



REDIAL PROJECT

National Synthesis Report – Republic of Croatia **Articles 7 to 11 of the Return Directive**

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Article 7 Voluntary departure

Article 112 of the Aliens Act regulates the voluntary departure in a way that a decision on leaving the Republic of Croatia is issued always and only ex officio to an alien staying illegally and an alien whose legal stay terminated by the decision of an administrative body.

Article 112 of the Aliens Act: "An alien staying illegally and an alien whose legal stay is to terminate pursuant to a decision of the state body shall be ordered to leave the Republic of Croatia in a decision (since 1 July 2013, leaving of the EEA)".

The Act does not provide the possibility that the time for voluntary leave be determined at the request of an alien, which is a possibility provided for in Article 7, paragraph 1 of the Return Directive.

The deadline for leaving is defined in a way that it may not be less than 7 nor more than 30 days, and it should be noted that current practice shows that the governing body usually specifies the maximum limit of 30 days for voluntary departure.

The deadline of 30 days may be extended up to 90 days, taking into account the personal circumstances of a third country citizen, and the time in which an alien can do so. Best interests of minors and the needs of other vulnerable persons, family life and state of health of an alien will also be taken into consideration and measures taken accordingly. Vulnerable persons are persons with disabilities, the elderly, pregnant women and single parents with minor children, victims of violence and minors, especially unaccompanied minors.

In the period from the entry into force of the Aliens Act, in which the Return Directive was transposed (1 January 2012) to the entry into force of the amendments to this Act (27 June 2013), the decision on return was considered part of the decision on expulsion, or the decision terminating the legal stay of an alien, and it was possible to initiate an administrative dispute against the same. Based on this provision the lawyers - legal aid providers, were submitting two claims: against the decision terminating the legal stay (e.g. a request for asylum was rejected) and against the decision to leave the Republic of Croatia, and they were also recognized a double cost for legal assistance. According to current practice, challenging the legality was based solely on challenging the deadline for leaving, which is why all the claims for annulment have been rejected.

Based on the amendment to the Aliens Act, the decision on return may be contested only in the legal remedy against the decision on expulsion or the decision terminating the legal stay of an alien (this is usually a complaint against the decision rejecting the request for asylum), and therefore the lawyers - legal aid providers, are recognized a single cost (for representation in one case), and the reasons for disputing the decision on return are stated in the claims only arbitrarily, if at all, and only in relation to the deadline for leaving since the essence of the claim relates to the dispute of the reasons why the decision on expulsion or terminating the legal stay was made. Therefore the court practice concerning the review of the legality of the decision on return has been minimized.

Preventing the risk of flight

The decision on the abandonment of the EEA may determine obligations for an alien, intended to prevent the risk of flight, in the following cases:

1. If an alien has been rejected a request for asylum, or there are no conditions for the approval of subsidiary protection, because there are serious grounds on which it is considered that they have committed, encouraged or otherwise participated in the execution of:
 - > a crime against peace, war crime or crime against humanity defined by the provisions of international treaties,
 - > a serious non-political criminal offense outside the Republic of Croatia, and prior to their arrival to the Republic of Croatia, including the particularly cruel actions, even if committed with an alleged political objective,
 - > acts contrary to the purposes and principles of the United Nations, as set out in the Preamble and Article 1 and 2 of the United Nations Charter
 - > serious criminal offense,
 - > they pose a threat to legal order and the national security of the Republic of Croatia.
2. if the request for asylum was rejected in an expedited procedure as manifestly unfounded because:
 - > the asylum seeker has concealed that they have previously requested asylum by stating other personal data
 - > the asylum seeker has been staying for a longer period on the Croatian territory and they failed to previously submit a request for no valid reason
3. they do not have the financial means or documents as may be required for entry into another country, and the circumstances indicate that they will not obtain them,
4. they were expelled from the Republic of Croatia.

Article 136, paragraph 3 of the Aliens Act, prescribes the obligations aimed at preventing the risk of flight and are equivalent to the reasons for forced removal:

1. the deposit of travel documents, travel papers and travel tickets,
2. the deposit of certain funds,
3. the prohibition of leaving a particular address,
4. registering to a police station at a particular time.

At the Administrative Court in Zagreb, there is no court practice relating to the imposition of the subject obligations on an alien, in order to reduce the risk of flight.

Article 8 Removal

Article 116 of the Aliens Act prescribes that an alien shall be subject to forced removal:

- > if they failed to leave the EEA within the deadline set in the decision on return
- > if the decision of the state body terminating the alien's legal stay or the decision on expulsion become enforceable, and the decision on return has not been issued.

Also, the alien shall not be forcibly removed if it violates the principle of *non-refoulement*, the rights of minors, unaccompanied children.

At the Administrative Court in Zagreb there is no court practice relating to the assessment of the legality of the document of the governing body ordering forced removal.

Article 11 Prohibition of entry

The decision on expulsion shall specify the prohibition of entry and stay.

When making a decision on expulsion, the duration of stay, economic ties and the degree of social and cultural integration of an alien in the Republic of Croatia, and their links with the country of origin, are taken into consideration. In particular, the interests of minors and other vulnerable persons, family life and state of health of an alien are taken into account.

The prohibition of entry and stay imposed by the decision on expulsion may not be shorter than 3 months nor longer than 20 years.

The prohibition of entry and stay imposed by the decision on expulsion in the case of an illegal stay of an alien, and if they cross or attempt to illegally cross the state border, may not be longer than 5 years.

Apart from the verdict mentioned in the previously sent summary of court practice, there were no new cases related to the application of the mentioned provision of the Directive.

Conclusion

One reason for the scarce court practice is the fact that the Return Directive has been applied for a short time in the Republic of Croatia, i.e. from 1 January 2012.

A much more important reason is the fact that Croatia is still not a targeted country, and therefore there are not many cases where the Directive has been applied.

Having applied the Aliens Act, into which this Directive was transposed, I deem that its provisions are entirely appropriately incorporated in our Act, and although the practice is scarce, the same is applied in accordance with the set objectives.