



Ad-Hoc Query on return practices of persons with doubtful origin

Requested by SK EMN NCP on 18th November 2009

Compilation produced on 22 December 2009

Amended compilation produced on 22 February 2010

Responses from Austria, Belgium, Estonia, Finland, Lithuania, Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom
(11 in Total)

WIDER DISSEMINATION

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.

1. Background Information




The Migration Office of the Slovak Republic is looking for information on the experience of other MS regarding the return practices of persons (asylum seekers) with doubtful origin (e.g. Egyptians claiming to be Iraqis). The Slovak Migration Office has little experience in this regard and when such a case occurs the practice is to check the asylum seeker's geographical knowledge of the specific area.

We are interested in the procedure of other MS regarding the origin verification for the asylum and the return procedure purposes. How would be the country of return determined? Based on the experience, what scope of information is sufficient in this regard at the court of appeal? Recommendations and information from other MS (appended with examples if possible) would be highly appreciated.

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2. Responses¹




		Wider Dissemination? ²	<p><i>Q1 What is the practice in your Member State regarding returns of persons (asylum seekers) with doubtful origin, i.e. when there are doubts that the asylum seeker comes from a different country of origin as he/she is stating.</i></p> <p><i>Q2 How would be the country of return determined?</i></p> <p><i>Q3 Based on the experience, what scope of information is sufficient in this regard at the court of appeal?</i></p>
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Belgium	Yes	<p>1) If there is a doubt about the nationality, an interview will be organised with interpreter, in order to assess which nationality could be the right one. If the person has applied for asylum beforehand, the asylum file will also be examined. Sometimes, an inquiry from the asylum services in the country of origin (through trusted lawyers, NGO's, embassy of Belgium) gives extra information about credibility of nationality of the person. This information can help to determine to which embassy the Immigration Office has to send his request. Some embassies accept during interview the concept of identification on the basis of nationality, although name of person is incorrect. In those cases a travel document will be issued by the embassies on the wrong identity. Most countries however only accept identification on the basis of the through identity. In those cases it is very difficult to organise a return, because the name is mandatory for the deliverance of the travel document.</p> <p>2) If we have no information as stipulated in answer 1), it is almost impossible to identify the person and to send him back to his country of origin.</p> <p>If the Immigration Office has no information about the nationality or identity of the person, it is impossible to uphold a detention of the illegal immigrant, since Belgian legislation only allows administrative detention of these persons in order to effectuate a removal. If a removal can not be organised, the person has to be released.</p>
	Estonia	Yes	In Estonia there is only a few such cases. In these cases the Estonian Citizenship and Migration Board's Expulsion Centre will contact the speech experts and on the bases of language tests they determinate the foreigner's ethnicity. Also the fingerprints will be checked from EURODAC database.

¹ 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.

² 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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	Finland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Lithuania	Yes	Lithuania does not have practice in this area, therefore no comments can be provided.
	Netherlands	Yes	<p>Questions 1 and 2</p> <p>Prior the implementation of any return operation, national authorities first need to ascertain the nationality of the migrant. Return may then take place via forced or voluntary return, with the latter being the preferred type of return. In order to facilitate the process of return, the Ministry of Justice set up the Repatriation and Departure Service (R&DS) in January 2007. Its mandate is to implement return policy and the process of return. The process of the Repatriation and Departure Service is as follows:</p> <p>The migrant's file is transferred from IND or the Alien Police/ Royal Netherlands Constabulary to R&DS. This documentation is the basis for the departure plan. The working methods of the R&DS is characterised by a made to measure approach. In order to prepare the plan, R&DS makes an assessment of the migrant's situation to determine if the returnee is allowed in her/his country of origin, which travel documents that are available and which ones that needs to be organised etc.</p> <p>In cases where the migrant is <i>not</i> in possession of any valid travel document, and the file shows that the nationality and identity of the migrant are not determined, a request for further investigation is forwarded to either the Alien Police or the Royal Netherlands Constabulary by R&DS. The R&DS also tries to identify further clues as to the migrants country of origin through interviews with the migrant and in some cases language analysis.</p> <p>A (former) asylum seeker is not presented to the authorities of the country of his (claimed) origin, until the asylum procedure is completed. If there are clues that a person has a different nationality than stated, a presentation to the authorities of this country is arranged in order to obtain a travel document.</p> <p>In cases where the identity and/or nationality of the migrant are certain, an assessment is conducted to identifying possible options for return i.e. country of origin, country of previous residence, and countries where the individual already applied for asylum. Having identified a possible country of return, R&DS does a final check with the Immigration and Naturalization Service to verify that the migrant has not been granted residence permit in the Netherlands. If the migrant has been granted residence permit (e.g. through the asylum procedure), R&DS terminate the return operation. However, if the status is still valid, coordination is made with the concerned embassy for the arrangement of travel documents (laissez-passer, passport etc.). Before processing these documents, foreign representations commonly request to meet with the migrant in order to confirm her/his nationality. The presentation of the migrant is organised by R&DS, who in most cases also have a representative accompanying the migrant.</p> <p>Upon acquirement of necessary travel documents, R&DS proceeds with the booking of flight and retains the travel document unless the returnee is independent i.e. has agreed to leave voluntarily. Upon the closing in of scheduled departure date, the returnee is transferred to a closed centre. There, a final medical check is undertaken. If on the date of departure the returnee refuses to leave the Netherlands, s/he is escorted by the Royal Netherlands Marechaussee until reach of final destination. To avoid forced return and promote voluntary returns, R&DS, according to national authorities, communicate with the returnee throughout the return process in asylumseekers centrs as</p>



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			<p>detention centres to try and encourage her/him to leave voluntarily. This is done in cooperation with the International Organisation for Migration (IOM) office in the Netherlands.</p> <p>Question 3 A migrant is under the legal obligation to state his or her identity and provide proof of nationality. As long as the R&DS is making swift progress in determining the migrants identity and nationality and there is view to deportation, the Court will approve. In this respect the Court will also approve, when there are sufficient clues, to initiate presentation to authorities other than of his or her claimed nationality. Frustrating the process of determining his identity and nationality may furthermore lead to prolonged detention.</p>
	Poland	Yes	<ol style="list-style-type: none"> 1. According to the Polish national regulations an asylum seeker cannot be returned to his/her country of origin before he/she is issued a final negative decision in the case of granting him/her refugee status. In case an asylum seeker, whose application was rejected or refused, stays in Poland with no document providing his identity and citizenship, the Border Guard apply to the appropriate diplomatic posts in Poland and abroad to confirm his/her identity and issue for him/her a travel document. Moreover, the identity of a foreigner can be confirmed through the interviews with the experts from the appropriate institution in the foreigner's country of origin. However, it should be underlined, that in the case of an asylum seeker, the Border Guard cannot inform any authority from the foreigner's country of origin about the fact that he/she has applied for refugee status. 2. In general, if there is no possibility of determining a country of return, a foreigner is not expelled. Every expulsion is preceded by confirmation of foreigner's identity with aid of his/her embassy (diplomatic posts). When this confirmation wasn't possible, a foreigner may be granted a tolerated stay status (national protection status) in Poland. 3. No information available.
	Portugal	Yes	<p>Portugal has little experience in this regard. The number of applicants which origin is doubtful it's not expressive. Still, when such cases occur is prepared a questionnaire on the country concerned and the specific region where the applicant originates on a variety of issues, not only geographical.</p>
	Slovak Republic	Yes	<p>Slovak Republic has little experience in this regard. When such a case occurs the practice is to check the geographical knowledge of the specific area of the asylum seekers he/she claims that he/she is coming from. The language analysis has not been introduced yet.</p>
	Spain	Yes	<ol style="list-style-type: none"> 1. To begin with, it must be taken into consideration that once international protection in Spain has been applied for, the foreigner – asylum seeker – may not be subject to return, deportation or removal until the application has been decided upon or is not admitted (Law 12/2009 of 30 October, regulating the right of asylum and subsidiary protection). Therefore, return may only be considered in the event the application for asylum is not admitted for processing or due to clear reasons that the person's origin is not the one previously declared. 2. In determining the “country of return”, in other words, the country of origin of the asylum seeker, generally the documentation presented to justify the person's origin – passport or other document which allows for establishing the link referred to – is used. Holding a passport of a given country results in the assumption, unless proved otherwise, that the holder is a national of that country which has issued the passport, unless the passport itself states differently.

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			<p>If the person claims to be a national of a country different from that of the passport, that assertion must be proven, for example, by demonstrating that the passport is a so-called “passport of convenience”.</p> <p>If this documentation is not presented or is insufficient, origin will be determined in accordance with other elements. To this end, a nationality test will be carried out by the Asylum and Refugee Office. This test includes a variety of questions which determine the person’s knowledge on the country (such as political situation, cause of conflict motivating the application for international protection, questions about typical meals in that country, amongst others). Complementary to the above, a personal interview may be held to determine the person’s origin with greater clarity.</p> <p>3. No cases have been brought before the courts to determine the degree of sufficiency for arguing the veracity of one’s origin; however, it is understood that the abovementioned means are more than sufficient in determining and certifying a person’s country of origin.</p>
	<p>Sweden</p>	<p align="center">Yes</p>	<p>Basically the return of a person to any country and, the nationality in relation to the asylum application, are two separate issues. An applicant for asylum has to make his/her identity credible in relation to the reasons for claiming asylum. If the identity/citizenship/nationality is not made credible, the reasons for asylum are most often also not found to be credible and the decision will be, asylum denied. Even though the investigation on the correct identity and citizenship starts when the asylum case is opened there is no imperative to have found the correct identity (citizenship included) in order to take a decision in the asylum case. After/If the asylum procedure is concluded with a negative decision the return procedure starts and the authority responsible (Migration Board or Police) has to find facts to such an extent that return to the country of origin is made possible.</p> <p>In regard to methods for finding out country of origin the “language analysis” is a frequently used method (already in the beginning of the asylum procedure since it may verify an asylum seeker without passport) if Arabic is the spoken language. Language analysis is a method used also in some other language groups. Interviews and interrogations concerning geographical, social and cultural facts is also a method in use. If there are no remaining reasons for protection in Sweden, the authorities may contact a foreign country embassy if, there are indications towards a specific country, in order to verify the country of origin. Sometimes an identity is verified through the Swedish embassy in the presumed country of origin. Most often it takes quite some time from an asylum case being closed until deportation is executed if citizenship is unclear.</p>
	<p>United Kingdom</p>	<p align="center">Yes</p>	<p>A1. We seek to identify the true country of origin; A2. We do this using a variety of methods, including investigative interviewing, domestic and international data-sharing and language analysis; A3. The question is unclear, but it seems to be asking about the standard and burden of proof. If we merely doubt the proffered nationality but cannot suggest an alternative, the burden of proof remains on the applicant to positively prove his country of origin, to the lower standard (reasonable likelihood). If however UKBA positively offers an alternative nationality (you claim to be this, we think you are that), we have asserted, and so the burden shifts to us, and the applicable standard is to the balance of probabilities.</p>
