



European Migration Network

Ad-Hoc Query on special protection from expulsion

Requested by German EMN NCP on 21th January 2009

Responses from AT, BE, BG, DE, EE, FI, FR, GR, HU, IE, LT, LV, MT, NL, PT, RO, SE, SL; SK, UK (20 in Total)

Compilation as of 12th February 2009

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1. Background Information

Question of a Member of the German Parliament about data related to the expulsion of a foreigner who enjoys special protection from expulsion, e.g. because he/she

- is a national of an EU-Member State or
- has a long-term residence- or settlement permit, or
- is born in your country and is a minor or
- possesses an EC long-term residence permit or
- is married with a national of your country or
- enjoys the legal status of a refugee etc.

(see also § 56 of the German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory at the end of the query).

2. Responses

| | | Wider Dissemination? | Can you provide us with statistical data about the numbers of decisions on expulsions in cases with special protection and of the decisions actually enforced for a) citizen of the union b) third country nationals? |
|---|-----------------|-----------------------------|--|
|  | Belgium | No | This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further. |
|  | Bulgaria | yes | At present the statistical data in the national information system concerning expulsions are summarized and at the moment the cases of foreigners enjoying special protection from expulsion could not be specified. |

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| | | | |
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| | | | <p>The cases of minors: Minors are removed only together with their parents - subject to expulsion.</p> <p><u>The cases of special protection from expulsion of foreigners</u></p> <ul style="list-style-type: none"> ○ <u>with long-term residence or settlement permit</u> ○ <u>with an EC long-term residence permit,</u> ○ <u>married with a Bulgarian national</u> <p>come under the regulations of the Law for the Foreigners in the Republic of Bulgaria:</p> <p>When a foreigner who has received a long-term residence permit in another EU member-state or the members of his/her family present a serious threat to public safety and order the authorities of the Ministry of Interior or of the State Agency for National Security may expel them from the territory of the European Union even before they have received entitlement to long-term residence in the Republic of Bulgaria after coordination with the competent authorities of the other European Union member-state in which they have a long-term residence permit.</p> <p>In case of expulsion the length of the foreigner's residence in the Republic of Bulgaria, the age, the health status, the family position, the social integration and the existence of a relationship with the state of residence or the lack of a relationship with the state of origin shall be taken into consideration.</p> <p>The authorities of the Ministry of Interior or of the State Agency for National Security shall notify the competent authorities of the other European Union member-state of the implementation of the decision on expulsion.</p> <p>Expulsion of a foreigner shall be imposed where the presence thereof in Bulgaria poses a serious risk to national security or to public order.</p> <p>A foreigner residing on the territory of the Republic of Bulgaria to whom an expulsion decision has been issued by the competent authorities of another European Union member-state shall also be expelled. The expulsion shall not be executed when a special law or an international agreement to which the Republic of Bulgaria is a party provide otherwise.</p> <p>The authorities of the Ministry of Interior and of the State Agency for National Security, may issue an expulsion order and require its execution by the competent authorities of the other European Union member-state in relation to a foreigner residing on its territory.</p> <p>Where immediate expulsion or forcible escort of a foreigner to the border is impossible, or where execution of the said measures has to be postponed for reasons of legal or technical nature, the authority who has issued the order imposing the coercive administrative measure shall postpone the execution of the said measure until the lapse of the obstacles to the execution thereof.</p> <p>If upon expiration of the temporary protection period granted under the Asylum and Refugees Act it is not possible to expel or forcefully take a foreigner to the national border or those measures should be postponed for health or humanitarian reasons, the authority which has issued the order to enforce the respective compulsory administrative action shall postpone its effectuation until the obstacles to its implementation are no longer in place.</p> |
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| | | <p><u>The cases of EU citizens:</u> According to the Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families:</p> <p>The compulsory administrative measures, imposed on European Union citizen or member of his/her family, shall be:</p> <ol style="list-style-type: none"> 1. Withdrawal of the right of residence in the Republic of Bulgaria; 2. Expulsion; 3. Ban on entry in the Republic of Bulgaria. <p>The imposing of the measure shall be based exclusively on the personal conduct of the individual concerned and shall be determined according to the degree in which the latter threatens the national security, public order or public health.</p> <p>At imposing the measure shall be taken into account the duration of residence in the Republic of Bulgaria of the individual on which it is imposed, his/her age, state of health, family and economic situation, social and cultural integration and the extent of his/her links with the country of origin.</p> <p>Expulsion shall be imposed to an EU citizen or to a member of his/her family, in case his/her presence in the Republic of Bulgaria creates actual threat to national security or public order.</p> <p>Expulsion shall be imposed on EU citizen who has resided in the Republic of Bulgaria during the last ten years, in exclusive cases only, connected with the national security, and on underage person - if this is in his/her interest.</p> <p>In the event of expulsion the person shall be deprived of the right of residence in the Republic of Bulgaria and a ban to entry in the Republic of Bulgaria shall be imposed on him/her.</p> <p>If an expulsion order has not been executed for more than two years after its entry into force, the body which issued it shall check whether the factual grounds for its issuing are still present. In case the factual grounds have dropped out, the order shall be revoked.</p> <p>EU citizen or member of his/her family, to whom expulsion is imposed, shall not be expelled in a country, in which his/her life and freedom are threatened and he/she is exposed to danger of chase, torture or attitude, which is inhuman or humiliating.</p> <p><u>Since the beginning of 2007 when the Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families came into force no expulsions have been executed of EU Citizens and their family members.</u></p> <p><u>The cases of refugees:</u></p> |
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| | | | |
|---|----------------|------------|--|
| | | | <p>According to the Asylum and Refugees Act:</p> <p>Refugee status or humanitarian status shall not be granted with respect to an alien whose application is manifestly unfounded, and the alien after having had enough time and opportunities, he/she files his/her application in order to prevent the enforcement of a coercive administrative measure imposed on him/her, such as "revocation of the right to stay in the Republic of Bulgaria ", "forcible escort to the border of the Republic of Bulgaria" or "expulsion".</p> <p>Coercive administrative measures, such as "revocation of the right to stay in the Republic of Bulgaria", "forcible escort to the border of the Republic of Bulgaria", "expulsion" and "ban on entering the Republic of Bulgaria" shall not be enforced prior to the completion of the procedure with an effective decision in place. These coercive administrative measures shall be reversed, where the alien has been given asylum or granted refugee status or humanitarian status.</p> <p>The above mentioned coercive administrative measures shall be enforced where there are grounds to assume that the alien seeking or granted protection presents a threat to the national security or if he/she, having been convicted of a serious crime by a judgment that has come into effect, constitutes a threat to the community.</p> |
|  | Germany | yes | <p>a) The number of instances of EU citizens and their family members who are themselves not EU citizens losing their rights to freedom of movement sent to the Central Alien Register in 2008 is: 960. It can be assumed that 412 of the 960 have left the Federal Territory (new address in another country: 94; new address unknown: 66; no longer resident, i.e. deported: 252).</p> <p>b) Number of instances of aliens with special protection from expulsion pursuant to the Federal Residence Act being expelled sent to the Central Alien Register (AZR¹) in 2008: 46, of that</p> <ul style="list-style-type: none"> ⇒ 25 are in possession of a settlement permit or an EC permit for permanent residence (§ 56 paragraph 1, no. 1 and 1a of the Federal Residence Act) ⇒ 13 are in possession of a residence permit obtained due to being born in the Federal Territory or having entered the Federal Territory as a minor and who have resided here legally for at least five years (§ 56 paragraph 1, no. 2 of the Federal Residence Act) ⇒ 8 have been recognized as having a right to asylum or as refugees in terms of the July 28, 1951 agreement on the legal status of refugees (§ 56 paragraph 1, no. 5 of the Federal Residence Act). <p>None of the 46 have left the Federal Territory according to the AZR.</p> <p>Due to a lack of data storage in the AZR the evaluation of the expulsions of third-country nationals with special protection from expulsion cannot be fully completed as the groups of persons referred to in § 56, paragraph 1 to 4 AufenthG² cannot be filtered out of the total number of expulsions (data about expulsions for altogether 4.658 third country nationals has been transferred to the AZR during the course of the year 2008).</p> |

¹ Ausländerzentralregister – German central aliens' register

² Aufenthaltsgesetz – German residence act

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|  | Estonia | yes | <p>a) EU citizens: In 2008- 3 Lithuanians, 1- Polish and 1 Latvian were expelled from Estonia. In 2007 and 2006 no EU citizens were expelled from Estonia.</p> <p>b) Minors- 1 minor. He was expelled twice in 2007 and 2008. Spouse of an Estonian citizen- 1 person in 2004. No persons who hold an EC or Estonian long-term residence permit or an international protection status in Estonia have been expelled from Estonia.</p> <p>Most of the persons who were expelled had committed a serious crime or were released from the prison.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|----------------|-------------------------|--|---|--|--|--|--------------------|--|-------------------------|--|-------|---|-----------|---|-----------|---|--|--|----------|---|--|--|---------|---|---------|---|--------------|-----------|--------------|----------|--------------------|--|-------------------------|--|---------|---|---------|---|-----------|---|-----------|---|--------|---|----------|---|---------|-----|---------|----|--------------|------------|--------------|-----------|
|  | Ireland | yes | <p>The current position regarding EEA Nationals and Non-EEA Nationals is as follows:</p> <p>EEA Nationals - Removal/Exclusion Orders:</p> <p>Removal/Exclusion Orders are made by officials of the Department of Justice, Equality and Law Reform and signed by an officer at Assistant Principal Officer level pursuant to the European Communities (Free Movement of Person) (No. 2) Regulations 2006. These orders are used to remove persons from the State who are themselves European Union citizens or citizens of the European Economic Area. The Agreement on this Area was signed at Oporto on 2 May 1992, adjusted by the Protocol signed at Brussels on 17 March 1993 and amended from time to time since. Regulation 20 (1) (a) (iv) provides that Removal/Exclusion Orders are made in respect of persons who in the opinion of the Minister, the conduct or activity of the person is such that it would be contrary to public policy or it would endanger public security or public health to permit the person to remain in the State. Removal/exclusion orders impose an exclusion period from the State of up to a maximum period of 5 years. The Regulations governing removal/exclusion orders came into effect on 1 January 2007.</p> <p>The statistics below refer to EEA nationals.</p> <table border="1" data-bbox="607 963 2092 1431"> <thead> <tr> <th colspan="4" style="text-align: center;">Removal Orders Signed and Effectuated 01/01/2007 to 31/12/2008</th> </tr> <tr> <th colspan="2" style="text-align: left;">Signed 2007</th> <th colspan="2" style="text-align: left;">Effectuated 2007</th> </tr> </thead> <tbody> <tr> <td>Spain</td> <td style="text-align: center;">1</td> <td>Lithuania</td> <td style="text-align: center;">1</td> </tr> <tr> <td>Lithuania</td> <td style="text-align: center;">5</td> <td></td> <td></td> </tr> <tr> <td>Portugal</td> <td style="text-align: center;">1</td> <td></td> <td></td> </tr> <tr> <td>Romania</td> <td style="text-align: center;">4</td> <td>Romania</td> <td style="text-align: center;">3</td> </tr> <tr> <td>Total</td> <td style="text-align: center;">11</td> <td>Total</td> <td style="text-align: center;">4</td> </tr> <tr> <th colspan="2" style="text-align: left;">Signed 2008</th> <th colspan="2" style="text-align: left;">Effectuated 2008</th> </tr> <tr> <td>Hungary</td> <td style="text-align: center;">1</td> <td>Hungary</td> <td style="text-align: center;">1</td> </tr> <tr> <td>Lithuania</td> <td style="text-align: center;">6</td> <td>Lithuania</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Poland</td> <td style="text-align: center;">1</td> <td>Portugal</td> <td style="text-align: center;">1</td> </tr> <tr> <td>Romania</td> <td style="text-align: center;">132</td> <td>Romania</td> <td style="text-align: center;">34</td> </tr> <tr> <td>Total</td> <td style="text-align: center;">140</td> <td>Total</td> <td style="text-align: center;">40</td> </tr> </tbody> </table> | Removal Orders Signed and Effectuated 01/01/2007 to 31/12/2008 | | | | Signed 2007 | | Effectuated 2007 | | Spain | 1 | Lithuania | 1 | Lithuania | 5 | | | Portugal | 1 | | | Romania | 4 | Romania | 3 | Total | 11 | Total | 4 | Signed 2008 | | Effectuated 2008 | | Hungary | 1 | Hungary | 1 | Lithuania | 6 | Lithuania | 4 | Poland | 1 | Portugal | 1 | Romania | 132 | Romania | 34 | Total | 140 | Total | 40 |
| Removal Orders Signed and Effectuated 01/01/2007 to 31/12/2008 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Signed 2007 | | Effectuated 2007 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Spain | 1 | Lithuania | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Lithuania | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Portugal | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Romania | 4 | Romania | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 11 | Total | 4 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Signed 2008 | | Effectuated 2008 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Hungary | 1 | Hungary | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Lithuania | 6 | Lithuania | 4 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Poland | 1 | Portugal | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Romania | 132 | Romania | 34 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 140 | Total | 40 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | | <p>Non-EEA nationals - Deportation Orders</p> <p>Deportation Orders are made by officials of the Department of Justice, Equality and Law Reform and signed by the Minister for Justice, Equality and Law Reform pursuant to Section 3, Subsection 2 of the Immigration Act, 1999, as amended. The aforementioned Act has itself been subsequently amended by Section 10 of the Illegal Immigrants (Trafficking) Act, 2000.</p> <p>There are two types of Deportation Order as follows</p> <ul style="list-style-type: none"> (i) A consent Order and (ii) An enforcement Order <p>A consent Order is made in accordance with Section 3 (8) of the Immigration Act, 1999, as amended, and is made on foot of a signed written consent from the person concerned. Said Order has a limited lifespan of 3 months duration. This means that if the person the subject of the Order has not removed himself/herself from the State within the specified period, the Order lapses and ceases to have any effect.</p> <p>An enforcement Order, however, has no such limitation and exists in perpetuity unless it is revoked by the Minister. The revocation of a Deportation Order may be sought pursuant to the provisions of Section 3 (11) of the Immigration Act, 1999, as amended. However such an application would require substantial and compelling new grounds in order to be successful.</p> <p>Deportation orders will usually quote one of two subsections of the Immigration Act, 1999, as amended. Subsection 2 (f) refers to persons who have been refused refugee status in the State and Subsection 2 (i) refers to persons whose removal would, in the opinion of the Minister, be conducive to the common good. The latter category covers persons who for reasons other than refusal of refugee status have nonetheless become illegally present in the State.</p> <p>Section 6 of the Immigration Act 1999 provides that in determining whether to make a deportation order, the Minister shall have regard to the following factors:</p> <ul style="list-style-type: none"> (a) the age of the person (b) the duration of residence in the State of the person (c) The family and domestic circumstances of the person (d) the nature of the person's connection with the State, if any; (e) the employment (including self-employment) record of the person (f) the employment (including self-employment) prospects of the person (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions) (h) humanitarian considerations (i) any representations duly made by or on behalf of the person; |
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|---|----------------------|-------------------|--|---|--------------|--|-------------|
| | | | <p>(j) the common good; and (k) considerations of national security and public policy</p> <p>so far as they appear or are known to the Minister.</p> <p>The effect of a Deportation Order is that the person concerned must leave the State and remain thereafter out of the State.</p> <p>The onus is on a person served with a Deportation Order, to remove himself/herself from the State thereby complying with the provisions of the Order. When a person fails to comply with his/her obligations under a validly served Deportation Order, that person is deemed to be evading his/her Deportation Order and is classified as such. In the event of non-compliance with a Deportation Order, the State, specifically the Garda National Immigration Bureau, may proceed to enforce the Order. This may involve arrest and detention in accordance with Immigration law.</p> <table border="1" data-bbox="613 676 1487 775"> <tr> <td data-bbox="613 676 1487 740">No. of Deportation Orders signed from the commencement of the Immigration Act 1999 to date</td> <td data-bbox="1487 676 2096 740">15068</td> </tr> <tr> <td data-bbox="613 740 1487 775">No. of Deportation Orders effected/enforced</td> <td data-bbox="1487 740 2096 775">3276</td> </tr> </table> <p>Asylum seekers may also be transferred to other EU Member States on foot of a transfer order made under the provisions of Statutory Instrument No. 423/2003 – Refugee Act 1996 (Section 22) Order 2003 which gives effect to Council Regulation (EC) No. 343/2003 (the Dublin II Regulation).</p> | No. of Deportation Orders signed from the commencement of the Immigration Act 1999 to date | 15068 | No. of Deportation Orders effected/enforced | 3276 |
| No. of Deportation Orders signed from the commencement of the Immigration Act 1999 to date | 15068 | | | | | | |
| No. of Deportation Orders effected/enforced | 3276 | | | | | | |
|  | <p>Greece</p> | <p>yes</p> | <p>In our national legislation, and especially in Law 3386/2005, article 79 “Protection from expulsion”, provides the following:</p> <ol style="list-style-type: none"> 1) Expulsion is prohibited, if the foreigner: <ol style="list-style-type: none"> a) Is a minor and his parents or the persons who hold his parental care residing legally in Greece. b) Is a parent of a Greek minor and has his parental care or must provide alimony and he actually does so. c) Is over 80 years old. d) Has been recognized as a refugee or has sought for asylum, subject to articles 32 and 33 of the Geneva Convention of 1951. e) Is a minor, who has been subject to reformatory measures upon decision of the Minor Court. <p>Prohibition of expulsion also includes pregnant women during their pregnancy and six months after they give birth.</p> <ol style="list-style-type: none"> 2) Expulsion is not prohibited in cases b and c of the previous paragraph, if the foreigner is dangerous for public order and security or national security or public health. <p>Please note that the E.U. nationals are expelled only when a Court has issued a relevant decision or if there are special reasons of public security or public health.</p> <p>The available statistical data refer to total numbers and not to specific categories of stay.</p> | | | | |

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| <u>ARRESTED - EXPELLED - 2008</u> | | | |
|-----------------------------------|------------------------|------------------------|------------|
| TOTAL | ARRESTED FOR EXPULSION | EXPELLED | RATIO |
| | 81.741 | 20.555 | 25,14% |
| E.U. NATIONALS | | | |
| Nr. | NATIONALITIES | ARRESTED FOR EXPULSION | EXPELLED |
| 1 | BULGARIA | 171 | 147 |
| 2 | ROMANIA | 89 | 60 |
| 3 | POLAND | 12 | 9 |
| 4 | LITHUANIA | 7 | 3 |
| 5 | GERMANY | 6 | 5 |
| 6 | UNITED KINGDOM | 4 | 2 |
| 7 | FRANCE | 4 | 2 |
| 8 | ITALY | 3 | 3 |
| 9 | BELGIUM | 2 | 1 |
| 10 | SWEDEN | 2 | 1 |
| 11 | NETHERLANDS | 2 | 1 |
| 12 | SLOVAKIA | 1 | 1 |
| 13 | IRELAND | 1 | 1 |
| 14 | CYPRUS | 1 | 1 |
| 15 | MALTA | 1 | 1 |
| 16 | HUNGARY | 1 | 1 |
| 17 | PORTUGAL | 1 | 0 |
| 18 | CZECH REPUBLIC | 1 | 1 |
| 19 | SLOVENIA | 1 | 0 |
| | TOTAL | 310 | 240 |

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| | | | |
|---|------------------|-----|---|
|  | France | yes | <p>The cases in which Foreigners may be subject to expulsion are identified in the “Book” V of the Code of Entry and Residence of Foreigners (Code de l’entrée et du séjour des étrangers et du droit d’asile: CESEDA).</p> <p>- The principle, mentioned in Article L 521-1 of CESEDA is: expulsion may be imposed if the presence in France of a foreigner poses a serious threat to public order.</p> <p>- However, a number of foreigners enjoy special protection from expulsion. They can not be subject to expulsion unless this measure is a requirement for State security or public safety. They are mentioned in the article L 521-2:</p> <ol style="list-style-type: none"> 1) The foreigner, not living in the state of polygamy, father or mother of a French minor child residing in France, if he participates in the maintenance and education of the child. 2) The foreigner married for at least 2 years with a French, provided that the community of life has not stopped. 3) The foreigner who has lived in France for over 15 years, unless he was holding a temporary residence card "student". 4) The foreigner who has resided regularly in France for over 10 years, unless he was, during this period, the holder of a residence student. 5) The foreigner holding a pension of occupational injury or illness paid by a French organism with a permanent disability rate equal to or greater than 20%. <p>However, Foreigners listed above may be subject to expulsion if they were sentenced to imprisonment of at least 5 years.</p> <p>- Unlike those mentioned above, Foreigners listed below may not be subject to deportation if sentenced to imprisonment of at least 5 years. They may not be subject to an expulsion order except in cases of behavior that affects the fundamental interests of the State, or associated with terrorist activity, or acts constituting incitement to discrimination, to hatred or violence against a person or group of people. Those foreigners enjoying enhanced protection are (article L 521-3):</p> <ol style="list-style-type: none"> 1) The foreigner who has lived in France since the age of 13. 2) The foreigner who resides regularly in France for over 20 years 3) The foreigner who resides regularly in France for over 10 years and has been married for at least 3 years with a French citizen or an alien found in case 1 above 4) The foreigner who resides regularly in France for over 10 years and is the father or mother of a French minor child residing in France on condition that he contributes to the maintenance and education of the child 5) The foreign resident in France, whose health requires medical care. <p>- The article L 521-4 states that the foreign person under 18 can not be subject to expulsion.</p> <p>- Regarding the refugees, there is no provision under French law to protect the refugees that seriously threaten public order against the taking of a deportation order: in fact the articles L.521-2 , L.521-3 and L.521-4 of CESEDA, which define the categories of aliens protected against an expulsion order, do not cover Refugees as such.</p> |
|  | Latvia | yes | <p>There are no defined groups of foreigners in Latvian legislatives acts who enjoy special protection from expulsion.</p> <p>Expulsions: 2007: 1 third country national; 2008: 1 UE</p> |
|  | Lithuania | yes | <p>According to the Aliens Law there is only one group of aliens with a different status – those are EU nationals and their family members. They can be expelled from Lithuania only because of their threat to the public policy or public security. Since the accession to the EU (that is, since the day when this provision came into force) we had no such cases.</p> <p>Other aliens are treated according to common procedures (see below for details)</p> <p>However, minors can only be returned to another country. Unaccompanied minors can be returned only if they will be properly looked</p> |

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after in the receiving state according to their needs, age and their level of independency (decision is taken after the research done by the Department of Migration).

Number of returned minors (data from Migration department)

| No | Citizenship of the minor | 2004 | 2005 | 2006 | 2007 | 2008 |
|---------------|--------------------------|----------|----------|-----------|----------|----------|
| 1 | Byelorussian | | 1 | | - | |
| 2 | Russian | 1 | 3 | 5 | - | 2 |
| 3 | Ukrainian | | 1 | 10* | - | |
| Total: | | 1 | 5 | 15 | 0 | 2 |

* the minors were returned together with their mother

Common procedure:

Article 125. Obligation to Depart from the Republic of Lithuania

An alien shall be obligated to depart from the Republic of Lithuania if:

- 1) the alien's visa has been annulled;
- 2) the alien's temporary residence permit or permanent residence permit has been withdrawn;
- 3) the alien is staying in the Republic of Lithuania after the expiry of validity of the visa;
- 4) the alien is staying in the Republic of Lithuania after the expiry of the temporary residence permit;
- 5) the alien lawfully entered into the Republic of Lithuania, but is staying in the Republic of Lithuania without possessing a temporary or a permanent residence permit where he is obliged to possess one;
- 6) the alien has been staying in the Republic of Lithuania for a period exceeding the period of visa-free stay set for aliens

Article 126. Grounds for Expulsion from the Republic of Lithuania

1. An alien shall be expelled from the Republic of Lithuania if:

- 1) the alien has failed to comply with the requirement obliging him to depart from the Republic of Lithuania within a set time period;
- 2) the alien has entered in or is staying in the Republic of Lithuania illegally;
- 3) *the alien's stay in the Republic of Lithuania constitutes a threat to state security or public policy;*
- 4) a decision has been taken to expel the alien from another state to which the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

2. Provisions of paragraph 1 of this Article shall not apply to the aliens who may be returned to the country of origin or a foreign country as well as to asylum applicants. Such aliens shall be returned according to the provisions of Article 129 of this Law.

Article 128. Circumstances Taken into Account when Making a Decision to Expel an Alien or Due to which the Implementation of

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| <p>the Decision on the Expulsion of an Alien from the Republic of Lithuania May be Postponed</p> <ol style="list-style-type: none"> 1. When making a decision to expel an alien from the Republic of Lithuania account shall be taken of: <ol style="list-style-type: none"> 1) the period of his lawful stay in the Republic of Lithuania; 2) his family relationship with persons resident in the Republic of Lithuania; 3) his social, economic and other connections in the Republic of Lithuania; 4) type and extent of dangerousness of the committed violation of law. 2. The implementation of the decision regarding the expulsion of an alien from the Republic of Lithuania shall be suspended if: <ol style="list-style-type: none"> 1) the decision regarding expulsion of an alien from the Republic of Lithuania is appealed against in the court, except in cases when the alien must be expelled due to the threat which he constitutes to state security or public policy; 2) the foreign country to which the alien may be expelled refuses to accept him ; 3) the alien is in need of immediate medical aid, the necessity of which shall be confirmed by a consulting panel of a health care institution; 4) the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.). 3. With the disappearance of the reasons indicated in paragraph 2 of this Article the decision concerning expulsion of the alien from the Republic of Lithuania must be implemented without delay. <p>Article 129. Return</p> <ol style="list-style-type: none"> 1. Aliens, including minor aliens under the age of 18 who stay unlawfully on the territory of the Republic of Lithuania may be returned voluntarily or by force to the country of origin or to a foreign country to which they have the right to depart. 2. An unaccompanied minor alien shall be returned only provided that he will be duly taken care of in the foreign country to which the minor alien is returned, having regard to his needs, age and level of independence. 3. In case an unaccompanied minor alien cannot be returned to the country of origin or any other country, he must be granted the right to reside in the Republic of Lithuania on the ground set in subparagraph 8 of paragraph 1 of Article 40 of this Law. 4. The question of the alien's return shall be decided in cooperation with foreign countries and international organisations according to the concluded international treaties. <p>Article 130. Prohibition to Expel or to Return an Alien</p> <ol style="list-style-type: none"> 1. It shall be prohibited to expel or to return an alien to a country where his life or freedom is under threat as he may be subjected to persecution on the grounds of race, religion, nationality, political opinion or membership of a social group or to a country from whence he may later be expelled into such a country. 2. An alien shall not be expelled from the Republic of Lithuania or returned to a country where there are serious grounds to believe that in the country the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment. 3. The provisions of paragraph 1 of this Article shall not apply with respect to an alien who for serious reasons constitutes a threat to the security of the Republic of Lithuania or who has been convicted by an effective court judgement of a serious or particularly serious crime and constitutes a threat to the public. |
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| | | | 4. The alien shall not be expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off period according to the procedure established by the Government of the Republic of Lithuania, during which he, as the present or former victim of human trafficking, has to pass a decision on cooperation with the pre-trial investigation body or the court. |
|  | Hungary | yes | <p>In Hungary the Act I of 2007 contains the rules on the entry and residence of persons exercising the right of free movement and residence. The personal scope includes EEA nationals and their family members who do not have Hungarian citizenship, and also third-country national family members of Hungarian citizens. Pursuant to the provisions of this Act an expulsion measure may not be ordered against an EEA national or his/her family member who:</p> <ol style="list-style-type: none"> has resided in the territory of the Republic of Hungary for more than ten years; or is a minor, except if the expulsion is necessary for the best interests of the child. <p>The Act II of 2007 regulates the entry and stay of third-country nationals. Pursuant to the provisions of this Act a third-country national who:</p> <ol style="list-style-type: none"> resides in the territory of the Republic of Hungary under immigrant or permanent resident status; is bound to a third-country national residing in the territory of the Republic of Hungary under immigrant or permanent resident status by marriage or registered partnership, and has a residence permit, <p>may be expelled only if his/her continued residence represents a serious threat to national security, public security or public policy.</p> <ul style="list-style-type: none"> These provisions shall also apply to the immediate family members - defined in specific other legislation - of a third-country national who has applied to the refugee authority for refugee status for the duration of the application pending, and those with refugee status or to whom any subsidiary form of protection or temporary protection was granted. Third-country nationals who are victims of trafficking in human beings may be expelled during the time of deliberation they are afforded only if their residence in the territory of the Republic of Hungary constitutes any threat to national security, public security or public policy. An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care. <p>The immigration and also the asylum authority shall always take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures.</p> |
|  | Malta | yes | Malta does not have any submission to make to the ad Hoc query as there were no such cases of expulsion encountered. |
|  | Netherlands | yes | At this moment, these statistical data cannot be provided and if possible, it would take a lengthy period to do so because several ICT-files need to be linked which – at least recently – has not been done. |
|  | Austria | no | This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further. |
|  | Portugal | no | This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further. |
|  | Romania | yes | <p>In Romania there exist two laws regulating removal from the territory, this measure being differentiated according to the status of the person concerned. Thus:</p> <ol style="list-style-type: none"> Government Emergency Ordinance 194/2002 on aliens regime (republished); |

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| | | <p>2. Government Emergency Ordinance 102/2005 on free movement of the EU and EEA citizens on Romanian territory (further modified and added).</p> <p>Government Emergency Ordinance 194/2002 on aliens regime (republished) provides for two possibilities of removal the aliens from the territory:</p> <ul style="list-style-type: none"> - Return Decision, and - Escorted Removal. <p>The decision of return is an administration act produced by the Romanian Migration Office or its territorial units, by which aliens who have entered illegally, whose stay on the territory of Romania has become illegal, whose visa or right to stay has been cancelled or revoked, as well as those who have been refused extension of the temporary right to residence or whose right to permanent residence has ceased, and former asylum seekers, are forced to leave the territory of Romania.</p> <p>Escorted removal shall be carried out, under conditions of the present emergency ordinance, by specialised staff of the Romanian Migration Office, for following categories of aliens:</p> <ul style="list-style-type: none"> a) who did not voluntary leave the territory of Romania on expiry of the term provided by the return decision; b) who have illegally crossed the state border; c) who have been declared undesirable; d) against whom the measure of expulsion has been ordered. <p>Escorted removal may also be carried out in case of aliens who have physical or mental disabilities or represent a danger to public health. However, for some special cases, the national legislation prohibits removal from the territory. Thus, the removal is forbidden for the following situations:</p> <ul style="list-style-type: none"> a) the alien is underage, and his parents hold a right to residence in Romania; b) the alien is a parent of an underage Romanian citizen, if the minor is in his care or if there is the obligation to pay alimony, which is regularly fulfilled by the alien; c) the alien is married to a Romanian citizen, and the marriage is not one of convenience; d) the alien is aged over 80; e) there are justified fears that the alien's life is in danger or that he would be exposed to torture, inhuman or degrading treatments in the state he is going to be sent to; f) removal is prohibited by international documents Romania is a party of. <p>An exception from the above mentioned situations, are the aliens who represent a danger to public order, national security or who suffer from a disease which endangers public health and refuse to be subject to treatment ordered by medical authorities.</p> <p>Government Emergency Ordinance 102/2005 on free movement of the EU and EEA citizens on Romanian territory states that the competent Romanian authorities can limit the right to free movement on Romanian territory for the EU citizens and their family members <u>only</u> for reasons of public order, national security or public health.</p> <p>Among the ways the exercise of free movement on Romanian territory for the EU citizens and their family members can be limited are:</p> <ul style="list-style-type: none"> a) removal from the territory for public health reasons; b) expulsion. <p>Removal from the territory for public health reasons may be decided by the Romanian Immigration Office, upon request of the specialized departments of the Ministry of Health, only in case when the medical tests made by the concerned person within 3 months after his/her entry into Romania confirm the existence of one of the diseases set by the order of the minister of health.</p> |
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| | | | <p>Against an EU citizen or his/her family member who committed a crime on Romanian territory, expulsion can be decided according to the provisions of the Penal and Penal Procedure Codes.</p> <p>The EU citizen or his/her family member can not be expelled into a state where there are justified fears that his/her life will be endangered or he/she will be subject to torture or other inhuman or degrading treatments.</p> <p>Statistics:</p> <p>In 2007: 367 non-EU citizens who can fall under the categories of “special protection” as defined by the query were removed from the Romanian territory;</p> <p>In 2008: 511 non-EU citizens who can fall under the categories of “special protection” as defined by the query were removed from the Romanian territory;</p> <p>In 2007: 35 EU citizens who can fall under the categories of “special protection” as defined by the query were removed from the Romanian territory;</p> <p>In 2008: 1 EU citizen who can fall under the categories of “special protection” as defined by the query was removed from the Romanian territory.</p> |
|  | Slovenia | yes | <p>An EU citizen can only be expelled from Slovenia under special conditions. They are defined in Article 93.Z of Aliens Act as follows:</p> <p>“An EU citizen and family member who does not leave the Republic of Slovenia voluntarily shall be deported if:</p> <ul style="list-style-type: none"> - a final additional sentence of expulsion of the alien from the country has been passed on him/her; - his residence is revoked; - the issuing of a residence registration certificate or a residence permit was rejected since it might threaten public order and safety or the international relations of the Republic of Slovenia, or since there is a suspicion that his residence in the country will be associated with terrorist or other violent acts, illegal intelligence activities, drug trafficking, or with the committing of any other criminal acts; - the issuing of the first residence registration certificate or the first temporary residence permit was rejected since it might endanger public health.” <p>Safeguards regarding persons seeking international protection, including <i>non-refoulement</i> principle, decisions of competent authorities and protection from expulsion are included in International Protection Act.</p> <p>An applicant for international protection shall not be expelled unless the decision to reject his application or decision to revoke his refugee status is final.</p> <p>Requested statistical data is not available.</p> |
|  | Slovak Republic | no | This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further. |
|  | Finland | yes | In Finland the expulsion process is as follows: the Police is the competent authority for initiating an expulsion order. The police authority’s proposal for serving an expulsion is then forwarded to the Finnish Immigration Service to make a first instance decision on the case. Expulsion decisions can be contested in the appeal courts (Administrative Court and the Supreme Administrative Court). Thus there is a difference between the numbers of initial expulsion decisions and the actual implementation of those decisions as a consequence of a successful appeal |

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| | | | <p>In principle, the Police authority's decisions to propose expulsion should not be affected by the kinds of connections to Finland the person for whom the expulsion order is proposed has, including the types of special protection concerns noted in this query, such as refugeeism, family ties, EU-citizenship, etc. However, they do play a certain role, in some cases making the Police authority to decide against proposing an expulsion based on such special circumstances/considerations.</p> <p>The Finnish Immigration Service takes these matters into consideration in their decisions and nowadays quite a few Police proposals for expulsion are rejected by the Immigration Service based on the above mentioned factors. In 2008, the Finnish Immigration Service made 182 decisions on Police authority's expulsion proposals. Out of these, approximately 30 – 40 % the expulsion proposal was rejected. Refugees in particular are in a category of their own in this respect, expulsion is not applied to them very readily. Generally speaking it can also be said that there is a higher threshold to carry out expulsions of persons from third countries with long-term EC residence permit and EU- citizens. However, expulsions have been carried out based on the severity of the crime committed by persons falling under the special protection categories mentioned in this ad hoc query, even if they are EU-citizens.</p> <p>According to the Finnish Police authorities, in 2008 the total number of expulsions actually carried was 397. As for the special protection concerns listed in this query, in 2008 expulsions were carried out only in cases of 1 EU national and 6 third country nationals with a long term residence in Finland (over 5 years), in one case of EU national and 7 cases of third country nationals with family ties in Finland (family tie means either present or former spouse, child(ren) or parents), and one case of third country national with a refugee background and one case of third country national with other protection concern. In 2008, expulsions have not been carried out in cases of persons born in Finland, neither in cases of minors.</p> <p>The total number of removals from the country (which is a different category technically from expulsions) according to the Police authorities was 1082. The final figures for last year for this category have not come in yet, but most probably it will not exceed 1100). In this category, the number third country national removals to countries outside EU was 579, the number of third country nationals returned to an EU-country (Dublin returns) was 318 and the number of EU-nationals returned to another EU country was 183.</p> |
|  | Sweden | yes | In Swedish legislation there are no specific article on "special protection" the issue on protection is included in several articles under different sections in the Aliens law. In general very few persons with permits referred to in the ad hoc query are expelled. In all not more than 700 persons of which approx . 100 EU citizens. |
|  | United Kingdom | yes | <p>Removals, voluntary departures and assisted returns (1)(2),</p> <p>nationals of EU, January to September 2008 (P).</p> <p>_____ Number of</p> <p>Jan-Sep 2008 Nationals EU</p> |

Total cases

15 of 17

nationals of

815

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| | | | <p>of which: asylum cases, principal (3) 15 of which: asylum cases, dependants 5 of which: non-asylum cases 795</p> <hr/> <p>(1) Includes enforced removals, persons refused entry at port and subsequently removed (including cases dealt with at juxtaposed controls), persons departing voluntarily after enforcement action had been initiated against them, persons leaving under Assisted Voluntary Return Programmes run by the International Organization for Migration and since January 2005 persons who it has been established have left the UK without informing the immigration authorities. (2) Figures are rounded to the nearest 5 and may not sum to the totals shown because of independent rounding. (3) Persons who had sought asylum at some stage, excluding dependants. (P) Provisional figures.</p> |
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Section 56 of the German Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory

Special protection from expulsion

(1) A foreigner who

1. possesses a settlement permit and has lawfully resided in the Federal territory for at least five years,
 - 1a. possesses an EC long-term residence permit,
2. possesses a residence permit, was born in the Federal territory or entered the Federal territory as a minor and has been lawfully resident in the Federal territory for at least five years,
3. possesses a residence permit, has lawfully resided in the Federal territory for at least five years and cohabits with a foreigner as specified in numbers 1 to 2 as a spouse or in a registered partnership,
4. cohabits with a German dependent or partner in life in a family unit or a registered partnership,
5. is recognised as a person entitled to asylum, enjoys the legal status of a refugee in the Federal territory or possesses a travel document issued by an authority of the Federal Republic of Germany under the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), shall enjoy special protection from expulsion. He or she shall only be expelled on serious grounds pertaining to public security and law and order. Serious grounds pertaining to public security and law and order generally apply in cases covered by Section 53 and Section 54, nos. 5, 5a and 7. If the conditions specified in Section 53 apply, the foreigner shall generally be expelled. If the conditions specified in Section 54 apply, a discretionary decision shall be reached on his or her expulsion.

(2) In the cases covered by Sections 53 and 54, a discretionary decision shall be reached on the expulsion of an adolescent who has grown up in the Federal territory and possesses a settlement permit, and on the expulsion of a minor who possesses a residence permit or settlement permit. If

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the parents or the parent possessing the sole right of care and custody are/is lawfully resident in the Federal territory, the minor shall be expelled in the cases covered by Section 53 only; a discretionary decision shall be reached on his or her expulsion. Sentence 1 shall not be applicable where the adolescent has been unappealably convicted of wilfully committing a series of serious offences, of committing severe criminal offences or of committing a particularly severe criminal offence.

(3) A foreigner who possesses a residence permit in accordance with Section 24 or Section 29 (4) can only be expelled under the conditions stipulated in Section 24 (2).46

(4) A foreigner who has filed an application for asylum may only be expelled on condition that the asylum procedure is unappealably completed without recognition of the foreigner concerned as a person entitled to asylum or without a deportation ban being established pursuant to Section 60 (1). This condition shall be waived if

1. a case applies, the facts and circumstances of which justify expulsion pursuant to sub-section 1 or
2. a deportation warning under the provisions of the Asylum Procedure Act has become enforceable.