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Migration Policy Development

State practices related to medical COI

Annex: Country Case Studies

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Disclaimer

This research was concluded in March 2026 and reflects the national and EU legal framework of that time.

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Table of Content

CASE STUDY - AUSTRIA 5
CASE STUDY - BELGIUM 20
CASE STUDY - CZECHIA 37
CASE STUDY - DENMARK 47
CASE STUDY – ESTONIA 63
CASE STUDY - FINLAND 70
CASE STUDY - FRANCE 84
CASE STUDY - GERMANY 95
CASE STUDY - GREECE 114
CASE STUDY - HUNGARY 127
CASE STUDY – ICELAND 133
CASE STUDY - IRELAND 142
CASE STUDY - ITALY 147
CASE STUDY - LATVIA 156
CASE STUDY - LUXEMBOURG 163
CASE STUDY - MALTA 174
CASE STUDY - NETHERLANDS 183
CASE STUDY – NORWAY 198
CASE STUDY - POLAND 213
CASE STUDY – SLOVAK REPUBLIC 227
CASE STUDY - SLOVENIA 236
CASE STUDY - SWEDEN 245
CASE STUDY - SWITZERLAND 261

Case Study - Austria

CASE STUDY - AUSTRIA **5**

LIST OF ABBREVIATIONS **5**

1. MEDICAL CLAIMS IN MIGRATION CASES IN AUSTRIA 6
   - *1.1. Legal Basis* *6*
   - *1.2. Organisational Structure/ Responsibilities* *6*
   - *1.3. Procedure in medical migration cases* *8*
   - *1.4. The procedure of researching medical country of origin information* *8*
   - *1.5. Statistics* *9*
2. NATIONAL POLICY 10
   - *2.1. Medical severity of a person's health condition* *10*
   - *2.2. Availability of medical treatment/ medication in countries of origin* *11*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin* *13*
3. RESIDENCE AND RETURN 14
   - *3.1. Medical claim accepted* *14*
   - *3.2. Medical claim denied* *16*
4. SUMMARY 17
5. SOURCES 18

List of abbreviations

AsylG	Asylgesetz [Aylum Law]
BFA	Bundesamt für Fremdenwesen und Asyl [Federal Office for Immigration and Asylum]
BMI	Bundesministerium für Inneres [Federal Ministry of Interior]
BVwG	Bundesverwaltungsgericht [Federal Administrative Court]
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
FGA	Fremdenpolizei Gesetz [Aliens Police Act]
MedCOI	Medical Country of Origin Information
VwGH	Verwaltungsgerichtshof [Supreme Administrative Court]

1. Medical claims in migration cases in Austria

1.1. Legal Basis

In Austria, there is no separate procedure explicitly for medical migration. Most frequently, medical claims emanate from the asylum procedure, when the possibility of a return is assessed for an applicant who has been denied refugee status. Medical claims in asylum and migration cases are then related to possible violations of Article 3 ECHR (prohibition of torture and inhuman and degrading treatment) or – in exceptional cases – Article 2 ECHR (right to life) in case of a return to the country of origin or another safe third country.

In the Austrian Asylum Act 2005 (AsylG), paragraph 8 which determines the grounds for granting subsidiary protection refers to violations of Article 2 or 3 ECHR:

"The subsidiary protection status shall be granted to a foreigner, […] if a refusal, deportation or return of the foreigner to his country of origin would present a real risk of violating Article 2 ECHR, Article 3 ECHR or Protocols No 6 or No 13 to the Convention or pose a serious threat to his life or integrity as a civilian as a result of arbitrary violence in an international or domestic conflict."[1]

Furthermore, the Aliens' Police Act 2005 (*Fremdenpolizeigesetz*, FPG), which, among other topics, stipulates the rules for expelling foreigners, does also refer to impediments of return related to violations of the mentioned articles of the ECHR. Article 50 FPG prohibits the deportation of foreigners who would be subject to Art 2 or 3 ECHR violations:

"The deportation of foreigners to another state is inadmissible, if thereby Art. 2 or 3 of the European Convention on Human Rights (ECHR), Federal Law Gazette No. 210/1958 , or Protocol No. 6 or No. 13 to the Convention on Protection of Human Rights and Fundamental Freedoms against the abolition of the death penalty would be violated or, as a civilian they would be subject to a serious threat to life or integrity as a result of arbitrary violence in an international or domestic conflict."[2]

There is no written policy on how to deal with medical claims in migration cases. Decisions are taken in accordance with the above-mentioned norms and the relevant jurisprudence of the Austrian Supreme Administrative Court (*Verwaltungsgerichtshof*).

1.2. Organisational Structure/ Responsibilities

The first instance authority deciding on whether medical issues constitute an impediment to return is the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*, BFA). The BFA is a body directly reporting to the Federal Ministry of Interior (BMI). Its headquarters are in Vienna but each of the nine Federal States hosts one Regional Directorate. The BFA is responsible for conducting first

[1] AsylG, paragraph 8 (1). Note that all quotations of legal documents in this country case study have been translated from German to English by the author; these are therefore unofficial translations. All legal documents in its original versions are accessible at: https://www.ris.bka.gv.at/Gesamtabfrage/

[2] FPG, paragraph 50. (1)

instance procedures of asylum. It decides on granting and withdrawing refugee status or subsidiary protection status. Apart from this main task, the BFA imposes return decisions, grants residence permits in cases of exceptional circumstances and issues residence permits and all documents related to the asylum proceedings. Asylum and other immigration procedures are conducted regionally in its decentralised branch offices.

First instance decisions of the BFA can be appealed to the Federal Administrative Court (*Bundesverwaltungsgericht*, BVwG). The BVwG is organised in chambers, each of which is responsible for certain groups of countries of origin or special procedures.[3] The possible outcome of this procedure can be the granting of an international protection status (refugee or subsidiary protection status), the refusal of international protection status and the issuing of a return decision, or a referral by the BVwG back to the BFA for further investigations and a re-examination of the case.

The decision of the BVwG may be appealed before the Supreme Administrative Court (*Verwaltungsgerichtshof*, VwGH). The VwGH only acts upon request and decides on admissible appeals involving medical claims in migration cases. In its rulings, the VwGH has also made reference to international case law like the ECtHR's judgement in Paposhvili vs. Belgium.

The first instance decision makers (BFA) as well as judges of the BVwG and the VwGH make use of country-of-origin information (COI) during the appeals procedure. COI is provided, among other sources, by the COI unit within the BFA (*Staatendokumentation*), which in turn uses the services of the MedCOI Sector. In total the COI unit consists of 20 researchers, who are competent to conduct research on medical COI. Four out of the 20 researchers are certified MedCOI users who have access to the MedCOI database and submit requests to EUAA.

Medical professionals can be involved in the procedure at three stages: First, the medical certificates from the treating doctors are submitted by the applicant.

Secondly, medical professionals are consulted upon request of the authority. If there are any reasons to believe that the medical condition of the applicant is unclear (e.g. no medical reports at all or various conflicting medical reports), the case owner can request a separate medical examination. This second examination is conducted by a medical doctor working for the public authorities (*Amtsärzte*). The *Amtsärzte* can also advise the case owner on aspects related to the severity threshold, or on what kind of information needs to be researched to enable informed decision-making. Nevertheless, *Amtsärzte* are not directly involved in the decision-making process and can act only upon explicit request of the authority.

Thirdly, a medical doctor could be consulted during the appeal procedure. A judge can appoint a medical doctor to conduct a separate medical examination of the appellant's medical condition. However, most frequently, the medical certificates presented by the applicant and previously issued by Austrian doctors are regarded as sufficient proof.

[3] AIDA Country Report Austria 2016, p.25

1.3. Procedure in medical migration cases

Sometimes, claims for international protection are based i.e. on medical conditions of the applicants. However, medical conditions are typically not perceived as a ground for asylum protection by the first-instance decision makers. An assessment of the medical situation brought forward by an applicant usually occurs as a consequence of rejection on the protection grounds in the asylum procedure. Once the asylum application has been rejected because none of the international protection grounds (or humanitarian grounds) were established, the BFA caseworker investigates whether the medical condition of the applicant poses an impediment to return to the country of origin.

Whether relevant medical conditions exist, is often already assessed in the first interview of the asylum applicant which takes place at the moment of filing an asylum application at the police. If at a later point of the procedure medical issues arise or are detected, these can also be brought up by the applicant informing the BFA.

The applicant is required to disclose medical information voluntarily and to submit medical documents. This is submitted either physically in the course of the asylum hearings or send to the authority by e-mail or by post. The applicant can also provide consent to the BFA for obtaining medical information directly from the treating physicians. In such cases, the BFA contacts the respective physicians and requests the transmission of files, provided that this information is relevant for the proceedings. Currently there are no standardised templates used by physicians or other health professionals.

1.4. The procedure of researching medical country of origin information

When an asylum application has to be rejected (as no grounds for granting asylum have been determined), the BFA -before issuing a return decision- always assesses whether there are other grounds that could possibly lead to the granting of subsidiary protection or another humanitarian protection status (e.g., leave to remain). In this regard, the BFA also assesses the medical condition of the asylum seeker, in particular when medical reports have been presented in the asylum procedure. The BFA case owner then has to assess whether the medical condition can be treated, and whether the needed medication is available and accessible in the country of origin upon return.

In principle, the burden of proof regarding a possible violation of Article 3 ECHR due to a lack of medical treatment in the country-of-origin rests with the applicant. However, also the case worker needs to investigate and can rely on COI databases and other channels to gather the amount of information relevant to the medical claim.

Information provided by the MedCOI Sector helps the case owner to determine the availability and accessibility of a medical treatment or a medication. In addition, Austrian embassies in countries of origin and liaison officers can be contacted to conduct research on site. Furthermore, the case owner takes into account the family situation, existence of health care systems, the financial situation of the applicant, his/her mobility and ability to work and other factors (see chapter 2.3 on accessibility).

When the necessary medical treatment cannot be provided in the country of origin, and the asylum seeker would consequently face a violation of Article 3 ECHR upon return, the BFA case owner usually awards

either subsidiary protection status or a leave to remain (*Duldung*) to the applicant.[4] The BFA cannot definitively determine if conducting medical COI research that solely focuses on medication, without also considering treatments, is suitable and relevant for specific cases. This uncertainty arises because migration decisions are tailored to individual circumstances and evaluated on a case-by-case basis.

1.5. Statistics

The BFA does not classify asylum and other migration procedures according to the grounds for granting protection or whether medical claims were involved. Hence, statistics capturing the various migration procedures involving medical issues are not available.

The COI unit of the BFA registers all COI queries it receives and can extract the ones involving medical COI and in addition apply various search filters. Thus, it has data on medical queries forwarded to MedCOI versus medical queries answered by alternative sources, including liaison officers, embassies, or own research. In 2023, an overall of 48% of all medical queries of the Staatendokumentation were forwarded to MedCOI, and in 2022, MedCOI requests amounted to 59% of the total share. The BFA COI register does not provide a clear distinction between the number of availability and accessibility queries.

Table 1: Number of medical queries received by the COI Unit of BFA (Staatendokumentation; Source: BFA questionnaire, 2023)

	No of all medical queries received by COI unit of BFA	No. of requests requiring MedCOI from the EUAA	No. of requests responded by other sources than MedCOI of the EUAA
2023 (until 27/09/2023)	211	103 (48,8%)	108
2022	274	163 (59,4%)	111
2021	260	No data available[5]	No data available[6]

Table 2: Number of responses to requests by EUAA MedCOI (Source: EUAA 2025)

	AVA	ACC
2021	84	45
2022	45	21
2023	34	21
2024	66	40

[4] See below the considerations with respect to the appropriate status that derive from the CJEU M'Bodj versus Belgium decision.

[5] For 2021, it is technically not possible to extract the number of MedCOI requests vs. researched via alternative channels.

[6] See previous footnote.

2. National Policy

2.1. Medical severity of a person's health condition

The question whether a caseworker has to research the availability of medical treatment in all medical claims or only severe claims is referred to the 'severity threshold' of a disease in this report. In general, a disease meets the severity threshold if an interruption of treatment during or after a return has serious impact on the deterioration of the migrant´s health condition. Only in cases which meet the severity threshold the authorities need to assess whether medication and/or treatment is available and accessible for the foreigner upon return. Medical claims that can be easily determined as not severe (e.g. non-chronic diseases like influenza) are not assessed with regard to availability or accessibility.

2.1.1. Severity threshold to initiate research on medical COI

No threshold is specified for the case worker to either be able or be required to initiate medical COI research. The case worker will evaluate each situation individually, ultimately considering the severity threshold for decision-making as outlined in 2.2.

2.1.2. Severity threshold for decision-making

In principle, the severity threshold is determined by the Austrian legislation and confirmed by settled case-law on Article 3 ECHR, which states that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."* In Austria, the Asylum Act refers to a *"real risk of violating Article 2 or Article 3 ECHR"*[7], and the Aliens' Police Act declares deportation inadmissible, if *"Article 2 or 3 of the ECHR […] would be violated"*.[8] This threshold is considered to be rather high by Austrian Courts and is deemed to be fulfilled only under exceptional circumstances. International case law[9] is used by the Austrian Courts to further define and specify the threshold set by Article 3 ECHR on medical grounds as a "serious, rapid and irrecoverable deterioration":

"Only in exceptional circumstances a removal leads to a violation of Art. 3 ECHR. Such are in any case if an individual suffering from a life-threatening disease would be at a real risk of dying under aggravating circumstances, but also if there were valid reasons to suggest that – because of a lack of adequate treatment in the country of return or the lack of access to such treatment - a seriously ill person would be confronted with a real risk of serious, rapid and irrecoverable deterioration of their state of health leading to severe suffering or a significant reduction in life expectancy."[10]

In practice, the BFA operates on a case-by-case basis following the *case-owner-principle.* This principle establishes that a single decision-maker is assigned the responsibility throughout all stages of an applicant´s procedure (asylum, residence permit, return), but also that the case owner is granted a

[7] AsylG, paragraph 8. (1)

[8] FPG, paragraph 50.(1)

[9] ECtHR – No 417381/10, Paposhvili v Belgium on 13.12.2016 and No 26565/05, N v UK on 27.05.2008

[10] VwGH 23.03.2017, Ra 2017/20/0038 [12]

considerable degree of discretion in deciding on certain aspects of the application. Different case owners might therefore interpret the severity of a disease differently.[11]

In assessing the severity of a disease, BFA case owners and - in the second instance – judges of the BVwG rely primarily on medical certificates provided by the applicant. Only in rare cases are medical expert opinions commissioned by the court. Medical certificates issued by medical doctors are expert opinions which cannot make an assertion on whether a real risk in the sense of Article 3 ECHR exists in the case of no treatment or non-adequate treatment. Based on the expert opinion, BFA case owners in the first instance and judges of the BVwG in the second instance assess the legal question whether the disease meets the severity threshold of Article 3 ECHR.

The BFA considers the severity threshold for children to be lower than for adults, i.e. a disease is more likely to constitute a real risk of violating Article 3 due to a lack of treatment when it concerns a child.

Regarding the relevance of a mental illness at the return, the decision makers take into consideration stays in closed psychiatric hospitals, as well as the frequency, regularity, and intensity of the use of medical-psychiatric services. The possibility of a worsening of the state of mental health as a consequence of the return, even if associated to suicidal tendencies of the applicant, does not itself constitute an impediment of return.[12]

When the disease is life-threatening or in a terminal stage, the BFA case owners are not required to assess availability and accessibility of an adequate treatment in the country of origin. In such cases, they would normally refrain from issuing a return decision in the first place.

2.1.3. Medical threshold cases

No threshold specified in the written policy of Austria, regarding extremely severe medical cases. The case worker will evaluate the situation, ultimately considering the severity threshold for decision-making.

2.2. Availability of medical treatment/ medication in countries of origin

The fact that an applicant suffers from a disease found to be severe, meaning that a lack of treatment would lead to a serious, rapid, and irrecoverable deterioration of his/her health situation, does not by itself constitute an impediment to return. Only if the person returned cannot receive the necessary treatment, a real risk of violating Article 3 ECHR may arise. One reason for a possible absence of the necessary treatment might be that it is not available or accessible in the country of return. In the Austrian practice, there is no clear-cut distinction between availability and accessibility of a medical treatment or medication in the country of return. Both aspects need to be taken into account when considering the lawfulness of a return. For the purpose of this study however, availability and accessibility in the context of medical issues in return procedures are assessed separately.

[11] In order to ensure high quality standards in decision-making and a uniform practice within the BFA, internal standardized trainings are frequently held by the BFA Quality and Training Department. Organization-wise, case owners are grouped in small teams and supervised by team leaders. Furthermore, a quality assurance officer present in each of the field offices is required to check each decision.

[12] VwGH 26.02.2015, Ra 2014/22/0198

2.2.1. Definition of availability in the national context

When a severe illness exists, the BFA case owners evaluate and decide whether the necessary treatment is available, i.e. whether it can be provided in the country of return.

The BFA COI unit (*Staatendokumentation*) provides information on the availability of medical treatment and medication in countries of origin. In most cases, MedCOI project services are required when it concerns the availability of a specific treatment or medication. MedCOI requests are channelled through the COI unit; BFA case owners formulate their questions which are then submitted to MedCOI. The MedCOI answer is then sent to the COI unit and forwarded to the respective case owner.

The COI unit makes use of Austrian embassies in countries of origin to conduct research on site, e.g. on whether a specific medication is available in pharmacies at the capital or regarding the price of a treatment or medication.

COI reports contain information on the existence of medical treatments, specialists and hospitals offering the necessary treatments in the country of origin.

2.2.2. Availability in practice

A medication is considered to be available if it is registered in the country. It is usually not necessary to check whether a medication can actually be found in pharmacies.

Neither BFA case owner nor the judges are required to assess whether the medical treatment meets the same standards as in Austria. The medical COI research does not have to identify exactly the same treatment as the one given in Austria. Also, in case the medication prescribed in Austria is not available in the country of return, alternative medications can be assessed, if it is equivalent in terms of effectiveness. An alternative medication might be sufficient to prevent a real risk of deterioration of the health situation.

If the medication is not available in the country of return but it is available in a neighbouring country, the case owner might deem it reasonable for the applicant to obtain the necessary medication in this neighbouring country, e.g. if he/she lives near to the border, border crossing is possible, and the medication does not need to be stocked up frequently. The BFA takes into account that medication can be ordered for a longer period. In such cases it would therefore be the responsibility of the patient to order or purchase the medication in time.

A medication or treatment is considered not available if it can be purchased only via illegal channels (e.g. at the black market).

In its jurisprudence the Austrian Supreme Administrative Court clarified that the quality of treatment in the country of origin does not have to be equivalent to the one in Austria[13]. This reflects the case law of the ECtHR.

[13] VwGH 14.08.2023, Ra 2023/14/0005; VwGH 16.05.2023, Ra 2023/20/0139.

2.3. Accessibility of medical treatment/ medication in countries of origin

The ECtHR Paposhvili decision does very explicitly establish the need for assessing the *de facto* accessibility of a medical treatment in the country of return:

"*The authorities must also consider the extent to which the individual in question will actually have access to this care and these facilities in the receiving State. The Court observes in that regard that it has previously questioned the accessibility of care […] and referred to the need to consider the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care […].*"[14]

Unlike the topic of availability, where the procedural outcome can be clearly determined by whether a treatment or a medication is available or not (information that is usually rather clearly obtained from COI research), accessibility is often more complex. It cannot be easily determined and requires careful consideration of various factors.

2.3.1. Definition of accessibility in the national context

As the Paposhvili case law is the only legal basis Austrian case owners and judges rely on when assessing the *de facto* accessibility of a necessary treatment or medication in the country of return, a considerable degree of discretion is granted to the decision makers. In national case law, the topic of accessibility lacks a clear definition:

"According to settled VwGH case law, in general no foreigner has the right to remain in a country merely for the purpose of medical treatment, even if he suffers from a serious illness. It is irrelevant that treatment in the destination country is not equivalent, more difficult to access or more cost-intensive, but the person concerned must actually have access to the necessary treatment, whereby the costs of treatment and medications, the existence of a social or family network and the travel distance necessary for access to treatment need to be taken into account."[15]

In principle, the burden of proof regarding a lack of accessibility lies on the applicant:

"According to the ECtHR´s settled case law that, with the exception of deportations to countries where the general situation is so severe that repatriation of a rejected asylum seeker would constitute a violation of Article 3 ECHR, it is in principle for the person in risk of deportation to provide appropriate evidence to substantiate proper reasons for assuming a risk that, in the event of a repatriation measure, he would face a treatment contrary to Art. 3 ECHR."[16]

Nevertheless, the BFA case owner (and in the second instance, judges of the BVwG) are also obliged to research on the *de facto* accessibility of the required treatment in the country of return. The BVwG may also refer appeals back to the BFA without deciding on the topic, if the appealed negative decision does

[14] ECtHR – No 417381/10, Paposhvili v Belgium on 13.12.2016 [190]

[15] VwGH 23.03.2017, Ra 2017/20/0038 [12]

[16] VwGH 13.09.2016, Ra 2016/01/0096 [9]

not explicitly touch upon medical issues brought up by the applicant and/or by consequence, does not assess availability and accessibility of a specific necessary treatment in the country of origin.[17]

2.3.2. Accessibility in practice

COI reports help the decision makers containing information on health care systems in the countries of origin, existence of hospitals providing specific medical treatments as well as their geographical location and effective accessibility.

Economic Accessibility

The Austrian practice foresees no specific rules on financial or geographical accessibility. Regarding the financial costs, it is up to the case owner to decide whether the costs of a treatment can be borne by the applicant. The cost factor can usually be determined through COI information, often MedCOI provides information on the cost of a medication or treatment.

Other factors pondered by the case owner to determine financial accessibility are the applicant's ability to work and generate an income and the existence of social and family networks. BFA and BVwG consider financial accessibility to be fulfilled if the applicant can be supported financially by his/her family. A detailed and thorough assessment of the financial situation of family members and their ability to afford the medical treatment of the applicant is not required.[18] Case workers also investigate whether the applicant has access to social protection schemes (e.g. public health insurance, governmental or international aid programmes) that could cover the costs. In principle, the unemployment rate in the country of origin is not considered relevant.

Geographic accessibility

If the existence of treatment is geographically limited to a specific region or town in the country of origin, the case owners decide whether the applicant can be expected to move to another town, in which the treatment would be available. It might also be expected from the applicant to travel a reasonable distance in order to receive treatment.

3. Residence and Return

3.1. Medical claim accepted

No residence permits exist based solely on medical conditions. According to Paragraph 8 AsylG, subsidiary protection has to be granted to an asylum applicant when his/her return would result in a real risk of violating Article 3 ECHR. BFA case owners adhere to this legal provision and award the subsidiary protection status when a person cannot be returned due to severe medical issues which cannot be treated adequately in the country of origin.

This practice of granting subsidiary protection to ill applicants who would not have access to adequate treatment at their return and would face a real risk of rapid, serious and irrecoverable deterioration of

[17] Among others BVwG 26.10.2017 I416 2150581-1/10E, BVwG 19.01.2018 L515 2183129-1, BVwG 24.08.2017 L519 2168095-1

[18] VwGH 21.02.2017, Ra 2017/18/0008

their health situation was however challenged by the CJEU in M'Bodj vs Belgium[19], which stated that granting subsidiary protection for medical reasons is (usually) not in line with the EU Qualification Directive:

"The risks faced by a third country national of a deterioration in his state of health which is not the result of that person being intentionally deprived of health care — against which the national legislation at issue in the main proceedings provides protection — are not covered by Article 15(a) and (c) of Directive 2004/83"[20]

Furthermore, "the fact that a third country national suffering from a serious illness may not, under Article 3 ECHR as interpreted by the European Court of Human Rights, in highly exceptional cases, be removed to a country in which appropriate treatment is not available does not mean that that person should be granted leave to reside in a Member State by way of subsidiary protection under Directive 2004/83."[21]

The question whether the Austrian practice of granting subsidiary protection on medical grounds is therefore not in accordance with the Qualification Directive has not been clarified by the Austrian Supreme Administrative Court, VwGH. The High Court has so far refrained from assessing the legal consequences of the CJEU ruling for the Austrian practice and the interpretation of Paragraph 8 of the Asylum Act.

Whereas some judges of the BVwG consider granting subsidiary protection status according to Paragraph 8 AsylG is no longer to be admissible in cases of medical issues,[22] others deem the current legal situation to be unclear, especially in light of the lacking guidance by VwGH's case law and continue granting subsidiary protection to ill applicants "under exceptional circumstances":

"Therefore, at the time of decision, Supreme Court case law for the Austrian legal system in this problem is lacking. The BVwG is aware of the relevant case law of the CJEU, but considers in the present case that overall, exceptional circumstances exist which in case of a return of the appellant would lead to a violation of their rights under Article 3 ECHR. In the light of the previous case law of the ECtHR, VfGH and VwGH, the appellant is therefore to be granted subsidiary protection by the BVwG."[23]

In another judgement of the BVwG, however, it is argued that the CJEU ruling does not have consequences on the relevance of the health situation and availability of treatment in the country of origin for granting subsidiary protection according to the national provisions in Paragraph 8 AsylG. Denying subsidiary protection (Paragraph 8 AsylG) only on the basis of M'Bodj would go far beyond the room for interpretation left by the law*: "The identified discrepancy between the [Qualification] Directive and Paragraph 8 AsylG must not be resolved by its implementation, but can only be resolved by the legislature."*[24]

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[19] CJEU - C-542/13, Mohamed M'Bodj v Belgium

[20] CJEU - C-542/13, Mohamed M'Bodj v Belgium [31]

[21] CJEU - C-542/13, Mohamed M'Bodj v Belgium [40]

[22] BVwG 12.05.2016, I406 2112343-1/8E

[23] BVwG 26.07.2017 G308 2124108-1/23E [3.2.3]

[24] BVwG 25.4.2016 W230 2007105-1/18E [3.2.1.2]

The Constitutional Court (*Verfassungsgerichtshof, VfGH*) in recent rulings cites the still valid legislation for Austria, which grants subsidiary protection on medical grounds according to Paragraph 8 Asylum Act, without making any reference to the M´Bodj ruling.[25]

A weaker protection against return is the right to leave to remain (*Duldung*) established in Paragraph 46a FPG. When the medical condition is temporary, the right to leave to remain can be granted to an applicant given the return is declared temporarily inadmissible. The VwGH clarifies that *"[a]ccording to the intentions of the law, temporary impediments for return (including on the grounds of Article 3 ECHR) lead only to the right to leave to remain on the federal territory […]. Subsidiary protection therefore remains out of the question."*[26]

When the applicant is temporarily under medical treatment or when the applicant is at an advanced stage of pregnancy, leave to remain according to Paragraph 46a FPG can be granted and is limited to the duration of the treatment.

Subsidiary protection (Paragraph 8 AsylG) is at first restricted to a one-year residence permit and can consequently be prolonged for two-year periods. Beneficiaries of subsidiary protection have access to the labour market.

As regards the right to leave to remain (Paragraph 46a FPG), the BFA assesses once per year whether the conditions are still fulfilled. No further rights are attached to the right to leave to remain.

3.2. Medical claim denied

If absence of medical treatment is considered not to lead to a serious, rapid, and irrecoverable deterioration of the applicant´s health, or medical treatment is available and accessible in the country of origin, a return decision is issued. Within the asylum procedure, the return decision is issued either by the BFA or the relevant Courts.

Returnees receive financial support as a measure to ease reintegration in the country of origin. The exact amount of return support granted is decided case by case by the Return Department within the BFA and depends on several factors, among them the length of stay in Austria, criminal records, age, etc.

Additionally, for ill returnees and depending on the medical requirements, further EUR 1,000 can be provided to cover medical assistance during the return flight and/or medical devices (wheelchair) or medication packages that are handed out to the returnee in order to provide for his/her medical treatment during a certain period. The need for assistance or support must be confirmed by a doctor.[27]

More-than-one-time applicants and persons, who have previously been returned and have claimed return support, are not entitled to financial support for any subsequent return measures.

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[25] VfGH 30.6.2016, E381/2016, VfGH 23.02.2015, E 882/2014

[26] VwGH 28.04.2015, Ra 2014/18/0146 [III.3]

[27] BFA Leistungs- und Kriterienkatalog zur Übernahme von Heim-/Rückreisekosten, https://www.bfa.gv.at/401/files/13_Leistungs_und_Kriterienkatalog/Leistungs_und_Kriterienkatalog_BF_20201005.pdf

The case owner or judge decides on the modalities of return, taking into account potential prior criminal convictions and the risk of absconding: return can be voluntary within a specified time period (the applicant receives a flight ticket and returns voluntarily), or forced (the person is placed in a charter flight and is expelled by force, also using detention measures). Furthermore, under exceptional circumstances, the return date can be postponed, e.g. to allow the completion of the school term.

4. Summary

In Austria, medical claims in migration procedures are most frequently encountered in the asylum procedure, when medical issues are brought up as a possible impediment to return. When medical issues constitute a real risk of violating Article 3 ECHR, foreign nationals cannot be returned and receive a protection status or right to leave to remain.

The legal basis for considering severe medical conditions as an impediment of return is set by the Asylum Act (Paragraph 8 on subsidiary protection) and the Aliens´ Police Act (Paragraph 50 on inadmissibility of return) referring to Article 3 ECHR.

International and national case law on this topic fine-tune the interpretation of those provisions in the sense that only exceptional circumstances justify the suspension or inadmissibility of a return due to medical conditions. Exceptional circumstances exist if the applicant would face a real risk of serious, rapid, and irrecoverable deterioration of his/her state of health at return to the country of origin.

Only if the required treatment cannot be provided in the country of return – either because it is not available at all, or it is available but the applicant would not have access to it – and the absence of treatment would lead to such severe consequences on the applicant´s state of health, the condition of exceptional circumstances would be fulfilled and the ill person would be entitled to protection.

The BFA, the first instance authority deciding on migration procedures, assesses these medical claims usually during the asylum procedure, when the application has to be rejected for not meeting the grounds for refugee status. The legal provisions, as well as the available case law on the topic leave a considerable degree of discretion to the case owner who decides on a case-by-case basis, whether a real risk of violating Article 3 ECHR exists. The severity of a disease constituting exceptional circumstances can be factually assessed with the aid of medical expertise. Also, the availability of medical treatment or a specific medication in the country of origin can be well identified with the help of country-of-origin information. In contrast, however, the *de facto* accessibility to medication and/or treatment is difficult to assess and thus requires the judgment of the case owner.

In order to evaluate the accessibility of the required medical treatment in the country of origin, the case owner ponders financial factors (cost of the treatment, health care system, applicant´s ability to work, existence of family and social networks) and geographical factors (regional existence of the treatment, mobility of the applicant). The initial burden of proof lies however on the applicant who is required to substantiate any claims regarding the lack of individual access to a specific treatment in the country of origin.

The treatment in the country of origin does not need to be equivalent to the treatment received in Austria but must in any case be sufficient to prevent a serious, rapid, and irrecoverable deterioration of the state of health.

Persons found to be in real risk of being subject to an Article 3 ECHR violation due to their medical condition are usually granted subsidiary protection on the basis of Paragraph 8 AsylG. There is an apparent contradiction to case law of the CJEU. The CJEU considers that the requirements of the Qualification Directive 2011/95/EU for granting subsidiary protection status are not fulfilled in the case of purely medical issues, especially when the person is not intentionally deprived of health care. This contradiction is being discussed on the national level as can be seen in several decisions of the second instance. Nevertheless, the topic has not yet been addressed by the Supreme Administrative Court.

Subsidiary protection is initially granted for a period of one year but can then be prolonged for subsequent two-year periods.

	Definition/applied practice	**Basis for definition**
Severity of the disease (threshold for admission of a medical claim)	Absence of treatment would lead to a serious, rapid, and irrecoverable deterioration of the health situation.	Case law
Availability	When a severe illness exists, the BFA case owners evaluate whether the necessary treatment is available, i.e. whether it can be provided in the country of return. Assessed together with accessibility.	Case law
Accessibility	The ill person must have access to the necessary treatment upon return, whereby the costs of treatment and medications, the existence of social or family networks and the travel distance necessary for access to treatment must be considered.	Case law
Residence permit	When a disease constitutes an impediment to return, subsidiary protection is granted in most cases.	Asylum Act, Aliens´ Police Act, case law
Return	If absence of medical treatment is considered not to lead to a serious, rapid and irrecoverable deterioration of the applicant´s health, or medical treatment is available and accessible in the country of origin, a return decision is issued. Ill returnees receive financial or in kind-support.	Aliens´ Police Act, BFA return guidelines

5. Sources

The report on "State practices related to medical COI: Country report Austria" was first completed in 2018. For this version, ICMPD conducted qualitative interviews with two representatives of the Federal Office for Immigration and Asylum (BFA) and one representative of the Federal Administrative Court (BVwG) in November and December 2017.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the BFA

(Unit for *Staatendokumentation* and *Rechtliche Grundlagen*) reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the BFA also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Austria" was completed in March 2024.

Finally, the case study has also been reviewed by representatives of the Austrian Federal Office for Immigration and Asylum in March 2026 in order to ensure its validity.

Additional sources:

- Quotations from Austrian legal documents (court rulings and laws) have been translated from German to English by the authors.
- Asylum Act 2005 (Asylgesetz, AsylG)
- Aliens´ Police Act 2005 (Fremdenpolizeigesetz, FPG)
- BFA Leistungs- und Kriterienkatalog zur Übernahme von Heim-/Rückreisekosten, https://www.bfa.gv.at/401/files/13_Leistungs_und_Kriterienkatalog/Leistungs_und_Kriterienkatalog_BF_20201005.pdf
- AIDA Country Report Austria 2016
- CJEU - C-542/13, Mohamed M'Bodj v Belgium on 18.12.2014
- ECtHR - No 417381/10, Paposhvili v Belgium on 13.12.2016
- ECtHR - No 26565/05, N v UK on 27.05.2008
- VwGH 23.03.2017, Ra 2017/20/0038
- VwGH 26.02.2015, Ra 2014/22/0198
- VwGH 23.03.2017, Ra 2017/20/0038
- VwGH 13.09.2016, Ra 2016/01/0096
- VwGH 21.02.2017, Ra 2017/18/0008
- VwGH 28.04.2015, Ra 2014/18/0146
- VwGH 14.08.2023, Ra 2023/14/0005
- VwGH 16.05.2023, Ra 2023/20/0139
- VfGH 30.6.2016, E381/2016
- VfGH 23.02.2015, E 882/2014
- BVwG 26.10.2017, I416 2150581-1/10E
- BVwG 19.01.2018, L515 2183129-1
- BVwG 24.08.2017, L519 2168095-1
- BVwG 12.05.2016, I406 2112343-1/8E
- BVwG 26.07.2017, G308 2124108-1/23E

Case Study - Belgium

CASE STUDY - BELGIUM 20

LIST OF ABBREVIATIONS 20

1. MEDICAL CLAIMS IN MIGRATION CASES IN BELGIUM 21
   - *1.1. Legal Basis 21*
   - *1.2. Organisational Structure/ Responsibilities 21*
   - *1.3. Procedure in medical migration cases 23*
   - *1.4. The procedure of researching medical migration country of origin information 25*
   - *1.5. Statistics 25*
2. NATIONAL POLICY 27
   - *2.1. Medical severity of a person's health condition 27*
   - *2.2. Availability of medical treatment/medication in countries of origin 29*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 30*
3. RESIDENCE AND RETURN 32
   - *3.1. Medical claim accepted 33*
   - *3.2. Medical claim denied 33*
4. SUMMARY 34
5. SOURCES 35

List of abbreviations

COI	Country of Origin Information
CoO	Country of Origin
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
IOM	International Organisation for Migration
MedCOI	Medical Country of Origin Information
PTSD	Post Traumatic Stress Disorder

1. Medical claims in migration cases in Belgium

1.1. Legal Basis

The main law dealing with migration in Belgium is the Law from 15 December 1980 on access to the territory, residence, reception, and removal of aliens (further on referred to as the 1980 Law).[28]

In Belgium, the possibility to apply for a residence permit on medical grounds goes back to Art 9.3 of the 1980 Law, which foresaw the possibility to ask – under exceptional circumstances – for a legal status in Belgium.

With the transposition of the EU Directives,[29] Art 9.3 has been lifted and split into two separate Articles: [30]

- Art 9bis refers to requests for authorisation to stay for humanitarian reasons, and
- Art 9ter refers to requests for authorisation to stay for medical reasons.

With Art 9ter, Belgium thus created a specialised procedure for the regularisation of third country nationals residing in Belgium applying for stay based on medical grounds. This procedure is considered a specialized procedure for all medical claims. Regardless of the type, all cases involving the medical background of the applicant are referred to the same specialised Medical Section. To initiate the procedure, the third country national needs to submit an application for the stay based on medical grounds, also in case the medical claims have been brought forward in other migration processes.

1.2. Organisational Structure/ Responsibilities

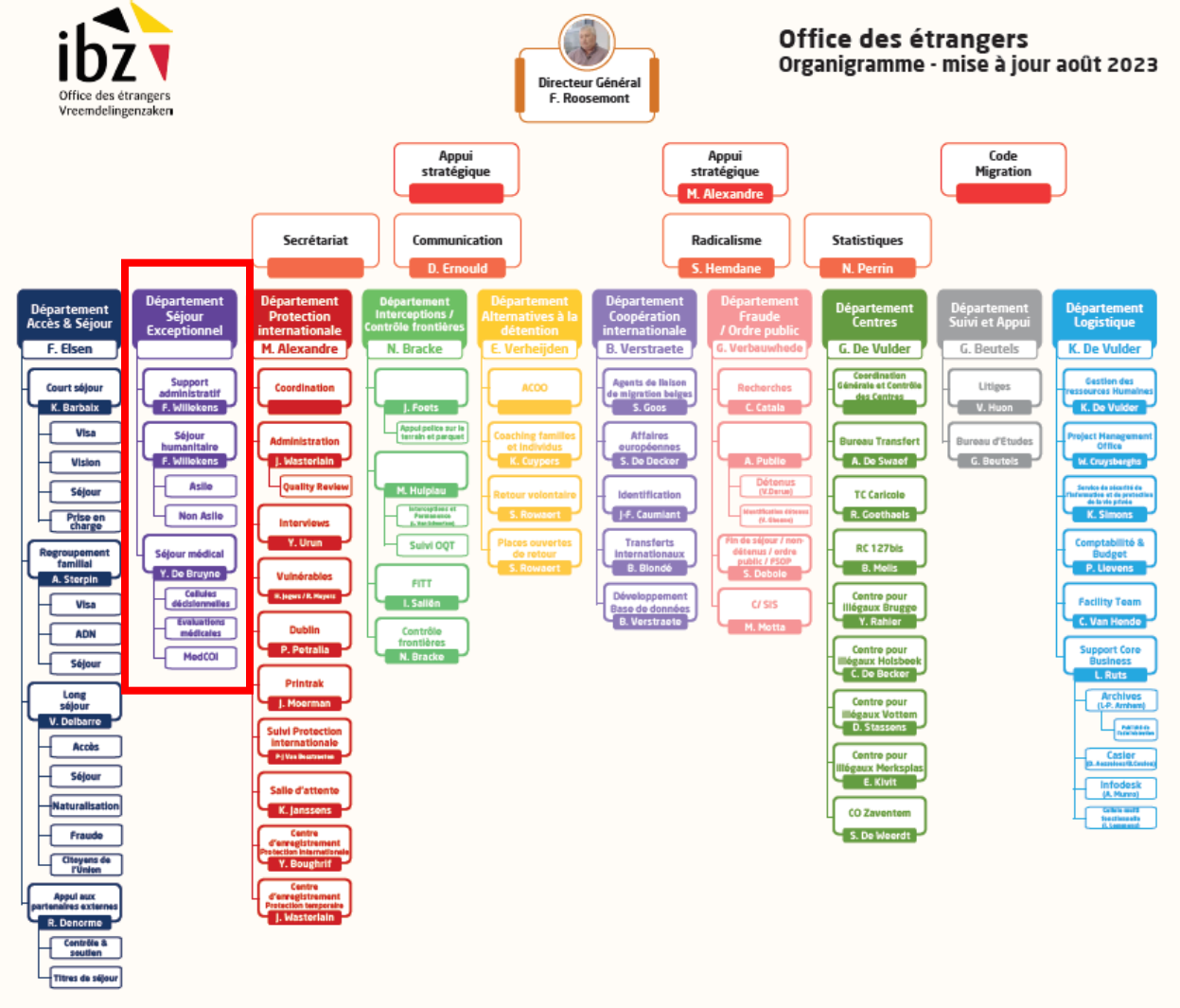
The competent organisation dealing with migration issues and thus implementing the 1980 Law, is the Migration Office. The Migration Office is divided into several directorates, one of which is the "Directorate for Exceptional Stay," which has two sub-divisions, the Section 9bis (authorization to stay for humanitarian reasons) and the Medical Section (authorisation to stay on medical grounds).

[28] Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Coordination Loi du 15/12/1980 Version 30/09/2014)

[29] Particularly with respect to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

[30] 'Arrêté royal du 17 mai 2007 (M.B. du 31.05.2007) fixant les modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers", which came into force on 01.06.2007; see: https://etaamb.openjustice.be/fr/arrete-royal-du-17-mai-2007_n2007000527.html

Figure 1: Organigram of the Migration Office[31]



The Medical Section further on is divided into 5 units:

- The Unit of Decision-makers (around 15 decision-makers or caseworkers)
- The Unit of Medical Doctors (around 8 medical doctors)
- The Unit of Medical Secretaries (4 medical secretaries)
- The Unit for Medical Country of Origin Information (since January 2021, the MedCOI Team Belgium is composed of 3 researchers),
- The Unit for internal Quality Control, and
- The Unit for securing medical documents

The Medical Doctors unit issues expert opinions about the clinical situation of applicants and is thus closely involved in medical migration procedures. Despite the advisory nature of their opinion, medical doctors

[31] See: *https://dofi.ibz.be/sites/dvzoe/FR/Documents/_Organigram_DOFI_ENG.pdf* (Accessed on 12.12.2023)

play a significant role in the procedure. This practice is historically rooted in the Belgian law (9ter), specifically the responsibility for assessing the availability of medical treatment and/or medication being placed with medical doctors.

The Directorate for Exceptional Stay is also responsible for the fight against medical fraud in this context; this is also the responsibility of certain caseworkers who execute the internal 'Quality Control' besides their core business in follow-up of jurisprudence.

Within the 9ter (medical) procedure, a standardized medical certificate has to be filled in and if it is correctly filled in, the medical certificate and other medical documents submitted alongside the certificate will be examined by a medical doctor from the Immigration Office.

The applicant or his/her lawyer or aid worker submit the medical certificate to the Immigration Office. In some cases, doctors also send the documents directly to the department in charge, if, for example, additional documents to an application are requested. Also, doctors from Fedasil centres (centres where asylum seekers reside) can sometimes submit their advice directly to the medical department.

The confidentiality is upheld at all stages. Once medical documents arrive by post or email at the Immigration Office they are scanned and added to the internal database and are secured (the same applies for documents sent by email). Only those with an authorized access can consult medical documents in the internal database. Everyone involved in the procedure are obliged to professional confidentiality. Medical advice reports are sent in a sealed envelope.

1.3. Procedure in medical migration cases

With the so-called "9ter procedure" Belgium introduced a special procedure for medical cases. Irrespective of whether the applicant started an asylum procedure or is being subjected to the return procedure, s/he may submit an application for residence based on medical grounds (as part of exceptional stay in Belgium). If another migration procedure is ongoing, these procedures run in parallel. A third country national may only be returned if all procedures have been completed with a negative decision.

The medical procedure entails two parts:

- the admissibility stage, where it is checked whether the application can formally be admitted to the procedure, and
- the in-merit stage, where the application is reviewed on substance (in merit).

The procedure is characterized by a close cooperation between the units of the "Medical Section," in particular, the decision-makers unit, the Medical Doctors unit, the secretaries, and the MedCOI unit.

Admissibility Stage

An application for a residence under exceptional stay based on medical reasons needs to fulfil specific criteria in order to be admitted to the procedure. The decision-maker of the Medical Section under the Migration Office thus needs to screen whether the application sent by post meets the following criteria:

Administrative conditions for admitting the medical application

1. The application must be sent by registered letter
2. The person must reside in Belgium
3. The identity must be documented (only exception may be done in case of asylum seekers)
4. The application must contain a medical attestation that must not be older than three months with the following information:

a. Diagnosis
b. Treatment
c. Degree of severity of the disease

5. Review whether the application is a repeated application or not.

If one of the above criteria is not fulfilled, the decision-maker may reject the application based on inadmissibility. Only if these requirements are fulfilled, the decision-maker may proceed with the application to the medical doctor within the Medical Section under the Migration Office. The medical doctor conducts the next step in the procedure, applying the medical filter:

Medical conditions for admitting the medical application (medical filter)

The medical filter checks whether the disease is in accordance with art. 9ter 1§1

If the medical doctor concludes in his advice that the applicant suffers from an affection[32] in such a way that this affection poses a genuine risk for his life or his physical integrity, or in such a way that this affection poses a genuine risk of an inhumane or humiliating treatment when there is no adequate treatment in his country of origin or in the country where he usually resides (art 9ter 1§1), the decision-maker will declare the application admissible and the application will be reviewed on substance

If the medical doctor concludes otherwise, the application is considered inadmissible and rejected directly by the decision-maker.

If the application is admissible, the application is reviewed on substance.

In-merit stage

The in-merit determination of the application contains an analysis of the medical situation and a check whether the applicant could receive treatment/ medication in the country of origin or not. As such, this phase encompasses the following steps in Belgium:

In-merit review

1. Art. 9ter 1§1: degree of severity of the medical condition
2. Is the medical treatment/ medication available in the country of origin
3. Is the medical treatment accessible in the country of origin

[32] Note: In medicine, “affection” refers to a diseased state, ailment, or physical/mental disorder, often describing an unhealthy condition affecting a specific body part or system. While in common language it means fondness, in medical literature it is used synonymously with a disease.

The review of the availability of and accessibility to medical treatment and/or medication may be regarded obsolete in case the medical doctor advises not to return a person due to his/ her very severe health situation, for example, in case of a very complex health problem, in case of hospitalisation and/ or in case of inability to travel.

Decision

The medical doctor provides advice to the decision-maker on whether the degree of severity is in accordance with art. 9ter 1/1, whether the medical condition is still present, and whether the medication and or treatment is available. If these elements are not met, the medical doctor states that the degree of severity is in accordance with art. 9ter 1/1, that the medical condition is still present, and that the medication is not available.

Then the decision-maker assesses whether the necessary medication and/or treatment is accessible for the individual concerned. Additionally, the decision-maker checks if the applicant forms no threat to public safety. If not, the application is granted, and the applicant receives the right to stay in the country.[33]

The decision-maker would thus forward the decision to the municipality of the applicant and give the municipality instructions to issue a (temporary) residence permit, and the applicant would receive an A-Card for temporary residence for 1 year.

The decision-maker is not bound to the expert opinion provided by the medical doctor but usually follows it in the decision.

1.4. The procedure of researching medical migration country of origin information

To assess the availability of medical treatments, an internal database listing the main medical facilities in the country of return (including websites and contact details) is consulted first. Often, the medical doctors find the relevant information on the availability of medical treatment there. In such cases, where the information on medical treatment was already obtained from other sources, the corresponding request to EUAA may focus solely on medication-related questions.

1.5. Statistics

The Belgium Migration Office publishes statistical data at the Office's webpage. The statistics also show the number of applications for a medical stay in Belgium. In 2022, a total of 1.147 applications were submitted for a residence permit on medical grounds. This constitutes roughly an average of about 100 applications per month.[34]

[33] The denied applicant's return though still may be pending due to another, in parallel brought forward asylum application. If return already can be effectuated, the person concerned may make use of the "special need programme", should her/his situation fall under this programme.

[34] See: Demandes d'autorisation de sejour pour motifs humanitaires ou medicaux (ibz.be) (p. 6).

Table 1: Number of applications for medical procedures (9ter) in Belgium in 2022 and 2024.[35]

Month	2022	2024
January	120	97
February	90	107
March	106	118
April	80	109
May	86	108
June	99	134
July	79	117
August	101	96
September	86	116
October	93	141
November	112	130
December	95	126
Total	**1147**	**1399**

For 2023, there is no monthly break down available. The Belgium Migration Office granted temporary stay based on medical grounds in 248 cases and definitive stay in 9 cases in 2023.[36]

Table 2: Number of positive decisions based on medical grounds (9ter procedure) per year (Source: Belgian Migration Office, 2024[37]).

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Temporary stay based on medical grounds	213	134	140	240	240	178	182	119	160	248	313
Definitive stay based on medical grounds	82	28	15	11	19	14	13	7	10	9	12
In total	295	162	155	251	259	192	195	126	170	257	325

The number of applications in Belgium is quite stable since the last 4 years, with slightly decreasing numbers (see **Table**). The main countries of origins of people who were granted such a residence permit based on medical grounds in 2023 are Congo (Dem. Rep.), Morocco, Albania, Kosovo, Cameroun, Armenia,

[35] See: Demandes d'autorisation de sejour pour motifs humanitaires ou medicaux (ibz.be), (p. 3) ; https://dofi.ibz.be/sites/default/files/2025-01/STAT_HUM-MED_FR_2024-12.pdf (p. 3)

[36] See: https://dofi.ibz.be/sites/default/files/2024-03/STAT_HUM-MED_FR_2014-2023.pdf (p. 7).

[37] See: https://dofi.ibz.be/sites/default/files/2024-03/STAT_HUM-MED_FR_2014-2023.pdf (p. 7) and https://dofi.ibz.be/sites/default/files/2025-04/STAT_HUM-MED_FR_2015-2024%20.pdf (p.7)

Guinea, Algeria, Palestine and Venezuela.[38] The main countries of origin in 2024 were Morocco, Congo, Albania, Guinea, Armenia, Cameroon, Brazil, Serbia, Kosovo and Türkiye.[39]

Table 3: Yearly applications for medical residence (Article 9ter) in Belgium (2018 – 2024)[40]

Yearly applications for medical residence in Belgium	
2018	1.45
2019	1.237
2020	1.166
2021	1.156
2022	1.147
2023	1.294
2024	1.399

The table below shows the total number of requests sent to EUAA for 2021-2023. Significantly more requests for availability assessments were sent than accessibility requests. This could be based on various reasons: The relevant information on the accessibility might have already been gathered in previous cases, given that this also applies to the application at hand. In addition, other sources are used for the assessment of accessibility, including websites on social security systems or MedCOI publications. Another reason for this difference in the number of requests lies in the time required for response. General availability requests are addressed much more quickly than the collection of information on subjective, individual aspects.

Table 4: Number of responses to requests by EUAA MedCOI (Source: EUAA 2025)

	AVA	ACC
2021	189	8
2022	164	2
2023	246	2
2024	251	8

2. National Policy

2.1. Medical severity of a person's health condition

In Belgium, a special procedural step has been introduced to consider the severity of the disease. The so called "medical filter" was introduced in 2012, mainly because the numbers of medical claims rose over the years and contained diseases of minor severity as well. To avoid taking each medical claim into a

[38] See: https://dofi.ibz.be/sites/default/files/2024-03/STAT_HUM-MED_FR_2014-2023.pdf (p. 12).

[39] See: https://dofi.ibz.be/sites/default/files/2025-01/STAT_HUM-MED_FR_2024-12.pdf taires ou medicaux

[40] See: https://dofi.ibz.be/sites/default/files/2025-04/STAT_HUM-MED_FR_2015-2024%20.pdf (p.3)

detailed procedure on the merit, admissibility requirements have been introduced to check the degree of severity of the medical claims before the review on substance. The applications that are not in accordance with the required degree of severity are rejected as inadmissible without further in-merit review.

2.1.1. Severity threshold to initiate research on medical COI

No threshold is specified for the case worker to either be able or be required to initiate medical COI research. The caseworker will evaluate each situation individually, ultimately considering the severity threshold for decision-making as outlined in 2.2.

2.1.2. Severity threshold for decision-making

In general, there is no applied definition for "severity" of a disease that is applied in order to identify which medical application should be admitted to the 9ter procedure and thus should be further investigated.

Every disease is different. A common applicable definition of "severity" that can be used is thus not possible to give. The medical doctors of the Medical Section in Belgium decide for an individual case whether a certain disease or medical problem has a certain degree of severity or not and thus whether it "passes the medical filter" or not.

In the absence of a clearer definition, an illness is considered as severe by the Belgian Migration Service if the applicant suffers from an affection in such a way that this affection poses a genuine risk for his/her life or physical integrity, or in such a way that this affection poses a genuine risk of an inhumane or humiliating treatment when there is no adequate treatment in his/her country of origin or country of return.

But even such a definition cannot be applied without looking into further additional factors, such as the age or the complexity of a disease, or of many smaller diseases that accumulate to an overall severity of the state of health of a person.

Generally, within the 9ter procedure, the legal stay can be granted to a person whose life is at risk because of his/her medical situation. A medical doctor from the Immigration Office takes the decision in such cases. However, in some rare cases, a legal status can be granted based on medical grounds on a discretionary basis without any MedCOI research or a medical doctor being involved.

In a court case, the Court had to decide on an issue closely related to the severity in connection with the medical attestation and the applicability of Art 9ter in general: The Court stated that the applicants' medical certificate would not have demonstrated that their return would result in panic attacks due to the pressure and stress of the regime in Russia/Chechnya, as stated in the applicants' appeal. One could further not imply that the return to the country-of-origin *ipso facto* would provoke panic attacks by the applicants. The Court further ruled that the applicants would have access to PTSD treatment in Russia/Chechnya and that a granting of residence based on Art 9ter would contradict its very meaning. Otherwise, every foreigner with PTSD, whose causes lie in the country of origin, would be entitled to a residence permit. Such an interpretation though finds according to the Court no support in Art 9ter of the Aliens Law 1980.

2.1.3. Medical threshold cases

The assessment of the availability and accessibility of medical treatment and/or medication may be deemed outdated if the medical doctor recommends against the person's return due to their extremely severe health condition. This could include situations such as complex health issues, hospitalization, and/or an inability to travel.

2.2. Availability of medical treatment/medication in countries of origin

The availability check falls under the responsibility of the medical doctors. The medical doctors determine whether treatment and/ or medication is available according to the needs of the patient. The decision-makers are not involved in this part of the procedure.

2.2.1. Definition of availability in the national context

There is no clear and generally applicable definition of “availability” in Belgium. The medical doctors within the Medical Section are responsible to determine the availability and do have a certain discretion in this respect.

At the least, the medication must be registered in the country of origin. The medical doctors research the registration in the country of origin by using the generic and not the brand names. If applicable, medical doctors would also investigate whether there is any alternative medication. Preferably medication should be not only registered but also on stock in drugstores and pharmacies. Medication from the black market or from on-line pharmacies is considered as too insecure: the availability would thus be denied in such cases.

With regards to the availability of medical treatment, the medical doctor of the migration office reviews the attestation by the treating physician and checks whether the prescribed treatment is necessary for the described disease of the applicant. When the medical doctor assesses whether the treatment is available in the country of origin, the doctor also researches the quality of the care in the country of origin. Although Belgium case-law clearly determines that the quality may be lower than care offered in Belgium, medical doctors still need to investigate whether the available treatment would provide minimum care possibilities.

Researching whether appropriate treatment and residence in the country of origin exists is performed case by case, taking into account the individual situation of the applicant. This is evaluated within the limits of the jurisprudence of the ECtHR.

2.2.2. Availability in practice

As the availability of medication and/or treatment is based on a very individual assessment of the disease, an availability assessment in the one case might be not sufficient in another.

Ideally, medical doctors have access to more sources on the availability of medical treatment and medication than just the registration of medication. Medical doctors usually check the availability in the capital of the country of origin unless there is significant information on the region, such as in the context of Chechnya and the Russian Federation.

Research through MedCOI-contact persons in the capital or in certain regions of the country of origin is the most important source and assurance of availability and quality of medical care.

Should the medical doctor wish so, she/he can also ask the applicant for supplementary medical attestations and reports and conduct an additional examination of the applicant. This examination can be done at every stage of the in-merit procedure.

In national jurisprudence and practice, the following elements have been considered regarding the availability of medical treatment and care: The court stated that the quality of the healthcare in the country of origin does not need to be of the same level as in Belgium.[41]

2.3. Accessibility of medical treatment/ medication in countries of origin

Once the medical doctor has determined that medication and/or treatment is available in the country of origin, the decision-maker assesses the accessibility to medical treatment and/or medication in the country of origin.

2.3.1. Definition of accessibility in the national context

Generally, there is no all-encompassing definition that would give clear guidance on what needs to be established regarding the accessibility to medication/treatment. Solely the law determines that the caseworker needs to establish whether access to treatment/medication would be possible for the returnee.

Researching whether appropriate treatment is sufficiently accessible in the country of origin or residence is performed case by case, taking into account the individual situation of the applicant. This is evaluated within the limits of the jurisprudence of the European Court of Human Rights (ECtHR).

2.3.2. Accessibility in practice

As a general rule, decision-makers need to respond to the claims addressed in the application for exceptional stay. It is thus to a certain extent the applicant who determines what decision-makers in the medical procedure in Belgium need to establish in their decisions. If the applicant uses sources that are no longer up to date or too general, Belgium counters this while using other more recent sources.

Various sources are consulted for the accessibility assessment: apart from medical COI collected from previous cases, decision-makers consult a number of websites[42] that provide information on the health care system in countries of origin and residence. Decision-makers also consult EUAA's MedCOI database for information. If all these sources do not provide sufficient information, a request is submitted to EUAA's MedCOI Sector or to the Belgian MedCOI team

[41] Court of Appeal; Decision Number: 122.034.

[42] For example, the Cleiss (Centre des Liaisons Européennes et Internationales de Sécurité Sociale) website of the French government: https://www.cleiss.fr/ or the website of the U.S. government on social security programs worldwide https://www.ssa.gov/policy/docs/progdesc/ssptw/.

When reviewing the accessibility to medication and/or treatment the economic, geographic, and political accessibility might be of relevance. The decision makers need to review the accessibility according to the standards as described below, which have been shaped over years based on case law.

Economic Accessibility

Belgium mainly considers the "economic accessibility" and is thus preliminary researching and determining whether the applicant could gain a living or whether other subsidiary sources like public health care, family members or other organisations could support the applicant. These elements were developed taking into account national court decisions as well as developed national practice. Summarised, the following elements are usually checked by decision-makers when looking into the accessibility to medical treatment and medication in countries of origin:

- ✓ Can the applicant work?
  - This element is established by looking at the age of the applicant (is the person in an age where he/she can work?)
  - Did the medical doctor attest that the applicant would be too ill to work?
  - Does the applicant have any particular degree, education, or work experience?
- ✓ Social health system
  - Is support by a social health scheme possible?
  - If the claimant would bring forward any "individual reasons" for why she/he cannot benefit from the health care system, the decision-maker needs to respond to such claims. Quoting a general report would not be considered as sufficient. The applicant must give individual proof that he/she cannot benefit from the social health system.
- ✓ Presence of family (or close friends) in the country of origin that the applicant can rely on
- ✓ IOM additionally offers re-integration programmes in many countries which further could support "access" to social benefits or other support schemes
- ✓ Jurisprudence of the ECHR

The 'ability of an applicant to work' has been challenged by an applicant who argued that he would not have access to medical treatment and medication in the country of origin because he was not capable to work. In the appeal, the applicant referred to medical records confirming the applicant's stay in a psychiatric clinic twice. The Court determined that while the applicant could evidently not work during the time when admitted to the psychiatric clinic, this does not mean that the applicant would in general not be **capable to work**. In the absence of any further evidence for the applicant's general incapability to work, the Court upheld the 9ter decision.[43]

Similarly, the Court ruled that the medical doctor of the Migration Office explained that the claimant's disease would **not** be **of such severity** that it **would prevent her from being able to work**. The applicant therefore would be capable to provide for her livelihood and may, by means of income from work, also take care of medical expenses that she would need. It was also understood that she could get assistance from her partner and family members. Additionally, the Court's [first instance] decision pointed out that

[43] Decision 83.460 from 21st June 2012; see also Decision Nr 81399.

the claimant could address IOM. The Court held this reasoning of the 9ter decision as not manifestly unreasonable.[44]

Accordingly, the Court argued by interpreting the case-law of the ECtHR, when deciding that "the applicant's argument on the prices of medical care and the necessity of bribes/ informal payments indicate an understanding that the medical care should be free of charge. This interpretation would though be contrary to the European Convention of Human Rights (ECHR). The ECtHR ruled that Article 3 of the ECHR does not guarantee access to the territory of a state for the sole reason that the state may provide better medical care than the country of origin. Even the fact that the expulsion would affect the health status of the foreigner, it would not be sufficient to constitute a violation of that provision."[45]

While the costs of medication and treatment play the most crucial role when analysing the accessibility to medication and treatment, information on social support (financial or other) provided by the state, NGOs or charity organisations remains important as well.

Geographic accessibility

The Belgian Migration Office is not always required to assess the geographic accessibility. In several judgements, the Belgian Court held that a long distance between the applicant's home region and the place where treatment and/or medication would be available, is irrelevant for the determination of whether treatment and/or medication would be accessible for the person concerned. The Court in this respect argued that as the applicant came a long way from his/her country of origin to Belgium, relocation within the applicant's country of origin would reasonably be the same.

As geographic accessibility plays a limited role, availability is researched in the whole country and not in a specific region. In certain cases, when the medical certificate explicitly states that the requester has limited mobility, availability is researched in a specific area in the country so that reaching the medical infrastructure remains easy for the patient. This area will not necessarily be the region of origin of the requester. In line with national case law, the applicant is supposed to be able to settle down where the treatment is available and accessible.

Depending on the claims made in the application and the individual situation of the applicant, the decision-maker will consider if geographic accessibility needs to be assessed or not.

Political accessibility

Political accessibility is only researched upon explicit claims in the application that there would be any difficulties with this respect. This ground though is invoked at times – especially in the context of Roma from Serbia.

3. Residence and Return

Once the decision-maker has collected information on the accessibility, the result of this research is forwarded to the medical doctor, who drafts a medical statement based on the results of the availability

[44] Decision 81.943 from 30th May 2012; see also Decision Nr. 82232, Nr. 82161, Nr 83407.

[45] Decision 81.359 from 15th May 2012.

and accessibility research together with an overall assessment of the applicant's illness. The statement is then passed to the decision-maker who then issues the decision, taking into account the medical expert opinion. The medical expertise is attached to the decision in an envelope which only can be accessed by the applicant him/herself.

3.1. Medical claim accepted

Should the Migration Office conclude that the medication and/or treatment would not be available or not accessible for the applicant in the country of return or country of origin, the Medical Section of the Ministry of Immigration then decides that the applicant cannot be sent back to the country of return.

The Medical Section would then send the decision to the municipality where the applicant is residing. The municipality would grant a resident permit (A-Card for "temporary (exceptional) stay") based on medical grounds to the applicant. The applicant gets notified and may pick up the residence permit. With the A-Card the applicant may request for a working permit.

While residence permits were granted initially for one year, this has changed. The Migration Office now grants a residence permit for one or two years in severe cases. Cases are then re-evaluated when the duration expires and can be prolonged for another year or two years. Five years after the acceptance of the application, based on medical grounds and no changes in the medical situation, the applicant may be granted a permanent residence permit (B-card).

3.2. Medical claim denied

Should the decision-maker of the 9ter division conclude that the applicant has access to available medication/treatment in the country of origin and is able to travel, the decision-maker would reject the application and issue the order to leave. If no other procedures are ongoing, return decisions are taken by the Immigration Office as well. For the return decision, the Immigration Office analyses the case while considering all the elements related to family unity, family life, special interest of a child and the medical situation of the person (a medical advice is requested at this stage too if medical elements can be found in the file and have not been analysed yet). The denied applicant then needs to leave the territory within a given timeframe.

Generally, a "bridging support" (in kind or in cash) is not foreseen. However, a "special needs programme" may provide such support, which is an EU-funded project initiated by the Immigration Office to support returnees with special needs. It has the objective to provide tailored, financial support for essential medical and psychological follow-up care to vulnerable individuals upon their return. This assistance can be provided for up to 12 months after their repatriation. The scope of this support encompasses various aspects, including – for example – procuring necessary medications, scheduling medical appointments, and facilitating residential intakes as needed. The program is designed to address the unique medical needs of each returnee on an individual basis.

Additionally, the Aliens Law also contains a provision (Article 74/13) stipulating that the authority must take the medical situation of a returnee into account before the removal.

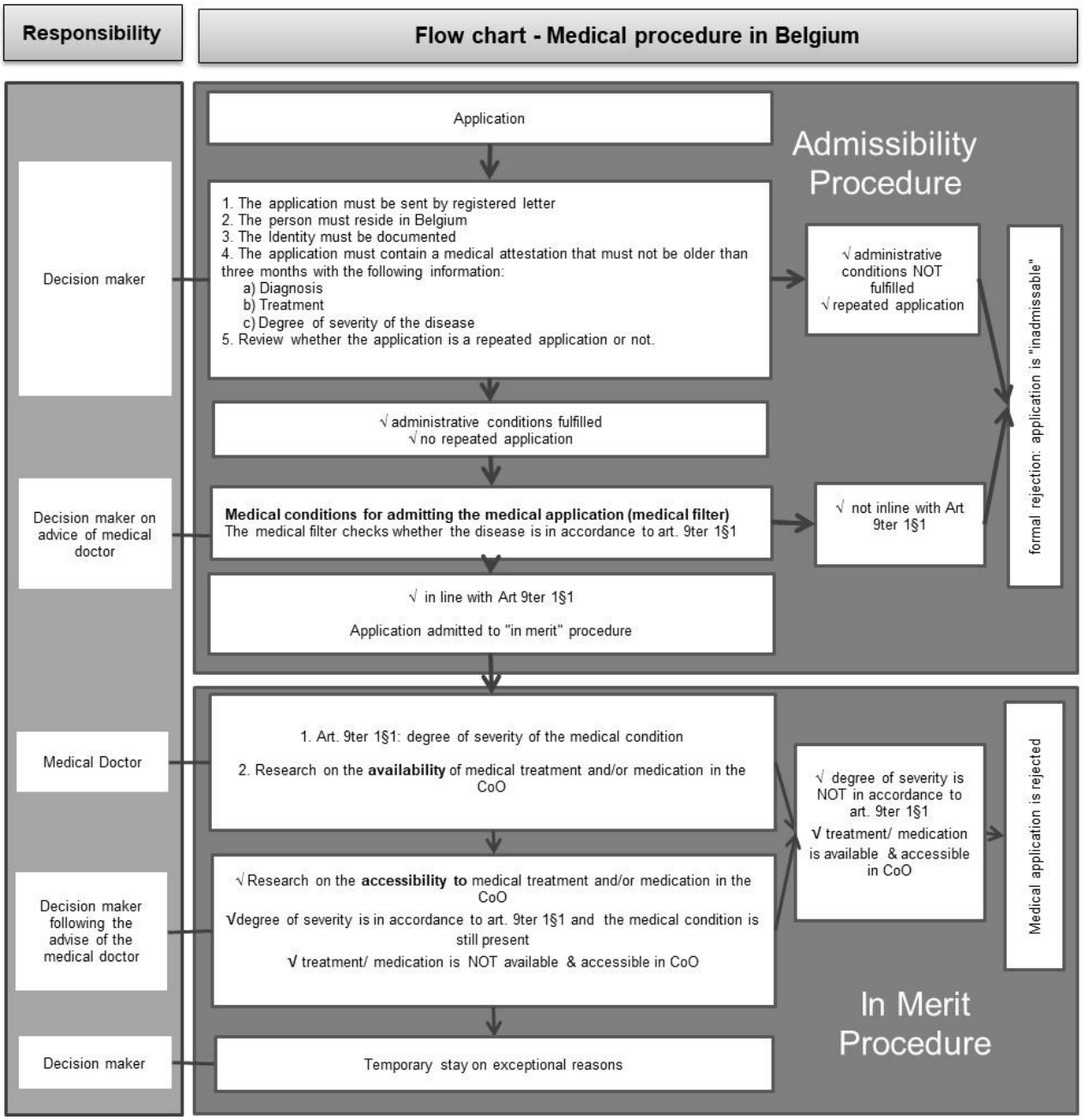
With the Paposhvili judgement (Dec. 2016) the Grand Chamber of the ECtHR changed the application of Article 3 ECHR from protection that was applied only in cases where the person facing expulsion was "close

to death" to facing a real risk of "being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy". The authorities must also consider the extent to which the individual in question will have access to care and facilities in the receiving state. The judgement also confirms the duty of host states to obtain individual and sufficient assurances from the receiving state, in cases where there is doubt on the impacts of the removal on the applicant, that the medication or treatment will be available and accessible to the individual person.

4. Summary

- Belgium has a specialised procedure for medical applications.
- A specialised section (referred to as the "Medical Section") within the Migration Office deals with medical claims.
- The procedure is characterised by a strong involvement of medical doctors in the decision-making process. Decision-makers and medical doctors in fact share the responsibility for different parts during the procedure.
- A third country national claiming medical reasons needs to apply to the Medical Section under the Belgium Migration Office.
- Belgium has a rich case law on medical related issues.
- The Belgium policy on medical migration cases thus reflects closely the decisions of the appeals courts and the highest court of Belgium.

The workflow of the medical procedure may be visualised in the following way:



The main elements and definitions may be summarised om the following way:

	Definition/ applied practice	**Basis for used definition**
Severity of the disease (threshold for	In the absence of a clearer definition an illness is considered as severe by the Belgian Migration Service if the applicant suffers from an affection in such a way that this affection poses a genuine risk for his life or his	Practice; no clear definition

admission of a medical claim)	physical integrity or in such a way that this affection poses a genuine risk of an inhumane or humiliating treatment when there is no adequate treatment in his/her country of origin or country of return.	
Availability	No applied definition – upon discretion of the medical doctors	n/a
Accessibility	As a basic rule, the decision-maker needs to respond to all statements brought forward in the application. If no statements were brought forward, the following elements must be established: - Applicant's ability to work. - Social health system in CO. - Family Members in CO. - Support by other organisations (e.g. IOM)	Case law
Residence permit	If the disease is severe AND/OR if treatment/ medication is not "available" and/or not "accessible", the applicant is granted a temporary residence permit on exceptional grounds (1 – 2 years, prolongable). 5 Years after the introduction: B-card	1980 Law
Return	Generally, no benefits (or "bridging support" like medication or cash for a certain period to pay for medication) are foreseen. In case of special needs a needy returnee may request the support from a specialised programme ("special needs programme").	Law; EU funded programme

5. Sources

The report on "State practices related to medical COI: Country report Belgium" was first completed in 2018. For this version, ICMPD conducted qualitative interviews with representatives of the Medical Section of the Belgium Migration Office from February to March 2018.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and October 2023, the Medical Section of the Belgium Migration Office reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the Migration Office also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Belgium" was completed in March 2024.

The case study has also been reviewed and updated by representatives of the Belgian Public Service of Home Affairs General Directorate Immigration Office in March 2026 in order to ensure its validity.

Case Study - Czechia

CASE STUDY - CZECHIA 37

LIST OF ABBREVIATIONS 37
1. MEDICAL CLAIMS IN MIGRATION CASES IN THE CZECHIA 38
1.1. Legal Basis 38
1.2. Organisational Structure/Responsibilities 39
1.3. Procedure in medical migration cases 39
1.4. The procedure of researching medical country of origin information 40
1.5. Statistics 40
2. NATIONAL POLICY 41
2.1. Medical severity of a person's health condition 41
2.2. Availability of medical treatment/ medication in countries of origin 42
2.3. Accessibility of medical treatment/medication in countries of origin 43
3. RESIDENCE AND RETURN 43
3.1. Medical claim accepted 43
3.2. Medical claim denied 44
4. SUMMARY 44
5. SOURCES 45

List of abbreviations

COI	Country of origin information
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUAA	European Union Agency for Asylum
HIV	Human immunodeficiency virus
IOM	International Organization for Migration
OAMP	*Odbor azylové a migrační politiky* (Department for Asylum and Migration Policy of the Ministry of the Interior of the Czechia)
MedCOI	EUAA's Sector working on medical country of origin information
MoI	Ministry of Interior
PTSD	Post Traumatic Stress Disorder
UK	The United Kingdom

1. Medical claims in migration cases in the Czechia

The vast majority of medical claims within migration procedures in Czechia occur in the asylum procedure. However, it can arise within procedures for legal migration and return as well. In the context of legal migration, a residence permit on grounds of "worthy of consideration" can be granted in line with Section 66(1)(b) of the Czech Act on the Residence of Foreigners.[46]

Since the number of cases requiring medical COI within the procedures for legal migration and return is so low, this research study is limited to medical claims within the asylum procedure.

Previous research on Czechia commissioned by EUAA's MedCOI Sector, has shown a lack of clearly formulated policy or specific national legislation/legal description on how to assess medical issues within migration procedures. This might also reflect the low numbers of cases involving medical claims in migration procedures.

1.1. Legal Basis

In Czechia, a person raising medical claims during the procedure for international protection may be granted a subsidiary protection status if he/she does not qualify for asylum and the conditions for subsidiary protection are met. The legal basis for the subsidiary protection status is to be found in Section 14a subsection 2 (b) of the Asylum Act:

"(1) Subsidiary protection shall be granted to a foreign national who does not satisfy the criteria for asylum if it has been established in the procedure for granting international protection that a legitimate concern exists in his/her case that if the foreign national is returned to the country of which he/she is a citizen or, if the foreign national is a stateless person, to the country of his/her last permanent residence, he/she would face a genuine risk of serious harm pursuant to subsection 2 and that he/she is unable or unwilling, due to such risk, to avail him/herself of the protection of the country of which he/she is a citizen or the country of his/her last permanent residence.

(2) For the purposes of the Act, serious harm means:

a) imposition or execution of capital punishment,

b) torture or inhuman or degrading treatment or punishment of the applicant for international protection,

c) serious threat to life or human dignity by reason of arbitrary violence in situations of an international or internal armed conflict. international protection and the procedure for return"

Medical grounds are not explicitly mentioned in the law but may be covered by practice by this Section if the conditions for granting subsidiary protection are met. The threshold of severity of a disease for qualifying for subsidiary protection is very high (see below on p. 5).

[46] See: https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/72751/CZE72751%20English.pdf

Furthermore, section 33 of the Law on the Residence of Foreigners (Act No. 326/1999 Coll. provides a basis for granting a long-stay visa when a person cannot be returned due to an unavoidable obstacle beyond their control.[47]

1.2. Organisational Structure/Responsibilities

The Department for Asylum and Migration Policy within the Ministry of the Interior decides on migration cases with medical elements. The department consists, *inter alia*, of the unit for asylum and immigration. The asylum unit decides on applications for international protection and therefore grants the subsidiary protection status. The immigration unit deals with tolerance visas under Foreigner Act.

The COI desk is also subordinated to the Department for Asylum and Migration Policy of the MoI. Currently, three COI researchers are trained in using the MedCOI database, however all case officers cover medical issues, if needed. In addition, there is one policy officer. Due to the low number of cases, there is no staff specialised on medical claims. Nevertheless, as part of the asylum interview and during the data collection for the application all applicants are specifically asked about their health status, as well as about the care and medic they may need (immediately or in the long-term). Despite the separation of the COI desk and the asylum unit, there is close cooperation between both units. Upon request, the COI experts can have access to all information (asylum interview protocol, personal data, other materials available in the asylum file) related to the asylum applicant which are relevant and needed for having a thorough COI assessment.

Apart from the medical reports submitted by the applicant, there is no other medical doctor consulted by the MoI. The burden of proof lies with the applicant, who must substantiate the medical claim by presenting medical reports from the treating physician practicing in the country.

There is no specific format required nor standardised templates provided for the medical report. The submitted medical reports normally include all necessary information.

The medical information is treated with confidentiality (which applies to all information provided by the applicant). Only authorised and relevant staff (i.e. persons specifically responsible for the proceedings) have access to the files. The applicant must give their consent to access the medical files. The documentation, including medical information, is not accessible to persons outside of the asylum system, with the exception of the applicant, their lawyer, and/or judicial authorities in case of appeal.

In general, medical COI provided by EUAA is regarded by national courts as a reliable source of information and has been accepted in court proceedings.

1.3. Procedure in medical migration cases

Within the procedure for international protection and the procedure for return there is no specific procedure for cases involving medical claims. All applications for international protection that are

[47] Law on the Residence of Foreigners (Act 326/1999 Coll.), Sec. 31, https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/72751/CZE72751%20English.pdf#:~:text=This%20Act%20establishes%20the%20conditions%20for%20an%20alien%E2%80%99s,Foreign%20Affairs%20in%20this%20area%20of%20state%20administration.

processed in Czechia are first assessed for refugee protection. Only if refugee protection is denied the assessment for subsidiary protection is being investigated by the authority. Hence, Czechia applies a single asylum procedure leading to one asylum decision consisting of two parts: the decision on 1) refugee protection or 2) subsidiary protection.

1.4. The procedure of researching medical country of origin information

Theoretical decisions relying exclusively on medication are possible, such as in cases where a patient consistently requires specific medications over the long term without necessitating frequent reassessment or follow-ups. However, even in such scenarios, the availability and accessibility of pertinent medical professionals are usually evaluated for future prescriptions or long-term follow up medical examinations.

1.5. Statistics

The MoI does not separately register medical claims within asylum or other migration procedures. Applicants with medical claims are registered together with other applicants of international protection. Hence, statistics capturing the various migration procedures involving medical issues are not available.

However, the overall number of cases which require medical COI is very low in Czechia. Cases with medical claims arise within the procedure for asylum more often compared to the return procedure.

Table 1: Approximate number of cases with medical COI relevance per year (SOURCE: information provided by COI desk by email in 2018).

Procedure	Approximate number of cases with medical COI relevance per year				
	2013	2014	2015	2016	2017
Asylum	13	8	8	12	14
Return	1	1	1	0	0

Due to a change in the methodology after 2017, the asylum and return cases with medical COI relevance can no longer be separated from the other cases. Therefore, an approximate number of cases with medical COI relevance per year can no longer be derived.

Table 2: Number of medical queries received by the COI desk (Source: MoI questionnaire, 2023)

	No of all medical queries received	No. of requests sent to MedCOI	No. of requests responded via alternative sources
2021	11	4	7
2022	9	4	5
2023	10	2	6

Table 3: The number of individual availability (AVA) and individual accessibility (ACC) responses to requests by EUAA MedCOI.

	AVA	ACC
2021	9	2
2022	3	1
2023	2	
2024	1	

When it comes to medical COI requested submitted to the EUAA by Czechia, availability requests are significantly more frequent than accessibility requests. The research starts with the assessment of availability first and information on accessibility is requested only later in case of concrete doubts, for example when the applicant claims to not have adequate access to the treatment, or when the COI experts know about the problematic situation in the CoO (politics, economy, security), and/or when other elements transpire that availability may not translate to access for the individual applicant.

2. National Policy

2.1. Medical severity of a person's health condition

The question whether a caseworker should research the availability of medical treatment for all medical claims or only for severe claims, is referred to as the 'severity threshold' of a disease in this report. Only for cases that meet the severity threshold the authorities need to assess whether medication and/or treatment is available and accessible for the foreigner upon return.

Diseases that do not meet or are not close to this severity threshold are not further assessed.

2.1.1. Severity threshold to initiate research on medical COI

No threshold is specified for the caseworker to either be able or be required to initiate medical COI research. The caseworker will evaluate each situation individually. The applicant can indicate any health issues throughout the asylum process. In the first instance, health issues are being taken into consideration by the caseworkers. If there is a long-term issue or the applicant requires specialist care, the MedCOI unit will typically be consulted. Ultimately, the severity threshold for decision-making as outlined in 2.2 is considered.

2.1.2. Severity threshold for decision-making

In the assessment for subsidiary protection based on medical claims, the disease is considered severe if it *endangers the person's life* or *causes a serious deterioration* of the applicant's medical situation. However, in order to trigger subsidiary protection and thus a legal stay in Czechia, treatment additionally must be neither available nor accessible by the applicant upon return (see below). Within the procedure for return, there is no clear definition of the severity of a disease due to the low number of cases with medical claims and thus it is decided on a case-by-case basis. The severity level of a disease is an integral part of the overall assessment. After having confirmed this, other factors are assessed.

The threshold has been derived from ECtHR and subsequent national case law. Czech courts regard accordingly the severity threshold to be met "where there are serious reasons to believe that, in the receiving country, the lack of appropriate care or access to it would pose a real risk that the sick person's health would seriously, rapidly, and irreversibly deteriorate, leading to intense suffering or a significant reduction in the person's life expectancy".

In 2009, the Supreme Administrative Court decided upon a migration case involving medical elements for the first time and followed the very high threshold set by the ECtHR. Furthermore, the Supreme Administrative Court found the necessary treatment accessible to the applicant, despite the high costs. The Court also took into consideration the applicant's family network in the country of origin. Since the

ECtHR judgment Paposhvili v Belgium national jurisprudence followed the slight shift in severity threshold for decision making. Judgment 2 Azs 383/2020, for instance, directly refers to Paposhvili, stating that "subsidiary protection on health grounds must remain reserved for *very exceptional cases*, but not only for those in which the applicant's life is in immediate danger at the time of the application."[48]

2.1.3. MedCOI threshold cases

Due to a rather low case load of medically sick applicants, there did not develop any particular policy on a threshold for conducting MedCOI research.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

There is neither a legal definition nor internal instructions on the availability of medication and/or medical treatment. Due to the low numbers of cases, there are no pre-defined criteria; thus, the question of availability is subject to case-by-case considerations. Within the asylum procedure the decision on availability is taken by a decision maker based on the information provided by the COI desk.

2.2.2. Availability in practice

A judgement from August 2017 of the Regional Court from Brno describes the approach of how country of origin information from Ukraine was obtained. The applicant was an outpatient for cardiologic treatment and was denied international protection. A generic medication was found available close to the applicant's place of residence in the country of origin. This information was obtained from a network of local medical doctors cooperating with the Medical Advisors Office of the Dutch Immigration and Naturalisation Service. Thus, the appeal was rejected by the Court.[49]

In another judgement of a regional court, it was concluded that the psychiatric care which the applicant needed was available in the Ukraine, despite the fact that the care was of a lower quality than provided in Czechia.[50]

In theory, the COI desk might submit requests to EUAA focusing on the relevant medication only but not ask for research on treatment. This could be the case, for example, if the patient routinely uses a specific medication for a long period of time without undergoing regular assessments and/or follow-ups. However, even in these cases the availability and accessibility of relevant medical professionals is assessed to account for future prescriptions and long-term follow-ups.

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[48] https://www.nssoud.cz/stazeni-dokumentu?filepath=SOUDNI_VYKON%2F2020%2F0383_2Azs_2000024_20210401133431_20210407092027_prevedeno.pdf&utm, [paragraph 18]

[49] Judgement of the Regional Court in Brno, Case No. 56 Az 4/2016-43 from April 28th 2017

[50] Judgement of the Regional Court in Hradec Králové, Case No. 32 Az 54/2015 – 31 from January 24th 2017

2.3. Accessibility of medical treatment/medication in countries of origin

The accessibility of medical treatment and/or medication refers to the individual circumstances of the concerned person that may prevent the applicant from de facto receiving the objectively available treatment and/or the medication in the country of origin. Thus, the accessibility portrays the subjective component of the assessment whereas the availability describes the objective element. The Czech authorities consider the accessibility test as an important element when deciding on the return of a severely sick person.

2.3.1. Definition of accessibility in the national context

There are no clear pre-defined criteria of accessibility and thus it is decided by the case worker on case-by-case considerations. Elements of accessibility that have been assessed in previous cases are of economic and geographic nature.

The underlying principle is that healthcare must be genuinely accessible in practice rather than only in theory. It is therefore not possible to establish an exhaustive list of relevant considerations that are taken into account during the Czech accessibility assessments. In some countries of origin, financial barriers alone may impede access, while in others, geographical distance may present a significant obstacle. In certain contexts, there may even be limitations on the basis of the discrimination - for instance, situations in which healthcare is available only in areas inhabited by one ethnic group, making it difficult for members of another group to travel to or reside in those regions. Generally, the primary focus must be on the information provided by the applicant; authorities are not required to undertake an unlimited search for potential barriers to access. It is the applicant who advances the asylum claim, as noted at the end of this section.

2.3.2. Accessibility in practice

Geographic accessibility was briefly discussed by the Supreme Administrative Court in a case decided in 2016. The individual access of the applicant, a woman from the Ukraine with a small child, was confirmed, and the Supreme Court viewed it feasible for the applicant to travel 50 km to the nearest hospital where the medical treatment was provided.

3. Residence and Return

3.1. Medical claim accepted

The subsidiary protection status is granted for a minimum of 1 year. After a re-assessment it can be extended for at least 2 years. A person can apply for a permanent residence permit after 5 years of stay with a temporary residence permit.

Following the 2025 amendment to the Asylum Act, which abolished humanitarian asylum, established practice is being reviewed in light of the existing case law of the Czech Supreme Administrative Court, in particular Case No. 3 Azs 80/2023–27. This decision refers to the conclusions of the Court of Justice of the EU in the cases M'Bodj and Abdida. The change in practice is headed towards a situation where medical condition will not in itself be considered relevant for the purposes of entitlement to international

protection unless there are other reasons relevant to asylum or international protection. In such cases, however, applicants may still be protected from removal on the basis of a tolerance visa.

3.2. Medical claim denied

If the MoI's Department of Asylum and Migration Policy deny international protection, a negative decision will be issued. The departure order is being issued separately by the competent authority (MoI or Foreigners Police) and indicates the period that the person has to leave the country and the Schengen area. the same procedure is in place when dealing with unsuccessful applicant for tolerance visa.

4. Summary

In general, the number of migration cases with medical elements is very low in Czechia. The majority of such medical claims occur in the asylum procedure. In contrast, medical COI plays a minor role in procedures for legal migration and return. The main immigration authority is the Department for Asylum and Migration Policy of the MoI, which also decides on migration cases involving medical claims.

In Czechia, third-country nationals who suffer from a serious disease may be granted a subsidiary protection status if the requirements are met.

Due to the low number of cases, there did not develop any further formulated policy or specific national legislation/legal description on how to assess medical issues within the migration procedures yet.

	Definition/applied practice	**Basis for definition**
Severity of the disease (threshold for admission of a medical claim)	Subsidiary protection: The disease is severe if it endangers the person's life or causes a serious deterioration of the applicant's medical situation upon return due to a lack of medication and/or medical treatment in the CO.	Practice, no clear definition
Availability	There is neither a legal definition nor internal instructions on the availability of medication and/or medical treatment. Due to the low numbers of cases there are no pre-defined criteria and thus it is rather subject to case-by-case considerations.	Practice, no clear definition
Accessibility	The assessment of the individual accessibility is an important element and is conducted for all cases that meet the severity threshold. There are no clear pre-defined criteria of accessibility and thus it is decided by the case worker on case-by-case considerations.	Practice, no clear definition
Residence permit	The subsidiary protection status is granted for a minimum of 1 year. After a re-assessment it can be extended for at least 2 years. A person can apply for a permanent residence permit after 5 years of stay with a temporary residence permit.	
Return	If the authorities within the return procedure come to the conclusion that a person cannot return due to medical grounds, a permit for a tolerated stay is being granted visa for tolerated stay or residence permit for	Section 33 and Section 43 Act on the Residence of Foreign Nationals in Czechia

	tolerated stay. Both permits can be prolonged after a positive re-assessment of the medical situation. Apart from the general return support, there is no other financial or in-kind support specifically targeting returnees with medical problems.	

5. Sources

The report on "State practices related to medical COI: Country report Czech Republic" was first completed in 2018. For this version, ICMPD conducted three qualitative interviews with the Ministry of Interior of the Czechia, Department for Asylum and Migration Policy (Unit for COI, Unit for Return, Unit for Asylum) in September 2017 and March 2018.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the Ministry of Interior reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the Ministry of Interior also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Czech Republic" was completed in March 2024.

The case study has also been reviewed and updated by representatives of the Czech Department for Asylum and Migration Policy Ministry of the Interior in April 2026 in order to ensure its validity.

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Case Study - Denmark

CASE STUDY - DENMARK **47**

LIST OF ABBREVIATIONS **47**

1. MEDICAL CLAIMS IN MIGRATION CASES IN DENMARK 48
   - *1.1. Legal Basis* *48*
   - *1.2. Organisational Structure/ Responsibilities* *48*
   - *1.3. Procedure in medical migration cases* *49*
   - *1.4. The procedure of researching medical country of origin information* *51*
   - *1.5. Statistics* *52*
2. NATIONAL POLICY 53
   - *2.1 Medical severity of a person's health condition* *53*
   - *2.2 Availability of medical treatment/ medication in countries of origin* *55*
   - *2.3 Accessibility of medical treatment/medication in countries of origin* *55*
3. RESIDENCE AND RETURN 57
   - *3.1 Medical claim accepted* *57*
   - *3.2 Medical claim denied* *57*
4. SUMMARY 59
5. SOURCES 61

List of abbreviations

COI	Country of Origin Information
DIS	Danish Immigration Service
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECtHR	European Court of Human Rights
EMC	Extensive Medical Care
EUAA	European Union Asylum Agency
HIV	Human immunodeficiency virus
MedCOI	Medical Country of Origin Information
PTSD	Post Traumatic Stress Disorder

1. Medical claims in migration cases in Denmark

This report analyses the administrative procedure and jurisprudence on migration cases involving medical claims in Denmark. 'Migration cases involving medical claims' refer to all kinds of requests of third country nationals to be granted a permit to stay based on medical conditions. In Denmark these medical migration cases can arise within the asylum procedure when an asylum seeker may apply for a humanitarian residence in the course of the asylum procedure (see below). Other migration fields that take health problems into account are the procedures for international protection, family reunification under the Danish Aliens Act, expulsion and the revocation of any type of residence permits. Since the procedures for humanitarian residence and family reunification have special procedures in place for migration cases involving medical claims, the present study focuses on these two procedures.

Similar to other MedCOI countries, the Danish system provides the possibility of visas in order to receive medical treatment in Denmark. Apart from general requirements for granting a visa, this type of visa requires a written agreement between the patient and the treating private medical facility describing the exact expected treatment and an advance payment of all costs. The treatment has to be completed within 90 days. It is not an absolute requirement that the medical treatment is not available in the home country.[51] Medical country of origin information is not decisive in this procedure, and therefore this entry procedure is not further discussed in this report.

1.1. Legal Basis

A high number of cases with medical claims are raised in the procedure on humanitarian residence. Only persons who are registered as asylum seekers in Denmark can apply for this residence permit. The assessment for granting a humanitarian residence is initiated only upon application by the asylum seeker. The asylum seeker is being informed about the possibility of a humanitarian residence permit by the immigration authority during the asylum procedure. In general, the application for humanitarian residence does not constitute a right to stay in the country for the duration of the procedure but under special circumstances this can be granted.[52] The legal basis for the humanitarian residence permit can be found at Article 9b (1) - (3) Danish Aliens Act[53] which states:

"(1) Upon application, a residence permit may be issued to an alien who, in cases not falling within section 7(1) and (2), is in such position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application.

(2) An application for a residence permit under subsection (1) may only be submitted by aliens staying in Denmark who are registered as asylum-seekers […].

(3) It is a condition for a residence permit on health grounds under subsection (1) that the alien produces the requisite evidence of his state of health".

[51] Article 32(1)(a)(2) of the Visa Code. Ministry of Immigration and Integration (2017: 19-20).

[52] https://www.nyidanmark.dk/en-GB/You-want-to-apply/Residence-permit-on-humanitarian-grounds

[53] Danish Aliens Act, Consolidation Act No. 1009 of 2 September 2024.

Medical claims are also taken into consideration within the procedure for family reunification. Normally this procedure requires the spouse/partner living in Denmark to fulfil some requirements (such as the payment of a deposit, housing, and a minimum income without relying on public financial support, etc.). In exceptional cases some of these requirements can be waived by the Danish Immigration Service. This dispensation from the normal procedure applies only to family reunifications of spouses and cohabitating partners but not to other family members.[54]

1.2. Organisational Structure/ Responsibilities

The Ministry of Immigration and Integration is the responsible administrative authority that decides in migration cases involving medical claims. In this context most cases are decided by the Humanitarian Residence Permit Unit within the Return Division. The Danish Immigration Service, is a subordinate authority, subsidiary under to the Ministry of Immigration and Integration, is responsible for, inter alia, examining applications for international protection, family reunification, permanent residence, and visa.[55] Hence, some migration cases involving medical claims are decided by the Danish Immigration Service, in particular, by the division for family reunification. The Immigration Service has its own COI unit which also acts as the Danish focal point for the European Union Asylum Agency's (EUAA) MedCOI sector. However, the divisions concerned with medical COI for humanitarian residence permits, international protection and family reunification have direct access to the database on medical COI provided by the EUAA MedCOI sector. Within the division on family reunification 5 staff members work as decision makers concerning cases of family reunification involving medical claims were MedCOI may be request, two of those staff members are advanced MedCOI users. Therefore, the case workers from these units can directly research on medical country of origin information and do not rely on a separate unit to provide the necessary information.

An appeal against a decision on humanitarian residence permit can be brought before the ordinary courts of law. Administrative decisions of the Danish Immigration Service (decisions on family reunification) can be appealed first at the Immigration Appeals Board, which is a quasi-judicial administrative body,[56] before it can be brought before the ordinary courts of law. An administrative decision to deny convention or protection status, or to revoke such a residence permit, is automatically appealed to the Refugee Appeals Board.

MedCOI is among others used within the **Ministry of Immigration and Integration's Return Division's unit for humanitarian residence**. Within the Ministry of Immigration and Integration approximately 4 staff members work on cases as decision makers concerning humanitarian residence where MedCOI is requested.

Medical doctors are not involved. If the Ministry requires support form a medical professional, they will ask the treating physician to elaborate, so that there are no doubts on the diagnosis and the treatment and medication necessary.

[54] https://www.nyidanmark.dk/en-GB/You-want-to-apply/Family/Family-reunification/Spouse-or-cohabiting-partner

[55] https://uim.dk/om-os/

[56] http://www.udln.dk/da/GlobalMenu/english/About.aspx

When handling applications for residence permit, the Ministry request the applicants to provide medical information regarding the very serious treatment requiring physical or psychological illness that the applicant has stated to suffer from. The Ministry requests that the medical information comes from a heath care professional, e.g. a doctor or psychiatrist depending on the case. If clarification is needed, the doctor who has provided the medical information will be requested to clarify. According to Danish law[57] regarding declarations from medical health personal and medical personnel among others, doctors are required to give statements that are objective and based on their professional insight. This is one of the reasons why there are no medical doctors or other health care professionals within the Ministry involved. The Ministry does not have standardised templates for the treating doctor to fill out, but it has a list of questions that should be answered a guidance in order for the Ministry to get to necessary information regarding the applicant's health situation and diagnosis with mentioning of ICD-10.

The information is sent to the Ministry by the applicant or a lawyer or other representative holding a power of attorney. The Ministry is not entitled to contact the applicant's treating doctor directly without explicit permission from the applicant or the applicants' representative to do so, due to medical confidentiality. All staff members within the Ministry of Immigration and Integration are subject to confidentiality regarding the information they have about the applicants whose cases they are handling.

In addition, about 10 persons across different units within the Danish Immigration Service are certified to use EUAA's MedCOI services (both basic and advanced users). The users have a variety of backgrounds ranging from BAs and MAs to PhDs. They are medical COI researchers but are also engaged in other types of COI work. Further, one staff member has a master's in international health and a PhD in medical anthropology (health system research).

Furthermore, about 5 persons in the Danish Return Agency are certified to use EUAA's MedCOI services as advanced users.

For the Danish Immigration Service, about one third of all the requests for medical background information concern applications for family reunification. If the spouse/partner of the applicants is living in Denmark, is a Danish citizen or holds another EU-citizenship the DIS draws on the assistance from Danish embassies. If the spouse/partner living in Denmark is a third country national the case worker from DIS will directly research on medical country of origin information.

1.3. Procedure in medical migration cases

The most relevant administrative procedures in the context of migration cases with medical claims are the procedures for humanitarian residence permit and family reunifications.

Medical claims in the procedure for granting a humanitarian residence permit

The humanitarian residence permit can be granted only to persons who are registered by the Immigration Service as an asylum seeker in Denmark. Only if the Immigration Service decides to process the asylum application in Denmark, the person is entitled to apply for the residence permit on humanitarian grounds. The assessment for a humanitarian residence status is not automatically initiated by the authorities (*ex*

[57] Autorisationsloven, A20230012229

officio) in cases of a negative asylum decision, as being done in some other countries. If an asylum seeker puts forth a medical claim during the asylum procedure, the Danish Immigration Service will initially determine whether the claim relates to the application for international protection, or whether the applicant should be referred to apply for humanitarian residence. Health issues are always covered during the first interview with an asylum seeker.

In cases where the medical claim may be relevant for the application for international protection, the determining factor is not the medical situation itself, but whether the applicant upon return to the country-of-origin risks persecution or abuse and therefore would be put in a situation which violates Article 3 ECHR. In such cases, the applicant will be granted asylum. The question of whether deporting a foreigner on health grounds will in itself constitute a violation of Article 3 falls under the assessment of a humanitarian residence permit.

Should a humanitarian residence permit become relevant, the asylum seeker is informed by the immigration authority about the possibility of humanitarian residence permits and has to separately apply for this residence permit. The case workers, within the Humanitarian Unit, within the Return Unit in the MII are specialised in handling cases concerning humanitarian residence permits pursuant to the Danish practice regarding section 9 (b) (1) of the Danish Aliens Act. However, there are no medical specialists involved. The applicant then receives a letter requesting for more information including a medical certificate by their treating physician. There is no specific template for this medical certificate.

Medical claims in the context of family reunification

In the context of medical claims within the family reunification procedure, the question arises when the applicant applies for a residence permit for Denmark and his/her spouse or partner residing in Denmark is sick. The spouse/partner is either a Danish citizen or is holding a permanent residence. The applicant can submit the application either from Denmark or abroad. The normal procedure for family reunification requires the spouse/partner living in Denmark to fulfil some requirements such as housing and financial requirements that might be difficult to meet due to the sickness or other reasons. The Immigration Service can waive all of these requirements if the spouse or partner is seriously ill or seriously disabled and if both criteria – the severity of the illness and the lack of treatment option – are fulfilled. This has to be proven with a medical certificate. Applications that involve medical claims are processed by a case worker who is, *inter alia*, specialised on family reunification cases with medical aspects.

Cases that involve medical claims are processed by case workers who are specialised in assessing applications for family reunification with medical aspects. No medical professionals engage in the decision making, apart from issuing relevant medical certificates.[58]

1.4. The procedure of researching medical country of origin information

In most cases that deal with humanitarian residence permits based on medical grounds, both the treatment and the medication is relevant. However, if the medical statements declare that only medication and no other treatment is required, a decision solely based on medication and diagnosis is possible.

[58] Information provided by DIS on 16 November 2023

1.5. Statistics

The available statistics cover the overall number of applications, and the number of granted humanitarian residence permits and family reunifications, but there is no data collected specifically on cases based on medical grounds. Medical claims are registered as claims for residence permit for humanitarian reasons pursuant to section 9 b (1)-(3) in the Danish Aliens Act in the Ministry. However, humanitarian reasons are not only medical according to the Danish practice but can also be applied to families with children, where the parents due to their health state are limited in their ability of caring for their own children, families with small children from a country at war, or single women from Afghanistan.

The applicants for humanitarian residence mainly come from the former Yugoslavian Republic, Kosovo, Bosnia-Herzegovina, Serbia, Afghanistan, Iran and Iraq, and some from African countries. Furthermore, applicants are often stateless.[59]

With regards to the specific diseases, most applications regarding humanitarian residence within the Ministry are applicants suffering from severe treatment-requiring psychological (most often schizophrenia) or physical diseases (cancer, AIDS, diabetes requiring insulin treatment or intestinal or blood diseases requiring dialysis).

To assess the availability of a treatment, the Ministry will typically consult the EUAA MedCOI platform or send a request if the necessary information is not listed. If the needed information for a specific country cannot be provided by the EUAA MedCOI platform, the Ministry tries to get the relevant information through the Danish embassies in the specific country of origin.

Table 1: The number of individual availability (AVA) and individual accessibility (ACC) responses to requests by the EUAA MedCOI to Denmark per year.[60]

	AVA	ACC
2021	59	33
2022	71	44
2023	68	36
2024	42	28

According to EUAA data there is a slight disparity between the AVA and the ACC requests sent to the EUAA by Denmark.

This disparity is caused by multiple factors. For instance, if the Danish authorities receive a negative answer to an individual availability request, they will not follow up and request further information on the individual accessibility of the treatment.

[59] When applying for asylum in Denmark applicants receive guidance that they can also apply for humanitarian residence permit and therefore applicants for humanitarian residence come from all over the world. Some applicants do not have any medical issues whatsoever.

[60] Data provided by EUAA MedCOI Service.

Furthermore, if a prior accessibility has shown that the cost for a specific treatment of medication is low, the Danish authorities will not proceed to submit an individual ACC. Similarly, if an AVA request confirms the availability of the required treatment and the individual can afford it, whether through employment, support from family or networks in their home country, or coverage by public health insurance there, Danish authorities will not pursue an accessibility request.

2. National Policy

2.1. Medical severity of a person's health condition

The threshold for the severity of a disease refers to the severity level of a disease and only if it meets a certain threshold the health situation may constitute an impediment to return. Diseases that do not meet this severity threshold or are not close to it are not further assessed.

2.1.1. Severity threshold to initiate research on medical COI

A humanitarian residence permit in Denmark can be granted, among other reasons, if an applicant suffers from a very serious illness, or if there is a risk of a serious deterioration of the applicant's health, by returning them to the country of origin. The Danish MII conducts a specific assessment of each application for a humanitarian residence permit individually. A prerequisite for initiating research on medical COI is documented evidence that the applicant suffers from a severe, treatment-requiring illness, meeting the criteria for a humanitarian residence permit. This triggers the need to determine whether the applicant can access necessary treatment or medical assistance in their country of origin, known as the "criteria of absence of treatment options". Both criteria—the severity of the illness and the lack of treatment options—must be fulfilled for the MII to grant a humanitarian residence permit.

Applicants suffering from cancer in terminal stage for example will as a general rule be granted a humanitarian residence permit without prior MedCOI research. The same applies to applicants suffering from AIDS in terminal stage, and cases where the so-called combination criteria can lead to the granting of humanitarian residence permit. These are situations in which the applicant's illness is not of such severe nature that it fulfils the illness criteria on itself, but only in combination with other circumstances in the applicant's individual case can lead to the granting of a humanitarian residence permit. In such cases the Ministry would not involve MedCOI research.

2.1.2. Severity threshold for decision making

The threshold for the severity of the disease is not defined by law. The decision is taken on a case-by-case basis and is primarily based on the medical certificate which addresses the severity of the disease. To meet the threshold, the medical situation of a person has to be either *life-threatening* or cause a *serious deterioration* upon return due to a lack of medication and/or medical treatment in the country of origin. Psychological diseases that are psychotic are viewed as very serious diseases. It is explicitly mentioned by the Ministry that serious disabilities can also qualify for a humanitarian residence permit or a dispensation of requirements for family reunification. On the Newtodenmark.dk-website it is stated that a humanitarian residence can be granted if "*you suffer from a very serious treatment-requiring illness, or if you risk*

deterioration of a serious handicap by returning to your home country".[61]The requirements for the family reunification of spouses or partners can be waived if the spouse or partner residing in Denmark is "*seriously ill or […] seriously disabled that it would be indefensible from a humanitarian point of view to advise [the spouse] to reside in the home country of the applicant because the needed treatment or care would not be available*".[62]

Another relevant aspect is the medical condition at the time of the decision and not how the disease might further develop. However, if the disease has significantly worsened after the negative decision was taken, there is the possibility to request the reopening the case if the person has not left Denmark yet. Hence, the relevant criteria are the severity level of the disease, the consequences if left untreated, and, in some exceptional cases, the stage of the disease may be relevant.

The severity threshold for minors is the same as for adults but there is a special provision for unaccompanied minor asylum seekers that gives the possibility of granting a residence permit for minors who might be "*placed in an emergency situation upon a return to his country of origin or former country of residence"* (9c (3) (ii) Danish Aliens Act).[63] However, this residence permit for unaccompanied minor asylum seekers cannot be renewed beyond the person's 18th birthday and is not applicable to minors who are sick and accompanied by family members.

The decision on the severity of a disease is taken by a decision-maker. The applicant is requested to submit a written medical certificate from a medical doctor. If the disease is not serious at all, a decision on the refusal to grant a humanitarian residence status can be taken immediately.

In 2016 the case of a Gambian national who was infected with HIV was decided by one of the High Courts of Denmark (*Østre Landsret*).[64] It mainly discussed the question on the severity of the disease and consequently whether the immigration authority is obliged to investigate treatment possibilities in the country of origin. The Court confirmed that the applicant did not suffer from a serious illness because she was not in an advanced stage of HIV that would entail a significant risk of developing AIDS. This judgement shows that the stage of the disease is relevant. The disease must be severe at the moment of the decision in order to be granted a residence permit.

Within the procedure of family reunification, the decisive factor whether to initiate research, is if the spouse is undergoing life-saving treatment and whether that treatment is not available in the applicant's country of origin.

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[61] https://www.nyidanmark.dk/en-GB/You-want-to-apply/Residence-permit-on-humanitarian-grounds

[62]https://www.nyidanmark.dk/en-GB/Words-and-concepts/US/Familie/Family-reunification-of-spouses---Waived-requirements-due-to-illness-or-disability

[63] This special provisions on unaccompanied minor asylum seekers can be found at 9c (3) (ii) Danish Aliens Act: "an unaccompanied alien under the age of 18 whose application for a residence permit under section 7 has been refused if there is reason to assume that the alien will be without any family network or without any possibility of staying at a reception and care centre and will in fact be placed in an emergency situation upon a return to his country of origin or former country of residence. The residence permit cannot be renewed beyond the alien's 18th birthday".

[64] Eastern High Court, judgement, reference number B-1219-15, decided on 25 February 2016.

2.2. Availability of medical treatment/ medication in countries of origin

Once the severity of the disease has been confirmed, the availability of the medication and/or the medical treatment in the country of origin is investigated. For diseases that do not meet the severity threshold, or are not close to it, the availability assessment is not conducted. Only if the necessary medical treatment and/or medication is not available in the country of origin, the humanitarian residence permit based on medical grounds may be granted or the requirements for family reunification is waived.

2.2.1. Definition of availability in the national context

There is no explicit legal definition on the availability of medication/medical treatment. However, the criteria for availability are that a) the medication is supplied by pharmacies and that b) the medical treatment is provided by medical facilities at the time of the assessment somewhere in the country of origin. Delays in re-supply time influence the decision only in exceptional cases if the delay may cause a serious health problem for the applicant. The medication has to be offered through legal channels, i.e. medication that is available only at the black market is regarded as not available. The quality of medical treatment is not required to be the same level as provided in Denmark.

If the prescribed medication is not supplied by pharmacies in the country of origin, other ways of receiving the medication might be investigated, which applies only to the procedure for humanitarian residence. First, the treating physician is being consulted for clarifications whether other medication with the same effect can be used as a substitute. The applicant is requested to submit this information from the treating physician on substitute medication. Second, the possibility of importing the required medication from other countries, which is normally processed through local pharmacies, is investigated. This is not part of the practice within the procedure for family reunification.

2.2.2. Availability in practice

The case law identified during the present research study does not discuss the issue of availability.

The practice within the procedure for family reunification is that once the severity of the disease has been confirmed, the availability of the medication and/or the medical treatment in the country of origin is investigated. If the necessary medical treatment and/or medication is available in the country of origin a consultation of the spouse or partner residing in Denmark will be conducted and then it will be assessed on a case-by-case basis whether the requirements for family reunification should be waived.

2.3. Accessibility of medical treatment/medication in countries of origin

Accessibility refers to the individual situation of the applicant and whether he/she can de facto access the necessary medication and/or medical treatment that is available in the country of origin.

The landmark decision of the Grand Chamber of the ECtHR in the case of *Paposhvili v Belgium*[65] in December 2016 triggered an internal revision within the Ministry for Immigration and Integration on the

[65] Case of Paposhvili v Belgium, Application no. 41738/10, European Court of Human Rights, Grand Chamber, 13 December 2016.

influence of this ruling on the Danish practice. The judgement states that for cases that meet the threshold for the severity of the disease, the immigration authorities are obliged to consider an assessment on the actual availability as well as the accessibility to medication and medical treatment in the country of return. Due to the Paposhvili judgement the Danish practice was subsequently adjusted in April 2018. Since then the Ministry requests the applicants for humanitarian residence to provide information regarding whether a treatment requiring illness is of such a nature that the applicant – even though death is not imminent, due to the absence of adequate and sufficient treatment in the home country – will run a real risk of serious, fast and irreversible deterioration of his/her health condition, resulting in intense suffering or major reduction of life expectancy. If the applicant provides medical proof of this, the Ministry will assess whether the relevant treatment is in fact also accessible to the applicant in his or her home country. In this connection the costs of the medication and treatment concerned, the existence of a social and family network, and the distance to be travelled to have access to the required care will be considered.[66]

In a case where the applicant has no family or social network in the home country the ability of the applicant to reach medical facilities may be relevant to take into consideration (if also the health system in the applicant's home country does not provide help reaching the medical facilities). The security situation in the home country may also be considered.

2.3.1. Definition of accessibility in the national context

For applications for humanitarian residence permits that were submitted before August 2010 and where the humanitarian residence permit has to be extended, the Ministry evaluates the economic accessibility. In particular, it looks at the costs of the medication and/or medical treatment, the financial situation and the person's ability to work. Aspects of geographic accessibility, which refers to the geographic distance between the person's place of residence (in the country of return) and the place where the medical treatment/medication is available, occurs less often. The Ministry views that if the medication and/or medical treatment is available somewhere in the country of return it is feasible for the person to travel to the place in order to be treated. Issues with political accessibility, i.e. discriminatory practices concerning the actual access to health care, appear less frequently in the assessment of a humanitarian residence permit because it is more decisive in the assessment for international protection.

Other accessibility aspects that may influence the decision are the age of the applicant and the social network. If the applicant is an elderly person or if the applicant has no family members who can help with financial support or care in the country of origin, it might add to the overall humanitarian consideration. The actual accessibility might influence the procedure only if the medication is extraordinarily expensive.

In its announcement, the Ministry for Immigration and Integration has stated that "the examination of the actual accessibility shall take into account the costs of the medication and treatment concerned, the existence of a social and family network, and the distance to be travelled in order to have access to the required care".[67] The Ministry clarified that a high threshold will be applied for concluding that the

[66] See information in Danish regarding the adjustment at Ny i Danmark (accessed 19.12.2023)

[67] https://www.nyidanmark.dk/en-GB/News-Front-Page/2018/01/Follow-up-on-the-Paposhvili-judgment

applicant does not have actual access to treatment (e.g. the costs for the treatment have to be very high and not affordable at all for the applicant).

As for cases of family reunification, similar accessibility aspects, primarily if the medication or treatment is extraordinarily expensive, may be taken into account when assessing if the requirements for family reunification should be waived.

2.3.2. Accessibility in practice

The research for this study did not identify case law, neither by desk research nor by expert interviews, that discusses the issue of accessibility.

3. Residence and Return

3.1. Medical claim accepted

If the immigration authority decides that a person suffers from a serious disease that requires medication/medical treatment that is not available in the country of return, a humanitarian residence permit is granted. Usually, this residence permit is granted for two years. However, in some cases the validity can be limited up to 6 months. This can be the case if the required medical treatment (e.g. surgery) in Denmark can be completed within a certain timeframe. Thereafter, the humanitarian residence permit can be prolonged if the conditions for granting the humanitarian residence are still met. The prolongation can be granted for 3 years and then again for 3 years if the conditions are met until the applicant has had a residence permit for 8 years. During the prolongation procedure a re-assessment of the severity of the disease and the availability of the medication and/or medical treatment in the country of origin is conducted. After 8 years of residence in Denmark with a humanitarian residence status the person has the possibility to apply for a permanent residence permit. Otherwise, it can be prolonged for 6 years at a time.

For medical claims in the family reunification procedure the immigration authority grants the person a dispensation from the normal requirements and the person is granted a residence permit for 2 years which can be prolonged after a re-assessment of the medical situation. After 8 years of stay in Denmark the person can apply for a permanent residence permit. In very specific cases there is a possibility of permanent residence after 4 years of stay.

3.2. Medical claim denied

If the application for a humanitarian residence permit is rejected the person can submit an appeal to the ordinary courts of law. In general, the application for a humanitarian residence permit does not entail a right to stay in Denmark for the duration of the procedure. Such a right to stay is granted only under special circumstances. Therefore, in most cases the refusal of a humanitarian residence is not directly linked with the person's present right to stay. However, if the person has received a right to stay for the duration of the procedure, then a negative decision on the humanitarian residence permit also entails a return decision. Normally the person must leave Denmark within 15 days, but this can also be prolonged (e.g. in order to complete a treatment).

If the immigration authority responsible for family reunifications concludes that the spouse or partner of the applicant cannot have the requirements for family reunification waived due to their illness, the couple

has to fulfil the normal requirements for a family reunification. If the normal requirements for family reunification cannot be met, the application is rejected. If the applicant is already in Denmark, he/she normally has to leave Denmark within 7 days. A complaint against the decision can be addressed to the Immigration Appeals Board.

When foreigners have had medical treatment in Denmark, and they return to their home country, the Danish Return Agency supplies them with medication for the first period (14 days up until 1 month) regardless of whether they have been granted or refused Extensive Medical Care (EMC). EMC is an economical support that covers expenses to very serious treatment-requiring illness and/or medication. If a foreigner is granted EMC, the Danish Return Agency will cover all expenses for 12 months from the day the foreigner arrives back in their home country.

The Danish Return Agency will make an agreement with for example a relevant hospital, pharmacy, or residence for mentally vulnerable. The economical support is paid in kind.

Extensive Medical Support (EMC)

The Danish Ministry of Immigration and Integration (UIM) has introduced a clause in the Danish national annexes to the contracts with local reintegration partners, which allows for the activation of so-called extended support, Extensive Medical Care (EMC), in cases of special needs. This may, for example, include treatment courses in the country of return, medication, special assistive devices, care accommodation, and more.

An applicant may apply for EMC regardless of whether they return to a country with or without a reintegration partner.

To receive EMC support, you must be eligible to receive reintegration support and meet the requirements set out in the Danish Return Act regarding reintegration support.

However, it is a requirement that the individual's health-related needs or treatment have first been initiated in Denmark, meaning that the person must not have been undergoing treatment in their country of origin prior to arrival in Denmark.

The assessment of whether EMC should be granted is based on a medical evaluation carried out by case officers in the Reintegration Unit at the Danish Return Agency, who are also advanced users in MedCOI and make the final decision in the case. In this connection, a consultation will be conducted through the MedCOI system.

The Reintegration Unit may also choose to involve their reintegration partners in countries where strong cooperation has been established. In such cases, the reintegration partner may be asked to facilitate the treatment against a service fee.

In particularly exceptional cases, the Reintegration Unit may also make use of their special attaches stationed in Africa and the Middle East to obtain information via Danish embassies around the world.

The Danish Return Agency may also choose to enter into a bilateral agreement with a hospital, pharmacy, or accommodation facility, for example for applicants who are particularly mentally vulnerable.

4. Summary

Migration cases involving medical claims arise within the procedure for humanitarian residence and the procedure for family reunification of spouses and cohabitating partners, cf. the Danish Aliens Act. Only persons who are registered as asylum seekers in Denmark are entitled to apply for a humanitarian residence permit. Within the family reunification procedure, a couple can receive a dispensation from the normal requirements for family reunification if the spouse or partner living in Denmark is suffering from a serious sickness or disability. However, this dispensation due to medical reasons applies only to spouses and cohabitating partners but not to other family members. There is no specific data collected, neither on the number of humanitarian residence permits, nor of family reunifications based on medical claims. The Danish Parliament each year receives an orientation about the number of granted humanitarian residence permits the year before and information about the number of granted humanitarian residence permits is also made public in the publication "Tal and Fakta" which can be found on the New to Denmark website.

The Ministry of Immigration and Integration is the responsible administrative authority that decides on applications for humanitarian residence permits, while applications for family reunification are processed by the Danish Immigration Service based on medical reasons. The applicant is requested to submit a written medical statement by the treating physician. If other medical questions have to be clarified the applicant is asked to submit further information from the treating physician or other. There is no medical doctor involved in the decision making in Ministry or the Danish Immigration Service. But as mentioned above regarding the case handling of humanitarian residence permits within the Ministry, medical information from the applicants treating physician will be taken into consideration.

A disease is regarded as severe if it is either life-threatening or causes a serious deterioration of the applicant's health upon return/ travel to the applicant's home country due to a lack of medication or treatment. One of the High Courts in Denmark has confirmed in a decision in 2016 that the severity of a disease has to be given at the time of the decision making. Accordingly, diseases that at the time of the decision, are neither life-threatening nor cause a serious deterioration upon return, however, entail a significant risk of becoming life-threatening at a later stage, do not meet the required severity threshold. Hence the severity level of the disease, the consequences if not treated and in some cases the stage of the disease are relevant criteria for the severity threshold. When it comes to minors the same severity threshold as for adults is applied. Within both procedures (humanitarian residence permit and family reunification), there is the possibility of taking a decision without requesting further information, if without doubt the disease is not serious at all.

Only if the threshold for the severity of the disease or the disability is given, it is proceeded to the second step of the assessment which deals with the medical country of origin information. In this second step it is assessed whether the medication and/or the medical treatment is available in the country of origin. A residence permit is granted only if the required medication and/or treatment is not available in the country of origin or return. The medication is available if it is supplied by pharmacies and the medical treatment is being provided by medical facilities in the country of origin at the time of the assessment. If the prescribed medication is not supplied in the country of origin, the Ministry's practice in the humanitarian residence permit foresees that the treating physician is consulted. The physician is asked to inform whether generic medication can be used. Moreover, in some cases the possibility of importing medication from other

countries through local pharmacies in the country of origin is assessed but only in the procedure for humanitarian residence.

The question of accessibility, whether the applicant has de facto access to the available medication and/or medical treatment in the country of origin is in general not part of the assessment. Hence the immigration authority is not obliged to assess economic and geographic aspects. Only under exceptional circumstances (i.e. the costs for the medication and/or medical treatment are exceptionally high, and the applicant cannot afford it) may the immigration authority grant a residence permit. The decision of the Grand Chamber of the ECtHR in the case of Paposhvili v Belgium in December 2016 triggered an internal discussion within the Ministry for Immigration and Integration on the influence of this ruling on the Danish practice. The judgement of the ECtHR confirmed the obligation of Member States to conduct an accessibility assessment if the case meets the threshold for the severity of the disease. As a consequence, the Danish Ministry adjusted the national practice in April 2018 requiring the illness is of such a nature that the applicant – even though death is not imminent, due to the absence of adequate and sufficient treatment in the home country – will run a real risk of serious, fast and irreversible deterioration of his/her health condition, resulting in intense suffering or major reduction of life expectancy.

If the Ministry of Immigration and Integration takes a positive decision in the application for a humanitarian residence the person is granted the humanitarian residence permit for 2 years. The residence permit can be prolonged after a re-assessment of the severity of the disease and the availability of the medication and/or medical treatment in the country of origin. After 8 years of residence in Denmark with a humanitarian residence status the person can apply for a permanent residence permit. If the application for a humanitarian residence permit is rejected and only if the person had received a right to stay for the duration of the procedure, then the negative decision on the humanitarian residence permit also entails a return decision. Normally the person must leave Denmark within 15 days.

For medical claims within the family reunification procedure, the immigration authority grants a dispensation from the normal requirements and the person is granted a residence permit for 2 years which can be prolonged after a positive re-assessment of the medical situation. After 8 years of stay in Denmark, in specific cases 4 years, the person can apply for a permanent residence permit. If the dispensation is not granted the applicant must fulfil the normal requirements for a family reunification.

	Definition/applied practice	**Basis for definition**
Severity of the disease (threshold for admission of a medical claim)	The severity of a disease is given if it is either life-threatening or cause a serious deterioration of the applicant's health upon return to the CO due to a lack of medication or treatment. The severity of a disease has to be given at the time of the decision making.	Practice
Availability	The medication is available if it is being supplied by pharmacies and the medical treatment is being provided by medical facilities in the country of origin at the time of the decision-making. Within the procedure for humanitarian residence, the possibility of importing medication through pharmacies or the treatment with generic medication is investigated.	Practice

Accessibility	In general, when the applicant suffers from a very serious treatment-requiring physical or psychological illness the authorities will assess aspects of accessibility. Furthermore in very exceptional cases (e.g. where there is reason to believe that, that the applicant, even though death is not imminent, will be exposed to a real risk, due to the lack of appropriate treatment in the country of origin or the lack of access to such treatment, of suffering a serious, rapid and irreversible deterioration in his or her state of health, resulting in intense suffering or a significant reduction in the expected remaining life expectancy), the authorities will also assess whether the necessary treatment is in fact accessible to the applicant with regards to price, social/family network and travel distance). Changes that were triggered by the decision of the ECtHR in the *Paposhvili v Belgium* case are planned.	Internal policy, practice
Residence permit	A humanitarian residence permit is granted for 2 years. This status can be prolonged after a re-assessment of the severity of the disease and the availability of the medication and/or medical treatment in the CO. For medical claims within the procedure for family reunification of spouses/partners the immigration authority grants a dispensation from the normal requirements if the person residing in Denmark is seriously ill or seriously disabled that it would be indefensible from a humanitarian point of view to advise the spouse to reside in the home country of the applicant because the needed treatment or care would not be available".[68] The applicant is granted a residence permit for 2 years, which can be prolonged after a positive re-assessment of the medical situation.	Art. 9b (1) - (3) Danish Aliens Act and Art. 9 para (1) Danish Aliens Act.
Return	The Danish Return Agency supplies foreigners who had medical treatment in Denmark with medication for the first period (14 days up until 1 month). Also, the Extensive Medical Care (EMC) may cover expenses to very serious treatment-requiring illness and/or medication covering all expenses for 12 months from the day the foreigner arrives back in their home country. The economical support is paid in kind.	

5. Sources

The report on "State practices related to medical COI: Country report Denmark" was first completed in 2018. For this version, ICMPD conducted two qualitative interviews with representatives of the Ministry of Immigration and Integration and the Danish Immigration Service in August and November 2017.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted the relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the Ministry of Immigration and Integration and the Danish Immigration Service reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, both authorities also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Denmark" was completed in March 2024. Finally, the case study has been reviewed and updated by representatives

[68] https://www.nyidanmark.dk/en-GB/Words-and-concepts/US/Familie/Family-reunification-of-spouses---Waived-requirements-due-to-illness-or-disability

of the Danish Immigration Service and the Ministry of Immigration and Integrations in March 2026 in order to ensure its validity.

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Case Study – Estonia

CASE STUDY – ESTONIA 63

LIST OF ABBREVIATIONS 63

1. MEDICAL CLAIMS IN MIGRATION CASES IN ESTONIA 64
   - *1.1. Legal Basis 64*
   - *1.2. Organisational Structure/ Responsibilities 64*
   - *1.3. Procedure in medical migration cases 65*
   - *1.4. The procedure of researching medical country of origin information 66*
   - *1.5. Statistics 66*
2. NATIONAL POLICY 66
   - *2.1. Medical severity of a person's health condition 66*
   - *2.2. Availability of medical treatment/ medication in countries of origin 67*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 68*
3. RESIDENCE PERMITS AND RETURN 68
   - *3.1. Medical claim accepted 68*
   - *3.2. Medical claim denied 68*
4. SUMMARY 69
5. SOURCES 69

List of abbreviations

CJEU	Court of Justice of the European Union
COI	Country of Origin Information
CoO	Country of Origin
ECtHR	European Court of Human Rights
PBGB	Police and Border Guard Board

1. Medical claims in migration cases in Estonia

1.1. Legal Basis

While the Estonian Act on Granting Internation Protection to Aliens does not contain a specific provision directly regulating the assessments of medical claims, Section 15^1(1) may be regarded as a legal basis for their evaluation. The provision mandates the assessment of special needs of an application and explicitly classified individuals with a serious illness as vulnerable applicants (*erivajadusega taotlejad*) whose particular situation and the resulting needs must be taken into account in the context of international protection procedures.[69]

1.2. Organisational Structure/ Responsibilities

In Estonia, the competent authority for medical COI research and policy is the Estonian Police and Border Guard Board (PBGB), a governmental agency under the authority of the Ministry of the Interior.

There are two COI experts working for the Estonian administration and if needed they both can work on medical COI research. Medical COI policy is developed in cooperation with all relevant parties working for the Estonian PBGB and the Ministry of Interior, including COI experts, decision makers, and legal representatives. There are no medical doctors or other healthcare professionals, however the COI researchers may refer to doctors or other medical professional for their expert opinion in specific cases if relevant. The decision on whether medical professionals need to be involved in a given case is made on a case-by-case basis. To date, there has not been a migration case in Estonia that required the involvement of a medical professional in the medical COI research.

In cases where the medical examination is being conducted on the applicant's own initiative, the applicant has to submit the results themselves as they deem necessary and relevant for their international protection claim. If the applicant undergoes a forensic examination and has given their written consent, the results of the examination are sent directly to the examining authority. In practice, forensic medical examinations are usually conducted when the evidence submitted by the applicant is insufficient to prove past persecution or serious harm but provides a reasonable indication that such events may have occurred. Information on the applicant's condition are collected using a standardised form during the vulnerability assessment, which is conducted by the reception officials of the PBGB, when an application in lodged. In other instances, a standard form used by the relevant medical authorities are submitted to the PBGB.

All information on the applicants' case is considered confidential. According to Article 15^1(6) of the Act on Granting Internation Protection to Aliens, the PGBG shall communicate the information on a special need of an application to other administrative authorities and persons who are in contact with the applicant to the extent necessary.

[69] See: Act on Granting International Protection to Aliens–Riigi Teataja

1.3. Procedure in medical migration cases

In Estonia, there are three forms of international protection available to individuals in need: refugee status, subsidiary protection, and temporary protection.

In the context of international protection, if it is determined that medical treatment is being denied to a specific group of individuals on any of the grounds set out in the Geneva Convention, the applicant may be eligible for refugee status. This assessment takes into account all elements of the application, including the seriousness of the applicant's medical condition. For instance, refugee status may be granted to a transgender person if it is demonstrated that the policies of their country of origin prevent them from accessing the necessary medical treatment. If, however, the application does not directly relate to the Convention grounds but instead involves a severe and life-threatening medical condition, and it is established that medical treatment is being deliberately withheld, Article 15(b) of the Qualification Directive (Directive 2011/95/EU) may apply. In such cases, the applicant may be granted subsidiary protection.

The health of applicants is assessed either during the examination of an application for international protection or within the framework of the Dublin procedure. In accordance with Article 15^1(1) of the Act on Granting International Protection to Aliens,[70] the particular situation of a vulnerable person and any special needs arising therefrom must be taken into account throughout the international protection process. Under Article 15^1(2) thereof, the PBGB is designated as the authority responsible for identifying such special needs.

The Act specifically refers to vulnerable persons, defining applicants with special needs as including, in particular, minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking, **individuals with serious illnesses or mental health problems**, as well as victims of torture, rape, or other serious forms of psychological, physical, or sexual violence.

According to Article 15(8) of the Act on Granting International Protection to Aliens, the examining authority must arrange a medical examination - subject to the applicant's consent - if there are signs that may indicate past persecution or serious harm, and where the PBGB considers this necessary for assessing the applicant's statements. Furthermore, under Article 10(4) thereof, applicants are entitled to arrange a medical examination independently and at their own expense.

Additionally, medical examinations are undertaken when there are sufficient grounds to believe that the applicant's health condition could significantly influence the assessment of their claim. Applicants may additionally seek medical examinations from healthcare providers under the general state-funded healthcare system. Any findings from these assessments are duly considered during the asylum procedure and in the evaluation of the claim.

[70] See: Act on Granting International Protection to Aliens–Riigi Teataja

When an applicant is confirmed to have a medical condition, special need, or other vulnerability, these factors are taken into account throughout the entire process, and appropriate measures—such as adjustments during the asylum interview—are implemented.

During the asylum procedure, medical COI is requested to determine whether the situation in the applicant's country of origin falls within the scope of refugee status or subsidiary protection.

In Estonia, there is no specific mechanism for the identification of persons with special needs within the Dublin procedures. In the context of the Dublin procedure, Medical COI is requested to ensure that the reception conditions in the responsible Member State do not constitute inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. The EUAA does not respond to MedCOI requested in the context of Dublin procedures. COI research within the EU falls outside the EUAA's mandate. Where needed medical COI research is conducted by EU authorities, such as COI researchers, themselves.

Most frequently, medical considerations are invoked in the assessment of whether a return decision is compatible with humanitarian considerations, particularly in relation to access to adequate healthcare in the country or return or how long a ban on re-entry should be. The use of MedCOI in return or legal migration procedures is determined on a case-by-case basis. To date, there has been no return case or application for medical treatment abroad, due to the unavailability of a specific treatment in the applicant's country of origin, in which MedCOI has been used.

1.4. The procedure of researching medical country of origin information

Currently there is no official practice nor written policy on the procedure of research medical COI. Decisions are made on a case-by-case basis. Decisions are always based on the availability and accessibility of both the medication and treatment option in the country of origin. Both are considered as important in determining whether the applicant can receive appropriate help in the CoO.

1.5. Statistics

There are no statistics available on migration procedures involving medical claims. Estonia generally does not gather statistics pertaining to the grounds of applications for international protection.

Estonia has not yet submitted AVA or ACC requests to the EUAA MedCOI sector.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In the Estonian practice there is no defined severity threshold defining when medical COI research needs to be initiated. The decision to initiate research in made on a case-by-case basis.

2.1.2. Severity threshold for decision-making

In Estonian jurisprudence, courts consistently refer to the relevant judgments of the Court of Justice of the European Union (CJEU) when addressing comparable situations, applying the criteria established therein. They also rely on the standards set by the European Court of Human Rights (ECtHR) in *Paposhvili v Belgium*.

Estonian courts have recognised that, in accordance with *Paposhvili*, Article 3 of the European Convention on Human Rights (ECHR) may be engaged where a seriously ill person would face a real risk of a serious, rapid, and irreversible decline in their state of health, or a significant reduction in life expectancy, owing to the absence of adequate and accessible medical treatment in the country of return.

Furthermore, the courts have held that, in line with this case law, the assessment of whether a removal order or entry ban to a particular country is enforceable must include an individualised examination of the actual availability and accessibility of appropriate medical care in that country.

Drawing on EU case law, the Supreme Court of Estonia has clarified that the principle of non-refoulement under the EU Charter of Fundamental Rights is equivalent to that established in EU jurisprudence (see, for example, C-562/13 *Abdida*, paragraphs 47 et seq.; C-353/16 *MP*, paragraphs 37 et seq.; and C-69/21 *Staatssecretaris van Justitie en Veiligheid*, paragraphs 61–66). In cases involving serious psychiatric illness, consideration must be given not only to the potential effects of the person's physical transfer from one Member State to another, but also to any serious and irreversible consequences that such removal might entail (C-353/16 *MP*, paragraph 42).

2.1.3. Medical threshold cases

There is no written policy in Estonia concerning extreme severe medical threshold cases. All decisions are made of a case-by-case basis.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

Currently there is no official practice or written policy on what is considered available medication or treatment. The case worker decides this on a case-by-case basis. However, treatment and medication should be available through official channels, care that is solely obtainable through the black market would not be considered as available.

2.2.2. Availability in practice

Based on the questions, themes, or topics raised by decision-makers, COI experts compile a report. This report, prepared in response to a specific query, is used to assess the availability and accessibility of treatment or medication in the applicant's country of origin. COI experts rely exclusively on publicly available sources, and all reports are prepared in accordance with EUAA recommendations. However, COI experts have made use of publicly available EUAA MedCOI Topical Reports. Both COI experts have additionally finished the EUAA MedCOI advanced user training and are able to submit AVA and ACC queries.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

Currently there is no official practice or written policy stipulating the definition of accessibility of medication or treatment. The case officer decides whether a treatment or medication is accessible to the individual applicant, using medical COI and relevant evidence submitted by the applicant.

2.3.2. Accessibility in practice

Economic Accessibility
Economic accessibility is not assessed in the Estonian state practice.

Geographic accessibility
Geographic accessibility is not assessed in the Estonian case.

Political accessibility
Access to medical facilities, medication, or the public health insurance system—when granted or denied on the basis of a person's race, religion, nationality, membership of a particular social group, or political opinion—may be relevant in relation to one of the five persecution grounds set out in the Geneva Convention. For example, this may be the case if a particular social group is denied access to medical facilities.

3. Residence permits and return

3.1. Medical claim accepted

There is no special protection type for medical claims in Estonia.

A positive decision means the applicant is granted either refugee status or subsidiary protection. An applicant that is granted refugee status, receives a residence permit for 3 years. Applicants that are granted subsidiary protection, receive a residence permit for 1 year. Beneficiaries of international protection have right to access healthcare under the same eligibility conditions as Estonian nationals.

3.2. Medical claim denied

Negative decisions in international protection applications are made by the PBGB. Return decisions are made as soon as an applicant does not have a legal ground to remain in Estonia, thus the return decision is issued with the rejection of the claim.

During the return, medical considerations can be made in the practical arrangements of the travel. However, there are no state-sponsored schemes to finance the individual's treatment in their country of origin.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	Seriously ill person who would face a real risk of a serious, rapid, and irreversible decline in their state of health, or a significant reduction in life expectancy, owing to the absence of adequate and accessible medical treatment in the country of return	Article 3 ECHR
Availability	No official practice or written policy.	
Accessibility	Case workers assess whether the applicant may be denied the treatment and/or medication because there are discriminated against.	
Residence permit	A positive decision means the applicant is granted either refugee status for three years or subsidiary protection for one year.	Geneva Convention, Directive 2011/95/EU
Return	Return decisions are granted immediately, when a claim is rejected. During the return, practical arrangements can be made to accommodate an applicant's medical condition.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Estonian case study is based on the questionnaire filled in by representatives of the Estonian Police and Border Guard in September 2025.

Finally, the case study has been reviewed and updated by representatives of Estonian Police and Border Guard in March 2026 in order to ensure its validity.

Case Study - Finland

CASE STUDY - FINLAND 70

LIST OF ABBREVIATIONS 70

1. MEDICAL CLAIMS IN MIGRATION CASES IN FINLAND 71
   - *1.1. Legal Basis 71*
   - *1.2. Organisational Structure/ Responsibilities 72*
   - *1.3. Procedure in medical migration cases 72*
   - *1.4. The procedure of researching medical country of origin information 74*
   - *1.5. Statistics 74*
2. NATIONAL POLICY 76
   - *2.1. Medical severity of a person's health condition 76*
   - *2.2. Availability of medical treatment/ medication in countries of origin 77*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 78*
3. RESIDENCE PERMITS AND RETURN 80
   - *3.1. Medical claim accepted 80*
   - *3.2. Medical claim denied 81*
4. SUMMARY 81
5. SOURCES 81
6. ANNEX 82

List of abbreviations

COI	Country of Origin Information
CoO	Country of Origin
MedCOI	Medical Country of Origin Information
EUAA	European Union Agency for Asylum

1. Medical claims in migration cases in Finland

1.1. Legal Basis

The Main Legal Act for migration cases involving medical elements in Finland is the Aliens Act 2004/301[71]. Sec. 51 and Sec. 52 stipulate specific provisions for residence permits due to a foreigners' health situation.

Sec. 51 provides for a temporary residence permit if the foreigner residing in Finland cannot be returned to his/her country of origin due to temporary health reasons.

Section 51 (alternation 674/2015) Issue of residence permits in cases of obstacles to leaving the country

(1) Aliens residing in Finland are issued with a temporary residence permit if:

1) they cannot be returned to their home country or country of permanent residence for temporary reasons of health; or

2) their return to their home country or country of permanent residence is not actually possible.

(...)

Similar in nature, Sec. 52 provides for a continuous residence permit on a discretionary basis on humanitarian grounds if the refusal of the residence permit would be considered manifestly unreasonable with regards to the health situation of the applicant.

Section 52: Issue of residence permits on a discretionary basis on humanitarian grounds

(1) Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on a discretionary basis on other humanitarian grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

(…)

The medical migration cases are mainly connected with asylum cases or come up in relation to persons irregularly staying in Finland, or persons whose residence permit ends, and they cannot be returned due to their health situation.

Important guidelines for the interpretation of Sec. 51 and Sec. 52 are the preparatory works of the governmental proposal for the Aliens Act. The corresponding case-law concerning the issuance of residence permits related to an applicant's state of health has been based on these sources.

[71] See : https://www.finlex.fi/api/media/statute-foreign-language-translation/688424/mainPdf/main.pdf?timestamp=2004-04-29T21%3A00%3A00.000Z

1.2. Organisational Structure/ Responsibilities

The Finnish Immigration Service is the body responsible for issuing residence permits and thus also for the determination on whether humanitarian grounds weighing against the return of a foreigner to his/her country of origin may exist.

Medical COI, the research on MedCOI as well as the policies related to medical cases are consequently also under the Finnish Immigration Service. However, there is no separated, specialised staff that solely works on medical COI and policy. Instead, medical cases are processed by all COI researchers, policy specialists, and decision makers in the Immigration Service, depending on the need.

COI staff work at the Country Information Service which is organised as a subunit within the Immigration Service. Policy specialists belong institutionally to the Legal Service, and the decision makers work at the International Protection Unit or the Permit and Nationality Unit.

In the Finnish Immigration Service there are no health care professionals involved in the process, since the process of issuing a residence permit based on medical issues, is not separated from the process of issuing residence permit for other reasons. Thus, there has not been the need to involve medical professional in-house. Additionally, there is no legal requirements to involve medical professionals in the process of issuing residence permits based on medical grounds. In a complex case, the medical professionals at the EUAA or the Finnish Institute for Health and Welfare may be consulted, or the applicant will be asked to provide a medical certificate containing further information about their condition.

In order to collect evidence on the medical situation of the applicant, the burden of proof lies with the applicant. The applicant must submit an attestation by a medical doctor or other relevant documents. Such evidence documents are usually handed over by the reception centre where the asylum seeker is residing, or by the counsel of the applicant or by the applicants themselves (if the person is not an asylum seeker).

The Immigration Service does not currently provide a standardised template. In general, a medical doctor should follow the general template for a doctor's statement provided by the Finnish Medical Association. However, this is not a legal requirement and in practice, there is a lot of variety in the form of attestations provided. The medical information is then added to applicant's case file and is processed by the decision maker. Generally, there is no formal policy on how information is gathered.

The medical confidentiality is guaranteed, as medical information can be only collected if permission is given by the applicant. Before its submission to the Immigration Service, the information is only processed by the applicant, a social worker in a reception centre, or the applicant's counsel, who are required to keep this information confidential by law. Within the Immigration Service, only people who are involved with the decision making of this individual's application can access the medical information.

1.3. Procedure in medical migration cases

Finland does not have any specialised procedure for medical issues in migration processes. Medical problems of foreigners are mainly brought forward during the asylum procedure. During the asylum

interview, one of the questions asked by the interviewer is whether the asylum applicant has any medical problems. Should the applicant mention some health problems, he/she is asked by the Finnish Immigration Service to submit a medical attestation for the condition. A statement by the applicant alone would not suffice to further consider the medical aspect of the asylum claim. If the medical condition is connected to the applicant's basis of claim for international protection, the office requests the medical attestation at its expense.

The medical condition of the applicant is always brought up in the procedure if the applicant pleads to it.

Only if international protection has been denied, a stay on discretionary basis on humanitarian grounds (here: medical reasons) is reviewed.

The applicant can appeal the decision to an administrative court. The court may postpone the return decision until the appeal has been processed.

Temporary residence permit according to Sec. 51 Aliens Act

Sec. 51 Aliens Acts foresees a temporary residence permit for cases when a foreigner cannot be returned for specific medical reasons that can be considered of temporary nature. Sec. 51 relates to the enforcement of the return and thus mainly of concern to the enforcement agency, the police. The Immigration Service is not responsible for examining whether a decision on removal is enforceable. In normal situations, the enforcing authority, the police, will examine if there are any obstacles to removal.[72] The Supreme Administrative Court stated that the purpose of Sec. 51 was to avoid a legal limbo for refused asylum applicants who could not be forcibly removed.[73]

In order for a person to qualify for a residence permit under Sec. 51, it is required that the obstacle to the removal is of a technical nature.[74] Sec. 51 may, for example, be applied in case the returnee is not fit to fly.

A temporary residence permit according to Sec. 51 is valid only until the impediment to return ceases. The Supreme Administrative Court took the view that the nature of a residence document as specified in Section 51 of Aliens Act is a temporary permit and fixed term. Its validity is dependent on the prevention of actual removal. It delays refoulement but does not have any effect on a negative judgment refusing international protection and a residence permit. If the conditions for granting a fixed-term residence

[72] Supreme Administrative Court, 22 November 2013, KHO:2013:180. A summary of the decision may also be read at http://www.asylumlawdatabase.eu/en/case-law/finland-supreme-administrative-court-22-november-2013-kho2013180#content (accessed on 19.01.2015)

[73] As the law changed in 2015 this Sec. was broadened from forcible returns to cover voluntary return. If the authority cannot forcibly return and the applicant is unwilling to return, this limbo-situation may become reality.

[74] Supreme Administrative Court, 22 November 2013, KHO:2013:180. A summary of the decision may also be read at http://www.asylumlawdatabase.eu/en/case-law/finland-supreme-administrative-court-22-november-2013-kho2013180#content (accessed on 19.01.2015)

permit still prevail, based on section 54(5) of the Aliens Act, after a two-year stay, a permanent residence permit is granted.[75]

Residence permit according to Sec. 52 Aliens Act

A residence permit on a discretionary basis on humanitarian grounds (Sec. 52 Aliens Act) is issued if a person cannot be returned into the country of origin because of a lack of appropriate medical treatment in the country of origin.[76]

Sec. 52 is of continuous duration, first issued for 1 year and may be prolonged thereafter if the conditions still prevail. Sec. 52 is reviewed by the Finnish Immigration Service. The main elements that are to be reviewed according to Sec. 52 is the medical situation in the country of origin and whether the applicant could receive the necessary treatment/medication in the country of origin.

As a precondition for applying Sec. 52 Aliens Act, the foreigner must already reside in Finland (see Sec. 52 and the respective explanation by the governmental proposal of the Aliens Act). An application for medical care based on Sec. 52 is thus not possible. According to the government proposal this provision would concern cases where international protection is not granted but refusing a residence permit would be manifestly unreasonable).[77]

In the case of Sec. 52 the decision-maker investigates the situation in the country of origin, while this is of less importance in the case of Sec. 51.

In most cases residence permit is granted on cumulative grounds, the medical condition is rarely the sole defining factor.

1.4. The procedure of researching medical country of origin information

MedCOI decisions are made considering both the research regarding treatment options and the necessary medication. A MedCOI decision solely relying on the information about the medication is not possible, as the applicant usually cannot be treated by using only medication.

1.5. Statistics

Finnish legislation does not include a specific provision exclusively dealing with medical claims. The above cited Sec. 52 Aliens Act refers to medical claims but may be applied for other reasons as well. As a consequence, the Finnish Immigration Service does not register medical claims separately. No reliable data

[75] Supreme Administrative Court, 25 April 2013, KHO:2013:78. A summary of the decision is accessible in English at http://www.asylumlawdatabase.eu/en/case-law/finland-supreme-administrative-court-25-april-2013-kho201378#content (accessed on 19.01.2015)

[76] Health reasons are only one of several grounds for issuance of a residence permit according to Sec. 52 Aliens Act. In addition to the health related situations the points mentioned in section 52 concern also issuing a residence permit on a discretionary basis on humanitarian grounds because of ties to Finland or some other specific situations that might relate to families with children or other individuals who are in a vulnerable situation as well as unaccompanied minors who are not in need of international protection, but cannot return to the country of origin because their parents have passed away or their whereabouts are not known. See preliminary remarks to the Aliens Act (HE 28/2003).

[77] See preparatory works for the Aliens Act (HE 28/2003). When drafting Sec. 52 these were the situations in which this section was presumed to be most often applied.

on medical cases are collected. One reason for not gathering such data is because medical grounds are considered as sensitive personal information, and due to personal data protection (required by law), there are not separate statistics on these claims.

Also, with regards to requests for MedCOI research, there are no exact data available for how many medical COI requests are processed by the COI Service. However, the Immigration Service estimates between 20-30 requests per year. In most medical COI query responses, information from EUAA MedCOI service is used as a source. The COI researcher decides if there is a need to submit a new request to EUAA, or if the COI request can be solved with existing information in the EUAA MedCOI database or other (public) sources.

The decision makers do not submit medical COI request for every case, they can also consider information that is readily available in the national COI database, or other sources, like public EUAA MedCOI reports.

Table 1: The number of individual availability (AVA) and individual accessibility (ACC) responses to requests by EUAA MedCOI to Finland per year.[78]

	AVA	ACC
2021	10	1
2022	13	
2023	16	1
2024	9	

Finland does not usually send individual accessibility requests. Instead, information needed is usually gathered from EUAA MedCOI general reports if available, or other public sources. If information is not available from these sources, a new accessibility request may be submitted. Therefore, there is a disparity between the number of availability requests send to the EUAAs MedCOI sector by Finland and the number of accessibility requests.

Table 2: Number of COI requests sent to the Finnish authorities mentioning the keywords 'MedCOI' or 'healthcare' [79]

	Number of requests sent to the COI unit mentioning 'health care' and/or 'MedCOI'
June – December 2020	20
2021	28
2022	20
2023	15
2024	12
January – September 2025	26

As mentioned above, the Finnish COI Unit does not distinguish between different reasons for applying for protection, such as medical COI, in their statistics on country-of-origin requests. However, it is possible for the Finnish Immigration Service to search for keywords such as 'health care' or 'MedCOI,' to determine

[78] Data provided by EUAA MedCOI Service.

[79] Information provided by the Finnish Immigration Service in 2024 and updated in 2025

the number of requests sent to the COI unit dealing with medical themes. Due to system changes, the number of requests mentioned the keywords are not available before June 2020.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

Besides the disease, also the level of (available) treatment and the general circumstances in the CoO are relevant if return would reduce the life expectancy of the applicant or cause significant physical or mental suffering. All facts which make it impossible for the applicant to return to the country of origin are relevant.[80]

While the "severity" of the disease is relevant to a certain extent, the disease must not necessarily be in the final stage or be of life-threatening nature. Case workers evaluate each situation of an applicant on an individual basis. There is no threshold specified for a case worker to be able to initiate medical COI research.

2.1.2. Severity threshold for decision-making

One of the main elements in assessing whether a disease is severe or not, depends on the medical attestation. The Finnish Immigration Service does not need to follow the assessment of the medical doctor in the provided attestation about the (lack of) treatment in the CoO. In practice, the standard of the health care is not considered relevant as long as necessary medical treatment is available in the country of origin.

Nevertheless, the Immigration Service would still take the medical attestation as given and would analyse whether it is clear enough and would further look at the medical information in the attestation.

While the "severity" of the disease is to a certain extent relevant, the disease is not necessarily to be in the final stage and also does not need to be of a life-threatening nature, but the return would reduce the life expectancy of the applicant or cause significant physical or mental suffering.

2.1.3. Medical threshold cases

A residence permit on discretionary basis on humanitarian grounds can be also granted without further research on the medical situation in the CoO if the medical situation of the applicant is extremely severe. These cases are included under Section 52. If there is an extreme severity of medical condition, as, for example, cancer patients in terminal stage, COI is not necessarily needed.

[80] See preparatory works for the Aliens Act as regards to Sec. 52 Aliens Act.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

The Finnish Immigration Service considers the governmental proposal of the Aliens Act as regards to Sec. 52 as most conducive for clarifying the scope of "availability".

According to the preparatory works for the Aliens Act, Sec. 52 concerns situations in which it would be manifestly unreasonable to refuse a residence permit with regard to the applicant's health.[81] The preparatory works state as regards to Sec. 52 Aliens Act, that it must be impossible for the foreigner to receive necessary care in the home country. Additionally, it is required that the (quality) level of care or the availability of it in the home country would seriously harm the health of the alien if he/she was to return there.

According to the agency's guidelines, availability is defined as whether medical treatment (including medication) is available and adequate in at least one healthcare facility in the country of origin at a given time. The evaluation is based on COI.

To a certain degree it also remains at the discretion of the decision-maker whether treatment/ medication is considered available or not. All cases are reviewed based on the person's individual circumstances.

2.2.2. Availability in practice

When examining the availability of treatment, the decision-maker uses the services of the country-of-origin information unit to verify whether medical treatment and/or medication exists in the country of origin and whether there are hospitals that provide the treatment. The Finnish Immigration Service needs to verify whether the sources for such treatment/medication are officially and legally available. Medication on the black market is not considered as available. Also, the supply via official pharmacies needs to be guaranteed to satisfy the availability criteria. Supply via, for example, internet pharmacies would require additional research as regards to whether this would be "legal or illegal."

Should there be a disease which cannot be treated in the country of origin or in Finland; this would not automatically lead to a residence permit in accordance with Sec. 52 Aliens Act. Nevertheless, there still might be sufficient reasons to issue a residence permit on a discretionary basis on humanitarian grounds (e.g., reasons related to severe suffering together with the vulnerability of the person in the country of origin).

[81] It should be well noticed that Sec. 52 Aliens Act also encompasses other – non health related – reasons that may be relevant grounds for the issuance of a residence permit on discretionary basis on humanitarian grounds such as the ties to Finland or other humanitarian grounds.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

According to agency's guidelines, COI related to the accessibility of medical treatment can be taken into account when evaluating a medical claim. Accessibility is defined as whether the applicant has actually the opportunity to receive the necessary treatment or medication in their country of origin, taking into account economic, geographical, and political factors. COI on accessibility can be used, for example, to determine whether a member of a particular ethnic, religious, or other social group, such as women, children, or persons with disabilities, have equal access to treatment.[82]

2.3.2. Accessibility in practice

The granting of a residence permit on the basis of Sec. 52 Aliens Act is always based on a case-by-case and individual overall assessment, in which the applicant's individual circumstances and possible vulnerability factors must be taken into account together, and in which all relevant grounds for reasonableness are weighed against each other. In practice, the application of Sec. 52 Aliens Act often involves weighing several different circumstances or the cumulative effect of circumstances together. In cases of an accumulation of several issues that all together would make the access to medical treatment very cumbersome for the applicant, questions of accessibility may become relevant.

The courts have emphasised that the applicant's individual situation must always be assessed as a whole. There may be factors that, individually, are not sufficient grounds for granting a residence permit, but when taken into account as a whole, the conditions for granting a permit may be met.

Economic Accessibility

Applicants in Finland often claim that the treatment in the country of origin is too expensive and that they could thus not access it once in the country of origin.

According to the preparatory works[83] for the Aliens Act, the fact that health care is expensive in a country, does not in itself constitute the basis for issuing a residence permit on a discretionary basis on humanitarian grounds. Following this understanding, the Finnish Immigration Service concludes that Sec. 52 Aliens Act does not require evaluating the costs of medical treatment and/or medication in the country of origin when applying Sec. 52 in health-related cases. Finland consequently does not research the economic accessibility to treatment/medication.

Costs may only exceptionally play a role in medical cases, specifically in cases where the accumulation of different elements would add up to circumstances in the CoO that would cause the person concerned remarkable health-related physical or mental pain.

[82] Guideline MIG-Dno-2024-396

[83] See preliminary works for the Aliens Act (HE 28/2003).

Geographic accessibility

The Finnish Immigration Service does, in principle, not investigate the geographic accessibility of treatment. Treatment and/or medication must be available in the region where the applicant comes from. Availability is usually determined in relation to capital of the country. Alternatively, the determination may be made in relation to another major city in the country if that is the applicant's place of residence. Whether the person would have access to the treatment/medication from a geographic point of view alone would not be decisive to decide on issuing a residence permits on a discretionary basis on humanitarian grounds.

Should treatment and/or medication be only available in the capital or in another major city, but not in the region of the returnee, the Immigration Service would need to take this into consideration when deciding upon residence permits on a discretionary basis on humanitarian grounds. Geographic accessibility would be reviewed if different accumulating issues came together. If such cumulative issues would make the situation of the applicant unreasonably harsh if he were to be returned to his/her country of origin, a residence permits on a discretionary basis on humanitarian grounds may be granted. Such an assessment is thus very individual.

The physical ability of the applicant to reach medical facilities may be taken into consideration if the health condition of the applicant is especially severe and travel needed to reach the facility would be long or otherwise challenging. Equally the security situation in the country of origin is taken into consideration if the travel would require passing an area of armed conflict, and the person could not, for individual reasons, move closer (in practice) to the facility where they are treated. The availability of transportation, however, is not taken into consideration in general.

Geographic accessibility per se is thus not reviewed by the Finnish Immigration Service. Usually, it would be enough if treatment/medication would be available in the capital. Geographic accessibility nevertheless may play a role if there are other factors in addition to geographic proximity which would create significant obstacles for a returnee to access necessary treatment and medication. Such circumstances may include, for example, the applicant's age or lowered functional capability due to a health reason. The continuity of necessary health care and, consequently, the frequency of travel may also be relevant in the overall assessment, taking into account the applicant's individual circumstances.

In a court case, geographical accessibility was taken into account when, according to the COI, diabetes treatment was not available in the applicant's home residence in Iraq but in Baghdad, 100 kilometres away. The court considered that the applicant was a child and that sufficient treatment would require stable conditions. Additionally, the conditions in the home region were such that it might not be possible to store the required medication for the long term. The court decided that a permit should be granted based on these factors in whole.[84] In another case where the applicant needed dialysis treatment for three times

[84] Supreme Administrative Court, 7 May 2020, case number 2018

per week and it was not available in their home residence, geographical accessibility was considered as a one factor when the court decided that a permit should be granted.[85]

Political accessibility

Political accessibility usually is already determined and taken into consideration during the refugee status determination process. Political accessibility therefore is not often relevant in medical cases of asylum applicants. According to agency's guidelines, an applicant being a member of a discriminated minority group (on based on such as ethnic background, religion, or statelessness) or gender may also, in some cases, affect the determination of accessibility of the treatment if, based on COI, access to care for those belonging to the minority group is restricted or if the applicant requires a male escort for travel.[86]

In a decision by the Supreme Administrative Court[87] an Afghan asylum applicant with a severe heart disease was treated in Finland, received a pacemaker, and needed constant control by a cardiologist and medication. According to the Court, there was basic medical care available in Afghanistan. Interestingly, the Court also stated that it was not to be expected, that the applicant would be treated any worse than other citizens by the Afghan authorities.

3. Residence permits and return

3.1. Medical claim accepted

According to section 67 of the Aliens Act, the Finnish Immigration Service is responsible to issue all permits, including the first residence permit to an alien who has entered the country without a residence permit e.g., also in cases according to sections 51 and 52.

If a disease is considered severe and medication and or treatment is not available in the country of origin, the Immigration Service issues a residence permits on a discretionary basis on humanitarian grounds.

In cases of Sec. 52 Aliens Act, the residence permit is at first valid for 1 year and may be prolonged thereafter, following a re-evaluation of the case and if the reasons are still valid.

In cases where the enforcement of return would not be possible due to health reasons, the police may postpone the enforcement of the removal.

According to Sec. 78 para 3 Aliens Act, a foreigner may work with a residence permits on a discretionary basis on humanitarian grounds. According to same section, a foreigner is entitled to work also if the issuance of the residence permit is based on section 51 of the Aliens Act.

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[85] Supreme Administrative Court, 20 December 2018, case number 6017

[86] Guidance no MIG-Dno-2024-396

[87] See decision from the Supreme Administrative Court from 6th March 2009, case number 538, accessible in Finnish at: https://www.finlex.fi/fi/oikeus/kho/lyhyet/2009/200900538 The applicant was considered not in a vulnerable position required by section 52 of the Aliens Act and thus the court decided that the refusal of issuance of a residence permit was not unreasonable and not contrary to Art. 3 of the ECHR either.

3.2. Medical claim denied

If a residence permit is not granted, the foreigner must return to the country of origin. Finland usually does not provide any further supply of medication for a potential bridging period, upon return to the country and actual access to the treatment. In case of an assisted voluntary return, there is a programme which may have some component for the supply of medication.[88]

The police are responsible for the enforcement of the return decision and thus for the assessment whether return is technically possible. Should any legal issues come up, such as the medical conditions of the returnee, the case may be re-directed to the Finnish Immigration Service. The police will not assess the medical situation in the country of origin of the returnee.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	While the "severity" of the disease is to a certain extent relevant, the disease is not necessarily to be in the final stage and does not need to be of a life-threatening nature, but the return would reduce the life expectancy of the applicant or cause significant physical or mental suffering.	Sec. 52 Aliens Act; the preparatory works to Sec. 52 Aliens Act.
Availability	It must be impossible for the foreigner to receive necessary care in the home country. Additionally, it is required, that the (quality) level of care or the availability of it in the home country would seriously harm the health of the alien (if he/she was to return there).	preparatory works for the Aliens Act Sec. 52
Accessibility	Accessibility is not reviewed. Neither the financial nor the economic or the political accessibility are of relevance. Accessibility may be only of concern, if several elements would accumulate in an individual case.	preparatory works for the Aliens Act Sec. 52 as regards the costs of treatment
Residence permit	A residence permit based on Sec. 52 Aliens Act on a discretionary basis on humanitarian grounds is issued by the Finnish Immigration Service for 1 year and may be prolonged.	Sec. 52 Aliens Act
Return	Following Sec. 51 Aliens Act, a temporary residence permit may be issued until the return can be enforced.	Sec. 51 Aliens Act

5. Sources

The report on "State practices related to medical COI: Country report Finland" was first completed in 2018. For this version, ICMPD conducted qualitative interviews with representatives of the Finnish Immigration Service in January 2017.

[88] More information on assisted voluntary return is available at: https://migri.fi/en/return

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted the relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and October 2023, the Finnish Immigration Service reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the Finnish Immigration Service also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Finland" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of the Finnish Immigration Service in March 2026 in order to ensure its validity.

6. Annex

Aliens Act (301/2004; amendments up to 389/2023 included) [89]

Section 51 (674/2015) Issue of residence permits in cases of obstacles to leaving the country

Aliens residing in Finland are issued with a temporary residence permit if:

1) they cannot be returned to their home country or country of permanent residence for temporary reasons of health; or

2) their return to their home country or country of permanent residence is not actually possible.

A residence permit is not issued under subsection 1, paragraph 2 if the alien's return is not being accomplished because he or she does not agree to return to his or her home country or country of permanent residence or is hindering the arrangements for this return.

Issuing the residence permit is not conditional on the alien having sufficient financial resources.

If aliens are issued with a residence permit under subsection 1, their family members residing abroad are not issued with a residence permit on the basis of family ties.

Section 52: Issue of residence permits on a discretionary basis on humanitarian grounds

Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on a discretionary basis on other humanitarian grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

Issuing the residence permit is not conditional on the alien having sufficient financial resources.

[89] The translation of the Aliens Act from Finnish into English by the Finnish MoI is accessible at: https://www.finlex.fi/fi/laki/kaannokset/2004/en20040301.pdf

If aliens are issued with a residence permit under subsection 1, their family members are issued with a residence permit under section 47, subsection 3.

If unaccompanied minor children who have entered Finland are issued with a residence permit under subsection 1, their minor siblings residing abroad are issued with a continuous residence permit. Issuing a residence permit requires that the children and their siblings have lived together and that their parents are no longer alive or the parents' whereabouts are unknown. A further requirement for the issue of a residence permit is that issuing the permit is in the best interest of the children. Issuing the residence permit is not conditional on the alien having sufficient financial resources.

Case Study - France

CASE STUDY - FRANCE **84**

LIST OF ABBREVIATIONS **84**

1. MEDICAL CLAIMS IN MIGRATION CASES IN FRANCE 85
   - *1.1. Legal Basis* *85*
   - *1.2. Organisational Structure/ Responsibilities* *86*
   - *1.3. Procedure in medical migration cases* *87*
   - *1.4. The procedure of researching medical country of origin information* *88*
   - *1.5. Statistics* *88*
2. NATIONAL POLICY 89
   - *2.1 Medical severity of a person's health condition* *89*
   - *2.2 Availability of medical treatment/ medication in countries of origin* *90*
   - *2.3 Accessibility of medical treatment/ medication in countries of origin* *90*
3. RESIDENCE PERMITS AND RETURN 91
   - *3.1 Medical claim accepted* *91*
   - *3.2 Medical claim denied* *92*
4. SUMMARY 92
5. SOURCES 93
6. ANNEX 93

List of abbreviations

ACC	Individual Accessibility
AVA	Availability
CESEDA	Code de l'entrée et du séjour des étrangers et du droit d'asile [Code on the Entry and Residence of Foreigners and the Right of Asylum]
COI	Country of Origin Information
EML	Essential Medicine List
EUAA	European Union Asylum Agency
OFII	Office Français de l'Immigration et de l'Intégration [French Office for Immigration and Integration]
OQTF	Obligation de Quitter le Territoire Français [Obligation to leave French territory]
MedCOI	Medical Country of Origin Information

1. Medical claims in migration cases in France

1.1. Legal Basis

In France, the process of medical claims in migration cases is defined in Article L.425-9[90] of the Code on the Entry and Residence of Foreigners and the Right of Asylum (CESEDA). According to this article, a foreign resident in France who requires medical treatment that is necessary to avoid exceptionally serious consequences, and who would not receive the appropriate care if repatriated due to the healthcare system in their home country, may be granted a temporary residence permit for up to 48 months, depending on the predictive duration of the care. Article L.425-9 further states that the decision on the permit is taken by the administrative authority after consulting a College of 3 doctors from the medical services of the French Office for Immigration and Integration (OFII), under conditions specified by a decree of the Council of State. [91] The OFII doctors may request necessary medical information from health professionals they follow their own professional opinion, and the decision may be supported by guidelines set by the Ministry of Health. If the College concludes that the above-mentioned conditions have been met, the administrative authority can only deny the residence permit through a specially reasoned decision. The final decision lies with the 'préfet,' representing the state and the administrative matters in each of the 101 departments, who can grant or deny the residence permit on grounds other than medical ones. Two legal decrees, on the need for consent by patients and the consequences of disease, were added later to the law, one outlining the rules for sharing medical information, and another setting possible guidelines for the doctors evaluating the medical cases of foreign patients - however every OFII doctor evaluates each case according to their experience and self-guidance.

The practice of processing medical claims in migration cases dates back to 1997, when triple combination therapies – effective treatments for HIV-positive patients – were introduced in France. Since this treatment was unavailable in some countries of origin, French officials began issuing permits to third country nationals on humanitarian grounds, for diseases that met the severity threshold and lacked accessible treatment in the country of origin. In 2017, the policy was reformed due to an exponential increase in the number of foreign patients seeking medical permits, together with incidents of fraud such as the submission of fake medical certificates. Consequently, the entire medical process was placed under the

[90] Article L425-9 - Code of Entry and Residence of Foreigners and the Right of Asylum - Légifrance (legifrance.gouv.fr). See inofficial translation in Annex 1.

[91] Code de l'entrée et du séjour des étrangers et du droit d'asile R4.25 §11 and following
Art. 4. – The exceptionally serious consequences resulting from a failure to provide medical care, as mentioned in Article L.313-11 (11o) of the CESEDA, are assessed on the basis of the following three criteria: degree of severity (threatening the vital prognosis of the person concerned or deterioration of one of their important functions), probability, and presumed timeframe for the occurrence of these consequences. This condition of exceptionally serious consequences resulting from a lack of care must be considered as fulfilled whenever the health condition of the foreign national concerned presents, in the absence of the medical care that his/her health condition requires, a high probability within a time horizon that cannot be too far from now of occurrence of a life-threatening prognosis, or a serious harm on his physical integrity, or of a significant alteration of an important function. When the consequences of exceptional severity are likely to occur only in the medium term with a high probability (chronic progressive pathologies), the exceptional severity is assessed by examining the consequences on the health condition of the person concerned of the interruption of the treatment from which s/he is currently receiving in France (breakdown in the continuity of care). This assessment is carried out taking into account the care from which the person may benefit in his/her country of origin.

authority of the OFII and the Ministry of the Interior. Additionally, specific training for OFII doctors was significantly enhanced. New procedural methodologies were implemented, involving four doctors in the medical evaluation of each patient instead of just one.

1.2. Organisational Structure/ Responsibilities

In France, medical country of origin (MedCOI) research falls under OFII, supervised by the Ministry of Interior. In total, large number of doctors and some lawyers engage in MedCOI research and policy. Additionally, since 2022, litigation officers are also being trained to use the EUAA's MedCOI service. OFII doctors are responsible for evaluating the health conditions of approximately 25 000 individuals every year.

The OFII's information-gathering process is formalised in national policy. The key stages of data collection and assessment are as follows:

- **Standardised template:** To gather the medical information of the applicant, a **standardised template** has been developed to document their medical history, diagnosis and required treatment, amongst other information. The template needs to be accessed and downloaded by the applicant through the internet.
- **Treating physician's input:** The treating physician(s) fill out the standardised template containing the applicant's medical information. While the template is usually completed by the treating physician(s), the OFII may also accept that other physicians do so, if it is linked to the clinical case. Once completed, the template is sent to OFII's medical staff.
- **Written consent:** The applicant must give their **written consent** for the exchange of medical information between their treating physician(s) and the OFII medical staff.
- **Verification and summary:**
  - The OFII medical staff checks whether the medical file is complete, and requests any missing information from the treating physician if necessary. If no additional written materials have been received within certain period of time, the applicants file is processed without these additional materials.
  - A **summary** of the gathered information is prepared by **one OFII doctor**.
- **Review by a college of doctors**
  - The **College of three doctors** reviews the facts of the case.
  - The college evaluates whether the **severity threshold for decision making** has been met, and if so, **assesses the treatment options** in the country of origin.
- **Two-step evaluation of the medical information:**
  1. **Severity check:** if the severity threshold is **not met**, an **unfavourable advice** is issued.
  2. **Availability and Accessibility review:** If the severity threshold has been met, the college of doctors examine the availability and accessibility of treatment and medication in the applicant's country of origin.
     - If adequate treatment is available and accessible, an unfavourable advice is issued.
     - If adequate treatment is not available and/or accessible, a favourable advice is issued.
- **Forecast:** If the advice is **favourable,** a forecast of the predicted period of care (up to 48 months) is attached to the advice.

A decision, issued on the 28 July 2022 by the Council of State n° 441481, states that if the applicant intends to contest the opinion of OFII doctors in court, only the applicant has the right to lift the confidentiality of

their medical information. By doing so, the administrative judge can consider all relevant medical information and evidence during the legal proceedings.[92]

Generally, MedCOI files are given great importance. Initially, OFII provided courts with MedCOI references only, but following court judgments that stated that this was not sufficient and transparent enough, OFII started to deliver some extracts of MedCOI along with the relevant MedCOI references.

1.3. Procedure in medical migration cases

Generally, all asylum applicants entering France are entitled to free medical assistance in the designated reception centres within 3 months following the registration of the applicant. Free medical assistance is possible immediately after registration of children and pregnant women.

National protection

Third country nationals in the national protection or humanitarian protection procedures, as well as individuals in an irregular situation, can apply to the '*Étranger malade*' ('sick foreigner') procedure. The applicant asks a doctor of their choice to provide a medical certificate, which the OFII then reviews, taking the severity threshold into account. Only if the severity of the disease is confirmed, the availability and accessibility of treatment and medication in the applicant's country of origin will be assessed. If the OFII doctors conclude that the applicant should remain in France to receive care, they also provide an indication on the length of the expected duration of care. The OFII medical advice is then forwarded to the relevant administrative authority, who decides whether to grant a humanitarian protection status.

Medical claims in return procedures

When a third-country national no longer has the right to stay in France, they receive an order to leave by the administrative authority (Obligation de Quitter le Territoire Français – OQTF. In that case of OQTF, the applicant may file a request based on their medical condition to avoid return to country of origin; that request is named DPCE (for Demande de Protection Contre l'Eloignement). A seriously ill applicant may subsequently request to delay being returned due to their medical condition. In this case, the French authorities follow European guidelines outlined in the Return Directive (2008/115/EC).

Medical visa to seek medical treatment in France

Furthermore, France also has a pathway for foreign nationals suffering from a disease that cannot be treated in their country of origin. They may apply for the so-called 'medical visa,' allowing them to migrate to France for treatment. A foreign national intending to travel to France for medical treatment must obtain a cost estimate from a French hospital. In this procedure, the French authorities particularly review whether the applicant has sufficient income or resource before leaving their country of origin. However, the evaluation of medical visas does not involve an assessment by OFII doctors or the use of MedCOI.

Since August 2022, OFII processed a total of 2,119 medical migration litigations in France, of which only 792 have been adjudicated by a court. 139 of these 792 decisions were overturned by cancelling the OFII

[92] Conseil d'État, decision no. 441481, 28 July 2022, https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-07-28/441481.

medical advice. This is only a small part of the litigation activity, as OFII it not aware of all disputes being handed to a court of justice.

1.4. The procedure of researching medical country of origin information

Different sources of medical country of origin information research follows the so-called 'broker system' advised by the EUAA MedCOI Sector and is conducted when a patient's condition meets the severity threshold. The severity threshold was defined by the national authorities in 2017 in the CESEDA Act, L. 313-11 (11°), art. 4 as being met when, in the absence of appropriate treatment, the medical condition becomes, without a long delay and with a high probability, life threatening, has a significant impact on the patients physical integrity, or impairs one of the major organs.[93] Typically, the decision on medical migration cases is made based on research on treatment and medication.

Only when a medical situation meets the severity threshold, the availability and accessibility of medication and/or treatment are researched. Approximately 85% of medical advice is based on MedCOI research already in the database; requests are only sent to the EUAA if such information is not found.

1.5. Statistics

Data on medical procedures in France is being recorded both separately and under the respective protection procedure and status. Moreover, since 2017 the OFII has issued an annual and well-documented report on medical stay permits for the French Members of Parliament.

Table 1: The overall number of medical claims per year [94]

2019	2020	2021	2022	2023	Total
29,406	25,987	27,702	24,183	24,858	132,136

Table 2: The Number of individual availability (AVA) and individual accessibility (ACC) responses to requests by EUAA MedCOI to France per year [95]

	AVA	ACC
2021	2	-
2022	23	2
2023	37	2
2024	12	1

There is a disparity between the number of availability requests and number of accessibility requests. The disparity is caused by several factors, for instance, because requests for accessibility are only processed by

[93] Code de l'entrée et du séjour des étrangers et du droit d'asile - Article L313-11 (abrogé), https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037398329/2021-10-27

[94] From 1997 France enables all foreign citizens (including those entering/remaining in the country without a valid visa) to apply for a medical claim : that can explain why the numbers of medical claims on a yearly basis are important in the country.

[95] Data provided by EUAA MedCOI Europa Service.

MedCOI once the availability has already been released on the same topic. Furthermore, the legal definition of accessibility in France refers mainly to the financial aspects of accessibility – meaning the cost of the treatment itself, alongside out-of-pocket costs. MedCOI data that is already published is often detailed enough to assess the financial accessibility of medication and treatment without the need for a request to be sent.[96]

2. National Policy

2.1 Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

Only in cases where a condition meets the severity threshold is MedCOI research conducted by the OFII doctors. For instance, since schizophrenia in its acute phase meets the severity threshold, the availability and accessibility would be researched. However, if – for example – the schizophrenia is stabilised, it depends on whether or not the applicant has already been hospitalised for it. If yes, the severity threshold is met and medical COI research on availability and accessibility will be conducted by OFII doctors. If the applicant has not been hospitalised, on the other hand, the severity threshold is not met.

2.1.2. Severity threshold for decision-making

The severity threshold for decision making is defined by national authorities in the CESEDA Act L.313-11 (11°). As stated above, Art. 4. defines the severity threshold. It is met when, in the **absence of an appropriate treatment the disease becomes, within a not too long period of time and with a high probability, life-threatening or is impairing on the major functional organs of the patient or has a significant impact on the patient's physical integrity.**[97]

2.1.3. Medical threshold cases

In certain medical threshold cases, due to exceptional circumstances, there is the possibility to grant humanitarian status without conducting MedCOI research prior, due to the applicant's extremely severe medical condition. In some of these medical threshold cases, the patients may no longer be prescribed any ongoing treatment that could be researched.

[96] For example, if a MedCOI report states the there is a social scheme covering 100% of a treatment for the most vulnerable people in a country of origin, the OFII can document the accessibility of all medical situations in that country.

[97] Code de l'entrée et du séjour des étrangers et du droit d'asile - Article L313-11 (abrogé), https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037398329/2021-10-27

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

In France, medication that is officially registered in the country of origin, such as in the Essential Medicine List (EML), the MedCOI database and other reliable sources can be considered available. Determining the reliability of a source is at the discretion of the OFII doctor.[98]

Medication that can be solely obtained through unofficial channels, such as the black market or through an illegal internet pharmacy, is not considered available. The quality of treatment in the country of origin is not taken into account. Furthermore, if pharmacies may need a certain time to re-supply the medication, it is nevertheless considered available in the country of origin, provided that the resupply time is deemed 'normal' — for example, if it aligns with typical restocking times observed in France.

2.2.2. Availability in practice

The decision on availability of a treatment is made by the College of doctors, based on information obtained through the EUAA MedCOI, the EML, or through other reliable medical information[99]. In this practice the French authorities refer to regulations applying at the EU level, such as the European Medicine Agency.

Furthermore, OFII doctors consider other circumstances. This includes when the same medication comes in several formulations would be considered available, when a different dosage can be obtained by breaking up a tablet (for instance, if a 50mg posology is not available, but that dosage can be obtained by break an available 100mg tablet in half and there is scientific proof that the break would not alter the efficiency of the medication), or when an alternative medication for the same indication or an alternative treatment can be replaced with the one prescribed.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

Treatment or medication is considered accessible if it is covered or nearly fully covered under the national health scheme in the country of origin, if the national health insurance fully or nearly fully covers care to the patient, or if an NGO delivers care or medication. Also out-of-pocket expenses for care or medication has to be low or affordable.

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[98] OFII doctors may consider, among others, the following list of sources: http://www.who.int/mediacentre/factsheets/fs323/fr/; http://www.ilo.org/global/research/global-reports/world-social-security-report/2014/lang--fr/index.htm;

[99] Reports issued by entities such as: ILT (International Labour Organization); UNICEF; UNDP; World Bank; OECD; IOM; IGA & IGAS (French Administrative National Audit entities on Administration & Social Affairs); Vidal Afrique & Algérie (VIDAL Dictionaries on Medications in Africa & Algeria); IRRICO (Information on Return and Reintegration in Countries of Origin); RIF (Return Information Fund); MedCOI (Medical Country of Origin Information).

2.3.2. Accessibility in practice

Economic Accessibility

Economic accessibility considers the average cost of medication or treatment and social protection scheme in the country of origin, while it does not consider the unemployment rate and the possibilities for generating income. The financial situation and the family circumstances of the individual are also not taken into account, given that the college of doctors do not have access to the applicant's financial details. The financial situation may, nevertheless, be considered at a later stage of the process (by the préfet), and thus still influence the final decision.

Geographic accessibility

French law does not state that geographic accessibility must be considered in the MedCOI research. Nevertheless, the question of geographic accessibility is often discussed in French courts with some applicants arguing that their city or region of origin is far from the place where the treatment would be available. However, this argument is currently rejected by legal practice on two grounds. First, it is not possible to prejudge where the applicant would live if they were returned to their country of origin. Second, the applicant is not compelled to live in the same place they lived before leaving the country. OFII also notes that it is not unusual for patients with rare diseases to need to relocate to a place that offers the specific treatment required, regardless of where they reside as that practice is observed in similar situations in France, as well.

Political accessibility

When examining the accessibility of a treatment or medication, political accessibility needs to be reviewed by the OFII doctors. In principle, potential discrimination against an applicant is considered in every aspect that may affect their access to healthcare in their country of origin. For instance, if a homosexual patient received an expulsion order to Brazil during Bolsonaro's presidency, the OFII doctors would examine whether the applicant might face discrimination in the healthcare system and could even be refused treatment due to the stigmatisation of the LGBT community at the time. When evaluating the political accessibility of the applicant, French practice requires that both access to medical facilities and to public health insurance are assessed.

3. Residence permits and return

3.1. Medical claim accepted

Once the medical claim is accepted and a positive decision is taken by the Préfet, the Ministry of Interior grants the applicant a temporary permit. The duration of validity of all temporary permits granted on medical grounds is linked to how long the care is expected to take and may be up to 48 months. Before or once the time period of the temporary residence has elapsed, the applicant can file a new request to prolong the stay in France on the basis on medical grounds, thus undergoing the same procedure again. Then that subsequent application will follow the same evaluation path than the one applied on the first request. Reason is it is considered that every request, initial or renewal, must be evaluated as a new one (medical status may have changed in-between).

3.2. Medical claim denied

The decision to deny a medical claim is based mainly on the medical advice given by the OFII doctors. Other considerations, such as the financial situation of the applicant or whether the applicant exhibits any behavioural disturbances that threaten public safety, are also made.

After receiving a final negative decision, the applicant receives an 'OQTF' – an administrative order encouraging the applicant to leave the French territory.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	"The severity threshold is met when in the absence of an appropriate treatment the disease becomes, within a not too long period of time and with a high probability, life-threatening or is impairing on the major functional organs of the patient or has a significant impact on the patient's physical integrity".	CESEDA Act L.313-11 (11°), art. 4, unofficial translation
Availability	Medication that is officially registered in the country of origin or confirmed available in the CoO by a reliable source. Furthermore, if the same medication exists in several formulations and one of them is available, or if a different dosage is available and can be used to achieve the necessary dosage. Also, an alternative treatment or medication that can replace the prescribed care can be considered available.	No legal definition
Accessibility	A medication or treatment is considered accessible if covered or almost fully covered under the national health scheme, if the health insurance allows free or almost free care, if an NGO programme delivers free treatment or medication, or if the out-of-pocket money for care is considered low/affordable, taking into account socio-economic factors in the country or origin.	No legal definition
Residence permit	If the applicant receives a positive decision, the Ministry of Interior grants a temporary residence permit. All temporary permits on medical grounds are connected with a forecast time period for the care, which can be up to 48 months. When the permit expires the applicant may submit a new application.	CESEDA Art. L425-9
Return	Once the Ministry of Interior issues a final negative decision, the applicant receives an administrative decision to leave French territory. Usually, the hospital provides the applicant with treatment for one month before returning. The applicant may also receive guidance, for instance, in contacting medical services in the country of origin for follow ups. A return order usually comes with an allowance, and in specific cases, a medical allowance is additionally granted for a limited amount of time. Additionally, for	

	special cases there are specific medical return programmes in which return to the CoO is state-organised.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The French case study is based on the questionnaire filled in by representatives of the French Immigration and Integration Office (OFII) in June and July 2024.

Finally, the case study has been reviewed and updated by representatives of the French Immigration and Integration Office in April 2026 in order to ensure its validity.

6. Annex

Annex 1

Legislative part (Articles L110-1 to L837-4)

Book IV: STAY IN FRANCE (Articles L410-1 to L446-5)

Title II: CATEGORIES OF RESIDENCE PERMITS (Articles L420-1 to L426-23)

Article L420-1

Chapter V: RESIDENCE PERMITS ON HUMANITARIAN GROUNDS (Articles L425-1 to L425-10)

Section 3: Foreign Nationals whose state of health requires medical care (Articles L425-9 to L425-10)

A foreigner, habitually resident in France, whose state of health requires medical care, the failure to do so could have exceptionally serious consequences for him or her, and who, having regard to the provision of care and the characteristics of the health system in the country of origin, would not be able to effectively benefit from appropriate treatment there, is issued with a temporary residence permit bearing the mention "private and family life" for a period of one year. The condition provided for in Article L. 412-1 is not enforceable.

The decision to issue this residence permit is taken by the administrative authority after consulting a college of doctors from the medical service of the French Office for Immigration and Integration, under conditions defined by decree of the Council of State.

Subject to the agreement of the foreign national and in compliance with the rules of medical ethics, the doctors of the Office may request the medical information necessary for the accomplishment of this mission from the health professionals who have it. The doctors of the office conduct this mission in accordance with the general guidelines set by the Minister for Health.

If the College of 3 Physicians considers in its opinion that the above-mentioned conditions are met, the administrative authority may refuse to issue the residence permit only by a specially reasoned decision.

Each year, a report shall present to Parliament the activity conducted under this Article by the medical service of the Office as well as the general public health data collected in this context.

Case Study - Germany

CASE STUDY - GERMANY 95

1. MEDICAL CLAIMS IN MIGRATION CASES IN GERMANY 96
   - *1.1. Legal Basis 96*
   - *1.2. Organisational Structure/ Responsibilities 97*
   - *1.3. Procedure in medical migration cases 99*
   - *1.4. The procedure of researching medical country of origin information 101*
   - *1.5. Statistics 102*
2. NATIONAL POLICY 103
   - *2.1. Threshold for considering a migrant's health condition 103*
   - *2.2. Availability of medical treatment/ medication in countries of origin 104*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 106*
3. RESIDENCE AND RETURN 110
   - *3.1. Medical claim accepted 110*
   - *3.2. Medical claim denied 110*
4. SUMMARY 111
5. SOURCES 113

List of abbreviations

BVerwG	Bundesverwaltungsgericht [Federal Administrative Court]
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
ECHR	European Convention of Human Rights
IOM	International Organisation for Migration
IZAM	Informationszentrum Asyl und Migration [Information Centre Asylum and Migration]
MedCOI	Medical Country of Origin Information
PTSD	Post-traumatic stress disorder
VG	Verwaltungsgericht [Administrative Court]
VwGO	Verwaltungsgerichtsordnung [Administrative Court Regulation]

1. Medical claims in migration cases in Germany

1.1. Legal Basis

In Germany the main legal basis applicable to migration cases with a medical element derives from Sec 60 Law on Residence, Employment and Integration of Foreigners in the Federal Territory (Residence Act).[100] Sec 60 Residence Act lays down the conditions in the country of return under which a foreign national cannot be removed from Germany (impediment to removal).

The main provision in Sec 60 Residence Act that potentially refers to the impediment to return in cases of medical issues brought forward by a foreigner in migration procedures is:

Sec 60 para 7 1st sentence Residence Act provides that: "A foreigner should not be removed to another state in which this foreigner faces a substantial concrete danger to his or her life and limb or liberty."[101]

Germany applies the 'national impediment to return' in migration cases with medical elements and does not directly refer to Art. 3 ECHR in such cases. The impediment to return according to Sec 60/7 Residence Law is developed as a national ban on deportation (Sec 60/7 in combination with Sec 25/3 Residence Act).

Germany applies a lower threshold to impede return than the one developed by the European Court of Human Rights since the judgment of D vs UK. However, subsequent changes lifted the threshold significantly. As a consequence of rising asylum applications in 2015, amendments to the Asylum and the Residence Act from 11.03.2016 aimed at accelerating the asylum procedure and to limit the reasons for impeding returns. The amendment particularly raised the threshold for interpretation of "a substantial concrete danger" related to health reasons as stipulated in Sec 60/7 first sentence. It determines that such a substantial concrete danger

[…] on health reasons shall only exist in the case of life-threatening or serious illness which would significantly worsen upon the return is being conducted.

Thus, and as further explained below, for the German practice it is no longer enough that there would exist "*the danger of a significant or even life-threatening deterioration of health*"[102] but the person must suffer from a *life-threatening or serious illness* which itself *would significantly worsen upon the return being carried out.*

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[100] Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG). For the German version, please refer to Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p. 162), last amended by Article 10 of the Act of 30 October 2017 (Federal Law Gazette I p. 3618), **https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html#BJNR195010004BJNG000101310**, for the latest version in English including the amendment(s) to the Act by Article 1 of the Act of 11.3.2016 (Federal Law Gazette I p. 394), please refer to **https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0891**, accessed 12 March 2018

[101] Art 60 (7) Residence Act reads: „Von der Abschiebung eines Ausländers in einen anderen Staat soll abgesehen werden, wenn dort für diesen Ausländer eine erhebliche konkrete Gefahr für Leib, Leben oder Freiheit besteht."

[102] This was the situation before the amendment from 11.03.2016 as also outlined in the Comparative Research on the **State Practices on the Accessibility of Medical Treatment and/or Medication in Countries of Origin** February 2015.

1.2. Organisational Structure/ Responsibilities

Migration cases with a medical element are dealt with by two organisations, the German Federal Office for Migration and Refugees[103] and the Foreigners Office,[104] which is responsible for the return of migrants and operates at the state level. Both entities are responsible for the implementation of the respective provisions under the Residence Act and are thus determining whether there would be any obstacles to the return of a foreigner. However, the portfolio of these two entities differs with respect to the facts that each of them needs to determine:

- The Federal Office for Migration and Refugees needs to determine whether there are any obstacles to return a foreigner which lie in the country of origin of the returnee. The determination is thus future-oriented, looking into obstacles that the returnee would face if returned to his/her country of origin. After a recent European Court of Justice (CHEU) ruling, the Federal Office is now also responsible for examining domestic obstacles to deportation during the ongoing asylum procedure.[105]
- The Foreigners Office, however, needs to determine whether there are any obstacles to the return of a foreigner because of the "now and here," e.g. the returnee is not fit to fly or has developed strong family ties in Germany.

Thus, the main entity responsible for migration cases involving medical background, and of interest for this study, is the Federal Office for Migration and Refugees. Only this governmental organisation looks whether a foreigner could receive the necessary medical treatment in the country of origin upon return thereto.

Should an irregularly staying migrant be apprehended and does not claim international protection, the Foreigners Office needs to involve the Federal Office for Migration and Refugees to determine whether there are any obstacles related to Sec 60/5 and 60/7 Residence Act for the return of a foreigner in the country of origin (e.g. insufficient medical treatment in the country of origin causes an individual danger to the health of the migrant).

Within the Federal Office for Migration and Refugees, a specialised unit for medical cases supports decision-makers during the decision-making process. This unit provides advice on how to handle medical cases according to the German jurisprudence of the Federal Administrative High Court and conducts

[103] Bundesamt für Migration und Flüchtlinge. The Federal Office for Migration and Refugees is mainly responsible for granting and denying international protection as well as granting and denying the impediment to return. Besides, the BAMF holds additional portfolios such as the integration of foreigners or information on return programs. See: http://www.bamf.de/DE/Startseite/startseite-node.html.

[104] Ausländerbehörde. The Foreigner's Office is responsible for the implementation of the Residence Act and thus, issues or denies stay and residence permissions and executes the return of foreigners without a legal right to stay in Germany. Apart from other tasks, the Foreigners Office also decides on the exceptional leave to remain ("Duldung").

[105] It follows from Art. 5 of the Return Directive that the state of health of third-country nationals must be duly considered when issuing a return decision. In Case C-484/22 from February 15th, 2023, the CJEU specified that the best interests of the child referred to in Art. 5 must be duly considered when issuing a return decision. Based on this case law, the Federal Office is of the opinion that the CJEU's ruling also concerns family matters and health risks, meaning that the Federal Office is now also responsible for examining domestic obstacles to deportation during the ongoing asylum procedure.

research in cooperation with the COI experts from the Information Centre Asylum and Migration (IZAM).[106] This unit uses specialised databases, such as the EUAA MedCOI database, to determine whether medical treatment and/or medication would be available and accessible in the country of origin for the person concerned. This competence is vested in the Division for Policy on the Asylum Procedure. The division is responsible to maintain (among many other tasks) an overview of the leading case-law in medical cases, provide advice to the decision-makers on certain policy relevant issues or to provide information on the minimum pre-conditions for medical attestations. IZAM currently engages 10 medical COI researchers, who are trained in using the MedCOI database. They provide support to the decision-makers in cases where they are unable to find the relevant medical COI on their own.

Litigation officers at courts, who might require additional medical COI, contact the COI unit for support who then send requests to EUAA on their behalf.

With the introduction of Sec 60a/2c Residence Act, the German legislator also put into law the till then followed respective case law from the German BVerwG.[107] Usually, the applicant is handing over the medical information by him/herself to the decision maker or is submitting them during the application procedure. There is no standardised template provided by the Federal Office; the required content is dependent on the specific issues of the individual case. However, the applicant receives an information sheet from the Federal Office to hand over to the treating doctor, which provides detailed information on the legal requirements for certificates. Data protection regulations must be complied while managing medical documentations; all involved parties, e. g. decision makers or interpreters, are bound by confidentiality.

The certificate must be issued by a person with the title 'doctor' which may only be used by a person who approves or is authorized to practice the medical profession in accordance with para. 2(2), 2(3) or 2(4) of the Federal Medical Practitioners Act.[108]

The new Sec 60a/2d additionally determines that the medical certificate shall be submitted to the competent authority *immediately.*

In addition, the Federal Office for Migration and Refugees makes use of embassies abroad to receive information on the medical situation in countries of origin of to be returned migrants and denied asylum seekers.

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[106] Publications of IZAM related to medical COI are available here: https://www.bamf.de/EN/Behoerde/Informationszentrum/informationszentrum-node.html

[107] See BVerwG 10 C 8.07 from 11. September 2007: The Federal Administrative Court in Germany additionally clarified the requirements for an attest. From a medical attestation it therefore *"(…) must be comprehensibly understandable, on what basis the medical specialist formulated the diagnosis and how the disease develops in the particular case. This encompasses information about how long and how often the patient has been receiving medical treatment and whether the applicant's complaints are confirmed by the medical specialist's findings. Furthermore, the attest should provide information on the severity of the disease, the treatment required as well as the previous course of treatment (medication and therapy)*.

[108] In the version promulgated on 16 April 1987 (Federal Law Gazette I p. 1218), last amended by Article 5 of the Act of 23 December 2016 (Federal Law Gazette I p. 3191), only available in German, http://www.gesetze-im-internet.de/b_o/BJNR018570961.html

1.3. Procedure in medical migration cases

In Germany, there is no medical migration procedure as such. Nevertheless, an alien may apply for a residence permit based on medical reasons either in the framework of the asylum procedure or during a residence procedure. Medical reasons are mainly brought forward if a denied asylum seeker or an apprehended irregular migrant suffer from a disease which would worsen in case of return to his/ her country of origin. A national ban, of deportation under Sec 60 para 7/1 of the German Residence Act thus may apply if the foreigner claims that a return to the country of origin is impossible for health reasons. However, it is also possible to file an isolated application for the examination of national ban of deportation pursuant to section 60 (5) and (7) of the Residence Act. In this context, medical concerns are also examined. This isolated application can either be submitted to the Federal Office for Migration and Refugees or to the foreigners' offices (*Ausländerbehörden*). The latter is always the case if no asylum procedure has been pursued or is to be pursued.

Assessment

To determine whether Sec 60 para 7/1 Residence Act is applicable, the responsible authority needs to assess the following:

a. Preliminary Question:

As a preliminary question the decision-maker needs to assess:

> "Whether a disease of an asylum seeker or foreigner has been reasonably demonstrated."

The asylum seeker thus has to 'reasonably demonstrate' the disease to the decision-maker. This is regularly done by presenting an attest from a medical doctor. Before the latest amendments to the Residence Act the requirement for such a substantiation arose from the obligation of the applicant to cooperate in the investigation of the facts, which is especially true for circumstances that fall within the sphere of the applicant (Sec 15 para 1 sentence 1 AsylG). The amendments from 11 March 2016 put this obligation further into law by introducing two separate and new paragraphs (Sec 60a/ 2c and 2d).

Sec 60a/ 2c first and foremost introduced the general legal presumption that generally health grounds do not preclude the removal of third country national (irregular migrant or denied asylum seeker).[109] This legal presumption, however, can be challenged by the third country national based on a substantiated medical claim which reasonably demonstrates the disease. The legislator defines the requirements for a substantiated medical claim, which shall be based on "*qualified medical certificate*"*:*

"It is assumed that the deportation is not precluded on health grounds. The foreigner must provide credible evidence of an illness which might interfere with deportation by submitting a qualified medical certificate. As a rule, this medical certificate is to document in particular the factual circumstances on which the professional assessment was based, the method of establishing the facts, the specialist medical assessment of the illness (diagnosis), the severity of the illness, its Latin name or classification according to ICD 10 and the medical assessment of the probable consequences of the situation resulting from the

[109] See Sec 60a/ 2c first sentence Residence Act.

illness. Medications needed to treat the illness must be listed along with their active ingredients under the names used in international practice."[110]

"If the foreigner fails to submit such a medical certificate immediately, the competent authority need not take into account the foreigner's submissions regarding his or her illness, unless the foreigner was prevented, through no fault of his or her own, from obtaining such a certificate or there is other factual evidence for the existence of a life-threatening or serious illness which would be significantly worsened by deportation".[111]

Once the applicant reasonably demonstrated the disease, the decision-maker needs to assess the main facts of the attestation.[112]

b. Questions in fact

The justification for a prohibition of return for health reasons is subject to the condition that a:

> "[..] life-threatening or serious illness […] would significantly worsen upon the return being carried out."[113]

The different elements contained in the determination for the threshold for considering a migrant's health condition with respect to an impediment to return, may be defined as follows:

- The risk must always be a personal threat to the individual returnee, even if the respective disease is very common in the country of origin. It must exceed the level of danger for the population at large.
- "Immediately" after returning to the country of origin: If the risk will not manifest itself within a foreseeable period, it cannot be considered as "immediately".
- As a prognosis for the to be expected occurrence of an imminent danger the federal court uses the scale of a considerable probability. The danger must be expected by the foreigner with a high probability.[114]
- "After returning to the country of origin": The health risk must exist after the applicant's return to the country of origin. Health-related risks arising as a consequence of, or in connection with the removal, that are unrelated to the specific conditions in the country the applicant is to be returned to (i.e. the barriers to return lie in the host country, Germany, and not in the country of origin of the foreigner concerned) fall under the competence of the Foreigners Office.

c. Exclusion criteria

Finally, after having assessed that the applicant suffers from a life threatening or serious illness which would significantly worsen in case of his/her removal the decision-maker needs to assess whether there

[110] See Sec 60a/ 2c Residence Act.

[111] See Sec 60a/2d.

[112] Ibid.

[113] Sec 60/7 2nd sentence Residence Act.

[114] Upper Administrative Court Lüneburg Beschluss from 19.08.2016; 8 ME 87/16 with further references to case law.

are any reasons for excluding the impediment to return according to Sec 60 para 7/1 Residence Act. An applicant can be returned if she/ he could receive medical treatment/ medication in the country of origin.

The impediment to return may thus be excluded and the applicant could be returned if

> "It is reasonably determined that a therapy is available and accessible in the country of origin, which is sufficiently effective to prevent a worsening of the disease upon the return being carried out."

Further, the Court[115] also determined that the worsening of the life threatening or serious disease must happen after return because of the lack of medical treatment. A life threatening or serious disease which is not expected to worsen within a span of 2 years, however, is not anymore considered as a serious danger to health that could potentially justify an impediment to return according to Art 60/7 residence Act.

For further information on the "availability" and "accessibility" see below under point 4 and 5.

Decision making

In order to come to a decision, the decision-maker needs to assess different aspects of the necessary and available treatment by answering the following questions:

- The legal aspect: what treatment standards and expected treatment success are required?
- The medical aspect: what treatment is required, and
- The country-of-origin information aspect: what resources to respond to the medical treatment needs are available and accessible in the country of origin of the applicant?

1.4. The procedure of researching medical country of origin information

In Germany, the court decides according to its free conviction based on the overall outcome of the proceedings (cf. Section 108 (1) VwGO). This means that the court is obliged to form a conviction as to whether or not certain facts or events that are significant according to the overall result correspond to the truth. It has the task of forming its conviction about the facts relevant to the decision in accordance with Section 86 (1) VwGO by means of a free assessment of the facts and evidence, weighing up various possibilities. For this purpose, the court may use various types of evidence. Information from medical COI can be included in the court's assessment of evidence. The court in a variety of cases is quoting medical country of origin information (MedCOI) provided by the MedCOI sector of the EUAA.[116]

[115] See Upper Administrative Court Lueneburg 8 ME 87/16; Beschluss vom 19.08.2016: "[…] a significant specific health risk exists only in the case of life-threatening or serious illnesses, which would be significantly worsened by the removal. Necessary, but also sufficient for the existence of the requirements of § 60 (7) sentence 1 AufenthG according to which the existing illness of the foreigner aggravates due to circumstances in the country of return in a way, which leads to a substantial and concrete danger for body or life, which means that a substantial aggravation of the illness threatens soon after the return of the foreigner."

[116] As examples where MedCOI is quoted once or several times, see: Saxon Higher Administrative Court from 2.08.2023, 6 A 9/18.A on treatment of COPD, cancer and depression in the Russian Federation; Administrative Court of Regensburg from 5.12.2022, RO 13 K 20.30837 on treatment of COPD in Iraq; Administrative Court of Sigmaringen from 3.08.2021, A 8 K 1082/19 on the necessary medication for the treatment of paranoid schizophrenia in Guinea.

A decision with medical COI research solely based on medication is possible in cases where it is already known that adequate treatment is available in the respective country of origin, but it is unknown if the specific medication (or a suitable substitute) is licensed and available and/or financially feasible.

1.5. Statistics

The Federal Office for Migration and Refugees does not register medical cases in a separate way. The statistics provide only information on decisions as regards to the impediment to return according to Sec 60/7 Residence Act, which covers different grounds of impediments to return. Medical reasons are just one of them. However, data are not collected per ground for impediment to return separately and thus, there is no data accessible on medical grounds.

Decision makers make use of a wide range of sources to decide on cases with a medical element. The list of sources encompasses among others,

- Information from the Federal Foreign Office of Germany,
- Situation reports from the Federal Foreign Office of Germany,
- Situation reports/country reports from the asylum authorities or foreign ministries of other European states,
- EUAA MedCOI information and MedCOI country reports,
- Databases on registered medication in individual countries of origin,
- German court rulings in comparable proceedings,
- ZIRF information,
- IOM country reports,
- Websites of the health authorities of various countries of origin (available online)
- Etc.

The table below shows the total number of requests sent to EUAA for 2021-2024. More requests for availability assessments were sent than accessibility requests. This could be based on various reasons: the relevant medication might already be assessed as not available, thus, there is no need to check the individual accessibility. Furthermore, other sources are used for the assessment of accessibility, including other national COI units (provided either through the MedCOI database or bilateral cooperation) or MedCOI publications.[117]

Table 1: Number of responses of requests by EUAA MedCOI [118]

	AVA	ACC
2021	131	49
2022	131	40
2023	174	48
2024	163	46

[117] BAMF (2024).

[118] Data provided by EUAA MedCOI Service in 2025

2. National Policy

2.1. Threshold for considering a migrant's health condition

2.1.1. Severity threshold to initiate research on medical COI

In principle there is no certain threshold when medical country of origin information needs to be researched and obtained. However, from a practical point of view, a request only makes sense if the facts to be checked are relevant to the decision. For example, if the absence of a medication in the country of origin directly fulfils the facts for a deportation ban.

2.1.2. Severity threshold for decision-making

The amendments of the Asylum and Residence Act of 11 March 2016 came along with a significant shift in the definition of the threshold for the severity of a disease in migration processes with medical claims. Before the legal amendments, the stage of a disease was irrelevant, and the severity threshold looked at the deterioration of the medical conditions. Following the amendments of the Residence Act, the level or stage of the illness is now decisive for the severity check.

The disease thus must be "life-threatening or serious" and "would significantly worsen upon the return being carried out." There is no legal definition of what constitutes a "life-threatening or serious disease" in Germany. Every case is assessed on its own merits.

Such a serious or life-threatening disease cannot be regularly accepted in cases of post-traumatic stress disorder (PTSD). In cases of PTSD, forced removal is possible on a regular basis, unless the removal leads to a significant health risk or self-endangerment.[119] PTSD however led to an impediment to removal in case of a Pakistani citizen, where the VG Bayreuth determined that "90% of mental health services are private and their costs are extremely high in terms of average income. Due to the acute lack of psychosocial professionals and a relatively low level of mental health awareness, the majority of psychiatric patients rely on traditional "miracle healers" and religious healers. The stigma associated with mental disorders, and the discrimination against patients with mental health problems and their families prevents people to ask for psychological health care. The field of mental health has the lowest priority; the health service is elemental to miserable.[120]

In another case the VG Magdeburg determined an eye illness of a 5-year-old foreigner as serious enough to meet the threshold. Particularly as the child would not have guaranteed regular eye checks upon return to Macedonia and this would potentially lead to blindness, thus a significant worsening of the disease.[121]

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[119] See Administrative Court Augsburg, Au 2 K 16.30369, from 28.04.2016 and Upper Administrative Court of Sachsen-Anhalt, Beschluss from 28.09.2017 — Number: 2 L 85/17.

[120] Administrative Court Bayreuth B 5 K 16.31983 from February 2018.

[121] Upper Administrative Court Magdeburg 4A251/15MD from 10 February 2017.

A complete medical treatment was denied in the case of a bone cancer disease of an applicant from Albania, since in Albania such medical checks were determined as time-consuming and hardly possible without bribery. An impediment to removal was affirmed in this case due to considerable individual and concrete danger to life and limb.[122]

Furthermore, diseases of an applicant that already existed when entering the Federal Republic of Germany shall not prevent forced removal in principle. Summarised, the danger of a substantial deterioration of health is sufficient to fulfil the requirement. It must be a life-threatening or serious illness that will deteriorate significantly in the event of deportation. The decisive factor here is the deterioration in the event that no treatment is available. This health risk must be concrete, which means that the risk must be foreseeable. While the legislator does not specify a concrete period of time, a period of up to 2 years can be assumed.

The decision regarding to medical cases therefore depends on the individual circumstances and based on a case-by-case decision. See above the requirements on a reasonable proof of the applicant's medical state in form of an attestation by a medical doctor according to the Sec 60a/2c Residence Act.

2.1.3. Medical threshold cases

The decision regarding medical cases is dependent on the individual circumstances of the case and are being made on a case-by-case basis. Therefore, Germany does not have a written policy relating to extremely severe medical cases.

2.2. Availability of medical treatment/ medication in countries of origin

The treatment options for the specific medical condition in the country of origin are examined as well because a lack thereof would constitute one of the reasons preventing the removal under Sec 60 para 7/1 of the Residence Act.

An effective treatment must be available. The Federal Office for Migration and Refugees seeks advice from the attending physician or an expert on the treatment required to prevent the asylum-seeker's health from deteriorating with reasonable probability. Based on this information the Federal Office investigates whether such treatment is available in the respective country of origin.

2.2.1. Definition of availability in the national context

There is no legal definition for "availability" of medical treatment in the country of origin in Germany. However, some criteria have been determined by jurisprudence. Medication or medical treatment can thus be considered "available" if the medication is physically present or if the medical treatment is practiced in the country of origin. The source for the medical treatment/medication is of secondary consideration – all that matters is the fact that the medication and or the medical treatment exist in the country of origin. Nevertheless, decisive is the fact whether the treatment/medication exist at the time of

[122] Administrative Court Goettingen, 4A186/16 from 11.12.2017.

the decision and the supply is secured. Medication which is registered but regularly out of stock is not considered "available."

In the absence of clear decisions by the Federal Administrative Court on the availability, the Federal Office needs to determine whether a certain medication/ treatment would be reliably available and of adequate quality. The quality in this respect must be of such a level that the danger as described in Sec 60 para 7 "life-threatening or serious illness which would significantly worsen upon the return being carried out") would not materialise. The case-law in this respect clarifies that there is no legal right for a treatment that would go beyond the necessary treatment.[123] The legislators followed the case law and determined that possible higher standards in Germany or in other European countries are irrelevant if the treatment in the country of origin would constitute the necessary treatment, even if it would be of lower quality.[124]

2.2.2. Availability in practice

The decision-makers of the Federal Office for Migration and Refugees are responsible to research on the availability of medication/ treatment in the country of origin in specialized databases. The decision-makers are thereby supported by the services provided by the Information Centre Asylum and Migration (IZAM, Group 22) as well as by the services provided from the MedCOI Sector of the European Asylum Agency (EUAA). In addition, also the services of German embassies abroad are used to retrieve information on the health care situation in countries of origin.

The Federal Office needs to determine in the decision whether the medication/treatment needs of the applicant as outlined in the medical attestation is reliably available in the country of origin.[125]

According to the Federal Office for Migration and Refugees the treatment in the country of origin must be provided by professional (specialised) medical doctors to satisfy the availability assessment. Medication is preliminary checked against the medication indicated by the treating physician; substitutes may be checked and regarded as available only if the treating physician also agreed to those substitutes (see also below).

As indicated above, the German courts have so far not determined the very meaning of "availability" of medical treatment/ medication. Nevertheless, there are some judgments that provide guidance as regards certain questions in the context of availability:

With regards to substitute medication, the Federal Administrative Court decided that the Office needs to receive a respective attestation by the treating physician of the applicant indicating whether the specific substitute would be acceptable for the applicant.[126]

[123] Upper Administrative Court Lüneburg vom 18.05.2010, Az. 11 LB 186/08 with further references.

[124] Upper Administrative Court Lüneburg vom 18.05.2010, Az. 11 LB 186/08 with further references. See also Sec 60/7 second sentence.

[125] Federal Administrative Court from 29.10.2002, Az. 1 C 1/02

[126] Federal Administrative Court from 29.06.2005, Az. 1 B 174/04

In another decision, the Administrative Court Braunschweig decided that shortcomings in the supply of necessary medication in public hospitals could be considered relevant, even if the medication is available in private hospitals, if the private hospital would be too expensive for the applicant.[127]

In a recent judgement the court considered access to specialised paediatric cardiology hospitals in Pakistan as not available due to severely limited treatment capacities.[128]

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

Regarding the accessibility to medical treatment and/or medication, there is no legal definition. However, some criteria have been determined by jurisprudence. As a general rule, the decision-maker needs to determine that there are no obstacles for the person concerned to receive medical treatment and/or to physically get hold of the necessary medication. The treatment and/or the medication therefore also must be affordable for the person once returned to his/her country of origin. The treatment must be accessible as regards the existence of a sufficient number of places for treatment or such a place must be within reach.

2.3.2. Accessibility in practice

In Germany, the case law established the practice to first consider the general availability of the medical treatment. Once the availability is determined, the Court individually examines whether the treatment and medication is individually accessible for the applicant, e.g., among others, the economic accessibility which means that the treatment must be financially affordable by the applicant. The Court, for example, stated that:

"[a]n impediment to removal also may be applicable, although the treatment/ medication is available in the country of origin. This particularly in case of certain situations in the country of origin, which hinder the applicant from access to the necessary treatment/ medication. A particular danger to physical integrity and life therefore also may exist for the applicant, if the treatment is available, but due to the financial situation of the applicant not accessible."[129]

The accessibility to medical treatment and/ or medication must be thus researched by decision-maker, in particular the economic and geographic accessibility. In the past, as a result of several decisions by the

[127] Administrative Court Braunschweig, 20.06.2011: The applicant comes from Cote Ivoire and suffers from Bilharzias and an early stage of HIV and had to undergo operations and needs follow up treatment. The Court determined that HIV could generally be treated in Cote Ivoire, but recently there were registered shortcomings in the supply of the necessary medication. While the private clinic would be too expensive for the applicant, the public treatment gets more and more fragile and insecure. In case of a further worsening of the medical situation in Cote Ivoire the applicant would fall into real risk of an aggravation of the health situation. The applicant was granted impediment to removal.

[128] Administrative Court Berlin from 10.01.2022, 6 K 359/21. Online available at: https://gesetze.berlin.de/bsbe/document/NJRE001491097.

[129] Federal Administrative Court from 29.10.2002, Az. 1 C 1/02.

Courts in Germany, the following criteria for the establishment of the economic and geographic accessibility have developed over the years.

Economic Accessibility

The economic accessibility is of importance in the German context and needs to be determined by the decision-maker. When determining whether the applicant would face financial barriers to factually access the treatment/ medication in the country of origin, the Federal Office first needs to establish the costs of the treatment/ medication in the country of origin. In a next step the financial resources available to the applicant are to be determined, which potentially consist of three possibilities:

1. The applicant can afford the costs for treatment/ medication by themselves
2. The applicant may be financially supported by family members[130]
3. The applicant may rely on external financing by the social system in the country of origin[131] [132]

Having collected the financial information, the decision-maker would need to contrast the costs for medical treatment and/or medication with the available resources of the applicant. The Federal Office thereby does not need to count into the very last detail but rather makes an approximate comparison of the costs of the medication/ treatment with the average or minimum income in the country of origin and the possibility for external financing (such as for example by family members or the state).

The different Administrative Courts determined the **economic accessibility** in a number of cases and regularly refer to the average income of nationals of the country of return or the individual circumstances of the claimant and his possibilities with regards to access to the labour market upon return. In a case concerning a Roma applicant citizen of (former) Yugoslavia with the place of former residence in nowadays Kosovo the court held that in principle treatment and medication would be available in Kosovo. The Court further determined that the husband of the applicant is already 60 years, and it is therefore unlikely that he would find a job in Kosovo, considering an unemployment rate of 45%. The Court thus stated that:

"due to the economic situation in Kosovo and the fact that neither the applicant nor her husband would manage to find a job, the medical treatment would be not accessible for the applicant."[133]

In another case the *Administrative Court Braunschweig* determined that the applicant, a citizen of Côte d'Ivoire, could not earn enough money for the medical treatment. The average income in Côte d'Ivoire is about 61 Euros per month, while half of the population lives below the minimum income of 1,25 Dollars per day. The applicant therefore would need all earnings for his living. He further could also not rely on his family as they moved further to Niger or died.[134]

The costs and the capacity of the applicant to bear those costs was also relevant in a number of more recent cases. Accordingly, the accessibility has been denied in a case where the necessary medical

[130] Federal Administrative Court from 01.10.2001, Az. 1 B 185/01.

[131] The access to the social system is to be determined by the Foreigners Office according to the Federal Administrative Court.

[132] Upper Administrative Court Lüneburg Beschluss vom 19.08.2016

[133] Administrative Court Braunschweig from 17.01.2012.

[134] Administrative Court Braunschweig, 20.06.2011.

treatment for chronic lymphatic leukaemia has been identified as available in Iran. However, the treatment was not free of charge and could not be obtained without substantial additional payments. The applicant was 71-years-old, seriously ill and unable to work, and was thus considered unable to afford these additional payments.[135] Similarly the costs and the inability to afford it by work was decided by Administrative Court of Munich as the applicant was limited in his ability to work due to his disease.[136] For a minor applicant the paediatric treatment for Nephrotic syndrome was considered available in Senegal, but it was considered that the parents could not afford it in Senegal.[137]

Geographic accessibility:

The geographic distance of the place where the medication/treatment would be available is not the main consideration under the geographic accessibility. An applicant could thus be returned if medical treatment/ medication is available in another part of the applicant's country of origin than his/her region of origin. The Federal Office, nevertheless, needs to determine whether there are any additional barriers for the applicant to get access to the medication in practice.

As such, the treatment is not considered accessible if it is available in the capital but the applicant with medical issues would be prevented from registering there under the laws of his or her country of origin.

Equally, high costs for the applicant to reside in the city where the necessary treatment/medication is available, is considered as not accessible for the applicant.

The **geographic accessibility** may get relevant in case it collides for example with the lack of financial means to settle close to a place where the medical treatment would be available. As such the Administrative Court in Aachen decided that:

"the applicant expects in Türkiye, with substantial probability, a significant worsening of his condition, because it is not expected that he will succeed to establish the centre of his vital interests in Türkiye close to a clinic which is familiar with the particular pump technology, which may ensure the timely emergency treatment in hospital. The system used on the applicant is available in Türkiye, but he lacks the financial resources to rent a home near the hospital for his treatment together with his parents, who currently provide the indispensable support for his wellbeing."[138]

Political accessibility

The political accessibility in the medical context only plays a minor role when assessing an impediment to removal as this element would have been determined already earlier, namely when assessing if the applicant may qualify for refugee protection, asylum, or subsidiary protection according to Asylum Act Sec. 3 resp. Sec. 4.

[135] Administrative Court Aachen from November 14th; 10 K 1345/21.

[136] Administrative Court Munich, from 24.06.2022, M 10 K 17.34431.

[137] Administrative Court Munich from 24.10.2022, M 10 K 17.47935.

[138] Administrative Court Aachen from 26.07.2010.

Accumulating circumstances

The Administrative Court Goettingen dealt in 2009 with **the family ties** in the country of return of applicants from Sri Lanka. The male applicant suffered from diabetes and needed daily insulin. Returnees to Sri Lanka depend very much on social networks of families that could support the returnee, particularly in the first time of return. Even if the applicant would receive the necessary insulin, there would be no place where he could keep the medication cool at a certain temperature. As aggravated fact the Court determined that the peculiar situation of the male applicant could lead to a situation that the family might lose the bread earner of the family. Summarised, the court determined

"That the availability is questionable and the accessibility difficult with no possibility to rely upon family or relatives upon return."[139]

German courts further determined in different cases the special situation of the foreigner concerned and took this specific situation into account when deciding whether there would be any obstacles against the return of the foreigner. The Administrative Court Chemnitz dealt for example with a Kurdish applicant from Türkiye. The applicant suffered from chronic posttraumatic stress disorder (PTSD) with difficulties to speak (stutter) and (medically attested) low intelligence. The first instance denied an impediment to removal as the necessary treatment and medication for the applicant would be available in Türkiye as well. The court held,

"that due to the **special circumstance of the applicant** (minor with parents who legally reside in Germany, chronic PTSD, speech difficulties and low intelligence), he would not be able to help himself to prevent the chronic disease, although the medical treatment would be available in Türkiye. The applicant was granted impediment to removal."[140]

Similarly, the Administrative Court in Braunschweig dealt with the claim of a Roma from former Yugoslavia from the nowadays territory of Kosovo with respect to the medical treatment in Serbia. The Court held that

"Serbia would offer a free social system, which can be enjoyed by persons resident and registered in Serbia. As the registration would be in general too difficult to obtain and particularly for a member of the Roma minority, also the return to Serbia was considered not possible."[141]

In a more recent judgement, the Court determined that potentially the responsible authority may remove a foreigner only if the authority guaranteed a medical treatment upon return. However, the determining authority must guarantee such a treatment in the country of origin at the time of the decision to reject the impediment to return according to Art 60/7 Residence Act.

"The mere announcement of the defendant [the responsible authority], to only determine a place at a dialyse centre in the course of the return procedure and to only enforce return if such a place is

[139] Administrative Court Goettingen from 08.10.2009.

[140] Administrative Court Chemnitz from 26.07.2010.

[141] Administrative Court Braunschweig from 17.01.2012.

guaranteed, is not sufficient to neglect an immanent concrete danger and to reject an impediment to return according to Sec 60/7 first sentence.[142]

3. Residence and Return

3.1. Medical claim accepted

If the Federal Office for Migration and Refugees concludes that the foreigner cannot be returned because the return would lead with reasonable probability to a significant or even life-threatening deterioration of health immediately after returning to the country of origin, the Office would decide that applicant cannot be returned according to Sec 60 para 1/7 Residence Act.

The Federal Office then forwards this decision to the Foreigners Office, which is responsible to issue the residence permit according to Sec 25/3 Residence Act. According to Sec 25/3 Residence Act, the foreigners Office shall issue, in such a case, a residence permit if no other exclusion grounds are applicable (see Sec 25 para 3, 1-4 Residence Act).

The residence permit is valid for at least one year and for 3 years at the longest and may be renewed after this period, following a review of the foreigner's circumstances (§ 26 Abs. 1 S.1 u. Abs. 1 S. 4 AufenthG).

3.2. Medical claim denied

If the Federal Office for Migration and Refugees concludes that the foreigner can be returned because the return would **not** lead with reasonable probability to a significant or even life-threatening deterioration of health immediately after returning to the country of origin, the Office would decide that applicant can be returned according to Sec 60 para 1/7 Residence Act. The Federal Office now also examines domestic obstacles to enforcement on the basis of CJEU ruling C-484/22.

The Federal Office would also in this case forward the decision to the Foreigners Office. After completion of the asylum procedure the Foreigners Office, nevertheless, also still needs to determine whether there would still be any obstacles to return that are deriving from the inland (i.e. Germany) and not from the country of origin (which has already been determined by the Federal Office for Migration and Refugees). This assessment consists of two parts:

1. Fit to fly assessment: this assessment is a regular determination whether the returnee can be returned by flight or whether any health reasons would pose an obstacle to the return.
2. Obstacles to return that derive from the inland: this assessment needs to determine whether there are any obstacles to return that derive from the fact that the applicant would need to leave Germany. In this context, the Foreigners Office needs (for example) to take into account whether the segregation from family members who stay in Germany would have any influence on the applicant's state of health. Another example refers to the factual possibility to access the health system in the country of origin after being returned from Germany. In the latter context the Foreigners Office would take all the necessary steps for the "re-inclusion" into the welfare system of the country of origin should such steps be necessary. Further health risks which stand against

[142] Upper Administrative Court Lüneburg Beschluss vom 19.08.2016.

the removal may include the stopping of a therapy in Germany, suicide potential, or any other massive deterioration of mental health prior to or during the removal.

Once the Foreigners Office has established that there are no further obstacles deriving from "the here and now," the returnee may be returned to his/ her country of origin.

Should the Foreigners Office reach the conclusions that there would be further obstacles for the return, the person concerned would not be returned and would receive a "tolerated stay" ("Duldung") until the obstacles for return do not further exist anymore.

4. Summary

Germany has a rich basis on how to deal with migration cases with a medical element. In the absence of a respective "medical migration procedure" respective claims mainly come up in the course of an asylum procedure or in the context of return processes. The standards and policies on dealing with such cases mainly derive from law (mainly in the context of the impediment to return as outlined in Sec 60/7 Residence Act) and from a rather detailed case law practice of German courts.

Because of increasing numbers of asylum applications that were submitted in the course of 2015/2016 (among others) the Residence Act was amended. The amendment brought a higher threshold for the determination when a disease is so serious that it would impede a return of a third country national. As a consequence, a sick third country national that needs to leave Germany must plausibly proof a "life-threatening or serious disease" to invoke the impediment to return. However, even if the applicant's disease is life-threatening or serious, he/she can be returned if the worsening would not effectuate within a span of ca 2 years and/or the appropriate medical treatment/ medication is available and accessible in the country of origin.

The two more recent and much discussed judgements of *Paposhvili v Belgium*[143] and the M'Bodj judgement[144] did not influence the German practice:

- The requirement of determining whether the returnee has access to (available) treatment and/or medication has always been the practice in Germany. The ECtHR Paposhvili judgement thus did not have any influence on the German practice. According to the internal guidance and in summary of what has been stated above in this report, it must be examined whether treatment for the applicant is:
  - available, i.e. the required medication is in appropriate quality reliably available;
  - sufficiently effective, i.e. an appropriate effective therapy is available;
  - accessible, i.e. the applicant must be guaranteed with adequate medical care at least in a specific part of his/her country of origin. Access to medical care must be effectively possible;
  - affordable, i.e. the treatment including travel costs and/or medication is financially feasible for the person concerned.
- The M'Bodj judgement held that subsidiary protection status deriving from Art 15 Qualification Directive would not be applicable for health-related impediments to return. Hence, in Germany,

[143] ECtHR - Paposhvili v Belgium, Application no. 41738/10,13 December 2016.

[144] CJEU - C-542/13, Mohamed M'Bodj v État belge.

medical impediments to return are granted under a national protection status ("Duldung" or a residence permit[145]), which falls outside the scope of Article 15 of the Qualification Directive.

The main elements and definitions are summarised in the following table:

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	The severity of the disease is determined by law as a "life-threatening or serious illness which would be significantly worsened by deportation"	Sec 60 para 7/1 second sentence Residence Act
Availability	No legal definition, but criteria established. The basic tenor could be described as: "Treatment and/or medication must be there in the country of origin – irrespective whether it is registered or not".	Sec 60 para 7/1 Residence Act
Accessibility	No legal definition. The basic tenor could be described as: "There must not be any obstacle for the applicant to get hold of the medication or the treatment".	Sec 60 para 7/1 Residence Act
Residence permit	If the life-threatening or serious illness would significantly worsen upon the return being carried out, and the applicant would not have any medication and/or treatment available and accessible, the foreigner is granted a residence permit, which is issued by the Foreigners Office in the federal countries upon the decision on the impediment to removal issued by the Office for Migration and Refugees.	Sec 60 para 7/1 in connection with Sec 25 para 3 Residence Act
Return	If there is no life-threatening or serious illness or if it would NOT significantly worsen upon the return being carried out, and/or the applicant would have medication and/or treatment available and accessible, the Federal Office for Migration and Refugees decides that the removal is possible. The Foreigners Office in the federal country then needs to further look whether there are any obstacles to return that are vested in Germany (and not in the country of origin!). If there are no obstacles the foreigner may be returned. If there are any obstacles, the foreigner may be granted a stay until the obstacles ends (postponement of removal/ "Duldung")	Sec 60 para 7/1 Residence Act

[145] If there are medical reasons relating to the country of destination that prevent the person from leaving the country, the immigration authority should issue a temporary authorisation to stay in accordance with Section 25 (3) AufenthG. If, on the other hand, there are obstacles related to the country of residence, the foreigner's authority will usually only issue a tolerated stay, which means that deportation is only suspended, but the person is generally obliged to leave the country. If it is impossible to leave the country for a period of 18 months (for legal or factual reasons), a temporary authorisation to stay should be issued in accordance with Section 25 (5) AufenthG if the general conditions for issuing a temporary authorisation to stay are met.

5. Sources

The report on "State practices related to medical COI: Country report Germany" was first completed in 2018. For this version, ICMPD conducted a qualitative interview with representatives of the Federal Office for Migration and Refugees (BAMF) in March 2018.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the Federal Office for Migration and Refugees reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the BAMF also returned the respective questionnaire and provided follow-up clarifications in April 2024.

The present second version of the report "State practices related to medical COI: Country report Germany" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of the Federal Office for Migration and Refugees in April 2026 in order to ensure its validity.

Further sources:

- BAMF (2024): Information provided during a video call on 24/04/2024.
- EUAA (2024): Information provided via e-mail on 08/04/2024.

Case Study - Greece

CASE STUDY - GREECE 114

LIST OF ABBREVIATIONS 114

1. MEDICAL CLAIMS IN MIGRATION CASES IN GREECE 115
   - *1.1. Legal Basis 115*
   - *1.2. Organisational Structure/ Responsibilities 116*
   - *1.3. Procedure in medical migration cases 117*
   - *1.4. The procedure of researching medical country of origin information 118*
   - *1.5. Statistics 118*
2. NATIONAL POLICY 121
   - *2.1. Medical severity of a person's health condition 121*
   - *2.2. Availability of medical treatment/ medication in countries of origin 122*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 122*
3. RESIDENCE PERMITS AND RETURN 123
   - *3.1. Medical claim accepted 123*
   - *3.2. Medical claim denied 124*
4. SUMMARY 124
5. SOURCES 126

List of abbreviations

ACC	Individual Accessibility
AVA	Individual Availability
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
ECtHR	European Court of Human Rights
EUAA	European Union Asylum Agency
MedCOI	Medical Country of Origin Information
NCP	National Contact Point

1. Medical claims in migration cases in Greece

1.1. Legal Basis

In Greece medical claims in migration cases can occur in different situations. A significant number of them occur in the asylum procedure, while it can also arise within procedures for legal migration. Therefore, Greece has both a decision-making practice and internal guideline in place on how to deal with medical claims.

In the context of legal migration, the Greek immigration Law 5038/2023 allows the application (submitted from abroad or within the country) for a residence permit '*for humanitarian and exceptional reasons*'. Specifically, Article 134 states that a residence permit may be granted for humanitarian reasons to citizens of third countries who are already in Greece (*residence permit type "A.1" - Ad Hoc Residence Permit*) and, among others, suffer from serious health problems or participate in a legally approved addiction treatment programme for mental health. Nevertheless, a necessary condition for granting this residence permit is that the applicant should already have a valid residence permit. Moreover, Article 163 states that a residence permit (*residence permit type "I.4"*) may be granted to citizens of third countries who enter the country with a national entry visa, in order to receive medical - nursing and palliative care.

Regarding the asylum procedure, during 2021, the Greek Asylum Service issued a specific internal guideline on asylum requests based solely on the lack of treatment in the applicant's country of origin, in order to deal with medical claims. The guideline is based on the jurisprudence of the Court of Justice of the European Union and specifically on the decision M'Bodj (C-542/13, 18 December 2014). According to CJEU decision, a third country national with a deteriorating state of health, which is not the result of an intentional deprivation of health care, is not covered by article 15(b) of the Qualification Directive 2004/83/EC of 29 April 2004. The Greek internal guideline derives from M'Bodj that when the evidence (such as the applicant's statements, the documents he/she has submitted and the relevant country of origin) determines that in case the applicant returns, there will be a risk for his/her life or a serious deterioration of the applicant's health due to the lack of medical and pharmaceutical care, then the Greek authority can consider the condition of "intentional" refusal to provide medical treatment met, as it is set by the CJEU jurisprudence, even though it does not appear as such on a real level. In other words, the meaning of the term "intention" is interpreted in a broader way, specifically in cases where issues of unavailability or inaccessibility of the medication and the treatment of the applicant's serious and chronic illness in his/her country of origin arise. As a result, it is considered that the state fails to provide the necessary care (medication and/or treatment), which may lead to extremely serious consequences for the applicant's health. These consequences may amount to inhumane and degrading treatment, thus making the applicants eligible for subsidiary protection under the EU Qualification directive. However, it is important to clarify that this policy does not concern the granting of subsidiary protection in general, but only the granting of subsidiary protection for medical reasons as described above.

Therefore, in Greece a person raising medical claims during the procedure for international protection, may be granted subsidiary protection for medical reasons if he/she does not qualify for asylum because none of the relevant protection grounds are met. The legal basis for the subsidiary protection status can be found in Law 4939/2022, in which the Qualification Directive 2011/95/EU is incorporated. Article 1 (point xxviii) of the Law 4939/2022 states that a person eligible for subsidiary protection is a third country

national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 14, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

According to the Law 4939/2022 Article 14 serious harm includes:

a) imposition or execution of capital punishment,
b) torture or inhuman or degrading treatment or punishment of the applicant for international protection in his country of origin,
c) serious and individualised threat to life or to the physical integrity of a civilian resulting from indiscriminate violence in situation a of an international or internal armed conflict.

Medical grounds are not explicitly mentioned in the law, but in practice they are covered by Article 14(b).

1.2. Organisational Structure/ Responsibilities

In Greece, the competent administrative authority responsible for legal migration and international protection is the **Greek Ministry of Migration and Asylum**. All applications for international protection, including those with a medical element, are received, examined, and decided upon by the **Greek Asylum Service**, which falls under this Ministry, and which functions at the level of a Directorate General. Additionally, the Greek Asylum Service has a COI unit that participates in the MedCOI Sector of the EUAA and is thus in charge of researching medical COI in medical migration cases.

Appeals against first instance decisions are reviewed by the second instance, a **quasi-judicial Appeals Authority**. The Authority has its own COI unit providing it with general, but also medical COI, to evaluate the appeal. The EUAA MedCOI sector has, furthermore, also trained and given access to the MedCOI database to a legal rapporteur working for the Greek second instance.

For legal medical migration cases, the responsible authority is the **Residence Permits Directorate**, another entity under the Ministry of Immigration and Asylum that oversees issuing all types of residence permits.

In the Greek Asylum Service, there is 1 advanced MedCOI user (NCP). Moreover, 7 basic MedCOI users, 3 COI Unit Officers and 4 Quality Focal Points-QFPs engage in MedCOI research. Additionally, 4 MedCOI basic users work in the Greek Appeals Authority (COI Researchers and Rapporteurs). In international protection cases, the case workers, and Quality Focal Points engage in the decision-making. Case workers conduct the personal interviews and draft the decisions on international protection. The Quality Focal Points provide the case workers with the necessary guidance and counselling. The national MedCOI policy/decision making is shaped by the MedCOI National Contact Point (NCP) in collaboration with the Head of Asylum Process and Training Department. Medical doctors or other health care professionals are not yet involved in the medical COI research and policy, as there currently is no legal basis that provides for this in the Greek law. Applicants with claims of illness are referred to public hospitals to obtain certification of their health condition. Victims of torture can be referred to the NGO Metadrasi, which is

the only entity specialised on identifying and certifying victims of torture through a process based on the principle of the 'Istanbul Protocol.'

Currently, there is not standardised template to collect the medical information in Greece. Medical information about the applicant is handed over directly to the deciding public authority by the applicant themselves or by the applicant's legal representative. In the Greek Asylum Service medical confidentiality is maintained throughout the asylum application process and during the medical information-gathering phase. The Greek Asylum Service adheres to both Greek and European Union laws regarding data protection and privacy, including the General Data Protection Regulation (GDPR). These regulations require that any personal and medical data collected must be managed with confidentiality, ensuring it is used only for specific, lawful purposes related to the asylum process. Furthermore, access to medical data is restricted to personnel who need it to assess the applicant's asylum claim or to provide medical care. This ensures that the information is only shared on a need-to-know basis.

Article 77 of Law 4939/2022 stipulates that, with the applicant's consent, the decision-making authorities may refer the applicant to a medical or psychosocial examination in public hospitals, public mental health facilities, or to private doctors, especially those contracted by the Greek state, if there are indications suggesting that the applicant has been subjected to persecution or serious harm in the past. The examination and diagnosis in public health facilities are free of charge and conducted by specialised medical personnel. The results are submitted to the competent authority by the applicant themselves or by their legal representative. The decision on which situations require authorities to refer applicants for a medical or psychosocial examination, and when medical information from treating doctors or medical professionals is accepted without a referral, is made on a case-by-case basis, taking into account the applicant's claims regarding their health condition. If a medical examination has not been ordered and arranged by the Receiving or the Decision Authorities, the applicants are informed that they may conduct a medical examination at their own initiative and expense. Article 77 of the Law 4939/2022 further states that after the completion of the medical assessment, a medical team drafts a written recommendation addressed to the Head of the Regional Office and additionally communicated to the Governor of the Centre. The purpose of the assessment is to identify the specific needs of vulnerable applicants and ensure they receive appropriate care and support during the asylum process. This may include special procedural guarantees.[146]

1.3. Procedure in medical migration cases

Medical claims in the context of asylum processes

All applications for international protection that are processed by the Greek Asylum Service are first assessed for refugee protection. If the criteria for recognising refugee status are not fulfilled, the assessment for subsidiary protection is being investigated by the authority. According to The Greek Asylum Service's guideline regarding asylum requests based solely on the lack of treatment in the applicant' s country of origin, the applicant must suffer from **a life-threatening or serious illness which itself would**

[146] Law No 4939, Official Gazette A 111/10.6.2022 [ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 4939 ΦΕΚ Α 111/10.6.2022] – Art. 77, https://www.kodiko.gr/nomothesia/document/797068/nomos-4939-2022

significantly worsen upon the return being carried out due to the lack of medical care and there would be **a risk for his life or a serious deterioration of his/her health condition**. A person applying for international protection with medical elements may qualify for subsidiary protection if the return to his/her country-of-origin amounts to inhuman or degrading treatment. Information provided by the MedCOI database helps the case workers to determine the availability and accessibility of medical treatment and medication in the applicant's country of origin. The COI Unit and the newly established MedCOI team (2023) of the Greek Asylum Service play an important role, as they provide the appropriate information for the assessment of medical claims for the decision making.

Residence permit on humanitarian grounds

As mentioned above, Greek immigration Law 5038/2023 provides for the possibility for a residence permit on humanitarian grounds. This temporary residence permit on the grounds of serious health problems can be granted if the applicant already has a valid residence permit. Therefore, the applicant needs to already be in Greece in order to apply. However, if an application of international protection is denied, there is the possibility of submitting a new application under legal migration under the Greek Immigration Law Art 134, as described above.

Residence permit to seek medical treatment in Greece

Further, there is the possibility for third country nationals to apply for a temporary residence permit in Greece from abroad, for the purpose of receiving treatment, if Greece is considered to be the appropriate country to undergo the appropriate treatment. MedCOI research is not required for decision making for this type of a permit.

1.4. The procedure of researching medical country of origin information

According to the Greek Asylum Service's guideline regarding asylum requests based solely on the lack of treatment in the applicant' s country of origin, the applicant must suffer from a life-threatening or serious illness which would significantly worsen upon return due to the lack of medical care and a risk to their life or a serious deterioration of their health condition.

Given that a holistic approach to medical claims in migration cases by the Greek Asylum Service is pursued, research only on medication, that does not additionally assess the availability and accessibility of treatment, is not feasible.

1.5. Statistics

Medical claims are not registered separately in Greece. Further, data on applications for residence permits on medical grounds, MedCOI assessments, permit decisions, and returns following denials are not available.

However, there are data on the number of asylum requests with specific vulnerabilities.

Table 1: The number of asylum requests with specific vulnerabilities.

Data on asylum cases with medical relevance			
Greece		2023	2024
	#total asylum requests	64,212	73,687
	#asylum requests with specific vulnerabilities	660	1255
	%	1%	1,7%

From the total number of asylum requests (137.899) in the last two years (2023 - 2024), 1,4% (1,916) asylum requests were submitted by applicants with the specific [medical] vulnerabilities. Apart from that, the Greek Asylum Service does not classify asylum and other migration procedures according to the grounds for granting protection or whether medical claims were involved.

In 2024, the Greek Asylum Service received 1,255 asylum applications involving specific medical vulnerabilities from applicants originating from 34 countries. Of these, 26 countries (76%) are covered by the MedCOI network, meaning that MedCOI requests can be submitted. These cases account for 528 applications (42%). In contrast, 8 countries (24%) are not covered by the MedCOI network, so MedCOI requests cannot be submitted. These cases represent 727 applications (58%). In summary, although most countries of origin are covered by the MedCOI network, the majority of asylum applications involving medical vulnerabilities in Greece come from countries where MedCOI requests cannot be made.

Table 2: Asylum requests with medical vulnerabilities correlation with countries with or without MedCOI network

Total asylum requests with medical vulnerabilities 2024 per country of origin				
Country of origin	**Asylum requests with medical vulnerabilities**	**Percentage of total requests**	**Countries with EUAA MedCOI network**	**Countries without EUAA MedCOI network**
Syria	507	40,4%	-	507
Afghanistan	199	15,9%	199	-
Türkiye	72	5,7%	72	-
Egypt	71	5,7%	71	-
Iraq	64	5,1%	64	-
Somalia	58	4,6%	-	58
Palestine	55	4,4%	-	55
Kuwait	44	3,5%	44	-
Albania	28	2,2%	28	-
Pakistan	25	2,0%	25	-

Yemen	25	2,0%	-	25
Eritrea	21	1,7%	-	21
Iran	14	1,1%	14	-
Sudan	12	1,0%	-	12
Georgia	11	0,9%	11	-
Other	49	3,9%	-	49
Total	**1255**	**100%**	**528**	**727**

* The countries that are on the list without a medical country of origin information network are marked in red.

Greece receives the largest number of applications from the first 5 countries due to its geographical location. 9.3% of asylum requests with specific [medical] vulnerabilities come from countries in Sub-Saharan Africa that are in the list of countries without network.

The main medical issues/ diseases of applicants in Greece are the following ones:

- Endocrine and metabolic diseases/Diabetes
- Brain and Nervous system diseases/Epilepsy/Cerebral injuries/Dementia-Alz/MS
- Tumours and Hematological malignancies
- Orthopedics, general Injuries and traumas/Amputation
- Mental and behavioural disorders/retardation/Down syndrome/Autism/Substance abuse
- Cardiovascular and circulatory system deficiencies
- HIV/Hepatitis, infectious and parasitic diseases
- ENT injuries
- Lung and respiratory system disease/TB/Astma/touracic injuries
- Renal and urinary diseases

The categories of medical issues that appear in the left chart concern health conditions (diseases) with various levels of severity. All cases concern vulnerabilities for which MedCOI can be requested.

Table 3: The main diagnosis/ medical specialism in medical claims per country of origin in 2024

Country of Origin	Main Diagnoses (up to 50% or more)
Türkiye	1. Tumours and Hematological malignancies (22,2%)
	2. Endocrine and metabolic diseases/Diabetes (17,5%)
	3. Brain and Nervous system diseases/Epilepsy/Cerebral injuries/Dementia-Alz/MS (15,9%)
Egypt	1. Endocrine and metabolic diseases/Diabetes (23,3%)
	2. Orthopedics, general Injuries and traumas/Amputation (16,7%)
	3. Cardiovascular and circulatory system deficiencies (11,7%)
Iraq	1. Brain and Nervous system diseases/Epilepsy/Cerebral injuries/Dementia-Alz/MS (21,7%)
	2. Mental and behavioural disorders/retardation/Down syndrome (21,7%)
	3a. Endocrine and metabolic diseases/Diabetes (11,7%)
	3b. Orthopedics, general Injuries and traumas/Amputation (11,7%)
Kuwait	1. Endocrine and metabolic diseases/Diabetes (28,6%)
	2. Orthopedics, general Injuries and traumas/Amputation (20%)

	3. Brain and Nervous system diseases/Epilepsy/Cerebral injuries/Dementia-Alz/MS (14,3%)
Albania	1. Tumours and Hematological malignancies (50%)
Pakistan	1. HIV/Hepatitis, infectious and parasitic diseases (32%)
Iran	1. Endocrine and metabolic diseases/Diabetes (28,6%)
	2. Mental and behavioural disorders/retardation/Down syndrome (21,4%)
Georgia	1. Tumours and Hematological malignancies (18,2%)
	2. HIV/Hepatitis, infectious and parasitic diseases (18,2%)
	3. Rheumatology and autoimmune diseases (18,2%)
Others	1. Tumours and Hematological malignancies (20,6%)
	2. Brain and Nervous system diseases/Epilepsy/Cerebral injuries/Dementia-Alz/MS (14,7%)
	3. HIV/Hepatitis, infectious and parasitic diseases (11,8%)

Table 4: The Number of individual availability (AVA) and individual accessibility (ACC) responses to requests by the EUAA by Greece per year[147]

	AVA	ACC
2021	-	-
2022	-	-
2023	3	2
2024	13	7

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

There is no specific threshold of initiate research on medical COI in the Greek practice. Based on the submitted medical documents, proofing the severity of the applicant's illness, the medical COI research is initiated. Thus, the decision to initiate medical COI research is made on a case-by-case basis. The Greek MedCOI Team receives queries from the caseworkers responsible for drafting the international protection decisions.

2.1.2. Severity threshold for decision-making

The Greek Asylum Service's guideline concerning an applicant to be granted subsidiary protection based on a lack of treatment on the country of origin stipulates that the applicants' diseases must be chronic and serious, such that it would lead to a real risk to the applicant's life or a serious deterioration of the health condition if returned. This threshold is in line with the ECtHR judgement Paposhvili v Belgium. Nevertheless, there is no legal definition stating what constitutes a serious disease in the Greek context. As a result, the threshold is assessed on a case-by-case basis.

[147] Data provided by EUAA MedCOI Europa Service.

2.1.3. Medical threshold cases

In the Greek policy there is no practice defined regarding extremely severe medical cases for which MedCOI research would not be needed. Medical COI research is necessary in cases involving medical claims based on the submitted medical documents, which prove the illness' severity.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1 Definition of availability in the national context

There is no explicit definition on the availability of medication or medical treatment within the procedure for international protection stipulated in Greek law. The only criteria deriving from the Greek Asylum Service's directive, is that treatment is considered to be unavailable in a country of origin when it is not provided at all in that country.

2.2.2. Availability in practice

In practice, if a specific medication or alternative medication is not registered in a country or origin, it will not be considered as available.

There is, however, no specific pre-defined criteria for the assessment. Thus, in practice the decision is drafted on a case-by-case basis, depending on both the applicants' health condition and the treatment and/or medication concerned. For example, in situations involving a life-threatening illness where any delay in receiving the medication could result in severe consequences to the applicant's health or endanger their life, and the required medication is either out of stock or in short supply, it will not be considered as available. Medication that can exclusively be found on the black market or only though internet pharmacies is also considered not to be available, because there is no guarantee of a stable and regular supply of the medication. A medication and/or treatment that is of lesser quality in the country of origin in comparison with Greece, however, will still be considered available.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

In Greece, there is no guidance on what constitutes accessibility of a medication and/or treatment. However, the Greek Asylum Service's guideline on asylum requests based solely on the lack of treatment in the applicant's country of origin mentions that in cases where the is a lack of accessibility to treatment and/or medication, the reason for this lack must be specified. The decision on accessibility is taken by the case worker, on a case-by-case basis. In principle, once the availability of the medication or treatment has been established, the case workers examine the individual accessibility for the applicant. The case worker needs to determine that there are no obstacles to the applicant to receive the needed medical treatment or to acquire the necessary medication. Research on accessibility is conducted based on the information provided by the COI unit and on experiences from previous cases, taking into account information on the health care system in the country of origin, the existence of health care providers providing specific treatments and medication, and geographical location and effective accessibility.

Elements of accessibility that have been assessed in previous cases thus far have usually been of geographic and/or financial nature.

2.3.2. Accessibility in practice

Economic Accessibility

In principle, Greek practice does not foresee specific rules assessing economic accessibility. When assessing a case, the case worker evaluates whether the cost of a medication or treatment, as well as general medical expenses could be borne by the applicant once returned to the country of origin. The cost of the treatment or medication can be determined through COI. Other factors that are taken into account in the assessment are the applicant's ability to work and generate income, including the person's age, educational background, work experience, the severity of the illness, as well as the existence of social or family network that can offer financial or care support. Additionally, the country of origins unemployment rate, the existence of a social security system, the possibility of financial compensation, health insurance, and governmental aid programmes are incorporated into the assessment of accessibility.

Using the collected COI on the financial situation, the caseworker compares medical costs with the resources that would be available to the applicant in the country of origin, as well as the possibility for external financing.

Geographic accessibility

The geographic accessibility refers to the distance between the applicant's place of residence and the place where the medication or treatment is provided. In the Greek practice, the accessibility assessment considers the distance that the applicant would need to travel to access treatment, the frequency with which the applicant would have to travel, and whether the medical condition permits the applicant to travel or if rather they will experience restricted mobility.

If the medical facilities offering a specific treatment are geographically restricted to a region within the country of origin, the case worker considers whether the applicant can be expected to move to that town or region in which the treatment or medication is available. In this situation, geographic accessibility can become intertwined with economic accessibility, especially when financial constraints prevent individuals from living near a location where medical treatment is available. Additionally, security concerns related to traveling to the treatment location, such as passing through conflict zones, are also considered.

Political accessibility

In principle, the claim of an applicant stating that they are discriminated against for political reasons is considered primarily in the determination of a refugee status.

3. Residence permits and return

3.1. Medical claim accepted

Under subsidiary protection, the applicant is granted a residence permit that is valid for one year. No later than thirty days before the expiry of the residence permit, the applicant can request a renewal. If granted, the residence permit may be extended for two years.

In the legal migration procedure, the applicant is granted a residence permit on humanitarian and exceptional grounds (residence permit type A.1), valid for one year. The residence permit may be renewed for an additional year if the conditions for granting are continuously being met. Article 134(3) of the Law 5038, states that should the reason for granting the residence permit on humanitarian and exceptional grounds is no longer fulfilled, the third-country national can submit a request to change the residence permit category, in accordance with Article 12 of the Law 5038.[148] Article 12 of Law 5038 allows third-country nationals legally residing in Greece with a valid residence permit or long-stay visa to apply for a change of residence permit category, with exceptions depending on the visa.[149]

3.2. Medical claim denied

In cases where the absence of treatment is not considered to lead to a serious rapid and irreversible deterioration of the applicant's health, or the necessary treatment is considered available and accessible in the country of origin, the medical claim is rejected. In such a case, the applicant must leave Greek territory within a given timeframe. However, the applicant has the right to appeal their negative decision, with possible suspensive effect.

Once the return order has been issued by the Greek Asylum Service, the police is responsible for organising the return. Assessing compliance with the principle of non-refoulement is conducted by the competent police authority.

In the legal migration procedures, if the request for granting or renewing the residence permit is rejected, a return decision is issued under Article 21 of Law 3907/2011.[150] The applicant has the right to appeal this return decision within a strict timeframe of two months, as outlined in Article 24 of the Code of Administrative Procedure.[151]

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	To reach the severity threshold, the applicant's illness must be chronic and serious to an extent that a return to the country of origin and a subsequent lack of treatment could lead to a risk on their life or a serious deterioration of their health condition. Nevertheless, there is no legal definition stipulation what constitutes a serious disease.	Greek Asylum Service's guideline for an applicant to be granted subsidiary protection based solely on a lack of treatment on the country of origin.

[148] Law No 5038, Official Gazette A 81/1.4.2023 [ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 5038 ΦΕΚ Α 81/1.4.2023] – Art. 134, https://www.kodiko.gr/nomothesia/document/873766/nomos-5038-2023

[149] Law No 5038, Official Gazette A 81/1.4.2023 [ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 5038 ΦΕΚ Α 81/1.4.2023] – Art. 12, https://www.kodiko.gr/nomothesia/document/873766/nomos-5038-2023

[150] Law No 3907, Official Gazette A 7/26.01.2011 [ΝΟΜΟΣ ΥΠ' ΑΡΙΘ. 3907 ΦΕΚ Α' 7/26.01.2011] – Art. 21, https://www.kodiko.gr/nomothesia/document/129081/nomos-3907-2011

[151] Law No 2690, Official Gazette A 45/9.3.1999 [ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ 2690 ΦΕΚ Α'45/9.3.1999] – Art. 24, https://www.kodiko.gr/nomothesia/document/11641/nomos-2690-1999

		ECtHR Paposhvili v Belgium (Application no. 41738/10)
Availability	There is no definition on availability summarised in Greek law. The Greek Asylum Service's guideline for international protection applicants based solely on the lack of treatment on the applicant's country of origin states that a treatment is considered unavailable when it is not provided at all in the relevant country of origin.	Greek Asylum Service's guideline for an applicant to be granted subsidiary protection based solely on a lack of treatment on the country of origin.
Accessibility	In Greek law there is no all-encompassing definition on accessibility, but it is assessed on a case-by-case basis, taking into account the economic and geographic accessibility of medication or treatment.	Greek Asylum Service's guideline for an applicant to be granted subsidiary protection based solely on a lack of treatment on the country of origin.
Residence permit	If granted subsidiary protection, the applicant receives a temporary residence permit for 1 year. Subsequently, the applicant may request a renewal which if granted, their residence permit may be extended for two years Residence on humanitarian grounds may be granted to sufferers of serious health problems, if the severity threshold is passed. The applicant receives a temporary residence permit Type A.1 for 1 year, which may be renewed for up to 2 years if the necessary conditions are still met. Applicants can apply for an entry visa and residence permit into Greece - Type I.4 - to receive medical, nursing or palliative care. The residence permit needs to be assessed annually and can be granted for a maximum of 4 years.	Law 4939/2022, Art. 1, Art 14 (b), Art. 23 (1) Law 5038/2023, Art. 134 Law 5038/2023, Art. 163.4
Return	When the asylum application is rejected, the applicant must leave the Greek territory within a given timeframe. The return decision is issued by the Greek Asylum Service. The Police are responsible for organising the return. Assessing the compliance with the principle of non-refoulement is carried out by the competent police authority. In legal migration procedures, when the application is rejected the return decision is issued to the applicant, who can appeal the decision.	Law 4807/2021 Law 3907/2011, Art. 21

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Greek case study is based on the questionnaire filled in by representatives of the Greek Asylum Service in June and July 2024.

Finally, the case study has been reviewed and updated by representatives of the Greek Asylum Service in March 2026 in order to ensure its validity.

Case Study - Hungary

CASE STUDY - HUNGARY 127

LIST OF ABBREVIATIONS 127

1. MEDICAL CLAIMS IN MIGRATION CASES IN HUNGARY 128
   1.1. Legal Basis 128
   1.2. Organisational Structure/ Responsibilities 128
   1.3. Procedure in medical migration cases 128
   1.4. The procedure of researching medical country of origin information 129
   1.5. Statistics 129
2. NATIONAL POLICY 129
   2.1. Medical severity of a person's health condition 129
   2.2. Availability of medical treatment/ medication in countries of origin 130
   2.3. Accessibility of medical treatment/ medication in countries of origin 130
3. RESIDENCE PERMITS AND RETURN 131

3.1. MEDICAL CLAIM ACCEPTED 131
   3.2. Medical claim denied 131
4. SUMMARY 131
5. SOURCES 132

List of abbreviations

COI	Country of Origin Information
NDGAP	National Directorate-General for Aliens Policing

1. Medical claims in migration cases in Hungary

1.1. Legal Basis

According to Article 25/B (1) of the 2007 Act LXXX on asylum, the asylum authority shall grant a person **"tolerated status"** on the basis of prohibiting refoulement as determined in the course of the asylum proceedings; or if the asylum authority has rejected the individual's asylum application but simultaneously issued a decision prohibiting refoulement.[152]

1.2. Organisational Structure/ Responsibilities

In Hungary, medical country of origin research is based on the available medical information in the course of country-of-origin research. The COI unit within the National Directorate-General for Aliens Policing (NDGAP) conducts medical COI research when relevant. In some cases, the NDGAP COI unit may consult medical staff from various institutions.

1.3. Procedure in medical migration cases

Medical claims may arise in different procedures of NDGAP. In medical migration cases, the burden of proof lies with the applicant. Applicants submit medical documents containing the relevant information to the asylum authority as supplementary documentation to their asylum applications. Currently, no standardised templates are used to collect medical information in these cases.

In Hungarian law, medical information is classified as sensitive data and has to be managed accordingly. Therefore, information shall only be shared with the actors involved in the return procedure. In the asylum procedure, the medical information files are kept in a sealed envelope by the asylum authority, separate from the applicant's file, to ensure data protection.

International protection

In asylum procedures, if the applicant has a documented medical condition, the Hungarian asylum authority examines the health care system in the country of origin. The determining authority will consider the applicant’s medical examination results alongside other elements of the application. If necessary, the determining authority may seek a public healthcare provider or additional medical expert to verify the applicant's submitted results. An applicant's failure to attend a medical examination does not prevent the authority from making a decision on their application for international protection. If the health care system in the applicant’s country of origin is not considered to be adequate, then non-refoulement applies.

However, if the applicant is an unaccompanied minor and a medical claim arises, the asylum authority will inform the applicant - represented by the child welfare officer appointed by the guardian authority on the immediate request of the asylum authority - in a language and manner that is clear and easily understandable, about the examination to be conducted by a specialist. This includes an explanation of the significance of the results and the potential consequences if the applicant does not consent to the examination, as specified by law. Should the applicant disagree with the results of the medical

[152] 2007. évi LXXX. Törvény a menedékjogról – Art. 25/B, https://njt.hu/jogszabaly/2007-80-00-00

examination, they may request the asylum authority to appoint another specialist. In cases of conflicting expert opinions, the deciding authority will either base its decision on the provided opinion or appoint a new specialist for further assessment.

National protection (tolerated status)

With regard to national protection, the asylum authority may grant the applicant a 'tolerated status' to individuals whose asylum claim has been rejected, but to whom the principle of non-refoulement is applicable according to Article 25/B (1)" point b) of the Act LXXX of 2007 on asylum.[153] In medical migration cases, the non-refoulment may be based on the applicant's state of health and/or the health care system in the country of origin. NGDAP is required to examine whether the requirements on meeting the principle of non-refoulment are being met before they can order and execute a return.

1.4. The procedure of researching medical country of origin information

Assessing whether a treatment or a medication is available and accessible in the applicant's country of origin weighs into the consideration of non-refoulement. It is conducted by the Hungarian asylum authority based primarily on COI reports. Further, the NDGAP involves the Hungarian diplomatic representation in the country of origin, or other organisations with local connections in the applicant's country of origin.

In relevant medical migration cases, both availability and accessibility of medical treatment is assessed. Under certain circumstances, decisions can be taken solely based on research on the availability and accessibility of medication, without looking into medical treatment. This would be the case for example, if a medication is used that does not require medical expertise to take, and the applicant does not require supervision.

1.5. Statistics

In general, there are no separately registered migration statistics on medical procedures.

Between 2021 and 2024, Hungary has not forwarded any availability and accessibility requests to the EUAA.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In Hungary MedCOI research is initiated and performed if the applicant declares their state of health or provides any other relevant medical data or information. The same applies to medical information given by other relevant sources or any health data come to the attention of the asylum authority.

[153] 2007. évi LXXX. Törvény a menedékjogról – Art. 25/B, https://njt.hu/jogszabaly/2007-80-00-00

2.1.2. Severity threshold for decision-making

According to the severity threshold for decision-making, the illness does not necessarily have to be life-threatening, but also likely to cause a severe and permanent disability. Furthermore, the assessment considers whether the sickness would worsen if the applicant were to be returned, and how the sickness would develop without medication and treatment.

2.1.3. Medical threshold cases

There is the possibility of granting humanitarian status in exceptionally severe cases, without conducting MedCOI research.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

A medication is considered available when it is registered or known in the country of origin. Medication that is available through the black market or online pharmacies, or that can be ordered through a pharmacy but takes certain time to re-supply is also considered available.

2.2.2. Availability in practice

To assess the availability in the applicant's country of origin, the Hungarian asylum authority uses information available through the MedCOI database, internet sources, as well as information from the diplomatic representation and organisations with local connections.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

Assessing whether treatment and/or medication is de-facto accessible weights into the examination of non-refoulement and is also conducted by the asylum authority.

2.3.2. Accessibility in practice

Economic Accessibility

Economic aspects considered in the assessment include the average cost of the treatment, social protection schemes, the applicants' network, their financial means, the unemployment rate in the country of origin, and the possibilities to generate income.

Geographic accessibility

Geographic accessibility is also relevant in the medical COI research. To date, the Hungarian COI unit has considered the proximity of the medical facilities and pharmacies to the individual's places of residence, the physical ability of the applicant to reach those facilities, as well as the necessary frequency the applicant would have to travel to the medical facility.

Political accessibility

In medical COI research, the Hungarian COI unit examines whether individuals may face political discrimination when seeking access to medical facilities or the public insurance system due to their race, religion, nationality, membership to a particular social group, or political views.

3. Residence permits and return

3.1. Medical claim accepted

If the medical claim is accepted and neither the grounds for refugee status nor subsidiary protection have been determined, the Hungarian asylum authority, NDGAP, grants the applicant a tolerated status. The NDGAP reviews the conditions for granting the tolerated status annually. If the grounds for recognition cease, the status is withdrawn.

3.2. Medical claim denied

The final rejection decision, as well as the return order, is issued by the Hungarian asylum authority.

If the applicant states to be sick or an illness is detected by the Hungarian authority, the applicant will undergo a medical check.

Further, every applicant that is in a detention centre is issued a medical certificate following a medical check, to assess the applicants' overall state of health and thus determine the method of transportation to the country of origin that is most suitable. If medical assistance is required for the travel, removal is organised accordingly. In cases where the returnee can travel without assistance, but requires medication, the necessary medication will be provided to them. When a removal is enforced, a psychologist or a medical specialist is required in cases provided for by law where the mental or health condition of the person concerned makes it temporarily impossible or impossible for him or her to cope with the stress of removal, or where he or she can cope with it only under special conditions. Furthermore, the EU Reintegration Programme operated by Frontex is available for returnees needing financial support to cover the costs of medication or medical treatment in the country of origin.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	The illness does not necessarily have to be life-threatening, but also likely to cause a severe and permanent disability if not treated.	
Availability	A medication is considered to be available in the country of origin, if it is registered or known in the applicant's country of origin.	
Accessibility	Economic, geographic, and political accessibility determine an individual's real access to medical treatment. Economic factors consider affordability, financial resources, and support networks; geographic aspects assess proximity to facilities and the applicant's ability to reach them regularly; while	

	political accessibility addresses potential discrimination based on personal characteristics.	
Residence permit	If the medical claim is accepted, the Hungarian asylum authority, NDGAP, grants the applicant a tolerated status. Status is granted for one year, after which the conditions are reviewed. If there are no longer grounds for granting the permit, it is withdrawn.	2007. évi LXXX. Törvény a menedékjogról – Art. 25/B
Return	The Hungarian asylum authority issues final rejection and return decisions. If an applicant is ill or in detention, a medical check assesses their health and any travel assistance needed. During enforced removals, medical professionals are present, and necessary medication is provided. The EURP reintegration programme by Frontex offers in kind and in cash support for returnees needing medical treatment in their home country.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Hungarian case study is based on the questionnaire filled in by representatives of the National Directorate-General for Aliens Policing (NDGAP) – Asylum Directorate, Directorate for Aliens Policing Documentation Centre (COI Unit) in September 2024.

Finally, the case study has been reviewed and updated by representatives of the National Directorate-General for Aliens Policing (NDGAP) – Asylum Directorate, Directorate for Aliens Policing Documentation Centre (COI Unit) in March 2026 in order to ensure its validity.

Case Study – Iceland

CASE STUDY – ICELAND 133

LIST OF ABBREVIATIONS 133

1. MEDICAL CLAIMS IN MIGRATION CASES IN ICELAND 134
   - *1.1. Legal Basis 134*
   - *1.2. Organisational Structure/ Responsibilities 134*
   - *1.3. Procedure in medical migration cases 134*
   - *1.4. The procedure of researching medical country of origin information 135*
   - *1.5. Statistics 135*
2. NATIONAL POLICY 136
   - *2.1. Medical severity of a person's health condition 136*
   - *2.2. Availability of medical treatment/ medication in countries of origin 137*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 138*
3. RESIDENCE PERMITS AND RETURN 138
   - *3.1. Medical claim accepted 138*
   - *3.2. Medical claim denied 139*
4. SUMMARY 140
5. SOURCES 141

List of abbreviations

COI	Country of Origin Information
CoO	Country of Origin

1. Medical claims in migration cases in Iceland

1.1. Legal Basis

The Icelandic policy on medical claims in migration cases is outlined in Article 74 Foreigners Act No. 80/2016[154] and Article 43a of the Regulation on Foreigners No. 540/2017[155]. It stipulates that a medical condition must meet a specific threshold of severity—typically involving sudden, life-threatening, or extremely serious illnesses that are expected to cause substantial and irreversible harm to the applicant's health if the appropriate medical treatment is unavailable in their country of origin, or if discontinuing ongoing treatment would result in serious harm should the individual be forced to return.

1.2. Organisational Structure/ Responsibilities

In Iceland, two bodies are responsible for researching and using medical country of origin information (COI).

The Directorate of Immigration, a government agency operating under the Ministry of Justice, is responsible for processing applications for international protection and protection on humanitarian grounds. The Immigration and Asylum Appeals Board, an independent quasi-judicial body, reviews appeals against negative decisions issued by the Directorate. The Board is an independent administrative body composed of three members: a chairman, a vice-chairman, and a third member.

Neither the Directorate of Immigration nor the Immigration and Asylum Appeals Board have a specific COI unit that is assigned to work exclusively on medical COI. Instead, research is conducted on a case-by-case basis by caseworkers, as part of the assessment of individual applications for international protection or protection on humanitarian grounds. Currently, 14 case workers are employed in the Directorate of Immigration and 17 at the Appeals Board.

No medical doctors are employed at or directly involved with the Directorate of Immigration's work.

According to the Regulation on Foreigners, the burden of proof, and thus to collect the medical information lies with the applicant. When assessing an application on medical grounds, the Directorate of Immigration must take into account all the documents submitted, including medical certificates and any other medical records. Each applicant is assigned a legal advisor who assists in gathering the necessary documents. Currently, no standardised templates are provided to collect medication information, and it is up to the applicant and their legal advisor to request the necessary information from the treating physician and to ensure that is it submitted in an appropriate from.

1.3. Procedure in medical migration cases

National Humanitarian protection

In cases where an application for international protection is rejected, it is mandatory in all cases for the Directorate of Immigration to consider the applicant for national humanitarian protection status. All

[154] See: https://www.government.is/library/04-Legislation/Foreign_Nationals_Act.pdf

[155] See: https://island.is/reglugerdir/nr/0540-2017

applicants are asked about their health condition, already during their asylum application procedure. If any health conditions are raised during the procedure, the applicant is advised to submit medical documentation to strengthen their application.

Return procedure

Health documents are reviewed in every case, and an assessment is made to check if the person is fit to travel. An interview is held to discuss health, and extra documents can be provided if needed. Sometimes authorities or doctors are involved to confirm fitness to fly. It is ensured the person has the necessary medication, and in some cases a doctor accompanies them during the transfer.

Medical COI research may become relevant in return cases, if a new or significantly worsened condition arises after the return decision. An asylum seeker can lodge a subsequent application. In other types of return cases, the individual can apply for asylum and a humanitarian residence permit.

Legal migration for third country nationals for family reunification

The Icelandic Regulation on Foreigners states that an application for legal migration on the basis of family reunification for third country nationals may be made if accompanied by medical documentation demonstrating that the need for urgent care exists. When the application is based on the state of health of an applicant, the submitted medication documents must also demonstrate that the necessary treatment and/or medication are not available in the applicant's country of origin. [156]

1.4. The procedure of researching medical country of origin information

In Icelandic practice, there are no circumstances where decisions are made solely on the basis of medical COI research of medication, without research on treatment. In cases where medical COI research is conducted, the availability of medication and treatment must both be researched.

1.5. Statistics

No statistics covering medical claims in migration cases in Iceland are available, as the case handling system does not provide the option to register medical claims separately.

The Directorate of Immigration got access to the EUAA MedCOI portal in January 2025 and there are no statistics on AVA or ACC requests from Iceland yet.

[156] Article 51 – 540/2017 Icelandic Regulations on Foreigners, https://island.is/reglugerdir/nr/0540-2017

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

Medical country of origin information is initiated if the medical documentation suggests a severe condition. Generally, if a medical condition is raised by an applicant, research on the state of the healthcare in the country of origin is conducted and is mentioned in the decision.

2.1.2. Severity threshold for decision-making

Article 43a of the Regulation on Foreigners (No. 540/2017), states that protection on medical grounds may also apply to very serious illnesses that are not necessarily life-threatening, if it is shown that the individual would suffer serious and irreversible harm upon return to their country of origin. This reflects the Paposhvili threshold, which extended the protection of Article 3 of the ECHR to cases involving a real risk of a serious, rapid, and irreversible decline in health or significant reduction in life expectancy, due to lack of effective access to appropriate treatment in the country of return.

The threshold for decision making is defined in Article 43a of the Regulation on Foreigners No. 540/2017, which elaborate on the application of Article 74 on the Foreign Nationals Act No. 80/2016. Protection on medical grounds (rík þörf á vernd af heilbrigðisástæðum) may be granted in cases of sudden and life-threatening illness, where necessary treatment is available in Iceland but not in the CoO of the applicant.

Although sudden and life-threatening conditions are explicitly cited as grounds for protection, protection may also be granted in cases of very serious illnesses that are not immediately life-threatening if returning would likely lead to severe and irreversible deterioration in health. Life-threatening conditions are not precisely defined but are interpreted within context, generally where the absence of treatment would place the applicant's life in direct and imminent danger. This provision is particularly relevant in cases of chronic illness where the progression of the disease can be anticipated.

The progression of an illness without access to adequate treatment or medication is a relevant consideration. Greater weight is given to protection needs where the illness is at an advanced stage (for example, terminal or end-stage).

Furthermore, if treatment has already commenced in Iceland and it would not be medically justifiable to interrupt it, this may also be taken into account.

Examples that may meet the threshold include:

- An individual with a sudden and life-threatening condition such as acute organ failure, cancer requiring ongoing treatment, or severe cardiac disease.
- An individual with a chronic but non-life-threatening condition where country of origin information indicates that necessary treatment is unavailable, and return would likely lead to serious and irreversible deterioration in health.

- A terminally ill applicant receiving palliative care, where interrupting treatment would not be medically justifiable.

2.1.3. Medical threshold cases

In exceptional cases, where the medical condition is clearly extremely severe – such as terminal stage cancer – humanitarian protection may be granted even without detailed MedCOI research. In this case, the decision may be based primarily on the submitted medical documentation and an assessment whether the return would lead to inhumane or undignified treatment or irreversible harm to the applicant's health.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

There is no explicit written policy defining the concept of availability of treatment and/or medication in Iceland. The Regulation on Foreigners No. 540/2017 does not specify concrete elements that should be taken into account, such as the registration status and regular supply of medication, or the quality or treatment.

2.2.2. Availability in practice

In practice, the elements that are taken into account are considered depending on the available COI and the specific circumstances of the individual case.

In general, a treatment or medication would be considered unavailable when reliable COI indicates that it is not present within a functioning healthcare setting, either public of private, in the applicant's country of origin. Medication or treatment may also be considered unavailable if the collected COI indicates that the treatment is insufficient or that the applicant would not have reasonable access to the necessary treatment or medication to prevent the deterioration of their medical condition.

The availability of medication in the context mentioned above has not been specifically addressed in Icelandic practice. However, the quality of treatment in the country of origin has been taken into consideration in assessments by the Immigration and Asylum Appeals Board. In particular, the Board has considered situations where the supply of medication was found to be unstable and where the quality of available medication was inadequate or unsatisfactory. In one case, the Board concluded that it could not be established that the applicant would, in practice, have reliable access to the medication necessary to prevent the deterioration of their condition. Given this and the fact that the applicant was suffering from a life-threatening illness, the Board found that it would not be justifiable to interrupt the medical treatment that had recently been initiated in Iceland. Black market medication would hardly be considered a reliable and stable source. The reliability of the internet pharmacy and local pharmacy re-supply factors would have to be assessed on a case-by-case basis.

The assessment of the availability of medication or treatment is conducted by the Directorate of Immigration. In the event of an appeal, the Immigration and Asylum Appeals Board also assesses the availability of treatment based on the same type of information. Both bodies use reliable COI information, and both have access to the EUAA MedCOI database.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

In Iceland, there is a requirement to assess accessibility as a separate decisive criterion in health-related cases. If the medical condition is deemed to have reached a certain level of severity and the treatment is available, it must then be assessed whether it is accessible to the applicant. Factors related to accessibility—such as whether the individual would realistically be able to obtain the treatment—may nonetheless be considered as part of a holistic evaluation of the need for protection, based on the overall social situation the applicant would face upon return.

2.3.2. Accessibility in practice

Economic Accessibility
Economic accessibility is not considered in the assessment of individual accessibility. The Regulation on Foreigners explicitly excludes economic factors from the assessment of accessibility in health-related cases, stating that treatment cannot be considered inaccessible solely because the applicant would have to pay for it. However, as the provision is discretionary in nature and allows for a holistic assessment of the applicant's overall social situation upon return, difficulties in accessing healthcare services—while not decisive on their own—may still be considered as part of the broader evaluation.

Geographic accessibility
The case law on the assessment of geographic accessibility is limited, and there is no specific written policy on this. Each case is assessed on an individual, case-by-case basis. The Regulation refers to situations where the applicant is "in some way excluded" from accessing treatment, which may be interpreted broadly depending on the circumstances of the case.

The proximity of medical facilities to the applicant, the physical ability of the applicant to reach the facilities, the availability and cost of transportation, the necessary frequency to travel to the medical facility, as well as the security situation on the CoO, may be taken into account in the assessment.

Political accessibility
Political accessibility is taken into account. The Regulation on Foreigners states that it must be assessed whether the applicant does not have a legal right to the treatment or is, in some way, excluded from it — such as due to serious discrimination.

3. Residence permits and return

3.1. Medical claim accepted

When a medical claim is accepted under humanitarian grounds, a residence permit is granted in accordance with Article 74 of the Foreign Nationals Act No. 80/2016. A residence permit on humanitarian grounds is typically granted for a period of one year.

According to Article 74(3) of the Act, a residence permit on humanitarian grounds shall not be granted for more than one year at a time. It may be renewed if the conditions that justified the initial granting of the permit remain unchanged. A residence permit granted under this provision may also serve as a basis for a

permanent residence permit, provided the applicant has resided continuously in Iceland for the past four years on the basis of a residence permit.

The Directorate of Immigration is the authority responsible for issuing the permit. In cases of appeal, the Immigration and Asylum Appeals Board may instruct the Directorate to issue such a permit.

3.2. Medical claim denied

If a negative decision by the Directorate of Immigration is not appealed to the second instance body, it becomes final. If appealed, the second instance body, the Immigration and Asylum Appeals Board, serves as a competent authority and issues the final decision by confirming the Directorate's decision.

If the applicant's request for international protection or a residence permit on humanitarian grounds is rejected, a return decision is issued within the same decision and is accompanied by a two-year re-entry ban. Depending on individual circumstances, each person is given a deadline by which they must either leave the country or request voluntary return assistance.

Return can be voluntary, either carried out on the individual's own initiative or with voluntary assistance. Voluntary return assistance is organised by the Directorate of Immigration and may be carried out in cooperation with the International Organization for Migration (IOM) or Frontex through the EURP program. In cases there the individual notifies the Icelandic authorities of their intended departure within the deadline or applies for voluntary return; the re-entry ban is lifted.

If voluntary return is not undertaken, the Directorate of Immigration is responsible for enforcing the return decision and assesses whether a request for police escort should be submitted to the Return and Escort Division of the Office of the National Commissioner of the Icelandic Police. This division is responsible for carrying out forced returns of applicants for international protection who have received a final rejection and have no other legal right to remain in Iceland, once the return decision becomes enforceable and the individual does not leave the country voluntarily.

If needed, basic medical arrangements may be made prior to return. These include providing the individual with necessary medication for a limited period, issuing relevant medical documentation, and — if applicable — coordinating with healthcare services in the country of origin. The extent of these measures depends on the individual's health condition and the return modality (voluntary or forced).

Under Regulation No. 607/2023, individuals who opt for voluntary return may be eligible for financial assistance, which can include contributions toward the cost of medication or medical treatment in the country of origin. The amount and duration of such support are assessed on a case-by-case basis, depending on the applicant's needs, the return plan, and partner organisation (such as IOM, Frontex or the Directorate of Immigration).

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	The severity threshold is researched in cases of sudden and life-threatening illness, where necessary treatment is available in Iceland but not in the CoO. Although sudden and life-threatening conditions are explicitly cited as grounds for protection, protection may also be granted in cases of very serious illnesses that are not immediately life-threatening if returning would likely lead to severe and irreversible deterioration in health. Life-threatening conditions are not precisely defined but are interpreted within context, generally where the absence of treatment would place the applicant's life in direct and imminent danger.	Article 43a of the Regulation on Foreigners No. 540/2017, which elaborate on the application of Article 74 on the Foreign Nationals Act No. 80/2016. Protection on medical grounds
Availability	There is no detailed written policy in Iceland, that defines when a medication or treatment is considered available. In practice, a treatment or medication would be considered unavailable when a reliable country of origin information source indicates that it is not "present" within any functioning healthcare setting in the country of origin. Furthermore, the supply of the medication as well as its quality, can be taken into account in relevant cases.	
Accessibility	The Regulation on Foreigners refers to situations where an applicant is "in some way excluded" from accessing medication or treatment. The Regulation on Foreigners explicitly includes economic factors. However, while these factors are not decisive on their own, they may nevertheless be taken into account in the holistic assessment. Geographic accessibility is not specifically defined in Iceland written policy and there is only limited case law. However, multiple aspects including the applicant proximity to medical facilities, the physical ability to reach these facilities and availability of transportation may be relevant depending on the circumstance of each case. In line with the Regulation, political accessibility includes, whether the applicant has the legal right to treatment or whether they are excluded in any way from accessing treatment as a result of serious discrimination.	Act on Foreigners and case law
Residence permit	When a medical claim is accepted on humanitarian grounds, a residence permit is granted on humanitarian grounds. The residence permit granted	Article 74 of the Foreign Nationals Act No. 80/2016

	for up to one year. The applicant may apply for a prolongation of the permit for the next years with the grounds on which permit was granted remain unchanged. A residence permit granted under this provision may also serve as a basis for a permanent residence permit, provided the applicant has resided continuously in Iceland for the past four years.	
Return	If a negative decision is not appealed, it becomes final. Appeals are handled by the Immigration and Asylum Appeals Board, which makes the final decision. If protection or residence is refused, a return decision with a two-year re-entry ban is issued, but the ban is lifted if the person leaves voluntarily within the set deadline or applies for voluntary return. Voluntary return can be arranged by the Directorate of Immigration, sometimes with IOM or Frontex. If not, the Directorate enforces the decision, and the police may carry out forced returns. Basic medical arrangements and limited financial support may be provided, depending on the person's health and whether the return is voluntary or forced.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Icelandic case study is based on the questionnaire filled in by representatives of the Icelandic Directorate of Immigration in April and May 2025.

Finally, the case study has been reviewed and updated by representatives of the Icelandic Directorate of Immigration in March 2023 in order to ensure its validity.

Case Study - Ireland

CASE STUDY - IRELAND 142

LIST OF ABBREVIATIONS 142

1. MEDICAL CLAIMS IN MIGRATION CASES IN IRELAND 143
   - *1.1. Legal Basis 143*
   - *1.2. Organisational Structure/ Responsibilities 143*
   - *1.3. Procedure in medical migration cases 143*
   - *1.4. The procedure of researching medical country of origin information 144*
   - *1.5. Statistics 144*
2. NATIONAL POLICY 144
   - *2.1. Medical severity of a person's health condition 144*
   - *2.2. Availability of medical treatment/ medication in countries of origin 145*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 145*
3. RESIDENCE PERMITS AND RETURN 146
   - *3.1. Medical claim accepted 146*
   - *3.2. Medical claim denied 146*
4. SUMMARY 146
5. SOURCES 146

List of abbreviations

ACC	Individual Accessibility
AVA	Individual Availability
COI	Country of Origin Information
CoO	Country of Origin
EUAA	European Union Agency for Asylum
GP	General Practitioner
IPO	International Protection Office
MedCOI	Medical Country of Origin Information.
PTR	Permission to Remain

1. Medical claims in migration cases in Ireland

1.1. Legal Basis

In Ireland, medical claims are considered primarily within international protection, which is governed by the International Protection Act of 2015. Decision making follows relevant EU jurisprudence. However, no dedicated written policy exists, except guidance from the EUAA on medical COI practice. Legal basis is refugee and subsidiary protection decision-making framework. It is considered as part of well-founded fear of persecution and real risk of serious harm (s.28 & 47).

1.2. Organisational Structure/ Responsibilities

In Ireland medical COI research is embedded in the International Protection Office, in the Department of Justice, Home Affairs and Migration. More generally, COI is under the aegis of the Refugee Documentation Centre, which is part of the Legal Aid Board which is part funded by the Department of Justice, Home Affairs and Migration.

There is a small standalone unit comprised of 1 Assistant Principal Officer and 1 Administrative Officer. Caseworkers also conduct their own research as needed. The Irish medical COI researchers do not have medical background; however, they have done the EUAA MedCOI training and employ the support of the EUAA MedCOI Sector doctors.

In Ireland the burden of proof lies with the applicant. Medical documents are submitted by the applicant and/or their legal representatives, informing the international protection officers of all circumstances surrounding the applicant's claims. There is a standardised template to collection the applicant's information, including their age, date of birth, area they were residing in in the CoO, medical condition, medication and current treatment necessary. Under the International Protection Act, 2015, submitted documents, including medical evidence, will be assessed, in line with strict confidentiality rules.

1.3. Procedure in medical migration cases

Asylum procedure

Health issues may be raised during the asylum process. The IPO refers medical information as provided by applications to the COI unit, who conducts the medical COI research, complex cases may involve COI research by the EUAA MedCOI sector.

Humanitarian protection

Health conditions may be relevant when considering *permission to remain* (PTR) on humanitarian grounds under s.49 of the International Protection Act 2015.[157]

[157] International Protection Act 2015, S. 49 ,
https://www.irishstatutebook.ie/eli/2015/act/66/section/49/enacted/en/html#sec49

Return procedure

Medical issues are always considered prior to the removal of an applicant from the State, as part of the non-refoulement assessment.

1.4. The procedure of researching medical country of origin information

In the Irish state practice, MedCOI research must always be verified and conducted on both medication and treatment.

1.5. Statistics

Ireland does not maintain separate public statistics on medical claims; these causes are recorded within the broader asylum statistics.

Ireland has not sent AVA or ACC requests to the EUAA MedCOI sector.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

Medical COI research is generally initiated in cases where the applicants present proof, a GP or consultant report containing the diagnosis and prescription, of a serious or chronic condition. The focus is on life-threatening illnesses or situations where removal of the applicant would result in a serious, rapid, and irreversible decline of health, such as advanced stages of cancer, severe HIV/AIDS, severe psychiatric disorders, or organ failure (e.g., kidney failure).

2.1.2. Severity threshold for decision-making

The severity threshold applies in decision-making on life-threatening conditions or circumstances, where an applicant's removal would cause a serious, rapid, and irreversible deterioration in their health. This may encompass illnesses such as advanced cancer, severe HIV/AIDS, major psychiatric disorders, or organ failure.

Irish caselaw has confirmed this severity threshold for decision making, by aligning domestic interpretation with the European Court of Human Rights (ECtHR) threshold of 'serious, rapid and irreversible decline', in line with the ECtHR Paposhvili v Belgium judgement.[158]

2.1.3. Medical threshold cases

There are exceptional circumstances, for instance if an applicant currently on dialysis and it would not be possible to move without a lapse in care, in which an applicant may be granted a status without COI research due to the severity of the applicant's illness.

[158] See: https://hudoc.echr.coe.int/eng?i=001-169662

2.2. Availability of medical treatment/ medication in countries of origin

Decisions from the Irish High Court and Court of Appeal emphasise that medical removal cases must be assessed against both availability and accessibility of treatment in the country of origin.

2.2.1. Definition of availability in the national context

The availability of medication and treatment is evaluated by determining whether such care exists and can be accessed in the applicant's country of origin, using MedCOI or EUAA reports. Medication is considered unavailable if it is not registered in the CoO, consistently out of stock, or exclusively obtainable through informal markets. Quality and continuity of supply are also relevant factors.

2.2.2. Availability in practice

The decision of whether a treatment or medication is considered to be available is made by the case worker. The COI unit provide the case worker with evidence-based reports, which may contain recommendations, however the case worker has the final say. To assess the availability of the necessary medication or treatment, the COI unit uses the information provided by the EUAA, medical journals or independent reports.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

In the Irish state practice, accessibility is assessed on a case-by-case basis.

2.3.2. Accessibility in practice

Economic Accessibility
The main factors considered when assessing economic accessibility of medication or treatment are the social protection schemes, average costs, and the personal circumstances of the applicant; such as assessing the risk that the applicant cannot work and therefore will be at risk of losing access to their medication or whether the applicant is a student, retired or on disability payments.

Geographic accessibility
Geographic accessibility concerns are assessed overall when also assessing accessibility. The assessment includes the distance to the treatment, the frequency of the necessary treatment or whether the applicant needs to travel to collect their medication.

Political accessibility
Political accessibility includes possible denial of treatment of the applicant because there are discriminated due to their membership of a social groups, race, religion of their political opinion. Denial of access to medication or treatment due to discrimination could be grounds for granting refugee status or subsidiary protection.

3. Residence permits and return

3.1. Medical claim accepted

An applicant's request for international protection may be influenced by any medical evidence submitted in support of their case. While refugee status and subsidiary protection status may be granted for an indefinite period, the duration of Permission to remain is determined at the discretion of the decision-maker.

3.2. Medical claim denied

When an application for international protection is refused, a Deportation Order will be issued.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	Usually, a serious or chronic condition that is life threatening illness or situations where removal of the applicant would result in serious, rapid, and irreversible decline in health.	
Availability	Medication and treatment are considered to be available in a country if they exist and are obtainable through formal markets. Quality and continuity are a relevant factor	
Accessibility	Accessibility is assessed on a case-by-case basis, considering whether treatment or medication are accessible to the applicant, taking into account cost and geographic location.	
Residence permit	When a medical claim is accepted, an applicant may be granted either refugee status, subsidiary protection a permission to remain. Refugee status and subsidiary protection can be granted indefinitely, the duration of the permission to stay is at the discretion of the decision maker.	Geneva Convention, Directive 2011/95/EU, International Protection Act, S. 49
Return	When international protection is refused, a Deportation Order is issued.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Irish case study is based on the questionnaire filled in by representatives of the Department of Justice, Home Affairs and Migration in October 2025.

Finally, the case study has been reviewed and updated by representatives of the Department of Justice, Home Affairs and Migration in April 2026 in order to ensure its validity.

Case Study - Italy

CASE STUDY - ITALY 147

LIST OF ABBREVIATIONS 147

1. MEDICAL CLAIMS IN MIGRATION CASES IN ITALY 148
   - *1.1. Legal Basis 148*
   - *1.2. Organisational Structure/ Responsibilities 148*
   - *1.3. Procedure in medical migration cases 149*
   - *1.4. Procedure for researching medical country of origin information 151*
   - *1.5. Statistics 151*
2. NATIONAL POLICY 152
   - *2.1. Medical severity of a person's health condition 152*
   - *2.2 Availability of medical treatment/ medication in countries of origin 153*
   - *2.3 Accessibility of medical treatment/ medication in countries of origin 153*
3. RESIDENCE PERMITS AND RETURN 153
   - *3.1. Medical claim accepted 153*
   - *3.2. Medical claim denied 154*
4. SUMMARY 154
5. SOURCES 155

List of abbreviations

COI	Country of Origin Information
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Asylum Agency
MedCOI	Medical Country of Origin Information
TC	Territorial Commissions

1. Medical claims in migration cases in Italy

1.1. Legal Basis

The legal basis for issuing a residence permit for medical treatment is established in Legislative Decree No. 286/1998, Article 19, paragraph 2, letter d-bis), as referred to in Legislative Decree No. 25/2008, Article 32, paragraph 3.1, and described in this document below.[159]

1.2. Organisational Structure/ Responsibilities

In Italy, medical migration cases falling **under the asylum procedure** are managed by the **Territorial Commissions for the Recognition of International Protection** (*Commissioni Territoriali per il Riconoscimento della Protezione Internazionale)* of the Ministry of the Interior. They are the competent authorities for first-instance decisions concerning applications for international protection (see paragraph 1.3(a) below).[160]

Furthermore, medical claims may be submitted directly to the Police Authorities (**Questura**), **independently of the asylum procedure** (see paragraph 1.3(b) below).

Medical country of origin (COI) research is generally conducted by the Territorial Commissions' caseworkers in the context of the asylum procedure. If necessary, research can also be conducted centrally by the COI Unit of the National Asylum Commission, either at the request of the Territorial Commissions or at the request of a second instance body (e.g., tribunals).

Medical information is either submitted directly by the applicant or, if the applicant is in a migration centre, by the treating health-care professional. The Territorial Commission requires that a medical certificate be issued by a public health facility or by a doctor affiliated with the National Health Service. There are no standardised templates for collecting medical information.

All caseworkers (as of October 2025, 257 on a permanent contract and 56 on fixed-term contracts) working in the 43 Territorial Commissions and sections across Italy can conduct research on medical country of origin information related to their respective cases, provided that it is not necessary to consult the MedCOI portal and all necessary information is available from other sources. However, 113 caseworkers have access to the EUAA MedCOI portal and can conduct research on it, having attended the relevant training as basic users.

Caseworkers who do not have access to the portal, and who cannot find the necessary information in public sources, can request their colleagues to retrieve information from the EUAA MedCOI portal. Requests can be submitted either to MedCOI basic-user caseworkers within their own Territorial Commission or to researchers of the COI Unit of the National Asylum Commission (=NAC) at the central

[159] Legislative Decree n. 286/98 – Art. 19, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286~art19-com2; Legislative Decree, n°25/08 -Art.32,

https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008-01-28;25~art32-com3

[160] Legislative Decree n. 25/08 - Art. 4., https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008-01-28;25

level, where one basic user and two advanced users operate. Advanced users in the NAC may also submit requests to the MedCOI portal staff regarding the availability and accessibility of information that is not already present on the portal.

1.3. Procedure in medical migration cases

There are several procedures in Italy where a foreigner's health condition plays an important role in migration procedures.

Medical claims in the context of the asylum procedure

In general, medical claims in asylum cases do not meet the requirements for the recognition of international protection, unless there is a real risk that the applicant may be persecuted in their country of origin due to their disease (which could constitute a ground for granting refugee status), or unless there is a lack of necessary medical care (which could under certain circumstances constitute a ground for granting subsidiary protection). If the Territorial Commission determines that the conditions for granting international protection (refugee status and subsidiary protection) are not met, it assesses whether the conditions the conditions exist for granting one of the forms of national (complementary) protection provided by law, such as the 'permit for medical treatment' (*permesso per cure mediche*). In such cases, the Territorial Commission requests that the Questura issue the corresponding residence permit (Art. 32, paragraph 3.1, Legislative Decree 25/2008). These cases fall within the definition of 'health conditions resulting from particularly severe pathologies that cause significant harm to health' as provided by Article 19, paragraph 2, letter d- bis) of Legislative Decree 286/1998, as referred to in Legislative Decree No. 25/2008, Article 32, paragraph 3.1.

The ECtHR judgment in Paposhvili v Belgium (App. No. 41738/10 [GC], 13 December 2016) established a precedent under Article 3 of the ECHR, holding that the expulsion of a foreign national may violate Article 3 if it would amount to torture due to the lack of necessary healthcare in the country of origin. Accordingly, the applicant's return would be contrary to the principle of non-refoulement. The Territorial Commissions are responsible for assessing whether the principle of non-refoulement, as established in Article 3 of the ECHR, applies to the applicant and prevents their return. In such cases, the Questura issues the corresponding residence permit.

Medical claims in the context of return procedures

A temporary residence permit for medical treatment may be granted by the Questura to a foreign national staying irregularly in Italy without a valid residence permit. Indeed, according to Article 19, paragraph 2, letter d-bis) of Legislative Decree 286/1998, the expulsion of foreigners in health conditions resulting from particularly severe pathologies, which cannot be adequately treated in the country of origin, and verified by appropriate documentation issued by a public healthcare facility or a doctor affiliated with the National Health Service, is not permitted if such conditions would cause significant harm to their health upon return to their country of origin or departure.

Additionally, under Article 19, paragraph 2, letter d-bis) of Legislative Decree No. 286/1998, women without a residence permit who are pregnant or within six months following the birth of their child, as

well as their cohabiting husbands, cannot be expelled and are granted a residence permit for medical treatment related to pregnancy.

Likewise, when a seriously ill third-country national receives a negative decision on their application for a residence permit and consequently faces a return procedure, they may submit a medical claim.[161]

In the above-mentioned cases, the application for a residence permit may also be submitted in person by the applicant directly at the Questura, by registered mail, or via certified electronic mail. If a person applies for a residence permit for medical treatment directly at the Questura, the Questura staff does not conduct MedCOI research. They rely solely on the medical certificate, which must be issued exclusively by a public healthcare facility (or by a doctor affiliated with the Italian National Health Service).

The Questura may issue the permit following a report from the patient's doctors once it has been determined that return would be harmful to the patient and, therefore, the expulsion is not allowed.

The Questura issues a residence permit for medical treatment for the duration indicated in the medical certificate, or up to one year. After one year, the permit may be extended, according to the medical certificate.

Entry for medical treatment

A foreign national who intends to receive medical treatment in Italy, as well as any accompanying person, may obtain a specific entry visa and the corresponding residence permit[162]. To this end, the applicants must submit a statement from the selected Italian healthcare facility indicating the type of treatment, the starting date, and the estimated duration of the medical care. They must also provide proof of having deposited a sum as a security deposit, taking into account the estimated cost of the requested medical services, in accordance with the procedures established by the implementing regulations. In addition, they must provide documentation proving the availability of food and accommodation in Italy for the accompanying person and for the patient's convalescence period. The application for the issuance of the visa or for the issuance or renewal of the residence permit may also be submitted by a family member or by anyone else with a legitimate interest.

The transfer to Italy for the treatment, which allows to obtain a medical residence permit, is also possible within the framework of humanitarian programs pursuant to Article 12, paragraph 2, letter c), of Legislative Decree No. 502 of 30 December 1992[163], subject to approval by the Italian Ministry of Health in agreement with the Ministry of Foreign Affairs.

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[161] Legislative Decree , n. 286/98 – Art. 19, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286~art19-com2

[162] Legislative Decree n. 286/98 – Art. 36, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286~art36

[163] Legislative Decree n. 502/92 – Art. 12, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1992-12-30;502~art12-com2-letc

Finally, a residence permit for medical reasons can be granted to the foreign national transferred to Italy as part of humanitarian intervention programs organized by the Regions, which — in agreement with the Ministry of Health — may provide, through local health authorities, highly specialised medical services for certain categories of foreign nationals.[164]

Residence permit upon reaching the age of majority

According to Articles 31(1) and 32(2) of Legislative Decree No. 286/1998, a residence permit for family reasons, valid until the age of majority, or an EU long-term residence permit, shall be issued to the minor child of a foreign national legally residing in Italy, provided that the child lives with their foreign parent(s) or has been placed in their custody or foster care.

Upon reaching the age of majority, the foreign national to whom the previous provisions applied may be granted a residence permit for study purposes, for access to employment (either subordinate or self-employment), for health or care needs. These residence permits are issued subject to a positive opinion from a dedicated Office of the Ministry of Labour.

Eventually, the same residence permits may also be granted to unaccompanied foreign minors, not under foster care, who have participated in a social and civic integration program for a period of no less than two years.

1.4. Procedure for researching medical country of origin information

In principle, the Territorial Commissions assess both the availability and accessibility of a treatment or a medication in the country of origin when evaluating a medical claim submitted by an applicant for international protection. Furthermore, a decision may be made solely on the basis of the lack of access to a prescribed medication if such lack would itself cause significant harm, regardless of the accessibility of other treatments. However, this depends on the specific pathology and the details provided by the applicant, and therefore each decision is made on a case-by-case basis.

1.5. Statistics

In 2024, 484 applicants were granted complementary protection for medical treatment at first instance. In 2025, up to October 24, complementary protection for medical treatment was granted to 533 applicants at first instance.

In 2024 Italy submitted 3 AVA and 2 ACC requests.[165]In 2025, up to the end of October, Italy submitted 8 availability requests and 6 accessibility requests: responses to all 8 availability requests and to 5 of the accessibility requests have already been published on the EUAA portal, while 1 accessibility request was still pending.

[164] Law 27 No. 449/97, Art 32, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1997;449

[165] Information provided by the EUAA MedCOI Sector

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

The Territorial Commissions assess the availability and accessibility of the necessary medical treatment or medication in the country of origin only after the applicant's condition has reached a certain severity threshold.

To meet the threshold, the case must involve particularly severe pathologies that would cause significant harm if treatment were interrupted.

The definition of 'health conditions resulting from particularly severe pathologies that cause significant harm to health' is provided in Article 19, paragraph 2, letter d-bis) of the Legislative Decree No. 286/1998. Within the scope of the legal definition and taking into account the relevant case law of the ECtHR, such as the *Paposhvili v Belgium* judgement, the severity of the health condition of an individual is evaluated on a case-by-case basis.

2.1.2. Severity threshold for decision-making

In principle, the severity threshold for decision-making is established by Article 19, paragraph 2, letter d-bis) of Legislative Decree No. 286/1998, which states that expulsion is not permitted 'for foreign nationals who are in health conditions resulting from particularly serious illnesses, not adequately treatable in the country of origin, verified through appropriate documentation issued by a public healthcare facility or by a doctor affiliated with the National Health Service, and which would cause significant harm to their health if they were to return to the country of origin or provenance'.

Multiple ECtHR judgments, including *Paposhvili v Belgium* and *Savran v Denmark,* have set a precedent for the severity threshold for decision making in medical migration cases. In addition, there have also been national cases that further define this threshold.

2.1.3. Medical threshold cases

The ruling of the Court of Cassation, sect. VI, 11 December 2019, no. 32339, states that the fundamental right to health, as provided for in Article 35 of Legislative Decree no. 286 of 1998, may prevent the repatriation of a person, if the immediate enforcement of the return could cause the applicant to suffer irreparable harm.[166]

[166] Court of Cassation sect. VI, 11/12/2019, n.32339, https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-32339-del-11-12-2019

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

In Italy, there is no specific case law or policy stipulating a condition in which a treatment or medication is considered to be available. The Territorial Commissions consider treatment or medication as available in the country of origin if it (or a substitute established as equivalent by a doctor) is (physically) present in the country of origin. The quality of the treatment is not considered as a key element in assessing availability, but the quality is assessed considering all the elements of each individual case. Furthermore, the presence of the required medication on the black market is not considered.

2.2.2. Availability in practice

The availability of a specific treatment or a medication is assessed by the Territorial Commission, with a judge also potentially assessing availability in the second instance. The main sources used are documents retrieved from the EUAA MedCOI portal.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

De facto accessibility is also assessed, where real access to the adequate medication and/or treatment is taken into consideration through information provided on the EUAA MedCOI portal.

2.3.2. Accessibility in practice

Economic Accessibility
In the Italian national practice, the average cost of the medication or treatment, the presence of health insurance, governmental or international aid programmes, and the financial, social, and family situation of the applicant are assessed.

Geographic accessibility
Here, the proximity of the medical facility and pharmacies to the applicant's place of resident is assessed. Additionally, the Territorial Commissions consider the applicants physical ability to reach the facilities, as well as the security in the country of origin.

Political accessibility
Furthermore, during the assessment of international protection claim, the Territorial Commission must consider if the applicant may be denied health care in their country of origin on a discriminatory basis.

3. Residence permits and return

3.1. Medical claim accepted

If granted, the residence permit for medical treatment is issued by the Questura. The permit is issued for the time period attested for by the medical certificate, but not exceeding one year. After the permit has expired, it may be renewed as long as duly certified conditions persist. The permit is solely valid in the national territory.

3.2. Medical claim denied

The Territorial Commission and the Police Authorities issue the final decision, respectively, when the medical claim is filed in the context of the asylum procedure and when it is filed directly with the Police Authorities (Questura).

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	Health conditions deriving from particularly serious diseases, which could not adequately be treated in the country of origin and where the return to the country of origin may cause *significant harm to their health*.	Legislative Decree n° 286/98, Article 19, paragraph 2, letter d-bis) as referred to in Legislative Decree n° 25/2008, article 32, paragraph 3.1
Availability	In order to determine the availability of treatment or medication, the Territorial Commission takes into account the effective presence of the specific treatment or medication, or of an equivalent substitute as determined by a medical professional.	
Accessibility	The authority needs to take into consideration whether the individual could have real access to the adequate medication and/or treatment. The economic, geographic, and political accessibility needs are assessed.	
Residence permit	When a medical claim is accepted, the police shall issue a residence permit for not more than one year, renewable as long as the condition is duly certified. Third-country nationals seeking medical treatment in Italy, as well as any accompanying person, may obtain a specific visa and residence permit by providing a declaration from an Italian healthcare facility and proof of sufficient financial means to cover treatment, accommodation, and living expenses. The permit may also be granted under national humanitarian programmes, subject to approval by the Italian Ministries of Health and Foreign Affairs. Finally, a residence permit for medical reasons can be granted to foreign nationals transferred to Italy under regional humanitarian programs for specialized medical care, in agreement with the Italian Ministry of Health.	Legislative Decree n° 286/98, Article 2 and Article 19, paragraph 2, letter d-bis) Legislative Decree 286/98, Article 36 Legislative Decree n° No. 502/92, Article 12 Law No. 449/ 97 , Article 32
Return	The Territorial Commissions and the Police issue the final decision. If a medical claim has been rejected, other considerations are taken into account, such as the non-refoulement principle.	Legislative Decree n° 286/98, Article 19

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Italian case study is based on the questionnaire filled in by representatives of the Italian National Asylum Commission and its COI Unit within the Ministry of the Interior in June and July 2024.

Finally, the case study has been reviewed and updated by representatives of the COI Unit of the Italian National Commission for the Right of Asylum in April 2026 in order to ensure its validity.

Case Study - Latvia

CASE STUDY - LATVIA 156

LIST OF ABBREVIATIONS 156

1. MEDICAL CLAIMS IN MIGRATION CASES IN LATVIA 157
   - *1.1. Legal Basis 157*
   - *1.2. Organisational Structure/ Responsibilities 157*
   - *1.3. Procedure in medical migration cases 158*
   - *1.4. The procedure of researching medical country of origin information 158*
   - *1.5. Statistics 158*
2. NATIONAL POLICY 159
   - *2.1. Medical severity of a person's health condition 159*
   - *2.2. Availability of medical treatment/ medication in countries of origin 160*
3. RESIDENCE PERMITS AND RETURN 161
   - *3.1. Medical claim accepted 161*
   - *3.2. Medical claim denied 161*
4. SUMMARY 161
5. SOURCES 162

List of abbreviations

COI	Country of Origin Information
CoO	Country of Origin
ECtHR	European Court of Human Rights
OCMA	Office of Citizenship and Migration Affairs
SBG	State Border Guard
TCN	Third Country National

1. Medical claims in migration cases in Latvia

1.1. Legal Basis

According to Section 11 of the Latvia Immigration Law, a long-stay visa may be issued to a foreigner if the issuing conforms with the principles of international law or if the issuing is for humanitarian reasons. Additionally, according to Section 23 of the Latvian Immigration Law, a foreigner has the right to request a temporary residence permit in accordance with the procedures laid down in law for the period indicated in the contract for inpatient medical treatment.[167]

1.2. Organisational Structure/ Responsibilities

The Office of Citizenship and Migration Affairs (OCMA) under the Latvian Minister of Interior is responsible for residence permits in relation to international legal norms or humanitarian considerations, including decisions in legal migration, asylum decisions, and decisions on voluntary return. Here, the medical research is conducted during the evaluation of documents submitted for the residence permit. If necessary, officials can contact the Health Inspectorate Republic of Latvia[168] or if more detailed information is needed, the relevant medical association is contacted. Where additional consultation is needed on specific medical conditions or medications – medical experts from SIA Veselības centru apvienība (Association of Health Centers) which is provider of medical services in the Asylum seekers' reception center - are consulted. The State Border Guard (SBG) is an institution under supervision of the Ministry of the Interior, SBG is for decisions on forced return.

There is no particular COI division in OCMA and the SBG, therefore the case workers are responsible for gathering medical COI.

In the Ministry of Interior (MoI) in Latvia it is not possible to assess how many staff engage in medical COI research, as medical claims are only one of the aspects the case workers assess. However, OCMA has 9 decision makers/COI researchers in the field of asylum and 2 decision makers/COI researchers in the field of return. These decision makers/COI researchers additionally consult OCMA's Litigation officers on MedCOI in specific cases.

In the MoI, healthcare professionals are involved where clarification of the medical documentation submitted, or other medical expertise, is required. In the field of asylum, where necessary, consultation or advice on medical issues is requested from medical experts of the Association of Health Centres, a medical entity providing medicals support in receptions centres in Latvia. For medical enquires related to return, the State Health Inspection experts are consulted, and in cases of forced return, medical practitioners from the Detained Foreigners Accommodation Centre are consulted.

The burden of proof lies with this applicant who submits the initial medical information. If additional information is required, the competent authority may request it from the treating doctor. There is currently no standardised template to collect medical information from applicants.

[167] See: https://likumi.lv/ta/en/en/id/68522-immigration-law

[168] See: https://www.vi.gov.lv/en

1.3. Procedure in medical migration cases

Medical claims in asylum proceedings

Latvian asylum law does not foresee specific procedures or statuses for medical cases as such. A medical claim per se is not a reason to grant international protection, and thus there usually are other grounds from the protection request, and medical issues are mentioned as additional or consequent reasons.

Medical claims in humanitarian protection proceedings

In exceptional cases, a foreign national may apply for a temporary residence permit on humanitarian grounds in accordance with international law.

Medical claims in return procedures

Before making a return decision the OMCA examines any medical claims made by the applicant. To understand the potential effects of return and to take a lawful decision, the OMCA collaborates with the State Health Inspection experts. Pursuant to Latvian immigration law, the competent authority that issued the voluntary return decision may, upon application by the foreign national, grant an extension of the period stipulated in voluntary return decision for a duration not exceeding one year. Accordingly, where the returnee's state of health does not permit travel, the time limit for voluntary return may be extended.

Medical claims in legal migration

The Immigration Law of Latvia permits a third-country national travel to Latvia in order to undergo medical treatment in a Latvian medical institution, provided that the institution issues an invitation and ensures compliance with the rules governing entry and residence. In such cases, a residence permit may be granted for the intended duration of treatment.

1.4. The procedure of researching medical country of origin information

Due to the limited number of medical related cases, no particular practice on conducting medical COI research solely based on medication has not developed, likely both research on medication and research on treatment would be requested.

1.5. Statistics

Mostly, medical cases are not registered separately within migration statistics in Latvia. Information on medical claims is not collected as the medical claim itself does not constitute grounds for refugee status or subsidiary protection. While medical cases are not indicated specifically, it is possible to register vulnerabilities – in accordance with Article 21 of the Directive 2013/33/EU of the European Parliament and of the Council on 26 June 2013 laying down standards for the reception of applicants for international protection (recast).[169]

[169] See: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033

Similarly, statistics on individuals who have been returned after a medical claim has been denied are not collected by the OMCA. The information system on return also does not collect information on medical claims. However, it is possible to collect digitalised documents such as the application of the returnee or the return decision.

Additionally, medical information is not collected about the issuance of temporary residence permits on humanitarian grounds, as the status of the applicant's health is one of the grounds in the assessment of humanitarian considerations and it is recorded as such.

On the other hand, within legal migration procedures, medical claims are registered separately. During the last 5 years, there have been no requests for a permit to receive medical treatment in Latvia.

Latvian asylum case workers only joined the EUAA MedCOI network in 2024, and since then neither AVA nor ACC requests have been sent. However, the published reports on medical country of origin information have been used by the Latvian case workers.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In Latvia, there is no particular severity threshold definition that stipulates in which cases medical COI research must be initiated. Instead, the considerations expressed, and the evidence presented is being assessed in the overall context on a case-by-case basis.

2.1.2. Severity threshold for decision-making

The severity threshold for decision making, meaning how severe an illness has to be for the applicant to qualify for protection, is set based on judgments of the ECtHR, namely the judgment of 13 December 2015 in the case Paposhvili v Belgium, application No. 41738/10[170], the judgment of the 7 December 2021 in the case Savran v Denmark, application No. 57467/15[171], as well as the judgment of the 6 February 2021 in the case Bensaid v the United Kingdom, application No. 44599/98[172].

[170] See:
https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2241738/10%22],%22display%22:[2],%22languageisocode%22:[%22ENG%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-169662%22]}

[171] See:
https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2257467/15%22],%22display%22:[2],%22languageisocode%22:[%22ENG%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-214330%22]}

[172] See:
https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22\%22CASE%20OF%20BENSAID%20v.%20THE%20UNITED%20KINGDOM\%22%22],%22display%22:[2],%22languageisocode%22:[%22ENG%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-59206%22]}

2.1.3. Medical threshold cases

There is no information available on written policy related to extremely severe medical cases, where humanitarian decisions are possible immediately without conducting research on medical country of origin information.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

In Latvia, there is not specific written policy or national practice defining when a medication or treatment is considered available. However, medication should be registered/supplied officially to be considered available, medication that can only be obtained through the black market is not considered to be available.

2.2.2. Availability in practice

Availability is checked by the caseworkers with the support of the MedCOI database, different internet sources and in some cases with the medical experts may be consulted on possibilities to substitutes or alternatives to a particular medication.

The decision on the availability of treatment/medication is assessed in the overall context of the decision on granting a residence permit. It is made by the relevant official, who is entitled to decide on the granting or refusal to grant a residence permit. In return cases, a written decision on whether medication and/or treatment are available is made by the head of the OCMA. In asylum cases, the decision on availability is made by the Asylum Affairs Division. These decisions can be appealed in front of the competent Court.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

In Latvia, the individual accessibility is generally assessed in relevant cases. The decision on what is considered accessible is made on a case-by-case.

There is no particular regulation in Latvia stipulating which sources are considered acceptable evidence for the accessibility assessment. To date there have a been a limited number of cases where the accessibility of treatment was considered. In these cases, information for the EUAA MedCOI Portal and other COI sources were used. The information taken into consideration includes: the healthcare system in general in the country of origin, the existence of experts and clinics in the specific medical field, and in some cases geographic location and political accessibility.

In legal migration cases the accessibility of medication and/or treatments in the CoO are not relevant. Here, the medical institutions take responsibility for a person and only then is a residence permit granted.

2.3.2. Accessibility in practice

Economic Accessibility

There are no specific elements that need to be fulfilled in assessing economic accessibility. Generally, all evidence submitted and the justification for the request made by the applicant are considered in each specific case.

In asylum cases, medical issues could be linked to other grounds for international protection. Here, economic accessibility would be considered in connection with potential discriminatory practices against a particular group.

Geographic accessibility

In assessing cases related to asylum applications, several factors are taken into account, including the proximity of medical facilities and pharmacies to the individual's place of residence, the applicant's physical ability to reach these facilities, the security situation in the country of origin, the availability and cost of transportation, and the necessary frequency of travel to the medical facility. So far, certain cases have been analysed with particular attention to the geographical accessibility of specialised medical services, while the security situation in the country of origin is consistently examined. The MoI assesses the aforementioned aspects within the broader context of all the circumstances of each case.

Political accessibility

The MoI assesses these aspects within the overall context of all the circumstances of each case. In doing so, consideration is given to access to medical facilities and to the public insurance system, particularly where such access may be restricted on the grounds of the individual's race, religion, nationality, membership of a particular social group, or political opinion. As in asylum cases, medical issues usually constitute an additional element to the main grounds of the claim; therefore, political accessibility to healthcare is examined to determine whether the applicant may be subject to discrimination.

3. Residence permits and return

3.1. Medical claim accepted

In cases where the applicant receives a residence permit to receive treatment in the country of destination, the residence permit is granted for the expected duration of the treatment.

3.2. Medical claim denied

Return decisions are issued by the OCMA. In cases of forced expulsion of a TCN, the individual goes through a medical examination by the Detained Foreigners Accommodation Centre. If the individual is considered to be 'fit-to-fly,' the TCN is subject to removal from the EU territory. However, if the health condition does not allow the TCN to travel, repatriation is postponed.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for	Serious, rapid and irreversible decline in the state of health, which may lead to intense suffering or significant reduction in life expectancy	ECtHR cases Paposhvili v Belgium, application No. 41738/10, Savran v

admission of a medical claim)		Denmark, application No. 57467/15, Bensaid v The United Kingdom, application No. 44599/98
Availability	Evaluated on a case-by-case basis.	
Accessibility	Decision is made on a case-by-case basis, economic, geographic and political considerations are taken into account.	
Residence permit	When a medical claim is accepted, the applicant is granted a residence permit for the duration of the required treatment.	
Return	After a negative decision, the applicant receives a return order. If the individual is not fit-to-fly, the return is a postponed.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Latvia case study is based on the questionnaire filled in by representatives of the Latvian Ministry of Interior, the Office of Citizenship and Migration Affairs and the State Border Guard in May 2025.

Finally, the case study has been reviewed and updated by representatives of the Latvian Ministry of Interior, the Office of Citizenship and Migration Affairs and the State Border Guard in March 2026 in order to ensure its validity.

Case Study - Luxembourg

CASE STUDY - LUXEMBOURG 163

LIST OF ABBREVIATIONS 163

1. MEDICAL CLAIMS IN MIGRATION CASES IN LUXEMBOURG 164
   - *1.1. Legal Basis 164*
   - *1.2. Organisational Structure/ Responsibilities 164*
   - *1.3. Procedure in medical migration cases 165*
   - *1.4. The procedure of researching medical country of origin information 166*
   - *1.5. Statistics 166*
2. NATIONAL POLICY 167
   - *2.1. Medical severity of a person's health condition 167*
   - *2.2. Availability of medical treatment/ medication in countries of origin 168*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 169*
3. RESIDENCE AND RETURN 170
   - *3.1. Medical claim accepted 170*
   - *3.2. Medical claim denied 170*
4. SUMMARY 171
5. SOURCES 172

List of abbreviations

CoO	Country of Origin
DoI	General Department of Immigration
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
IOM	International Organization for Migration
MedCOI	EUAA's Sector working on medical country of origin information
MHA	Ministry of Home Affairs
MoH	Ministry of Health

1. Medical claims in migration cases in Luxembourg

This research report analyses the administrative procedures and jurisprudence in the context of migration cases involving medical claims in Luxembourg. 'Migration cases involving medical claims' refers to all kind of requests submitted by third country nationals to be granted a permit to stay based on medical claims. In Luxembourg, these medical claims are predominantly raised during return procedures following a negative decision on an application for international protection. The number of medical claims within other migration procedures has been reported to be very low, including persons applying for a residence permit for the purpose of receiving medical treatment (*l'autorisation de séjour des personnes bénéficiaires d'un traitement medical*).[173] The present study will focus on Luxembourg's practice regarding medical claims in return procedures.

1.1. Legal Basis

The legal basis to remain in Luxembourg based on medical grounds is explicitly mentioned in the Free Movement of Persons and Immigration Law of 29 August 2008.[174]

"Sous réserve qu'il ne constitue pas une menace pour l'ordre public ou la sécurité publique, l'étranger ne peut être éloigné du territoire s'il établit au moyen de certificats médicaux que son état de santé nécessite une prise en charge médicale dont le défaut entraînerait pour lui des conséquences d'une exceptionnelle gravité, et s'il rapporte la preuve qu'il ne peut effectivement bénéficier d'un traitement approprié dans le pays vers lequel il est susceptible d'être éloigné." (Art. 130 Free Movement of Persons and Immigration Law).

This article is listed in the section on impediments for return (*l'empêchement à l'éloignement*) and is part of the return procedure. Accordingly, in order to postpone the removal, the foreign national, who must not pose a threat to public order or security, must first establish, by means of medical certificates, that his or her state of health requires medical care, the absence of which would have consequences of exceptional gravity and, secondly, that he or she cannot effectively benefit from appropriate and sufficiently accessible treatment in the country to which he is likely to be removed. Luxembourg has clear provisions concerning migration cases involving medical claims in its immigration laws. If the conditions are met a **postponement of return** (*sursis à l'éloignement*) for medical reasons is being.

1.2. Organisational Structure/ Responsibilities

The main governmental authority that decides on migration cases with medical claims in Luxembourg is the Department for Refugees, which is part of the General Department of Immigration (DoI) within the Ministry of Home Affairs (*Ministère des Affaires intérieures*). The General Department of Immigration is composed of various services, notably the Departments for Foreigners, Refugees and Returns. The in-house COI unit provides medical country of origin information. In 2025, the case workers have completed the MedCOI basic training and have access to the MedCOI platform. Additionally, the National Contact

[173] Art. 90 Free Movement of Persons and Immigration Law of 29 August 2008. Expert interview 1 (2017). Expert interview 2 (2017).

[174] Loi du 29 août 2008 Libre circulation des personnes et immigration. Last amendment on 8 March 2017.

point has completed the advanced MedCOI training and therefore can launch requests on the MedCOI platform.

Another important stakeholder in the context of migration cases involving medical claims is the Ministry of Health. The medical doctors of the Division on Health Inspection *(Division de l'Inspection Sanitaire)* advice the General Department of Immigration medical questions within such procedures. The Ministry of Health submits recommendations in each individual case on the severity of the disease and medical country of origin information. The General Department of Immigration, however, is not obliged to follow the recommendation.[175] Research on medical COI is also conducted within the Department for Health. Doctors and nurses use the services of the MedCOI Sector to advice the General Department of Immigration. The involvement of medical professionals has proven to be useful in assessing the medical certificates, especially in cases where specialised knowledge is required. Furthermore, the Ministry of Health was requested to contribute in some asylum cases. To make the process more efficient, some employees of the Ministry of Health received MedCOI access in addition to the employees of the General Department of Immigration.

The administrative decision of the General Department of Immigration can be appealed against at the *Tribunal administratif*, the court of first instance. The *Cour administrative* is the court of second instance.

The applicant has to submit a medical certificate to the General Department of Immigration. The DoI sends a formal request to the Ministry of Health (MoH) with all medical documents and if available, any other information. A medical doctor of the Division on Health Inspection assesses the individual case. If further information or examination is required, the applicant is asked to come to the MoH for a medical examination. For cases that meet the severity threshold the MoH conducts research on medical country of origin information. The medical doctor then provides advice to the DoI on the severity of the disease, the availability, and the accessibility to medication and/or medical treatment in the country of return. General Department of Immigration is obliged by law to ask the Ministry of Health for advice[176] however, the final decision is taken by the Ministry of Home Affairs. All medical claims are forwarded to the doctors of the Ministry of Health, irrespective of the severity of the disease.

The applicant or his/her lawyer hands over the medical reports of the treating medical doctor to the authority, rather than the treating medical doctor submitting them directly. There are no standardised forms for these reports, however they have to meet the requirements of Article 130 on the Free Movement of Persons and Immigration.

1.3. Procedure in medical migration cases

The majority of migration cases based on medical claims arises within the procedure for return and affects mainly persons who have been denied international protection. After the decision on the rejection of international protection (i.e., refugee status and subsidiary protection status), a return decision is issued by the General Department of Immigration. The individual is then required to leave the country within a

[175] Art. 131(3) Free Movement of Persons and Immigration Law of 29 August 2008.

[176] Art. 131(3) Free Movement of Persons and Immigration Law of 29 August 2008.

specified time period. Only if the person submits a request for the postponement of the return based on medical claims a special procedure within the return procedure is initiated.

1.4. The procedure of researching medical country of origin information

No threshold is specified for the case worker to either be able or be required to initiate medical COI research. The case worker will evaluate each situation individually, ultimately considering the severity threshold for decision-making as outlined in 2.2.

Both the treatment and the medication necessary are taken into account in the decision.

1.5. Statistics

The number of postponements of return that were granted based on medical grounds according to Article 130 Free Movement of Persons and Immigration Law is available.

Table 1: Number of postponements of return based on medical grounds according to Art. 130 Free Movement of Persons and Immigration Law

	Number of postponements of return granted on medical grounds
2013	161
2014	258
2015	80
2016	22
2017	13
2018	22
2019	28
2020	38
2021	22
2022	28
2023	44
2024	65
2025 until October	30

SOURCE: information provided by the General Department of Immigration (MHA) by email in July 2017, April 2024 and in October 2025.

According to these numbers provided by the Ministry of Home Affairs, in 2013 a total of 161 individuals have been granted a postponement of return based on medical grounds. This number includes persons who have obtained a postponement for the first time as well as individuals who have received an extension of their postponement. In 2014 the total number of postponements increased to 258 and dropped in 2015 to 80 persons and in 2016 22 persons were granted a postponement. There is no data collected on the total number of all submitted applications for a postponement of return based on medical claims. Between 2017 and 2023 the numbers have remained at a low level and varied slightly, between 44 postponements in 2023 and 13 postponements in 2017. The numbers have stayed significantly below the postponements or return granted in 2013 and 2014.

In 2023, 2024, and 2025 Luxembourg has not sent AVA or ACC requests to the EUAA MedCOI sector. [177]

2. National Policy

2.1. Medical severity of a person's health condition

In this report the threshold for the severity of a disease refers to a certain level of severity that the disease or overall medical situation of a person has to reach in order to constitute an impediment to return. Only if the applicant's medical situation meets the threshold of severity, the case worker needs to assess the medical country of origin information.

2.1.1. Severity threshold to initiate research on medical COI

No threshold is specified for the case worker to either be able or be required to initiate medical COI research. The case worker will evaluate each situation individually, ultimately considering the severity threshold for decision-making as outlined in 2.2.

2.1.2. Severity threshold for decision-making

In Luxembourg, the threshold for the severity of a disease that qualifies for a postponement of return is set forth in law. Article 130 Free Movement of Persons and Immigration Law describes the threshold as consequences of exceptional gravity ('*conséquences d'une exceptionnelle gravité*'). Moreover, the official commentary of the House of Parliament on Art. 131 Free Movement of Persons and Immigration Law clarifies that the severity of a disease is given if the return would cause

1) the death of the person,
2) a reduction of life expectancy or
3) a very severe handicap to the applicant due to a lack of medication and/or medical treatment[178].

Hence, the threshold for medical claims seems lower than suggested by the case law of the ECtHR which is met if the person is "*close to death*" or faces a real risk of "*being exposed to a serious, rapid and irreversible decline in his or her state of health*"[179] upon return. The practice on the severity threshold in Luxembourg thus is more linked to a worsening of the health situation in case of return to the country of origin/ return (which spans from a "severe handicap" to the "death of the person"). The medical consequences in case of a lack of medical care seem to be of higher relevance than the severity of the disease itself.

In a judgement of the Administrative Court in 2018, the Court refers to the severity threshold set forth in Article 130 Free Movement of Persons and Immigration Law and secondly confirms the cumulative nature of the conditions: 1) severity and 2) availability/accessibility. The appellants, a couple and their minor

[177] Information provided by the EUAA MedCOI sector

[178] "The disease would, without treatment or medical care, result in consequences of exceptional gravity for the person concerned, in particular it may cause the death of the person, reduce his life expectancy or cause a serious disability." Commentary of the House of Parliament (2007, p. 86, translated by authors).

[179] Case of Paposhvili v Belgium, Application no. 41738/10, European Court of Human Rights, Grand Chamber, 13 December 2016, para. 183.

children, asked for a postponement of their return to Azerbaijan due to medical reasons after receiving a negative decision on their application for international protection. The basis for their appeal was a child's health condition, specifically a bilateral inguinal hernia, which they argued required specialised medical care unavailable in their country of origin. The child had to undergo a laparoscopy, which went without any complications.

According to the Court, the medical reports submitted by the appellants did not indicate any medical condition that qualify as a serious and imminent pathology necessitating urgent care in Luxembourg: The child did not require medical or post-operative treatment, the success of the operation, the child's prompt discharge from the hospital, the only immediate treatment was pain medication (with Paracetamol), and the child was scheduled for a follow-up appointment only one month later.

As a result, the Court concluded that the appellants failed to establish the exceptionally serious consequences resulting from the lack of medical treatment for the child's condition. The court upheld the decision of the General Department of Immigration, stating that "the first legal condition for a postponement of a return, which involves a health condition requiring medical care and the absence of which would result in exceptionally serious consequences" was not met. For this reason, further examination of the second condition, "that he or she cannot effectively benefit from appropriate and sufficiently accessible treatment in the country to which he or she is likely to be removed," is unnecessary because it would be superfluous. Thus, the appeal was dismissed.[180]

2.1.3. Medical threshold cases

No threshold specified in the written policy of Luxembourg, regarding extremely severe medical cases. The case worker will evaluate the situation, ultimately considering the severity threshold for decision-making. In general, Luxembourg rarely or never conducts repatriations in cases of illness. In the case of more serious illnesses, applicants are usually granted a deferral of deportation.

2.2. Availability of medical treatment/ medication in countries of origin

The availability of the required medication and/or medical treatment has to be conducted for all applications that meet the severity threshold. The availability assessment is being conducted by the Ministry of Health[181] and the Ministry of Home Affairs. The MHA is obliged to ask the Ministry of Health for advice on the availability, which is normally followed however, the final decision lies with the MHA. Hence, the decision on the availability is based on the information received from the applicant, the Ministry of Health, the COI unit of the MFA and the information provided by the EUAA's MedCOI Sector.

2.2.1. Definition of availability in the national context

The medication has to be actually supplied, and the medical treatment has to be provided by medical facilities in the country of origin. Delays in the re-supply of the medication are taken into consideration

[180] Cour Administrative, 40964C, 06/12/2018.

[181] The MoH conducts the research on the availability of medication only if the exact treatment is known from the information received by the MFA.

only if this may cause serious consequences to the person's health. In some cases, the Ministry of Health conducts research on the availability of substitute medication.

2.2.2. Availability in practice

The Luxembourgian Courts and Tribunals have often found that the first cumulative condition set out in article 130 of the Free Movement of Persons and Immigration Law has not been met (see chapter 2). Thus, these instances did not often continue with the assessment of availability or accessibility of medication and/or treatment in the CoO. For this reason, there is only a limited discussion in national case law on the availability and accessibility of medical treatments/medication.

2.3. Accessibility of medical treatment/ medication in countries of origin

In addition to assessing the availability the General Department of Immigration and the Ministry of Health investigate for all cases that meet the severity threshold whether the applicant can de facto access the necessary medication and/or medical treatment that is available in the country of origin. The official commentary of the parliament on Art. 131 Free Movement of Persons and Immigration Law states that "*The question of whether there is appropriate and sufficiently accessible treatment in the country of origin should be analyzed on a case-by-case basis, taking into account the individual situation of the applicant*"[182]. In practice there is no clear cut between aspects of availability and accessibility during the assessment.

2.3.1. Definition of accessibility in the national context

There is no definition on the accessibility to medication and/or medical treatment. During the assessment different economic and geographic aspects of accessibility can influence the decision.

2.3.2. Accessibility in practice

The research for this study did not identify any judgments, neither through desk research nor through expert interviews, discussing the accessibility of medication and/or medical treatment in the context of migration cases involving on medical claims.

Economic Accessibility

The economic accessibility involves aspects such as the costs of the medication and/ or medical treatment, the access to social security or health insurance, the person's ability to sustain him- or herself (ability to work despite the sickness, previous job before leaving the country of origin, educational background) and the availability of family network (in the CoO) which can support financially but also with caretaking.

[182] "The question of whether there is appropriate and sufficiently accessible treatment in the country of origin should be analyzed on a case-by-case basis, taking into account the individual situation of the applicant."

"La question de savoir s'il existe un traitement approprié et suffisamment accessible dans le pays d'origine devra s'analyser au cas par cas, en tenant compte de la situation individuelle du demandeur." Commentary of the House of Parliament (2007, p. 86).

Geographic Accessibility

The geographic accessibility might be relevant if the medication/ treatment is geographically limited to a specific region or town in the country of origin. In such cases the case owner assesses the physical ability of the applicant to reach medical facilities, the security of transportation, and the proximity of medical facilities and pharmacies in relation to the individual's place of residence. Geographic accessibility is given if *"the person can reasonably reach the place where medication or treatment can be obtained"* (Expert interview 2, 2017). It depends very much on the country of origin and its infrastructure for transportation but also on the ability of the person to travel.

Political Accessibility

Political accessibility, which pertains to discriminatory practices affecting the applicant's actual access to medication and/or medical treatment, plays a less significant role in the assessment for a postponement of a return. Typically, a claim of discrimination based on political reasons is primarily considered in the determination of refugee status. However, if this is raised by a person in the context of return, the case worker has to investigate the issue of political accessibility.

3. Residence and Return

3.1. Medical claim accepted

If the General Department of Immigration takes a positive decision on the medical claim according to Article 130 Free Movement of Persons and Immigration Law a postponement of return (*sursis à l'éloignement*) is being issued. This is not a residence permit but rather a temporary postponement of the enforcement of the return decision. The length of the postponement depends on the information provided in the medical certificate (i.e. duration of treatment) but can be granted up to 6 months. After this period of time the person can re-apply for another postponement for a total duration of two years and has to submit new supporting medical certificates. The Ministry of Health conducts a re-assessment which includes the severity of the disease, the availability, and the accessibility. If all requirements are met, the second postponement is granted by the General Department of Immigration for another 6 months. The *sursis à l'éloignement* can be granted in total for 24 months. If the medical necessity still persists after 24 months the person is eligible to apply for a residence permit based on medical reasons (*authorisation de sejour pour raisons médicales*) which can be granted for up to 1 year and can be prolonged. After a certain time of residence, which depends on the concrete situation of the person in Luxembourg, the applicant can apply for another residence permit. This application is reviewed by the General Department of Immigration.

3.2. Medical claim denied

If the immigration authority concludes that the medical claim does not constitute an impediment for return, the decision for return will not be postponed and the applicant has to leave Luxembourg within a given time limit. For rejected asylum seekers, the time limit for departure is 30 days, while for others, it can extend up to 3 months. If the specified time limit is exceeded, a forced removal will be executed. Apart from the assisted voluntary return programs supported by IOM, specific support for returnees with special

medical needs are taken into account (e.g., providing medication for the first months or other medical supplies).

4. Summary

Luxembourg has developed a firm practice on migration cases involving medical claims due to a high number of applications in the past. These claims are predominantly raised during return procedures whereas the majority of claims concerns persons who have received a negative decision on their application for international protection. The General Department of Immigration within the Ministry of Home Affairs is the responsible authority deciding on such cases. However, the MHA is obliged to ask the Ministry of Health (Medical Service for Immigration) for its advice on medical questions for all cases.

This special procedure on medical claims is initiated only upon request of the person who can request a postponement of the return (*sursis à l'éloignement)*. To be granted a postponement the medical situation of the person has to meet a threshold for the severity of the disease. This threshold is met if the return would cause 1) the death of the person, 2) a reduction of his/her life expectancy or 3) a very severe handicap to the applicant if not treated.

Only for those cases that meet the severity threshold the assessment on the medical country of origin information is being conducted. If the necessary medication and/or medical treatment is not available or is not accessible in the country of origin the postponement of return is being granted. Availability is given if the medication is actually being supplied and the medical treatment is provided by medical facilities in the country of origin. Accessibility, the question whether the applicant has de facto access to the necessary medication and/or medical treatment that is available, is investigated by the authorities in Luxembourg for all cases that meet the severity threshold. In practice there is no distinction between the availability and accessibility assessment; both aspects are conducted in one step. During this assessment different economic and geographic aspects of accessibility can influence the decision. Economic accessibility involves aspects such as the costs of the medication and/ or medication treatment, the access to social security or health insurance and the person's ability to sustain him- or herself. Geographic accessibility is given if the person can reasonably reach the place where medication or treatment can be obtained.

If the General Department of Immigration takes a positive decision on the medical claim a postponement of return is being granted for up to 6 months. After this period of time another postponement can be granted upon re-application if all requirements are still present. The re-assessment includes the severity of the disease, the availability, and the accessibility. The postponement of return can be granted in total for 24 months. After these 24 months the person is eligible to apply for a residence permit based on medical reasons (*autorisation de séjour pour raisons médicales*) which can be granted for up to 1 year.

If the requirements for the postponement are not met the application is rejected and the applicant has to leave Luxembourg within a given time limit. If the person overstays, a forced removal is being executed. If required, medical provisions or measures are taken into account for the return.

	Definition/applied practice	Basis for definition
Severity of the disease (threshold for admission of a medical claim)	• The severity of a health condition is given if the return would cause consequences of exceptional gravity on the state of health. This is given in particular if the return results in the death of the person, • a reduction of life expectancy or • a very severe handicap to the applicant due to a lack of medication and/or medical treatment.	Art. 130 Free Movement of Persons and Immigration Law; Commentary on the Free Movement of Persons and Immigration Law by the House of Parliament
Availability	There is no clear definition of availability. According to the practice the medication has to be appropriate, actually supplied and the medical treatment has to be provided by medical facilities in the country of origin.	Practice
Accessibility	The accessibility assessment is carried out for all cases that meet the severity threshold. Case owners have to assess whether there is sufficiently accessible treatment in the country of origin on a case-by-case basis, taking into account the individual situation of the applicant.	Art. 130 Free Movement of Persons and Immigration Law; case law
Residence permit	A postponement of return (sursis à l'éloignement), which is not a residence permit, is being issued. The postponement is granted up to 6 months. The person can re-apply for another postponement. A re-assessment based on updated medical certificate is being conducted. The sursis à l'éloignement can be granted in total for 24 months. After 24 months the person is eligible to apply for a residence permit based on medical reasons (authorisation de sejour pour raisons médicales) which is granted for up to 1 year and can be prolonged. After a certain time of residence, which depends on the concrete situation of the person in Luxembourg, the applicant can apply for another residence permit.	Art.130 Free Movement of Persons and Immigration Law
Return	Medical provisions and measures are taken into account.	Practice

5. Sources

The report on "State practices related to medical COI: Country report Luxembourg" was first completed in 2018. For this version, ICMPD conducted qualitative interviews with representatives of Ministry of Interior of Luxembourg.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted the relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and October 2023, the

Ministry of Interior of Luxembourg reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the Ministry of Interior of Luxembourg also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Luxembourg" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of the Ministry of Interior of Luxembourg in April 2026 in order to ensure its validity.

- Case of Paposhvili v Belgium, Application no. 41738/10, European Court of Human Rights, Grand Chamber, 13 December 2016. Online available at: http://hudoc.echr.coe.int/eng#{"itemid":["001-169662"]} [visited on 23.02.2018].
- Commentary on the Free Movement of Persons and Immigration Law, House of Parliament of the Grand Duchy of Luxembourg, No. 5802/00, 20 November 2007. Online available at: http://chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=/export/exped/sexpdata/Mag/041/619/064108.pdf [visited on 27.03.218].
- Cour Administrative, reference no. 40964C, decided on 06/12/2018. Online available under: https://ja.public.lu/40001-45000/40964C.pdf
- Free Movement of Persons and Immigration Law of 29 August 2008 (*Loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*). Online available at: Loi du 29 août 2008 1) portant sur la libre ci... - Legilux (public.lu) [last visited on 25.08.2024].

- Expert interview 1 conducted on the phone with two representatives of the Ministry of Foreign and European Affairs, Directorate of Immigration, Department for Legal Affairs and Department for Foreigners, 11 July 2017.
- Expert interview 2 conducted on the phone with one representative of the Ministry of Foreign and European Affairs, Directorate of Immigration, Unit for Country-of-Origin Information, 17 October 2017.
- Information received by the Ministry of Health, Directorate of Health, Division on Health Inspection, by email on 20 March 2018.
- Information provided by the Ministry of Foreign and European Affairs, Directorate of Immigration, by filling in a questionnaire in September 2023.
- MFA (2024): Information provided via phone call on 17 April 2024
- MFA (2024): Information provided via email on 19 April 2024
- MFA (2024): Information provided via email on 23 April 2024
- Finally, the case study has been reviewed and updated by representatives of the Department of Refugees - Ministry of Home Affairs in October 2025 in order to ensure its validity.

Case Study - Malta

CASE STUDY - MALTA 174

LIST OF ABBREVIATIONS 174

1. MEDICAL CLAIMS IN MIGRATION CASES IN MALTA 175
   - *1.1. Legal Basis 175*
   - *1.2. Organisational Structure/ Responsibilities 175*
   - *1.3. Procedure in medical migration cases 176*
   - *1.4. The procedure of researching medical country of origin information 177*
   - *1.5. Statistics 177*
2. NATIONAL POLICY 178
   - *2.1. Medical severity of a person's health condition 178*
   - *2.2. Availability of medical treatment/ medication in countries of origin 179*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 179*
3. RESIDENCE PERMITS AND RETURN 180
   - *3.1. Medical claim accepted 180*
   - *3.2. Medical claim denied 180*
4. SUMMARY 181
5. SOURCES 181

List of abbreviations

AWAS	Agency for the Welfare of Asylum Seekers
COI	Country of Origin Information
CoO	Country of Origin
IOM	International Organisation for Migration
IPA	International Protection Agency
MHA	Ministry of Health and Active Ageing
MHSE	Ministry for Home Affairs, Security and Employment
MIRL	Medical Information Request Letter
SPO	Senior Protection Officer
PO	Protection Officer
SL	Subsidiary Legislation
TCN	Third Country National
THPS	Temporary Humanitarian Protection Status

1. Medical claims in migration cases in Malta

1.1. Legal Basis

In Malta, the national legal framework regulating the assessment of medical claims within the context of asylum is the International Protection Act. **Article 17A(1) of the International Protection Act** states that the International Protection Agency (IPA) may grant temporary humanitarian protection to applicants who do not qualify for refugee status or subsidiary protection When it comes to illnesses or medical conditions, **Article 17A(1)(b) of the International Protection Act** stipulates that such temporary humanitarian protection may be granted to "*an applicant who is terminally ill or suffers from a severe or life-threatening medical condition that cannot be treated in the applicant's country of origin or in the country of former habitual residence for persons who are recognised as being stateless, or if treatment is available, he would not have access to such treatment*".[183] Moreover, of relevance to disability in either physical or psychological terms, **Article 17A(1)(c) of the International Protection Act** states that humanitarian protection may be granted *"to an applicant who cannot be returned in view of other humanitarian considerations. Such considerations may include, inter alia, cases of serious disability that significantly affect the applicant's ability to conduct a normal life."*[184]

1.2. Organisational Structure/ Responsibilities

In Malta, medical claims are only assessed by the International Protection Agency (IPA) if presented by an applicant for international protection (IP) or an ex-applicant whose application had, in the past, been rejected. There is no framework within the context of asylum that regulates the assessment of medical claims by migrants who do not apply for IP.

Medical COI research and policies are embedded in the national administration via the International Protection Agency. Currently, one Protection Officer (PO) work on medical COI under the guidance of one Senior Protection Officer (SPO), and no healthcare professionals are employed by the IPA. However, upon the applicant's consent, the physician of the applicant may be consulted about the medical information of the applicant. Further, the physician is consulted in cases where the medical staff of the MedCOI Sector proposes an alternative medication.

In Malta, a standardised template is used to collect the applicant's medical information. The POs provide the applicants with a Medical Information Request Letter (MIRL) to be presented by the applicant to their medical provider. The applicant is required to return the filled-out MIRL within 5 working days, either digitally via email or in person at the IPA premises. Extensions may be granted upon request and for justified reasons.

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[183] CAP 420, International Protection Act – Article 17A(1)(b), https://www.refworld.org/sites/default/files/2024-01/malta_-_international_protection_act.pdf

[184] CAP 420, International Protection Act – Article 17A(1)(c), https://www.refworld.org/sites/default/files/2024-01/malta_-_international_protection_act.pdf

Should the applicant, due to old age or impairments, be unable to present the MIRL but already have medical records, the PO shall request the applicant to present copies of the available medical records and sign a consent form allowing the IPA to communicate directly with the medical provider.

In cases where the applicant is in detention or residing in an open residence centre and currently receives treatment or medication, the PO requests the applicant to sign a form enabling the IPA to communicate directly with the Detention Service or the Agency for the Welfare of Asylum Seekers (AWAS) regarding the treatment or medication.

The PO consults the EUAA's MedCOI team to enquire whether the required medication and/or treatment is available in the applicant's home area within the country of origin. If it is determined that the required medication and/or treatment is available either in the applicant's home area or elsewhere within the CoO, the POs examines whether such medication and/or treatment would be accessible for the applicant. In cases where the PO is unable to determine whether the required medication and/or treatment is accessible in the applicant's home area or elsewhere within the CoO based on information the IPA currently has in its possession, an accessibility request is submitted by the PO to the EUAA MedCOI team to obtain further clarification.

On the basis of all information gathered throughout this process, the IPA concludes whether or not the applicant qualifies for temporary humanitarian protection under Article 17A(1) of the International Protection Act.

1.3. Procedure in medical migration cases

Medical claims in asylum procedures

Health issues can be disclosed at any time of the asylum process. This can be done by the applicants themselves or through a third party, such as the AWAS or the applicant's legal representative, at any stage of the procedure.

Medical claims in humanitarian protection procedures

In 2022, the Maltese IPA issued the internal Memo (Protection) 01.2022 on Temporary Humanitarian Protection Considerations on Medical Grounds, which outlines the procedure and the methodology the Agency follows if an application for international protection is likely to be rejected, but the applicant might qualify for the national form of protection on medical grounds because the medication and/or treatment required is either not available or accessible in the applicant's country of origin.

During the personal interview, the PO should confirm whether the applicant currently receives medication and/or treatment in Malta for a terminal illness or a severe, or life-threatening illness. The PO should explore elements pertaining to the applicant's health condition, including their medical history with a particular focus on the country of origin.

The PO consults the EUAA's MedCOI team to enquire whether the required medication and/or treatment is available in the applicant's home area within the country of origin. If it is determined that the required medication and/or treatment is available either in the applicant's home area or elsewhere within the CoO, the POs examines whether such medication and/or treatment would be accessible for the applicant. In

cases where the PO is unable to determine whether the required medication and/or treatment is accessible in the applicant's home area or elsewhere within the CoO based on information the IPA currently has in its possession, an accessibility request is submitted by the PO to the EUAA MedCOI team to obtain further clarification.

On the basis of all information gathered throughout this process, the IPA concludes whether or not the applicant qualifies for temporary humanitarian protection under Article 17A(1) of the International Protection Act.

Medical claims in return procedures

In general, all potential returnees need to be fit for travel to be considered for removal.

In cases where the TCN is voluntarily returning, but requires treatment that is inaccessible, they are provided with accurate and up-to-date information on the available medical treatment in the country of origin. Should the TCN, nevertheless, be interested in voluntarily returning, they will be supported accordingly, while being made aware of the challenges and risks they would face from a medical standpoint following their return.

Medical claims in legal migration cases for third country nationals

The MHA may provide medical treatment in another country for TCNs that are legally residing in Malta and are economically active in Malta or entitled to make use of the Public Healthcare system.[185]

1.4. The procedure of researching medical country of origin information

The IPA distinguishes between the availability and accessibility of medical treatment and medication in the CoO. Detailed instructions in relation to this subject are provided by the internal Memo (Protection) 01.2022 Temporary Humanitarian Protection Considerations on Medical Grounds.

The IPA currently relies on the information provided by the EUAA MedCOI sector, via the MedCOI search database or MedCOI query responses. Generally, the Agency requests information both in relation to the medical treatment and medication.

It is pertinent to note, however, that there may be cases where desk-based research by the PO would be sufficient for the Agency to reach a conclusion with regard to the availability of certain medication and/or treatment. Such cases typically concern deprived regions in underdeveloped countries.

1.5. Statistics

Statistics on claims of applicants, including medical claims are not recorded for statistical purposes in Malta.

[185] See: https://health.gov.mt/cross-border/cross-border-health-care/

Table 1: The Number of individual availability (AVA) and individual accessibility (ACC) requests to the EUAA by Malta per year.[186]

	AVA	ACC
2021	9	-
2022	7	2
2023	17	-
2024	5	-

In most cases, the IPA determines accessibility on the basis of subjective elements and COI research conducted by the PO. Only in cases where the PO is unable to determine whether the required medication and/or treatment is accessible to the applicant based on the information currently available to the IPA, an ACC request is submitted. Therefore, the IPA generally submits more AVA requests, than ACC requests to the EUAA MedCOI sector.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In order for medical COI research to be conducted, the condition of an applicant must be terminal, severe or life-threatening. The Management of the IPA decides whether these criteria are met and, therefore, whether MedCOI research should be conducted.

2.1.2. Severity threshold for decision-making

Decision, on whether a give case passes the severity threshold of decision making, are made on a case-by-case basis, keeping past praxis in mind. Mostly a condition needs to be of a life-threatening nature, in order to pass the severity threshold for decision-making. However, there are certain conditions that do not need to be life threatening to be considered severe, such as seizures.

Medical prognosis is taken into account when the IPA assesses the applicant's need for temporary humanitarian protection. Moreover, the IPA enquires what would happen to the applicant, should the condition be left untreated.

2.1.3. Medical threshold cases

Granting temporary humanitarian protection status without previous MedCOI research into treatment and medication options is possible in cases where an illness or medical condition also qualify as a disability in a broader sense. In such cases, the applicant may be granted temporary protection status in terms of Article 17A(1)(c) of the International Protection Act, chapter 420. This article stipulates that temporary humanitarian protection may be granted to an applicant that cannot be returned in view of humanitarian reasons, such as due to a disability that significantly affects the applicant's ability to conduct a normal life.

[186] Data provided by the EUAA MedCOI Europa Service

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

If the MedCOI query response suggests that the medical treatment and medication are available at public or private facilities, the IPA considers them to be available.

2.2.2. Availability in practice

The IPA relies on the information provided by the EUAA MedCOI sector, including the MedCOI search database and the MedCOI query responses to determine availability of the treatment and medication in the applicant's country of origin (CoO).

It is pertinent to note, however, that there may be cases where desk-based research by the PO would be sufficient for the Agency to reach a conclusion with regard to the availability of certain medication and/or treatment.

The decision whether a medication or treatment is available is taken by the PO in charge of the MedCOI research and Management.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

To determine the accessibility, the IPA accesses whether the applicant would be able to obtain the required treatment or medication, taking into account several factors, including sources of income or the availability of a reliable support network in the home area or country of origin.

2.3.2. Accessibility in practice

Economic Accessibility
When assessing economic accessibility, the IPA takes various factors into account. These include the average costs of medication or treatment, the social protection scheme in place in the country of origin, the applicant's financial situation and, where relevant, that of their family, as well as the applicant's family circumstances and social network. Furthermore, the unemployment rate of the country may be taken into consideration, depending on the cost of the medication or treatment.

Geographic accessibility
Furthermore, geographic accessibility is assessed. This includes an evaluation of the proximity of medical facilities and pharmacies in relation to the applicant's home area, as well as the physical ability of the individual to reach the medical facilities and the necessary frequency in which the individual must travel. Furthermore, the IPA takes into account the security in the country of origin and the availability of transportation and a reliable support network.

Political accessibility

Generally, individual political accessibility is assessed. However, political accessibility is already addressed in the eligibility assessment for international protection, meaning it does not fall under the eligibility assessment for temporary humanitarian protection.

3. Residence permits and return

3.1. Medical claim accepted

If the medical claim is accepted, the applicant is granted temporary humanitarian protection. This protection certificate is valid for a period of one year. The certificate can be renewed upon presentation of recent medical documentation, showing that the applicant's medical condition subsists.

According to Article 20 of the Procedural Standards for Granting and Withdrawing International Protection, Subsidiary Legislation 420.07 a beneficiary of temporary humanitarian protection is entitled to:

- Remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for period of one year, which shall be renewable.
- A Travel Document in accordance with relevant provisions of national law entitling him/her to leave and return to Malta without the need of a visa.
- Have access to employment, social welfare (which may be limited to core social welfare benefits), appropriate accommodation, integration programs, State education and training, and to receive State medical care; and
- His/her family members, if they are in Malta at the time of this decision, enjoy the same rights and benefits so that family unity may be maintained.

3.2. Medical claim denied

Decisions on protection requests are made by the Internal Protection Agency, while return decisions are issued by the Principal Immigration Officer. These decisions are provided in writing and explained to the individual to ensure full understanding. In the asylum process, a return decision is only issued once a negative asylum ruling has become final.

The Immigration Police coordinate return procedures, working with specialised sectors as needed, including support from the IOM-MHSE programme for assisted voluntary return and reintegration. Voluntary return is the preferred option and may include an in-kind grant or cash incentive for the returnee. If medical follow-up is required, arrangements are made with medical authorities in the country of origin to ensure continuity of care, including the provision of medication for an agreed period after return. A medical escort is also arranged if deemed necessary. In cases of forced return, a monitoring officer oversees the process to ensure full compliance with fundamental rights.

Voluntary return can be facilitated through the IOM or via the Ministry for Home Affairs, Security, and Employment's (MHSE) cash incentive scheme. Returnees with serious medical needs may receive an in-kind grant of €3,800 plus an additional €1,000 top-up under a joint IOM-MHSE project. The level of financial support provided depends on various factors, including the individual's medical condition.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	In most cases, a condition must be life-threatening in order to meet the severity threshold for decision-making. However, some conditions, such as seizures, may be deemed severe even if they are not life-threatening.	
Availability	In general, a treatment or medication can be considered available when research shows that they are available at public or private facilities.	
Accessibility	To assess accessibility, the IPA examines whether the applicant can realistically obtain the necessary treatment or medication, considering their financial means, their ability to physically access the medication/treatment, and the availability of a support network. Factors such as the cost of treatment, availability of medical facilities, transportation, personal circumstances, a reliable support network, and the security situation in the country of origin are all taken into account.	
Residence permit	If the applicable criteria are satisfied, the applicant is granted with a temporary humanitarian protection status for one year, which may be renewed upon submission of up-to-date medical documentation confirming the condition persists. Under Article 20 of the Procedural Standards, beneficiaries are entitled to reside in Malta, access healthcare, employment, and core social welfare benefits, and receive a residence permit and travel document. Family members present in Malta at the time of the decision are also granted the same rights to preserve family unity.	International Protection Act, Article 17A(1)(b) or Article 17A(1)(c).
Return	In Malta, return decisions are issued by the Principal Immigration Officer once a final negative asylum decision has been reached. Voluntary return is prioritised and may include in-cash or in-kind support, with additional assistance available for individuals with serious medical needs. Where necessary, medical follow-up and escorts are arranged to ensure continuity of care, and forced returns are monitored to safeguard fundamental rights.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Maltese case study is based on

the questionnaire filled in by representatives of the Maltese International Protection Agency in October 2024.

Finally, the case study has been reviewed and updated by representatives of Maltese International Protection Agency in March 2026 in order to ensure its validity.

Case Study - Netherlands

CASE STUDY - NETHERLANDS 183

LIST OF ABBREVIATIONS 183

1. MEDICAL CLAIMS IN MIGRATION CASES IN NETHERLANDS 184
   - *1.1. Legal Basis 184*
   - *1.2. Organisational Structure/ Responsibilities 184*
   - *1.3. Procedure in medical migration cases 186*
   - *1.4. The procedure of researching medical country of origin information 187*
   - *1.5. Statistics 187*
2. NATIONAL POLICY 188
   - *2.1. Medical severity of a person's health condition 188*
   - *2.2. Availability of medical treatment/ medication in countries of origin 190*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 191*
3. RESIDENCE PERMITS AND RETURN 194
   - *3.1. Medical claim accepted 194*
   - *3.2. Medical claim denied 194*
4. SUMMARY 194
5. SOURCES 196

List of abbreviations

ABRvS	Afdeling bestuursrechtspraak van de Raad van State [Administrative Law Division of the Council of State]
ACC	Individual accessibility
AVA	individual availability
BMA	Medical Advisors Bureau
COI	Country of origin information
DT&V	Repatriation and Departure Service
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
HIV	Human immunodeficiency viruses
IND	Immigration and Naturalisation Service
PTSD	Post-Traumatic Stress Disorder
TB	Tuberculosis
Vc	Vreemdelingencirculaire [Aliens Act Implementation Guidelines 2000]
VVR med	Residence permit for medical treatment
Vw	Vreemdelingenwet [Aliens Act 2000]

1. Medical claims in migration cases in Netherlands

1.1. Legal Basis

The most important national law regarding migration in the Netherlands is the Aliens Act 2000 (Vreemdelingenwet, Vw). In this law, Article 64 provides the legal framework for medical migration cases, allowing temporary legal stay on humanitarian grounds called "postponement of departure":

"Expulsion will be postponed as long as it is not responsible to travel due to the health condition of the foreign national or one of his family members."

The provisions in the Vw are supplemented and further elaborated in lower legal frameworks, such as the Aliens Decree 2000 (Vreemdelingenbesluit 2000), and the Aliens Act Implementation Guidelines 2000 (Vreemdelingencirculaire, Vc). The practical implementation of the Vw is regulated in the Vc, which is regularly amended and updated to implement international (EU) law, national and international case law, and policy changes. The State Secretary for Justice and Security decides on any changes to the Vc, which are then published in the Government Gazette (Staatscourant).

Important amendments in the Vc took place in September 2017, with the objective of implementing international case law in the Dutch policy on medical migration cases. As a consequence of the 2014 CJEU judgment on the M´Bodj vs Belgium case, the practice of granting asylum or subsidiary protection in medical migration cases was abandoned. Furthermore, the 2016 ECHR judgment on the Paposhvili case obliges the Dutch authorities to assess – in addition to the availability of a treatment or medication – the de-facto accessibility of medical care in the country of origin before proceeding with the return of a rejected applicant. A more recent amendment took place in July 2023 after the X-case of November 2022 (Case C-69/21) where the Court ruled that the definition in the Vc of medical emergency as a result of medical consequences that might occur within a period after discontinuation of the medical treatment administered to the person concerned was explained too strict.[187]

1.2. Organisational Structure/ Responsibilities

The Immigration and Naturalisation Service (IND) is an administrative body and part of the Ministry of Justice and Security. It is the government agency that ensures the admission of foreign nationals in the Netherlands, processing all applications for asylum, family reunification, naturalization, visas, and other residence permits. The IND has the task of deciding on medical migration cases. In these cases, the IND is supported by information of the Medical Assessment Section (BMA).

The Medical Assessment Section is an independent part of the Ministry of Justice and Security and advises its client, the IND, on requests about the medical aspects of third country nationals related to making a decision under the Aliens Act 2000. The Medical Assessment Section draws up medical advice based on information obtained from the foreigner's treating physicians. In addition, medical COI is used to determine the availability of a treatment or medication in the country of origin or return.

[187] Case C-69/21

The Repatriation and Departure Service (DT&V) is responsible for expediting the return of third country nationals who under the provisions of the Alien Act are not allowed to stay in the Netherlands. The DT&V operates on behalf of the Ministry of Justice and Security and cooperates in close partnership with other agencies involved in the asylum and migration process.

Responsible for the medical cases in the Dutch authority, there is one policy officer who manages the medication portfolio. There is one Dutch NCP which directly works with the medical COI, as well as 1 lawyer and 10 doctors. The medical doctors work for the Medical Assessment Section (BMA). The BMA is an independent part of the Ministry of Justice and Security and advises its client, the IND, on requests about the medical aspects of third country nationals related to making a decision under the Aliens Act 2000. The medical advisors draw up medical advice based on information obtained from the foreigner's treating physicians. In addition, medical COI is used to determine the availability of a treatment or medication in the country of origin or return.

An applicant who applies themselves, must submit several documents with the application, including the relevant medication data. The applicant requests this information from their practitioners using a standardised letter from the BMA, containing a number of standard questions. The standard letter is attached to the application form. If the foreign national does not submit the application themselves, but the application is submitted ex officio by the IND (as may occur during further assessment in the asylum procedure or in response to a request from the Repatriation & Departure Service (DT&V) when a foreigner is, for example, in immigration detention), then only a declaration of consent is sufficient and the BMA will request the information from the practitioners.

Before the medical advice can be drawn up, the BMA requires a declaration of consent from the applicant, to allow the BMA to request, view, and use the applicants' medical data. In this declaration, the applicant can indicate all their current practitioners. With the declaration of consent, the application additionally, gives permission to the medical advisor to provide medical advice on their case to the IND.

If the medical information is complete, the BMA examines the information and provides medical advice. In cases where the information is incomplete, the BMA reports this to the IND with reasons. Then the burden to provide further proof lies with the applicant to provide the missing information together with the relevant practitioner in a timely manner and/or to take a different action, such as a providing a current declaration of consent for the BMA to request the missing information from the relevant practitioner(s).

Based on the written report from the BMA, the IND decision-maker then decides whether a temporary postponement of departure will be granted based on Article 64 Vw. If the BMA assesses that the applicant suffers from a serious medical condition for which treatment is available in the country of origin, it is then for the applicant to prove that the medical treatment as stated in the BMA advice is not available or accessible for him. The information provided by the applicant on the accessibility of the treatment must then be assessed by the IND decision-maker. BMA is only entitled to advice regarding the availability of medical treatment or medication. No statement can be made about whether treatment or medication would also be (economically, geographically, or politically) accessible to the applicant. However, such claims can be submitted by the applicant and will be assessed by the IND decision-maker.

As mentioned before, in certain cases, the IND does not require advice from the BMA before suspending an expulsion or postponement of departure. The pregnancy of a foreign national suspends the removal from six-weeks before to six weeks after delivery. It is considered sufficient if the foreign national provides the IND with a statement from a doctor or midwife.[188]

Suspension of departure is granted to tuberculosis (TB) patients and their family members. No advice from the BMA is required, a recent statement from a doctor is sufficient proof that the foreign national suffers from TB. The doctor must indicate that the foreign national has TB and what the expected duration of treatment is. Once the patient withdraws from medical treatment and there is no contamination risk, postponement of departure will end.[189]

If a foreign national is hospitalised, undergoes active medical treatment that is not possible outside the clinic and is unable to travel in this condition, suspension of departure under Section 64 Vw can also be granted without consulting the BMA. In these cases, the IND grants suspension of departure for the duration of the admission up to a maximum of six months. The granted postponement of departure expires two weeks after the end of the admission.[190]

1.3. Procedure in medical migration cases

Medical claims in humanitarian protection

An assessment of the medical situation brought forward by an applicant can occur within the asylum procedure or because of rejection in the asylum procedure. In an asylum procedure it concerns applicants aiming for international protection who, according to the EU Qualification Directive, do not meet the conditions for receiving refugee status or subsidiary protection status. If the asylum application has been rejected because none of the protection grounds (or humanitarian grounds) have been met, the IND investigates whether the asylum seeker's medical condition poses an impediment to return to the country of origin.

Medical claims in return procedures

The IND can grant "postponement of departure" based on Article 64 of the Vw if the applicant is for medical reasons unable to travel and the return is a real risk of violation of Article 3 ECHR. According to the Dutch migration policy, there is a real risk of violation of Article 3 ECHR if the lack of medical treatment is likely to lead to a *medical emergency* and the necessary medical treatment is not available or has proven to be inaccessible in the country of origin.

Legal migration for third country nationals

Medical migration cases in the regular procedure concern persons who have resided in the Netherlands as a regular migrant, but do not otherwise meet the required criteria for a renewal of their residence

[188] Vc A3/7.3.2.6 https://wetten.overheid.nl/BWBR0012287/2023-10-09#Circulaire.divisieA3

[189] Vc A3/7.3.2.7 https://wetten.overheid.nl/BWBR0012287/2023-10-09#Circulaire.divisieA3

[190] Vc A3/7.3.2.8 https://wetten.overheid.nl/BWBR0012287/2023-10-09#Circulaire.divisieA3

permit. If a medical condition is present or occurs, this may constitute an impediment to return, allowing the person to apply for a postponement of departure or a humanitarian residence permit. In addition, persons from abroad can apply for a temporary humanitarian residence permit in the Netherlands, if the Netherlands is considered the most suitable country to receive necessary medical treatment.

Involvement of the BMA

Regardless of which of the procedures is applied, in accordance with existing regulation and procedures, the IND will request the BMA to issue a medical advice based on the evidence provided to assess the application. The BMA uses the medical information provided by the applicant to draw up the medical advice. If necessary, BMA can also request additional medical details from the treating physician. If requested, the BMA further investigates whether medical treatment or medication is available in the country of origin if there is a risk that a medical emergency will arise if the current medical treatment of the third country national will stop

1.4. The procedure of researching medical country of origin information

In most relevant cases, both treatment and medication are examined. However, in certain circumstances, such as when there has been a change in medication, an additional query arises, or the medication changes while the treatment remains unchanged, it may be appropriate to research only the medication without research on treatment.

1.5. Statistics

In the Netherlands Statistics are available regarding medical claims. A distinction is made between a residence permit for medical treatment (VVR med) and suspension of departure under Section 64 of the Aliens Act (art 64).

Table 1: Overall number of medical claims from 2015-2023 in relation to the procedure (including family members):

Overall number of medical claims from 2015-2023	
Residence permit for medical treatment (VRR med)	2,720
Suspension of departure (Art 64)	15,700

The main countries of origin claiming residence permit for medical treatment (VRR med) were Sierra Leone, Suriname, and Armenia. The most frequent countries of origin of applications for suspension of departure (Act 64) in between 2015 and 2023 were Armenia, Afghanistan, and Nigeria.

Additionally, statistics on the most common diagnosis that arise during medical claims are being collected, however the data are not collected in relation to the applicant's nationality. The main diagnosis the occurred in medical migration cases between 2015 and 2023 were PTSD, HIV, Diabetes and Hypertension.

The number of medical migration cases for which the IND caseworkers requested medical advice from the BMA has decreased in recent years. In 2022, the medical advisors of BMA drafted 1516 reports providing medical advice on applicants.

Table2: Number of medical reports drafted by BMA (Source: Interview with representative of BMA, 2023).

Number of medical migration cases with BMA involvement					
2019	**2020**	**2021**	**2022**	**2023**	**2024**
1,793	1,536	1,517	1,516	1699	1658

However, the IND has not requested medical advice in all medical migration cases. In some cases, the IND caseworker may omit the medical advice from BMA. This is possible in cases as stipulated by regulations and in cases where the medical information provided by the third country national is sufficient to make a decision by the IND caseworker on its own. Postponement of departure can be granted without consultation with BMA if it concerns pregnancy, tuberculosis, or clinical admission of the third country national.[191]

In 2022 in approximately 70% of the medical reports drawn up by the BMA, medical COI was obtained to assess the availability of a treatment or medication in the country of origin. In the remaining cases medical COI was not considered relevant, partly because the foreigner's health situation was not that severe that return was not possible or because the foreign national´s country of origin was unknown.

Table 3: The Number of individual availability (AVA) and individual accessibility (ACC) requests to the EUAA by the Netherlands per year[192]

	AVA	ACC
2021	328	-
2022	352	-
2023	436	-
2024	350	-

In the Dutch practice, the burden of proof regarding the accessibility of treatment lies with the applicant, as a result the Dutch authorities generally to not request information on individual accessibility from the EUAA MedCOI sector.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In the Netherlands, in order for MedCOI research to be initiated, the disease must be of such severity that the return would violate the ECHR.

[191] Vc A3/7.2.6-A3/7.2.8 https://wetten.overheid.nl/BWBR0012287/2023-10-09#Circulaire.divisieA3

[192] Data provided by EUAA MedCOI Service.

2.1.2. Severity threshold for decision-making

According to A3/7.1.3 Vc, the departure of an applicant can be postponed under Section 64 of the Vw if a *medical emergency* is likely to arise and the necessary treatment is not available or accessible.

The medical emergency is therefore the threshold for severity of a disease to constitute an impediment for return:

"The IND defines a medical emergency as: the situation in which the foreign national suffers from a condition for which, based on current medical-scientific insights, it has been established that failure to treat within an indicative period of three to six months will lead to death, disability or another form of serious mental or physical damage."[193]

What is meant by "disability or another form of serious mental or physical damage" is further explained in the BMA Protocol: "Failure to receive medical treatment will in all likelihood lead to death, a (nearly) complete loss of ability to perform daily-life activities, or forced admission to a psychiatric hospital of the person concerned in accordance with the Psychiatric Hospitals (Compulsory Admission) Act."[194]

Several judgments of the Administrative Law Division of the Council of State (Afdeling bestuursrechtspraak van de Raad van State, ABRvS) have confirmed this clearer and more detailed definition of the BMA Protocol.[195]

"This method of assessment is in line with the standard set by the ECtHR in paragraph 183 of the Paposhvili judgment."[196]

Because the definition of the severity threshold relates to the future ("within an indicative period of three to six months after the absence of treatment") and to an assessment of a certain probability ("in all likelihood"), the BMA provides an estimate of the occurrence of a medical emergency within three to six months in the absence of treatment. To assess whether the threshold is met, a medical prognosis is required, which can rarely be made with 100% certainty.

In the context of Article 3 ECHR, the question is raised whether the migrant's disease is in an advanced (terminal) stage or in an immediately life-threatening stage at the time of the assessment (see also paragraph C2/3.3 of the Vc). Thus, it involves an assessment of a more serious medical condition than the one involved in the assessment of the medical emergency in the short term.

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[193] Vc A3/7.1.3 https://wetten.overheid.nl/BWBR0012287/2023-10-09#Circulaire.divisieA3

[194] BMA Protocol, Section 3.3 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

[195] ABRvS: 25-06-2014 no. 201310606/1/V4, 12-11-2010 no. 201000697/1/V3 and 15-03-2010 no. 200905701/1/V1 https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2023:4789

[196] ABRvS:28-09-2017 no.201702470/1/V3 https://www.raadvanstate.nl/uitspraken/@139267/202108161-1-v1/

2.1.3. Medical threshold cases

When a medical adviser determines that the applicant is in the terminal stage of their illness, that curative treatment is no longer being administered and only palliative care is provided, the advisers will not issue a full advisory report but instead a '*Terminal Patient Memo.*' This memo states the complaints of the and/or the diagnosis and the care provided. 'Terminal' means that the individual concerned will die within 6 months to one and half years.[197]

2.2. Availability of medical treatment/ medication in countries of origin

If the BMA determines, based on its assessment of medical symptoms, diagnosis, and treatment, that a medical emergency will occur in the absence of treatment, the medical advisor may be required to investigate the availability of the necessary treatment or medication in the country of origin.

2.2.1. Definition of availability in the national context

Availability is defined as whether medical treatment (including medication) for a specific case is available in a particular medical facility at a certain time at any location in the country of origin or destination.[198]

More specifically, section A3/7.1.4 of the Vc states that medical treatment is *not* available if one of the following cases apply:

- the BMA medical advice shows that there are no or insufficient treatment options available in the country in question;
- the BMA medical advice shows that there are interruptions in medication supplies essential to prevent a medical emergency in the country concerned, and such interruptions last for a month or longer;
- the BMA is unable to advise on the presence of treatment options in the country of origin due to the situation in the country of origin (no information available; unknown); or
- the BMA medical advice shows that, in order to prevent a medical emergency within three to six months, informal care is necessary for the success of the medical treatment, while the foreign national has shown that he cannot receive this informal care in the country of origin from family members or through professional (home) care.

2.2.2. Availability in practice

The medical advice indicates whether medical treatment for the symptoms in question is available, partially available, or not available anywhere in the requested country. That information is provided by a local doctor or healthcare provider in that country based on the local situation. The medical advisor assesses whether the treatment is sufficient to prevent a medical emergency that may arise within three to six months after return to the country of origin. The medical advice lists the sources used and comments on the treatment available in the country of return.[199]

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[197] See: B8/12 Vc

[198] BMA Protocol, Section 3.2 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

[199] BMA Protocol, Section 3.4.5 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

Medication which is somehow available at a particular moment in a pharmacy in a particular country is regarded as available. If a medication is registered in a country by a local health authority, this usually means that it is regularly available. Sometimes however unregistered medication are available (for example at pharmacies with a special license) and registered medication s are not available due to supply or delivery problems.[200]

Therefore, it is the BMA standard practice to inquire about inventory or delivery problems. If such problems arise, the delivery time of the requested medication must be determined. The fact that there is sometimes a delivery period of several weeks does not necessarily mean that the patient's drug treatment or daily intake is interrupted. The BMA takes into account that medication can be ordered for a longer period, which would then be the responsibility of the patient to order the medication in time.[201]

If a medication is not registered in the country, but the pharmacy can order/stock up this medication from abroad, the BMA considers it available, as two statements from the ABRvS confirm.[202]

The medical advisor does not have to assess whether the medical treatment meets the same standards as those that apply in the Netherlands. The medical advisor and the sources of the medical COI do not have to identify exactly the same treatment as, for example, in the Netherlands. Their inquiries relate to treatments for specific symptoms in the country in question which may or may not be present/available and available in the locally accepted way. The medical advisor then assesses whether the available/existing (alternative) treatment is sufficient to prevent the occurrence of a medical emergency within three to six months.[203]

Sometimes the given medication, as prescribed in the Netherlands for example, is not available in a certain country. In these situations, the medical advisor may inquire about alternative medication. The BMA advisor then assesses whether the available/existing alternative medication is sufficient to prevent a medical emergency arising within three to six months. However, the medical advisor must take into account the medical contra-indications of the alternative medication.[204]

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

The assessment of the actual accessibility of a necessary treatment or medication was established in 2017 based on the implementation of the ECHR Paposhvili case law[205] in the national policy through the Vc

[200] BMA Protocol, Section 3.2.7 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

[201] BMA Protocol, Section 3.2.8 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

[202] ABRvS on 13-12-2012, number 201202753/1/V3, and on 15-07-2015, no. 201500308/1/V1

[203] BMA Protocol, Section 3.2.4 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

[204] BMA Protocol, Section 3.2.5 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

[205] Paragraph 190 of Paposhvili v Belgium states: *"The authorities must also consider the extent to which the individual in question will actually have access to this care and these facilities in the receiving State. The Court observes in that regard that it has*

brought along the requirement to assess the factual accessibility to medical care, although in principle, the burden of proof for non-accessibility rests with the applicant. [206]

In the Vc, "Actual accessibility" is described as "the accessibility of a medical treatment for an individual in which non-medical factors, such as, inter alia, political, discriminatory, safety, geographical, economic, infrastructural and income aspects, play a role."[207] The ABRvS affirms this statement and takes the Paposhvili judgment into account.[208] Prior to Paposhvili, assessing accessibility of a medical treatment had been regarded as beyond the scope of the IND´s responsibilities.[209]

In 2023, the District Court of the Hague, 202104780/1/V2., confirmed that the accessibility test conducted in line with the Dutch practice and taking into account the ECtHR judgment Paposhvili v Belgium, is still in relevant and up to date.[210]

2.3.2. Accessibility in practice

Section A3/7.1.5 of the Vc establishes the policy on how to deal with accessibility in practice. In cases where the BMA concluded that failure to provide medical treatment would likely lead to a medical emergency and indicated that treatment is available in the country of origin or permanent residence, the IND submits the medical advice to the foreign national for information and offers the opportunity to demonstrate plausibly if medical care would be inaccessible.

The IND gives the foreign national four weeks to respond. From a 2017 judgment, it appears that these provisions align with the ECHR: *"From paragraph 186 of the Paposhvili judgment, the Division concludes that it is up to the foreign national to make plausible ('to adduce evidence capable of demonstrating') that he is, on the grounds of his poor state of health, at real risk within the meaning of Article 3 of the ECHR. If the alien has provided this proof, it is up to the national authorities of the returning state to remove the doubt about a possible violation of Article 3 of the ECHR ('to dispel any doubts', point 187) […] In paragraph 190, it was considered that national authorities should also consider the degree of effective access for the foreign national to the care available in the receiving state. When estimating this, the specific circumstances, such as the costs of medication and treatment, the presence of a social network and the*

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previously questioned the accessibility of care […] and referred to the need to consider the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care […].

[206] ECLI:NL:RVS:2023:3876 https://www.raadvanstate.nl/uitspraken/@139847/202104780-1-v2/

[207] Vc B8/9.1.7 in the version applicable in January 2017, accessible at: http://wetten.overheid.nl/BWBR0012289/2017-01-01

[208] ABRvS: 28-09-2017 no. 201702470/1/V3

[209] Lower House (Parliament), session year 2015–2016, 19 637, no. 2066: From the government letter dated 06-10-2015: "Economic accessibility is however extremely difficult to objectify. From the Netherlands it is not possible to assess what funds or support networks the migrant has access to. Taking all of this into account I see no reason, on the basis of the results of this investigation, to change the current policy. I therefore take the view of my predecessor (Lower House, session year 2010-2011, parliamentary paper 19 637, no. 1398 / Lower House, session year 2013-2014, parliamentary paper 19 637, no. 1764) that the responsibility of the Dutch government is limited."

[210] See: https://www.raadvanstate.nl/uitspraken/@139847/202104780-1-v2/

travel distance to obtain the necessary care, must be taken into account. If serious doubts remain after conducting this investigation, it is up to the national authorities to request guarantees from the country of origin regarding the availability and accessibility of medical care that is sufficient to prevent violation of Article 3 of the ECHR."[211]

"From paragraph 186 of the Paposhvili judgment, the Division concludes that it is up to the foreign national to make plausible ('to adduce evidence capable of demonstrating') that he is, on the grounds of his poor state of health, at real risk within the meaning of Article 3 of the ECHR. If the alien has provided this proof, it is up to the national authorities of the returning state to remove the doubt about a possible violation of Article 3 of the ECHR ('to dispel any doubts', point 187) […] In paragraph 190, it was considered that national authorities should also consider the degree of effective access for the foreign national to the care available in the receiving state. When estimating this, the specific circumstances, such as the costs of medication and treatment, the presence of a social network and the travel distance to obtain the necessary care, must be taken into account. If serious doubts remain after conducting this investigation, it is up to the national authorities to request guarantees from the country of origin regarding the availability and accessibility of medical care that is sufficient to prevent violation of Article 3 of the ECHR."[212]

The BMA is not involved in the question of accessibility. Due to its scope as medical advisory board it cannot assess (individual) economic, geographic, or political access to a treatment as its expertise is limited to medical issues.[213] The DT&V can be involved on questions regarding accessibility to medical health care upon return to the country of origin.

Economic Accessibility

Costs of medication and treatment are considered when assessing effective access to care. However, simply stating that treatment costs are high does not constitute sufficient reason to establish a real risk of violation of Article 3 of the ECHR. When assessing economic accessibility, the Dutch practice takes into account the income aspects of the applicant, including the applicant income, as well as the income of their family.

Geographic accessibility

Geographic elements are also assessed in the Dutch practice. The burden of proof here lies with the applicant. Documentary evidence about the distance between the foreigner's residence and the healthcare institution and possible travel options must be provided. Travel distance is explicitly mentioned as a factor in assessing effective access to care. Merely claiming that the treatment location is far away is not enough to prove a real risk under Article 3 of the ECHR.

Political accessibility

Political or systemic barriers are indirectly addressed through the requirement for guarantees and arrangements.

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[211] ABRvS: 28-09-2017 no. 201702470/1/V3, Paragraph 7.3

[212] ABRvS: 28-09-2017 no. 201702470/1/V3, Paragraph 7.3

[213] BMA Protocol, Section 3.2.1 https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/

3. Residence permits and return

3.1. Medical claim accepted

Should the IND case worker come to the conclusion that the applicant can be granted postponement of departure according to Art 64 Vw, the foreign national is notified of this decision. The duration of the postponement of departure is equal to the period mentioned in the medical advice from BMA, for which the foreign national is expected to be under treatment, with a maximum of one year.

Postponement of departure cannot be granted if the applicant has not worked sufficiently active on the DT&V investigation on the de facto access to medical care in the country of origin.

Art 64 Vw postponement of departure does not constitute a residence permit. However, it is considered a temporary humanitarian legal stay. If following the maximum duration of one year, the situation regarding diagnosis, treatment and availability or accessibility in the country of origin has not changed, the return can be postponed for another two consecutive years. After three years of stay on medical humanitarian grounds based on Art 64 Vw, a regular (non-temporary) humanitarian residence permit can be granted.

If the departure is postponed for 1 year, the person can apply for a residence permit on medical grounds (*Verblijfsvergunning op medische gronden*).[214]

3.2. Medical claim denied

If absence of medical treatment is considered not to lead to a medical emergency situation in the short term, or medical treatment is available and accessible in the country of origin, a return decision is issued by the IND.

An appeal and request for a provisional order must be submitted within 24 hours of the announcement of the decision. The appeal of the foreign national has a suspensive effect unless there is a danger that the possibility of returning to the country of origin would be lost, in case of consecutive applications or when there is an attempt by the stranger to frustrate the expulsion.

If a medical emergency situation would arise in the absence of treatment, but DT&V has demonstrated that the applicant has access to the required treatment in the country of origin, it is the responsibility of DT&V to guarantee the applicant effectively will have access. Based on the BMA report, which contains information on travel conditions, the DT&V will facilitate the return. For the transfer, DT&V also takes necessary medication, medical transfer, and transfer of the medical file into account. DT&V may make arrangements for the admission of the patient in a hospital and make appointments with doctors.

4. Summary

In the Netherlands, Art 64 of the Aliens Act sets the legal framework for medical claims in migration procedures. The policy determined by the Ministry of Justice and Security defines the corresponding

[214] https://ind.nl/en/residence-permits/other-residence-permits/residence-permit-medical-treatment; https://ind.nl/nl/documenten/06-2022/evaluatie-medisch-beleid-december-2020.pdf

procedure which is laid down in detail in the Aliens Act Implementation Guidelines. The policy is continuously updated in order to comply with national and international case law.

In September 2017, the important rulings of the ECtHR in M´Bodj v Belgium and the CJEU in Paposhvili v Belgium were implemented in the NL practice regarding medical claims, having a wide-ranging impact on the related procedure. Firstly, the practice of granting asylum or subsidiary protection status on medical grounds was terminated, as the M´Bodj judgment clarifies that medical grounds are not covered by the EU Qualification Directive. Secondly, as a consequence of the Paposhvili judgment, the need to take into account the de facto accessibility of life-saving medical treatment in the country of origin was established. Prior to that, assessing accessibility of a medical treatment had been regarded as beyond the scope of the IND´s responsibilities.

A clear-cut severity threshold is established in the Guidelines and was found to be compliant with the threshold set by the Paposhvili ruling. The threshold is called *medical emergency* and is met when the absence of treatment would in all probability lead to death, disability, or some other form of physical or mental damage in the short term. The medical advisers of the BMA assess on individual merits and on the basis of the documents offered by the applicant whether a disease fulfils the medical emergency criterion.

Besides assessing the potential medical emergency situation, BMA is tasked with investigating the availability of a treatment or medication in the country of origin. Availability of the required treatment is assessed through medical COI. The BMA gives advice whether a treatment is available or partly available in a determined country of origin, whether pharmacies experience supply problems and if relevant whether alternative medications exist. In its advice, the BMA limits itself to medical factors and does not make an assessment of the accessibility of the treatment, which involves economic, geographic, and political factors.

To determine the accessibility to treatment and/or medication, it is the applicant who bears the initial burden of proof. Only if the applicant can bring forward plausible arguments stating s/he would not have access to the required treatment, the IND is required to further investigate the individual accessibility of the prescribed treatment. The DT&V investigates access to medical care in the country of origin and makes arrangements for the applicant to facilitate the access to the treatment, e.g. by organising admission to a hospital or financing medication during a short period of time.

Nevertheless, the NL practice on accessibility has only been established in September 2017 and may still require fine-tuning in the near future. By now, there is little experience in dealing with the accessibility of treatment in medical claims.

Persons found to suffer a medical emergency for which treatment is not available or accessible in the country of origin are granted *postponement of departure*, a temporary humanitarian stay. This temporary permit is only valid for the duration of the required treatment as assessed by the BMA, with a maximum duration of one year. Afterwards, the postponement of departure can be renewed and after three years of temporary stay on medical grounds, a non-temporary humanitarian residence permit can be granted.

	Definition/applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	The severity threshold (medical emergency situation) is met if a person suffers from a condition for which on the basis of current medical scientific knowledge it is established that the absence of treatment will lead to death, disability or another form of serious mental or physical damage within a period of three months.	Aliens Act Implementation Guidelines (Vc)
Availability	Availability is defined as whether medical treatment (including medication) for a specific case may be present at least in a certain medical facility at a certain time somewhere in the country of origin or destination.	Aliens Act Implementation Guidelines (Vc)
Accessibility	IND has started assessing the accessibility of a treatment, following international case law (Paposhvili). The burden of proof rests with the applicant. When assessing the accessibility of a medical treatment, non-medical factors, such as, inter alia, political, discriminatory, safety, geographical, economic, infrastructural and income aspects, play a role.	Case law (international and national)
Residence permit	*Postponement of departure*: temporary humanitarian stay for a maximum of one year but can be renewed for two consecutive years. After three years, a regular humanitarian residence permit can be granted; if the postponement of departure lasts for at least 1 year, the person can apply for a residence permit on medical grounds.	Aliens Act (Vw)
Return	If absence of medical treatment is considered not to lead to a medical emergency situation in the short term, or medical treatment is available and accessible in the country of origin, a return decision is issued. The Return Unit (DT&V) of the Ministry of Justice and Security investigates and guarantees effective access to treatment if necessary.	Aliens Act Implementation Guidelines (Vc)

5. Sources

The report is based on interviews with representatives of IND and BMA conducted in the course of drafting the initial report in 2017.

The report on "State practices related to medical COI: Country report Netherlands" was first completed in 2018. For this version, ICMPD conducted interviews with representatives of IND and BMA conducted in the course of drafting the initial report in 2017.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the IND

and BMA reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the IND and BMA also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Netherlands" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of the IND and BMA in March 2026 in order to ensure its validity.

Other sources:

- Aliens Act 2000 (Vreemdelingenwet, Vw): accessible at http://wetten.overheid.nl/BWBR0011823/2017-10-01
- Aliens Act 2000 Implementation Guidelines (Vreemdelingencirculaire, Vc): Parts A and B, accessible at https://wetten.overheid.nl/BWBR0012287/2024-02-14 and http://wetten.overheid.nl/BWBR0012289/2017-10-01 respectively
- BMA Protocol (Protocol Bureau Medische Advisering 2021): accessible at https://puc.overheid.nl/ind/doc/PUC_1287954_1/1/
- CJEU - C-542/13, Mohamed M'Bodj v État belge on 18.12.2014
- ECtHR – No 417381/10, Paposhvili v Belgium on 13.12.2016
- ABRvS number 201202753/1/V3, on 13-12-2012
- ABRvS no. 201500308/1/V1 on 15-07-2015
- ABRvS: no. 201702470/1/V3 on 28-09-2017
- ABRvS: no. 201310606/1/V4, on 25-06-2014
- ABRvS no. 201000697/1/V3 on 12-11-2010
- ABRvS no. 200905701/1/V1 on 15-03-2010

Case Study – Norway

CASE STUDY – NORWAY 198

LIST OF ABBREVIATIONS 198

1. MEDICAL CLAIMS IN MIGRATION CASES IN NORWAY 199
   - *1.1. Legal Basis 199*
   - *1.2. Organisational Structure/ Responsibilities 200*
   - *1.3. Procedure in medical migration cases 201*
   - *1.4. The procedure of researching medical country of origin information 202*
   - *1.5. Statistics 202*
2. NATIONAL POLICY 203
   - *2.1. Medical severity of a person's health condition 203*
   - *2.2. Availability of medical treatment/ medication in countries of origin 205*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 206*
3. RESIDENCE AND RETURN 208
   - *3.1. Medical claim accepted 208*
   - *3.2. Medical claim denied 208*
4. SUMMARY 208
5. SOURCES 211

List of abbreviations

ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECtHR	European Court of Human Rights
FSB	*Федеральная служба безопасности Российской Федерации* (Federal Security Service of the Russian Federation)
HIV	Human immunodeficiency virus
IOM	International Organization for Migration
PTSD	Post Traumatic Stress Disorder
UDI	*Utlendingsdirektoratet* (Norwegian Directorate of Immigration)
UNE	*Utlendingsnemnda* (Norwegian Immigration Appeals Board)

1. Medical claims in migration cases in Norway

This report analyses the Norwegian administrative procedures and jurisprudence on migration cases involving a medical claim. Such cases refer to all kind of requests by non-nationals to be granted a permit to remain in Norway based on medical conditions. Many of these cases arise within the asylum procedure. Due to an increasing number of migration cases with medical claims in past years, the immigration authorities have developed a well-established and consistent case law, which is summarised in internal guidelines.

The Norwegian immigration system contains the possibility of granting residence permits for the purpose to receive medical treatment in Norway, given that the costs for the treatment are covered by the applicant or by public funding from the applicant's home country.[215]

1.1. Legal Basis

Non-nationals with medical claims may qualify for a residence permit on humanitarian grounds. The legal basis for humanitarian residence permits is the Norwegian Immigration Act of 2008 that states in Section 38:

"A residence permit may be granted even if the other conditions laid down in the Act are not satisfied provided there are strong humanitarian considerations, or the foreign national has a particular connection with the realm. To determine whether there are strong humanitarian considerations, an overall assessment shall be made of the case. Importance may be attached to, among other things, whether:

(a) the foreign national is an unaccompanied minor who would be without proper care if they were returned,
(b) the foreign national needs to stay in the realm due to compelling health circumstances,
(c) there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit,
(d) the foreign national has been a victim of human trafficking.

In cases concerning children, the best interests of the child shall be a fundamental consideration. Children may be granted a residence permit under the first paragraph even if the situation is not so serious that a residence permit would have been granted to an adult."[216]

Accordingly, a foreign national with '*compelling health circumstances*' may constitute a strong humanitarian reason for being granted a residence permit. If children are affected by the return, the principle of the best interest of the child and a lower threshold may be applied.

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[215] "Foreign nationals who have been offered medical treatment at a treatment institution may be granted a residence permit for a total of one year. It is a condition that the foreign national (a) has an agreement with the treatment institution to the effect that the treatment is to be financed by personal funds or public funds provided by the foreign nationals country of origin, and (b) can produce confirmation from the treatment institution that the treatment is not taking place to the detriment of patients resident in Norway. A necessary companion for a foreign national as mentioned in the first paragraph may be granted a permit. […]" (Section 6-28 Regulations of 15 October 2009 on the entry of foreign nationals into the Kingdom of Norway and their stay in the realm (Norwegian Immigration Regulations)).

[216] Section 38 Act of 15 May 2008 On the entry of foreign nationals into the kingdom of Norway and their stay in the realm (Norwegian Immigration Act).

Another relevant legal instrument is the Norwegian Immigration Regulations of 2009[217] that explicitly contains the obligation for immigration authorities to conduct assessments of each applicant and their individual situations when deciding on a humanitarian residence permit.[218]

Since Norway is not a member state of the European Union the Qualification Directive, which sets forth the criteria for refugee status and subsidiary protection, is not directly binding. The national law on subsidiary protection, however, has been harmonised with the directive to a large extent. Subsidiary protection may be granted, inter alia, if the applicant's return to his/her country of origin will constitute a breach of Article 3 of the ECHR due to medical reasons. However, this is relevant only in cases that meet the very high threshold applied by the ECtHR. The interviewees are not aware of such a case in Norway, where a seriously sick person has been granted subsidiary protection status due to medical claims. This is still the situation after the ECtHR Grand Chamber rulings in the cases of Paposhvili v Belgium and Savran v Denmark.[219]

1.2. Organisational Structure/ Responsibilities

The Norwegian Directorate of Immigration (UDI) is the main administrative authority deciding on applications for international protection and return. Hence, it is responsible for deciding on migration cases with medical claims as well. Besides this, it is also tasked with processing applications for visitor's visa, citizenship, residence permit, and travel documents. UDI is governed by the Ministry of Justice and Public Security.[220]

The Norwegian Immigration Appeals Board (UNE) is an appeal body for decisions taken by the UDI. If an application is rejected by UDI, the applicant has the possibility to appeal against this decision. UDI has to consider the appeal and can either reverse the decision or forward the appeal to UNE. Decisions of UNE are final but can be brought before the ordinary courts of law. UNE is under the administrative authority of the Ministry of Justice and Public Security. However, the Ministry cannot instruct the Board in the interpretation of law or in individual cases, except in cases concerning national security.[221]

In Norway, the research on country-of-origin information is conducted by Landinfo, which is an independent body within the Norwegian Immigration Authorities. Landinfo is responsible for collecting, analysing and presenting objective country of origin information for various actors within the Norwegian immigration authorities, but mainly for UNE and UDI. Landinfo submits requests to EUAA regarding medical COI. Landinfo is formally governed by the Ministry of Justice and Public Security but is administratively subordinated to the Directorate of Immigration (UDI). Nevertheless, it is an independent

[217] Norwegian Immigration Regulations of 2009.

[218] See: Norwegian Immigration Regulations of 2009, Section 8-1 Requirement of a case-by-case assessment, etc. under section 38 of the [Immigration] Act: "*In the application of section 38 of the Act, the individual situation of each applicant shall be assessed. The decisive factors are not the applicant's nationality or the geographical region from which he/she originates, but the individual applicant's possibilities of returning to his/her country of origin. The Ministry may instruct the Directorate of Immigration to make exemptions in certain cases, see section 128 of the Act.*"

[219] Case of Paposhvili v Belgium, Application no. 41738/10, European Court of Human Rights, Grand Chamber, 13 December 2016.

[220] https://www.udi.no/en/about-the-udi/ [visited on 15.11.2017].

[221] https://www.une.no/en/about-une/this-is-une/ [visited on 19.12.2023].

body and neither UNE nor UDI are allowed to give instructions to Landinfo on its research and analyses. It does not participate in the decision-making process and does not express any opinion on whether it is safe for an individual person to return to a specific country or area. Nor does Landinfo give advice on what should be the outcome of a case or interfere in how the COI is interpreted against applicable legislation/case law. [222] Neither the Landinfo nor the UDI have staff with a medical background.[223]

The medical information about an applicant is typically submitted by the applicants themselves or their attorneys. If the documents provided to the UDI, claim the applicant has a severe physical or mental illness the UDI request the applicant and their attorney to submit supporting documents by the treating medical doctor. The case worker will typically ask specific questions to be able to assess the severity of the condition, as well as the necessary treatment and/or medication. Additionally, the treating medical doctor follows a template from a regulation under the healthcare professional act. The documents are submitted by the applicant for the attorney, not directly by the medical processional.[224]

The UNE collaborates with a psychiatrist and a child psychologist who provide guidance on various aspects of individual cases, including the quality of medical documentation and the severity and treatment of illnesses. Both are being consulted in some cases both in the UNE and if/when the case goes to Court. The child psychologist offers broad expertise on children's situations and may advise on how immigration processes affect them. The psychiatrist is consulted when a more detailed psychological and medical assessment is necessary. It is also useful to have a professional review the documents submitted by the applicant, which is why the involvement of a medical professional was chosen in some cases. The psychiatrist primarily assists in determining the severity of illnesses, particularly to assist with the threshold test. However, both the child psychologist and the psychiatrist's roles are advisory, and they do not participate in decision-making process. Therefore, they do not offer opinions on the safety of returning to specific countries or interfere with how medical documentation aligns with relevant legislation or case law.

1.3. Procedure in medical migration cases

Humanitarian protection

The majority of medical claims are examined in the context of assessing potential humanitarian reasons for granting a residence permit, in particular, asylum seekers who have received a negative decision after applying for international protection. If an application for international protection (refugee protection according to Section 28 (a) Norwegian Immigration Act or subsidiary protection according to Section 28 (b) Norwegian Immigration Act) is denied, UDI is obliged (*ex officio*) to initiate the assessment whether the rejected asylum seeker is qualified for a residence permit based on humanitarian grounds, which also includes medical reasons. Norway applies a single asylum procedure leading to one asylum decision consisting of three parts: the decision on 1) refugee protection, 2) subsidiary protection and 3) on humanitarian residence. Hence in Norway the procedure on medical claims is mainly dealt within the

[222] http://www.landinfo.no/id/162.0 [visited on 15.11.2017].

[223] Questionnaire, UDI, 2023

[224] Questionnaire, UDI, 2023

asylum procedure. There is no specific procedure in place for medical claims, however, the practice on how to process medical claims is well established and consistent.

Only in few cases where doubts arise, case workers of UNE consult with the treating physician who issues the documentation on the applicant's medical situation. Additionally, as mentioned above UNE employs a psychiatrist and a child psychologist who can be consulted by case workers for advice.

1.4. The procedure of researching medical country of origin information

Referencing the ECtHR case law Paposhvili v Belgium and Savran v Denmark, humanitarian status could be granted in a case that fulfils the high threshold for the application of Article 3 of the ECHR in exceptional circumstances concerning an applicant who suffers from serious illness and where sufficient treatment is not available in the country of origin.

In these exceptional cases, it is possible to be granted humanitarian status, without MedCOI research, due to the severity of the case and the need for treatment. In theory, a decision could be solely based on the availability and accessibility of medication in the country of origin. However, this would only apply in situations where no specific treatment other than medication is needed, and where the applicant faces no challenges in self-administering the medication.

1.5. Statistics

At present, there are no qualified statistical tools available that provide data on humanitarian residence permits based on medical grounds or other procedures regarding medical claims. UNE is in the process of developing and establishing more extensive statistical tools that, in some years, might be able to provide reliable and comprehensive statistics.

There are no statistics regarding medical claims available, neither from the Landinfo nor through UDI. Landinfo, additionally, does not collect statistics regarding when advisors used the MedCOI data or in which cases they use other sources

Table 1: The number of individual availability (AVA) and individual accessibility (ACC) responses to requests by the EUAA to Norway per year.[225]

	Availability	Accessibility
2021	15	4
2022	12	5
2023	20	4
2024	17	6

MedCOI requests from the Norwegian authorities mainly relate to the availability of a treatment or a medication. The first inquiry is made to determine the availability of either treatment or medication in general, which potentially will be followed by an assessment of accessibility on a case-by-case basis. Therefore, availability requests are sent first, and only if relevant accessibility requests are sent afterwards, explaining why the number of AVA and ACC requests sent to the EUAA.

[225] Data provided by EUAA MedCOI Service.

2. National Policy

2.1. Medical severity of a person's health condition

Whether MedCOI research is initiated or not, is decided on case-by-case basis. Before investigating in further detail, the impediment to return due to health reasons, the severity of the disease or the overall medical situation of the applicant is assessed. Only if it exceeds a certain threshold, the health situation may constitute an impediment to return. And only if the applicant's medical situation fulfils the threshold of severity, the case worker needs to assess the availability and the accessibility of the medical treatment/ medication in the country of origin. Most cases are rejected for not meeting the required severity threshold.

2.1.1. Severity threshold to initiate research on medical COI

No threshold is specified for the case worker to either be able or be required to initiate medical COI research. The case worker will evaluate each situation individually, ultimately considering the severity threshold for decision-making as outlined in 2.2.

2.1.2. Severity threshold for decision-making

According to Section 38 Norwegian Immigration Act of 2008 the applicant's situation has to contain *'strong humanitarian considerations'* due to *'compelling health circumstances'.*[226] Following the national jurisprudence the disease or the medical situation of the applicant has to be *life-threatening* or *may become life-threatening* without the necessary treatment.

Somatic diseases alone (without looking at other factors), has to be *acute* and *life-threatening* in order to fulfil the **severity threshold** and to justify '*compelling health circumstances*' and the granting of a humanitarian residence permit.

- '*Life-threatening'* refers to the patient's risk of dying if not treated and
- '*acute*' describes a relative short period of time in which a disease has to be treated.[227]

Thus, in general, chronic diseases or diseases that are not life-threatening do not provide grounds for a stay. However, if appropriate, diseases that may become life-threatening without treatment may also fulfil the requirement. If the stay in Norway is decisive in providing a worthwhile life it will be weighted in the assessment. On the other hand, a disease itself may not be life-threatening as such but several other factors may aggregate and substantiate the justification for a stay in Norway.[228] For example, in cases which are close to this severity threshold, either below or above, the question to what extent the applicant can rely on a social network in the country of return is taken into consideration. If the applicant lacks a social network (i.e. family members) in the country of origin that can help with the care, the residence permit in Norway can be of crucial importance for maintaining a minimum living standard.[229]

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[226] Section 38 Norwegian Immigration Act of 2008.

[227] Norwegian Immigration Appeals Board (2017:11).

[228] Norwegian Immigration Appeals Board (2017:11).

[229] Norwegian Immigration Appeals Board (2017:6).

In addition to somatic diseases, the internal case law-based guidelines of UDI and UNE contain some instructions on the **severity** of **mental disorders**. Accordingly, there must be a serious mental disorder in order for it alone to be granted a humanitarian residence permit. The term '*serious mental disorder'* is referred to, but not limited to, the medical term *psychosis*, which describes *"a weakening of the patient's mental functions to such an extent that it engages strongly in the person's ability to meet daily life's requirements and the ability to maintain contact with reality".*[230] Typical psychotic disorders that are listed in the internal guideline are schizophrenia with paranoid psychosis and serious forms of bipolar disorder. Less severe disorders, which may have psychotic elements for example mild and moderate depression, anxiety, obsessive compulsive disorder, and common forms of posttraumatic stress disorder (PTSD), as such do not justify the threshold. If the requirements for compulsory admission to a psychiatric institution are met, it is regarded by the immigration authorities as a strong indication for a serious mental disorder. In the overall assessment of serious mental disorders particular attention is paid to the documentation of the disorder, the patient's connection to reality, the treatment with antipsychotic medication and suicide attempts and the risk of suicide.[231]

A lower severity threshold is applied for minors. Section 38 Norwegian Immigration Act states that "[i]in cases concerning children, the best interests of the child shall be a fundamental consideration. Children may be granted a residence permit […] even if the situation is not so serious that a residence permit would have been granted to an adult."[232]

Over the past years, this lower threshold for children has become increasingly established in the Norwegian practice. Thus, a child may be granted a residence permit even if the situation is not as serious compared to the requirements which must be met in order for an adult to be granted a residence permit. The implications of this can vary based on an overall, individual assessment of each case. Specifically, it means that the threshold for severity but also for availability/accessibility may be lower. If the child is not the applicant but the parents are most likely not able to provide adequate care, due to their medical situation, it is given considerable weight in the assessment. In such cases it will also be assessed if there are other family members in the country of origin who can provide care for the child(ren).[233]

Before analysing some selected judgements of Norwegian courts, a few examples of UNE's administrative decisions are discussed:

In UNE decision on the withdrawal of subsidiary protection, the appeal was rejected. UNE concluded that the applicant's physical conditions were neither acute nor life-threatening and that the mental health issues did not reach the required severity threshold. A prior suicide attempt was not considered sufficient to change this assessment. Return was therefore deemed lawful.[234] Evidently the past suicide attempt did not aggravate the applicant's mental disease amounting to a *'serious mental disorder.'*

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[230] Norwegian Immigration Appeals Board (2017:13), translated by authors.

[231] Norwegian Immigration Appeals Board (2017:12-13).

[232] Section 38 Norwegian Immigration Act of 2008.

[233] Norwegian Immigration Appeals Board (2017:6).

[234] UNE appeal, N1592371016, decided in August 2015.

In another case UNE decided in 2015, The appeal was granted. UNE found that the applicant was in ongoing rehabilitation for substance dependence and that return to the country of origin, where adequate treatment was unlikely, would carry a substantial risk of relapse. This made expulsion disproportionately burdensome, warranting continued residence.[235]

Only few judgments discussing a humanitarian residence based on medical claims have been identified during the research for this study. It is important to highlight that the case law analysis below constitutes a selection and is not a comprehensive review of all relevant jurisprudence.

One case was brought before the Court of Appeal in Borgarting that delivered its judgment on a family case involving a child with trauma-related disorder in 2013. The appeal was **granted**. The Court held that UNE had not adequately applied the **lower severity threshold for children** set out in the law and had also failed to address the significance of the disorder being directly linked to the events forming the basis of the protection claim. The Court found that the administrative decision lacked sufficient justification. [236]

In another case the same court, the Court of Appeal in Borgarting, discussed the issue of severity only briefly.[237] The case concerned an adult with a chronic illness and trauma-related disorder. The Court accepted that the applicant's conditions were serious but held that the necessary medical treatment and medication were available and accessible in the country of origin. As the severity threshold and the accessibility criteria were not met, there was no basis for granting residence on humanitarian grounds. The appeal was dismissed.

From 2019-2025 UNE, assessed only a considerably small number of appeals within asylum cases, compared to the previous period from 2015 to 2018 when a big number of asylum complaints were assessed. Only in a small number of these cases were medical claims decisive.

2.1.3. Medical threshold cases

There was no information provided whether Norway accepts in certain constellations decision without further procedure in cases of extremely severe cases.

2.2. Availability of medical treatment/ medication in countries of origin

Once the severity of the disease has been established, one of the following two elements have to be fulfilled in order to grant a humanitarian residence permit based on medical grounds:

- either the availability of the medical treatment/ medication is not guaranteed in the country of origin or
- the medical treatment/ medication is available, but the applicant has no access to it (the latter will be explained below in chapter.

It is viewed that if the treatment and/ or medication is available in the country of origin and the person has de facto access to it, the stay in Norway is not of crucial importance to ensure a worthwhile life to the

[235] UNE appeal, N1577571016, decided in September 2015.

[236] Borgarting Court of Appeal, LB-2013-58457, decided on 24 October 2013.

[237] Borgarting Court of Appeal, LB-2014-42615, decided on 11 February 2015.

patient. In cases that do not meet the severity threshold or is not even close to the threshold, neither the availability of nor the accessibility to the treatment or the medication is assessed. Hence, only if the first step of the severity requirement is fulfilled, the case worker proceeds to the second step, which involves the assessment of the availability and accessibility.[238]

2.2.1. Definition of availability in the national context

Neither the courts nor the immigration authorities have developed a clear definition on the 'availability' of medical treatment and/or medication. However, following the practice of UNE and UDI, the **availability of a medication** is fulfilled if it is actually being supplied in the country of origin. It is not sufficient to have the medication only registered in the country. It has to be physically present. Re-supply time for medication that has to be ordered at pharmacies is taken into account only if this causes a deterioration of the person's medical condition. **Medical treatment** is considered available if it is being practiced in the country. There is no requirement to meet the same quality of treatment as provided in Norway, however, it has to be adequate to treat the disease. The main criterion regarding the 'availability' is whether the medication or the medical treatment *exists* or is *physically present* in the country of origin. Moreover, it has to be provided through official and legal channels. Hence, medication or medical treatment that is available only at the black market does not fulfil the requirement.

2.2.2. Availability in practice

Due to the low number of cases involving medical claims, there are only few cases, particularly from 2019-2025, where the availability and the accessibility of the medical treatment/ medication were given a thorough assessment.

In the previous case, UNE assessed the availability of the medical treatment and held that specialised treatment for children would be provided at medical facilities.[239]

2.3. Accessibility of medical treatment/ medication in countries of origin

In addition to assessing the availability of the medical treatment/ medication, the Norwegian authorities are required to assess whether the applicant can de facto access the necessary medical treatment/ medication that is available in the country of origin. However, the assessment of the accessibility is being conducted only if the medical situation meets the severity threshold or is at least close to it. For diseases that are not regarded as severe enough or not close to the threshold, the accessibility will not be considered (see above).

2.3.1. Definition of accessibility in the national context

The focus of the accessibility assessment is whether the treatment/ medication is actually accessible for the individual applicant, in particular from an economic and geographic point of view. The economic

[238] Norwegian Immigration Appeals Board (2017:14).

[239] Borgarting Court of Appeal, LB-2013-58457, decided on 24 October 2013.

accessibility is guaranteed even if the costs for the treatment/ medication are high, unless the costs are so high that *"only a small part of the population can afford to pay for it."*[240]

In general, it is viewed by UNE that the medical treatment/ medication is geographically accessible even if it is not provided at the applicant's place of residence but, for example, in the capital of the country. Only in extraordinary individual circumstances elements of a geographic accessibility may be assessed. Examples of such individual circumstances may be the physical ability of the applicant to travel, the security situation, the availability of transportation, the necessary frequency of travel, or the existence of family members or others who can assist to get the required treatment/ medication.

In theory political accessibility, such as discriminatory practices concerning the actual access to health care, may be taken into consideration. However, in the context of humanitarian residence permits the interview partners are not aware of any cases involving difficulties in accessing health care due to discriminatory practices.[241] Moreover, discrimination in the access to health care is primarily being assessed during a refugee status determination.

2.3.2. Accessibility in practice

In the case UNE found the medical situation sufficiently serious and concluded that, due to limited support structures and economic constraints, adequate treatment in the country of origin was not realistically accessible. The appeal was granted.[242]

In another case, the UNE granted an appeal, since. Although treatment and medication were deemed available, UNE had serious doubts about accessibility, particularly because the applicant lacked a functioning social network needed to ensure consistent medication and follow-up.

In a judgment of the Borgarting Court of Appeal, it is noted that the applicant will be able to receive the required treatment and referred to a report of Landinfo and the testimony of a Landinfo counselor. The economic accessibility has been taken into account in this case, as it has been found that the treatment and counselling for HIV was offered for free in several cities in the country of origin.[243]

The Norwegian jurisprudence confirms the authorities' obligation to conduct an accessibility assessment, in order to determine whether the (available) medical treatment and/or medication would also be accessible to the person concerned. As pointed out above, the costs would only affect a decision if '*only a small part of the population can afford to pay for it*'[244].

[240] Norwegian Immigration Appeals Board (2017:14); Interview with representative of UNE (2017).

[241] Interview with representative of UNE (2017).

[242] UNE appeal N1577571016 decided in September 2015.

[243] Borgarting Court of Appeal, LB-2014-42615, decided on 11 February 2015.

[244] Norwegian Immigration Appeals Board (2017:14); Interview with representative of UNE (2017).

In a more recent judgement, decided in June 2021, the Court of Appeal in Borgarting accepted UNE's assessment that appropriate medication and treatment were both available and accessible in the CoO, and that neither political nor security conditions would prevent access.[245]

In another case regarding the expulsion of the applicant, the same Court, the Court of Appeal in Borgarting, elaborated on accessibility, in particular regarding the overall health situation of the applicant and the waiting time to receive treatment. Although treatment was considered available in the country of origin, the Court found significant doubts regarding actual accessibility, especially due to mobility limitations and potentially long waiting times for essential treatment. The appeal was granted.[246]

3. Residence and Return

3.1. Medical claim accepted

If the decision-maker concludes that the medical situation of the applicant is severe **and** the medical treatment/ medication is not available **and/or** is not accessible in the country of origin, then a residence status based on humanitarian grounds is being granted for three years. In cases where the applicant is not able to provide documentation for his/ her identification, the residence status is limited to one year. If the disease can be cured within three years by treatment in Norway, the humanitarian residence permit can be limited to the period needed for the treatment. After a three-year residence based on humanitarian grounds the person is allowed to apply for permanent residence in Norway, provided that the requirements for this residence permit are fulfilled. There is no re-assessment of the applicant's medical situation or of the medical country of origin information undertaken when applying for the permanent residence permit. The permit for the humanitarian residence and the permanent residence is granted by UDI.

3.2. Medical claim denied

If the immigration authorities also deny the humanitarian residence permit based on medical claims, the applicant has to leave Norway within a given time limit, normally within three weeks. The Norwegian Immigration Act provides for longer or shorter time limits and also for the extension of a limit that has already been announced if the circumstances of a case are particularly compelling. Apart from the assisted voluntary programs, supported by IOM, there is no other financial support specifically targeting returnees with medical problems. In-kind support (e.g. providing medication for the first months or medical supplies) is also not part of the practice, however it would be possible if required, according to the interviewee from UDI.[247]

4. Summary

The immigration authorities in Norway have developed a well-established and consistent practice, derived from its case law when it comes to medical claims in migration procedures. The majority of medical cases are processed within the asylum procedure. The responsible immigration authorities have clear internal

[245] Borgarting Court of Appeal 21-071417ASK-BORG/04, decided in June 2021.

[246] Borgarting Court of Appeal 21-041807ASD-BORG/O2, decided in June 2021.

[247] Interview with representative of UDI (2017).

guidelines when deciding in such cases, guidelines that is based on a number of migration cases with medical claims over the past years.

The threshold for the severity of a disease has to be met in order to qualify for a residence permit due to health problems. The severity of a disease or the overall medical situation of the applicant has to be either life-threatening or at risk of becoming life-threatening without the necessary treatment. When it comes to somatic diseases it has to be *acute* and *life-threatening* in order to be granted a humanitarian residence. Whereas mental disorders have to be *severe* which is often referred to the medical term *psychosis*. On the other hand, a disease itself may not be life-threatening as such, but several other factors may aggregate and substantiate the justification for a stay in Norway. For minors a lower level of the severity of the disease is being applied compared to adult applicants. Apart from the treating physician, there is no medical doctor involved in ***the decision making***. UNE collaborates with a psychiatrist and a child psychologist who provide guidance on various aspects of individual cases, including the quality of medical documentation and the severity and treatment of illnesses. However, both the child psychologist and the psychiatrist's roles are advisory, and they do not participate in decision-making process.

Once the severity of the disease has been established, an assessment of the availability and the individual accessibility to the medication/medical treatment is being conducted. The Norwegian practice seems to meet the requirements set in the recent Grand Chamber judgement in the case of Paposhvili v Belgium that confirmed State's obligation to assess the applicant's accessibility to medication/medical treatment in the country of origin in each case.[248] Landinfo provides authorities with country-of-origin information.

There is no definition on the availability and accessibility of medication/medical treatment in Norway. However, it is regarded as available if the medication exists or is physically present in the country of origin and is being actually supplied. The re-supply time for medication that has to be ordered is taken into account only if this causes a deterioration of the person's medical condition. Medical treatment is considered available if it is being practiced in the country of origin. There is no requirement to meet the same quality of treatment as provided in Norway, however, it has to be adequate to treat the disease. The economic accessibility is guaranteed even if the costs for the treatment/medication are high, unless the costs are so high that *"only a small part of the population can afford to pay for it"* .[249]

In general, it is viewed by UNE that the medical treatment/medication is geographically accessible even if it is not provided at the applicant's place of residence as long as it is available in the country of origin. Only in exceptional cases the accessibility is denied if extraordinary individual circumstances do not allow the applicant to travel to the place where the medical treatment/medication is being offered.

If the requirements are fulfilled applicants are granted a residence status on humanitarian grounds for up to three years. After a three year stay in Norway based on a humanitarian residence permit, the person is allowed to apply for permanent residence given that the requirements are fulfilled. There is no re-assessment of the medical situation being conducted when applying for the permanent residence. If the humanitarian residence permit based on the medical claim is denied, the person has to leave Norway

[248] Case of Paposhvili v Belgium, Application no. 41738/10, European Court of Human Rights, Grand Chamber, 13 December 2016.

[249] Norwegian Immigration Appeals Board (2017:14); Interview with representative of UNE (2017).

within a given time period. There is no financial or in-kind support specifically tailored for returnees with health problems.

	Definition/applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	The disease or the overall medical condition has to be either life-threatening or at risk of becoming life-threatening without the necessary treatment. • Somatic diseases have to be acute and life-threatening • Mental disorders have to be severe, which often is referring to psychotic disorders. Psychosis is described as a weakening of the patient's mental functions to such an extent that it engages strongly in the person's ability to meet daily life's requirements and the inability to maintain contact with reality. Several other factors may aggregate and substantiate the justification for a stay even though the disease itself may not be life-threatening as such. For minors a lower level of the severity of the disease is being applied.	Internal guidelines, case law
Availability	There is no definition on the availability and accessibility of medication/ medical treatment. It is regarded as available if the medication exists or is physically present in the CO and is being actually supplied. Medical treatment is available if it is being practiced in the CO.	Internal guidelines/case law
Accessibility	Accessibility is part of the overall assessment. There is no definition on the accessibility of medication/ medical treatment in Norway. The practice follows the following rules: • Economic accessibility: is considered available regardless of the costs, unless it is so high that only a small part of the population can afford to pay for it. • Geographic accessibility: generally, it is guaranteed even if the person has to travel long distance to receive medication/treatment. Exceptions are made only in extraordinary individual situations.	Internal guidelines/case law
Residence permit	A residence permit on humanitarian grounds is granted for up to 3 years. After a 3-year stay in Norway based on a humanitarian residence permit, the person is allowed to apply for permanent residence.	Section 38 Immigration Act of 2008
Return	There is no financial or in-kind support specifically tailored for returnees with health problems.	Practice

5. Sources

The report on "State practices related to medical COI: Country report Norway" was first completed in 2018. For this version, ICMPD received information from the Norwegian Immigration Appeals Board in April 2017"

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the Norwegian Immigration Appeals Board reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the Norwegian Directorate of Immigration also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Norway" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of Norwegian Immigration Appeals Board and Landinfo in March 2026 in order to ensure its validity.

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Expert interviews:

- Interview with the Norwegian Directorate of Immigration, 14 November 2017.

Case Study - Poland

CASE STUDY - POLAND **213**

LIST OF ABBREVIATIONS **213**

1. MEDICAL CLAIMS IN MIGRATION CASES IN POLAND....214
   1.1. Legal Basis....214
   1.2. Organisational Structure/ Responsibilities....215
   1.3 Procedure in medical migration cases....217
   1.4 Procedure of researching medical country of origin information....218
   1.5 Statistics....218
2 NATIONAL POLICY....219
   2.1. Medical severity of a person's health condition....219
   2.2. Availability of medical treatment/ medication in countries of origin....220
   2.3. Accessibility of medical treatment/ medication in countries of origin....22110
3. RESIDENCE AND RETURN....222
   3.1. Medical claim accepted....222
   3.2. Medical claim denied....223
4. SUMMARY....223
5. SOURCES....226

List of abbreviations

COI	Country of origin information
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights

1. Medical claims in migration cases in Poland

Medical claims used to play a very minor role in Polish migration policy. However, recently this is becoming more and more relevant since the numbers of such cases are increasing. For this reason, a firm practice or policy did not develop yet when it comes to migration cases involving medical elements. Medical claims mainly occur in the procedure for the determination of international protection needs and the return procedure.

1.1. Legal Basis

The legal basis for granting a third country national the right to remain in Poland based on medical reasons can be found in two legal instruments. First, the "Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 2003"[250] deals with international protection. Article 15 regulates subsidiary protection and states:

"A foreigner who does not meet the conditions for a refugee status, is granted subsidiary protection in cases where a return to the country of origin may expose him to a real risk of serious harm by: 1) a death penalty sentence or an execution to be carried out, 2) torture, inhumane or degrading treatment or punishment, 3) a serious and individualized threat to life or health resulting from widespread use of violence against civilians in a situation of an international or internal armed conflict and due to this risk he is unable or unwilling to avail himself of the protection of the country of origin." (Art 15 Act on granting protection to aliens within the territory of the Republic of Poland).

Decisions on granting subsidiary protection for medical reasons are based on the grounds of the prohibition of torture and inhumane or degrading treatment. The second legal instrument is the Act on Foreigners of 2013[251] that contains the norms on the return procedure. Article 348 covers residence permits on humanitarian grounds and states:

"A foreigner shall be granted a permit for humanitarian stay within the territory of the Republic of Poland, if a return obligation for him/her: 1) can be realized only to the country where […] a) his/her right to life, freedom and personal security might be threatened, or b) he/she could be subject to torture or inhumane or degrading treatment or punishment, or c) he/she could be subject to forced labour, or d) he/she could be deprived of the right to fair trial or be punished without a legal basis, or 2) would violate his/her right to family or private life within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, or 3) would violate the rights of the child, as defined in the Convention on the Rights of the Child […] in a manner which may represent a serious threat to his/her psychophysical development." (Art 348 Act on Foreigners).

Decisions on granting humanitarian status for medical reasons are based on the grounds of the right to life, the prohibition of inhuman and degrading treatment, the rights of the child or the right to family (if it concerns family members of the applicant).

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[250] Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland.

[251] Act of 12 December 2013 on Foreigners.

1.2. Organisational Structure/ Responsibilities

The Polish system of granting or denying international protection to asylum applicants lies within the responsibility of the Office for Foreigners while the power to grant humanitarian status during the return procedure is with the Border Guards. Both entities are governed by the Ministry of Interior.

Medical migration claims mainly come up in the course of the procedure for granting or denying international protection. The Head of the Office for Foreigners is the administrative authority specialised on international protection and is responsible for examining, granting, refusing, and withdrawing international protection in Poland as well as for Dublin procedures. In the Office for Foreigners a specialized unit researches and collects Country of Origin Information (COI unit), which also includes medical information if needed and requested by the caseworkers.

The Office for Foreigners receives the asylum application which (as a rule) has been submitted by an applicant to the Border Guards (see below). Following the asylum procedure the Office may grant refugee status in the meaning of the 1951 Geneva Refugee Convention and, if that is denied, subsidiary protection status. Should subsidiary protection also be denied, the decision whether the return of the applicants is possible or not rests in the hands of the Border Guards.

The Refugee Board is the second instance administrative body competent to manage appeals against first instance negative decisions in all types of asylum procedures (including Dublin). After the administrative appeal procedure before the Refugee Board, a complaint can be submitted before the Voivodship Administrative Court in Warsaw. Against the ruling of the Voivodship Administrative Court in Warsaw a cassation complaint can be lodged at the Supreme Administrative Court.[252]

[252] http://www.asylumineurope.org/reports/country/Poland/asylum-procedure/general/short-overview-asylum-procedure

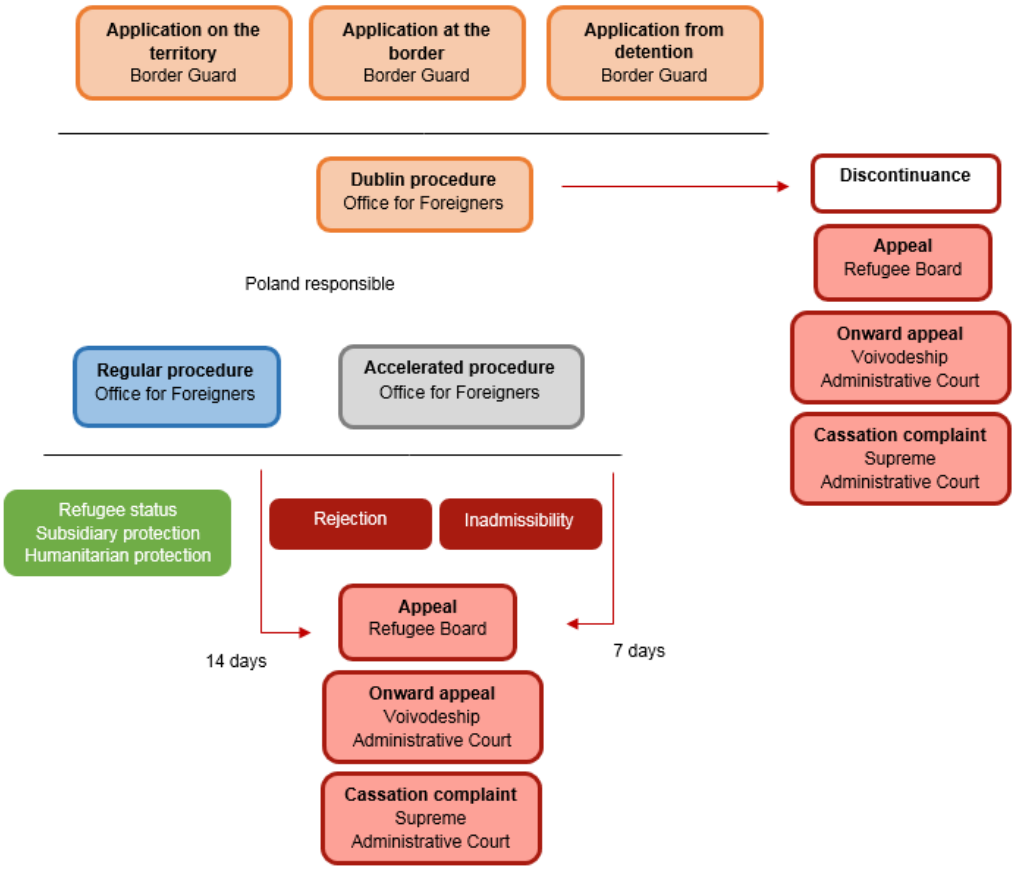

Figure 2: Overview of the asylum procedure and responsible authorities (Source: Asylum Information Database[253])

Theoretically medical migration cases may also gain relevance within return procedures. However, in practice the number of medical migration claims within the return procedure is very low according to a representative of the Polish Border Guard.[254]

The Polish Border Guards in Poland are mostly the central organ which receives applications for international protection (however the decision is taken by the Office for Foreigners) and, following the respective procedures, to decide on whether a person can be returned to the country of origin or not. They are also entitled to grant humanitarian status to migrants with medical claims. Apart from this, the Border Guards are also responsible for the protection of the border, controlling the legality of stay and labour of foreign nationals, investigating in border crimes, granting tolerated status, and organising returns of irregular migrants. The Polish Border Guard is regionally divided in 9 divisions across the territory and the headquarter. The smallest units are the Border Guard posts. The assessment of whether a medical claim establishes the requirements for a humanitarian status is conducted either by the Border Guards posts or by the regional divisions. The Polish Border Guard is subordinated to the Ministry of Interior. The

[253] http://www.asylumineurope.org/reports/country/Poland/asylum-procedure/general

[254] From May 2014 - February 2017 only 5-6 cases of granting humanitarian status due to medical reasons were reported.

body of second instance in the procedure for humanitarian status granted by the Border Guards is the Head of Office for Foreigners.

Beside the asylum and return procedure some countries also offer legal migration channels for medical purposes, which however is not the case in Poland.

1.3 Procedure in medical migration cases

Persons travelling to Poland in order to undergo a medical treatment can apply for a visa for medical treatment. The Polish government is promoting Poland as a destination country for cross-country medical services mainly targeting Scandinavian countries. A project on the development of the so-called medical tourism sector in Poland was co-financed by the European Regional Development Fund.[255] Besides this entry procedure, Poland does not foresee a specific procedure for applying for a residence permit based on health issues. Thus, migration procedures where medical elements may play a role are rather limited to the asylum and return process. However, in practice the Polish Border Guards reported a very low number of medical migration cases during return procedures without indicating any possible reasons.

Medical assertion during the asylum process

As a general rule, the asylum authority needs to respond to all possible assertions of the asylum applicant. Thus, if the applicant brings forward any medical issue during the asylum procedure, the Office for Foreigners needs to appropriately respond to such a claim. In a first step the Office determines whether the health condition is of a certain severity. Only if such is affirmed, the Office needs to establish whether the treatment and/or medication would be also availability and accessibility in applicant's country of origin. Such an assessment is conducted by specific research on the health care situation in the country of origin.

In general, medical claims may play a vital role in the determination of the refugee status, if, for example, the applicant's access to health care would be denied due to discriminatory practices in the country of origin based on one of the grounds mentioned in Article 1A Geneva Refugee Convention. However, such cases are rather the exception. Medical cases thus, also in Poland, are more frequently of relevance when determining the subsidiary protection needs of an applicant. The Office for Foreigners may grant subsidiary protection if the medical conditions of an applicant in combination with a lack of necessary treatment in the country of origin would derive to a situation comparable with inhuman or degrading treatment.

However, if the Office for Foreigners comes to the conclusion that the person neither fulfils the requirements for refugee status nor those for subsidiary protection a negative decision on the asylum application is delivered. The applicant has the possibility to appeal against this decision at the Refugee Board, which is the administrative authority of second instance. A complaint against this decision can be

[255] Medical tourism to Poland was part of a project implemented by the Polish Ministry of Economy on "The Promotion of Polish Economy on International Markets, Sub-measure 6.5.1 of the Innovative Economy Operation Programme".
https://www.imtj.com/articles/dr-ada-kostrz-kostecka-talks-about-new-polish-medical-tourism-initiative/
https://ec.europa.eu/health//sites/health/files/cross_border_care/docs/cbhc_information_patientschoice_en.pdf

submitted to the administrative court (Voivodship Administrative Court). If the negative decision on the asylum application is final, the case is forwarded to the Border Guards for initiating the return procedure.[256]

Medical assertion during the return process

During the return procedure the Polish Border Guards are obliged to assess whether there would be any reasons that would stand against the return of the foreigner subjected to a return procedure. In such cases, the Border Guard may grant a humanitarian status. Among the grounds for granting humanitarian status also medical problems may justify an impediment to return a person. This assessment is the first part of the return procedure. Only if no grounds for a humanitarian status have been identified, the Border Guards assess the issuance of the return decision.

In the context of medical problems, the Border Guards may also issue a permit for tolerated stay. This is the case if the foreigner cannot be granted humanitarian status due to security reasons (committed a crime against humanity or constitutes a threat to national security) but there are still grounds to believe that the return would endanger his/her right to life, liberty or security.[257] In these cases, the return decision is issued but it is not enforceable as long as the decision on tolerated stay is in force. The permit for tolerated stay is cancelled when the person is able to be returned.

1.4 Procedure of researching medical country of origin information

In Poland, medical COI research always assesses availability and accessibility of both the medication and the treatment. Even for in cases where medication is most crucial, such as in cases using Spinraza – nusinersen, COI researchers assess treatment options, because the effect of the medication needs to be monitored.

1.5 Statistics

The Office for Foreigners does not collect data on medical migration cases and therefore there are no reliable statistics available. One reason that was mentioned for the lack of data is the fact that the medical component is very often only one within several components of an asylum application. However, as the Office needs to respond to all relevant claims of an applicant, medical claims may – even if they are not decisive for the asylum procedure itself – become part of the investigation during the asylum procedure. Regularly there is little evidence on whether a person may receive medical treatment and/or medication

[256] Before May 2014 a negative decision of the Refugee Board (second instance) was accompanied by a return order. The next complaint at the administrative court did not have suspensive effect and thus the return order remained final and enforceable. Therefore, both proceedings were separated, and the return decision is issued by the Border Guards and no longer within the asylum procedure. Additionally, a complaint at the administrative court has suspensive effect on the enforcement of the return. Consequently, rejected asylum seekers cannot be returned immediately after receiving the negative decision and have better access to court. http://www.asylumlawdatabase.eu/en/journal/prolonging-detention-under-return-directive-poland [13.02.2017].

[257] The tolerated stay can be granted also to foreigners who currently cannot be returned due to technical obstacles, for instance due to lack of travel documents or the person is not fit-to-fly (Head of the Office for Foreigners, 2016).

in the country of return. Therefore, decision makers request the services of the Country-of-Origin Information (COI) unit within the Office for Foreigners.

The COI unit received in 2013 and 2014 around 30 requests for medical country of origin information and in 2015 and 2016 it increased to approximately 50 requests per year. However, the number of requests to the COI unit does not reflect the actual number of medical migration cases, since information of general nature from one case, can be and is used for other cases, without submitting a new request to the COI unit. In 2016 the profile of asylum applicants in Poland is rather homogenous and mainly consists of applicants from the Russian Federation (ca. 73% of overall 12,321 applications) and Ukraine (ca. 11%). However, in 2025 majority of applicants in Poland are from Ukraine (54% of total) and Belarus (22%) and to a lesser extend from the Russian Federation (5%).

Table 1: The Number of individual availability (AVA) and individual accessibility (ACC) requests to the EUAA by Poland per year[258]

	AVA	ACC
2021	2	-
2022	4	-
2023	4	-
2024	4	1

2 National Policy

2.1. Medical severity of a person's health condition

2.1.1 Severity threshold to initiate research on medical COI

In the Polish case practices, there is no official threshold definitions that sets when medical COI has to be initiated, this is decided on a case-by-case basis.

2.1.2. Severity threshold for decision-making

In general, neither the Polish law nor practice define when a disease is of such severity that justifies further assessments of the international protection needs or the possibility to return a foreigner.

If the applicant indicates any medical issues that potentially prevents him/her to leave Poland, the applicant is asked to submit a written statement (medical attestation) issued by a medical doctor practicing in Poland. This statement constitutes the basic evidence for considering the severity of a disease. The statement needs to consist of the diagnosis, information on the health condition of the patient, his/her medical problems, a prognosis of the medical condition and information on the treatment (including medication and how often he/she needs to see a doctor). Additionally, it should also contain information on the person's ability to work. Based on the written medical attestation the caseworker decides whether the health situation has to be further assessed or not.

[258] Data provided by EUAA MedCOI Europa Service.

While medical cases are increasing in Poland, these were so far of minor importance and thus did not yet lead to national case law on e.g. the severity threshold of a disease. The interview partners were equally not aware of any national case law discussing this issue.

Particular attention is paid on the overall situation of the person. For example, the case of one elderly person was mentioned who suffered from several diseases, which were considered not very severe but the combination of all diseases (co-morbidities) and the age of the person, met the threshold. In the past, the Office also took into account if the applicant was already diagnosed with a severe disease in the country of origin whether they made also efforts to be treated in the country of origin. In past practice, a lack of such efforts negatively influenced the decision on whether to grant or deny subsidiary protection.

2.1.3. Medical threshold cases

There is no stipulating from which severity medical COI is not necessary due to the high severity of the disease. In Poland, medical COI research is also conducted in case where the individual is in a vegetative state, on order to determine the kind of protection that shall be granted to the applicant – tolerated status or humanitarian protection.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

If an asylum seeker or a returnee brought forward a medical attestation for a disease that was regarded as severe, the availability of the relevant medical treatment and/or medication in the country of origin has to be assessed by the Office for Foreigner or the Border Guard. A medication is regarded as available if it is supplied by pharmacies and is regular on stock. It has to be available through legal channels and is not considered as available if it is supplied only at the black market. Internet pharmacies, as long as it is legal, are viewed as legitimate sources. A treatment is available only if there are specialized doctors offering the required treatment, or if the specific treatment is provided in hospitals or medical centres.

The supply is guaranteed only if it is available in the region where the person is located. Depending on the overall situation of the applicant, it is generally viewed as reasonable that the person relocates to other regions where the supply is guaranteed. For example, in some parts of Ukraine the medication or treatment might not be available but in other regions the supply is guaranteed. In exceptional situations the possibility of relocation is considered as not reasonable, for example due to the family situation, or if the relocation would entail that no social network is available in the other region.

The decision whether a treatment or medication is sufficiently available is taken by the Department of Asylum Procedures (Office for Foreigners), in particular by the caseworker responsible for the asylum application. If required, the caseworker discusses the case within the team. Based on medical country of origin information and previous decisions of the Office for Foreigners and the Refugee Board (the second instance administrative body), it is decided whether the availability of a treatment and/ or medication in the country of origin can be considered as guaranteed or not.

2.2.2. Availability in practice

The interview partners were not aware of any court decisions discussing the availability of treatment or medication. Elements of the availability assessment that are discussed in decisions of the Council of Refugees mainly refer to the quality of care:

"The fact of low level of health care in the country of origin cannot be the reason of granting protection to the applicant because protection cannot be granted on the grounds of low level of life or low level of health care. International protection is not for upgrading the level of life of people who are not content with the level guaranteed by the country of origin" (RdU-515-1/S/10, issued on 12 July 2010)[259].

„[…] reduced quality of social or health care in the country of origin compared to the one offered to the foreigner in Poland is not a violation of the European Convention on Human Rights (decision of 2 May 1997, RJD 1997-III, par. 54, decision of 7 September 1998, complaint no. 30930/96, RJD 1995-VI). According to that it cannot be claimed that the possibility of embracing the higher level of Polish social, health or other care in Poland than in Ukraine shall make Poland responsible for granting international protection to the foreigner." (RdU-576-1/S/14, issued on 14 July 2015)[260].

Both decisions of the Council of Refugees follow previous rulings of the ECtHR regarding the quality of care. According to the ECtHR rulings it has to be verified whether the care generally provided in the receiving country is sufficient and appropriate for the individual person but it is not relevant whether the level of care in the receiving country is equal or inferior to the level of care provided in the receiving country[261]. In any case, the examples also well illustrate that the Polish appeals body reaches out for the ECHR[262] when assessing medical migration cases, yet the national case law has not further developed in this field.

2.3. Accessibility of medical treatment/ medication in countries of origin

The accessibility of medical treatment and/ or medication refers to the individual circumstances of the concerned person that may prevent the applicant from de facto receiving the objectively available treatment and/ or the medication in the country of origin. Thus, the accessibility portrays the subjective component of the assessment whereas the availability describes the objective element. The Polish authorities consider the accessibility test as an important element when deciding whether the return of a severely sick person is possible or not.

2.3.1. Definition of accessibility in the national context

There is no definition on the accessibility of medical treatment or medication. The relevant criteria are not clearly pre-defined and rather subject to case-by-case considerations. The decision on the accessibility is, similar to the availability test, taken by the Department of Asylum Procedures (Office for Foreigners). The case worker discusses the case within the team and based on the information provided by the COI unit

[259] Translation provided by the Office for Foreigners.
[260] Translation provided by the Office for Foreigners.
[261] See Case of Paposhvili v Belgium, Application no. 41738/10, European Court of Human Rights with further referrals to earlier judgements.
[262] Convention for the Safeguarding of the human rights and fundamental freedoms, drawn up in Rome on 4 November 1950.

and on previous cases, it is decided whether the individual person has de facto access to the medical treatment and/or medication that is available.

When assessing the individual accessibility, according to the Office of Foreigners, different elements might be relevant in order to determine the accessibility to specific medical treatment and medication. For this report, the different elements are classified in three types of accessibility.

Economic accessibility

First, the **economic accessibility** examines the financial situation of the applicant including the ability to work and the chances of finding a job, including factors such as educational background, the age of the person and language skills. The economic accessibility also captures the costs of medication and medical treatment and the possibilities of refunds for medication or treatment from governmental or non-governmental organisations. The family situation can also be a relevant factor in this regard, for instance if family members can financially support the applicant.

Geographic accessibility

Secondly, the geographic accessibility is another relevant part of the accessibility test. Even though, as mentioned above, the Office is in principle of the opinion that a sick person may relocate to a region where treatment or access to medication is available the geographic accessibility may still be relevant in exceptional cases. This can be affirmed if the applicant is restricted in mobility and has no means to reach the place of treatment, irrespective of the distance, to the place of treatment. For instance, the person lacks the support that he/ she relies on in order to reach the place of treatment or lacks support in childcare connected with long travels in order to arrive at the next medical centre.

Political accessibility

Thirdly, the **political accessibility** might be taken into consideration in exceptional cases and only if signalled by the applicant. This becomes relevant only if the applicant does not establish refugee status due to a lack of individual persecution. However, the person might face difficulties in fully accessing medical treatment or medication due to discrimination. It is examined whether the discrimination claimed by the applicant based on ethnicity or political believe is reported. For instance, internally displaced persons from the Eastern part of Ukraine, who moved to other regions of the country due to the war, have claimed to face difficulties in receiving adequate medical treatment because of political discrimination. Another example for political accessibility that has been claimed is the discrimination of persons belonging to the Roma minority.

2.3.2. Accessibility in practice

National case law discussing the accessibility in practice could be found neither through desk research nor by expert interviews. The interview partners confirmed the lack of court judgements on this issue.

3. Residence and Return

3.1. Medical claim accepted

If the Office for Foreigners takes the decision that the person cannot return to his/her country of origin, he/ she is entitled to subsidiary protection. The person has to apply for the residence card at the Office for

Foreigners, which is also the responsible body for the issuance of the residence permit and card for subsidiary protection. The residence card is valid for 2 years and can be renewed, after a re-assessment of the individual's situation.

The humanitarian residence status is granted by the Polish Border Guards for an unlimited time; however, the residence card is valid for 2 years and has to be prolonged. The authority has the power to re-assess whether the protection grounds are still given. However, in practice this does not happen on a regular basis. The case might be re-investigated if the authority has the knowledge that the grounds for maintaining the humanitarian status ceased to exist or other circumstances that justify a revocation.

3.2. Medical claim denied

In case of a negative decision for international protection the person has the possibility to lodge an appeal at the next instance body. If the applicant does not submit a complaint or if the legal remedies are exhausted, the individual has no access to health care and financial support anymore. During this research, no information was found on whether returnees can request for specific financial help or treatment/ medication based on the medical problems on the one hand for the time period they remain in Poland and on the other hand for the first months after return.

Since May 2014, the return decision has not been issued within the asylum procedure anymore. As stated above, this responsibility moved to the Polish Border Guards. The applicant can bring forward arguments in the return procedure that she/ he cannot be returned.

4. Summary

There is no specific migration procedure for medical residence permits in Poland. Medical migration cases appear in the asylum procedure when determining whether or not to grant international protection. Medical cases may also come up during the return procedure – in the context of rejected asylum seekers (if the claim for international protection is rejected medical claims still may come up during the return procedure), as well as in the context of the return of migrants irregularly staying in Poland.

There are different authorities responsible for those procedures in Poland, the Office for Foreigners for granting international protection and the Border Guards for the return process. Both entities thus potentially are confronted with medical cases.

The Office for Foreigners is the responsible administrative body deciding in asylum application as a first instance. There is no definition of the threshold for the severity of a disease. Based on a medical statement of a physician the severity of a disease is decided on a case-by-case basis. Cases with disease that are regarded as severe undergo an assessment of the availability and accessibility of the necessary treatment and/or medication in the country of return. Neither the availability nor the accessibility is defined by law or internal instructions. Generally, the Office understands the availability as guaranteed if the medication is regular on stock or the specific treatment is provided in hospitals or medical centres in the region where the person is located. The medication has to be available through legal channels, which may also include online pharmacies. For the assessment it is irrelevant whether the care in Poland would be of higher quality than the care available in the country of return.

In the Polish practice also the accessibility to health care/ medication is relevant. The actual accessibility for the applicant to medication and/or treatment is guaranteed only if the economic, political and in exceptional cases the geographic accessibility is given. The economic element captures the financial situation of the individual person and family members, the ability to work, the costs of medication and treatment and possibilities of refund. Political accessibility is also being assessed if discrimination in the access to medication and/or treatment is signalled by the applicant. In exceptional cases the geographic accessibility may be a relevant element, e.g. if the relocation to a region where the supply of the medication and/or treatment is guaranteed, is not reasonable. The COI unit assists with collecting medical country of origin information. The decision on the medical migration claim is taken by the case worker responsible for the asylum application together with other colleagues of the Department of Asylum Procedures (Office for Foreigners).

If it is concluded that the treatment and/or medication is not available or not accessible, a permit for subsidiary protection is issued. If the Office for Foreigners decides that the disease is not severe, or the availability and the accessibility in the country of origin are guaranteed, then there are no obstacles from the medical side to issue a negative decision on international protection. The case is forwarded to the Border Guards for initiating the return procedure.

The return procedure is processed and decided by the Polish Border Guards who are, since May 2014, entitled to grant humanitarian status and tolerated stay to migrants under certain circumstances. The humanitarian status is granted if the return to the country of origin is not possible due to a violation of the person's right to life, the prohibition of torture and inhuman and degrading treatment, the right to family, and the rights of the child. Medical migration cases may be granted a humanitarian status, however very low numbers of actual medical migration cases have been reported in the interview.

There is no statistical data collected specifically on medical migration claims within both procedures. In the context of the present research no jurisprudence on medical migration cases was found.

Overall, the procedure for medical migration claims is not well elaborated, partly due to the low numbers of actual cases. The different elements of severity of disease, availability and accessibility are not very much differentiated. In the absence of clear guidelines or case law it is decided on a case-by-case basis and attention is paid to the overall circumstances of the applicant. At the time of this research, there were no plans foreseen to change the procedures concerning medical migration cases.

	Definition/applied practice	**Basis for used definition**
Severity of the disease (threshold for admission of a medical claim)	There is no clear definition of the severity of a disease, neither in law nor in practice. The question whether the medical claim has to be further assessed is primarily based on the diagnosis, the recommended treatment and the prognosis. Attention is also paid on the overall situation of the applicant including humanitarian aspects.	Practice

Availability	There is no clear definition of availability neither in law nor in practice. According to the practice the following criteria are important: • Medication is available if supplied by pharmacies and regularly in stock. It must be available through legal channels. • A treatment is available if the specific treatment is provided in hospitals or medical centres and if there are specialized doctors practicing the required treatment.	Practice
Accessibility	Accessibility is assessed for all medical claims that are severe. There is no clear definition of accessibility neither in law nor in practice. It is subject to case-by-case considerations and is not pre-defined. Relevant criteria according to the practice are: • Economic accessibility: costs of medication/treatment, health care system, other possibilities for refund, financial situation of applicant, ability to work, chances of finding a job (education, age, language skills), family members in CO. • Geographic accessibility: in general, it is viewed that the sick person can either travel or relocate within the CO in order to receive medication/treatment. However, in very exceptional cases this can be relevant if the person is restricted in mobility. • Political accessibility: arises only in very few cases, and only if international protection is denied. It is assessed only if mentioned by the applicant.	Practice
Residence permit	Within the procedure for international protection a subsidiary protection status is granted for 2 years. After a positive re-assessment it can be renewed. Within the return procedure the Polish Border Guards grant humanitarian residence status for	Art. 15 Act on granting Protection to Aliens within the Territory of the Republic of Poland Art. 348 Act on Foreigners

	unlimited time, but it can be withdrawn if the protection grounds are not given anymore.	
Return	No information was found during this research on specific financial or in-kind support for returnees with medical problems.	

5. Sources

The report on "State practices related to medical COI: Country report Poland" was first completed in 2018. For this version, ICMPD conducted interviews with the Polish Office for Foreigners in 2017.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the Ministry of Interior reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the Polish Office for Foreigners also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Czech Republic" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of the Polish Office for Foreigners in March 2026 in order to ensure its validity.

Other sources:

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Case Study – Slovak Republic

CASE STUDY – SLOVAK REPUBLIC 227

LIST OF ABBREVIATIONS 227

1. MEDICAL CLAIMS IN MIGRATION CASES IN THE SLOVAK REPUBLIC 228
   - *1.1. Legal Basis 228*
   - *1.2. Organisational Structure/ Responsibilities 228*
   - *1.3. Procedure in medical migration cases 229*
   - *1.4. The procedure of researching medical country of origin information 231*
   - *1.5. Statistics 231*
2. NATIONAL POLICY 231
   - *2.1. Medical severity of a person's health condition 231*
   - *2.2. Availability of medical treatment/ medication in countries of origin 232*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 232*
3. RESIDENCE PERMITS AND RETURN 233
   - *3.1. Medical claim accepted 233*
   - *3.2. Medical claim denied 233*
4. SUMMARY 234
5. SOURCES 235

List of abbreviations

COI	Country of Origin Information
EUAA	European Union Asylum Agency
MedCOI	Medical Country of Origin
IOM	International Organisation for Migration
MoI	Ministry of Interior

1. Medical claims in migration cases in the Slovak Republic

1.1. Legal Basis

The legal status of medical claims during an international protection procedure is defined in Act. 480/2002 Coll. on Asylum and Amendment of Some Acts (hereinafter "Act on Asylum"). If the applicant does not meet the conditions for being granted refugee status according to Section 8 or 10, or for subsidiary protection according to Section 13a or 13b, a medical condition may be a ground for providing asylum on humanitarian grounds.

According to Section 9, the Slovak Republic may grant a national protection status to third country nationals, as specified by the implementing regulation of the Minister of Interior to the Act on Asylum No. 34/2014, as amended. According to this regulation, humanitarian reasons are mainly considered to be cases of failed asylum applicants who are elderly, traumatised or seriously ill, and whose return, therefore, could result in considerable physical or psychological suffering or even death.

There have not been any changes observed in written policy during the past 10 years. A new development in recent years has emerged following the Supreme Court Judgement 10Sžak/11/2020 on this national form of protection. According to this case, asylum on humanitarian grounds may be granted in exceptional cases for which, due to the individual circumstances of the applicant, the administrative authority would consider it inhumane to return the applicant.

1.2. Organisational Structure/ Responsibilities

In the Slovak Republic, medical COI research is embedded within the Migration Office of the MoI. At the Department of Documentation and Foreign Cooperation of the Migration Office of the MoI, there are five medical COI researchers: four have completed the EUAA Basic MedCOI Training and one has completed the EUAA Advanced MedCOI Training. Additionally, there are two legal officers working at the Organisation and Legal Department and four caseworkers working at the Procedural Department of the Migration Office of the MoI who have been trained as basic users of the EUAA MedCOI platform. No medical doctors or other health care professionals engage in the medical COI research processes in Slovakia. In asylum cases specifically, medical experts are consulted on the medical elements of the application, yet these experts are not regular contractors for the MoI, since such cases are uncommon.

All communication or examination between the Migration Office of the MoI and a third party about the medical conditions of the applicant is subject to the applicant´s consent and remains confidential. Communication with third parties, including the treating physician or other medical experts, is conducted directly with the authority. All files, opinions, or medical materials provided by the medical professionals are included in the case file and made accessible to the applicant.

Medical information is gathered by the Migration Office of the MoI to the extent necessary for the assessment of the application. Medical information may additionally be submitted by applicants themselves.

In the judgment of the Regional Court of Bratislava no. k. 6SaZ/3/2018-96, the Court stated that the relevant authorities need to consider all medical records related to the applicant's state of health, comprehensively evaluate their medical condition at the time of issuing the decision, and evaluate the

availability of medication in the applicant's country of origin. In another judgment, the Regional Court of Bratislava no. 4SaZ/6/2019, the court stated that the information used in the assessment of the medical condition in asylum cases needs to be up to date and take into account the latest developments in the applicant's country of origin.

1.3. Procedure in medical migration cases

Refugee status

A third country national with medical issues that may face discrimination or might be denied access to medical care due to their (imputed) political affiliation, religion, ethnicity, race, or membership to a particular social group, may be granted **refugee status.** Aspects of the applicant's health or explicit claims about their medical condition could be brought forth during any point of the asylum procedure. In practice, the applicant's health condition is mainly referenced during the registration of the application, the medical examination, the personal interview or once having been granted reception.

Subsidiary protection

According to Section 13a of the of the Act on Asylum, Slovakia grants subsidiary protection to applicants who face a real threat of serious harm if returned to their country of origin, provided that no exceptions under the law apply.[263] Medical claims might play a role for assessment when referring to the torture or inhuman or degrading treatment or punishment, or to the individual elements in establishing real risk of serious harm due to the serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Asylum on humanitarian grounds

Under Section 9 of the Act on Asylum, the Slovak Republic may grant asylum on humanitarian grounds. The specific conditions for granting this **national form of protection** are outlined in the implementing regulation issued by the Minister of the Interior of the Slovak Republic under Act No. 34/2014 on Asylum, as amended. According to this regulation, humanitarian grounds primarily include cases involving unsuccessful applicants of international protection who are elderly, traumatised, or seriously ill, where return to their country of origin could result in significant physical or psychological suffering or even death. This is not automatically assessed in every asylum case and does not constitute its own procedure. Rather, it would be assessed for applicants that have claimed for it and have not been granted international protection. For the evaluation, all significant information regarding the applicant's medical background, along with details about the healthcare system and medical conditions in their country of origin, is considered by the national authority.

[263] Act No. 480/2002 Coll. The Act on Asylum, § 13, 480/2002 Z.z. - Zákon o azyle a o zmene a doplnení niektorých zákonov (slov-lex.sk)(last accessed on September 5, 2025)

Return process

Additionally, medical claims play a role in **return procedures**. A third country national who has received a negative decision on their application for international protection is then required to leave the territory after a negative decision, a decision on administrative expulsion will be issued, in which the deadline for departure may be 7-30 days. In principle, almost all categories of persons may be detained in cases where an administrative expulsion is conducted. Persons may be detained if they meet the conditions laid down by law - such as if they pose a security threat to the Slovak Republic - and for no longer than six months. According to Section 88(9) of the Act No.404/2011 Coll. on Residence of Foreigners, vulnerable persons in particular may only be detained if necessary, and for the shortest period possible. Minors without a legal representative cannot be detained under any circumstances.

Section 96(3) of the Act on Residence of Foreigners states that vulnerable persons and families with children are entitled to access psychological and social services, as well as a counselling and crisis intervention. In cases where a person cannot be expelled because of their medical condition, such as if they are considered not to be fit for traveling, the time limit in which they were supposed to depart may be extended.

"Tolerated stay"

An irregular third-country national may remain on Slovak territory during provision of urgent inpatient health interventions (clinical admissions). The legal concept of a "third-country national's stay on the territory of the Slovak Republic" is not regarded as a stay as such, but rather a form of toleration for irregularly third-country nationals for a certain period, as long as reasons for their stay persist.

Legal migration

Legal pathways for third country nationals seeking medical care in the Slovak Republic exist if their country of origin does not provide a certain necessary treatment. In this case, the applicant may be granted temporary residence for the purpose of this specific activity, as defined in Section 25(1) of the Act on Residence of Foreigners. In medical migration cases the purpose could be, for instance, being provided with medical care or accompanying a third-country national who is receiving medical care. Where applicable, it is possible to obtain a visa for this purpose.

Family reunification

A third country national may be granted **a temporary residence permit to reunify** with a family member in the Slovak Republic that has a temporary or permanent residence, as stipulated in section 27 of the Act on Residence of Foreigners, on the basis of medical condition. This includes, for example, an unmarried child over the age of 18 who cannot care for themselves due to a long-term medical condition. A temporary residence permit for family reunification is granted until the third-country national's permit expires, but for no longer than five years.[264]

[264] Act No. 404/2011 Coll. on Residence of Foreigners, § 27, https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2011/404/20150720#paragraf-27 (last accessed August 12, 2024)

1.4. The procedure of researching medical country of origin information

The type of medical information required for the assessment would depend heavily on the specifics of the case. If the medical aspect relates solely to medication and not to any form of medical treatment, only medical country of origin information (COI) on medication would be necessary for the evaluation of the asylum application, and vice versa.

1.5. Statistics

Generally, in asylum processes there is no statistical data collected on medical claims. Information about applicants with serious illnesses is not collected as this information is solely stored in the personal file and their 'Social personality Profile.' Data on medical claims in return procedures, or on the legal migration of third country nationals for the purpose of receiving medical case is also not collected.

There were no availability or accessibility requests send to the EUAA in between 2021 and 2025. During this time, MedCOI researchers provided relevant data to caseworkers in the Migration Office of the MoI approximately in 23 MedCOI response instances, mostly related to the availability of treatment or medication and the general healthcare situation of different countries of origin. MedCOI researchers provide caseworkers with relevant data through research on the MedCOI portal. Depending on the MedCOI query, they also use other COI or MedCOI sources such as public health institution websites, regional or country-specific public health websites, disease-specific websites, academic resource websites, media resources, EU+ COI databases, etc. to determine AVA and ACC of medication and treatment in the country of origin.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In Slovak policy and practice, there is no clearly defined severity threshold to initiate medical country of origin research. Any health-related claims, diagnosis or indicated diseases would be assessed by the case worker in relation to the protection claim. If there is an application consisting potential medical condition to be relevant to the case and in the decision on granting protection, the caseworker would initiate MedCOI research. The case worker would also initiate the necessary consultation with medical specialists or contracted doctors to obtain their position on a given case.

2.1.2 Severity threshold for decision-making

The Slovak written policy or practice does not follow a certain threshold for severity or concrete definition for decisions on **international protection**. Decisions are made on a case-by-case basis.

For the **national forms of protection**, the Regulation of the Minister of the Interior of the Slovak Republic No. 34/2014, specifies that the asylum on humanitarian grounds may be granted to traumatised or serious ill applicants whose return to their country of origin may lead to significant physical or psychological suffering or even death.

Furthermore, in its judgement 10Sžak/11/2020 of 18 November 2020 on national protection, the Slovak Supreme Court clarified that this form of protection allows administrative authorities to grant asylum on humanitarian grounds in exceptional cases where none of the grounds for international protection are met, yet where the applicant's individual circumstances make denying asylum incompatible with basic human dignity. The circumstances of the case that may justify the application of the humanitarian aspect should be extreme and striking and go above and beyond the ordinary nature of an asylum seeker's case.

2.1.3. Medical threshold cases

There is no clear definition of severe medical cases in the Slovak policy or past practice, where a humanitarian decision would have been taken without first conducting medical COI research because of the severity of the condition.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

A medication can be considered available if it is registered in the country of origin, or if there is a possibility to obtain a given alternative. Medication that can be exclusively obtained on the black market is not considered available.

For the assessment of the availability of treatment, it is relevant whether the specific treatment is truly available in the country of origin. However, generally such treatment does not have to be of same quality as the treatment in the Slovak Republic to be considered available. Exceptions to assessing the quality remain where healthcare specialists consider a very specific procedure to be vital.

2.2.2. Availability in practice

In the field of asylum, national practice is further defined and guided by national jurisprudence, while there are no written documents to guide the practice. As a result of the limited number of medical claims among asylum cases, only few assessments of availability exist to date. In general, the assessment is conducted by the caseworker, based on the provided medical country of origin information by the MedCOI researchers. This includes, for instance, information from the EUAA MedCOI portal, different regional or country specific health websites or websites on the specific diseases. Consultations with medical specialists or contracted doctors are also required in cases with a medical claim in order to establish the required treatment or medication and their possible alternatives. The primary point of consultation is the contracted general practitioners assigned to asylum facilities; the Migration Office of the MoI does not contract specialist doctors. Even if an applicant is under the care of a specialist and specialised medical information—such as details on medication, treatment, or prognosis—is required, the contracted general practitioner remains the primary contact, as they possess all medical records, including specialist reports.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

A treatment or medication is considered accessible to the applicant if they can afford it, based on their personal situation and any support available in their country of origin. In some cases, the assessment also

considers whether the applicant can physically reach the medical facility providing the treatment, and whether there are any discriminatory practices in place.

2.3.2. Accessibility in practice

The assessment of the accessibility of a treatment or medication is conducted by the caseworkers overseeing each specific case individually. The caseworkers base their assessment on information obtained through the EUAA MedCOI Portal, specific health websites from different regions or countries, websites on specific diseases, and the personal circumstances of the applicant, which are clarified during a personal interview.

Economic Accessibility
During the accessibility assessment, the caseworker is required to consider whether the costs of the medication and/or treatment could be borne by the applicant if returned. The public health care and the support schemes in the country of origin and financial aid programmes are also considered. Furthermore, the personal economic circumstances of the applicant are assessed. Such assessment involves an evaluation of the applicant's ability to work and to generate income, the applicant´s financial assets and their social and family network.

Geographic accessibility
The caseworkers also assess the ability and possibility of the applicant reaching the relevant medical facility from their region in the country of origin.

Political accessibility
Political discrimination is another included aspect. This involves assessing whether the applicant could be denied medical care or medication based on discriminatory grounds. Furthermore, if a different quality of medical care might be provided for specific social groups that are discriminated against, this is also considered in the accessibility assessment.

3. Residence permits and return

3.1. Medical claim accepted

The final decision to grant or reject an application for international protection in Slovakia is issued by the Migration Office of the MoI. If an applicant is granted refugee status, or asylum on humanitarian grounds, she/he is considered as foreigner with a permanent residence permit. Refugee status and asylum on humanitarian grounds are granted for an indefinite period of time. An applicant that is granted subsidiary protection is considered as foreigner with a temporary residence permit. Subsidiary protection is granted for one year, after the lapse of one year, provision of subsidiary protection may always be renewed by two years upon request.

3.2. Medical claim denied

Once a third country national has been given a decision of administrative expulsion, the third-country national is obliged to leave the territory of the Slovak Republic within 7-30 days. The administrative expulsion procedure is an administrative procedure both based on the Articles 77 to 83 of the Act of

Residence of Foreigners[265] and the Act No 71/1967 Coll. on Administrative Proceedings,[266] as well as some other relevant internal regulations.

If an individual that receives a return decision requires special medical provisions, such as organising a medical transfer, these are considered during the return procedure. There is no special financial contribution covering the costs of medication or treatment for ill returnees. However, financial assistance may be given to returnees that are granted reintegration assistance through Frontex. There are three types of packages provided to third-country nationals through the framework of reintegration programmes. The post-arrival package grants EUR 615 per person for three days and includes airport pick up, onward transportation, accommodation upon arrival, medical assistance, and family reunion. The charter flight arrival package includes a one-time payment of EUR 205 per person, as well as the same services as above. Lastly, the post-return package is issued within 12 months after the individual's arrival. It also includes EUR 2000 per person in cases of voluntary return and EUR 1000 per person in cases of forced return. Additionally, for each family member, EUR 1000 is given. Finally, the post-return package from Frontex includes long-term housing, regular medical assistance, psychological support, education, job counselling, assistance in setting up a small business, family reunification monitoring, legal advice, and administrative support.

The agreement with the International Organization for Migration (IOM) is currently back in effect, with the IOM providing assisted voluntary return and reintegration services.

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	Slovak written policy or practice does not follow a certain threshold for severity or a concrete definition for the respective decision in the matter of international protection or in the national form of protection. Decisions are made on a case-by-case basis.	
Availability	There is no definition on availability of medical care in Slovak asylum law and policy. The caseworkers assess whether a specific treatment or medication is available in the country of origin at a given time, and excludes availability on the black market.	
Accessibility	There is no definition on the accessibility of medical care in Slovak asylum law and policy. The caseworkers assess the individual circumstance of the applicant, including political, geographic and economic accessibility.	

[265] 404/2011 Coll. on Residence of Foreign, Zákon z 21. októbra 2011, o pobyte cudzincov a o zmene a doplnení niektorých zákonov – https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2011/404/20150720

[266] 71/1967 Coll. on Admiistrative Proceedings, Zákon z 29. júna 1967 o správnom konaní (správny poriadok) -

Residence permit	If an applicant is granted refugee status or asylum on humanitarian grounds, she/he is considered as foreigner with a permanent residence permit. Refugee status and asylum on humanitarian grounds are granted for an indefinite period of time. An applicant that is granted subsidiary protection is considered as foreigner with a temporary residence permit. Subsidiary protection is granted for one year, after the lapse of one year, provision of subsidiary protection may be renewed by two years upon request.	Articles 20, 24 and 27a of the Act on Asylum
Return	When a third-country national is issued an administrative expulsion from Slovakia, they must leave within 7-30 days. Financial and reintegration assistance through Frontex is available, with varying support based on whether the return is voluntary or forced, including post-arrival aid, housing, and medical assistance.	Articles 77 to 83 of the Act of Resident of Foreigners

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Slovak case study is based on the questionnaire filled in by representatives of the Slovak Migration Office of the MoI in June and July 2024.

Finally, the case study has been reviewed and updated by representatives of Slovak Migration Office of the Ministry of the Interior in March 2026 in order to ensure its validity.

Case Study - Slovenia

CASE STUDY - SLOVENIA 236

LIST OF ABBREVIATIONS 236

1. MEDICAL CLAIMS IN MIGRATION CASES IN SLOVENIA 237
   - *1.1. Legal Basis 237*
   - *1.2. Organisational Structure/ Responsibilities 237*
   - *1.3. Procedure in medical migration cases 237*
   - *1.4. The procedure of researching medical country of origin information 239*
   - *1.5. Statistics 239*
2. NATIONAL POLICY 239
   - *2.1. Medical severity of a person's health condition 239*
   - *2.2. Availability of medical treatment/ medication in countries of origin 240*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 241*
3. RESIDENCE PERMITS AND RETURN 241
   - *3.1. Medical claim accepted 241*
   - *3.2. Medical claim denied 242*
4. SUMMARY 243
5. SOURCES 244

List of abbreviations

COI	Country of Origin Information
CJEU	Court of Justice of the European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Asylum Agency
EURP	European Union Reintegration Programme
MedCOI	Medical Country of Origin Information
MoI	Ministry of Interior
ZMZ-1	International Protection Act

1. Medical claims in migration cases in Slovenia

1.1. Legal Basis

In Slovenia, there are no guidelines on decision making for international protection claims on medical grounds. In practice, policies have emerged following a judgement in case IU 2337/2018 by the Administrative Court[267]. The judgement set the precedent that the medical condition of an applicant for international protection is not relevant within itself for the assessment of eligibility. However, it could be a relevant circumstance for other protection procedures.

1.2. Organisational Structure/ Responsibilities

The Ministry of Interior (MoI) is the authority responsible for medical COI research and policy in Slovenia. The Directorate for Migration at the MoI employs one COI researcher who gathers general COI as well as medical COI, where necessary. The researcher may refer to doctors or other healthcare professionals for their expert opinion in specific cases; however, generally, **no healthcare professionals engage in the medical COI research**.

There is **no formalised national practice on gathering information about the medical condition of applicants** in migration procedures, such as providing the practitioners with standardised medical questionnaires. Information on the applicant's medical condition is collected either through the applicants themselves or by a proxy. To ensure compliance with data protection rules, confidentiality is strictly protected, and the Ministry does not receive the medical documentation directly from the doctors.

1.3. Procedure in medical migration cases

Medical claims in asylum procedures

For asylum procedures, Article 39 of the Slovenian International Protection Act states that if medical documents are submitted indicating a condition that may require a specialist's opinion, the official must seek it. This is particularly necessary if the official lacks the expertise needed to establish or assess the relevant facts for the decision. However, the expert is not consulted in every case of international protection where the applicant has a health issue, but only when there is clear evidence that the applicant's health condition could significantly impact the assessment of an applicant's protection needs. This includes situations where the applicant has an extremely serious health condition or where there is a lack of available treatment in the applicant's home country, to the extent that **denying such treatment would result in a severe deterioration in the applicant's health**.

In such cases, a medical expert shall be appointed through a formal decision that explicitly states the reason why their specific expertise is required. The expert is chosen by forensic specialists who have knowledge in the relevant subject area. Additionally, if the caseworker or the Ministry believes that a

[267] I U 2337/2018 - https://www.sodnapraksa.si/?q=I%20U%202337/2018&database[SOVS]=SOVS&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111442241 (Last accessed on 20.11.2024)

medical condition might influence the applicant's ability to comprehend the meaning of the international protection proceedings, an expert will be consulted to either confirm or refute this assumption.

Medical claims in return procedures

In cases where a medical claim potentially impedes a return process, the police must address serious concerns about the effect a removal may have on the applicant's health. The return process is organised by the police[268] and the Ministry of Interior (MoI). At this stage, the applicant may also present a medical certificate demonstrating a particularly serious health condition, where removal could lead to a significant and irreversible worsening of the applicant's state of health.

In accordance with the provisions of Article 73 of the Slovenian Foreigners Act, the police initiate the procedure for granting temporary permission to stay in the country, if it is established that the life-threatening state of the applicant's health could expose them to a serious and irreversible deterioration during the removal phase.

To establish the facts of the case, the police can request the MoI for information on the country of origin, as well as to provide the administrative decision or order in the international protection procedure. For an assessment on the facts of the case, an expert may be consulted if necessary. The applicant can bring action against the decision within five days of being notified; in turn, the Administrative Court must decide on the case within eight days. A return can only be realised after the decision has become final.

A foreigner who has been allowed to stay in Slovenia for at least 24 months as their removal would not be in line with the principle of non-refoulement, and the third-country national still cannot be removed to the country of origin after these 24 months, together with reasonable grounds and special circumstances justifying the continued need for residence, such as a life-threatening medical condition due to which the applicant could be exposed to the risk of severe and irreversible deterioration of their medical condition, may be issued a temporary residence permit by the competent authority valid for two years. When assessing whether there continues to be such circumstances, the competent authority must respect all guarantees established in Article 3 ECHR and Article 18 of the Slovenian Constitution, regarding the prohibition of torture and inhumane and degrading punishment, and follow the guidelines established from the constitutional process and relevant ECtHR case law.

Medical claims in legal migration cases for third country nationals

A third country national with a reasonable ground for entry and residence on medical grounds in the Republic of Slovenia, may be issued a temporary residence permit to travel and stay in Slovenia, in line with Article 51(1) of the Foreigners Act. To get this permit the applicant must comply with the conditions laid down in the Foreigners Act. This includes a valid travel document, an adequate health insurance, sufficient means or guarantees for subsistence during the stay in Slovenia of at least in the amount of Slovenian monthly minimum wage. Further, the permit is only granted if there are no other reasons that may cause the refusal to issue a permit. According to the administrative practice, hospital and outpatient treatments which require regular and frequent visits to a specialist treatment facility over a long period of

[268] In cases prior to the entry into force of the amendment to ZMZ-1

time, and where the foreigner cannot complete the treatment during the permitted stay in the Republic of Slovenia is also considered as a reasonable ground to be granted a temporary permit. However, the issuance of a temporary residence permit for other reasonable grounds, due to medical treatment in the Republic of Slovenia, is not conditioned on the fact that the foreigner cannot receive treatment in the home country or that the treatment he or she will receive in the Republic of Slovenia is not received in the home country, which means that no medical COI is obtained or examined in this procedure.

Medical claims in family reunification

The assessment of medical COI could potentially come into consideration in the context of the obligations outlined in Article 17 of the Directive 2003/86/EC on the right to family reunion. However, to date there have not been cases where this specific procedure took place.

1.4. The procedure of researching medical country of origin information

The MoI does not have a practice to conduct detailed investigations into the availability and accessibility of medication or treatments when making decisions related to protection. To date, there have been no cases where the Ministry has conducted such specific research, and as a result, there have also been no recorded cases in which a decision was made using medical COI research based solely on available medication without considering treatment options.

In practice, the MoI does not distinguish between the availability and the accessibility of medication and/or treatment in the country of origin. Whether treatment is available but not accessible to the applicant is not relevant to the authorities, as the applicant would not be able to receive the necessary medical assistance either way. Thus, each case is assessed individually and considering the specific circumstances of the applicant. Accessibility to treatment includes physical accessibility, such as the dangers of reaching treatment or an individual's inability to access it, and factors like overpriced treatment or reliance on private clinics. However, these aspects alone do not necessarily meet the conditions required for granting a permit on this basis.

1.5. Statistics

The MoI does not collect statistics on the different grounds on which applications are submitted, including medical ones. Furthermore, no statistics are collected on the number of cases where medical COI was considered, either by the national COI unit themselves or by referring to the EUAA MedCOI sector.

In the last three years Slovenia has not submitted any country-of-origin requests regarding the availability or accessibility of specific treatment to the EUAA MedCOI sector.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1. Severity threshold to initiate research on medical COI

In Slovenia there is no specified threshold defined when research on medical COI should be initiated. When assessing an individual application, minor health problems, such as headaches, toothaches or dioptric eye problems, are not considered and medical COI is not investigated. However, in cases where

the medical condition is particularly serious, and there are good reasons to believe that the applicant would be at risk of serious harm if returned to the country of origin, research on the medical situation in the country of origin is necessary. Cases where this may be examined would be, for instance, terminal diseases where there are no treatment options or medication in the country of origin, such as end-stage cancer.

2.1.2. Severity threshold for decision-making

Similarly, the severity threshold for decision-making considers whether the applicant would be at risk of being exposed to serious harm in case of return. However, since the MoI has, to date, not had such cases, there are no specific examples of applicants that have not received a return order due to their medical condition. The CJEU judgment *Mohamed M'Bodj v Belgium* has had some influence on the Slovenian practice, with regards to the criteria on what constitutes a sufficiently serious medical condition.

2.1.3. Medical threshold cases

There is no written policy related to extremely severe, medical threshold cases in Slovenia that would not permit the individual to be sent back to their country of origin. There has not been an example of a case where such a policy would have been relevant.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

In Slovenia, there is no defined practice of investigating the availability of specific medications or treatment options. In principle, the COI researchers do not distinguish whether care is available or accessible to the applicant since the applicant would not be able to receive the needed medical assistance upon returning to their country or origin.

2.2.2. Availability in practice

In practice, the decision on availability is made by the case worker and their supervisor, based on the specific country of origin research conducted by the case workers. To gather this information, all available resources via COI portals are being used.

In its judgement Up 207/2024 (CHIRIFI), the Slovenian Supreme Court confirmed the need for assessing availability of adequate treatment, stating that removal of an ill applicant to a country where the only effective *legal* pain treatment is not available to them, it would constitute an infringement of non-refoulement.[269]

[269] See : https://www.sodnapraksa.si/?_submit=i%C5%A1%C4%8Di&database[IESP]=IESP&database[SOVS]=SOVS&database[UPRS]=UPRS&database[VDSS]=VDSS&q=Listina%20Evropske%20unije%20o%20temeljnih%20pravicah&showType=table&rowsPerPage=20&page=5&id=2015081111477859

In cases where a temporary residence is granted to enter Slovenia on medical grounds, it is not dependent on the treatment options in the applicant's country of origin, meaning that no medical COI is obtained or used in the decision-making process.

2.3. Accessibility of medical treatment/ medication in countries of origin

2.3.1. Definition of accessibility in the national context

In Slovenia there is no defined practice of investigating the accessibility of specific medications or treatment options in such detail. In principle, the COI researchers do not distinguish whether care is available or accessible to the applicant.

2.3.1. Accessibility in practice

Similar to the availability in practice, accessibility is determined by the case worker and their supervisor, based on country-of-origin research. There has not been relevant national case law where the lack of accessibility to a treatment or medication has been discussed in connection to a return decision.

While the Slovenian COI unit has not yet had a case concerning access of the applicant to a certain treatment or medication in the country of origin, the decision of accessibility would be based on the individual's health situation of the applicant, as well as the available resources in the country of origin via COI portals to ensure the use of credible sources.

3. Residence permits and return

3.1. Medical claim accepted

In the context of international protection, if it is established that only a particular category of people – based on the grounds outlined in the Geneva Convention – is denied treatment in the country of origin, the applicant may be granted refugee status. This decision will consider all the circumstances of the application, including the seriousness of the health situation. If the application is not directly related to the grounds outlined in the Geneva Convention but is concerning a serious and life-threatening medical condition and there is a deliberate withholding of medical treatment, this could trigger Article 15b of the Qualification Directive (Directive 2011/95/EU) and the applicant would be granted subsidiary protection. The length of the status is dependent on the individual's circumstance of the case, however the legal minimum for granting the status is one year.

In this context Slovenia took note of the CJEU judgment *Mohamed M'Bodj v Belgium*, where the court ruled that Article 15(b) of the Qualification Directive (Directive 2004/83) should not be interpreted as covering cases where inhuman or degrading treatment arises from the lack of appropriate medical care in the applicant's country of origin. Consequently, a Member State is not required to grant social welfare and health care benefits to third-country nationals who are allowed to reside in their territory under national

laws because of medical reasons. This exclusion applies unless the individual is deliberately denied health care in their home country.[270]

Should the police determine during the return procedure that return would lead to a life-threatening state of the applicant's health exposing him/her to a serious and irreversible deterioration during the removal phase the police may grant a temporary permission to stay in the country. This permission to stay is valid for up to six months and can be renewed. This procedure falls within the provisions of the Code of Administrative Procedure.

Finally, in legal migration cases, a third country national has reasonable medical grounds for residence in the Republic of Slovenia is issued a temporary residence permit to travel and stay in Slovenia for up to one year, with the possibility of renewal under the same conditions.

3.2. Medical claim denied

The rejection of a medical claim is issued by the MoI. A negative decision in an application may also be considered by the Administrative Court and potentially by the Supreme Court.

The return procedure is decided by the police and by the MoI. After a return order has been issued, the police checks whether the person in question is fit to travel. If the return is conducted by plane, a fit-to-fly certificate needs to be issued. In cases where the applicant has special medical needs or medical restrictions, the return operation is organised taking all these circumstances into account.

If the medical situation permits and the return can take place, the returnee is provided with a supply of the necessary medication for a certain period of time. In certain cases, the authorities may also organise a medical transfer to the country of origin. If necessary, medical needs can also be addressed on site by the EU reintegration programme (EURP), implemented by Frontex. This programme provides short-term support, such as airport pick-up, onward transportation to the destination, or further medical assistance, as well as long-term support for serious illnesses or psychosocial needs. Furthermore, a doctor may prescribe therapy for a certain time period, and a special reception after arrival may be organised on a case-by-case basis in cooperation with the missions of the country of destination. Furthermore, where necessary, a financial contribution for covering the cost of medication or treatment in the country of origin can be addressed under the framework of the EURP. An amount for the short-term can be paid out in cash or in kind, amounting to EUR 615 per person that is being returned voluntarily, or EUR 205 per person in cases of forced return. Long-term in-kind support is generally granted as a benefit. The amount for voluntary return consists of EUR 2,000 for the main applicant and 1,000 for each additionally family member. The amount for applicants that are being forcefully returned the long-term financial support for medical costs amount to EUR 1,000.

[270] CJEU, M'Bodj v Etat Belge, C-542-13

4. Summary

	Definition/ applied practice	Basis for used definition
Severity of the disease (threshold for admission of a medical claim)	In Slovenia there is no specified threshold defining when to initiate research to investigate medical COI. When assessing an individual application, minor health problems, are not considered. However, cases are considered and assessed when the medical condition is particularly serious, and there are good reasons to believe that the applicant would be at risk of serious harm if returned to the country of origin. These decisions are made on a case-by-case basis, by the responsible caseworker and potentially their supervisor.	
Availability	There is no definition on availability of medication or treatment in Slovenian policy. In principle, COI researchers do not distinguish whether care is available or accessible to the applicant. The case workers decide on a case-by-case basis.	
Accessibility	Slovenian policy does not define the accessibility of medication or treatment. Typically, COI researchers do not distinguish between whether care is available or accessible to the applicant. Case workers make decisions on an individual basis.	
Residence permit	**Refugee Status**: Permits can be granted if the applicant faces persecution based on one of the grounds outlined in the Geneva Convention (e.g., race, religion, nationality). For example, if only a particular group faces discrimination or harm in the country of origin, this status may apply. **Subsidiary Protection**: Granted under Article 15b of the Qualification Directive (Directive 2011/95/EU) if the claim does not fall under the Geneva Convention but involves serious risks, such as a life-threatening medical condition and deliberate denial of treatment in the country of origin. **Temporary residence status of up to six months** (renewable) if the medical condition impedes the return.	Geneva Convention, Article 15(b) Directive 2004/83/EC
Return	In all return procedures, the police conduct a check to see whether the returnee is fit to travel. Special medical needs of the applicants are taken into account during the preparation of the return. In special cases, a medical transfer may be organised. In the country-of-origin medical needs could additionally be met through the EU reintegration programme. Applicants may also receive short- or long-term financial support to cover costs of medication or treatment upon return.	

5. Sources

The EUAA commissioned ICMPD to draft country reports on the state practice in medical migration cases. For this purpose, ICMPD contacted relevant authorities, designed (in cooperation with the EUAA) and distributed a questionnaire and conducted follow up calls and emails. The Slovenian case study is based on the questionnaire filled in by representatives of the Slovenian Ministry of Interior in June and July 2024.

Additionally, the case study has been reviewed and updated by representatives of the Slovenian Ministry of Interior in March 2026 in order to ensure its validity.

Case Study - Sweden

CASE STUDY - SWEDEN 245

LIST OF ABBREVIATIONS 245

1. MEDICAL CLAIMS IN MIGRATION CASES IN SWEDEN 246
   - *1.1. Legal Basis 246*
   - *1.2. Organisational Structure/ Responsibilities 247*
   - *1.3. Procedure in medical migration cases 249*
   - *1.4. The procedure of researching medical country of origin information 251*
   - *1.5. Statistics 251*
2. NATIONAL POLICY 253
   - *2.1. Medical severity of a person's health condition 253*
   - *2.2 Availability of medical treatment/ medication in countries of origin 254*
   - *2.3 Accessibility of medical treatment/ medication in the country of origin 256*
3. RESIDENCE AND RETURN 257
   - *3.1 Medical claim accepted 257*
   - *3.2 Medical claim denied 257*
4. SUMMARY 259
5. SOURCES 260

List of abbreviations

COI	Country of Origin Information
CoO	Country of Origin

1. Medical claims in migration cases in Sweden

1.1. Legal Basis

The main legal basis for migration procedures, including the asylum procedure, in Sweden, is the Aliens Act (2005:716).[271] To assess medical claims Chapter 5 Section 6 and Chapter 12 Section 18 of the Aliens Act (2005:716) are relevant.

In addition, the Swedish Migration Agency uses Legal Position Papers; these are the Swedish Migration Agency's statements on how a legal act should be interpreted and they are binding for the authority's employees. Legal Position Papers are decided and issued by the director of the legal department. For the present report, Legal Position Paper "RS/085/2021" on residence permits according to Chapter 5 Section 6 of the Aliens Act and "RS/008/2020" is relevant, regarding the application of Article 3 of the European Convention on Human Rights (ECHR) when illness is invoked.

Since 1980, there has been a possibility for foreigners who are in Sweden to be granted a residence permit due to humanitarian reasons. During the period 20 July 2016 to 19 July 2021, The Act (2016:752) on temporary restrictions on the possibility to obtain residence permit in Sweden (the temporary law) was in place. The temporary law entailed limitations on the application of the provision.

The two above mentioned provisions of specific relevance to the health conditions of a foreigner, are:

Chapter 5: Residence Permits

Section 6: Residence permits on grounds of exceptionally distressing circumstances

If a residence permit cannot be awarded on other grounds, a permit may be granted to an alien if on an overall assessment of the alien's situation there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden. In making this assessment, particular attention shall be paid to the alien's state of health, his or her adaptation to Sweden and his or her situation in the country of origin.

Children may be granted a residence permit on the basis of exceptionally distressing circumstances as referred to in the first paragraph, even if the circumstances that come to light do not have the same seriousness and weight as required for a permit to be granted to adults.

Chapter 12: Enforcement of refusal-of-entry and expulsion orders

Section 18: The Swedish Migration Agency may grant a residence permit if, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new circumstances come to light that mean that

1. there is an impediment to enforcement under Section 1, 2 or 3,
2. there is reason to assume that the intended country of return will not be willing to accept the alien or

[271] Utlänningslagen 2005:716.

3. there are medical or other special grounds why the order should not be enforced.

Children may be granted permanent or temporary residence permit in accordance with paragraph 3, even though the circumstances that come to light do not have the same seriousness and weight as required for a permit to be granted to adults.

While both provisions are rather similar, they are applied at different stages in the procedure and by different units of the SMA. The first stage is when an asylum or migration unit is assessing either an application for international protection or an application for residence permit on other merits. The second stage is when an expulsion order has gained legal force, and a litigation unit is assessing impediments of enforcing the expulsion order.

From the legislative history of the Aliens Act[272] it appears that the concept of health status allows consideration of the entire health scale - the degree of health or illness as well as the ability to function. Since it is an overall assessment that must be made in the individual case, it is not possible to determine in isolation when a certain health condition should lead to a residence permit. A reason for a residence permit may be that the foreigner has a life-threatening physical or mental illness or suffers from an extremely serious disability. Firstly, it must be considered whether care can be provided at all in Sweden for a certain individual case. The care must also be expected to lead to a tangible and lasting improvement in the foreigner's state of health or alternatively be essential to life. It must then be considered whether it is reasonable for the care to be provided in Sweden. For it to be reasonable for Sweden to offer care in the individual case, it must also be considered whether the foreigner can receive adequate care in the country of origin or another country to which the foreigner can travel. Even if, in an individual case, Sweden could offer significantly better care than what can be provided in the country of origin, it is inevitable that the combined economic consequences for Sweden must be considered in the overall assessment.

Even if Sweden in some cases can offer significantly better care than what can be provided in the country of origin, this alone cannot justify granting a residence permit in Sweden. For diseases for which there is access to care in Sweden, the combined financial consequences can be such that a residence permit should be refused. Because of the assessment that must be made considering both the state of health of the applicant and his/her situation in Sweden and the country of origin, the requirements for when it will be reasonable for a person to return to his or her country of origin will vary in each individual case.

As the Court noted, the provision in Chapter 5 Section 6 of the Aliens Act is of an exceptional nature and must be applied very restrictively. For a residence permit according to this provision to be granted to adults for medical reasons alone, the medical condition has to be extremely serious.[273]

1.2. Organisational Structure/ Responsibilities

The Swedish Migration Agency (SMA) is the State Authority in Sweden responsible for migration and asylum procedures.

[272] Prop. 2004/05:170.

[273] Migration Court of Appeal, MIG 2007:35.

Several units within the SMA are responsible for conducting the asylum process.[274] There are also several units that are responsible for assessing applications for residence permits on other grounds. The health of a foreigner may be invoked during both procedures. When the application for international protection or for a residence permit on other grounds is unfounded, the decision-maker may still need to investigate if there are any exceptionally distressing circumstances that make it possible to grant residence permit according to Chapter 5 Section 6 of the Aliens Act.

A decision to reject an application for residence permit can be appealed to the migration court. The litigation unit of the SMA is responsible for representing the SMA in court.

When all legal remedies have been exhausted, the litigation unit is required to assess whether there are any impediments to return in accordance with Chapter 12 Section 18 of the Aliens Act.

The SMA is responsible for voluntary returns to the country of origin when an expulsion order has gained legal force. Apart from by reason of medical claims from the individual, a doctor, a legal representative, or another person representing the individual, the SMA may suspend the enforcement of an expulsion ex officio for medical reasons. The Swedish Police Authority is responsible for involuntary or forced returns.[275] If medical claims are made that might constitute an obstacle for enforcing the expulsion, the Police might refer the question to the SMA.

Medical Country of Origin Information (COI) research is conducted by the COI unit at the SMA. The legal department of the SMA has the mandate to issue legal guidance to the staff of the Agency. The legal guidance is based on the law and case law. This is however not binding for the migration courts or Migration Court of Appeal.

Ten persons at the COI unit work part-time with medical COI research. These are primarily COI analysts. Case workers, decision makers, and litigation officers are expected to do some basic research in open sources themselves. The SMA relies mainly on the MedCOI-service at the EUAA, and only specific staff members of the COI unit can use MedCOI.

The legal department does not have experts specifically designated for working with issues pertaining to medical reasons as a ground for residency. In the legal department, two legal experts are responsible for legal issues relating to the application of Chapter 5, Section 6. They work with general legal guidance, not assessments in individual cases.

There are no medical doctors at the SMA that work on medical migration cases. The Agency relies on medical certificates issued by physicians in the general health care system submitted by the applicant (or a representative of the applicant). In theory, the agency could hire external medical experts to review a medical certificate submitted by an applicant in case needed. However, an external medical expert is rarely consulted. Here the common procedure is that, if needed, the applicants or their lawyers are informed

[274] Two types of units within the SMA are responsible for the asylum process: *asylum application units* and *asylum examination units*.

[275] The SMA is responsible for voluntary return, the Swedish Police Authority for involuntary return. When the returnee refuses to cooperate or absconds the return case is handed over from the SMA to the police.

about missing (medical) information. The applicants or their lawyers will then usually refer back to the treating doctor to provide more insight into the applicant's medical situation. [276]

Following the burden of proof, the applicant has to show that his/her health condition is serious enough for a residence permit to be granted. The applicants themselves are responsible for ensuring that documentation about their state of health is received by SMA. The legal counsel, if one has been appointed, will usually help the applicant. The applicant can submit a certificate issued by a doctor by visiting the SMA or by posting or emailing it. Medical certificates can also be submitted by the doctor who issued the certificate. For the medical certificate, the SMA has developed a template[277] that is used for statements from doctors when examining health conditions in cases of residence permit or impediments to enforcement. This template, available in Swedish, serves as a useful tool for applicants to provide their physicians with necessary information. While its use is not mandatory, it is commonly used because it facilitates the assessment process for both doctors and caseworkers. The template is structured to address specific questions pertinent to the assessment, making it a valuable aid. It covers inquiries about the applicant's medical history, previous treatments, current health issues, the severity and life-threatening nature of the condition, planned treatment methods, current medications (including active ingredients), anticipated treatment effects, the necessity of care, and potential consequences if medication or treatment is not available.

1.3. Procedure in medical migration cases

A residence permit can only be granted due to medical reasons when a person is present in Sweden. It can be applied for solely or in connection with another application for a residence permit. There is – besides this - no specific procedure. The assessment of the grounds for remaining in Sweden due to health reasons is separate from the assessment of the need for international protection. The issue whether there are grounds for granting a residence permit due to medical reasons that constitute exceptionally distressing circumstances is considered ex officio in all asylum cases where the applicant is denied status as a refugee or subsidiary protection. Claims on this ground can also be made when the issue arises in relation to an expulsion order from Sweden even if no asylum application has been lodged.

Medical reasons can result in a residence permit in Sweden if the circumstances in the individual case reach the required level of severity.

A new assessment needs to be done if, after an expulsion order has gained legal force, new facts appear that might constitute an impediment to enforce the order of expulsion.

On a general note, decisions are made by decision-making officers at the Swedish Migration Agency. The burden of proof, however, lies on the applicant in an individual case. The principle of free examination of evidence is expressed in Chapter 35 Section 1 of the Code of Judicial Procedure and includes both free presentation of evidence and free evaluation of evidence. In principle there are no restrictions regarding which sources may be used. An asylum seeker has the right to invoke any form of evidence that can be

[276] Information provided by SMA in a videocall on 17 April 2024

[277] The template is available to all and is published on the SMA's website, see: Utlåtande från läkare vid prövning av hälsotillstånd i ärenden om uppehållstillstånd eller verkställighetshinder (migrationsverket.se).

obtained. Free evaluation of evidence means that the Swedish Migration Agency has to freely determine the value of the evidence presented in the case. The evidence in a case must be assessed on a case-by-case basis.

Medical claims as national protection ground

If a residence permit cannot be granted on other grounds and the person is residing in Sweden, the SMA has to assess if the applicant can be granted a residence permit due to exceptionally distressing circumstances.[278]

Chapter 5 section 6 Aliens Act lists, inter alia, the alien's state of health as one possible ground for exceptionally distressing circumstances. The concept of the applicant's health status refers to both the physical and mental state. If there are reasons to believe that a person has medical grounds that could be sufficient for residence permit the SMA would encourage the applicant to submit a medical certificate from a physician/psychologist outlining the state of health of the applicant.

The applicant may appeal a negative decision to the migration court. There are four migration courts, regionally divided across the country. In the court process the litigation officer from the Swedish Migration Agency acts as a party to the process. The migration court examines all aspects of the case and may reject the appeal, grant the applicant a residence permit or send the case back to the SMA for a renewed assessment and decision. Both the SMA and the applicant can appeal the decision of the migration court to the Migration Court of Appeal. It may be granted either for precedential reasons or for extraordinary reasons. Precedential reasons involve cases in which the legal situation requires clarification, which means there must be a need for a ruling (precedent) which can provide guidance to migration courts and public authorities. Leave to appeal based on extraordinary reasons may be granted if the outcome in the migration court was based on a grave oversight or mistake.

The litigation officer represents the position of the SMA at court hearings and may respond to an appeal by the applicant or, after having consulted the legal department of the SMA, file an appeal on behalf of the SMA to the Migration Court of Appeal.

The Migration Court of Appeal has in its jurisprudence established that considerations under Chapter 5 Section 6 must be separated from grounds for international protection, which are examined under the clauses defining refugees and people in need of subsidiary protection.[279]

Medical claims in the context of return

Health reasons can be claimed by the applicant at any time during the asylum process. If health reasons are claimed after the decision has acquired legal force (when the expulsion order cannot be appealed to any further instances), these are managed as an application for impediment to enforce the order of

[278] In a non-health related case the Migration Court of Appeal stated that, before considering exceptionally distressing circumstances in a case, refugee protection and subsidiary protection must be first reviewed before looking into exceptionally distressing circumstances. See Migration Court of Appeal, 15 June 2007, MIG 2007:33, in English accessible at: http://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-15-june-2007-mig-200733#content (accessed on 19.01.2015)

[279] Migration Court of Appeal, MIG 2007:33.

expulsion. It is the SMA that decides whether there are impediments to enforcement and whether, for example, an application should be re-assessed. This claim is processed according to Chapter 12 Section 18 of the Aliens Act. In this very specific procedure, the SMA is the first and last instance. There is no possibility to appeal a negative decision of the SMA according to Chapter 12 Section 18 of the Aliens Act However, if the medical condition constitutes a threat to the applicant's life, a decision to enforce an expulsion may in exceptional cases constitute a breach of article 3 of the European Convention on Human Rights. In these cases, the assessment should be made within the framework of Chapter 12 Section 19 of the Aliens Act. [280] The decisions of the SMA in accordance with this provision can be appealed to the migration court.

1.4. The procedure of researching medical country of origin information

When an applicant claims reasons linked to chapter 5 section 6 in the Aliens Act and SMA finds that the applicant's health condition is serious, the case officer initially conducts a search in the COI database Lifos, the Swedish Migration Board's database for country information and legal governance, to find information on the situation for individuals with that type of health condition, primarily if care is available and accessible. Factors such as if the applicant belongs to a specific vulnerable group can be important, i.e. to find out if the applicant who belongs to the LGBTQIA+ group will be denied medication or medical treatment even if it is available in the country of origin.

In Lifos, the case officer, can usually find general COI, and not always specific Medical COI. When a case officer needs case specific medical COI, he/she has to, according to routines, determine which questions about the availability and accessibility are relevant and proceed with a query for the specific case. As the burden of proof lies on the applicant, the SMA must have a medical certificate in order to proceed and request more specific MedCOI. SMA case officers have routines and templates for requests about health issues available. Incoming questions are processed by analysts at the COI unit. If previous answers are not available, the COI unit sends a new request to the experts at MedCOI.

There are certain situations where a decision can be made solely on the availability of medication, without researching treatment options. However, there is no unified standard that regulates this process, as claims are always considered on an individual basis.

1.5. Statistics

The Swedish law does not permit the SMA to register grounds for claims. Due to this and to the fact that the provision applicable for assessing health issues (Chapter 5, Section 6 of the Aliens' act) does not exclusively concern medical cases the SMA has no reliable statistics on medical claims and cases.

Table 1: The number of individual availability (AVA) and individual accessibility (ACC) responses to requests by the EUAA to Sweden per year.

	AVA	ACC
2021	57	5
2022	41	1

[280] Migration Court of Appeal, MIG 2015:9

2023	51	5
2024	52	4

In general, the exact reason for the disparity between AVA and ACC requests is difficult to determine. One reason may be that the AVA will be requested first and if the reply is negative, no ACC request will be sent. Another reason may be that economic factors pertaining to accessibility to the health system (i.e. medical insurances) as well as medical treatments or medication is not in itself a decisive factor/ground for granting a residence permit, according to Swedish case law (see section 2.1.1).[281]

In the absence of reliable data, only the number of medical COI queries sent to the COI unit is available (see Table 2). However, in all likelihood, it does not represent the actual number of cases where medical claims were invoked.

Table2: Yearly medical COI requests submitted to the COI unit of the SMA.

Year	No of requests submitted to the COI unit
2025 as of 08.09.2025	71 requests
2024	91 requests
2023	106 requests
2022	60 requests
2021	77 requests
2020	96 requests
2019	93 requests

In the majority of cases Sweden uses the services of the MedCOI sector at the EUAA. By September 2025, the COI unit received 71 queries of which the COI unit submitted a specific request to the EUAA MedCOI sector in 47 of those cases (66 %). The rest were answered by using information already available in the MedCOI database. In 2024, the COI unit received 91 queries of which the COI unit submitted a specific request to the EUAA MedCOI sector in 56 of those cases (62 %).

Over the past years Iraq and Afghanistan were the main countries of origin of persons with medical claims in migration procedures based on the requests submitted to the COI Unit (see **Table**).

Table 3: Main countries of origin of persons with a medical claim in migration cases

Year	Main countries of origin
2025 *as of 08.09.25*	*Afghanistan (17), Lebanon (5), Mongolia (5), Venezuela, Nigeria and Uzbekistan (4 each), Eritrea and Iraq (3 each)*
2024	*Afghanistan (31), Iraq (10), Iran (5) Mongolia (5), Nigeria, Eritrea and Ethiopia (4 each)*
2023	Afghanistan (29), Iraq (12), Ethiopia (7), Kosovo (7), Uzbekistan (5).
2022	Afghanistan (18), Iraq, Kosovo, Nigeria (4 each)
2021	Iraq (9), Afghanistan (7), Ukraine, Ethiopia (5 each)
2020	Iraq (20), Mongolia (8), Afghanistan (7)
2019	Iraq (17), Mongolia (7), Afghanistan, Albania, Kirgizstan (4 each)

[281] See also the decision of the Migration Court of Appeal in MIG 2007:35.

2. National Policy

2.1. Medical severity of a person's health condition

2.1.1 Severity threshold to initiate research on medical COI.

As previously noted, Chapter 5 Section 6 of the Aliens Act refers to "exceptionally distressing circumstances". The assessment of whether a disease has reached the threshold is taken by a decision-maker from the SMA. The decision-makers are not educated in medication (incl. psychiatry). Their assessment on whether a disease is severe or not is therefore closely depending on the medical information given in the certificate from the treating physician/psychologist. The burden of proof lies with the applicant. Consequently, the applicant needs to submit such evidence in the form of a certificate by the treating physician/psychologist. The medical certificate must fulfil the basic requirements of a medical certificate. As such, it must include the purpose of the certificate, the identity of the person including information of how the identity has been established, the name, competence, and title of the certifying person, his or her office, address, and phone number.[282] The SMA additionally requires information of the severity of the disease and the necessary treatment/ medication. The Swedish Migration Court of Appeal decided in this context that a sole record of the applicant's visits to the doctor would not be sufficient.[283] In addition, Swedish Migration Agency also requests a prognosis/ forward-looking risk assessment from the treating physician issuing the certificate. The assessment of the applicant's risk, if the necessary care is not available in the home country, is then the basis for the decision in the case.

In the preparatory work of the Aliens Act the Government clarified that the threshold for granting residence permit requires (for an adult) that the condition of the alien is life threatening or that he or she suffers from a severe disability. The decision-maker decides whether or not the threshold has been met by examining all medical information in the case. The burden of proof that a disease is life-threatening lies with the applicant. When assessing the severity of a disease, the SMA may also assess the competence of the certifying person. In rare cases, the SMA may refer the examination to external expertise that is paid for by the SMA.

Generally, however, there is no policy in Sweden stating that medical COI research needs to be conducted in all cases where health related claims are raised. It depends, among other things, on the severity of the condition and other individual circumstances.

2.1.2. Severity threshold for decision-making

Generally, claims are considered on an individual basis, considering the specific circumstances of the case, all relevant evidence and relevant country of origin information.

According the Swedish understanding of the Paposhvili case,[284] a deportation of an ill person can be in breach of Article 3 if he or she would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and

[282] The attestation must fulfil certain standards requested by the National Board of Health and Welfare (SOSFS 2005:29).

[283] Migration Court of Appeal, MIG 2007:35.

[284] Case of Paposhvili v Belgium, European Court of Human Rights, Application no. 41738/10, 13 December 2016.

irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.

Diseases as leukaemia, HIV, and diabetes are some examples of diseases, which the Migration Court of Appeal, assessed as severe, because of the life-threatening element those cases brought forward. Nevertheless, it is not the disease, but the individual circumstances of the person concerned that need to be considered in the assessment of whether a health condition meets the threshold for exceptionally distressing circumstances.

Mental health disorders are considered more difficult to assess with respect to whether a condition amounts to exceptionally distressing circumstances. In a case of a person suffering from a mental health disorder, the SMA denied protection even though the applicant had made several suicide attempts. In its decision, the Migration Court of Appeal said that it is decisive whether the suicide attempts are a consequence of the decision denying residence in Sweden or a consequence of a mental health disorder. The courts conclusion is that only a mental health disorder meets the threshold for exceptionally distressing circumstances.[285]

In a case from 2021, the Migration Court of Appeal had to decide on a case regarding a child suffering from a very rare medical condition. The medical condition in itself was not considered exceptional to the extent that it would amount to a violation of article 3 of the ECHR not to grant him protection or residence. However, his condition and the lack of available treatment and care in Iraq, in combination with his best interest, amounted to such exceptionally distressing circumstances that he was granted residence pursuant to Chapter 5 Section 6 of the Aliens Act.[286]

2.1.3. Medical threshold cases

There is no written policy in Sweden, which defines the procedure in extremely severe medical cases, including the assessment of whether there are exceptionally distressing circumstances. As mentioned in chapter 1.1, the case workers consider all cases on an individual basis.

2.2. Availability of medical treatment/ medication in countries of origin

When the severity meets the threshold, the SMA needs to check whether the necessary medical treatment/medication is available in the country of origin. Sweden often asks the EUAA MedCOI sector to provide information of availability.

2.2.1. Definition of availability in the national context

There is no definition of availability in the law.

The Courts have dealt with questions of availability, but they have not made a general definition of what “availability” means in the context of Chapter 5 Section 6 of the Aliens Act.

[285] Migration Court of Appeal, MIG 2007:35.

[286] Migration Court of Appeal, MIG 2021:18.

2.2.2 Availability in practice

So far, the Migration Court of Appeal decided on different elements as regards the availability of medical treatment/ medication.

In one case, the applicants were a mother and a child from Eritrea. The child suffered from epilepsy. They claimed that there were no child-neurologists in Eritrea and that adequate medication would be sparse. The Migration Court of Appeal concluded that there are hospitals in Asmara and that the child **had been treated in Eritrea prior to departure**. Because of this decision, the prior treatment in the country of origin may be used as a clear indication of the availability of medical treatment in the country of origin.[287]

In the same decision, the Migration Court of Appeal also determined, that the fact that medical care in Sweden is of **higher quality** than that in the country of origin, cannot be sufficient for granting a residence permit according to Chapter 5 Section 6 of the Aliens Act.[288]

In a case of a Mongolian applicant, the Migration Court of Appeal assessed questions regarding the availability of medication on the **black market**: A woman from Mongolia suffered from a disease, which could be life threatening without proper medication. The applicant claimed that this medication would only be available on the black market in Mongolia and the supply would be unreliable. The Migration Court of Appeal established that even though the burden of proof in this respect lies with the applicant it should not require a too high **standard of proof**. The alien must therefore have fulfilled the burden of proof when he or she has made it probable that necessary care is not available in the country of origin. If the Migration Agency does not provide evidence that contradicts this fact, the applicant's statement should be accepted as if it is probable and credible. The court concluded that, if necessary, treatment is available only on the black market the availability is considered too uncertain. It would not be reasonable that a person would need to make use of unofficial or even illegal channels to obtain the necessary medication. The court decided that "exceptionally distressing circumstances" were at hand, and the woman was granted residence permit in Sweden.[289]

When care and medication are available in the country of origin, a residence permit based on chapter 5 section 6 of the Aliens Act cannot be granted, even if the foreigner must pay for the necessary treatment himself/herself.[290]

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[287] Court of Appeal from 30 May 2007, MIG 2007:25. A summary of this judgement may be found in English at http://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-30-may-2007-mig-200725#content (accessed on 19.01.2015).

[288] Ibid.

[289] Migration Court of Appeal, MIG 2010:23, A summary of this decision can be accessed in English athttp://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-25-october-2010-um-7664-09#content (accessed on 19.01.2015)

[290] Migration Court of Appeal, MIG 2007:48.

2.3. Accessibility of medical treatment/ medication in the country of origin

2.3.1. Definition of accessibility in the national context

Sweden does not have any definition of accessibility in its legislation. However, some decisions were determined by the application of accessibility, such as the example mentioned in 2.2.2X.

2.3.2. Accessibility in practice

The application of the accessibility derives only from the jurisprudence of the Migration Court of Appeal. The most relevant judgments have been issued some time ago but have not been challenged since.

Generally, as indicated under chapter 2.1.1 above, the burden of proof lies with the applicants which has to be considered by the decision maker following the principle of free examination of evidence. Claims are considered on an individual basis, considering the specific circumstances of the case, all relevant evidence and relevant country of origin information. To assess the accessibility of a treatment/ medication decision makers use Country of Origin Information (COI), both internal and international, and the EUAA MedCOI service.

Economic Accessibility

The economic accessibility has been discussed in two cases of the Migration Court of Appeal– one regarding a HIV-infected person from Cameroon and another regarding a person with diabetes from Kosovo. The Migration Court of Appeal made the following conclusion. When adequate treatment and medication is available in the country of origin for a certain fee, the fact that the patient **might have trouble financing the necessary care will** not deem the necessary care as unavailable and a residence permit can therefore not be granted according to Chapter 5 Section 6 of the Aliens Act.[291]

Following the decision of the European Court of Human Rights in the Paposhvili case however, which was delivered after the two cases above, it is clear that the authorities must consider the extent to which the individual in question will **actually** have access to care and the necessary facilities in the receiving State, and that the assessment needs to take in consideration the cost of medication and treatment, the existence of a social and family network and the distance to be travelled in order to have access to the required care.[292]

Geographic accessibility

There has not yet been any court decision that has dealt more closely with the geographic accessibility to medical treatment and/ or medication.[293] The distance and/ or the costs of travel in combination with the

[291] Migration Court of Appeal, MIG 2007:48.

[292] Case of Paposhvili v Belgium, p. 190.

[293] The interviewees nevertheless remarked that the geographic accessibility could be relevant if, for example, the person concerned cannot access the region where the necessary medication is available due to special allowances needed to access this region. Also, with regard to the internal flight alternative, questions of geographic accessibility may arise. The asylum decision-maker in such case would need to assess whether medication and/or treatment are also available in the other, considered safe, region in the applicant's country of origin. Ultimately, the "accessibility" may play a role here. In the absence of a specific jurisprudence though, the geographic accessibility is currently not reviewed.

geographic proximity are factors that can be regarded under the overall assessment that needs to be made in Chapter 5 Section 6 of the Aliens Act.

There is no jurisprudence in this regard.

Political accessibility

The SMA normally assesses political discrimination at an earlier stage - during the assessment of the asylum claim. Political accessibility would therefore normally not be an issue when regarding the health issues which require that the claim for refugee status and the claim for subsidiary protection have been rejected. However, it can be regarded under the overall assessment that needs to be made in Chapter 5 Section 6 of the Aliens Act.

There is no jurisprudence in this regard.

3. Residence and Return

3.1. Medical claim accepted

If the SMA has determined that the applicant's health condition meets the threshold of severity and that the necessary medication/ treatment is not available in the country of origin, the SMA may issue a residence permit on grounds of exceptionally distressing circumstances according to Chapter 5 Section 6of the Aliens Act.

A residence permit granted in accordance with Chapter 5 Section 6 is time-limited and valid for thirteen months. A new temporary residence permit that is subsequently granted is valid for two years. After at least three years with a residence permit, an application for a permanent residence permit can be granted provided that the foreigner also meets the special requirements specified in Chapter 5 Section 7.

The SMA is the responsible authority for issuing the residence permit.

3.2. Medical claim denied

In the event that a residence permit is not granted, a return decision is made at the same time, in the same process. The issue of impediments to enforcement is also being considered.

The decisions are made by the Swedish Migration Agency and can be appealed to the migration court, and subsequently to the Migration Court of Appeal.

If residence is denied by the SMA and an order of expulsion has gained legal force, it is possible that new circumstances require a new assessment if the health condition will constitute an impediment to enforce the expulsion order. The litigating officers make these assessments according to Chapter 12 Section 18 of the Aliens Act.

This provision foresees different facts that would manifest an impediment to return, even if all legal remedies have been exhausted. Two facts also refer to the medical or health situation of the returnee:

- Firstly, the SMA needs to determine whether the person concerned is fit to travel.
- And secondly, the SMA also needs to determine whether there are "other special grounds" why the expulsion order should not be enforced.

While the first fact is outside the scope of this study, the second fact requires the SMA to look into the case and assess whether the new facts would constitute an obstacle to the enforcement of the order. Such an assessment is to be done after an application by the returnee but also ex officio by the SMA. This final assessment before the enforcement of the return allows for an assessment of all circumstances that could have occurred since the final decision.

It is within the framework of this assessment not possible to make a new assessment of the facts that have previously been assessed by the SMA or the court. These facts may, however, be considered when a new assessment needs considering of new circumstances. Thereby the overall assessment in certain cases might result in a residence permit being granted. This procedure is a one instance decision: the SMA is the first and final instance. As mentioned above, is not possible to appeal the decision of the SMA in accordance with Chapter 12 Section 18 of the Aliens Act, but in certain severe cases an assessment in accordance with Chapter 12 Section 19 of the Aliens Act, with can be appealed to the court, can be called for.

The SMA generally does not provide the person with medication or financial support for medical treatment in the country of return. The SMA arranges for all returnees who need medical assistance during their return journey to be escorted to their country of origin by medical staff. Responsibility for the care of such persons is handed over to the health authorities in the country of return upon arrival. The SMA has a dedicated process for this, through the Unit for Return Coordination. The unit has specialized staff who are responsible for contact/interaction with border authorities and other ministries that are involved at the airport. The SMA has procured an external supplier to accompany the returnee and provide any necessary medical care during the return flight.

When there is a re-admission agreement with the receiving country the SMA is obliged to inform the receiving country of the medical situation of the returnee and book the travel in advance. When there is no re-admission agreement and the person gives his/ her permission the SMA can contact the responsible authority (may also be an embassy) in the country of origin to inform them about the person's medical condition and needs and make sure that there is someone meeting the person upon arrival. The SMA usually transfers the medical data to the relevant authorities before departure. Medical journals and lists of medications are always translated to English or to the language of the receiving country. Upon arrival, the medical staff is in charge of transferring medical data and instructions to the party in the country of origin that receives the returnee at the airport. All medical information from the returnee's stay in Sweden, as well as any available previous medical history in the country of origin, is translated and transferred to the country of return. Furthermore, the medical contact in Sweden ensures that medication is prescribed to cover a transition period.

4. Summary

The main elements and definitions of Swedish law and jurisprudence on health-related claims for a residence permit may be summarised as follows

	Definition/ applied practice	Basis for used definition
Severity of the health/medical condition	There is no legal definition of the "severity" of the health/medical condition. The medical condition nevertheless needs to be life threatening. As such the threshold that must be reached is high. A decision whether a medical condition is severe or not, must be included in the certificate by the applicant's treating physician/psychologist. The threshold for adults is slightly higher than that for children.	Chapter 5 Section 6 of the Aliens Act; Chapter 12 Section 18 of the Aliens Act
Availability	No definition in law. Some guidance is given in jurisprudence: - The fact that it is possible to get access to the treatment on the "black market" does not manifest "availability" - Quality of treatment in country of origin compared to Sweden is irrelevant - Earlier treatment in the country of origin manifests a clear indication of "availability"	Case-law
Accessibility	No definition in law. While national jurisprudence has determined that care may be seen as accessible even if the applicant has to pay (a higher fee) for the care in the country of origin than in Sweden, subsequent case law of the European Court of Human Rights has declared that the cost of medication and treatment also needs to be taken into account in assessing accessibility.	Case-law
Residence permit	Residence permit on grounds of exceptionally distressing circumstances. A residence permit granted in accordance with Chapter 5 Section 6 of the Aliens Act is time-limited and valid for thirteen months. A new temporary residence permit that is subsequently granted is valid for two years.	Chapter 5 Section 6 of the Aliens Act
Return	Before return the SMA can assess new facts that might lead to an impediment to enforce the order of expulsion. . The designated unit for return undertakes all the necessary arrangements to provide medical care during the return journey, as well as assuring that health authorities are in place to receive the returnee if such assistance is needed. In exceptional cases medication may also be provided until the person can visit a doctor in the country of origin.	Chapter 12 Section 18 of the Aliens Act

5. Sources

Interviews

If not otherwise quoted in the case study, the basis of information in this report dates back to interviews conducted in January 2015 and information provided by representatives from the Swedish Migration Agency and the Stockholm Administrative Court (migration court).

The case study was updated in October/November 2023 with additional information provided in writing based on a specific questionnaire distributed by the ICMPD. The questionnaire was answered by representatives of the Swedish Migration Agency and the administrative court in Stockholm.

In 2024, a follow up call with the SMA was held to answer follow-up questions.

Finally, the case study has also been reviewed and updated by representatives of the Swedish Migration Agency and the administrative court in Stockholm in March 2026 in order to ensure its validity.

Case Law:

- MIG 2007:25
- MIG 2007:35
- MIG 2007:48
- MIG 2010:23
- MIG 2021:18
- Case of Paposhvili v Belgium, European Court of Human Rights, Application no. 41738/10, 13 December 2016

Case Study - Switzerland

CASE STUDY - SWITZERLAND 261

LIST OF ABBREVIATIONS 261

1. MEDICAL CLAIMS IN MIGRATION CASES IN SWITZERLAND 262
   - *1.1. Legal Basis 262*
   - *1.2. Organisational Structure/ Responsibilities 264*
   - *1.3. Procedure in medical migration cases 265*
   - *1.4. The procedure of researching medical country of origin information 266*
   - *1.5. Statistics 266*
2. NATIONAL POLICY 267
   - *2.1. Medical severity of a person's health condition 267*
   - *2.2. Availability of medical treatment/ medication in countries of origin 272*
   - *2.3. Accessibility of medical treatment/ medication in countries of origin 274*
3. RESIDENCE AND RETURN 278
   - *3.1. Medical claim accepted 278*
   - *3.2. Medical claim denied 278*
4. SUMMARY 279
5. SOURCES 281
6. ANNEX 283

List of abbreviations

AIDA	The Asylum Information Database
BVG	Bundesverwaltungsgericht (Federal Administrative Court, FAC)
CAT	United Nations Convention against Torture
CoO	Country of Origin
COI	Country of Origin Information
CRC	United Nations Convention on the Rights of the Child
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECtHR	European Court of Human Rights
FNIA	Foreign Nationals and Integration Act (Federal Act on Foreign Nationals and Integration, Ausländer- und Integrationsgesetz)
GRC	Geneva Refugee Convention
ICCPR	United Nations International Covenant on Civil and Political Rights
PTSD	Post Traumatic Stress Disorder
SEM	Staatssekretariat für Migration (State Secretariat for Migration)

1. Medical claims in migration cases in Switzerland

Medical claims in migration cases can occur in different migration procedures. The most prevalent situation in Switzerland is related to applicants of international protection who do not fulfil the conditions to be granted refugee status. However, their return is not enforceable due to a serious medical condition that requires treatment and/or medication that is not available and/or not accessible for this individual person in the country of origin. Thus, if the person would be returned, he/she may find him- or herself in a situation of a life-threatening medical emergency, which may cause a violation of rights set forth in international and national legislation. Therefore, before deciding on the enforcement of a return in such cases, the responsible authorities have to make an assessment on the availability and accessibility of medical treatment and/or medication. Besides this, medical claims can arise in return procedures of migrants who have not applied for asylum. In these cases, the cantonal authorities or the corresponding authorities on national level are responsible for the assessment of potential impediments of return, including the assessment whether the medical treatment and/or medication is available and/or accessible in the country of origin.[294]

Another situation where the enforcement of the return cannot be enforced due to medical issues involves persons who are not able to travel due to medical reasons (fit-to-fly). Furthermore, medical claims occur in entry procedures; persons residing outside Switzerland and in need of medical treatment that is not available in the country where the person is residing, have the possibility to apply for a visa for medical treatment in Switzerland. The costs of the treatment must be borne by the applicant.[295] The duration of this visa for medical treatment depends on the length of the medical treatment. In the latter two situations, the fit-to-fly assessment and visa for medical treatment, the health care system in the country of origin is not relevant or only to a limited extent. Thus, the cases related to 'fit-to-fly' and visa for medical treatment are not further discussed in this report.

1.1. Legal Basis

In Switzerland persons with medical claims who fulfil the requirements are granted a temporary admission (*Vorläufige Aufnahme*).[296] Switzerland is not bound by the EU Qualification Directive (2011/95/EU) as it is not member of the EU. However, the Swiss temporary admission offers a similar protection as the subsidiary protection scheme foreseen in Art.15 of the mentioned EU Directive. Thus persons, who do not qualify for a Geneva refugee status but cannot be returned because of obligations under national and international law, can be granted temporary admission. From a legal perspective, the temporary admission does not provide the right to reside in Switzerland as such. Persons with a temporary admission status are rather temporarily admitted in order to remain in Switzerland. Typically, it refers to cases, where the return decisions have been issued but cannot be enforced, e.g., due to the medical condition of the person and the health care infrastructure in the country of origin. Thus, the temporary admission is rather a substitute

[294] SEM (2015): Handbuch Asyl und Rückkehr: Die vorläufige Aufnahme, p. 4.

[295] The legal basis for the visa for medical treatment can be found in Art. 29 Foreign Nationals and Integration Act (FNIA).

[296] AIDA (2016): p. 89.

measure for return cases that cannot be enforced.[297] If the impediment for return ceases to exist, the return decision can be enforced and the permit for the temporary admission expires.

The national legal basis for granting a temporary admission can be found in Article 83 of the Foreign Nationals and Integration Act (*Ausländer- und Integrationsgesetz, FNIA*):

"(1) if the enforcement of removal or expulsion is not possible, not permitted or not reasonable, the SEM shall order temporary admission.

(2) Enforcement is not possible if the foreign national is unable to travel or be brought either to their native country or to their country of origin or a third country.

(3) Enforcement is not permitted if Switzerland's obligations under international law prevent the foreign national from making an onward journey to their native country, to their country of origin or to a third country.

(4) Enforcement may be unreasonable for foreign nationals if they are specifically endangered by situations such as war, civil war, general violence and medical emergency in their native country or country of origin. […]" (Art. 83 Federal Act on Foreign Nationals).

The enforcement of a removal or expulsion is regarded as *not possible* if, for example, technical obstacles such as the lack of travel documents or lack of transportation possibilities (e.g. flight connections) for an undetermined period of time arise.[298] The enforcement is *not permitted* if the return may violate Switzerland's obligations under international law.[299] The enforcement of a removal or expulsion is *unreasonable* if (a) it leads to a rapid and life-threatening impairment of the person's health because the required medication or medical treatment is not available and/or not accessible in the country of origin[300]. Furthermore, the enforcement of a return can be *unreasonable* (b) due to social, economic and humanitarian aspects, such as the lack of social networks in the country of origin if it becomes a real threat to a person.[301] A person can be exempted from the temporary admission based on Art. 83 (4) FNIA if he/she is sentenced to a long-term custodial sentence or other criminal law measures, or if he/she poses a threat to public security (Art 83/7).

Hence, temporary admission knows two different elements of relevance for medical claims in migration cases:

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[297] Federal Council (2016): p.18. AIDA (2016): p. 15.

[298] SEM (2015): Handbuch Asyl und Rückkehr: Die vorläufige Aufnahme, p. 10.

[299] Examples of legal instruments of international law that might be violated: the European Convention on Human Rights (ECHR), Geneva Convention relating to the Status of Refugees (Geneva Refugee Convention GRC), the United Nations Convention against Torture (CAT), the United Nations International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child (CRC). https://www.refugeecouncil.ch/asylum-law/asylum-procedure/obstacles-to-removal.html [visited on 26.01.2018].

[300] Federal Council (2016): p. 20.

[301] Federal Council (2016): p. 19.

https://www.refugeecouncil.ch/asylum-law/asylum-procedure/obstacles-to-removal.html [visited on 26.01.2018].

- The first element refers to the case when the enforcement of the return is *not permitted* according to Art. 83 (3) FNIA and derives directly from Switzerland's obligation under international law. In particular, Art. 3 ECHR (the prohibition of torture and inhuman and degrading treatment or punishment) is of relevance in this respect.
- The second element originates from humanitarian considerations based on national law according to Art. 83 (4) FNIA and does not stem from obligations based on international law.[302] This second element, when the enforcement of the return is *not reasonable*, contains exemption clauses, i.e. for reasons of public security.

Both elements result, if decided positively, in the granting of a temporary admission, however, different thresholds are applied. For the majority of the claims the responsible immigration authority assesses the lower threshold of the second element. The first element follows a higher threshold deriving from the case law of the ECtHR. Only for persons who are exempted for reasons of public security, the immigration authority exercises the higher threshold according to the ECtHR.

1.2. Organisational Structure/ Responsibilities

The State Secretariat for Migration (*Staatssekretariat für Migration*, SEM) is the main responsible authority in migration cases with medical claims. The SEM, in particularly the units for asylum procedures, decides on international protection and on return. Apart from this, the SEM is also responsible for entry and residence, on employment, integration, and naturalisation. The SEM has established a formal group of caseworkers and decision makers who are specialised on the assessment of medical claims. Caseworkers can consult this group if dealing with a complex decision involving medical claims.

The unit for Country-of-Origin Information (COI) belongs to the Analysis and Services unit of the SEM. It collects information on countries of origin, including medical country of origin information, and thus plays an important role in the assessment of availability and accessibility of medical treatments and/or medication in the country of return. However, the ultimate decision (for example of a return) is taken by case workers, considering the information provided by the COI unit as well as the personal circumstances of the applicant. Currently, the COI unit has three researchers specifically assigned to manage medical COI. These medical COI researchers have a medical background (two nurses and one medical doctor). They are also responsible for submitting medical COI requests to the EUAA. Their role is usually limited to conducting research. These researchers with a medical background cannot provide advice on prognosis but the medical doctor can provide advice on alternative medication and depending on the complexity of the case alternative medication is also finetuned with treating doctors.[303]

The Federal Administrative Court (FAC) is the first court of appeal for all decisions of the federal administration. Thus, it is also responsible for appeals in asylum and return decisions taken by the SEM. In

[302] BVGer-D-7246/2015, 6.3.2.

[303] In specific situations - such as HIV, oncology, and rare diseases - alternative medication is proposed only after consultation with, or confirmation by, the treating physician. In other cases, the medical Coi researcher may directly analyse and determine alternative medication. A disclaimer is included in such cases.

the asylum context (including decisions on temporary admission) the court is the first and final complaints body.

In return procedures involving migrants who have not applied for asylum, the cantonal authorities for migration are responsible for the assessment of potential impediments for return. This means that for medical claims the cantonal authorities have to assess whether the medical treatment and/or medication is available and accessible in the countries of origin. However, given the broad variety of cantonal practices in this respect, the present country case study discusses these differences only to a limited extent.

Four policy units located in the headquarters of SEM are responsible for defining the asylum policy with regards to specific topics or countries of origin. Three policy makers from these units form the "Medical Policy Team," that advises case workers located in one of the six asylum centres all over Switzerland. These policy makers from the "Medical Policy Team" are also decision makers/ case workers.

The policy team and the medical COI researcher work closely together in order to advise the case workers in the asylum centres.

Previously, a medical doctor provided advice to decision-makers when necessary. However, due to limited requests, this position has been discontinued.

1.3. Procedure in medical migration cases

There is no specific procedure for applications for medical claims, apart from the visa for medical treatment. The majority of medical claims are processed preliminary as a follow up of the asylum procedure by the SEM. The caseworker for the asylum application first determines whether the applicant is entitled for refugee status according to the 1951 Geneva Refugee Convention. If refugee status is granted, a positive decision is issued, and the medical claim is not relevant. If the SEM considers that the applicant does not meet the criteria for refugee status, the asylum application is rejected.

In a second step, the caseworker examines whether the enforcement of the removal of the applicant is *permitted, reasonable and possible* according to Article 83 of the Federal Act on Foreign Nationals.[304] The medical claim is being investigated only if no other impediment to return is given.[305] Hence, medical grounds are subordinated to other grounds that may constitute an impediment to return. The removal order is issued together with the negative asylum decision.[306] Medical claims may fall under unreasonable removal (*Unzumutbarkeit des Wegweisungsvollzugs*) due to a risk of medical emergency if the applicant is returned to the country of origin. In this case a temporary admission is granted.

If the SEM concludes the enforcement of the return being reasonable (a positive decision on the enforcement of the removal), the applicant has the possibility to lodge an appeal against the decision of the SEM to the second and final instance body, the Federal Administrative Court. This Court can either

[304] http://www.asylumineurope.org/reports/country/switzerland/asylum-procedure/general/short-overview-asylum-procedure [visited on 26.01.2018].

[305] Federal Council (2016): p. 20.

[306] SEM (2019c): Handbuch Asyl und Rückkehr: Der materielle Asylentscheid, p. 4.

nullify the decision and forward the case back to the SEM, which has to decide once again on the application, or the Court itself issues a decision on the acceptance of the application.[307]

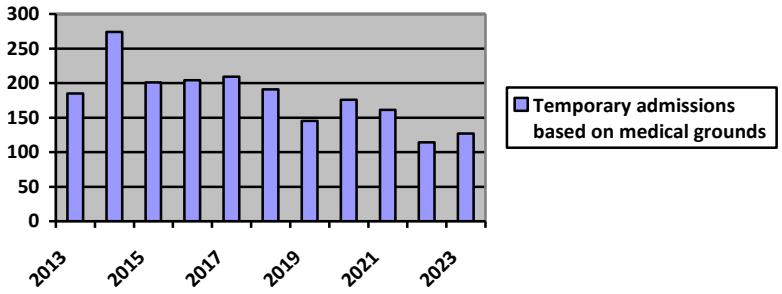
1.4. The procedure of researching medical country of origin information

A decision is typically made based on research on treatments and medication combined. A decision considering only research on medication without researching treatment options would be made only in a case where a person needs medication only and no treatment, or the medical condition is extremely severe, and no further research is needed. Sometimes requests focusing on medication only are sent to EUAA, if the information on medical treatment has already been obtained within the internal database.

1.5. Statistics

The SEM does not collect information on all cases with a medical element. However, numbers are available on the most relevant form of stay, the temporary admissions solely based on medical grounds. In average there are about 180 of such stays based on medical grounds granted per year, with a peak in 2014 with 274 admissions.

Figure 1: Number of temporary admissions based on medical grounds per year (Source: Information provided by the SEM, 2017, 2023, 2024).



Important to note is that these numbers do not account for cases of temporary admissions that may have involved medical claims but were primarily based on other reasons for granting residence.[308]

The main countries of origin of persons that were granted a temporary admission based solely on medical grounds during 2013-2017 are: Georgia (93), Afghanistan (55), Ethiopia (55), Eritrea (50), Iraq (48), and Sri Lanka (41). There are no numbers available on persons who have been returned after a medical claim has been rejected.

The majority of medical claims within asylum procedures is being processed by the SEM, but there is no explicit data on this.

[307] https://www.refugeecouncil.ch/asylum-law/asylum-procedure/appeal-procedure.html [visited on 26.01.2018].

[308] Interview with SEM, 2017.

The table below shows the total number of responses to requests sent by EUAA for 2021-2024. Notably more requests for availability assessments were sent than accessibility requests. This could be based on various reasons: The relevant information on the accessibility might have already been gathered in previous cases, given that this also applies to the application at hand. In addition, other sources are used for the assessment of accessibility, including websites on social security systems or MedCOI publications. In cases of extremely expensive medication, there is no need to submit a request regarding the individual accessibility because it is evident that accessibility is not provided. Another reason for this difference in the number of EUAA requests lies in the time required for gathering accessibility information. General availability requests are addressed much more quickly than the collection of information on subjective, individual aspects. However, both aspects of availability and accessibility are assessed.

Table 1: Number of responses to requests sent by EUAA MedCOI[309]

	Availability	Accessibility
2021	37	2
2022	26	0
2023	15	0
2024	76	14

2. National Policy

2.1. Medical severity of a person's health condition

In this report the 'severity threshold' of a disease refers to the severity level of a disease that has to be reached in order to initiate a special proceeding based on the medical elements, i.e. research on the availability of medical treatment. In general, the severity threshold is met if the disease may constitute an impediment for the enforcement of the return order, irrespective of the availability of the medical treatment. Only in cases that meet the severity threshold the caseworker needs to proceed further and to assess whether medication and/or treatment is available and accessible for the foreigner upon return. Medical claims that are determined as not severe are not further investigated.

2.1.1. Severity threshold to initiate research on medical COI.

In this report the 'severity threshold' of a disease refers to the severity level of a disease that has to be reached in order to initiate special proceedings based on the medical elements, i.e. research on the availability of medical treatment. In general, the severity threshold is met if the disease may constitute an impediment for the enforcement of the return order, irrespective of the availability of the medical treatment. Only in cases that meet the severity threshold the caseworker needs to proceed further and to assess whether medication and/or treatment is available and accessible for the foreigner upon return. Medical claims that are determined as not severe are not further investigated.

The SEM does not investigate the availability of medical treatment for all medical claims that are raised by applicants. The claim has to be of a certain 'severity' however, this threshold is interpreted very broadly.

[309] Data provided by EUAA MedCOI Service.

The severity threshold is met if the disease may cause a **life-threatening situation or serious and irreversible consequences** for the health condition of the person if not treated. This decision is taken by the case worker based on the attestation of a medical doctor. Chronical diseases which mostly need regular treatment and follow-up are more likely to become an impediment of return, whereas acute diseases or symptoms are already treated in Switzerland. There is no list of diseases that are viewed as severe or not severe.

2.1.2. Severity threshold for decision-making

However, whether a medical claim may constitute an impediment of return may also be influenced by other elements because the scope of the temporary admission covers also other humanitarian considerations. Apart from the health problem of the applicant, which may lead to a 'medical emergency' in the country of origin, humanitarian reasons can also constitute an enforcement of a removal to be unreasonable according to the Swiss Federal Act on Foreign Nationals. The report of the Federal Council (mentioned above) states that some cases where the enforcement of the return has been decided to be not reasonable are very often caused by a combination of different elements.[310] In light of this, it has been shown in case law[311] that the assessment of the severity of a disease may also capture humanitarian aspects, as for example the existence of social networks in the country of origin and the age of the applicant (see below on the severity of a disease in practice). If children are affected by the decision, the best interest of the child is given priority. Thus, the assessment of the severity of a disease in Switzerland cannot always be clearly distinguished from the availability and accessibility assessment.

Thus, for the majority of cases the SEM assesses the lower threshold of article 83 (4) FNIA that originates from humanitarian considerations. Accordingly, the enforcement is unreasonable if the person is endangered by situations such as war, civil war, general violence and medical emergency in their country of origin.[312] Only for cases where the application of article 83 (4) FNIA is not possible - if the applicant is sentenced to a long-term custodial sentence or other criminal law measures, or if the applicant poses a threat to public security- the SEM exercises the higher threshold deriving from the case law of the ECtHR (such as the Paposhvili case).

The case law of the Federal Administrative Court provides some guidance in defining the threshold of a severe disease.

In the following case concerning a woman from Kosovo who suffered from posttraumatic stress disorder with depression and chronical migraine, the judgment from July 2014 states: "Health problems could only lead to the enforcement of the expulsion order being unreasonable if, due to a lack of adequate treatment options in the home country, the health of the person concerned would deteriorate to such an extent that their life would be in danger."[313] (BVG E-3872/2012, 7.2.1). Accordingly, the threshold of severity is

[312] Article 83 (4) of the Federal Act on Foreign Nationals and Integration.

[313] "Gesundheitliche Probleme könnten sodann nur zur Unzumutbarkeit des Wegweisungsvollzugs führen, wenn sich aufgrund eines Mangels an angemessener Behandlungsmöglichkeiten im Heimatland der Gesundheitszustand der betroffenen Person derart verschlechtern würde, dass ihr Leben in Gefahr geriete." (Translated by the author)

established only for diseases that result in a deterioration of health which consequently puts the life of the concerned person at risk, due to a lack of medical treatment in the country of origin. The Court determined that upon return to the country of origin a non-sufficient treatment of the disease is likely to result in a decompensation with suicidal tendency and complete dysfunction. Thus, the Court concluded that the threshold of severity was met.[314]

A judgement, delivered in June 2014, was about a child who was in treatment for renal diseases: "There is a very serious risk that, if returned to Macedonia, the child's health would deteriorate significantly, rapidly, and durably—potentially even fatally—notably through the loss of function of the remaining kidney, which would necessitate long-term dialysis. It is evident that in such circumstances, given the complexity of this child's medical condition, the preservation of his nephrological and urological functions, and indeed his life, would be gravely endangered." [315](BVG E-4596/2013, 6.4). Accordingly, the Court found that there is a serious risk, if returned to Macedonia, that the child's state of health would significantly, rapidly and permanently (or even fatally) degrade, in particular that the applicant loses the function of his residual kidney, which would involve long-term dialysis. Furthermore, the Court views that, given the medical complexity of this case, it is self-evident that safeguarding his nephrological and urological functions and even his life would be seriously endangered. In this case the Court had disagreed with the SEM on this issue. The SEM viewed that the child's health condition is that complex that there is no possibility for cure, not even in Switzerland.[316] The Court concluded the enforcement of the return to be unreasonable, and the child and its nucleus family were granted temporary admission.

Interestingly in other judgments the Court interprets the threshold of severity differently. In these cases, the severity threshold is found to be between a serious deterioration of health and a life-threatening situation.[317] A judgement from February 2014 notes: *"However, removal will no longer be considered reasonably enforceable within the meaning of Art. 83 para. 4 FNIA if, due to the absence of adequate treatment options, the person's state of health were to deteriorate very rapidly to the point of leading with certainty to a concrete endangerment of their life, or to a serious, lasting, and significant threat to their physical integrity."*[318] (BVG D-1248/2010, 6.2.1). This paragraph states that the enforcement of a return is not reasonable under Art. 83 (4) Federal Act on Foreign Nationals if, owing to the lack of adequate treatment, the health condition of the concerned person may rapidly degrade to the point where it is certain that this person will be in a position that endangers his/her life *or* results in a serious, permanent and significant threat of his/her physical integrity. Hence, it is either a life-threatening situation or a serious, permanent, and significant deterioration of health. In this case the applicant was affected by

[314] BVG E-3872/2012, 7.3.3.

[315] « Le risque est très sérieux qu'en cas de retour en Macédoine l'état de santé de l'enfant se dégrade de manière importante, rapide et durable (voire fatale), en particulier qu'il perde la fonction de son rein résiduel, ce qui impliquerait une dialyse à long terme. Il est patent que dans un tel cas, vu la complexité du cas de cet enfant sur le plan médical, la sauvegarde des ses fonctions néphrologiques et urologiques, voire sa vie seraient gravement en danger « (Translated by the author)

[316] BVG E-4596/2013, 6.4.

[317] BVG D-1248/2010; BVG E-7609/2015; BVG E-5836/2013.

[318] *„Tuttavia, l'allontanamento non sarà più reputato ragionevolmente esigibile ai sensi dell'art. 83 cpv. 4 LStr se, a causa dell'assenza di possibilità di trattamento adeguato, lo stato di salute dell'interessato dovesse degradarsi molto rapidamente al punto di condurre in maniera certa alla concreta messa in pericolo della sua vita o ad una minaccia seria, durevole e notevole della sua integrità fisica"* (Translated by the author)

severe haemophilia and hepatitis C and the medical reports confirmed that if not treated with the required medication, his life expectancy would be immediately affected. Additionally, even if treated properly, the general prognosis continues to have further complications and the risk of serious bleedings in other organs. The decision thus draws a direct connection between the disease and the expected development not only in the short or medium term but also in the long term. Accordingly, a disease may at the time of the decision not yet be life threatening; however, should the life-threatening situation be *certainly* to be expected *rapidly* without the necessary treatment, the disease would still fulfil the severity threshold.

Another judgment confirming the severity threshold being between a serious deterioration of health and a life-threatening situation was delivered in February 2016. The judgment refers to the connection of the disease with the poor prognosis of the disease if not treated in the country of return: *"The prognosis without treatment is unfavourable. The appellant has no support in her home country and would be left to fend for herself, which would certainly worsen her symptoms (the feeling of being alone is evidently a trigger factor and immediately induces psychological distress, as it brings her back into the traumatic situation)."*[319] (BVG E-7609/2015, 7.2.3.). The decision indicates that the claimant's health condition may deteriorate shortly after returning to Kinshasa in such a way that she may face a real risk: *"It can therefore not be ruled out that, upon return to Kinshasa, her state of health could deteriorate in the near future to such an extent that she would be in concrete danger."*[320] (BVG E-7609/2015, 7.2.3.). Furthermore, the Court discusses the applicant's financial situation. It views that the applicant may find herself in a situation where her livelihood may be threatened: *"Aufgrund vorstehender Erwägungen ist anzunehmen, dass die alleinstehende Beschwerdeführerin im Falle einer Rückkehr in ihr Heimatland in eine existenzbedrohende Situation geraten würde, zumal es ihr in ihrem Heimatland nicht gelingen dürfte, sich in die Gesellschaft zu integrieren und ein die Existenz sicherndes Einkommen zu generieren. Ein zusätzliches nicht zu unterschätzendes Erschwernis stellen ihre gesundheitlichen Probleme dar. Im Rahmen einer Gesamtwürdigung der geschilderten sozialen, gesundheitlichen sowie wirtschaftlichen Aspekte kommt das Gericht zum Schluss, dass der Vollzug der Wegweisung der Beschwerdeführerin in ihr Heimatland als unzumutbar zu erachten ist."* (BVG E-7609/2015, 7.3.). This judgement shows that besides the health condition, other aspects such as the social and economic situation of the applicant may play a role in the assessment of the threshold for considering a migrant's health condition. This decision does not mention a life-threatening situation, if returned, however the overall situation contributed to meet the threshold.

A case where the Court decided on the severity of the disease not meeting the threshold concerned a national of Bosnia and Herzegovina who was diagnosed with post-traumatic stress disorder.[321] The applicant's health condition was argued not being acute and the mental health disorder having not

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[319] *„Die Prognose ohne Behandlung sei ungünstig. Die Beschwerdeführerin verfüge in ihrem Heimatland über keine Unterstützung und wäre auf sich alleine gestellt, was mit Sicherheit die Symptomatik verschlechtern würde (Gefühl von Alleinsein sei offensichtlich ein Triggerfaktor und löse unmittelbar psychische Not aus, da es sie in die traumatische Situation zurückversetze)."* *(Translated by the author)*

[320] *"Es kann folglich nicht ausgeschlossen werden, dass sich ihr Gesundheitszustand bei einer Rückkehr nach Kinshasa in naher Zukunft dermassen verschlechtern könnte, dass sie konkret gefährdet wäre"* (Translated by the author)

[321] BVG E-4773/2013.

prevented him from living a live comparable to others in his country of origin. The fact that his situation may be less favourable in the event of a hypothetical worsening of his health condition cannot constitute an impediment for return, according to the judgment. Moreover, the Court found the required medication and psychotherapy being available in the country of origin.[322] However, shortly after the appeal was dismissed by the Federal Administrative Court, the applicant's son was born with a serious heart disease that required a cardiac catheterisation or an open-heart surgery. Without the recommended operation the child may be at risk of high blood pressure and early death according to the cardiologist. In a subsequent application to the SEM and a second appeal at the Court, the latter decided the availability for the specific treatment for the child not being guaranteed in the region where the applicant was from.[323] Moreover, the child had to undergo the surgical intervention within the following 18 months according to the medical reports. The Court found that it could not be ensured that the child would receive the operation within the time period because it needed to be registered in a long waiting list. The poor prognosis combined with other factors, such as the health condition of the father and the high costs of the child's treatment, made the Court to conclude on the enforcement of the return of the child as not being reasonable. Based on the principle of the unity of the family (Art. 44 Federal Act on Foreign Nationals) the whole family was granted temporary admission.[324]

In a case the Federal Administrative Court discusses the severity threshold in its judgement from September 2017.[325] According to Art. 83 (4) FNIA the enforcement of a return is not reasonable if it poses a real threat to the person. The Court clarifies the term 'real threat' which has to be interpreted in a narrow way and refers to a serious interference in the physical integrity of a person. Moreover, the judgment states "*Article 83 (4) of the AuG applies, in particular, to persons who would be exposed to a real risk on their return because, from an objective point of view, the prevailing circumstances would, in all likelihood, render them irretrievably in utter poverty, starvation and thus serious deterioration of their livelihood state of health, disability or even death […]"* (BVG D-7246/2015, 6.3.2).[326] Accordingly, Art. 83 (4) FNIA applies to persons who with a high probability may face a serious deterioration of their state of health, invalidity, or even death upon return.

In cases where children are affected by the decision, either as applicants themselves or as family members of the applicant, the Court takes into consideration the best interests of the child during the assessment of the 'severity of the disease': *"If children are affected by a possible return operation, the child's best interest also constitutes a priority in the context of the reasonableness assessment"* (BVG E-3872-2012, 7.1.).[327]

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[322] BVG E-6620/2009, 8.1.

[323] BVG E-4773/2013, 7.

[324] BVG E-4773/2013, 7.

[325] BVG D-7246/2015.

[326] "[…] Art. 83 Abs. 4 AuG findet insbesondere Anwendung auf Personen, die nach ihrer Rückkehr einer konkreten Gefahr ausgesetzt wären, weil sie aus objektiver Sicht wegen der vorherrschenden Verhältnisse mit grosser Wahrscheinlichkeit unwiederbringlich in völlige Armut gestossen würden, dem Hunger und somit einer ernsthaften Verschlechterung ihres Gesundheitszustandes, der Invalidität oder gar dem Tod ausgeliefert wären" (BVG D-7246/2015, 6.3.2).

[327] Translated by authors, original text: "Sind von einem allfälligen Wegweisungsvollzug Kinder betroffen, so bildet im Rahmen der Zumutbarkeitsprüfung ausserdem das Kindeswohl einen Gesichtspunkt von vorrangiger Bedeutung"(BVG E-3872-2012, 7.1.).

The analysis of the selected cases shows that the threshold for a disease to impede the enforcement of a return depends on the one hand on the prognosis of the disease if not treated but has additional elements to be considered. This can be the time span until a deterioration of the health situation is to be expected after return or whether there are other additional elements that would negatively influence the health condition and lead to a life-threatening situation (e.g. the lack of livelihood, the age of the applicant, best interest of the child). The severity threshold has been interpreted differently in jurisprudence over the time, mostly reflecting the developments of international case law. Summarised it lies between a life-threatening situation and a serious, permanent, and significant deterioration of health to be expected if not treated. This difference in jurisprudence might illustrate the development of case law which also reflects the change in case law of the ECtHR which lowered the threshold for migration cases with medical claims in its decision of the case Paposhvili v Belgium.[328]

2.1.3. Medical threshold cases

In some extremely severe cases, it is evident, taking into account the different elements (such as the gender, age, social network and the financial situation of the applicant) of the case, that enforcing an expulsion order would not be reasonable for humanitarian reasons without the necessity to examine the availability and accessibility of treatment/ medication. This could be the case, for example, if an applicant is in his/her terminal stage of illness and all close family members live in Switzerland and he/she has no social network in the country of origin. Then the enforcement of the return may be considered unreasonable, regardless of whether the required (palliative) care is available in the country of origin or not.

2.2. Availability of medical treatment/ medication in countries of origin

2.2.1. Definition of availability in the national context

The Swiss national law does not provide a definition of 'availability' of treatment and/or medication in the country of return. However, different elements have to be fulfilled in order to affirm the availability: Generally, the medication is available if it is regularly on stock. The registration of the medication in the country is not sufficient. Moreover, it has to be supplied regularly and be on stock at pharmacies. Medication available only on the black market or at internet pharmacies is for example not considered as 'available.' Only the time of the assessment is taken into consideration but not the following years. The assessment is thus *ad nunc* and does not expect any assessment for the future. The level of treatment, however, is explicitly not required to be of the same standard as provided in Switzerland, thereby acknowledging the case law of the ECtHR.

The decision on the availability assessment is normally taken by the caseworker/ decision maker. In cases where the decision is difficult other caseworkers/ decision makers are consulted and if required also discussed on different hierarchical levels. The assessment is based on previous COI and medical COI information and if required, additional information is requested by the COI unit. Apart from this,

[328] See case Paposhvili v Belgium, Application no. 41738/10, ECtHR, Grand Chamber, 13 December 2016.

representatives of Swiss embassies and consulates in the countries of origin are consulted who may also conduct investigations for individual cases.

2.2.2. Availability in practice

The majority of availability requests are processed with the support of EUAA's MedCOI Sector - using the database when the information is already there or launching a request when necessary. However, other sources are consulted as well when assessing the availability of medical treatment and/or medication: Fact finding missions conducted by the SEM, Swiss embassies, Immigration Liaison Officers, online desk research including websites of hospitals in countries of return and information provided by other COI units from other countries.

In one case from 2016 the Federal Administrative Court (FAC) confirmed the availability of the medical treatment for posttraumatic stress disorder in Congo because it was provided by two medical facilities and international organisations in Kinshasa where the applicant had lived before. The Court stressed that it is not required to meet the same quality of treatment as provided in Switzerland.[329]

In the case of a young man who was treated for haemophilia and hepatitis C in Switzerland, the SEM decided that the availability of treatment for haemophilia was generally guaranteed, and the applicant had received this treatment in Bosnia and Herzegovina (BiH) before.[330] However, even though the applicant had already received the treatment in BiH before, the Federal Administrative Court still disagreed and was of the opinion that the necessary medication was not available. The Court justified that necessary medication was available only in situations of medical emergency because of the low distribution capacities.[331] The decision thus indicates that 'availability' requires a certain guarantee on stock medication. Interestingly, the Court also highlighted the inadequacy of the treatment that the applicant had received in BiH which resulted in the deterioration of his health conditions.[332]

In a more recent case, the Federal Administrative Court (FAC) published a reference judgment (=judgments that are of particular relevance for certain areas of law) and clarified on the elements of availability. Following the economic crisis in Sri Lanka, there were several judgments issued by the FAC that nullified negative asylum decisions of the SEM or directly ordered a temporary admission with regards to cases with medical claims. One of the most important judgments was Judgement FAC E-737/2020 of 27 February 2023. The court stated that it is questionable whether medical treatment for the complainant's mental health problems, suicidality, and diabetes was available during the current economic crisis, which also affected the health system. In order to decide on the reasonability of the enforcement of return involving medical claims, the SEM must show for each individual case that the applicant would not have to expect a rapid and life-threatening impairment of his or her health state upon return to Sri Lanka – even in cases of a temporary interruption in healthcare services. However, after the SEM conducted a country visit to

[329] BVG E-7609/2015, 7.2.3.

[330] BVG E-1248/2010, 5.1.

[331] BVG E-1248/2010, 5.1 and 6.2.3.

[332] BVG E-1248/2010, 6.2.3.

Sri Lanka to gather updated information on the healthcare system, the FAC has in principle started to support the asylum and return decisions of the SEM related to Sri Lanka again.[333]

On a more general note, the Federal Administrative Court indicated that, if necessary, the person can also be treated with other medication (alternative medication) than those prescribed in Switzerland and may nonetheless fulfil the requirement of availability.[334]

2.3. Accessibility of medical treatment/ medication in countries of origin

The individual accessibility of the applicant to medical treatment or medication in the country of origin is an integral part of the overall assessment within return procedures of persons with medical claims. This has been clearly confirmed by the Swiss Federal Administrative Court.

2.3.1. Definition of accessibility in the national context

Accessibility is not defined as such; however, over the past years, a firm practice has been developed and confirmed by the High Court, which requires different elements to be fulfilled to ensure the individual accessibility.

The most relevant elements are of economic nature, for example the costs of medication or medical treatment. It may be relevant if the treatment is provided only in a private clinic and is not available in public hospitals which may result in having no access. The costs may be relevant in connection with the person's chances to find employment and to bear the costs of the medication. Furthermore, it has to be clarified that if the costs of the medication/ treatment would be covered by a health insurance, this would safeguard economic accessibility. Moreover, accessibility may be guaranteed if refunding possibilities through special government programs for the required medical treatment or medication is provided. Another important element for the individual accessibility is the family network that may provide assistance in care but also in financial matters. The overall financial situation of the concerned person may also be of relevance for the decision. However, the SEM emphasises the need for careful consideration of the applicant's financial situation, acknowledging the inherent challenge of fully assessing it.

In comparison to economic elements, geographic elements which relates to the geographic distance between the person's place of residence (in the country of return) and the place where the medical treatment/medication is available, occur less frequently. The general health care system in the country of return may be relevant for the decision, for instance, if the treatment is accessible only in major capitals. Generally, it is viewed to be reasonable for the concerned person to move to another place where the medical treatment or medication is available. This may be feasible if, for instance, family members are located closer to the medical facility. Thus, it can be concluded that only in exceptional cases geographic accessibility may add to the overall situation that makes the enforcement of a return not reasonable.

Furthermore, political accessibility which refers to discriminatory practices in regard to the factual access to medication/ medical treatment for the applicant is of minor relevance in the assessment for temporary admissions. The assessment of any kind of discriminatory practices is primarily part of the refugee status

[333] Federal Administrative Court, Judgement E-737/2020 of 27 February 2023.

[334] BVG E-4773/2013, 4.2.

determination. In the context of temporary admissions, the decision-maker has to address the issue of political accessibility only if it has been claimed by the applicant. In these cases, representatives of Swiss embassies or consulates in the countries of origin were consulted for individual assessments, if necessary.

2.3.2. Accessibility in practice

Various sources are consulted when assessing the individual accessibility of medical treatment and/or medication: EUAA's MedCOI database, publications about health care systems and costs of treatment and medication (including MedCOI publications or for example the French Cleiss website[335] or online pharmacies), or direct requests sent to EUAA's MedCOI Sector.

There are many different judgments in which the accessibility of treatment/medication was used in the legal reasoning of the FAC.

In the judgment FAC D-3363/2022 dated October 21, 2022, involving a couple with two children, where both parents suffer from HIV infection (the mother: in combination with hepatitis B), the Court acknowledges the SEM's assertion that medical institutions and medication are available in Azerbaijan for the treatment of HIV-positive individuals. However, the Court notes that the SEM did not address the complainants' effective access to this treatment or the coverage of associated costs. Thus, the FAC highlighted the authorities' obligation to assess the individual element of accessibility.[336]

In one case the Federal Administrative Court found that in general everyone in Kosovo has free access to health care but de facto the treatments in specialized fields are patchy and strongly depend on the financial possibilities of the individual. The same applies to psychiatric and psychotherapeutic treatment. Therefore, the Court concluded that the specific and long-term psychotherapeutic treatment which the applicant needed cannot be guaranteed.[337]

In the case of a woman who was originally from Kinshasa and who suffered from posttraumatic stress disorder, the Court affirmed the availability of the medical treatment however, it disagreed on the issue of individual accessibility. The Court based it's reasoning on the economic situation of the applicant and the lack of family network (the applicant grew up on the streets) in the country of origin: *"Es ist somit davon auszugehen, dass die Beschwerdeführerin keine Berufserfahrung aufweist, im Falle einer Rückkehr in ihr Heimatland über keine Unterkunft verfügen dürfte und in einer schwierigen finanziellen Situation wäre, zumal sie auf kein oder allenfalls ein nur bescheidenes soziales Netz zurückgreifen könnte."* (BVG E-7609/2015, 7.2.2.). Furthermore, the Court pointed out that despite the availability of free medical treatment and the financial return assistance, the applicant may not find access to adequate medical treatment due to the lack of family and other social network and the lack of financial support. Consequently, the Court determined that the applicant's health condition may deteriorate after return and reach a level that may put her in a situation of a real risk for her livelihood and life since she may not be

[335] Cleiss (Centre des Liaisons Européennes et Internationales de Sécurité Sociale) website of the French government: https://www.cleiss.fr/

[336] Federal Administrative Court, D-3363/2022 dated October 21, 2022.

[337] BVG E-3872/2012, 7.3.3.

able to integrate into the society and earn her living. This case shows the Court's strong emphasis on family or other social network in the country of return and the economic situation of the applicant.

In the context of the chances of maintaining one's livelihood and finding a job, the Court weighed in another case the high unemployment rate in the country of origin, both applicants' low educational level and their poor language skills (regarding the language of the majority of the population).[338]

Medical treatment that is available only in private clinics may not fulfil the criteria of accessibility. In the case of a child suffering from renal diseases the Court determined that in order to avoid irreversible consequences the applicant needed expensive medication and treatment by specialists that is available only in private clinics at significant costs.[339] Thus, individual accessibility to the medical treatment and the medication was denied.

The Court discussed the costs of medication in detail in a case from 2014, which concerned a woman who was in treatment for paranoid schizophrenia.[340] According to the judgment, the costs for psychiatric and psychotherapeutic treatment have to be borne entirely by the patient and were determined to vary between 5.000 and 15.000 Swiss francs. Additionally, the costs for medication, which are often unavailable, range from 10.000 – 40.000 Swiss francs. In the case of this applicant, the duration of the treatment was likely to be necessary for an unspecified period of time.[341] The Court stated that this precarious nature of the medical infrastructure in Togo does not necessarily represent an obstacle for the return. However, the Court refrained from deciding on this issue, particularly because other elements of this case (such as the deterioration of the applicant's state of health, care obligations for her children, long distance to the next medical facility, and lack of social network) made the Court to conclude that the enforcement of the return was unreasonable.[342] Similarly in another case the Court took into account the financial burden of obtaining the costly medication for hepatitis C therapy. The applicant's inability to work due to the disease was taken into consideration, as well as the possibility of his wife to bear the high costs arising from the long-term treatment.[343]

Another element of accessibility is geographic accessibility that may pose an impediment for return under certain conditions. In the previously mentioned case of a woman diagnosed with paranoid schizophrenia, the Court examined that the medical facilities available in Togo do not appear to be able to provide the required treatment under satisfactory conditions. Further, it noted that only few medical facilities, located in Lomé, offer the required treatment to a small number of patients. Additionally, the infrastructure for psychiatric and psychotherapeutic care is not sufficient, particularly in rural areas, due to the lack of medical professionals.[344] Nevertheless, the Court refrained from deciding on the medical infrastructure in Togo and concluded that other factors specific to the applicant's situation may put the applicant and her

[338] BVG E-3872/2012, 7.3.4.

[339] BVG E-4596/2013, 6.3.1 and 6.3.4.

[340] BVG E-5836/2013.

[341] BVG E-5836/2013, 3.4.

[342] BVG E-5836/2013, 3.5.

[343] BVG E-1248/2010, 6.2.3.

[344] BVG E-5836/2013, 3.4.

family in a situation of emergency if returned. The other factors that accumulated to the unfavourable situation were the long distance to the medical facility in Lomé, having no family network in the country of origin, the high costs of the medication and treatment and care responsibilities for two children: *"En effet, les deux époux sont originaires de localités […] situées dans le centre et le nord du pays, loin de Lomé, où les ressources médicales et, de façon générale, les possibilités de réinsertion font défaut ; en outre, ayant quitté le Togo bien avant de rejoindre la Suisse, ils n'y disposent plus d'aucun soutien familial, leurs proches ayant pratiquement tous disparu ou n'entretenant plus de contacts avec les recourants. Enfin, ces derniers se trouvent en charge de deux enfants encore très jeunes, qui requièrent des soins constants, et dont la santé, voire la survie, pourraient se trouver menacées en cas de retour au Togo; en effet, l'état de leur mère et son incapacité actuelle à s'occuper d'eux, ainsi que les importantes difficultés où se trouverait leur père d'assumer seul l'entretien de la famille, seraient de nature à les mettre en danger."* (BVG E-5836/2013, 3.5.). Hence, the Court concluded that geographic accessibility, amongst other factors, may add to the overall situation that makes the enforcement of the return unreasonable.

Geographic aspects also played a decisive role in the previously mentioned case about a child, aged three, with a serious heart disease. The SEM affirmed the availability of the medical treatment, particularly in the region where the family used to live before moving to Switzerland. The Court however, disagreed in this matter and found: "*It is clear from the information available to the Court of first instance that the surgical intervention essential to the survival of the child at least in the medium term, is not available in the region from which the persons are from*." (BVG E-4773/2013, 7.). Moreover, the judgment specified: "*Although the Tuzla region includes a hospital specialized on cardiology ('BH Heart Center Tuzla'), which has a long waiting list […], it does not have a paediatric cardiology department. The only option seems to be the Paediatric Clinic of Sarajevo, which is almost 140 km away*" (BVG E-4773/2013, 7.). Additionally, the Court expressed its concern whether the child, who was not yet on the waiting list, can be operated within the 18 months' time limit indicated by the doctors.

In a more recent case, dated January 21, 2020, involving a male applicant with schizophrenia from China, the Court notes that the SEM had solely assessed the family situation and the overall availability of schizophrenia medication in the Shanghai region (which is 450 km away from the complainant's home village), without examining the access to the necessary medical treatment. According to the Court, the evaluation of accessibility should consider both the financial costs and the geographical proximity of the treatment.[345]

By analysing the Swiss case law, it is obvious that the assessment of availability and accessibility is not always that clear-cut in practice, and both are blurry at times. Furthermore, medical claims are seldom the only element that is closely looked at when determining the need to grant temporary admissions. Other elements, such as the situation of general violence or war, are often more relevant. Hence, the judgments take several factors into account for the assessment of the reasonability of enforcement of an expulsion or removal decision.

[345] Federal Administrative Court, judgment E-5850/2019 dated January 21, 2020.

3. Residence and Return

3.1. Medical claim accepted

If it is decided that the enforcement of the removal of a person is not reasonable due to the medical situation, a temporary admission (*Vorläufige Aufnahme, 'F permit')* is granted by the SEM and is issued by the respective cantonal immigration authorities. The temporary admission is valid until it expires, or it is being revoked. It expires if an order for expulsion from Switzerland becomes legally enforceable, if the person stays abroad for more than two months without authorisation, or if the person receives a residence permit.[346] The temporary admission can be revoked by the SEM if the medical reason ceases to exist.[347] Despite the validity of the temporary admission until expiration and revocation, the *'F permit'* is issued for 1 year and thus, has to be renewed on an annual basis. By law, the SEM has to periodically re-assess the cases of temporary admissions. If the requirements are no longer met the SEM revokes the temporary admission and orders the enforcement of the removal. Even if the requirements for temporary admission are no longer met, its revocation requires a prior, case-specific proportionality assessment. It has therefore been debated that the revocation of the temporary admission by the SEM has not been applied very often in the past, unless one of the exemption clauses was fulfilled.[348] There is ongoing discussion on the re-assessment of cases which do not meet the requirements for granting a temporary admission anymore.[349]

Temporarily admitted persons who have resided in Switzerland for more than 5 years can submit an application for a residence permit ('*B permit'*).[350]

3.2. Medical claim denied

In cases where the authorities come to the conclusion that the necessary medical treatment and/or medication is available and accessible in the country of origin, a positive decision on the enforcement of the removal or expulsion is being issued.

A rejected asylum seeker can apply for medical return assistance according to Article 93 AsylA. This assistance can consist of medication, support with the travel organisation or support during and after the return. In the event of the return of a rejected asylum seeker who requires urgent medical treatment, which does not permit an interruption of the therapy, the SEM, in consultation with the cantonal authorities and, if necessary, in cooperation with the International Organisation for Migration (IOM), the authorities in the CoO, the Swiss embassy in the CoO, can make arrangements to ensure that the required treatment can be continued immediately upon arrival in the country of origin. This medical return assistance should also enhance the reintegration into the health care system in the country of origin. It

[346] Art. 83 (9) and Art. 84 (4) Foreign Nationals and Integration Act.

[347] Art. 84 (2) Foreign Nationals and Integration Act.

[348] A person can be exempted from the temporary admission if he/she is imposed a long-term custodial sentence or other criminal law measures, or if he/she poses a threat to public security (Art. 83 (7) Foreign Nationals and Integration Act).

[349] In 2016 the Swiss government submitted a report on temporary admissions as a result of a parliamentary request. See report of the Federal Council (2016).

[350] Art. 84 (5) Foreign Nationals and Integration Act.

may be granted for up to six months and consists of in-kind allowances,[351] such as medication or medical appliances (wheelchair, inhaler, etc.). It may also include the attendance of a physician during the travel.[352]

4. Summary

In Switzerland there is no specific procedure for migration cases with medical claims. Since the majority of concerned persons have submitted an application for asylum, the medical claim is being assessed within the asylum procedure. If the authority comes to the conclusion that the person is not entitled for refugee status, then the return decision is issued together with the negative asylum application. Therefore, the authorities have to assess whether the return decision can actually be enforced or not. According to the Swiss Federal Act on Foreign Nationals and Integration (Art. 83) the enforcement of a return is not reasonable if the person is endangered by a situation of 'medical emergency' in the country of origin.

The analysis of the selected case law of the Federal Administration Court shows that 'medical emergency' is given if the return results in the deterioration of the applicant's health condition in such a way that it may endanger his/her life due to a lack of sufficient medical treatment or medication. Moreover, the review of case law has shown that also a rapid deterioration of the applicant's health resulting in a serious, permanent, and significant threat of his/her physical integrity may establish a medical emergency according to Article 83 of the FNIA. Thus, as it has been observed above, the jurisprudence on the severity of a disease, which refers to the threshold when a disease may constitute an impediment to return, irrespective of the medical infrastructure in the country of origin, varied over time. It is found to be between a life-threatening situation and a serious, permanent, and significant threat of the applicant's physical integrity if not treated. Thus, it can be summarized that diseases that result in a life-threatening situation, due to a lack of medical treatment or medication in the country of origin, are by all means considered as severe diseases, but also diseases that result in a serious, significant and rapid deterioration of the health condition may be viewed as severe. This difference in jurisprudence also reflects the development of international case law.

Apart from a written attestation by the treating medical doctor, there is no medical doctor involved in the decision-making, unless there is reasonable doubt regarding the written medical attestation.

The medical emergency can be caused by a lack of adequate medical treatment or medication in the country of origin. The Swiss authorities assess the availability of the specific medical treatment/ medication and furthermore evaluate whether the available medical treatment/ medication is de facto accessible for the applicant. There is no definition of 'availability' nor of 'accessibility.' Medication is in principle 'available' if it is regularly on stock. However, If the supply chain is interrupted from time to time, the medication can still be considered available, for example if the applicant can reasonably be expected to keep a supply at home to bridge periods of shortage. The mere registration of the medication in the country is not sufficient. Availability requires a certain guarantee on stock medication. Jurisprudence

[351] The general return assistance also includes financial assistance (see SEM (2019b): Handbuch Asyl und Rückkehr: Die Rückkehrhilfe).
https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/asyl/rueckkehr-_und_wiedereingliederungshilfe/4_rueckkehr_wiedereingliederungshilfe-d.pdf [visited on 20.12.2023].

[352] SEM (2019b): Handbuch Asyl und Rückkehr: Die Rückkehrhilfe, p.5.

indicates that, if necessary, the person can also be treated with other medication (generic medication) than those prescribed in Switzerland and may nonetheless fulfil the requirement of availability. The specific medical treatment has to be provided in medical facilities. The level of treatment, however, is explicitly not required to be of the same standard as provided in Switzerland, thereby the Court acknowledges the case law of the ECtHR.

The assessment of the individual accessibility is integral part of the overall procedure when it comes to medical claims that meet the severity threshold. The most important elements of the accessibility test are of economic nature, such as the costs for the medical treatment and medication, refunding possibilities by health insurance or special government programs, possibilities to maintain one's livelihood but also the availability of social networks that can assist the applicant with care but also in financial matters. Geographic elements, for instance long distance to the next medical facility offering the required medical treatment, occur less frequently but may add to the overall situation of the applicant that makes a return not reasonable. The review of the jurisprudence illustrates that the availability and accessibility evaluation are not clearly distinguished.

If it is concluded that the enforcement of the return is not reasonable due to the severe disease and the lack of adequate medical treatment/ medication, the person is granted a temporary admission. The permit is being issued for 1 year and can be renewed. If the impediment for the return ceases to exist, the temporary admission can be revoked by the SEM which periodically reviews temporary admissions. There is ongoing discussion in the Swiss parliament on the re-assessment of cases which do not meet the requirements for granting a temporary admission (not limited to medical claims) anymore.

If it is decided that the return of a person is reasonable despite the medical problems, a positive decision on the enforcement of the removal or expulsion is being issued. The person can apply for medical return assistance which can be granted for up to six months. It consists of allowances in kind, such as medication or medical appliances.

	Definition/applied practice	**Basis for definition**
Severity of the disease (threshold for admission of a medical claim)	The severity of a disease is found to be between a life-threatening situation and a serious, permanent and significant threat of the applicant's physical integrity if not treated. Persons who have committed a serious crime or pose a threat to public security have to fulfil a higher severity threshold applied by the ECtHR.	Case law
Availability	Availability is given if the medication is actually being supplied regularly by pharmacies and if medical treatment is provided by medical facilities in the CO at the time of the assessment. It is being assessed together with accessibility.	Practice

Accessibility	Individual accessibility is integral part of the overall assessment and covers the following economic and geographic elements: • costs for the medical treatment and medication • refunding possibilities through health insurance or special government programs • possibilities to maintain one's livelihood • availability of social networks in CO	Practice
Residence permit	If the enforcement of the removal of a person is not reasonable due to the medical situation, a temporary admission (*Vorläufige Aufnahme,* 'F permit'*)* is granted. It is valid until it expires, or it is being revoked. It expires if - an order for expulsion becomes legally enforceable, - there is an event of definitive departures. - if the person stays abroad for more than two months without authorisation, or - if the person receives a residence permit. The temporary admission can be revoked if the medical reason ceases to exist. The 'F permit' is issued for 1 year and has to be renewed on an annual basis. Temporarily admitted persons can apply for a residence permit ('B permit') after a stay of more than 5 years.	Article 83 Federal Act on Foreign Nationals and Integration
Return	A positive decision on the enforcement of the removal or expulsion is being issued if the disease is not severe, the medical treatment and/or medication is available and accessible in the CO. The person can apply for medical return assistance which can be granted for up to six months. It consists of allowances in kind, such as medication or medical appliances. If required, it can also include the attendance of a medical doctor during the travel or support in organizing the necessary medical treatment after return.	Art. 75 Asylverordnung 2

5. Sources

The report on "State practices related to medical COI: Country report Switzerland" was first completed in 2018. For this version, ICMPD conducted qualitative interviews with two representatives of the State Secretariat for Migration (SEM) in February 2017.

Between 2023 and 2024 the EUAA commissioned ICMPD to update the country report. For this purpose, ICMPD contacted relevant authorities, distributed the 2018 version of the report and a questionnaire with additional questions which were not covered in 2018. Between September and November 2023, the SEM (Policy Unit) reviewed the 2018 version and alerted ICMPD to changes that happened since then. In addition, the SEM also returned the respective questionnaire.

The present second version of the report "State practices related to medical COI: Country report Switzerland" was completed in March 2024.

Finally, the case study has been reviewed and updated by representatives of the Swiss State Secretariat for Migration in March 2026 in order to ensure its validity.

Other Sources:

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- Federal Administrative Court, judgement BVG E-7609/2015 from 24 February 2016.
- Federal Administrative Court, judgement BVG E-4773/2013 from 27 November 2014.
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- Information provided by the State Secretariat for Migration by filling in a questionnaire in October 2023.
- Cases of the Swiss Federal Administrative Court are online available at: https://www.bvger.ch/en/jurisprudence/judgments-database[visited on 26. January 2018].

6. Annex

List of selected judgements of the Swiss Federal Administrative Court on migration cases with medical claims

Reference no.	Severity	Availability	Accessibility	Other factors
BVG D-1248/2010	Life-threatening situation or a serious, permanent, and significant deterioration of health	Not sufficiently available because the medication is available only in situations of emergency	High costs of treatment; applicant's inability to work due to the disease	
BVG E-5836/2013	Life-threatening situation or a serious, permanent, and significant deterioration of health	Yes, available but only under precarious conditions	High costs for treatment and medication; long travel distance to the next medical facility; lack of social network	Best interest of the child; lack of social network
BVG E-4773/2013	The applicant's disease did not meet the severity threshold; however, his son's disease was severe. A significant deterioration of the child's health and even a life-threatening situation was expected	Treatment is not sufficiently guaranteed (too specific) and not within the required time period	High costs of treatment; long distance to the medical facility offering the treatment; applicant's low chances to find a job and to pay for the child's treatment	Best interest of the child
BVG E-3872/2012	Deterioration of health resulting in a life-threatening situation	Yes, available but only under precarious conditions	Treatment is not accessible for the applicant because it is being offered only at high costs; low chances of maintaining the	Best interest of the child

			applicant's livelihood; discrimination in access to health care.	
BVG E-4596/2013	Significant, rapid, and permanent (or even fatal) deterioration	Yes, but only under specific conditions	No access because treatment is available only in private medical clinics at significant costs	Best interest of the child
BVG E-7609/2015	Deterioration of health condition shortly after return, in such a way that the claimant might be endangered	Yes available	No accessibility due to lack of social network and no means of support, no financial resources	Lack of social network
BVG D-7246/2015	High probability of serious deterioration of state of health, invalidity, or death after return	Yes available	Access is guaranteed, good chances of maintaining the applicant's livelihood, geographic accessibility;	Best interest of the child