



AD HOC QUERY ON 2019.58 Legal representation for the government in court cases against rejected applications

Requested by Dylano de Wilde on 28 May 2019

Compilation produced on 27 August 2019

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, United Kingdom plus Norway, Marie BENGTTSSON (24 in Total)

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1. Background information

The Immigration and Naturalisation Service (IND) of the Netherlands is responsible for decisions on applications for residence permits. When an application is rejected, it is possible for the applicant to appeal to the Dutch courts. In these cases, legal representatives working at the Legal Affairs Department of the IND defend the position of the IND that an application is justly rejected.

Our colleagues of the Legal Affairs Department of the IND would like to know whether a similar organisation or department exists in your Member State in order to exchange experiences and good practices. Specifically, the Netherlands would like to know if there are any special departments within the relevant

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ministry and/or migration-related organizations (legal and/or litigation department) taking care of the legal representation of the government. This contributes to the objectives of the European Migration Network; bringing professionals and experts together. Therefore, the Netherlands would like to ask the following questions:

2. Questions

1. How is the legal representation for the government arranged in court cases against the decisions made by the competent authority on applications for residence permits in your Member State?

2. Does the organisation responsible for deciding on applications for residence permits also provide its own legal representatives in court cases about rejected applications? Yes/No. If yes, please explain the organisation and department. If not, please explain who is responsible for legal representation of the government in these court cases.

We would very much appreciate your responses by **28 June 2019**.

3. Responses

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		Wider Dissemination ²	
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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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	EMN NCP Austria	No	
	EMN NCP Belgium	Yes	<p>1. In Belgium decisions on applications for residence permits are taken by the Belgian Immigration Office. If a negative decisions in such an application is taken, the foreigner can file an appeal (in general before the Council for Alien Law Litigation). Within the Belgian Immigration Office the Litigations Bureau (in Dutch: Bureau Geschillen, in French: Bureau Litiges) is responsible for handling these appeals.</p> <p>2. Yes. Before the Council for Alien Law Litigation, the appealed decisions are often defended by staff from the Litigations Bureau. This is in accordance with article 74/1 of the Belgian Immigration Act (http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1980121530) and the preparatory parliamentary proceedings (page 4, https://docplayer.nl/25860774-Chambre-des-representants-belgische-kamer-van-de-belgique-volksvertegenwoordigers-doc-53-doc-mai-mei-2012-sommaire-inhoud.html) of this article. The staff members who defend the appealed decisions have a master degree, but not necessarily in law. Because of the complexity of migration law and jurisprudence, each staff member has its own specialty. The bureau is divided in a French and Dutch division. Because of staff shortages and the high number of appeals, the Litigations Bureau will however in most cases appoint a lawyer to defend the appealed decisions. It's also possible that a lawyer is appointed because of the high complexity of the case. Based on a tendering procedure, 7 law firms can be asked to defend the appealed decisions (rotation system).</p>
	EMN NCP Bulgaria	Yes	<p>1. The authorities responsible for the consideration of the obtained applications for residence permit in the Republic of Bulgaria are part of the Ministry of Interior. In these authorities there are procedural representatives that provide procedural representation of the authority, which has considered the application for residence, to the relevant competent courts.</p>

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			2.
	EMN NCP Croatia	Yes	<p>1. In accordance with the provisions of the Aliens Act the decision on the approval of temporary residence is made by the competent police department or police station. In the case of a decision rejecting the approval of a temporary stay and stay and work permit, the decision of the police administration or police station may be appealed to the Commission for Appeals appointed by the Government of the Republic of Croatia. A complaint may be lodged against the decision of the Commission for Appeals, which is decided by the ruling of the Administrative court. The decision in the cases of permanent residence is made by the Ministry of the Interior, against whose decision there can be no appeal, but a administrative dispute may be initiated before the competent Administrative court.</p> <p>2. Yes, please see answer number 1.</p>
	EMN NCP Cyprus	Yes	<p>1. In all cases, the competent authority (Civil Registry and Migration Department, Ministry of Interior) is represented by a lawyer appointed by the Attorney-General of the Republic (Law Office). In 99% of the cases, the lawyer is a Law Officer and belongs to the staff of the Law Office. The Attorney-General of the Republic is the only one who has the authority to decide who represents the Republic (i.e. the Civil Registry and Migration Department, Ministry of Interior) in any court case. The Law Office is an independent Office of the Republic.</p> <p>2. No. Only when needed, a representative of the competent authority is present at the court as a witness. The representative is an administrative officer with knowledge of the details of the specific case.</p>

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			<p>3. All the details about Cyprus' Law office can be found in their website http://www.law.gov.cy/law/lawoffice.nsf/dmlindex_en/dmlindex_en?OpenDocument</p>
	EMN NCP Czech Republic	Yes	<p>2. Yes. The above mentioned Commission provides its own legal representatives in court cases about rejected applications. The Commission is an organisation part of the Ministry of the Interior of the Czech Republic. However, it is independent on the Mol in taking decisions.</p>
	EMN NCP Estonia	Yes	<p>1. The Police and Border Guard Board (PBGB) is responsible for decisions on applications for residence permits in Estonia. When an application is rejected, it is possible for the applicant to first make an appeal to the administrative court. In case of appeal, the legal representatives working at the PBGB Bureau of Citizenship and International Protection defend the position of the PBGB in the court.</p> <p>2. Yes, see the answer for question 1.</p>
	EMN NCP Finland	Yes	<p>1. In these cases, the case handler responsible for the case represents the government and the authority (Finnish Immigration Service) in court. If the person who has handled the case no longer works for the Finnish Immigration Service, some one else from the same team or unit defends the case in court.</p> <p>2. Yes. Please see the response to Q.1.</p>

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	EMN NCP France	Yes	<p>1. Third-country nationals whose residence permit application was rejected by the prefecture of their place of residence may lodge a hierarchical appeal with the Ministry of the Interior, to contest the prefect's decision. The Minister directly decides on the cases filed on appeal. If the Minister confirms the refusal, TCNs may fill an appeal with the administrative court of the region of the concerned prefecture. TCNs may go to the administrative court without making a hierarchical appeal to the Ministry of the Interior first. The referral to the administrative court must be done within 30 days of the notification of the prefecture's decision. During court cases, the State is represented by the prefect; there is no obligation to be represented by a lawyer. Furthermore, a defense statement signed by the Minister of the Interior or its representative, may be submitted on behalf of the State.</p> <p>2. The prefect (who represents the State in the region) of the region where the application was rejected, is representing the State during court cases.</p>
	EMN NCP Germany	Yes	<p>1. The foreigners authorities of the Federal Länder, which decide on the applications for the granting of residence permits, are in principle responsible for legal representation in court.</p> <p>2. Yes. The Länder and their districts and independent cities, as bearers of the authorities, organize legal representation on their own responsibility. There is therefore no generally valid organizational structure. Consequently, depending on the size of the respective authority, there will be differences as to whether the foreigners authorities, as specialist departments, are responsible for the representation of the case itself or if this is done by a separate legal department.</p>

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	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. The Directorate of Migration of Ministry for Migration Policy and the one-stop-shop services (Aliens and Migration Directorates of the Decentralized Administrations) are the competent services for the issuance or rejection of applications of third country nationals. In case an application is rejected or a residence permit is revoked, the applicant has the right to appeal to the competent administrative Greek court. In court cases which concerns rejected applications, or in case of a revocation of a residence permit , the above mentioned services send written information and copies of the file of the person concerned to the competent court of the first instance, which will examine the relevant case. In case of appeal against first instance judgments or in certain cases, according to the relevant legislation, before the Council of State, the competent services are represented by a member of the State Legal Council.</p> <p>2. see Q1</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. The Immigration and Asylum Office (IAO) of Hungary is the responsible body for making decisions on applications for residence permits. The Hungarian legislation provides an administrative and a judicial remedy and in certain cases, even the Supreme Court can deal with the immigration cases. When an application is rejected by the authority of second instance, it is possible for the applicant to appeal to the Hungarian courts. In these cases, legal representatives working at the Unit of Residence and Resettlement of the Aliens Policing Directorate of the IAO are in charge of defending the position of the Office.</p> <p>2. Yes.Organizati on: Director General - Aliens Policing Directorate - Unit of Residence and Resettlement</p>

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	EMN NCP Ireland	No	
	EMN NCP Italy	Yes	<p>1. In Italy there is a general legal body, created by the Royal decree n. 1611/1933, called Advocacy of the State (Avvocatura dello Stato). The tasks assigned to this legal institution regards the legal advice and the defence of the State Administrations (included Constitutional bodies, Independent Administrative Authorities and Regions with a special status) in every civil, criminal, administrative, arbitral, european and international judgments. The Advocacy of the State, headed by the General Attorney of the State, is organized within the territory through a central structure called General Advocacy of the State, Rome based, and 25 sub-offices (district advocacies) in all regional capitals (or where the Appeal Court is based). So, against the rejected applications for residence permit issued by the Quaestor, the foreigner has the right to appeal the Italian courts, in particular the Regional Administrative Court. In this judgment, the Police and therefore the government (in particular, the Ministry of Interior) may be legally represented only by the Advocacy of the State, without the option to approach other legal assistance's institutions.</p> <p>2. Please see our answer to question 1.</p>
	EMN NCP Latvia	Yes	<p>1. The Office of Citizenship and Migration Affairs (OCMA) is responsible for decisions on applications for residence permits. When an application is rejected, it is possible for the applicant to appeal to the Latvian courts (three stages – District Court, Regional Court, Supreme Court). In these cases, lawyers working at the Legal Division of the OCMA defend the position of the OCMA that has rejected the application.</p> <p>2. Yes, Legal Division of the OCMA.</p>

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	EMN NCP Lithuania	Yes	<p>1. The responsible authority for issuing or replacing Residence permits in Republic of Lithuania is the Migration Department under the Ministry of the Interior of the Republic of Lithuania (Migration Department). Those decisions can be appealed to the Regional Administrative Court. The position of the Migration Department in the court is represented by the officers from the Legal Division (civil servants) of the Migration Department.</p> <p>2. Yes, please see our answer to question 1.</p>
	EMN NCP Luxembourg	Yes	<p>1. In Luxembourg, the legal representation for the government in court cases is arranged by governmental delegates, who are legal advisers within either the Ministry of Justice or within the Directorate of Immigration nominated by the Government in Council on proposal of the Minister of Justice.</p> <p>2. Yes, it is the Directorate of Immigration within the Ministry of Foreign and European Affairs, which is responsible for deciding on applications for residence permits. Within the Directorate, the Legal Affairs' department and in it mostly its own governmental delegates prepare the defense of the position/ decision that had been taken by the Minister of Foreign and European Affairs being at the same time Minister for Immigration and Asylum, once an appeal is launched.</p>
	EMN NCP Malta	Yes	<p>1. Residence permits in Malta are issued by an Agency established for the said purpose. Identity Malta Agency is the authority that manages the relative processes. When the decisions of the said Agency</p>

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			<p>are challenged by means of recourse to the Immigration Appeals Board or the Court of Justice in issues of point of law, in the case of the Immigration Appeals Board, legal officers of the Agency represent it in such instances after consulting with legal officers from the Attorney General. In the case of Court challenges legal officers from the Attorney General represent the Agency and are assisted by the legal officers of the Agency.</p> <p>2. Please vide answer to question 1</p>
	EMN NCP Netherlands	Yes	<p>1. Answer from the Netherlands: The Immigration and Naturalisation Service (IND) of the Netherlands is responsible for decisions on applications for residence permits. When an application is rejected, it is possible for the applicant to appeal to the Dutch courts. In these cases, legal representatives working at the Legal Affairs Department of the IND defend the position of the organization that has rejected the application (which is the IND itself) that an application is justly rejected.</p> <p>2. Answer from the Netherlands: Yes, please see our answer to question 1.</p>
	EMN NCP Poland	Yes	<p>1. The legal representation of the Head of the Office for Foreigners as a central government authority (and second instance administrative body) before the administrative courts (the Voivodship Administrative Court in Warsaw and the Supreme Administrative Courts) in cases related to residence permits (as well as return decisions) is held entirely in the Department for Legalization of Stay of the Office for Foreigners.</p> <p>2. The Department for Legalization of Stay provides its own legal representation and does not use legal aid of other units of the Office or any other external organisations. The legal staff consist of only 3 persons – deputy director who is a legal counsel, one legal counsel and an expert who is a trainee</p>

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			legal counsel.
	EMN NCP Slovakia	Yes	<p>1. In the Slovak Republic, application for residence are decided upon by the first-instance administrative body - the Foreign Police Department of the Police Force. In case this administrative body rejects the application for residence, the third-country national may appeal to the nearest competent appellate body, which in this case is the second-instance administrative body - the Directorate of the Border and Foreign Police. No appeal may be brought against the decision of the second-instance administrative appeal body. However, there is a possibility in the Slovak Republic to review a final decision by a court (e.g. the possibility of bringing an administrative action to the court, etc.).</p> <p>2. Yes. Following the answer above, for the purpose of representing the responsible administrative body in front of the court, specific persons are assigned – these are police officers assigned to the Directorates of Border and Foreign Police Directorates (Bratislava, Banská Bystrica and Prešov) or their subordinate units (e.g. Foreign Police Department of the Police Department, Border Inspection Department ...).</p>
	EMN NCP United Kingdom	Yes	<p>1. The answer to these questions depend on what type of decision is under challenge, certain decisions carry a right of statutory appeal, for information see here: https://www.gov.uk/immigration-asylum-tribunal . This link explains how the hearing will proceed: https://www.gov.uk/immigration-asylum-tribunal/if-theres-a-hearing and explains that the Home Office will send a ‘presenting officer’ who is a member of staff employed by the Home Office / UKVI. If a challenge is made to a decision that does not give rise to a statutory right of appeal, a challenge may be made by way of judicial review. Further information is here: https://www.gov.uk/guidance/administrative-court-bring-a-case-to-the-court the Home Office is represented by the Government Legal Department [see section headed litigation] here: https://www.gov.uk/government/organisations/government-legal-department/about</p>

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			2. Please see Q1.
	EMN NCP Norway	Yes	<p>1. It is important to note that Norway has an administratively independent Immigration Appeals Board (UNE). Any decisions made by the Norwegian Directorate of Immigration as first instance can be appealed to this board. The board's decision is considered final (in terms of immigration application processing). It is however possible for an applicant to then take their case to the courts. The court system in Norway does not include separate administrative courts. Cases concerning administrative immigration matters are heard by one specific ordinary court (Oslo District Court). The court is empowered to review whether Government decisions comply with the law. Generally, such cases are civil cases, and the question to be decided by the court is whether the administrative decision is valid or not (such as decisions made by immigration authorities). In such cases, the applicant must cover all their costs related to the court appeal (though it is possible to request free legal aid). It is possible that an immigration case can go through all three levels of the court system to the Supreme Court, but this is extremely rare. When it comes to proceedings against the Norwegian state concerning the lawfulness of administrative decisions of the Immigration Appeals Board, the State shall be represented by the Immigration Appeals Board. In the event of proceedings against the Norwegian state concerning the lawfulness of administrative decisions of the Norwegian Directorate of Immigration, the State shall be represented by the Norwegian Directorate of Immigration.</p> <p>2. Yes If yes, please explain the organisation and department. If not, please explain who is responsible for legal representation of the government in these court cases. The Office of the Attorney General of Norway is the legal advisor to the government. The attorney general assists the executive branch of government with judicial questions and to conduct civil legal trials. The office is a body subordinate to the Norwegian Office of the Prime Minister.</p>
	Marie BENGTSSO	Yes	1. In Sweden the decision on residence permit is made by the Swedish Migration Agency. If the decision is appealed to the Migration Court the appeal is handled by a special department called the

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	N		<p>Litigation Department that is independent of the original units that made the first instance decision. Litigation handles cases that have been appealed, represents the Migration Agency in courts and examines whether there are any obstacles to a person returning. Please see the attached organisational chart. migrationsverkets_organisation_eng.pdf</p> <p>2. Yes, in the sense that it is within the Swedish Migration Agency but it is different departments and appeals are handled by specialised litigation officers. Please see question 1.</p>
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