

Ad-Hoc Query on on the age limit for capacity to perform legal acts for the purpose of administrative expulsion and detention

Requested by CZ EMN NCP on 29 November 2011

Compilation produced on 25 January 2012

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden, United Kingdom plus Norway (18 in Total)

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1. Background Information

Because of the urgent need for overview of situation in other EU Member States, experienced in the process of drawing the new legislative, the hosting organization of the CZ NCP asks for answers to the following questions:

1. What age limit is set for having capacity to perform legal acts for the purpose of administrative expulsion and detention of foreign nationals in your country? (From which age can a person be subject to the procedure on administrative expulsion and/or detained?)
2. What is the age limit of majority? (Does the age limit of capacity to perform legal acts for the purpose of administrative expulsion and detention differ from the age limit of majority?)








EMN Ad-Hoc Query: Age limit for Capacity to perform legal acts for the purpose of administrative expulsion and detention

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To fill in both age limits will be sufficient.



Since the query is urgent, we would very much appreciate your responses by **6 December 2011**.

2. Responses

		Wider Dissemination?	1. What age limit is set for having capacity to perform legal acts for the purpose of administrative expulsion and detention of foreign nationals in your country? (From which age can a person be subject to the procedure on administrative expulsion and/or detained?) 2. What is the age limit of majority? (Does the age limit of capacity to perform legal acts for the purpose of administrative expulsion and detention differ from the age limit of majority?)
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	1+2. Unaccompanied minors are in principle not detained (< 18 years). Only if there is a doubt about the age which was declared by the irregular migrant, a detention is possible pending an “age investigation” (inquiry by the Tutoring Service by medical examination of teeth and bone structure, in order to make an age assessment). This investigation will be carried out within the first week of detention. If the examination concludes that the person could be a minor, he/she will be released immediately into the custody of a tutor, who will place the minor in an open centre for unaccompanied minors. In theory, unaccompanied minors can be removed by force; in practice, however, this is very difficult to realise, since this forced removal must meet different criteria (e.g. tutor must agree, we must find the family in the country of origin who should also agree to the return OR we must find a proper accommodation, with the necessary “care standards”, for the minor in the country of origin). Administrative decisions can be taken against minors, but since the person is under age, he can not sign this decision “for reception”. The decision will be submitted to the tutor or to an adult who is responsible (as a legal or ad hoc guardian of the minor), who will then also be responsible to carry out the decision or take legal actions against it for the minor. In an Immigration context, a person is considered to be a minor as long as he has not reached the age of 18 years.
	Czech Republic	Yes	1. A foreign national aged over 15 years, who is capable of expressing his/her own volition and ability to act independently, shall be deemed to have capacity to perform legal acts. I.e. foreign nationals over 15 years of age may be issued a decision on administrative expulsion and/or detained. 2. A person is major since his/her 18. birthday.
	Estonia	Yes	1. There is no such age limit set. 2. A person is considered an adult from the age of 18.
	Finland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	France	Yes	1- 18 years old 2- 18 years old
	Germany	Yes	1. Any foreigner who is 16 years old and older can undertake procedural actions himself/herself in matters concerning the right of residence and asylum procedures unless he/she is without legal competence or if he/she is of full age and must be supervised and be






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			<p>placed under the reservation of consent in such matters (§ 80 paragraph 1 Residence Act, § 12 paragraph 1 Asylum Procedure Act).</p> <p>2. In accordance with German law a person is of full age once he/she turned 18 years old. The legal competence and other legal capacities of a younger person who is of full age in accordance with the law governing such matters in his/her country of origin shall remain unaffected in this respect. (§ 80 paragraph 3 Clause 2 Residence Act).</p>
	Hungary	Yes	<p>1.)</p> <p>A) An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.</p> <p>B) If expulsion cannot be executed in accordance with the Section A) the immigration authority shall contact the competent guardian authority to provide support and care for the unaccompanied minor.</p> <p>C) The detention of a third-country family of a minor child should be ordered only as a finally measure for maximum of 30 days with attention to the best interests and rights of the child.</p> <p>D) The immigration authority shall conduct immigration proceedings relating to a minor child who is a third-country national to investigate as to whether the provisions laid down in the regulation on the Admission and Right of Residence of Third-Country Nationals pertaining to unaccompanied minors apply to the child in question. The inquiry shall, in particular, aim to determine:</p> <p>a) whether the third-country national in question is in fact a minor;</p> <p>b) if there is an adult who can be held responsible for him/her whether by law or custom.</p> <p>For the protection of the rights of unaccompanied minors, the immigration authority shall take adequate measures at the beginning of the proceeding to have a representative ad litem appointed.</p> <p>With a view to provide support and care for the unaccompanied minor the immigration authority shall contact the competent guardian authority and the consular post of the country of origin of the minor in question in the Republic of Hungary.</p> <p>2.)</p> <p>Everybody whose competency is not limited or disqualified by the law is legally competent.</p> <p>Whosoever is competent is entitled to conclude contracts and make other legal statements.</p> <p>Persons who have not yet reached the age of eighteen years shall be deemed minors, unless they are married. Marriage shall not constitute adulthood if the marriage has been annulled by a court owing to the absence of the guardian's permission, which is necessary because of the lack of competency or minority.</p> <p>A minor shall be of partial capacity if he or she has reached the age of fourteen years and is not incompetent.</p> <p>Unless otherwise provided by law, the legal statement of a minor with partial capacity shall not be deemed valid without the subsequent approval or consent of that person's legal representative. If and when minors of partial capacity become competent, they shall be entitled to make their own decisions concerning the validity of their pending legal statements.</p>
	Latvia	Yes	<p>1. Person can be subject to the procedure on administrative expulsion irrespective of age. Person who has attained an age from 15 to 18 years gives his opinion about his administrative expulsion. An official of the States Border Guard has the right to detain a foreigner who</p>





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			has reached the age of 14 years. 2. A person is major when he reached the age of 18 years.
	Lithuania	Yes	A minor in Lithuania is a person under 18 years of age. The Law on the Legal Status of Aliens is silent concerning the detention age of minors. The Law on the Legal Status of Aliens states that unaccompanied minors are to be assigned with a tutor or a guardian, and there is a possibility to use alternative means of detention for them. Other minors with families are usually not detained either. It is up to the court to choose whether to detain a minor or to assign him an alternative means to detention, but there is not enough practice in order to answer to this question. The return procedures are the same for all aliens. This means that depending on the situation, the minor will either be returned (with the possibility to leave voluntarily) or expelled – if it is in his/her best interests.
	Netherlands	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Poland	Yes	<p>1. Legal possibility to expel a foreigner is determined in Polish law not by age, but by the capacity for legal actions. In accordance with the Polish “private international law” act the foreigner’s capacity for legal actions is determined by the regulations of the country of origin.</p> <p>In case the foreigner does not have the full capacity for legal actions, the expulsion from Poland is still possible, but there are some additional requirements to be fulfilled. Namely, the decision on expulsion of a minor foreigner shall be executed only when care will be provided to him/her in the destination country by parents, other adults or by competent care institutions in accordance with the standards provided for in the Convention on children’s rights, signed at New York, 20 November 1989 (J. L. 1991, No 12, it. 526 and J. L. 2000, No 2, item 11).</p> <p>Moreover, a minor alien may be expelled only under care of the legal representative. That provision may not apply if the minor shall be handed over to the legal representative or to the representative of the competent agencies of the country to which the expulsion is carried out.</p> <p>Currently there is no age limit for detention in Poland. Minors are put in guarded centers together with their parents. A minor without care theoretically may be put in a guarded centre unless he/she applies for international protection. However, the Border Guard may make a request to the court for placing minor without care in the custodian-educational institution instead of guarded centre. This possibility is widely used in practice in order to avoid detention of minors without care. Moreover, the new draft law on foreigners (<i>not adopted yet, final provisions may differ from presented below</i>) introduces the age limit for detention. It will be forbidden to place in a guarded centre a minor without care who is up to 13 years old.</p> <p>2. Age limit of majority in Poland, understood as full capacity for legal actions, is generally 18. However, there are exceptions from this principle - a marriage, even concluded before 18 (which is possible only for women above 16, because of important reasons, with court permission) constitute full capacity for legal actions for the spouses. As stated before, foreigner’s capacity for legal actions is determined by the regulations of the country of origin, which may differ from the Polish ones.</p>
	Portugal	Yes	1. A third country national could be subject to the procedure of administrative expulsion (and detained in this framework) from the age of 18 years. 2. Majority status is acquired on the 18th birthday date.
	Slovak Republic	Yes	1. It is 18 years and over. According to Act on Stay of Aliens a police unit must not administratively expel a child younger than 18

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			<p>years; this shall not apply if expulsion of this child is in the child's interest (Notification No. 104/1991 Coll. of the Convention of the Rights of the Child).</p> <p>2. It does not differ, it is 18 years and over as well.</p>
	Spain	Yes	<p>1. According to Spanish Law, the age limit of capacity to perform legal acts for the purpose of administrative expulsion and detention is 18 years old.</p> <p>2. Majority age is 18 (age limit of capacity to perform legal acts for the purpose of administrative expulsion and detention do NOT differ from the age limit of majority)</p>
	Sweden	Yes	<p>1. The regulations regarding detention allows for detaining children (thus under 18 years of age) under specific and restrict circumstances. For instance in the case of an immediate enforcement, detention may be permitted if there is a manifest risk that the child may keep away from enforcement. It may be noted that children may not be detained due to uncertain/vague ID.</p> <p>The general rule is that children may not be detained more than 72 hours. Yet, if there are <i>exceptional grounds</i> to prolong the detention of a child, the maximum time allowed is 144 hours.</p> <p>2. The general age for legal capacity (legal age) in Sweden is 18 years old.</p>
	United Kingdom	Yes	<p>Generally a person is treated as an adult from the age of 18 for immigration purposes. Legally, a person subject to immigration control can be removed or deported from the UK at any age, and in appropriate cases can also be detained. For example, there are legal powers to remove/deport a family member of a person who is being removed/deported for breach of the UK immigration laws. There is an associated power to detain. However, policies are in place which limit in practice the extent to which these powers are exercised. For instance, an unaccompanied minor will not be removed unless UKBA are satisfied that safe and adequate reception arrangements are in place in the receiving country (as per UK Border Agency's policy for Unaccompanied Asylum Seeking Children policy (see http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/). And families with children are only taken into immigration detention in limited circumstances.</p>
	Norway	Yes	<p>In the Norwegian Immigration Act there is no lower age limit for making an expulsion decision. However, expulsion decisions are only rarely made with respect to persons below the age of 18, and only following a concrete assessment of the maturity and degree to which the person himself or herself can be said to be at fault. Such persons (children) will not be expelled if their parent gave false information on their behalf, e.g. about identity.</p>
