

## **Ad-hoc query on special judges or procedures for alien cases**

**Requested by LT EMN NCP on 21<sup>st</sup> March 2011**

### **Compilation produced on**

**Responses from Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Norway (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.*

### **1. Background Information**

According to the Lithuanian law, if an alien, who is to be returned to his/her country of origin, appeals to a court against the return decision, his/her return procedure is suspended until the court decides on the appeal. Lithuanian judges do not specialize in particular types of cases, therefore all such appeals fall into the general stream of court cases. The courts are overloaded with work, so the processing of appeals lasts for a long period of time. Meanwhile, the alien's stay causes financial and administrative burden to the State.






One of the ways to shorten the examination of the alien's appeal would be to have specialized judges who would particularly deal with cases related to the aliens' legal status or to establish special accelerated procedures for such type of cases.

We would like to know if there are judges in other Member States who specialize particularly in cases related to aliens or special accelerated procedures applied to such type of cases.

It would be very much appreciated if we received your answers by **21<sup>st</sup> April 2011**.

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## 2. Responses

		Wider Dissemination? <sup>1</sup>	<p>1. Are there judges (courts) who specialize in cases related to aliens or special/accelerated procedures for such type of cases in your Member State? If yes, could you elaborate please (what sort of cases, is it economically convenient to have such specialization of judges or such special procedures)?</p> <p>2. What is the average period of examination of a case related to the legal status of an alien?</p>
	<b>Czech Republic</b>	<b>Yes</b>	<p>1. Yes, there are judges who specialize in cases related to aliens with the administrative courts. As for accelerated procedure, single judges may be regarded as an element preventing protracted trials. There is an accelerated procedure with the Supreme Administrative Court called "legal institute of inadmissibility of cassation appeal", that provides for quick decision with reference to judicature (already decided cases).</p> <p>2. In 2010, the average period of examination of asylum cases in all instances was 362 days.</p>
	<b>Estonia</b>	<b>Yes</b>	<p>1. No.</p> <p>2. No data available.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. No. Cases on aliens' status in Finland are processed in administrative courts where judges do not specialise in different branches of law.</p> <p>2. The average period of examination was 6,2 months in 2010.</p>
	<b>France</b>	<b>Yes</b>	<p>1 - In France, appeals against decisions of the Administrative Authority are made to the Administrative Justice (and not before the general courts). These specialized judges judge only the decisions of the Administrative Authority.</p> <p>2 - The duration of the procedure varies depending on the 2 types of decisions:</p> <ul style="list-style-type: none"> <li>- If the Alien is detained during a police control, a return decision has been issued (decree of deportation: Arrêté de Reconduite à la Frontière in the French Code on Aliens). The alien has 48 hours to appeal against that decision. The judge must rule within 24 hours.</li> <li>- If an Alien applies for a residence permit, if it is denied, an "obligation to leave French territory" is taken against him. He must leave France within one month. If he makes an appeal against this decision, the judge must decide within three months.</li> </ul>
	<b>Germany</b>	<b>Yes</b>	<p>1. Legal procedures regarding asylum and residence related cases are in the competence of the administrative courts (the local courts (<i>Amtsgerichte</i>) decide only on the order of detention prior to removal). The assignment of cases is in the competence of the individual court. Each chamber is assigned a limited number of different legal fields, allowing a greater level of specialisation; however, the administrative courts in general do not have one single chamber which is charged exclusively with asylum or residence related cases.</p> <p>2. NA</p>

<sup>1</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."







**EMN Ad-Hoc Query: special judges or procedures for aliens' cases**

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	<b>Hungary</b>	<b>Yes</b>	<p>1. In Hungarian refugee status determination procedure the judicial review submitted against the contested decision is assessed by that county court after 01. 04. 2011. in the territory of which the client has his/her domicile/residence/accommodation. Formerly the Municipal Court had exclusive jurisdiction in refugee status determination procedure. The involvement of the county courts into the refugee status determination procedure expectedly results the decrease of the procedure time, due to the sharing of the different cases between more courts. Therefore the assessment of the cases in the judicial phase will not be the obligation of only one judicial body.</p> <p>2. In accordance with the Hungarian Act on Asylum the procedural deadline of the preliminary assessment procedure - where the refugee authority examines whether the application can be referred to detailed assessment procedure or not - is <b>30 days</b>. A judicial review against the decision can be submitted within 3 days. The court shall decide on the request for review in a non-litigious procedure within <b>8 days</b> of receipt of the request for review on the basis of the available documents. If the refugee authority refers the application to detailed assessment procedure, the decision shall be made within <b>2 months</b>, which deadline can be prolonged with 30 days. Against the decision made in the detailed assessment procedure a judicial review can be submitted within 15 days. The court shall decide on the request for review in a litigious procedure within <b>45 working days</b> of receipt of the request for review on the basis of the available documents. The Municipal Court usually assesses the judicial review within an average of 6-8 months. If the court does not make a judgement/order on the first trial, the next trial is held within additional 4-5 months. We do not have any experience about the efficiency of the county courts at present.</p>
	<b>Latvia</b>	<b>Yes</b>	<p>1. No, Latvia doesn't have judges who specialize in particular types of cases. We also don't have special simplified procedures for the cases related to aliens. On the same time we must indicate that if alien appeals to a court against return decision, it doesn't give him/her a right to stay in Latvia in any case.</p> <p>2. As we don't have simplified procedures and legal procedure in court has 3 instances, it is really difficult to forecast the length of the examination. For example, it could take 1 year time period since the complaint is submitted to the court and until the first sitting in the first instance court is designated.</p>
	<b>Lithuania</b>	<b>Yes</b>	<p>1. No, judges in Lithuania do not specialize in particular types of cases. Nor do we have any special procedures for the cases related to aliens.</p> <p>2. The average period of examination of such case is 1 year (in both - first and appeal – instances of the court).</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>1) In the Netherlands there are courts and judges who deal exclusively with cases related to an alien. Judges within a court deal with all sorts of cases related to an alien. If an asylum request is rejected in our "general asylum procedure" (within a period of 8 days after the application is made), then there is an appointment with the courts that the court will deal with the appeal within 28 days after the rejection of the application. There are no specific courts specialized in this sort of appeals.</p> <p>2) We don't have this information</p>
	<b>Poland</b>	<b>Yes</b>	<p>1. Due to the relatively small number of cases related to foreigners staying in the territory of Poland neither formal specialization of judges/courts nor special/accelerated procedures for that type of cases are foreseen in Polish law. None withstanding there is knowledge that through the experience certain judges become specialists in the matter of foreigners and all cases brought into Polish court are considered in the similar court's unit. The said is due to the material jurisdiction of Polish courts.</p> <p>2. The average period of examination of such case is from 6 to 9 months (in both - first and second instances). In case of a foreigner</p>

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			appeal – the procedure may additionally last from 3 to 8 months longer.
	<b>Portugal</b>	<b>Yes</b>	1. According to the legal framework (Act n. ° 23/2007, 4 <sup>th</sup> of July) in the Article 150. ° “Judicial review”: “The decision of removal is liable of judicial review, with a devolution effect before the administrative courts.” 2. PT does not have a reliable data in this issue.
	<b>Slovak Republic</b>	<b>Yes</b>	1. No, the Slovak Republic does not have this kind of judges. 2. Detention reaches up to two months. It takes several months to receive a decision on return.
	<b>Slovenia</b>	<b>Yes</b>	1. There are no special courts to deal with such appeals. 2. We have no information regarding average period of examination of such cases.
	<b>Spain</b>	<b>Yes</b>	1. According to the Spanish law, there are not specialized judges who particularly deal with cases related to the aliens' legal status. Therefore, there are Judges who solve complaints against administrative action whether or not involve aliens. If an alien, who is going to be returned to his/her country of origin on account of an administrative decision, appeals to a court asking for the reversal, the procedure will not be suspended. Only in specific and seldom cases, the court can stop the return, if otherwise damages hardly to repair could be produced. 2. The procedure lasts a short period of time which is always less than a year.
	<b>Sweden</b>	<b>Yes</b>	1. Yes, Sweden has Migration Courts that examine and handle migration appeal cases. They are specialized for Migration matters but the judges are generalists towards other administrative cases. The Swedish Migration Board (first instance) is party in the appeal process regarding negotiation on matters concerning aliens, both as live participants in the Court or by written statements to the Court. It's a legally secure system which is the main factor. The aim for this system is also to convince the aliens to accept the decision and hence be economically convenient. The highest level in the court procedure is the Migration Court of Appeal. They only examine and handle cases of precedent character. They give in relatively small numbers leave to appeal. During the whole process the alien is allowed to remain in Sweden until the case has gained legal force. 2. The average period of examination is about 4 -5 months in first instance and about six month in the appeal process.
	<b>United Kingdom</b>	<b>Yes</b>	1. Appeals against decisions to refuse permission to enter or stay in the United Kingdom, or to remove a person from it lie initially to the First-tier Tribunal Immigration and Asylum Chamber (FTIAC) which forms part of the Tribunals Service, an executive agency of the Ministry of Justice. Their sole purpose is to hear and decide appeals against decisions made by the Home Office in matters of immigration and asylum. Appeals are heard by one or more specialised Immigration Judges who are sometimes accompanied by non legal members of the Tribunal. Immigration Judges and non legal members are appointed by the Lord Chancellor and together they form an independent judicial body. There is an onward right of appeal, with permission, to the Upper Tribunal where appeals are normally heard by a panel of Senior Immigration Judges. Thereafter there is a right of appeal to the Court of Appeal where the case is heard by less specialised Judges because wider issues of law are likely to be involved, and ultimately to the United Kingdom Supreme Court. There is no in-country right of appeal against decisions to remove a person unless they allege that the removal decision breaches the UK's obligations under the 1951 Refugee Convention, the European Convention on Human Rights or obligations under European Treaties relating to the regulation of entry into or stay in the UK. Where these issues are raised the person will not be removed from the UK until their appeal has been heard, otherwise any appeal they wish to bring will be heard after their removal. 2. We aim to deal with 75% of cases within specific target timescales. Those timescales are as follows:

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			<ul style="list-style-type: none"><li>• Asylum – 6 weeks</li><li>• Applications made in the UK (managed migration) – 8 weeks</li><li>• Applications from outside the UK (general entry clearance) – 30 weeks</li><li>• Applications from outside the UK (family visit visas) – 25 weeks</li></ul>
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