



## **AD HOC QUERY ON 2019.25 Administrative or judicial review of appeals against administrative expulsion decisions**

**Requested by EMN NCP Czech Republic on 18 February 2019**

**Responses from EMN NCP Austria, EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Cyprus, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Greece, EMN NCP Hungary, EMN NCP Italy, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Malta, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Portugal, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Spain, EMN NCP Sweden, EMN NCP United Kingdom plus EMN NCP Czech Republic, EMN NCP Norway (25 in Total)**

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## **1. 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.

## **2. Questions**

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**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?**

We would very much appreciate your responses by **15 April 2019**.

**3. Responses**

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		Wider Dissemination <sup>2</sup>	
	EMN NCP Austria	Yes	<p>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).</p> <p>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</p>

<sup>1</sup> If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

<sup>2</sup> A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."



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			reason of unlawfulness (Article 130 Para 1 Subpara 1 Federal Constitutional Act). Therefore, there are up to two review instances in Austria.
	EMN NCP Belgium	Yes	<p>1. Yes, judicial appeals against the detention and the removal order linked to the detention are possible.</p> <p>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.</p>




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	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. Bulgarian legislation provides for both administrative and judicial review of appeals against compulsory administrative measures. According to Art. 46 of Foreigners in The Republic of Bulgaria Act, the orders for imposing compulsory administrative measures can be appealed under the conditions and by the order of the Administrative Procedures code. The individual administrative acts imposing compulsory administrative measures, incl. expulsion orders, could be contested before both administrative and judicial authority. In accordance with Art. 81, para 1 of the Administrative Procedure Code “The individual and the general administrative acts may be contested by administrative order before the immediate higher administrative body”. Para 2 “By administrative order may be contested and the contents of a document”. Art. 145 of the Administrative Procedures Code stipulate that the administrative act may be contested before the court regarding their lawfulness. Subject to contestation shall be the initial individual administrative act, including the refusal to be issued such act.</p> <p>2. The judicial review consist of one instance. According to Art. 46, para 2, point 3 of Foreigners in The Republic of Bulgaria Act “The orders for expulsion shall be subject to appeal before the relevant administrative court in accordance with the Administrative Procedure Code. The decision of the court shall be final”.</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. As regards third country national on short stay and illegally staying third country national, and persons on permanent residence (including long term residence), judicial review is envisaged as first instance for appeal. As regards third country nationals on temporary residence, administrative review of appeals is envisaged as first instance for appeal.</p> <p>2. In case of an administrative judicial review, two instances are available in administrative court proceedings. Administrative court and High administrative court.</p>




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	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. Cyprus Alien legislation provides for both, administrative and judicial review against decisions for expulsion. In addition, the judicial review option applies for the duration of the Detention Order.</p> <p>2. There is one instance judicial review of Detention Orders, which is in the form of an interim order, i.e. habeas corpus. There is a judicial review available for a case of expulsion once an appeal in accordance with the Cyprus Constitution is lodged before the Administrative Court of the Republic. The latter, may be appealed on a second instance.</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. Yes. In the Czech Republic, the Aliens Police (an administrative authority) issues decision on administrative expulsion. Thus, the decision can be reviewed in the framework of the administrative procedure. The person concerned can submit an appeal within 10 days. The time limit in a case of minor under 18 years is 15 days. Following this decision, the person concerned can further appeal to regional administrative court within 10 days. The competent regional administrative court decides within 60 days. The appeal has an automatic suspensive effect, except for cases when the expulsion decision is based on reasons of public security.</p> <p>2. There are two instances. For more details, please see above.</p>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. In Estonia a return decision is issued which is subject to judicial review.</p> <p>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.</p>



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	<p>EMN NCP Finland</p>	<p>Yes</p>	<p>1. Finland provides a judicial review of appeals against administrative expulsion decisions.</p> <p>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.</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Yes. Removal decisions may be challenged before the administrative judge. Detention decisions, that remove freedom, may be challenged before the Freedom and Detention Judge.</p> <p>2. Yes. Removal decisions may be subject to an administrative appeal. This may be either an internal appeal before the administrative authorities that decided the measure, or a hierarchical appeal before the Minister of the Interior. Use of an administrative appeal does not extend the appeal deadlines.</p>
	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. According to Article 24, par. 2 of Law 4251/2014, as currently in force, if an issued residence permit is withdrawn or the request for the issue or renewal of a residence permit is rejected the services competent as appropriate shall issue a return decision pursuant to the provisions of Article 16 to 41 of Law 3907/2011, to which Directive 2008/115/EC was transposed. The return decision is an integral part of the rejection decision of the request for the issue or renewal of a residence permit or withdrawal of an issued residence permit. Finally, please be informed that that in accordance with Article 25 of Law 4251/2014, as currently in force, procedural guarantees are provided for based on which the third-country national may file, against a decision issued pursuant to this Law, a remedy which shall be considered if sought within six (6) months from the delivery of the decision save in the case of reasons of force majeure. The third-country national may file an application for cancellation of a decision on the rejection, withdrawal or non-renewal of a residence permit issued pursuant to the provisions of Law 4251/2014 with the competent administrative court, in accordance with the provisions of Article 15 of Law 3068/2002 (GG Series I, No 274), as in force.</p>




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			2. see Q1
	EMN NCP Hungary	Yes	1. Judicial review of appeal is provided. (Act II of 2007, Section 52)  2. 1
	EMN NCP Italy	Yes	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.

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	<p>EMN NCP Latvia</p>	<p>Yes</p>	<p>1. YES, both.</p> <p>2. Judicial review – two stages: the Administrative District Court and the Department of Administrative Cases of the Supreme Court 1) A decision of a higher authority may be appealed to the Administrative District Court within seven days from the day when it entered into effect. 2) A judgment of the Administrative District Court may be appealed by submitting a cassation complaint to the Department of Administrative Cases of the Supreme Court.</p>
	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>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.</p> <p>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.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. In Luxembourg the appeals against administrative expulsion decisions are controlled by judicial review.</p> <p>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</p>





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			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 Malta	Yes	<p>1. Yes, we have appeals from Removal Order (RO), Detention Orders (DO), Work Permits (SP) and Residence Permits (RP)</p> <p>2. Two, The Immigration Appeals Board (IAB) and the Court of Justice.</p>
	EMN NCP Netherlands	Yes	<p>1. That the Dutch Immigration and Naturalisation Service (INS, in Dutch IND) does not take separate expulsion decisions. The obligation to leave (and the possibility of being expelled) is the result of the return decision. The return decision may be part of the decision to refuse a residence permit, or it may be a separate decision. In both cases judicial review is available, but it may only be filed after administrative review has failed to produce the desired result. For more information, see: <a href="https://ind.nl/en/Pages/objection-and-appeal.aspx">https://ind.nl/en/Pages/objection-and-appeal.aspx</a></p> <p>2. In a case of judicial review, two instances are available in the Netherlands</p>
	EMN NCP Poland	Yes	<p>1. Both, administrative and judicial review are provided.</p> <p>2. The administrative decision on return (issued in the first administrative instance) is subject to appeal to the higher authority (second administrative instance) - the decision issued in the second instance is considered as final in the administrative course. The decision issued in the second instance may be appealed to the administrative court. The verdict issued in the first instance court (WSA) may be appealed to the second court instance (NSA). administrative decision I instance -&gt;</p>





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			administrative decision II instance (administrative control) -> court judgment I instance (judicial control stage I) -> court judgment II instance (judicial review stage II)
	EMN NCP Portugal	Yes	<p>1. There are two types of administrative review of appeals: Complaint and hierarchical appeal. Judicial review is also possible.</p> <p>2. There are two instances in general cases: 1st Tribunal Administrativo e Fiscal (Administrative and Fiscal Court and 2nd Tribunal Central Administrativo (Central Administrative Court) There might be another one for specific cases: Supremo Tribunal Administrativo (Supreme Administrative Court)</p>
	EMN NCP Slovakia	Yes	<p>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.</p> <p>2. See Q1</p>


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	<p>EMN NCP Slovenia</p>	<p>Yes</p>	<p>1. We have no distinction between administrative and judicial decisions. Main provisions are in common regardless of the institution issuing the decision. We do provide for the review of the decisions.</p> <p>2. There are two instances of review in place.</p>
	<p>EMN NCP Spain</p>	<p>Yes</p>	<p>1. Both.</p> <p>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.</p>
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. Judicial review</p> <p>2. Normally one, the Migration Court. In the second instance, the Migration Court of Appeal, a leave of appeal is required.</p>
	<p>EMN NCP United Kingdom</p>	<p>Yes</p>	<p>1. The Immigration Enforcement guidance on appeals, administrative review and judicial review for those people subject to administrative removal is covered in the following guidance published on GOV.UK (which is fully disclosable):• 'Liability to administrative removal (non-EEA): consideration and notification' published on webpage Considering immigration status and deciding enforcement action, full URL for the guidance is: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606982/GI-Non-EEA-admin-removal-v3.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606982/GI-Non-EEA-admin-removal-v3.pdf</a>• 'European Economic Area: administrative removal'</p>

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			<p>published on webpage Considering immigration status and deciding enforcement action, full URL for the guidance is:  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775636/European_Economic_Area_-_administrative_removal.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775636/European_Economic_Area_-_administrative_removal.pdf</a> 'Arranging removal' published on webpage Returns preparation, full URL for the guidance is:  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745938/arranging-removal-v2.0ext.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745938/arranging-removal-v2.0ext.pdf</a> 'Judicial reviews and injunctions' published on webpage Returns preparation, full URL for the guidance is:  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753933/chapter-60-judicial-reviews-v17.0.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753933/chapter-60-judicial-reviews-v17.0.pdf</a></p> <p>2. I'm afraid we do not have this information at this time.</p>
	<p>EMN NCP Norway</p>	<p>Yes</p>	<p>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) <a href="https://lovdata.no/dokument/NLE/lov/1967-02-10/KAPITTEL_6">https://lovdata.no/dokument/NLE/lov/1967-02-10/KAPITTEL_6</a> 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.</p> <p>2. N/I – Vast majority of cases receive a final decision from the Immigration Appeals Board.</p>

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