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REDIAL PROJECT

National Synthesis Report – Croatia

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Article 12 Form

In accordance with the Aliens Act, the decision on return, the decision on the prohibition of entry and the decision on expulsion are always adopted in writing, and must contain a valid explanation (actual and legal reasons). The respective decisions are adopted according to the rules of an administrative procedure so, in accordance with the principle of subsidiarity, the provisions of the General Administrative Procedure Act apply to these procedures. These provisions specifically relate to integral parts of solutions, mandatory content of the explanation and proper legal remedy instructions.

Pursuant to Article 5, Paragraph 2 of the Aliens Act, the decision refusing or terminating the stay of an alien or expelling an alien for reasons of national security, shall contain a legal provision without explaining the reasons that were decisive for the adoption of the decision. Therefore, in accordance with the foregoing legal provision, the explanation shall be limited in relation to the data on the facts, as stipulated in Article 12, Paragraph 1 of the Return Directive.

Pursuant to Article 107 of the Aliens Act, an alien staying illegally and an alien staying for a short term who does not understand the Croatian language, will be provided translation/interpretation in the process into a language that the alien understands. The decision on expulsion will be translated at the request of the alien.

In the administrative procedures, the case files always include standardized forms that inform the aliens on their rights and obligations during the procedure, in a language that they understand (in their native language), the statements in the procedure are always heard and given in the presence of an interpreter, the aliens are informed that they have the right to legal aid free of charge (provided by lawyers or jurists from organizations registered for providing legal aid with which the administrative authority has a contract), and all the decisions are delivered to them in the presence of an interpreter.

All the above-mentioned rights of aliens are consistently respected, and it is necessary to emphasize that interpretation/translation is provided for whichever language the alien speaks, which is an even higher standard than the one prescribed by Article 12, Paragraph 3 of the Directive, due to which there is no relevant court practice.

In accordance with Article 109 of the Aliens Act, if the stay of an alien has become legal, the decision on expulsion shall expire without the adoption of an administrative act, which is in accordance with Article 12, Paragraph 3 of the Directive.

Article 13 Legal remedies

Article 114 of the Aliens Act prescribes the legal remedies against the decision on return, and it stipulates that the decision on return, which is issued in addition to the decision on expulsion of an alien or to the decision of the administrative authority (the Ministry of Interior) terminating the legal stay of an alien, is considered an integral part of the decision on expulsion or of the decision terminating the legal stay of an alien. The decision on return can be contested only in the legal remedy against the decision on expulsion or the decision of an administrative authority terminating the legal stay of an alien (*e.g.* only in the legal remedy against the decision rejecting the request for asylum, which is already described in the summary of Article 7).

The decision on return issued to an alien staying illegally or to an alien staying for a short term cannot be appealed against, but an administrative procedure may be initiated in relation to the same.¹

In the process of passing the decision on expulsion in the case of an illegal and short-term stay of an alien, the alien is entitled to free legal aid which includes;

- assistance in drafting lawsuits and
- representation before an administrative court.

Legal assistance may be provided by attorneys and jurists coming from organizations registered for the provision of legal aid which have stipulated an agreement on the provision of such services with the administrative authority.

An alien possessing sufficient financial means or items of greater value is not entitled to free legal aid. The same applies if it is likely that the alien will be the losing party in the proceedings before the administrative court.

It is considered likely that the alien will be the losing party in the proceedings before the administrative court if the case does not relate to protecting the interests of minors and other vulnerable persons' needs, the family life and health condition of an alien against which the measures are taken, as well as if it does not relate to circumstances due to which the principle of *non-refoulement* is to be applied.

The legal aid is provided at the request of the alien, and the costs of legal aid provided in accordance with the provisions of the Aliens Act shall be borne by the administrative authority.

So far, in practice, the question of assessing whether or not the alien will be the losing party in the case, on which the alien's right to free legal aid would depend, has not been raised before an administrative court. In all cases in which an alien did not have the financial means - the circumstances of which are determined and a declaration of which is given before the administrative body, while the data can be found in the case file to be submitted to the court, -the Court granted the right to free legal aid and ordered the administrative authority to reimburse the cost of legal aid to providers of such services, who have so far always been the lawyers on the list of providers of legal aid of the administrative authority.

No appeal can be filed against the decision on expulsion, but administrative proceedings can be initiated.

When delivering the decision to aliens, the administrative body does this in the presence of a translator/interpreter, at the same time informing the alien about the right to a legal remedy, the right to free legal aid, as well as the right to use the services of an interpreter/translator. According to this, the aliens have always had the option to hire a lawyer, because of which the right of access to court is not a matter of law.

¹ This implies that there is no appeal to the second degree administrative body, but the alien can directly initiate an administrative dispute before the Administrative court.

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Only in one case an alien's lawsuit was rejected for missing the deadline for filing a lawsuit. In that case the alien submitted a complaint on their own, without the help of a lawyer, not taking into account the instructions on legal remedy which explicitly stated that the deadline for filing claims was 8 days since the receipt of the decision. The decision on dismissing the complaint has not yet become final in this case.

As a rule, the deadline for filing a complaint against the decision of the administrative authority is 30 days, except in exceptional cases when a decision is passed on an expedited basis (*e.g.* in the case of manifestly unfounded reasons for an asylum) in which case the deadline for filing claims is 8 days since the receipt of the decision. The deadline for filing a lawsuit before the court is preclusive and exceeding this limit results in the loss of the right to legal protection.

Article 14 Safety conditions before returning

It is forbidden to return an alien by using force if this would breach the principle of *non-refoulement*, and if such return would violate the interests of minors and the needs of other vulnerable persons, the family life and health condition of the alien against which the measures are being taken.

In one case in which an application for asylum in the Republic of Croatia was refused, due to manifestly unfounded reasons, the decision on return was not even passed because of the alien's health condition and his stay in a hospital, and it is uncertain when he will be able to leave without serious consequences for his health.