

FACTSHEET

Expulsion from an EU State

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In many States it is common practice to expel a foreign national upon completion of a prison sentence. Prisoners Abroad has recently been made aware of British nationals imprisoned in a Schengen State who face expulsion back to the UK at the end of their sentence and are seemingly banned from re-entering that, or any other Schengen State, for a specified period of time. In some cases this has a detrimental impact on the former prisoner's right to respect for family life and in all cases severely restricts his/her right to freedom of movement within the EU. This fact sheet provides some information on this system but should not be viewed as an substitute for legal advice.

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1 What is a Schengen State?

The Schengen Convention came into force in 1995 and abolished the internal borders of the signatory States creating a single external border where immigration checks for the Schengen area are carried out in accordance with a single set of rules. Common rules regarding visas, asylum rights and checks at external borders were adopted to allow the free movement of persons within the signatory States without disturbing law and order. The Schengen area includes:

Austria	Finland	Iceland	Luxembourg	Portugal
Belgium	France	Italy	Netherlands	Spain
Denmark	Germany	Greece	Norway	Sweden

The UK and Ireland have not signed up to the Schengen Convention but will take part in those aspects that deal with cooperation between police forces and judicial cooperation.

2 What is a Schengen-wide ban?

The Schengen Information System (SIS) is part of the framework that implements the Schengen area. It is a shared database that uses a computerised system to place 'alerts' concerning persons or property at the disposal of the authorities of each Member State. The SIS gives authorities access to reports on persons and objects for the purposes of border checks and controls and other police and customs checks carried out within the country in accordance with national law. Its purpose is to help maintain public order and security.

Many States will expel a foreign national upon completion of a prison sentence. If the State is in the Schengen area it may decide to place an 'alert' against the name of that individual on the SIS which can prevent his/her entry into any other Schengen State.

3 Expulsions from EU states

Expulsion orders concerning an EU national from an EU State are lawful subject to certain conditions – there are strict requirements that must be met and anyone who is subject to an expulsion order should be able to access local judicial procedures to appeal against the expulsion.

The right to freedom of movement and residence of an EU national in another EU country may be restricted on grounds of public policy, public security or public health.¹ An expulsion order based on grounds of public policy or public security must be based on the personal conduct of the individual concerned rather than being a blanket rule for certain situations (e.g. having served a prison sentence). Previous criminal convictions may not in themselves constitute grounds for expulsion. Justification for expulsion must be that 'the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society²'.

An expulsion ban must also comply with the principle of proportionality. Accordingly, personal circumstances must be taken into consideration such as, how long the individual concerned has resided in the territory of the host country, their age, state of health, family and economic situation, integration into the host Member State and the extent of his links with the country of origin. Those who have permanent residency in the host state can only be expelled on serious grounds of public policy or security. If the individual concerned is a minor, or has been resident in the host state for the previous ten years, an expulsion order can only be based on imperative grounds of public security.

You should be officially notified in writing of a decision to expel you following your sentence. Unless contrary to interests of State security, you are also entitled to be informed of the grounds on which an expulsion order is taken. The written notification should include information on which court or administrative authority you can lodge an appeal with, the time limit for appeal and the time allowed for you to leave the country, which should not normally be less than a month.

¹ EC Directive 2004/58/EC, Article 27.

² *Ibid* Article 27(3)

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4 Human rights and expulsion orders

Under the European Convention on Human Rights and Fundamental Freedoms (ECHR) there is a right to respect for family life. Expulsion should not take place in contravention of this right unless it can be justified within the requirements set out in the ECHR. This means that it must be accordance with the law and necessary in the interests of national security, public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Factors which may be taken into account when determining whether there has been a violation of your right to respect for family life may include the strength of ties you hold with the expelling State, the extent of the disruption of your family life, whether there are real obstacles to establishing your family life elsewhere, and the gravity of the offence committed and your past criminal record.

The ECHR also prohibits torture and other cruel, inhuman or degrading treatment. Expulsion should not take place where there is a serious risk that you would be tortured or seriously ill-treated as a result.

5 Freedom of movement

In order to protect your right to freedom of movement within the EU, any decision to ban you from entering other Schengen States would need to be justified on the grounds mentioned above.

6 Can an expulsion order be permanent?

Depending on your circumstances, it may be unlawful for an EU State to order a lifetime or permanent ban with no opportunity for review. An automatic 'life ban' is not a proportionate way to achieve the aim of expulsion as it does not allow for your case to be assessed individually taking your personal circumstances into account.³ As an expulsion ban should be based on the threat of your future conduct there should be the potential for review after a certain period of time.

7 Can I challenge the expulsion order?

All decisions based on the above requirements should be properly justified and there should be a right to appeal every expulsion. You must be able to appeal the legality of the decision, the facts and circumstances on which the measure is based as well as compliance with the requirement of proportionality. If you have been removed from the country pending the appeal process you should still be permitted to submit your defence in person unless this would cause serious troubles to public policy or public security (this applies to expulsion but not to denial of entry decisions).

³ European Court of Justice, Case C-348/96 Donatella Calfa [1999] ECR I-11

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Any individual whose movement has been restricted on grounds of public policy or public security may apply to have the restriction lifted after a reasonable time, and at least after 3 years, by arguing that there had been a material change in their circumstances. A decision on this must be taken within six months but there is no right to entry to that country while your application is being considered.

You should contact a lawyer in the country that issued the expulsion order to determine how this order may be challenged locally. Whilst not every case will necessarily fall short of the requirements of European and human rights law, if a local challenge is unsuccessful, and depending on the circumstances of your case, a lawyer may advise you that you can make an application to the European Court of Human Rights or European Court of Justice. It is vital that you seek legal advice on these issues.

The law on the freedom of movement with the EU is a developing area and may be subject to change. **It is important that you consult with a lawyer to ensure that you receive the most up-to-date advice.**

If you require this leaflet in a large print format, please contact us. Our details are below.

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