It is possible, but highly uncommon for an applicant to then take their case to the courts. In such cases, the applicant must cover all their costs related to the court

appeal (though it is possible to request free legal aid from the County Governor's Office). In such rare cases, the courts have to decide if the decision from UNE can be suspended for the duration of the court case and whether the applicant can reside in Norway for the necessary duration of time to complete the court case. It is possible that an immigration case, or expulsion case can go through all three levels of the court system to the Supreme Court, but this is extremely rare.

2. N/I – Vast majority of cases receive a final decision from the Immigration Appeals Board.

EMN NCP Italy

Wider Dissemination: Yes

Viviana CAPRA, EMN NCP Italy

1. Yes, Italy provides judicial review of appeals against administrative expulsion decisions. The regulation of administrative expulsion and of the corresponding right to appeal is provided respectively by article 13 of law 286/1998 and article 18 of law 150/2011. There are 2 types of administrative expulsion decisions: one is taken by the Prefect (comma 2 and 3 of art. 13 law 286/1998) and the other one by the Ministry of Interior (comma 1 of Law 286/1998 and art. 3, co. 1, of Law 155/2005). Both are issued through a motivated decree and they are immediately executive (so the expulsion order is not suspended) even if the foreigner concerned has still the chance to appeal against them. In the first case (decision taken by Prefect), the right to appeal shall be exercised within 30 days from the notification of the expulsion decision and the competent authority of the judicial review is the Justice of the Peace, who has to decide within 20 days since the application has been lodged. Otherwise, if there is a danger for public order or security of the State (art. 13 co. 1 law 286/1998) or for reasons of prevention of terrorism (art. 3, co. 1, of Law 155/2005), the expulsion decision is issued by Ministry of Interior. The foreigner has the chance to appeal against a ministerial expulsion decision, but, in this case, the competent authority is the Regional Administrative Court of Lazio (TAR), who can only assess the formal adequacy of the order, without evaluation of the substance. Although the name of the abovementioned court, that it is likely to mislead, this is a judicial authority and, consequently, the appeal before this court is a judicial form of review.

2. Once the recourse before the Justice of the Peace is exhausted, the last judicial remedy is the appeal before Court of Cassation. In case of appeal before the Regional Administrative Court, the last review belongs to Council of State. So, there are a maximum of 2 judicial reviews.

EMN NCP Lithuania

Wider Dissemination: Yes

Vytautas EŽERSKIS, EMN NCP Lithuania

1. Judicial review. Decisions on administrative expulsion may be appealed with an administrative court within 14 days from the service of the decision to the foreigner.

2. Two. Decisions on administrative expulsion may be appealed with a regional administrative court (first review). Decisions taken by a regional administrative court can be challenged to the Supreme Administrative court within 14 days (second review). A decision of this court is final and not subject to appeal.

EMN NCP Luxembourg

Wider Dissemination: Yes

Adolfo SOMMARRIBAS, EMN statelessness platform

1. In Luxembourg the appeals against administrative expulsion decisions are controlled by judicial review.

2. 2. It is a two-level appeal procedure. The return decision issued by the Minister in charge of Immigration and Asylum issued in accordance with article 111 (1) of the amended law of 29 August 2008 on free movement of persons and immigration can be appealed before the First instance Administrative Court in a deadline of 3 months after the notification of the decision. Against the decision of the First instance Administrative Court an appeal could be filed at the Administrative Court in a deadline of 40 days after the notification of the decision (article 113). The appeals do not have suspensive effect. In case of an administrative expulsion decision based on threat to homeland security or public safety or to someone who violates an entry ban (article 116 (1)) it can be appealed before the First instance Administrative Court in a deadline of 3 months after the notification of the decision and once more against the first instance decision, an appeal can be filed at the Administrative Court in a deadline of 40 days after the notification of the decision (article 116 (5) in accordance with article 113).

EMN NCP Belgium

Wider Dissemination: Yes

david VOGEL, EMN NCP Belgium

1. Yes, judicial appeals against the detention and the removal order linked to the detention are possible.

2. - against the detention: appeal at the Tribunal of First Instance (Council Chamber) at the initiative of the detainee (or his/her lawyer) – this can be introduced at any time. After the first appeal, it can be redone every month. It has no suspensive effect, unless the Council Chamber decides that the detention is unlawful and the Immigration Office or the State Prosecutor appeal against that decision (no return possible then until decision in higher appeal). In case the Council Chamber decides the detention is lawful and the detainee appeals against this decision it is not suspensive and return is possible. From the 5th month of detention, the Immigration Office must automatically request the Tribunal to check the lawfulness. A higher appeal against the decision to liberate the detainee or maintain the detention can be lodged at the Court of Appeals (Accusation Chamber). An appeal because of a point of law can be lodged afterwards at the Court of Cassation.

- against the order to leave the country: a (non-suspensive) annulment appeal is possible at the Council for Alien Law Litigation (administrative court for all kind of appeals against immigration and asylum decisions). A suspensive appeal in extreme urgency is possible (automatically suspensive within 10 days after notification of the removal decision if it is a first decision – within 5 days from the second removal decision onwards) if the removal is imminent and if there is an extreme prejudice or difficulty to repair according to article 3 of the European Charter of Human Rights. Fundamental rights means (Articles 2,3,4 and 7 ECHR) to which no derogation is possible may be invoked for the first time during the appeal. These appeals can be lodged by people detained in closed detention centres, under house arrest as well as in community-based family units. Additionally, civil appeals are possible (if breaches of a subjective right) as well as appeals at the European Court of Human Rights.

EMN NCP Slovakia

Wider Dissemination: Yes

Simona MESZAROSOVA, EMN NCP Slovakia

1. Yes, both. TCNs who have been issued a decision on AE may appeal against this decision to the competent administrative body within 15 days from the day when decision was delivered. Firstly, the decision on AE is assessed by a second-instance administrative body (Directorate of the Bureau of Border and Foreign

Polic of the PFP). At the same time, each decision can be reviewed by the competent judicial authority, which means that a final decision issued by a first-instance or second-instance administrative authority can be challenged by bringing an action to the competent court. Subsequently, the court will review the decision. In general, appeals against the AE decision have suspensory effect and the return can not be carried out until the appeal body has taken its decision. An exception is where the administrative authority decides to exclude the suspensory effect of an AE decision. Such a decision can not be appealed (in line with art. 55 para 3 of Act on Administrative Proceedings n. 71/1967 Coll.) and the appeal will not affect the enforcement of the AE decision.

2. See Q1

EMN NCP Estonia

Wider Dissemination: Yes

Barbara ORLOFF, EMN NCP Estonia

1. In Estonia a return decision is issued which is subject to judicial review.

2. The TCN can file an appeal against the return decision to the administrative court in ten days as of the date of notification of the return decision. Appeal against the ruling of the administrative court may be lodged at the circuit court. Under certain conditions specified in legislation a matter may also be heard in the Supreme Court. Hence, in principle there are three instances available for judicial review. At the same time the appeal itself does not have an automatic suspensive effect. Expulsion of the TCN shall be suspended if the court suspends the execution of the return decision.

EMN NCP Finland

Wider Dissemination: Yes

Rafael BÄRLUND, Practitioners (Government Officials only)

1. Finland provides a judicial review of appeals against administrative expulsion decisions.

2. Two. The Administrative Courts and the Supreme Administrative Court. If the Administrative Court rejects the appeal, it is possible to continue appealing by lodging an appeal at the Supreme Administrative Court, if it grants leave to appeal.

EMN NCP Spain

Wider Dissemination: Yes

Gladys Roy Chicharro, EMN NCP Spain

1. Both.

2. In principle, there are two judicial instances. However, there is a third one for extraordinary cases where: - a factual error was made, or - new documents, of essential value for the resolution of the matter have been found, or - the resolution was essentially influenced by documents or testimonies declared false, - or the decision had been issued as a result of prevarication, bribery, violence or other fraudulent machination.