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LIMITE

CIREA 22

NOTE

From: The General Secretariat

To: CIREA

Subject: Questionnaire on the establishment of impediments to expulsion in the event of illness
(Telex No. 88 dated 8.1.99)

Delegations will find attached replies received to the above mentioned questionnaire.⁽¹⁾

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

⁽¹⁾ The replies from Italy and the Netherlands are in the process of being translated and have been included in this document in their original language.

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Questionnaire

1. Can the threat of deteriorating health /aggravated illness where medical treatment in the country of origin is either lacking or inadequate constitute an impediment to expulsion in the Member States?

If so, are there regulations in your country governing obstacles to expulsion on grounds of illness, e.g. in the form of an administrative ruling or statutory provision?

2. What proof of illness must be provided(doctor's opinion,certificate from public health officer)?
3. What conditions must be met for an impediment to expulsion to be established on grounds of inadequate treatment in the country of origin?
4. Do Member States check during the asylum procedure whether an illness can constitute an impediment to expulsion?
 - Who is responsible for checking , including external examiners where appropriate?
5. Is it significant for the establishment of an impediment to expulsion on health grounds that the illness concerned is very common in the alien's country of origin ?
6. How do Member States establish the foreseeable effects of the different treatments possible in the Member State and in the home country on the state of health of the individuals concerned?
 - What information sources do the Member States use here?
 - Who bears the burden of proof ?
7. For nationals of which countries of origin are impediments to expulsion on health grounds most likely to be established?
8. Do Member States assist the return of individuals to facilitate the continuation of medical treatment in the country of origin?
 - Does such assisted return for example lead to non-identification of actual impediments to expulsion so as to guarantee medical treatment?
 - What form does assisted return take (e.g. provision of medicine via the embassy)?

BELGIUM

1. Yes, Part 2, Title III, of the circular of 15 December 1998 on the application of Article 9(3) of the basic law of 15 December 1980 provides that seriously ill persons may apply for a temporary extension of their stay.
2. The documents to be provided in the event of illness are a medical certificate and, in principle, proof that the person concerned, his insurance company or a third party can pay for the medical treatment.
3. The individual concerned must be examined in person by a member of the doctors' association carrying out expert examinations on behalf of the administration; the administration requires an opinion on the gravity and duration of the illness and the scope for the treatment to be continued in the country of origin. If that opinion concludes that expulsion is impossible then a postponement of departure is authorised (and the stay extended).
4. Only if the asylum seeker has mentioned a medical problem during the procedure.
 - See above
5. No, each file is examined individually.
6.
 - In all cases the Aliens Office checks with the local Belgian diplomatic or consular authorities whether the country of destination has an adequate medical infrastructure to treat the medical condition and if the relevant medicines are available there.

In some cases additional information is requested from various non-governmental organisations.

 - The burden of proof lies in the first place with the administration.
7. Africa in general and the Democratic Republic of the Congo in particular.
8. No, no assistance is currently provided for return.

DENMARK

1. If the asylum application has been finally rejected as well as residence permit on other grounds, the applicant normally must leave the country immediately. If however the applicant suffers from severe illness, the expulsion can be postponed until the applicant is fit for travelling.

In severe cases it is possible to obtain residence permit on humanitarian grounds, but this is only applicable in very few cases yearly.

Residence permit on humanitarian grounds because of grave medical conditions requires a final decision in the asylum procedure. Other foreigners than asylum seekers can in similar situations be granted residence permit on exceptional reasons.

In 1998 residence permit on humanitarian grounds was granted in 15 cases involving a total of 33 persons. In these cases physical disease of a life threatening nature or serious mental disorder were among the most common reasons for granting the residence permit on humanitarian grounds.

2. Normally a doctor's opinion is regarded as enough proof of illness. Doctors from the Danish Red Cross or private medical experts are usually responsible in these cases.
3. Impediments to expulsion or a residence permit on humanitarian grounds due to a grave medical situation are granted following an individual examination of the case, which is based on all relevant facts in each case. No special conditions are to be met apart from a certain level of gravity.

4. All asylum applicants undergo a health check performed by the Danish Red Cross when the asylum application is submitted. The Danish Red Cross is also responsible for the health care of the applicant during the processing of the asylum case.
5. If serious illness occurs the Danish Red Cross will notify the authorities. The authorities decision in the case is normally not based on whether the illness concerned is very common in the aliens country of origin.
6. If a physical disease of a life threatening nature or a serious mental disorder implies a residence permit on humanitarian grounds, the local Danish diplomatic representation of the alien's country of origin in some cases is inquired whether that country can provide adequate medical attention. If adequate medical attention can not be administered a residence permit on humanitarian grounds will be provided.
7. Not applicable.
8. The applicant is normally provided necessary medicine for the travel and first period in the country of origin.

GERMANY

1. Can the threat of deteriorating health/aggravated illness where medical treatment in the country of origin is either lacking or inadequate constitute an impediment to expulsion in the Member States?

Yes.

If so, are there regulations in your country governing obstacles to expulsion on grounds of illness, e.g. in the form of an administrative ruling or statutory provision?

In Germany, the legal basis for establishing that expulsion cannot be carried out on grounds of illness or inadequate medical treatment in the country of origin is provided by the Aliens Law ⁽¹⁾, as developed by administrative case law.

2. What proof of illness must be provided (doctor's opinion, certificate from public health officer)?

There are no legal provisions governing the proof to be provided. The Federal Office for the Recognition of Foreign Refugees (Federal Office) requires a properly detailed medical certificate, containing the following information:

- a diagnosis of the illness and the stage it has reached
- the requisite treatment (e.g. what medicine or medical equipment is required)
- the likely outcome for the applicant if he is not treated, or inadequately treated.

In addition, the certificate should provide as objective as possible an assessment of the condition of the applicant's health. Accordingly, certificates usually have to be issued by specialist clinics or doctors. A certificate from a public health officer may be required in individual cases.

⁽¹⁾ § 53(6), § 54 and § 55(2) of the Aliens Law.

3. What conditions must be met for an impediment to expulsion to be established on grounds of inadequate treatment in the country of origin?

The Aliens Law covers two different types of case, which are thus subject to different conditions:

If an applicant cannot be expelled because he is physically or psychologically unable to cope with the stress of travelling, the aliens authority will postpone expulsion until he is fit to travel again ("impediments to enforcement of domestic origin").

Such cases must distinguished from "impediments to expulsion relating to the country of destination". Expulsion need not be carried out if the applicant faces a serious and specific threat to his person, life or liberty in the country of destination, usually his home country.

Such a threat may include an illness diagnosed in Germany requiring treatment which cannot be provided, or not adequately provided, in the country of destination, where lack of treatment would cause the applicant's condition seriously to deteriorate or even to become life-threatening.

If such circumstances are alleged in the course of an asylum procedure, it is up to the Federal Office to establish whether there is an impediment to expulsion. If it does so, it is the relevant aliens authority which decides, exercising due discretion, whether to carry out the expulsion.

In both cases the aliens authority grants the applicant temporary leave to remain (i.e. a stay of expulsion).

4. Do Member States check during the asylum procedure whether an illness can constitute an impediment to expulsion?

Yes, in the course of the asylum procedure the Federal Offices also establishes whether there is any impediment to expulsion on medical grounds (see answer to question 3).

- Who is responsible for checking, including external examiners where appropriate?

Where the Federal Office has established that there is, in a given case, an impediment to expulsion relating to the country of destination, the Office remains responsible for checking the continued existence of the impediment. To this end the case will be kept under regular review.

If it is claimed, outside the asylum procedure, that expulsion cannot be carried out on medical grounds, it is the aliens authority's responsibility to establish both whether there are any impediments to enforcement of domestic origin or any impediments to expulsion relating to the country of destination.

5. Is it significant for the establishment of an impediment to expulsion on health grounds that the illness concerned is very common in the alien's country of origin?

Where a whole group is subject to certain risks in the country of destination, the relevant Interior Ministries of the Länder can issue binding guidelines to the aliens authorities ⁽¹⁾ on humanitarian grounds. Several Interior Ministries have issued such guidelines in the light of the general danger posed by civil war, for Kosovo for example, and previously for Bosnia and Herzegovina. They guarantee that the persons concerned will not be expelled, without each individual case having to be considered, for an initial six-month period.

Widespread disease in the country of origin may warrant the issue of such guidelines.

In practice, when trying to establish whether or not there is an impediment to expulsion, the spread of a particular disease is considered only in relation to the probability of a specific threat in an individual case.

⁽¹⁾ § 54 of the Aliens Law.

6. How do Member States establish the foreseeable effects of the different treatments possible in the Member State and in the home country on the state of health of the individuals concerned?

- What information sources do the Member States use here?

When checking whether a disease can be treated in a particular country of origin, the Federal Office draws on all available sources of information on that country. If there is no reliable information on whether a particular disease can be treated, a specific inquiry is made to the Foreign Ministry. In such cases the embassies or consulates check on the spot to see what medical facilities are available and whether the applicant would have access to them.

- Who bears the burden of proof ?

The responsibility for checking whether treatment is available in the applicant's country of origin lies with the Federal Office, as part of its duty to investigate the circumstances of cases ⁽¹⁾.

7. For nationals of which countries of origin are impediments to expulsion on health grounds most likely to be established?

There are no separate statistics for this group. Such cases are registered as impediments to expulsion on humanitarian grounds.

However, it is noticeable that applicants often come from the Federal Republic of Yugoslavia, the Democratic Republic of Congo and Ethiopia.

8. Do Member States assist the return of individuals to facilitate the continuation of medical treatment in the country of origin?

⁽¹⁾ § 24 of the Law on Asylum Procedure.

- Does such assisted return for example lead to non-identification of actual impediments to expulsion so as to guarantee medical treatment?
- What form does assisted return take (e.g. provision of medicine via the embassy)?

Under Germany's general assisted repatriation programmes there is no provision for any special aid for medical treatment in the country of origin. Nor does the Federal Office provide any individual repatriation assistance specifically on medical grounds. However, it is quite conceivable that the aliens authorities which are responsible for expulsion in Germany might provide such assistance if it were appropriate.

General financial aid from the Federal Republic of Germany's repatriation programmes can also be used to provide medical care for a limited period, at least in those cases where treatment facilities are available in the applicant's country of origin.

GREECE

1. Can the threat of deteriorating health /aggravated illness where medical treatment in the country of origin is either lacking or inadequate constitute an impediment to expulsion in the Member States?

If so, are there regulations in your country governing obstacles to expulsion on grounds of illness, e.g. in the form of an administrative ruling or statutory provision?

Under Greek law (Joint decision of the Ministers for Justice, Foreign Affairs and Public Order), the threat of deteriorating health/aggravated illness will result in a suspension of expulsion, regardless of whether or not medical treatment in the country of origin is adequate.

2. What proof of illness must be provided (doctor's opinion, certificate from public health officer)?

Illness is always certified by a doctor from a public hospital.

3. What conditions must be met for an impediment to expulsion to be established on grounds of inadequate treatment in the country of origin?

As stated above, the adequacy or otherwise of the medical treatment available in the country of origin is not taken into account. The question examined is whether the alien is ill, in which case this constitutes an impediment to his expulsion.

4. Do Member States check during the asylum procedure whether an illness can constitute an impediment to expulsion?

Who is responsible for checking, including external examiners where appropriate?

Naturally, in the course of examination of an asylum application account is taken of any illness the applicant may be suffering from, so that if his application is rejected, either he is granted residence on humanitarian grounds, to enable him to overcome his health problems, or the decision to return him to his country of origin is suspended until he has recovered.

5. Is it significant for the establishment of an impediment to expulsion on health grounds that the illness concerned is very common in the alien's country of origin?

No, this makes no difference. The criterion is whether or not the alien is ill.

6. How do Member States establish the foreseeable effects of the different treatments possible in the Member State and in the home country on the state of health of the individuals concerned?

What information sources do the Member States use here?

Who bears the burden of proof?

Under Greek law, any alien arriving in Greece who wishes to apply for asylum is referred to a public hospital or health centre for standard preventive examinations, to see whether he is suffering from any infectious or contagious disease. Where this is the case, the alien is immediately admitted to a public hospital for appropriate monitoring and treatment.

Greece makes use of information from both local health authorities and from public hospitals. For instance, in various third countries, typhoid, cholera or hepatitis B are widespread, so aliens arriving from those countries are immediately given the necessary vaccinations.

The burden of proof in respect of an illness lies with the patient, unless the illness is discovered in the course of the preventive examinations carried out on arrival in Greece.

7. For nationals of which countries of origin are impediments to expulsion on health grounds most likely to be established?

There is no discrimination between third countries in respect of the return of aliens. The criterion is whether or not the alien is ill.

8. Do Member States assist the return of individuals to facilitate the continuation of medical treatment in the country of origin?

Does such assisted return for example lead to non-identification of actual impediments to expulsion so as to guarantee medical treatment?

What form does assisted return take (e.g. provision of medicine via the embassy)?

No, Greece does not make use of such procedures. In any event, medical treatment and hospital care cover both asylum applicants while their application is being examined and until a final decision is taken as well as aliens who are not granted refugee status, who are granted temporary residence on humanitarian and other grounds, in accordance with Greek law.

SPAIN

Question 1. Yes. Asylum legislation lays down that an asylum seeker whose application has been rejected and who is not therefore regarded as a refugee, may nevertheless be authorised to remain in Spain for humanitarian reasons. Although there is no specific legal provision, it is considered that a serious illness which cannot be treated in the country of origin is one of the reasons which may give rise to the granting of permission to stay on humanitarian grounds.

This possibility also exists in the framework of general legislation on aliens, i.e. persons who have not applied for asylum may be given permission to remain in Spain on humanitarian grounds, which may include medical reasons. In the first part of this questionnaire, the situation of asylum applicants will be dealt with, while in the second part details are given of the procedure for those who have not applied for asylum.

A. Procedure in the case of asylum seekers

Firstly, this type of situation is not very frequent in Spain's asylum practice, so no consistent line of action has yet been established.

Question 2. In order to prove the existence of an illness, a medical report must be produced by a qualified authority, for example, public hospitals (asylum applicants have access to public medical assistance while their claims are being dealt with) forensic doctors or doctors of the Spanish Red Cross. Usually, certificates made out by private doctors or brought by the applicant from his/her country of origin are not accepted.

Question 3. As indicated, there is no established experience in this area, so each case is examined on its own merits. As a general rule, permission to remain for medical reasons is granted when the person concerned has a serious illness which may be treated and/or substantially improved by medical attention in Spain, and for which adequate treatment does not exist in the applicant's country of origin or, if it does, the applicant is not in a position to have access to it.

Question 4. As indicated in the reply to Question 1, the possibility of granting permission to stay on humanitarian grounds is examined within the actual asylum procedure, subsequent to the rejection of the application. This means that the authorities which decide on the question of asylum are also those responsible for deciding on permission to remain in the cases described.

Question 5. No

Question 6. No regulated procedure has been established to determine whether the existence of an illness constitutes an obstacle to return. Therefore each case is analysed on its own merits. Normally, information concerning the possibilities of treatment in the country of origin is received from the Spanish medical services themselves, from foreign services, from non-governmental organisations with a good knowledge of the region of origin and in other cases it is deduced from the actual economic and social situation in the country of origin and the applicant's own economic and social circumstances.

Question 7. There is no one particular country producing a clearly higher level of instances of permission to stay for medical reasons. In recent months, Iraqi asylum applicants are perhaps those who most frequently present health problems in connection with their asylum application.

Question 8. To date, this possibility has not been considered.

B. Procedure in the case of persons who have not applied for asylum

Question 2. Proof must be provided by means of a medical certificate which certifies the illness suffered from and the fact that it cannot be treated in the country of origin.

Question 3. The conditions are verification of the exact diagnosis of the illness and proof that it cannot be treated in the country of origin.

Question 5. It may be taken into account, but it will depend on the analysis of the alien's specific case.

Question 6. The sources of information on the repercussions of expulsion on the health of the alien may be whichever authority provides authentic proof. The burden of proof is borne by the alien concerned.

Question 7. No list of countries exists, as it depends on the circumstances of each case.

Question 8. No such type of assistance has been established by the authorities.

FRANCE

Question 1

French law contains a provision that prevents an alien from being expelled in the case of illness. Article 25(8) of the amended Order of 5 November 1945 on the conditions of entry and residence in France of aliens provides that an expulsion order or a prefectoral order of escort to the frontier cannot be served on an alien ordinarily resident in France whose state of health requires medical services the lack of which could entail consequences of exceptional gravity for him, subject to the condition that he could not receive appropriate treatment in the country to which he is to be removed.

Question 2

It is up to the alien or his representative to produce sufficient evidence so that the administration can assess his position and decide, where necessary, whether to allow him protection under Article 25 in accordance with the rules laid down by the circular of 30 April 1997. The person concerned must produce a medical dossier making it possible to ascertain that he actually has the illness, assess how serious it is and establish whether his case really does come within the scope of Article 25(8). Illnesses that do not call in question the essential prognosis of the persons concerned or do not entail an immediate major risk for the patient are automatically excluded.

It has not been thought desirable or useful to establish in advance a list of serious illnesses that come within the scope of Article 25(8). It was considered that the assessment should be concerned more with the seriousness of the illness and any irreversible consequences that expulsion might have.

The administration's assessment is based on medical factors. The person concerned is invited to produce a confidential and duly supported medical dossier. This is sent to the public health medical examiner of the local health and social affairs department. The medical authority decides on the following two points:

- whether it is absolutely necessary that the alien suffering from a serious illness should continue the treatment he is receiving in French territory;

- whether he can continue the treatment without undue risk in his country of origin or in a third country to which he could be legally admitted.

The person concerned can be authorized to stay in France only if the medical examiner's opinion confirms that he needs to continue the treatment in French territory and that there is no such possibility in the country to which he would be removed.

Question 3

The health situation of the country of removal needs to be assessed here: hospital infrastructure, treatment provided, access to treatment, qualifications of doctors. This assessment has to be done by the public health medical examiner, who will if necessary contact the central departments of the administration (including those of the Ministry of Employment and Solidarity - department of the State Secretary for Health).

Question 4

During the asylum procedure no systematic check is made on whether an illness can constitute an impediment to expulsion. However, an alien living in French territory can now claim a temporary residence permit as of right under Article 12a(11) of the 1945 Order as amended by the Law of 11 May 1998 if his state of health requires essential medical services in France.

Question 5

The fact that an illness is very common in the alien's country of origin is not taken into account when establishing an impediment to expulsion in the event of illness. The administration proceeds on the basis of the results of the person's individual examination and takes its decisions case by case independently of the health situation of the population in his country of origin.

Question 6

This point is partly answered under Question 2. The scope for the person to receive medical treatment in his country of origin is assessed by the public health medical examiner.

Question 7

We have no statistics to indicate for which countries the procedure concerning impediment to expulsion is initiated most frequently.

Question 8

France assists the return of aliens to their countries of origin only for the purpose of helping them to reintegrate economically and socially.

IRELAND

The basic position is that there are no regulations in Ireland specifically governing obstacles to expulsion on grounds of illness and as such it is not possible to respond definitively to many of the questions raised in the questionnaire. A person whose asylum claim has failed on appeal is given an opportunity to make representations to the Minister as to why he or she should not be deported. It is open to the person to raise any humanitarian features of the case, including illness, and consideration will be given to the application on its individual merits. To date there have not been sufficient number of cases where illness and inadequate treatment in the country of origin have been cited by a person under consideration for removal to comment generally on the standards applied.

In response to question 8, the position is that we do not provide any return assistance at this time, for any category of persons.

ITALY

La Commissione Centrale per il riconoscimento dello status di rifugiato, in sede di esame di una domanda, valuta se vi siano gravi motivi di salute che possano impedire l'allontanamento dello straniero.

La valutazione viene effettuata sulla base della documentazione medica proveniente da un presidio pubblico.

In questo caso la Commissione segnala il caso ai competenti organi di Pubblica Sicurezza affinché rilascino un permesso di soggiorno per motivi di salute.

Il rientro dello straniero viene effettuato solo quando le sue condizioni di salute lo permettono.

LUXEMBOURG

1. In practice, a risk of this kind may constitute an impediment to expulsion to the country of origin. However, national law does not make any provision in this respect, except in Article 14 of the Law of 26 March 1972 on the admission and residence of aliens, which stipulates that an alien may not be expelled or deported to another country if he establishes that his life or liberty would be seriously threatened there or that he would be at risk of treatment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.
2. National law does not make any provision in this respect. In practice, a medical certificate is required.
3. National law does not make any provision in this respect except in Article 14 of the Law of 1972 (see 1).
4. No.
5. Since Luxembourg has only extremely limited experience in this area, it is impossible to answer this question.
6. Idem
7. Idem
8. Idem

THE NETHERLANDS

1. Mogelijkheden t.a.v. beroep op medische klachten

In de Nederlandse regelgeving worden drie categorieën van gevallen onderscheiden waarin medische klachten van invloed kunnen zijn op de behandeling van een asielverzoek.

1. De asielzoeker stelt, als gevolg van gebeurtenissen die hem in het land van herkomst zouden zijn overkomen, medische klachten te ondervinden, respectievelijk littekens te hebben;
2. De asielzoeker wenst mede verblijf in Nederland in verband met medische behandeling die hij hier te lande wil ondergaan;
3. De asielzoeker stelt in verband met zijn gezondheidstoestand niet te kunnen worden uitgezet.

Ad 1.

De asielaanvraag wordt beoordeeld op de inhoudelijke aspecten gezien in het licht van het Vluchtelingenverdrag en het EVRM. Het onderzoek naar de geloofwaardigheid en de zwaarwegendheid van de aangevoerde asielmotieven staat voorop. Bij deze waarheidsvinding spelen medische aspecten in beginsel geen rol, aangezien er medisch gezien (meestal) geen zekere uitspraken zijn te doen over de oorzaak van medische klachten of littekens. De medische aspecten kunnen wel een rol spelen als ondersteuning van het asielrelaas. Dit is neergelegd in een werkinstructie van de Immigratie- en Naturalisatiedienst (IND).

Ad 2.

Wordt niet overgegaan tot het verstrekken van een verblijfsvergunning in verband met aspecten van het asielrelaas en er is sprake van medische klachten dan geldt het reguliere toelatingsbeleid. Dit is neergelegd in de Vreemdelingencirculaire. Voor medische behandeling wordt in het algemeen slechts verblijf hier te lande toegestaan, indien Nederland voor het ondergaan van de behandeling het meest aangewezen land is. Voor bepaalde categorieën verblijfsgerechtigden en in bepaalde gevallen gelden hier uitzonderingen op.

Ad 3.

Medische klachten kunnen ten slotte een reden zijn voor belemmering van uitzetting. Artikel 25 van de Vreemdelingenwet stelt: De feitelijke uitzetting blijft achterwege indien de verwijdering van de vreemdeling uit Nederland met het oog op zijn gezondheidstoestand of die van een zijner gezinsleden niet verantwoord is te achten. Hierbij valt te denken aan de omstandigheid dat de vreemdeling is opgenomen in een ziekenhuis en daarom niet kan reizen of niet kan reizen wegens acuut besmettingsgevaar (tuberculose). Bij zwangerschap is het gebruikelijk dat de uitzetting gedurende de periode van 6 weken voor en 6 weken na de bevalling wordt opgeschort op grond van artikel 25 Vw. De beoordeling van artikel 25 Vw staat los van de

beoordeling van de aanvraag om toelating. Toepassing van artikel 25 Vw kan niet in de plaats komen van een oordeel over het al dan niet verlenen van een vergunning tot verblijf.

2. Bewijsvoering ten aanzien van medische klachten

Ad 1.

Omdat vanuit een medische invalshoek geen zekere uitspraken kunnen worden gedaan over causale verbanden tussen littekens/medische stoornissen en beweerde gebeurtenissen, wordt inschakeling van de Medisch Adviseur (MA) om zekerheid over deze verbanden te krijgen zinloos geacht. Echter, indien de gestelde medische aspecten gestaafd worden door een rapportage van de medische onderzoeksgroep van Amnesty International, moet de rapportage met een aanvraag om een medisch advies worden voorgelegd aan de MA. Deze zal worden gevraagd of hij kanttekeningen heeft bij de bevindingen van de medische onderzoeksgroep van Amnesty International.

Zie verder het antwoord op vraag 4.

Ad 2.

Bij de beoordeling of een vergunning tot verblijf voor het ondergaan van een medische behandeling kan worden verleend, wordt door de IND altijd om een advies gevraagd van de MA. Overgelegde documenten zijn bijvoorbeeld brieven/verklaringen van behandelend artsen (door de vreemdeling zelf aangeleverd of met toestemming van betrokkene ('informed-consent') door de door de MA opgevraagd bij de behandelend artsen. De MA kan bovendien de vreemdeling onderzoeken. Ook wordt in voorkomende gevallen gebruik gemaakt van aanvullende expertise door een medische specialist (voornamelijk district-psychiater = forensic psychiater). De MA beoordeelt of er sprake is van een medische behandeling, alsook of de behandeling aan Nederland is gebonden.

Zie verder het antwoord op vraag 3, 5, 6.

Ad 3.

Indien een voorlopige voorziening wordt aangespannen door de vreemdeling om opschorting van feitelijke uitzetting te bewerkstelligen, wordt de MA ingeschakeld voor een advies over de medische aspecten, indien en voorzover deze aspecten niet reeds in de procedure aan de orde zijn gekomen.

3. Voorwaarden vaststelling noodzaak medische behandeling

Ten aanzien van de medische mogelijkheden in het land van herkomst wordt gekeken of een vergelijkbare medisch behandeling zoals in Nederland wordt gegeven in het land van herkomst aanwezig is. Er wordt niet gekeken of deze behandeling in het land van herkomst ook daadwerkelijk toegankelijk is voor betrokkene. Er wordt thans niet noodzakelijkerwijs uitgaan van het beginsel dat de Nederlandse medische mogelijkheden maatlat zijn. In de Vreemdelingencirculaire en in Werkinstructie 187 wordt uitsluitend gesteld dat het simpele feit dat het in Nederland beter is dan in het land van herkomst niet betekent dat betrokkene dan ook maar in Nederland moet blijven.

In het algemeen geldt dat de vreemdeling aannemelijk moet maken dat Nederland het meest aangewezen land is voor het ondergaan van een behandeling. De omstandigheid dat Nederland het meest aangewezen land is kan verband houden met de aard van de ziekte, een bijzondere specialisatie in Nederland of andere factoren waardoor de behandeling elders voor de betrokkene minder aangewezen is. Op basis van de huidige jurisprudentie behoeft een psychiatrische behandeling niet per se in Nederland te worden voortgezet. Evenmin leidt het enkele feit dat een vreemdeling vanwege een handicap is aangewezen op een speciale vorm van opvang tot de conclusie dat de vreemdeling verblijf in Nederland moet worden toegestaan. Vreemdelingen die zich in de terminale fase van een ziekte komen voor verblijf in aanmerking. Daarbij valt te denken te aan AIDS-patiënten en personen die lijden aan een niet langer behandelbare vorm van kanker.

4. Vaststelling tijdens de procedure van medische gronden

Statusdeterminatie vindt op de gebruikelijke wijze plaats. De behandelend beslismedewerker moet zelf beoordelen of het asielrelaas voldoende grond oplevert voor statusverlening. Daarbij moet worden gekeken of de gestelde medische aspecten in het asielrelaas passen. Vanuit een medische invalshoek kunnen in beginsel geen zekere uitspraken worden gedaan over causale verbanden tussen littekens/medische stoornissen en beweerde gebeurtenissen. Als betrokkene stelt littekens te hebben overgehouden aan mishandeling en deze mishandeling past volledig in het verhaal van betrokkene, voegt medisch onderzoek naar de littekens niets toe aan de beoordeling van het asielrelaas. Omgekeerd geldt hetzelfde; past de mishandeling absoluut niet in het relaas, dan kunnen eventuele littekens ook andere oorzaken hebben en is evenmin een medisch oordeel naar de littekens nodig.

Het uitgangspunt is in overeenstemming met de jurisprudentie van de oude rechter, de Raad van State. Deze heeft gesteld dat een medische verklaring inhoudende dat littekens afkomstig kunnen zijn van mishandelingen niet doorslaggevend is als het asielrelaas op zichzelf reeds onvoldoende zwaarwegend is.

5. Belang van mate van voorkomen van de ziekte in het land van herkomst

Dit is niet van belang bij de beoordeling.

6. Verschillen in behandeling tussen Nederland en het land van herkomst

Het zal aan de rechter zijn om een uitspraak te doen over de accepteerbaarheid van de gevolgen op de gezondheid van de vreemdeling van een mindere behandeling in het land van herkomst. Uitsluitend als valt te voorzien dat de mogelijkheden in het land van herkomst zullen leiden tot een medische noodtoestand bij de vreemdeling, wordt de vreemdeling verblijf in Nederland toegestaan.

Bij de beoordeling hiervan wordt gebruik gemaakt van:

- vertrouwensartsen in de landen van herkomst
 - internet onderzoek
 - onderzoek door SOS-Air
 - contacten met ministeries van volksgezondheid
 - de landenrapportages van Buitenlandse Zaken ('ambtsberichten')
- De "burden of proof" wordt door de rechter bij de staat gelegd.

7. Meest voorkomende landen van herkomst

Sierra Leone, Liberia, Somalië, Ethiopie, DR Congo, Rwanda, Burundi.

8. Ondersteuning bij terugkeer

Er wordt geen ondersteuning/begeleiding verleend na de terugkeer, behoudens in zeer uitzonderlijke individuele gevallen.

AUSTRIA

There are no specific administrative rules or legal provisions concerning impediments to expulsion on account of illness. The general legislation under which consideration has also to be given to whether a lack of or inadequate facilities for treatment of an illness in the country of origin may constitute an impediment to expulsion is as follows:

Under section 56(2) of the 1997 Aliens Act, a stay of expulsion of an alien is to be granted for a set time not exceeding one year, upon application or unsolicited, if expulsion is not permissible under section 57 or does not seem feasible for practical reasons.

Under section 57(1) of the Act, the return, removal or expulsion of aliens to a country is not permissible if there is good reason to believe that they risk inhuman treatment or punishment or the death penalty there.

There is, however, hardly any national supreme-court case law regarding the application of these provisions, in particular section 57(1) of the Aliens Act, in establishing impediments to expulsion on account of a lack of or inadequate facilities for treatment of an illness in the country of origin. In the event of a person to be expelled suffering a serious illness for which there may not be adequate medical care available in the country to which the alien is to be expelled, however, a stay of expulsion under section 56(2) of the Aliens Act will in practice be grantable on humanitarian grounds.

Consideration of non-*refoulement* under section 57 of the Aliens Act falls to the asylum authorities during an asylum procedure and to the immigration authorities outside an asylum procedure. The granting of a stay of expulsion under section 56(2) falls to the immigration authorities.

No repatriation aid is generally granted for medical treatment. Exceptions are made for repatriation aid under the special scheme for Bosnians. Under this, medical aid or medicines are supplied in specific cases by way of bilateral cooperation engaged in by *Länder* or individual municipalities or by aid organisations.

PORTUGAL

1. There are no legal provisions or administrative circulars dealing with the matter in Portugal.
2. Under asylum legislation, asylum seekers have access to the national health service and so, if they fall ill, medical certificates are normally issued regarding patients' condition; this is a matter for the Ministry of Health.
3. Situations are considered on a case-by-case basis, with no pre-established requirements.
- 4-5. Under asylum legislation, asylum seekers whose application has been rejected are given a set time to leave the country of their own accord. That being so, no assessment is made during the asylum procedure to ascertain whether any particular illness may constitute an impediment to expulsion. However, should asylum seekers fail to comply with the order to leave the country of their own accord and should an illness be detected or be reported by them, the authorities responsible for enforcing expulsion always bear in mind medical reports and opinions on the case.
6. As stated above, the asylum authorities are not directly involved with this problem since, except at border posts, asylum seekers whose applications have been rejected are not expelled immediately. However, those responsible for enforcing expulsions of illegal aliens consider each case individually and seek a medical opinion assessing the feasibility of expulsion.
Although the problem is almost non-existent in Portugal, in at least one case expulsion was carried out after liaison and prior discussion between the doctor treating the alien in Portugal and the health service in the alien's home country (Mozambique).
7. -
8. -

FINLAND

1. *Can the threat of deteriorating health/aggravated illness where medical treatment in the country of origin is either lacking or inadequate constitute an impediment to expulsion in the member states?*

If so, are there regulations in your country governing obstacles to expulsion on grounds of illness, e.g. in the form of an administrative ruling or statutory provision?

Yes.

According to Art. 41 of the Aliens' Act, all relevant matters and circumstances must be assessed in their entirety, whenever an alien's deportation from Finland is under consideration. Such relevant matters include an alien's health condition vis-a-vis the availability of medical treatment in the country of origin. If it is considered that there is an impediment to expulsion, an alien is issued a fixed-term residence permit under Art. 20 (1).(3) ("there are special grounds for issuing a residence permit").

2. *What proof of illness must be provided (doctor's opinion, certificate from public health officer)?*

A doctor's opinion is required. An asylum seeker can obtain a doctor's certificate free of charge from the National Health Authorities.

3. *What conditions must be met for an impediment to expulsion to be established on grounds of inadequate treatment in the country of origin?*

In certain cases it is possible that the threat of deteriorating health or aggravated illness can constitute an impediment to expulsion. These are cases where an alien needs constant medical care and the expulsion would jeopardise such care.

An alien may not be expelled as long as he is in need of hospital treatment. In cases of serious chronic illness, there is normally an impediment to expulsion if the patient is in the terminal phase, e.g. in cases of cancer or Aids, especially if the necessary medical treatment is not attainable or is inadequate in the country of origin.

Mental problems may also constitute an impediment to expulsion. If a person needs therapy on a regular basis, a fixed-term residence permit is granted as a rule.

4. *Do member states check during the asylum procedure whether an illness can constitute an impediment to expulsion?*

- *who is responsible for checking, including external examiners where appropriate?*

Reception centres have medical facilities and every asylum-seeker undergoes a medical check-up. They can also be referred to the Centre for the Victims of Torture for further consultations. If any medical reasons which might constitute an impediment to expulsion arise during the asylum procedure, such matters are taken into consideration. Ultimately, a rejected asylum applicant may be issued a residence permit for special grounds i.e. under Art. 20 (1).(3) of the Aliens' Act (see above 1.)

5. *Is it significant for the establishment of an impediment to expulsion on health grounds that the illness concerned is very common in the alien's country of origin?*

This can be taken into consideration. One could expect that in a country where a certain illness is very common, special medical treatment is also available. On the other hand, it could be seen that due to the great number of illnesses, there is no possibility to give treatment to everyone. The type and seriousness of the illness has to be taken into consideration as well.

6. *How do member states establish the foreseeable effects of the different treatments possible in the member state and in the home country on the state of health of the individuals concerned?*

- *what information sources do the member states use here?*
- *who bears the burden of proof?*

Information can be obtained from various sources: the National Health Authorities, the Ministry for Foreign Affairs, the WHO, Internet, various news agencies like Reuter etc.

The burden of proof:

An alien is responsible for providing the information concerning the illness. If an alien claims that the lack of appropriate treatment in the country of origin constitutes an impediment to expulsion, the decision-making body (the Directorate of Immigration, the District Administrative Court, the Supreme Administrative Court) acquires the information concerning the situation in the home country.

7. *For nationals of which countries of origin are impediments to expulsion on health grounds most likely to be established?*

Every case is assessed individually. No clear policy concerning specific countries can be established.

8. *Do member states assist the return of individuals to facilitate the continuation of medical treatment in the country of origin?*

- *does such assisted return for example lead to non-identification of actual impediments to expulsion so as to guarantee medical treatment?*
- *what form does assisted return take (e.g. provision of medicine via the embassy)?*

No.

SWEDEN

1. CAN THE THREAT OF DETERIORATING HEALTH/AGGRAVATED ILLNESS WHERE MEDICAL TREATMENT IN THE COUNTRY OF ORIGIN IS EITHER LACKING OR INADEQUATE CONSTITUTE AN IMPEDIMENT TO EXPULSION IN THE MEMBER STATE?

IF SO, ARE THERE REGULATIONS IN YOUR COUNTRY GOVERNING OBSTACLES TO EXPULSION ON GROUNDS OF ILLNESS, E.G. IN THE FORM OF AN ADMINISTRATIVE RULING OR STATUTORY PROVISION?

Sweden's Aliens Act contains provisions stating that humanitarian reasons may be grounds for granting permission to stay. Serious illness may constitute such a humanitarian reason.

Serious illness may consequently constitute an impediment to expulsion inasmuch as permission to stay may be granted on humanitarian grounds. However, there is no specific provision stating that serious illness constitutes an obstacle to an expulsion decision or to the enforcement of such a decision. (By way of comparison, the risk of corporal punishment or of the death penalty constitutes an absolute impediment to enforcement of an expulsion decision.)

2. WHAT PROOF OF ILLNESS MUST BE PROVIDED (DOCTOR'S OPINION, CERTIFICATE FROM PUBLIC HEALTH OFFICER)?

A certificate from the doctor treating the case is always required. The authority responsible for taking the decision may also request an opinion from or an examination by a doctor acting on its behalf.

3. WHAT CONDITIONS MUST BE MET FOR AN IMPEDIMENT TO EXPULSION TO BE ESTABLISHED ON GROUNDS OF INADEQUATE TREATMENT IN THE COUNTRY OF ORIGIN?

For permission to stay to be granted on grounds of illness (humanitarian reasons), it is in principle necessary for a life-threatening illness to be involved for which no treatment can be provided in the country of origin. Care or treatment in Sweden should lead to an improvement in the condition or be life-saving. In principle, therefore, the condition should be so extremely serious that the alien is likely to die or deteriorate considerably if he is sent home. An example of this might be a person who is dependent on renal dialysis for his survival and who is unable to get such treatment in his country of origin.

The above principle has been expressed by the government in a precedential ruling on individual cases involving aliens. The decisions in question also state that it is impossible to lay down general rules on how serious an illness must be for permission to stay to be granted and that it is difficult to make comparisons between different illnesses and handicaps. In addition, the humanitarian aspects have to be weighed against the financial commitments which may be a direct or indirect consequence of granting permission to stay. The mere fact that treatment in Sweden is better cannot constitute grounds for granting permission to stay, nor can a statement of financial difficulties in securing treatment in the country of origin.

As will be evident, relatively stringent conditions are attached to the granting of permission to stay. A somewhat more liberal view may be taken if a child is involved and if the illness or handicap may have a decisive impact on the child's development, should it be returned to the country of origin. The same may apply to a person who has developed the illness or handicap after entering Sweden.

4. DO MEMBER STATES CHECK DURING THE ASYLUM PROCEDURE WHETHER AN ILLNESS CAN CONSTITUTE AN IMPEDIMENT TO EXPULSION? WHO IS RESPONSIBLE FOR CHECKING, INCLUDING EXTERNAL EXAMINERS WHERE APPROPRIATE?

The authorities make no official checks. It remains the responsibility of the alien to invoke his reasons, including illness, for wanting to be allowed to stay in Sweden. If illness is given as a reason, the burden of proof also lies with the alien. As mentioned above, however, the authority may call in its own doctor to make his own examination or give an opinion on the medical certificate submitted by the alien.

5. IS IT SIGNIFICANT FOR THE ESTABLISHMENT OF AN IMPEDIMENT TO EXPULSION ON HEALTH GROUNDS THAT THE ILLNESS CONCERNED IS VERY COMMON IN THE ALIEN'S COUNTRY OF ORIGIN?

The government ruling referred to above admits that financial consideration is given to how many people in need of care may be expected to try to come to Sweden.

6. HOW DO MEMBER STATES ESTABLISH THE FORESEEABLE EFFECTS OF THE DIFFERENT TREATMENTS POSSIBLE IN THE MEMBER STATE AND IN THE HOME COUNTRY ON THE STATE OF HEALTH OF THE INDIVIDUALS CONCERNED?

- WHAT INFORMATION SOURCES DO THE MEMBER STATES USE HERE?
- WHO BEARS THE BURDEN OF PROOF?

Information about possibilities for treatment in the home country is normally collected through the Swedish authorities abroad in the country concerned. Information is also gathered from other sources such as NGOs.

As stated above, it is in principle the alien himself who bears the burden of proof when it comes to establishing illness and the consequences a return may have. Since the Swedish authorities are obliged to make a thorough investigation, it is however customary for the authority to investigate the treatment situation in the home country. Obviously, a decision to expel a seriously ill person on the grounds that treatment is available in his home country has to be well-founded.

7. FOR NATIONALS OF WHICH COUNTRIES OF ORIGIN ARE IMPEDIMENTS TO EXPULSION ON HEALTH GROUNDS MOST LIKELY TO BE ESTABLISHED?

It is not possible to single out any particular countries, but developing countries with a poor health-care structure are obviously most often involved. The question must always be examined on a case-by case basis.

8. DO MEMBER STATES ASSIST THE RETURN OF INDIVIDUALS TO FACILITATE THE CONTINUATION OF MEDICAL TREATMENT IN THE COUNTRY OF ORIGIN?

- DOES SUCH ASSISTED RETURN FOR EXAMPLE LEAD TO NON-IDENTIFICATION OF ACTUAL IMPEDIMENTS TO EXPULSION SO AS TO GUARANTEE MEDICAL TREATMENT?
- WHAT FORM DOES ASSISTED RETURN TAKE (E.G. PROVISION OF MEDICINE VIA THE EMBASSY)?

In some decisions the deciding authority will issue certain instructions concerning enforcement to the persons dealing officially with the return journey which is to be effected. There is no other form of measure.

UNITED KINGDOM

1. Can the threat of deteriorating health/aggravated illness where medical treatment in the country of origin is either lacking or inadequate constitute an impediment to expulsion in the Member States?

The availability of medical facilities and treatment available in the country of origin which do not meet the standards available in the United Kingdom does not, in itself, constitute a bar to removal. However, it is a factor which may be considered in deciding whether to take enforcement action particularly if such action would result in significantly reducing life expectancy. Claims of unfitness to travel are only accepted when there is supporting medical evidence (see paragraph 2 below).

If so, are there regulations in your country governing obstacles to expulsion on grounds of illness eg. in the form of an administrative ruling or statutory provision?

General

There is no statutory provision governing obstacles to expulsion on grounds of illness in general. It is Immigration Service policy not to remove any individual from the United Kingdom if s/he is not fit to travel and/or their life expectancy would be substantially shortened if they were removed or deported.

Exceptional leave to remain must be granted to asylum applicants where there is credible medical evidence that return, due to the medical facilities in the country concerned, would reduce the applicant's life expectancy and subject him to acute physical and mental suffering, in circumstances where the United Kingdom can be regarded as having assumed responsibility for his care.

At appeal, some adjudicators will take account any serious medical matters irrespective of whether or not the Health Department has considered them, and will often make recommendations based on the facts put before them. Appeal hearings are sometimes adjourned to allow the Health Department to provide evidence as to whether a person would receive the appropriate treatment if returned.

Mental illness

Powers under the Mental Health Acts relate to the removal from the United Kingdom of persons who do not have the right of abode and who are psychiatric in-patients.

- Under Section 82 of the Mental Health (Scotland) Act 1960 as amended by Section 30 of the Immigration Act 1971, the Secretary of State for the Scottish Home and Health Department may order the removal of any person who does not have the right

of abode and who is receiving in-patient treatment for mental illness, provided it appears to the Secretary of State that proper arrangements have been made abroad for the care and treatment of the patient and that it is in the interests of the patient to remove him.

- Under Section 86 of the Mental Health Act 1983, which applies to England, Wales and Northern Ireland, the Secretary of State for the Health Department may order the removal of any person who does not have the right of abode and who is receiving in-patient treatment for mental illness while detained in hospital under certain of the long term powers of detention under the Act. The Secretary of State may use this power only if it appears to him that proper arrangements have been made abroad for the care and treatment of the patient, that it is in the interests of the patient to remove him and if the approval of the Mental Health Review Tribunal has been given. The initiative for seeking the removal of a psychiatric patient lies with the hospital concerned under the direction of the case doctor.

- Cases involving the removal of psychiatric in-patients who have been detained in hospital under orders of a court because of criminal activities would be referred to the Mental Health and Criminal Cases Unit of the Crime Prevention Agency.

2. What proof of illness must be provided (doctor's opinion, certificate from public health officer)?

If a person's medical condition is advanced as a reason for delaying or discontinuing removal, he is asked to provide:-

full details of the condition;
signed consent for access to his medical records;
a medical certificate;
a doctor's or hospital letter outlining the condition.

Medical evidence is usually referred to the Department of Health for an informed opinion ie. guidance on the severity of the condition and the likely prognosis.

3. What conditions must be met for an impediment to expulsion to be established on grounds of inadequate treatment in the country of origin?

Where the individual's medical condition is serious and/or life-threatening and facilities for appropriate treatment and care are absent or inaccessible in the country of origin which would result in a significant reduction in life expectancy, in circumstances where the United Kingdom can be regarded as having assumed responsibility for his care, the individual would be granted exceptional leave to remain in the United Kingdom.

4. Do Member States check during the asylum procedure whether an illness can constitute an impediment to expulsion?

It is normal practice to consider an asylum application independently of whether or not the individual may be removed from the United Kingdom if their application were to be refused.

Eligibility for exceptional leave to remain is considered automatically in all cases where asylum is to be refused. Any medical evidence available would be taken into account before removal action was taken.

- Who is responsible for checking, including external examiners where appropriate?

An individual who seeks to maintain that he should not be removed for reasons of illness is expected to provide medical evidence (see paragraph 2 above). Such evidence is checked and considered by Immigration and Nationality Department officials, and a second medical opinion may be sought. Where a person claims to have a medical condition which will lead to a lengthy deferral of removal, or no removal, the medical evidence provided is usually referred to the Department of Health for an informed opinion.

5. Is it significant for the establishment of an impediment to expulsion on health grounds that the illness concerned is very common in the alien's country of origin?

No.

6. How do Member States establish the foreseeable effects of the different treatments possible in the Member State and in the home country on the state of health of the individuals concerned?

Local advice is obtained from Foreign and Commonwealth Office representatives in the country of origin. The Embassy/High Commission doctor can usually provide this information. Often, he can also advise on the level of education or support organisations which exist concerning particular illnesses. For example, British High Commission staff in Lagos have been able to provide copies of leaflets published by the "Sickle Cell Club" in Lagos and the Diabetes Association of Nigeria. Other examples of information and assistance provided by posts abroad are as follows: the names of pharmacies which stock certain drugs and their cost; local teaching hospitals have been consulted; and the names of doctors or surgeons who specialise in treating certain illnesses established.

- What information sources do the Member States use here?

Useful information has been provided by the Hospital for Tropical Diseases (part of University College London); and from the Department of Health.

- Who bears the burden of proof?

The burden of proof is on the individual to provide the evidence of his medical condition and prognosis and to support a claim that the same/similar treatment would not be available to him on return. There is an obligation on the Health Department to fully and properly consider any evidence provided and to make reasonable enquiry. Any decision by the Secretary of State not to use his discretion not to remove an individual is open to judicial review.

7. For nationals of which countries of origin are impediments to expulsion on health grounds most likely to be established?

In developing countries where health systems are less well equipped and there is a lack of highly qualified staff with special equipment. Lack of access to clean water and illiteracy also constrain the ability to manage complicated long-term drug administration.

Cases are considered on the basis of their individual circumstances. No separate statistics are recorded by country of origin.

8. Do Member States assist the return of individuals to facilitate the continuation of medical treatment in the country of origin?

Through liaison with Embassy staff abroad appropriate arrangements can be made with a local hospital for the reception, care and treatment of an individual who requires continuing treatment.

A warrant for removal of Mental Health patients (see 1 above) will not be issued unless the United Kingdom hospital authorities have made specific arrangements for care and treatment in the country of origin and a medical escort to accompany the patient to his destination.

- Does such assisted return for example lead to non-identification of actual impediments to expulsion so as to guarantee medical treatment?

Such cases are extremely rare; has no impact.

- What form does assisted return take (eg. provision of medicine via the embassy)?

See above.

Brussels, 19 April 1999

6648/99
ADD 1

LIMITE

CIREA 22

NOTE

From: The General Secretariat

To: CIREA

Subject: Questionnaire on the establishment of impediments to expulsion in the event
of illness
(Telex No. 88 dated 8.1.99)

Delegations will find attached the English translations of the replies from Italy and the Netherlands.

SEMDOC
Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

ITALY

When examining an application, the Central Commission for the Recognition of Refugee Status considers whether there are any serious health reasons which may stand in the way of an alien's expulsion.

It does so on the basis of medical documentation from a public health centre.

In that event the Commission refers the case to the relevant law enforcement agencies for issue of a residence permit on health grounds.

The alien is not repatriated until his state of health permits.



THE NETHERLANDS

1. Possibilities regarding appeal on medical grounds

Netherlands regulations distinguish between three categories of cases in which medical complaints may influence the manner in which an asylum application is dealt with:

1. The asylum-seeker states that as a result of events which he claims occurred to him in his country of origin, he is experiencing medical complaints or has scars;
2. The asylum-seeker furthermore wants to stay in the Netherlands in connection with medical treatment which he wishes to undergo in the Netherlands;
3. The asylum-seeker claims that he cannot be expelled in view of his state of health.

Re 1.

The asylum application is assessed on the basis of the substantive aspects viewed in the light of the Convention relating to the Status of Refugees and the ECHR. The investigation into the credibility and gravity of the grounds for asylum adduced is of paramount importance. In this search for the truth medical aspects do not, in principle, play a role, as from a medical point of view no firm statements can (usually) be made regarding the cause of medical complaints or of scars. However, medical aspects may come into play in the support of the asylum account. This is laid down in implementing instructions issued by the Immigration and Naturalisation Department (IND).

Re 2.

Where no residence permit is issued on the basis of certain aspects of the asylum account and where there are medical complaints, the standard admission policy applies. This is laid down in the Aliens circular. Residence in the Netherlands for the purpose of medical treatment is generally only allowed if this is the most suitable country for undergoing such treatment. There are exceptions to this for certain categories of persons entitled to residence and in certain cases.

Re 3.

Finally, medical complaints may constitute grounds for an impediment to expulsion. Section 25 of the Aliens Act states that "an alien shall not be removed from the Netherlands if this is regarded as unreasonable in view of his state of health or that of any of the members of his family". This may for instance refer to an alien who has been hospitalised and who cannot therefore travel or who cannot travel for reasons of an acute risk of infection (tuberculosis). In the case of pregnancy, expulsion is usually suspended on the basis of Section 25 of the Aliens Act during a period of 6 weeks prior to and following delivery. The assessment under Section 25 of the Aliens Act is unrelated to the assessment of the application for admission. Application of Section 25 of the Aliens Act cannot take the place of an assessment as to whether or not a residence permit should be issued.

2. Provision of proof regarding medical complaints

Re 1.

Since no definite pronouncements can be made - from a medical point of view - about causal links between scars/medical disorders and alleged events, it is considered pointless to call on the Medical Adviser (MA) to establish certainty in this respect. However, if the alleged medical aspects are underpinned by a report from the Amnesty International medical investigation team, this report should be submitted to the MA together with a request for a medical opinion. The MA will be asked whether he has any comments to make on the findings of the Amnesty International medical investigation team.

See also the reply to question 4 below.

Re 2.

In assessing whether a residence permit can be issued for the purpose of undergoing medical treatment the IND always asks the MA for an opinion. The documents produced are, for instance, letters/statements from the attending physician (submitted by the alien himself or applied for by the MA to the attending physician with the alien's permission ("informed consent")). The MA may furthermore examine the alien. In some cases use is also made of a supplementary expert appraisal by a medical specialist (principally a forensic psychiatrist). The MA judges whether medical treatment is involved as well as whether the treatment is connected with the Netherlands.

See also the replies to questions 3,5 and 6.

Re 3.

Where a provisional appeal is lodged by the alien to obtain a stay of actual deportation, the MA is asked to give an opinion on the medical aspects if and provided that these aspects have not already been dealt with in the course of the procedure.

3. Conditions for establishing the need for medical treatment

As regards the medical possibilities in the country of origin, it is examined whether medical treatment comparable to that provided in the Netherlands is available in the country of origin. It is not examined whether the treatment is also actually accessible to the person in question in the country of origin. The principle applied at present is not necessarily that the medical options in the Netherlands are regarded as the benchmark. The Aliens circular and implementing instructions 187 solely state that the mere fact that treatment in the Netherlands is better than in the country of origin does not mean that the person in question must also be allowed to stay in the Netherlands.

The general rule is that the alien must show convincingly that the Netherlands is the most suitable country for following a form of treatment. The fact that the Netherlands is the most suitable country may be linked to the nature of the illness, a particular specialisation in the Netherlands or other factors making treatment elsewhere less suitable for the person concerned. On the basis of current case law, psychiatric treatment does not necessarily have to be continued in the Netherlands. Nor does the mere fact that a special form of treatment is indicated for an alien owing to a particular handicap lead to the conclusion that he should be allowed to stay in the Netherlands. Aliens in the terminal phase of an illness qualify for residence. In this connection, AIDS patients or persons suffering from forms of cancer which can no longer be treated come to mind.

4. Establishment of medical grounds during the procedure

Status is determined in the usual manner. The decision-maker involved in the case should himself assess whether the asylum account provides sufficient grounds for allocating status. It should be examined whether the medical aspects claimed concur with the asylum account. From a medical point of view, it is in principle impossible to reach any definite conclusions about the causal links between scars/medical disorders and alleged

events. If the person concerned states that he has scars as a result of maltreatment and that maltreatment corresponds fully with his account, medical investigation of the scars adds nothing to the assessment of the asylum account. The reverse also applies; where maltreatment does not correspond at all with the account, any scars may also have other causes and no medical assessment of the scars is needed either.

The basic principle is in conformity with the case law of the original court, i.e. the Council of State. The latter argued that a medical statement to the effect that scars may be the result of maltreatment is not a decisive factor if the asylum account itself is already insufficiently convincing.

5. Importance of the extent to which the disease occurs in the country of origin

This is of no consequence for the assessment.

6. Differences in treatment between the Netherlands and the country of origin

It will be up to the Court to hand down a decision on the acceptability of the consequences for the alien's health in the event of a lesser degree of treatment in the country of origin. Only where it is expected that the medical options in the country of origin will result in a medical emergency for the alien is he authorised to stay in the Netherlands.

The following are used for the purpose of assessment:

- medical examiners in the countries of origin
- internet searches
- investigation by SOS Air
- contacts with Ministries of Public Health
- country reports from the Ministry for Foreign Affairs ("situation reports")

The burden of proof is laid upon the State by the courts.

