



Ad-Hoc Query on Deportation of foreigners convicted of a crime - procedural question

Requested by FI EMN NCP on the 24th of June 2015

Compilation produced on the 22nd of January 2016

Responses from Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, United Kingdom plus Croatia, Norway (26 in Total)

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1. Background Information

The Information Service of the Finnish Parliament would like to know about the legislation and the procedure in the other Member States regarding deportations of foreigners in conjunction with a conviction of a criminal offence.




There is an urgent need for this information; therefore we would kindly request the responses in two weeks' time by the **8th of July**.

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Question

Does the legislation in Your Member State include provisions to issue a deportation order to a foreigner in conjunction with a criminal conviction (i.e. in the same verdict/process) by a court of law or is a separate administrative process (e.g. by the immigration authorities) needed for the deportation order/decision?

2. Responses¹













		Wider Dissemination? ²	
	Austria	Yes	<p>According to Art. 3 para 2 subpara 4 of the Federal Office for Immigration and Asylum Procedures Act the competence to impose return decisions (and where applicable entry bans as well as enforcement orders) pursuant to Section 8 of the Aliens Police Act, lies with the Federal Office for Immigration and Asylum. According to Art. 3 para 2 subpara 3 of the Federal Office for Immigration and Asylum Procedures Act, the Federal Office for Immigration and Asylum is also responsible for ordering deportation of aliens against whom a return decision is enforceable pursuant to Art. 5 para 1a subpara 1 in conjunction with Art. 46 para 1 Aliens Police Act.</p> <p>A criminal conviction can lead to a return decision and subsequently a deportation order. Nevertheless, the exclusive competence to issue a return decision and impose a deportation order lies with the Federal Office for Immigration and Asylum. Therefore, Austrian legislation prescribes a separate administrative procedure by the Federal Office for Immigration and Asylum for a deportation order.</p>
	Belgium	Yes	In Belgium, the Immigration Office takes an administrative decision regarding the deportation of a foreigner, which is separate from the judicial decision (the legal basis is different).
	Bulgaria	Yes	The procedure in Bulgaria is the same as in Finland, i.e. the deportation decision is issued and executed by the Migration Directorate, which is the immigration service of Bulgaria. If a foreigner is convicted for a criminal offense and has an effective prison sentence, the deportation is executed after serving the sentence.

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

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








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	Cyprus	Yes	
	Czech Republic	Yes	Yes, in the Czech Republic the criminal court can punish the foreigner to order his /her expulsion in conjunction with a criminal conviction in the same process according to The Criminal Code and The Criminal Proceedings Act. A separate administrative process in relation to a criminal conviction is not necessary.
	Denmark	Yes	
	Estonia	Yes	Yes, in Estonia a court convicts a foreigner of an intentional criminal offence and imposes imprisonment. A court may impose expulsion with prohibition on entry (for up to ten years) as supplementary punishment on the offender. A foreigner shall be expelled from Estonia in this case without issuing a return decision.
	Finland	Yes	In Finland, the deportation order/decision is given to a foreigner by the Finnish Immigration Service in a separate administrative process from the criminal justice process.
	France	Yes	In France, the deportation order/decision is given to a foreigner by the French Immigration Service in relation with refusal of residence permit issuance / renewal or withdrawal due to public order threat in a separate administrative process from the criminal justice process.
	Germany	Yes	A criminal conviction does not automatically mean that the foreigner is required to leave the country. As a result, neither a criminal conviction nor the responsible criminal court judge can order a person's expulsion or deportation. Instead, this requires independent action by the responsible authorities, i.e. usually the foreigners authority. However, under certain circumstances such action can also be based on the criminal conviction. For example, according to current legislation a foreigner who has been sentenced to more than three years in prison for intentionally committing a criminal offence must be expelled.
	Greece	Yes	In Greece, the deportation decision is given by the Greek Immigration Service while the deportation order is given by the Police Headquarters.
	Hungary	Yes	In Hungary, the deportation order in conjunction with a criminal conviction is given to a foreigner by the court of law, in the verdict of the criminal justice process.
	Ireland	Yes	In Ireland it is a separate administrative process by the immigration authorities.
	Italy	Yes	In Italy, a deportation order is usually an administrative measure taken by the Ministry of the Interior, in particular by the local Prefects. However, in some cases, a deportation order may be issued as an alternative penalty in an ordinary trial, together with a conviction. In fact, according to the Consolidated Act on Immigration (Article 16), a judge sentencing an offending foreigner to a term of imprisonment of less than two years may, under certain circumstances replace this penalty with deportation (which may also be requested by the Public Prosecutor or by the defendant him/herself). Therefore, in these cases, deportation is the outcome of a criminal proceeding and not of a separate administrative process. The judge, however, cannot order deportation as an alternative penalty in the cases in which deportation is forbidden as an administrative measure.
	Latvia	Yes	In accordance with the Criminal Law Article 43 the Court while taking a decision on criminal case and considering the circumstances of the matter and the personality of the offender in the judgement can define an additional punishment - deportation (removal) from the Republic of Latvia jointly with the basic punishment and can determine the entry ban. The deportation is executed only after the basic






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			<p>punishment has been served or after conditional release prior to completion of punishment in accordance with the procedures laid down in law, or after entering into effect of a judgment in case of suspended sentence.</p> <p>Article 42 of the Immigration Law defines that a return decision shall not be issued (neither voluntary nor forced return decision) if an additional punishment for the foreigner has been imposed by a Court judgment – removal (deportation) from the Republic of Latvia.</p> <p>In case if the Court in conjunction with a criminal conviction has not defined in the judgement an additional punishment - deportation from Latvia for a foreigner, who is illegally staying on the territory of Latvia and who does not have the right to obtain legal status in Latvia, the relevant competent authority will issue a return decision for such foreigner in administrative process.</p>
	Lithuania	Yes	In Lithuania, the deportation order/decision is given to a foreigner in a separate administrative decision by the Migration department separately from the criminal justice process.
	Luxembourg	Yes	In Luxembourg, the return decision (article 109 (1) and 111 (1) of the amended law of 29 August 2008 on free movement of persons and immigration) or expulsion (article 116 (1)) of a third-country national is given by the Ministry in charge of Immigration in a separate administrative procedure from the criminal proceedings.
	Malta	Yes	In Malta the return decision/ removal order is given to a foreigner by the Principal Immigration Officer in an administrative process which is separate from the criminal justice process.
	Netherlands	Yes	In The Netherlands, the return decision is given to a foreigner by the Dutch Immigration Service in a separate administrative process from the criminal justice process.
	Poland	Yes	In case of Poland, the decision on obligation to return is given to a foreigner by the Border Guards in an administrative process (separate from the criminal justice process).
	Portugal	Yes	In Portugal there are two distinct circumstances: if it is an administrative procedure of expulsion - applied in situations where the citizen is detected irregularly-staying in national territory – the competence falls within the administrative authority, i.e. SEF. If it is an ancillary penalty of expulsion, the decision is delivered by the Court.
	Romania	Yes	<p>Removal from the territory of aliens is regulated by two different concepts, provided for by different pieces of legislation but which are complementary in this area – expulsion and escorted removal.</p> <p>Expulsion represents a complementary penalty provided for by the Romanian Penal Code [art. 66 para (1) c]. Expulsion is included in the category of complementary penalties regarding prohibition of certain rights. In this case it is prohibited, for a period between one and five years, the exercise of the right to stay on Romanian territory. Prohibition of exercising the right to stay on Romanian territory is decided by the court in the same time with the main penalty against an alien who committed a crime.</p> <p>The Government Emergency Ordinance 194/2002 on aliens' regime in Romania (with its subsequent modifications) provides for that escorted removal represents implementation of removal from the territory, return and expulsion, by accompanying the aliens outside the Romanian territory (art. 2 v^2).</p> <p>From the point of view of the Government Emergency Ordinance 194/2002 on aliens' regime in Romania, expulsion means the implementation of the complementary penalty of prohibition of exercising the right to stay on Romanian territory, previously decided by the court, based on provisions of art. 66 (1) c of the Romanian Penal Code (art. 2 v^1).</p> <p>Expulsion is implemented by the General Inspectorate for Immigration by escorted removal of the alien.</p> <p>In conclusion, the Romanian legislation provides for two types of removal, according to the situation of alien:</p>



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			<p>1. In case of aliens who were convicted with a complementary penalty of prohibition of exercising the right to stay on Romanian territory, the measure is implemented by the General Inspectorate for Immigration based on the decision of the court, without being necessary to issue a special return decision.</p> <p>2. Against the illegal immigrants a return decision is issued. The return decision represents the General Inspectorate for Immigration's administrative act finding the illegal stay of alien and establishing the obligation to return as well as the period for voluntary departure. By exception from point 2., in case of aliens declared undesirable and who presents the risk of absconding from the voluntary departure, the return decision finds the illegal stay in Romania and establishes the obligation to return as well as escorted removal.</p>
	Slovak Republic	Yes	<p>Yes. If a foreigner is issued a decision by a court according to which he/she is guilty of a crime, the court can issue him/her also an administrative expulsion from the territory of the Slovak Republic (if the person concerned is not a Slovak citizen or a citizen of other EU Member State, EEA, or a beneficiary of international protection). If the court issues an administrative expulsion, the Border and Alien Police department executes the removal. If the court does not issue the foreigner convicted of a crime an administrative expulsion, the respective Alien Police can administratively expel this person from the territory of the Slovak Republic according to the Act on Residence of Aliens (depending on whether the person concerned is a third-country national or an EU citizen) and issue him/her an entry ban to the territory of the Schengen area or Slovak Republic.</p>
	Slovenia	Yes	
	Spain	Yes	<p>For irregularly staying third country nationals, courts should, in principle, exchange any sentence to imprisonment shorter than six years for a judicial expulsion.</p> <p>For longer sentences, judicial expulsions should take place once $\frac{3}{4}$ of the total duration of imprisonment has passed or the person starts obtaining leaves from prison (the so called third degree of penitentiary regime). This decision is to be taken by the court in the initial sentence or at a later stage.</p> <p>Anyhow, the possibility of an administrative expulsion procedure still remains.</p>
	Sweden	Yes	<p>In Sweden a deportation order to a foreigner in conjunction with a criminal conviction is issued by a court of law. This is done in one process.</p>
	United Kingdom	Yes	<p>The UK has administrative arrangements for deportation.</p> <p>The Immigration Act 1971 enables the Secretary of State to deport Non-EEA nationals where their presence in the UK is not conducive to the public good, which includes those with criminal convictions in the UK and abroad.</p> <p>UK legislation (the UK Borders Act 2007) sets out when the Secretary of State for the Home Department must make a deportation order in respect of a foreign criminal, known as automatic deportation. The Immigration Act 1971 permits the Secretary of State to deport individuals where their presence in the UK is not conducive to the public good, which includes those with criminal convictions in the UK and abroad.</p> <p>Section 117C in Part 5A of the Nationality, Immigration and Asylum Act 2002 sets out how Article 8 is to be applied in cases</p>

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			<p>involving Non-EEA foreign criminals. It states that the deportation of foreign criminals is in the public interest. The more serious the offence committed, the greater is the public interest in deporting the foreign criminal.</p> <p>EEA nationals can be deported from the UK on the grounds of public policy or public security and this includes individuals who engage in serious or persistent low level offending on an individual case basis. All EEA (and Non-EEA) nationals who receive a custodial sentence in the UK are considered for deportation.</p> <p>For Non-EEA nationals there is no right of appeal against a decision to deport from the UK except in the specific circumstances set out in section 82 of the Nationality, Immigration and Asylum Act 2002. Those circumstances are:</p> <ul style="list-style-type: none"> • Refusal of a protection claim, • Refusal of a human rights claim, • Revocation of protection status. <p>Section 94B allows the UK to certify human rights claims (e.g. article 8 claims) made by foreign criminals so that they have their appeals out-of-country where this would not cause them serious irreversible harm.</p> <p>There is a similar power in Regulation 24AA of the Immigration (EEA) Regulations 2006 to allow the certification of EEA human rights claims so that appeals are non-suspensive.</p>
	Croatia	Yes	Pursuant to the Croatian Foreigners Act, the police may issue a decision to a foreigner, who has been validly sentenced by court due to the commitment of a criminal offence, prohibiting the foreigner from entering to and staying in Croatia (for a maximum of 20 years) and enforce expulsion. Individual assessments are being conducted on a case-by-case basis.
	Norway	Yes	When it comes to deportation decisions, Norway has a separate administrative process.
