

Summary of the EMN Ad-Hoc Query No. 2018.1263

EMN ad hoc query on return to Sudan

Requested by BE EMN NCP on 18 January 2018

1. KEY POINTS TO NOTE

★ Several Member States and Norway have organised the forced and/or voluntary return of Sudanese nationals to Sudan during the past few years. For most Member States the numbers are relatively low.

★ Most Member States indicate that a return is not enforced if there is a risk of violating Article 3 of the European Convention on Human Rights (ECHR). However, most Member States are not specific on how the assessment occurs in case it concerns a returnee who did not apply for asylum.

★ For the purpose of identification and issuing travel documents (laissez-passer/ETD) in view of return, most Member States and Norway collaborate with the Sudanese embassies. In addition some countries have received a Sudanese delegation for identification and for issuing travel documents.

★ Several Member States indicate that the profile, ethnicity and/or region of origin are taken into consideration when assessing the asylum application but most Member States indicate that this is not the case in the framework of the return procedures.

★ None of the Member States or Norway organise systematic monitoring of the returnees in Sudan.

2. BACKGROUND AND CONTEXT

On 22 December 2017, the Belgian Government officially requested the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) to carry out an independent enquiry on testimonies and allegations of mistreatment from Sudanese nationals forcibly returned to their country of origin following an identification mission by a Sudanese delegation in Brussels.

In this context and in the framework of this investigation, the Belgian authorities wanted to collect up to date and comparable 1) data regarding the number of Sudanese ordered to leave the territory and returned to Sudan by other EU Member States (MS) and Norway, and 2) additional information on the identification and return processes in other MS States and Norway.

It is important to emphasise that the information obtained via this EMN AHQ is not a complete overview over the return policy of EU MS and Norway to Sudan. While some EU MS did not reply to the ad hoc query, others provided a response that is not open for wider dissemination. Furthermore, some countries provided an answer to the EMN AHQ that is open for wider dissemination, and then provided additional information on the return policy and/or on the way they have collaborated with the Sudanese authorities.

3. MAIN FINDINGS

3.1. Returns to Sudan (forced and voluntary)

The responses to the EMN ad hoc query indicate that at least the following Member States and Norway have organised **forced return** of Sudanese nationals to Sudan during the past two years: **BE, NL, NO, UK, IT, SE, HU, EE**.

Several Member States (**BE, NL, NO, UK, SE, MT, SI, HU, ES, LT, IT**) indicated that **voluntary returns** of Sudanese nationals to Sudan took place during the past two years.

For most Member States the numbers are relatively low (see **annex 1**). Some Member States also provided information on the number of return decisions towards Sudanese nationals, but the information provided on this question is too fragmented to provide a comparative overview.

3.2 Verification of the risk of violation of Article 3 ECHR

3.2.1 Is Article 3 ECHR taken into consideration in the return procedure?

Three MS (**BE, NL, PL**) state that the appropriate procedure to assess the need for protection, and a possible fear of torture, and other cruel, inhuman or degrading treatment or punishment, is the **international protection procedure**. **BE and PL** stress in this regard that the authorities inform the persons concerned of the possibility to submit an application for international protection to substantiate such a risk or fear.

NL says that the check of Article 3 ECHR doesn't take place in the framework of the return procedure when a third country national (TCN) who is staying illegally in the Netherlands does not apply for asylum. **BE** says that, even in the absence of an application for international protection, the persons concerned are invited to share any information on their situation at any time and they have access to judicial remedies.

UK and BE consider that there is no information according to which Sudanese nationals returning to Sudan are facing a real risk of being exposed to torture or some other form of ill-treatment and that it is the responsibility of the TCN to provide information that may indicate a possible violation of Article 3 ECHR in his/her individual circumstances.

Other MS state that Article 3 ECHR is taken into consideration **when ordering and/or enforcing return**. However, the way it is taken into consideration varies between MS. The following elements are brought forward:

- Article 3 ECHR is transposed into national laws and regulations (**AT, EE, HU, IT, LT, LU, SE**).
- Article 3 ECHR is emphasized during repetitive training and preventive activities (**GR, SK**).
- Article 3 ECHR is checked prior to return based on a (systematic or not) individual assessment (**LV, LT, LU, SE, NO**) or consultation of the asylum authority (**CZ, HU**).
- Article 3 ECHR is controlled by prosecutors, ombudsmen and other supervising authorities (**GR, SK, NO**).

AT explains that a risk of violation of Article 3 ECHR can be raised by the person concerned when an expulsion decision or exclusion order is issued, but, in the case the risk concerns the country of origin, the check itself is carried out as part of the international protection procedure.

3.2.2 What procedure is applied?

Although several MS indicate they respect Article 3 ECHR, most MS do not provide concrete information on what procedure is applied to verify if there is a risk of violation of this article when returning someone who hasn't applied for asylum. Some say there is no specific procedure (**EE**) or say that standard procedures do not exist and are left to the discretion of the authority taking care of the return (**IT**).

Some MS (**CZ, HU**) state that the check involves the asylum authority. For example, **HU** says that the opinion of the asylum authority is requested before issuing a return decision and again before carrying out the return. In **AT**, the asylum authority may be involved as well. The third-country national has to request the check, and in that case, if the irregularly staying TCN who hasn't applied for asylum is to be returned to his country of origin, the application is classified as an application for international protection. However, if the person indicates that he/she does not want to apply for asylum in Austria, a return decision is issued.

Other MS state that the State Border Guard (**LV**) or the Police (**SE**) shall always, before enforcement, consider if there are impediments to return.

LT specifies that the TCN is interviewed and fills in a survey form.

Other MS don't explain the details of the procedure.

3.3 Identification procedure and obtaining travel documents

For the purpose of identification in view of the return operation and for issuing travel documents (laissez-passer/ETD), most Member States and Norway collaborate with the Sudanese authorities through the Sudanese embassy or consulate in their country (**BE, EE, HU, IT, NL, SE, UK, NO**) or via the Sudanese embassy in a different EU MS (**SI**).

In addition, some countries have received a Sudanese delegation for identification and issuance of travel documents (**BE**). **IT** referred to a Memorandum of Understanding (MoU) signed with the Sudanese Ministry of Interior, according to which the Sudanese competent authorities supply assistance and support in the framework of the identification of irregularly staying Sudanese nationals and issuance of emergency travel documents.

3.4 Impact of profile on return policy

Several MS (**AT, SE, IT, HU, NL, SI**) state that the profile, including the ethnicity, of the Sudanese nationals is rather taken into account in the assessment of the need for protection, that is to say **in the framework of the asylum procedure and not in the return procedure**. Several MS indicate that the ethnicity and region of origin, although considered as significant factors in the assessment of the need for protection, are not necessarily decisive (**UK, NO**). In this regard, several MS underline that all relevant elements are considered in the framework of the individual case examination (**AT, BE, UK, NO**).

Some countries indicate that caution is applied in the assessment of non-Arab groups from conflict areas (**NO**). According to case law in the UK, non-Arab Darfuris in the Darfur region, as an ethnic group, are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere

in Sudan. However, the UK Home Office view is that there is cogent evidence that non-Arab Darfuris are not generally at risk of persecution or serious harm solely on the grounds of their ethnicity in Khartoum (**UK**).

When it comes to the **return procedure** as such, several MS state that the profile is not taken into account (**BG, EE, IT, HU, NL, SE**). Some MS (**EE, LV**) state they experience too few cases to draw conclusions on this point. **SE** states that there is no explicit policy on region of origin or ethnicity when looking at return but that "the handling officer is always taking into account whether there are any specific needs or conditions to address". **NO** replies that "ethnicity and region of origin are significant factors in the assessment and this goes for cases where there is an asylum application and in cases where there is no asylum application".

Some MS (**HU**) indicate also that special policies apply to vulnerable cases (e.g. minors, single women, etc.).

3.5 Monitoring of returnees

Several MS (**GR, HU, SE, NO**) explicitly state that there is no monitoring of returnees. **IT** says that no systematic monitoring has been put in place by the Italian authorities. However, a pool of Italian **lawyers** who are in contact with 5 Sudanese nationals returned to Sudan in 2016, say that they report security-related problems. **SI** stresses that they monitor the reactions of the Sudanese authorities during the hand-over procedure and on this basis, that they didn't detect any type of mistreatment or torture.

Some MS (**EE, MT**), which also don't carry out monitoring activities in the case of forced returns, still refer to possible monitoring activities by the **IOM** in the case of assisted voluntary returns.

BE specifically referred to the **reintegration support and follow up** proposed in the framework of the European Reintegration Network (**ERIN**) program to Sudanese nationals forcibly returned to Sudan. This support (such as airport pick-up, travel guidance, schooling, shelter facilities, social support) is provided in Sudan by the IOM, upon request of the returnee.

Some MS (**BE, NL, UK**) underline that they make use of **country of origin information** to find out more about the situation of returnees in Sudan. UK refers to various **country and policy information notes**¹ that are made publicly available. BE and UK make use of a report based on a **joint fact finding mission** carried out by the Danish Immigration Service and UK Home Office in February - March 2016. According to the report, “A number of sources stated that they had no information to indicate that failed asylum seekers / returnees from Darfur or the Two Areas would generally experience difficulties on return to Khartoum International Airport (KIA), or they did not consider that claiming asylum overseas would put such a person at risk per se”². NL also make use of information or **country reports** produced by the Ministry of **Foreign Affairs**. NL stresses that the return to a specific country of origin can be suspended if signals are received from reliable sources that returnees are at risk of a treatment as mentioned in Article 3 ECHR.

EMN NCPs participating: Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (24 in total).

Germany, France, The Czech Republic and Finland provided an answer that is not open for wider dissemination, therefore their answer is not reflected in this summary.

¹ <https://www.gov.uk/government/publications/sudan-country-policy-and-information-notes>

² “Sudan – Situation of Persons from Darfur, Southern Kordofan, and Blue Nile to Khartoum”, Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi, February – March 2016, p. 13

Annex 1: overview on returns to Sudan in 2016 and 2017 (forced and voluntary)³

Return to Sudan	2016		2017	
	forced	voluntary	forced	voluntary
Austria ⁴				
Belgium	0	4	10	9
Bulgaria	0		0	
Croatia	0		0	
Czech Republic				
Estonia	1	0	0	1
Finland				
France				
Germany				
Hungary	6	0	0	2
Ireland	0	0	0	0
Italy	41	3	2	0
Latvia	0	1	0	0
Lithuania	0	0	0	0
Luxembourg	0	0	0	0
Malta	0	1	0	2
Netherlands	0	15	1	10
Norway	17	7	20	3
Poland	0	0	0	0
Slovak Republik	0	0	0	0
Slovenia	0	0	0	1
Sweden	0	11	1	3
UK ⁵	1	23	0	11

³ The information on the number of orders to leave the territory requested in question 1 of the AHQ is not reflected in this table due to incompleteness and lack of comparability of the figures. The information provided by France, Germany, the Czech Republic and Finland are not for wider dissemination.

⁴ Austria did not reply to this question of the EMN AHQ.

⁵ Data for UK only refer to the first nine months.