NOTE

from: General Secretariat of the Council

to: Migration Working Party (Expulsion)

No. prev. doc.: 8428/94 ASIM 141

Subject: Situation of persons who cannot be expelled

Delegations will find herewith copy of a compilation of replies to the aforementioned questionnaire.

Belgium and Italy have not replied as yet.
B. LEGAL PROVISIONS

1. International law

Which treaties of international law guaranteeing protection against torture or inhuman or degrading punishment has your State ratified?

GERMANY

The Federal Republic of Germany is a Contracting Party to the following treaties of international law containing such protection provisions:

- European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (EHRC)
- International Covenant of 19 December 1966 on Civil and Political Rights
- Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- European Convention of 26 November 1987 for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

GREECE

Greece has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 10 December 1984 (Law No 1782/88). It has also ratified the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed in Strasbourg on 26 November 1987 (Law No 1949/91).

SPAIN

Among other international-law treaties, Spain is a party to the following:

- Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratified by an instrument of 19 October 1987;
- European Convention of 26 November 1987 for the prevention of Torture and Inhuman or Degrading Treatment or Punishment. Ratified by an instrument of 28 April 1989;
FRANCE

La Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales signée à Rome le 4 novembre 1950 entrée en vigueur le 3 mai 1974 et notamment son article 3.

IRELAND

The International Convenant on Civil and Political Rights, New York, 1966 was ratified by Ireland on 8 December 1989. The Optional Protocol was acceded to on 8 December 1989. The 2nd Optional Protocol was acceded to on 18 June 1993.

The Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by Ireland on 25 February 1953.

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, was signed by Ireland on 28 September 1992.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, was ratified by Ireland on 14 March 1988.

The Convention Relating to the Status of Refugees, Geneva, 1951 was acceded to by Ireland on 29 November 1956. The Protocol Relating to the Status of Refugees, New York, 1967 was acceded to by Ireland on 6 November 1968.

LUXEMBURG

- la Convention des Nations Unies contre la torture et autres peines ou traitement cruels, inhumains ou dégradants du 31 juillet 1987,
- la Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (art. 3), approuvée par une loi du 22 juin 1988,
- la déclaration universelle des droits de l'homme (art. 5),
- le Pacte international relatif aux droits civils et politiques (art. 7), approuvé par une loi du 3 juin 1983,
- la Convention de sauvegarde des droits de l'homme et des libertés fondamentales. La Convention a été approuvée au Luxembourg par une loi du 29 Août 1953.

NETHERLANDS

1. The Netherlands has ratified the following treaties of international law guaranteeing protection against torture or inhuman or degrading punishment:
   - The four 1949 Geneva Conventions;
   - The European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 1950:
AUSTRIA

Austria has ratified both general human rights treaties which include provisions on torture and conventions specifically against torture.


With regard to the specific Conventions against torture, we refer, in the European context, to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment of 26 November 1987, which was ratified in 1989 (Federal Legal Gazette BGBl. No 74/1989). In the universal context we would refer in this regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which was ratified by Austria in 1987 (Federal Legal Gazette BGBl. No 492/1987).

PORTUGAL

Portugal has subscribed to the most important instruments of international law governing this matter, in particular:

- Universal Declaration of Human Rights, on 9 March 1978;
- European Convention on Human Rights, on 13 October 1978;
- International Covenant on Civil and Political Rights, on 12 June 1978;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

FINLAND

The main treaties are as follows:

- Convention for protection of Human rights and fundamental freedoms (Council of Europe)
- Convention against torture and other cruel, inhuman or degrading treatment or punishment.
- International covenant on civil and political rights,
- Convention relating to the status of refugees of 28 July 1951 (Geneva Convention),
- Protocol relating to the status of refugees of 31 January 1967,
- European convention on extradition.

**SWEDEN**

- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
- The European Convention on Human Rights,
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

**UNITED KINGDOM**

The treaties of international law guaranteeing protection against torture or inhuman or degrading punishment which have been ratified by the United kingdom are:

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2. **National legal provisions**

   *Which obstacles to expulsion are provided for in your national law?*

**DENMARK**

The rules on obstacles to expulsion are laid down in Section 31 of the Aliens Act.

Under Section 31(1), an alien may not be expelled to a country in which he risks persecution on the grounds set out in Article 1 A of the Refugee Convention of 28 July 1951 or in which he is not protected against further transfer to such a country.

This provision applies to all aliens and not just refugees.

Information on the risk of persecution and information on protection against further transfer will, as appropriate, be obtained from the Foreign Ministry, the local Danish representation or other available sources, including humanitarian aid organizations, etc.
GERMANY

German law provides for obstacles to expulsion in Sections 51 et seq. of the "Ausländergesetz" (Law on the Entry and Residence of Aliens in Federal Territory - AuslG), which are in the main derived from guarantees of basic rights.

Section 51(1) of the AuslG prohibits the expulsion of an alien to a State in which there is a threat to his life or freedom owing to his race, religion, nationality, membership of a particular social group or political convictions. This provision corresponds to Article 33(1) of the Geneva Convention.

Section 53(1) of the AuslG states that no alien may be expelled to a State in which he would be exposed to a specific threat of torture.

Section 53(2) of the AuslG states that an alien may not be expelled to a State if the alien is wanted by that State for a criminal offence and there is a risk of the death penalty.

If another State has made a formal request for extradition or a request for arrest in connection with notification of a request for extradition, the alien may not be expelled to that State until a decision is taken on extradition (Section 53(3) of the AuslG).

Section 53(4) of the AuslG states that an alien may not be expelled where it follows from application of the EHRC that expulsion is inadmissible.

Section 53(6), first sentence, of the AuslG states that the State may refrain from expelling an alien to another State if there would be a substantial and specific threat to his person, life or liberty in that State.

A general risk that an alien may be exposed to criminal prosecution and punishment in another State and, provided no other situation covered by the above four sections arises, a specific threat of lawful punishment under the legal system of another State do not constitute obstacles to expulsion (Section 53(5) of the AuslG).

For reasons of international law or for humanitarian reasons or in order to protect the political interests of the Federal Republic of Germany, the highest Land authorities may, under Section 54 of the AuslG, decide to call a general halt to expulsion of aliens coming from certain States or aliens from other specific groups. If the decision is to halt expulsion for a period of more than six months, it must be agreed to by the Federal Ministry of the Interior in order to ensure consistency within the Federal Republic.

GREECE

Pursuant to the above Conventions and the Geneva Convention, which have become law in Greece, and also in accordance with Law No 1975/91 (Greek law on aliens), Greece does not expel aliens to their country of origin if there are substantive grounds for believing them to be at risk of being tortured.
SPAIN

- If an alien has been granted asylum, he is entitled not to be returned to a country in which he has good reason to fear prosecution or punishment.

- Refusal of admission or expulsion cannot entail non-compliance with the obligation laid down in Article 33(1) of the Geneva Convention relating to the Status of Refugees or involve transfer to a third State in which there is no effective protection against being returned to the country of persecution, in accordance with that Convention.

FRANCE

Le terme "expulsion" est compris ici au sens large d'éloignement, regroupant les notions d'expulsion proprement dite, de compétence ministérielle, motivée par une menace grave à l'ordre public ou une nécessité impérieuse pour la sûreté de l'État ou la sécurité publique, de reconduite à la frontière de compétence préfectorale motivée par l'irrégularité du séjour sur le territoire français et l'interdiction judiciaire du territoire prononcée comme peine principale ou accessoire par le juge judiciaire, pour irrégularité de l'entrée et du séjour, aide directe ou indirecte à l'entrée, à la circulation au séjour irrégulier d'un étranger, volonté de se soustraire à l'exécution d'une mesure de refus d'entrée ou d'éloignement, infractions graves (atteintes volontaires à la vie, proxénétisme, trafic de stupéfiants), volonté de se soustraire à une mesure de remise aux autorités d'un Etat membre de l'Union européenne qui avait admis l'intéressé à entrer ou à séjourner sur son territoire avant sa venue irrégulière en France.

a) S'agissant de l'expulsion prononcée par le ministre de l'intérieur :

- si elle est fondée sur le fait que la présence de l'étranger sur le territoire français constitue une menace pour l'ordre public, celle-ci :

  1. est totalement prohibée pour l'étranger de moins de dix-huit ans,

  2. ne peut intervenir en règle générale à l'endroit de certaines personnes protégées regroupées dans les 6 catégories suivantes :

     1. l'étranger qui justifie par tous moyens résider en France habituellement depuis qu'il a atteint au plus l'âge de six ans.

     2. l'étranger qui justifie, par tous moyens, résider en France habituellement depuis plus de quinze ans ainsi que l'étranger qui réside régulièrement en France depuis plus de dix ans, sauf s'il a été, pendant toute cette période, titulaire d'une carte de séjour temporaire portant la mention "étudiant".

     3. l'étranger, marié depuis au moins un an, dont le conjoint est de nationalité française, à condition que la communauté de vie n'ait pas cessé et que le conjoint ait conservé la nationalité française.
4. l'étranger qui est père ou mère d'un enfant français résidant en France, à la condition qu'il exerce, même partiellement, l'autorité parentale à l'égard de cet enfant ou qu'il subvienne effectivement à ses besoins.

5. l'étranger titulaire d'une rente d'accident de travail ou de maladie professionnelle servie par un organisme français et dont le taux d'incapacité permanente est égal ou supérieur à 20 %.

6. l'étranger résidant régulièrement en France sous couvert de l'un des titres de séjour prévus par la présente ordonnance ou les conventions internationales qui n'a pas été condamné définitivement à une peine au moins égale à un an d'emprisonnement sans sursis.

Toutefois, par dérogation au à la règle du § 6 ci-dessus, peut être expulsé tout étranger majeur qui a été condamné définitivement à une peine d'emprisonnement sans sursis d'une durée quelconque pour une infraction relative à l'aide à l'immigration ou au séjour irrégulier, à l'hébergement collectif ou au travail clandestin ou encore au proxénétisme.

De plus, par dérogation aux 2, 3, 4 et 5 § ci-dessus, peut être expulsé l'étranger majeur entrant dans l'un des cas précités qui a été condamné définitivement à une peine d'emprisonnement ferme au moins égale à 5 ans

- si l'expulsion constitue une nécessité impérieuse pour la sûreté de l'État ou la sécurité publique, tous les étrangers y compris ceux "protégés" listés ci-dessus, à l'exception de l'étranger mineur de moins de 18 ans, peuvent être expulsés.

b) S'agissant de la reconduite administrative à la frontière.

L'autorité préfectorale ne peut prendre une décision motivée de reconduite à la frontière que dans des cas précis limitativement énumérés par la loi.

c) S'agissant de l'interdiction judiciaire du territoire.

Le tribunal ne peut la prononcer que dans des cas précis limitativement énumérés par la loi.

L'interdiction judiciaire du territoire n'est pas applicable à l'encontre du condamné étranger mineur de moins de 18 ans.

Par ailleurs, pour certaines catégories d'étrangers protégés, le tribunal ne peut prononcer l'interdiction du territoire que par décision spécialement motivée au regard de la gravité de l'infraction ; ces catégories sont :

1) le condamné étranger père ou mère d'un enfant français résidant en France, à condition qu'il exerce, même partiellement, l'autorité parentale à l'égard de cet enfant ou qu'il subvienne effectivement à ses besoins ;
2) le condamné étranger marié depuis au moins un an avec un conjoint de nationalité française, à condition que ce mariage soit antérieur aux faits ayant entraîné sa condamnation, que la communauté de vie n’ait pas cessé et que le conjoint ait conservé la nationalité française ;

3) le condamné étranger qui justifie qu’il réside habituellement en France depuis qu’il a atteint au plus l’âge de dix ans ;

4) le condamné étranger qui justifie qu’il réside régulièrement en France depuis plus de quinze ans.

d) De plus la loi prévoit qu’un étranger ne peut être éloigné à destination d’un pays s’il établit que sa vie ou sa liberté y sont menacées ou qu’il y ait exposé à des traitements contraires à l’article 3 de la convention européenne de sauvegarde des droits de l’homme et des libertés fondamentales du 4 novembre 1950. Cette règle s’applique quelle que soit la mesure d’éloignement concernée.

IRELAND

National law provides for certain restrictions on the deportation of aliens who have been legally resident in Ireland for over five years.

LUXEMBURG

Les obstacles à l’expulsion sont :

- une demande d’extradition (article 9 de la loi modifiée du 28 mars 1972 sur l’entrée et le séjour des étrangers),

- l’étranger qui remplit les conditions pour acquérir l’indigéнат luxembourgeois par déclaration d’option, ne pourra être expulsé avant l’échéance du délai d’option (entre l’âge de 18 et 25 ans) (article 10 de la loi du 28.3.1972),

- l’introduction d’une demande d’asile ou la reconnaissance du statut de réfugié politique,

- est actuellement envisagé d’introduire dans la loi de 1972 la disposition suivante : "l’étranger ne peut être expulsé, ni éloigné à destination d’un pays s’il établit que sa vie ou sa liberté y sont gravement menacées ou qu’il y est exposé à des traitements contraires à l’article 3 de la convention européenne de sauvegarde des droits de l’homme et des libertés fondamentales du 4 novembre 1950, ou à des traitements au sens des articles 1er et 3 de la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants." (projet de loi).
NETHERLANDS

The Netherlands Aliens Act provides for the following temporary obstacles to expulsion

- Article 25 of the Aliens Act:
  There shall be no removal if expulsion of the alien from the Netherlands is not considered justifiable for reasons of his health or the health of one of the members of his family.

- Article 22, third indent, of the Aliens Act:
  Aliens who claim that expulsion from the Netherlands would oblige them to leave immediately for a country in which they have legitimate reasons to fear being subjected to torture or inhuman or degrading treatment or punishment shall not be removed except on special instructions from the Minister concerned.

- Article 32 of the Aliens Act:
  During the period in which an objection or administrative appeal is pending against a decision rejecting an application for admission, removal shall not be effected if:
  (a) the alien has made an application for admission as a refugee unless it can reasonably be accepted without doubt that there is no danger of persecution within the meaning of the Convention on Refugees;
  (b) the alien has made any other application for admission and there are reasons to assume that the objection or appeals procedure against rejection of the application stands a reasonable chance of success.

Chapter A6.4.1 of the 1994 circular on Aliens furthermore mentions the following temporary obstacles to expulsion:

Removal may not be effected:
- As long as the alien is allowed to remain in the Netherlands in accordance with one of the provisions of Articles 8 to 10 inclusive of the Aliens Act;
- As long as the applicant has not been ordered to leave;
- As long as the alien has been allowed to await the decision regarding an application for admission or an objection or appeals procedure against a rejected application for admission;
- As long as the deadline for departure has not yet expired (NB: following rejection of an application for admission the alien is as a rule granted a reasonable period – mostly 4 weeks – in which to leave voluntarily);
- If it appears from a police notice or other notice that an alien is wanted (and is to be arrested for the purpose of extradition) by a foreign authority;
- If it concerns an alien who has been arrested on suspicion of having committed a punishable act, against whom criminal proceedings have been initiated or who has been sentenced to an unconditional prison sentence. In such cases no removal may take place as long as the investigation has not yet been completed or punishment has not been undergone unless the Public Prosecutor raises no objection to removal.

AUSTRIA

A prohibition on expulsion is laid down by paragraph 37 of the Aliens Law, Federal Legal Gazette BGBl. No 110/1994. Under it, the expulsion of an alien to another State is inadmissible where there are solid grounds to believe that he runs the risk of being subjected there to inhuman treatment or punishment or to the death penalty.
Furthermore, the expulsion of an alien to another State is inadmissible where the expulsion is counter to the recommendation of a measure taken by the European Commission for Human Rights or the recommendation of a provisional measure enacted by the European Court for Human Rights.

PORTUGAL

Obstacles to expulsion are provided for in the national legal system:

- the Constitution of the Portuguese Republic lays down that extradition will not be allowed for political reasons nor for crimes punishable by the death penalty under the law of the requesting State;

- the Aliens Legislation stipulates that expulsion may not "be carried out to any country in which the alien may be persecuted for reasons which, under the law, justify the granting of the right of asylum" (these are persecution or a serious threat of persecution as a result of a person's activity in support of democracy, social and national liberation, peace between peoples, freedom and human rights, or persecution by virtue of one's race, religion, nationality, political opinions or adherence to a particular social group).

Although the ordinary law and the constitutional law confine themselves to setting out the abovementioned obstacles, one cannot but consider that expulsion and extradition, notwithstanding the many differences between them, are two facets of one situation: the expulsion of an alien by coercive means. It is thus clear that in the case of expulsion many of the general principles governing extradition and limiting the possibility of its implementation must be observed; expulsion is not possible in the following cases:

- when the requirements of the European Convention for the Protection of Human Rights and Fundamental Liberties of 4 November 1950, or of other relevant international instruments ratified by Portugal, are not satisfied or respected;

- when it may lead to judgment by a special court or it involves the enforcement of a sentence handed down by a court of that nature;

- when the act concerned is punishable with the death penalty or with life imprisonment;

- when it concerns an offence punishable by a permanent security measure.

FINLAND

According to Finnish Aliens' act (40 § par. 2) no one should be returned to an area where he may be subjected to inhuman treatment, or persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or to an area from which he may be further sent to such an area.
SWEDEN

An alien expelled may never be conveyed to a country where there is firm reason to believe that the alien would be in danger of suffering capital or corporal punishment or of being subjected to torture, nor to a country where he is not protected from being sent to a country where he would be in such danger.

When an expulsion order is to be put into effect, the alien may not be sent to a country where he risks persecution, nor to a country where he is not safeguarded against being sent to a country where he risks persecution.

An alien may, however, be sent to a country as referred to above if he cannot be sent to any other country and if he has shown, by committing a particularly serious criminal offence that public order and safety would be seriously endangered by his being allowed to remain in Sweden. This does not apply if the persecution threatening him in the other country implies danger to his life or is otherwise of a particularly grave nature. The same applies if the alien has conducted activities endangering the national security of Sweden and if there is reason to suppose that he would continue to engage in such activities here and he cannot be sent to any other country.

A war-resister may not be sent to a country where he risks being sent to a theatre of war. The same impediments applies to countries where he has no safeguards against being sent on to a country where he will run this risk.

Furthermore it shall be noted that these regulations cannot bee isolated from the rest of the aliens act. For example shall possible impediments to implementation be taken into account in connection with the examination of the question of removal. If, in the course of such an examination, it proves that it would not be possible to implement the removal decision, such a decision should not be made.

UNITED- KINGDOM

All asylum applications are considered in accordance with our obligations under the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol.

Asylum seekers may not be removed from the United Kingdom unless and until their claim is shown to be unjustified, or unless they are specifically excluded from the protection of the Convention by Article 1(f). Furthermore, article 32 permits the expulsion of a refugee who is a risk to national security or public order in the country of asylum. In addition, Article 33 permits the refoulement of a refugee/asylum seeker who has been convicted of a particularly serious crime and poses a danger to the public in the country of asylum or is a risk to national security.

The Asylum and Immigration Appeals Act 1993 provides that nothing in the Immigration Rules should lay down any practice which would be contrary to the Convention. Where a person fails to qualify under the Convention, account is taken of our obligations under other international instruments, including the European Convention on Human Rights, and grants of exceptional leave to remain may be appropriate where a person qualifies under that instrument.
3. **Residence status**

(a) **Legal residence status**

What legal residence status is granted in your country to individuals who cannot be expelled for legal or political reasons?

- **Reuniting families**

  Do the individuals in question have a right to be reunited with their families?

**DENMARK**

Under Section 31(2), the provision in subsection 1 applies mutatis mutandis where the alien has been issued a residence permit in accordance with Section 7(2) or (4) in conjunction with (2). However, this does not apply if there are definite grounds for believing that the alien poses a threat to national security or if, after final conviction for a particularly dangerous crime, the alien may be presumed to pose a clear threat to the life, limb, health or liberty of other persons.

Under Section 32a of the Aliens Act, a rejection of an application for a residence permit under Sections 7 and 8 or a document discontinuing or withdrawing such a residence permit must also determine whether the alien may be expelled, if he does not leave the country voluntarily, in accordance with Section 31.

**GERMANY**

Individuals who cannot be expelled owing to the ban on expulsion of the politically persecuted are granted a residence licence once it has been incontrovertibly demonstrated that the conditions laid down in Section 51(1) of the AuslG obtain (Section 70 of the "Asylverfahrensgesetz" (Asylum Procedure Law - AsylVfG)).

Individuals who are not expelled pursuant to Sections 53 and 54 of the AuslG are granted the status of tolerated persons, i.e. expulsion is halted temporarily (Section 55 of the AuslG).

In cases where there are obstacles to voluntary departure and expulsion for which the alien is not answerable, consideration may also be given to the granting of a residence licence (Section 30(3) of the AuslG).

The spouse or under-age child of an alien in possession of a residence licence may also be granted a residence licence in order to reunite and keep together the alien and his family in Federal German territory (Section 31(1) in conjunction with Section 30(1) to (4) of the AuslG).

Family members are not allowed to join aliens whose residence is only being tolerated.

**GREECE**

In cases where aliens cannot be expelled from Greece for legal or political reasons, they are allowed temporary residence either "on sufferance" or with a residence permit.

- No provision is made for this in Greek law (Article 14, Law No 1975/91).
Persons having the right of asylum are issued a residence permit.

Where asylum is not granted, persons who cannot be expelled remain in the country until such time as the expulsion order can be implemented.

Reuniting families

If asylum has been granted, the right to family reunification extends to ascendants and descendants in the first degree and the spouse or partner in a similar cohabitation relationship, except in cases of separation, divorce, majority or independence from the family.

Persons against whom an expulsion order has been made, but cannot be implemented, have no right of family reunification.

FRANCE

Quatre hypothèse se présentent :

= soit il n'est pas possible de prononcer l'éloignement. Dans ce cas l'étranger auquel le séjour a été refusé est invité à quitter le territoire par ses propres moyens, s'il ne le fait pas il devient clandestin ;

= soit la mesure d'éloignement a été prononcée, mais l'on renonce à l'exécuter faute de pays de renvoi respectant la règle de article 3 de la convention européenne des droits de l'homme. Dans ce cas une assignation à résidence est prononcée. Si la mesure d'éloignement initiale était un arrêté de reconduite à la frontière, l'étranger assigné à résidence ne peut bénéficier d'une autorisation provisoire de travail ; en revanche s'il s'agissait d'un arrêté d'expulsion, bien que dans ce cas il n'ait pas, non plus, vocation à se voir délivrer une telle autorisation, celle-ci peut exceptionnellement être accordée ;

= dans les cas d'éloignement non exécutés en l'absence de documents de voyage, l'étranger qui demeure matériellement sur le territoire ne reçoit aucun autre document. Toutefois, dans certains cas, il peut être assigné à résidence dans l'attente du document de voyage lorsqu'il est probable qu'il recevra bientôt le dit document.

Dans de tels cas le regroupement familial n'est naturellement jamais autorisé. Si la personne est assignée à résidence avec une autorisation provisoire de travail, elle bénéficie des droits sociaux accordés aux étrangers travaillant légalement.

Elle ne peut en revanche jamais bénéficier du revenu minimum d'insertion.

L'aide médicale d'urgence et l'aide sociale à l'enfance sont quant à elles toujours possibles, y compris pour les étrangers irréguliers.
IRELAND

In general the "legal residence status" of an alien who cannot be expelled will be left undecided until such time as the obstacles preventing removal are overcome or otherwise.

- The alien does not have a right of family reunification.

LUXEMBOURG

Les étrangers qui, pour des raisons d'ordre juridique ou politique ne peuvent être éloignés sont tolérés au pays en attendant que les circonstances qui empêchaient leur retour éventuel au pays aient disparu.

Si leur expulsion n'est pas possible après une durée raisonnable, ces personnes peuvent bénéficier d'une autorisation de séjour pour des raisons humanitaires.

Ces personnes ont droit au regroupement familial dans les mêmes conditions que les ressortissants non-communautaires, c.à.d. après une résidence légale d'un an et sur présentation du permis de travail B (d'une durée de 4 ans) qui est délivré après un permis de travail initial d'une durée d'un an.

NETHERLANDS

Aliens who are not expelled on the basis of any of the abovementioned temporary obstacles are not granted residence status. Their expulsion is merely suspended.

Aliens who are not regarded as refugees and who are not granted a residence permit on humanitarian grounds may be granted a conditional residence permit if it is established that return to the country of origin would be particularly harsh on the alien in view of the general situation in that country.

- Aliens have no right to be reunited with their families in any of these cases. This is only possible if the alien resident in the Netherlands holds a residence permit.

AUSTRIA

(a) In the event of the inadmissibility and/or actual impossibility of expulsion, paragraph 36(2) of the Aliens Law provides for the issue of a suspension of expulsion for a maximum of 1 year. This is not a right of residence; the alien is instead granted residence, in a legally enforceable form, for a specified period of time. After the expiry of this period there must be a renewed investigation into whether expulsion is possible.

Under paragraph 8 of the Asylum Law, BGBI. No. 8/1992, an alien may in cases meriting particular consideration be granted a restricted residence permit following refusal of an asylum application, where the expulsion is legally or actually impossible, or cannot be imposed on him for compelling reasons because of the situation in his country of origin, or - in the case of a stateless person - in the country in which he was last normally resident.
The restricted residence permit may be granted for a maximum of one year. It may be extended for periods of not more than one additional year at a time if the reasons for its issue continue to apply.

The subject of an expulsion suspension or of a restricted residence permit has no right to family reunion.

PORTUGAL

The law does not provide for any specific status regarding the residence of individuals who, having been the subject of an expulsion order or legal proceedings leading to that end, may not then be expelled for legal or political reasons. General status is thus conferred on them whereby residence of an exceptional nature may be granted for a maximum period of five years, with the possibility of renewal for further periods of the same duration.

The Portuguese Aliens Legislation specifically provides that, when an application for a residence visa is assessed, consideration will be given, inter alia, to the criterion whereby the reuniting of families should be facilitated (spouse and minor or handicapped natural or adopted children, and members of the resident’s or spouse’s family in the ascending line provided that they are dependents).

FINLAND

Refugee status, residence permit due to his need for protection or residence permit on humanitarian grounds.

Yes.

SWEDEN

If enforcement of an expulsion order cannot be carried out for legal or political reasons the alien can be granted a permanent residence permit - if the obstacle can be assessed to be of a more permanent nature. If the obstacle can be assessed to be more or less temporary, a temporary residence permit is granted. A temporary residence permit can also be granted when an expulsion order cannot be carried out and the alien has committed a serious crime.

When a permanent residence permit is granted the alien has the right to be reunited with his or her family, otherwise not.

UNITED-KINGDOM

Those recognised as refugees are normally granted leave to remain in the United Kingdom for 4 years in the first instance. A refugee may apply for indefinite leave to remain towards the end of the period of initial leave.
A person who fails to qualify as a refugee but who nevertheless is allowed to remain in the United Kingdom for humanitarian reasons will normally be granted 12 months exceptional leave to remain. Applications for further exceptional leave will be considered. Towards the end of a period of seven continuous years spent on exceptional leave, a person may apply for indefinite leave to remain.

Whilst there is no right to family reunion for refugees under the 1951 Convention, the United Kingdom takes steps to safeguard family unity where necessary, in line with the recommendations of the Final Act of the Conference which adopted the 1951 Convention. Although all such applications are considered under the appropriate on-entry Immigration Rules certain criteria are waived, as a concession, where the sponsor is a refugee. Once recognised as a refugee, the refugee’s family may make an immediate application to join the sponsor.

A person with exceptional leave to remain must have spent 4 years in the United Kingdom in that capacity before becoming eligible to be joined by dependant family members. However, exceptions to the 4 years qualifying period can be (and are) made where there are exceptionally compelling compassionate circumstances. Applications from the dependants of a sponsor on exceptional leave are considered in accordance with the appropriate on-entry Immigration Rules, however the requirement for the sponsor to be settled here is waived, as a concession.

(b) Other rights

- Work permit

Can individuals who cannot be expelled for legal or political reasons be granted a work permit?

- State benefits such as welfare, unemployment benefit

Is an individual in need who cannot be expelled entitled to state benefits such as unemployment benefit, welfare or other state support? If so, on what conditions?

GERMANY

Section 19(1) of the "Arbeitsförderungsgesetz" (Employment Promotion Law) in conjunction with Section 1(1) of the "Arbeitserlaubnisverordnung" (Work Permit Regulation) allow rejected asylum applicants whose presence is tolerated to be granted a work permit, subject to the condition that, taking account of the situation and development of the labour market in each individual case, no German with a better claim or equivalent foreign worker (e.g. EU/EEA national) can be found on the open labour market. In cases of particular hardship a work permit may also be granted even if workers with a better claim are available.

Individuals who may not be expelled for humanitarian reasons or for reasons of international law and whose presence is tolerated are also covered by this rule.
Is an individual in need who cannot be expelled entitled to State benefits such as unemployment benefit, welfare or other State support? If so, on what conditions?

**Unemployment benefits**

In Germany there are the following social security services for the unemployed:

1. **Unemployment insurance for employees** who have been members for a specified minimum period of the "Versichertengemeinschaft" (Insured Persons' Association), i.e. the association of contributors to the Federal Labour Office (which is responsible for unemployment insurance),

   - if all the individual conditions are fulfilled, they are granted "unemployment pay" irrespective of need,

2. **Unemployment relief**, which is a special welfare benefit for individuals who have not or only briefly been members of the association of contributors to the Federal Labour Office, or whose claim to insurance benefit in the form of unemployment pay has expired,

   - they are granted unemployment relief from general tax resources according to need.

3. **National assistance**, which is a general system of welfare to guarantee subsistence.

   Entitlement to unemployment pay is conferred when the beneficiary

   (a) has his domicile or usual place of residence in Germany,
   (b) is unemployed,
   (c) is available for employment, which presupposes in the case of foreign workers that they have a work permit or are certain of being granted one,
   (d) has personally given notification that he/she is unemployed,
   (e) has applied for unemployment pay, and
   (f) has completed the qualification period (twelve months of contributory employment within the previous three years).

   Entitlement to unemployment relief exists where the beneficiary fulfils conditions (a) to (e) as applicable to unemployment relief, has been in contributory employment within the terms of the Employment Promotion Law for a basic period of at least 150 working days within the year preceding notification of unemployment (qualifying period) and is in need.

   Aliens who may not be expelled can also apply for unemployment pay or unemployment relief provided they fulfil the general conditions.

   Individuals whose presence is being tolerated because there are obstacles to their voluntary departure and their expulsion are granted benefits under the "Asylbewerberleistungsgesetz" (Law on Asylum Applicant Benefits).
If the beneficiary is answerable for the obstacles which have arisen as in the case of destruction or loss of a passport, the same benefits as for asylum applicants are paid for the first twelve months. The necessities of life, in particular the need for food, housing, heating, clothing, health and physical care, and household consumer durables and goods, are secured primarily by benefits in kind. In addition, a monthly amount of DM 10 until the age of 15 or DM 80 from the age of 15 is paid to cover the personal needs of daily life. Further payments may be made in the case of sickness or childbirth, in connection with the work situation or in special cases. Where benefits take the form of money or its equivalent, e.g. vouchers, the following monthly totals are involved:

<table>
<thead>
<tr>
<th>Head of household</th>
<th>440 DM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of household</td>
<td></td>
</tr>
<tr>
<td>- up to the age of 8</td>
<td>260 DM</td>
</tr>
<tr>
<td>- from the age of 8 to the age of 15</td>
<td>350 DM</td>
</tr>
<tr>
<td>- from the age of 15</td>
<td>390 DM</td>
</tr>
</tbody>
</table>

If, on the other hand, the beneficiary is not answerable for the obstacles which have arisen, he/she is paid the same amounts as an asylum applicant after twelve months' residence pursuant to Section 2 of the Law on Asylum Applicant Benefits, i.e. benefits in line with the "Bundessozialhilfegesetz" (Federal National Assistance Law – BSHG). Where benefits take the form of money, payment must be based on the rules of the BSHG. In the case of the original Federal Länder, the average amounts as at 1 July 1994 are as follows:

<table>
<thead>
<tr>
<th>Head of household</th>
<th>519 DM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of household</td>
<td></td>
</tr>
<tr>
<td>- up to the age of 8</td>
<td>259 DM</td>
</tr>
<tr>
<td>- from the age of 8 to the age of 15</td>
<td>337 DM</td>
</tr>
<tr>
<td>- from the age of 15 to the age of 19</td>
<td>467 DM</td>
</tr>
<tr>
<td>- from the age of 19</td>
<td>415 DM</td>
</tr>
</tbody>
</table>

In addition, under Section 120 of the BSHG, sickness benefit, assistance for mothers and women who have recently given birth, and care allowances must be provided. Additional benefits may also be provided where justified in individual cases.

Indians who have been issued with a residence licence are granted national assistance benefits under the provisions in Section 120 of the BSHG.

GREECE

- Work permits may be granted only to those who cannot be expelled because they have been granted refugee status.

- Medical and hospital care is provided for those who cannot be expelled.
SPAIN

- Yes, if they have been granted refugee status. No, in other cases.
- For such purposes, refugees enjoy the same rights and freedoms as other legal foreign residents.
- Aliens whose expulsion cannot be implemented do not enjoy such rights.

FRANCE

Voir sous 3 a).

IRELAND

- In Ireland work permits are issued to employers rather than to individual aliens. An alien who cannot be expelled does not have a right to be granted a work permit.
- The alien may apply for normal social welfare payments.

LUXEMBURG

- Les personnes qui bénéficient d'une autorisation de séjour provisoire pour des raisons humanitaires sont assimilées aux autres étrangers en séjour légal et peuvent se voir accorder un permis de travail.
- L'étranger, en attente d'un éloignement a accès à une aide sociale octroyée par le Commissariat du Gouvernement aux étrangers. Cette aide vise à couvrir les frais de logement et de nourriture. Ces personnes n'ont en principe pas droit aux allocations de chômage, alors que ce droit ne naît qu'après une période de travail de 6 mois consécutifs.

NETHERLANDS

- Aliens who have been granted a conditional residence permit may not work in the first year; in the second year they are given the possibility of short-term employment for which a work permit is required. In the third year they acquire free access to the labour market.
- Other aliens, for instance those whose removal is suspended for any of the reasons mentioned under Question B2, may not in principle work.
- As long as an alien resides in the Netherlands with the Government's approval (see cases referred to in B2), he is entitled to state benefits.
AUSTRIA

(b) Persons who for legal or political reasons cannot be expelled cannot receive a work permit under paragraph 4(3) point 7 of the Foreign Workers Law, BGBl. No. 218/1975 as amended by BGBl. No. 19/1993, because the issue of a work permit is dependent on legal residence. It follows that no right to unemployment benefit exists.

In Austria, responsibility for enacting implementing legislation regarding the social welfare services falls to the individual federal Länder. There are therefore nine different sets of rules concerning this subject, some of which permit the provision of social welfare assistance irrespective of the legal residential status of the person in need.

PORTUGAL

- Under Portuguese law a residence permit automatically leads to a work permit, whether under the general arrangements or the special arrangements for granting permits.

- Provided that his residence situation on Portuguese territory has been regularized, under the constitution the foreign citizen enjoys the same rights to social benefits as a national.

FINLAND

- No work permit is needed according to Aliens' act (Art. 25).

- By applying an asylum as persons mentioned in a) are entitled to state benefits.

SWEDEN

Work permit is always granted. The alien has the same rights to state benefits as other foreigners residing in the country.

UNITED KINGDOM

Refugees and those granted leave to remain on an exceptional leave basis are free to seek employment and are eligible for receipt of the full range of state benefits and welfare services, subject to the same conditions applied to United Kingdom citizens.
4. **Legal remedies**

*Can the alien in question lodge an appeal against threatened expulsion? If so, do appeals have suspensory effect?*

**GERMANY**

If the asylum procedure, in which (since 1 July 1992) a decision is taken simultaneously on whether the conditions in Section 51 of the Ausländergesetz (AuslG) obtain and whether the obstacles to expulsion referred to in Section 53 of the AuslG exist, reaches a negative conclusion, the alien is normally at the same time threatened with expulsion. The decision – both on whether the asylum application is justified and on whether the threat of expulsion is lawful – is monitored by an administrative court. An appeal does in principle have suspensory effect, but this is not the case if the asylum application has been rejected as manifestly unfounded (Section 75 in conjunction with Section 38(1) of the AsylVFG). In such a case, it is possible to apply for the appeal to have suspensory effect for the purposes of temporary legal protection.

In all other cases in which the existence of obstacles to expulsion is denied by the Aliens Authority following an examination and decision without simultaneous or prior asylum proceedings, a threat of expulsion will be made by the competent Aliens Authority of the Länder, which are responsible for the administrative enforcement of such threats. There is then in the main no legal possibility of a plea or appeal against the threat of expulsion having suspensory effect (see the enforcement laws of the Länder or their laws implementing the "Verwaltungsgerichtsordnung" (Administrative Court Code)). In such cases also, however, it is possible to apply for an appeal to have suspensory effect for the purposes of temporary legal protection.

**GREECE**

In accordance with legislation on aliens in force in Greece, an alien against whom an expulsion order has been issued may lodge an appeal, which can have suspensory effect. He may also appeal to the highest administrative court, the Council of State.

**SPAIN**

Any alien against whom an expulsion order has been made may exercise the judicial remedies available.

The lodging of such appeals may have suspensory effect if this is requested in the appeal lodged by the alien and granted by the judicial authority.
FRANCE

L’étranger qui a fait l’objet d’une expulsion peut exercer un recours en annulation de la décision dans le délai de droit commun de deux mois suivant la notification de la décision. Le recours n’est pas suspensif.

La décision d’expulsion peut donc être exécutée d’office :

- s’agissant de l’arrêté préfectoral de reconduite à la frontière : l’étranger qui fait l’objet d’un arrêté préfectoral de reconduite à la frontière peut dans un délai de 24 heures de la décision faire un recours en annulation devant le président du tribunal administratif qui statue lui-même ou son délégué dans un délai de 48 heures.

La décision ne peut être exécutée avant l’expiration du délai de 24 heures ou, si il est saisi, avant que le président du tribunal administratif (ou son délégué) n’ait statué (48 heures avant la saisine).

L’appel contre le jugement du président du tribunal administratif est possible dans un délai d’un mois. Cet appel n’est pas suspensif ;

- s’agissant de l’interdiction judiciaire du territoire, qui est une décision de justice pénale, l’appel est possible dans les conditions du droit commun, soit dix jours, sauf si l’appel émane du procureur général qui dispose de deux mois. L’appel est en principe suspensif, mais la peine peut être accompagnée d’une exécution provisoire qui rend la décision exécutoire. Le juge d’appel n’est pas soumis à un délai pour statuer, mais si l’intéressé se trouve en détention provisoire, il sera libéré au bout de deux mois que le juge d’appel se soit prononcé ou pas.

IRELAND

There is no formal right of appeal against threatened expulsion. The alien can however apply to the High Court for a judicial review of the decision to deport.

LUXEMBURG

La mesure d’expulsion est prise par arrêté ministériel.

Le recours à l’encontre de cet arrêté est porté devant le Comité du Contentieux du Conseil d’État. Il s’agit d’un recours en annulation qui doit être introduit dans un délai de 3 mois ; ce recours n’a pas d’effet suspensif automatique, mais l’effet suspensif peut être sollicité dans une requête séparée au moment de l’introduction du recours.
NETHERLANDS

An alien may have recourse to legal remedies (objection or appeal) if his application for admission has been rejected. In principle he may not await the relevant decision in the Netherlands unless it is established that the legal remedy stands a reasonable chance of success. If the alien nevertheless wishes to await the outcome of the objection or the appeal in the Netherlands, he can submit a request to a court (referred to as a provisional arrangement). In this case the alien is not actually expelled pending the decision on the provisional arrangement.

AUSTRIA

An alien may appeal to the security authorities against a decree prohibiting him from remaining in the country or a deportation order. This appeal is basically suspensory in effect.

However, under paragraph 27(3) of the Aliens Law the suspensory effect of an appeal against deportation may be disallowed where the expulsion of the alien in question is in the interests of public order.

Under paragraph 51 of the Aliens Law, an alien may lodge a complaint with the independent administrative board against an order to escort him to the frontier or the suspension of a detention order pending expulsion. Such complaints carry no suspensory effect.

In addition, in the course of a procedure for the issue of a deportation order or a residence prohibition an alien may apply for a ruling on the inadmissibility of expulsion to a particular state (Aliens Law, paragraph 54). He may appeal to the security authorities against any order of this kind. Until a legal decision is taken on the application the alien may not be expelled to that state.

PORTUGAL

An alien who is the subject of an expulsion order can always lodge an appeal:

- a legal action which merely involves the competence of a higher court provided that a judgment leading to expulsion is involved and that the repeal of the order has not been requested;

- hierarchical or administrative appeal, without suspensory effect, when an administrative decision leading to expulsion is involved.

FINLAND

An alien who considers that his rights have been infringed by the decision made by the Ministry of the Interior regarding e.g. deportation may appeal to the Supreme Administrative Court. Appeal has suspensory effect.
SWEDEN

An alien can lodge an appeal to The Aliens Appeal Board against an expulsion order from the Swedish Board of Immigration. Such an appeal has normally suspensory effect. It is not possible to lodge an appeal against the decision by the Appeal Board.

In certain limited circumstances, an alien has a possibility to get an expulsion decision which has the force of law rescinded by making a new application for a residence permit to the Aliens Appeal Board. In order to get such an application approved it is necessary that the application is based on conditions which have not been subject to prior examination and that the circumstances either provide entitlement to asylum or involve exceptional reasons of a humanitarian nature which indicate that the alien shall be allowed to remain in Sweden. One example could be new circumstances in the applicants country of origin.

Measures to achieve the implementation of an expulsion decision which has gained the force of law do not cease when a new application is submitted to the Aliens Appeal Board. However, in this context the Board has the possibility if inhibiting implementation of a decision which has previously been notified. Implementations should not be cancelled unless, it appears reasonably probable, in an total assessment, that the new application will be approved.

UNITED-KINGDOM

The 1993 Act introduced an in-country right of appeal, before removal, with an oral hearing before an independent adjudicator, for all failed asylum seekers except those who are a threat to national security (see Article 32(2) of the 1951 Convention). Failed asylum seekers who exercise their appeal rights cannot be removed from the United Kingdom until any outstanding appeal has been finally determined.
C. VARIOUS CATEGORIES OF POLITICAL AND LEGAL OBSTACLES TO EXPULSION AND TEMPORARY WAIVER OF EXPULSION

1. Measures by the State

(a) Death penalty

Can expulsion and return also take place to a country in which the alien concerned is threatened with the death penalty? If not, is imposition of the death penalty sufficient in itself or must there also be a likelihood of enforcement?

Can an alien be expelled and returned to a country if it guarantees that the death penalty will not be carried out? What form must such a guarantee take?

Does the threat of imprisonment on "death row" constitute an obstacle to expulsion?

Is expulsion/non-expulsion also dependent on the way in which the death penalty is carried out?

What is the relationship in your country between an obstacle to expulsion because of a threat of the death penalty and non-extradition to a country in which there is a threat of a death penalty?

Does non-judicial execution - i.e. execution which is not ordered by the State - constitute an obstacle to expulsion?

GERMANY

- Section 53(2) of the AuslG states that an alien may not be expelled to a State if the alien is wanted by that State for a criminal offence and there is a threat of the death penalty.

- Section 53(2), second sentence, of the AuslG refers to extradition provisions in this connection. Pursuant thereto, removal of the obstacle to expulsion constituted by the threat of the death penalty occurs in the same circumstances as removal of the ban on extradition arising from the threat of the death penalty. In extradition proceedings not governed by treaty, the guarantee takes the form of the requested State formally asking the requesting State before authorizing extradition (i.e. by a Foreign Office Note Verbale or by a letter from the Federal Ministry of Justice) to provide a guarantee as defined in Section 8 of the "Gesetz über internationale Rechtshilfe in Strafsachen" (Law on International Recognition and Enforcement of Judgments in Criminal Cases - IRG) ("... guarantee that if the wanted person is extradited the death penalty will not be imposed or will not be carried out"). If the requesting State then provides that guarantee - again in the form of a Note Verbale or a letter from the Ministry of Justice - and there are no other obstacles to admissibility and authorization, extradition is authorized in a further Note Verbale or letter from the Ministry of Justice, which again refers to the previous exchange of Notes.
In extradition proceedings governed by treaty, the same procedure applies with the
difference that the requested State’s insistence on a sufficient guarantee can normally be
supported by corresponding treaty provisions (e.g. Article 11 of the European Convention
on Extradition).

Both in extradition proceedings which are governed by treaty and in those which are not,
the procedures described can be shortened by basing authorization of extradition not on
a specific guarantee by the requesting State in each individual case but on a general
guarantee given in an exchange of Notes.

It should in any case be pointed out that there is a fundamental difference between such
guarantees in the case of extradition and in the case of expulsion. While extradition is
always based on a bilateral agreement between the requesting and the requested State
(according to accepted "treaty theory", the request for and authorization of extradition in
each individual case constitute a treaty under international law), deportation and expulsion
are unilateral acts by the State concerned, which do not require cooperation by the other
State under international law. The principles of extradition law can therefore only be
applied to expulsion law to a limited extent. The point that extradition provisions apply
mutatis mutandis in this connection (second reply to C(1)1(a) above) is true in determining
whether a guarantee is provided but not in determining how.

According to the rulings of EHRC bodies, the threat of imprisonment on “death row”
constitutes a violation of Article 3 of the EHRC and is therefore already covered by the
obstacle to expulsion indicated in Section 53(4) of the AuslG (referring for the legal basis
to obstacles to expulsion under the EHRC).

It is not dependent on the way in which the death penalty is carried out.

Where there is a threat of the death penalty, neither expulsion nor extradition is allowed.

Where there is a threat of non-judicial execution in a specific case, expulsion may be
waived pursuant to Section 53(6), first sentence of the AuslG.

There might also be an obstacle to expulsion in this case under Section 53(4) of the AuslG
in conjunction with Article 3 of the EHRC.

GREECE

- Greece examines any claims made by an alien to the effect that in his country of origin he
  runs the risk of being, or has already been, condemned to death. No measures have
  hitherto been taken against any alien proven to be subject to such penalties.

- Greece’s policy is such that expulsion measures are not applied in respect of countries
  where the alien runs the risk of being executed, regardless of any guarantee which might
  be offered by the country of destination.

- For Greece, the mere threat of imposition of the death penalty is enough for the application
  of expulsion measures to be suspended.

- The way in which the death penalty is carried out is of no relevance.
- Greece has already formally abolished the death penalty and is in general opposed to this form of punishment.
- The meaning of this paragraph is not clear.

**SPAIN**

- Expulsion is not carried out if there is reasonable reason to believe that the threat exists or that the alien may risk enforcement of the death penalty.
- Where he is to be punished for a serious crime, an alien may be expelled if the death penalty is commuted to imprisonment, provided the penalty imposed is proportionate in accordance with our own legislation.

The guarantee must consist of a formal commitment (court order) by the state of which the alien is a national.
- Yes, if it is established that there is such a risk.
- No.
- Expulsion of an alien is a completely separate process from extradition and so the two are unrelated; the bodies responsible for extradition are therefore uninfluenced in their action by expulsion orders.
- Yes.

**FRANCE**

S'agissant du risque encouru par la personne d'être exécutée dans le pays vers lequel elle est éloignée : il n'est pas procédé à une mesure d'éloignement dès lors que les informations transmises par le poste diplomatique permettent de penser que l'individu est susceptible d'être exécuté. De plus, les raisons qui empêchent de procéder à l'extradition d'une personne menacée dans son pays, peuvent être reprises en matière d'éloignement.

**IRELAND**

Each case is assessed on its merits in consultation with the Department of Foreign Affairs and, as necessary, with the UNHCR.
**LUXEMBURG**

Le projet de loi qui est actuellement déposé auprès du Conseil d’État pour avis prévoit que l’étranger ne peut être expulsé, ni éloigné à destination d’un pays s’il est établi que sa vie ou sa liberté y sont gravement menacées ou qu’il y est exposé à des traitements cruels, inhumains ou dégradants.

Il faut donc la preuve que la personne concernée risque d’y subir des traitements contraires à l’art. 3 de la convention européenne du 4.11.1950 ou aux articles 1 et 3 de la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, pour que son rapatriement n’ait pas lieu.

Le Grand-Duché de Luxembourg n’a jusqu’à l’heure actuelle pas encore été confronté à une telle situation, de sorte que les renseignements fournis ne sauraient avoir qu’une valeur théorique.

**NETHERLANDS**

An alien who is threatened with the death penalty upon expulsion to his country of origin will not be expelled. This would run counter to Protocol No. 6 to the ECHR to which the Netherlands is a party. Where it is certain that the death penalty has been pronounced but will not be carried out, expulsion may in principle be effected. In that case, the alien to be expelled may not, however, run the risk of still ending up on death row as this would constitute an infringement of Article 3 of the ECHR within the meaning of inhuman or degrading punishment.

For this purpose the opinion of the Minister for Foreign Affairs will be sought. If a provisional arrangement is requested before a court against the intended expulsion, the latter will ultimately decide whether the authorities’ decision allowing possible expulsion of the alien was arrived at on reasonable grounds.

The manner in which the death penalty is carried out is of no importance for the decision waiving expulsion. In all cases where the death sentence is certain to be enforced, expulsion is not effected. Moreover, in such cases a residence permit will usually be granted on humanitarian grounds so that expulsion is no longer an option.

There will be no expulsion either where it is certain that the alien is threatened with extrajudicial execution if expelled to his country of origin. In such cases too, a residence permit will normally be granted on humanitarian grounds so that expulsion is no longer an option.

**AUSTRIA**

In the cases referred to it would have to be assumed that there was an obstacle to expulsion in accordance with paragraph 37(1) of the Aliens Law, i.e. danger of the death penalty or at least of inhuman treatment.

Under paragraph 13 of the extradition and mutual assistance law, BGBI. No. 529/1979, extradition takes precedence over expulsion. If extradition is inadmissible, as in the case mentioned, expulsion is also inadmissible.
Where there is a threat of non-judicial execution, expulsion would be waived on humanitarian grounds. Paragraph 37 of the Aliens Law is not applicable because the execution threat is not from the State.

**PORTUGAL**

In view of the introductory considerations set out in point 2 (Legal provisions) it is clear that the provisions in Portuguese law regarding extradition apply: expulsion may be allowed specifically if the State of destination has commuted those sentences or withdrawn the permanent nature of the punishment.

**FINLAND**

According to Finnish Aliens' Act no-one may be returned to an area where he may be subjected to inhuman treatment or to the persecution or an area from which he could be further sent to such an area. Finland has also ratified such conventions which denies not to expel, return or extradite a person to another State where are substantial grounds for believing that he would be in danger of being subjected to torture of to inhuman or degrading treatment or punishment.

It is very difficult to give very specific answers because every case will be handled and considered individually all relevant matters and circumstances assessed in their entirety. If there will be found a danger of death penalty, torture, inhuman or degrading treatment or punishment, a person concerned will be issued with residence permit on humanitarian grounds.

**SWEDEN**

An expulsion order can not be carried out to a country where the alien is threatened with a death penalty. There must be a likelihood of enforcement though.

Such a guarantee can occur and be accepted in a case of extradition.

Imprisonment on "death row" has not been tried in practice.

Death penalty is an obstacle to expulsion regardless of the way in which it is carried out.

The obstacle is in practice the same to expulsion because of the threat of the death penalty and to extradition.

Non-judicial execution constitutes an obstacle only if there is a high possibility that the execution will take place.
UNITED KINGDOM

Introduction

Where a person has expressed a fear of return to his country of origin on the basis of claimed persecution for any reason, whether by state authorities (including a judicial sentence) or any other agencies/individuals, the application will be considered in accordance with our obligations under the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. If, following substantive consideration in accordance with Convention criteria, an applicant does not qualify for recognition as a refugee, consideration is given to the question whether the applicant should be granted exceptional leave to remain for humanitarian reasons. The United Kingdom fulfils its obligations under other human rights instruments in this way. Although there is a considerable degree of overlap between the 1951 Convention and other human rights instruments with regard to persecution, this is not always the case and where a person falls outside the 1951 Convention but within the provisions of another international instrument the appropriate way to deal with such cases is by grant of exceptional leave to remain. We do not normally return people to a war zone or to a place where serious violations of human rights are endemic.

Each case is considered on its merits in the light of all relevant circumstances including the general situation in the country of origin. Where appropriate, consideration is given to the legal system and penal code operating in a particular country.

- The United Kingdom would in principle consider returning a rejected asylum seeker to a State in which he might face the death penalty if the system of justice which led to his conviction met normal international standards and the sentence was not disproportionate.

Any assurance that the death penalty would not be carried out (if it arose as an issue), would have to come from a representative recognised as speaking for the highest levels of government, eg a High Commissioner, Ambassador, Minister etc. The form of death penalty must be relevant to our consideration. A person who is the subject of an extradition request would not be extradited to the requesting country unless a satisfactory assurance was given that the death penalty would not be imposed, or if it was imposed, that it would not be carried out.

We would not seek to remove a failed asylum who faced extra-judicial execution or murder.

Imprisonment on "Death Row" could pose an obstacle to removal, since this could constitute inhuman and degrading treatment in breach of Article 3 of the ECHR.
(b) Torture

How is torture defined in your country? Can you list practical examples?

How specific must the threat of torture be to justify its use as an obstacle to expulsion?

Under what conditions does expulsion not take place because of a threat of torture in the State or origin?

GERMANY

Following ratification of the UN Convention against Torture the definition contained in Article 1 thereof is binding with regard to its interpretation on Federal territory. According to that Article torture is to be understood as meaning any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, or punishing, intimidating, coercing or persecuting him or a third person for any reason based on discrimination. In addition there is the definition of torture developed on the basis of rulings given by EHRC bodies which is to some extent broader and covers any act intentionally causing severe psychological or physical suffering which is unjustified in the particular situation. The minimum degree of severity required in this connection is to be assessed in each case taking into account the particular circumstances of the individual case and depends in particular on the duration, the physical and psychological consequences and, in specific cases, on the sex, age and also the state of health of the person concerned.

There must be a specific threat of torture. The fact that it is the general practice of a State to employ torture in certain situations for specific purposes does not mean that every alien expelled to that country is at individual risk. This applies all the more so if there is only evidence of torture as an act of excess being suppressed by the State by both preventive and repressive measures. The existence of the threat of torture must accordingly be determined by taking into account the specific circumstances of the individual case. For it to be accepted there is a specific – sufficiently probable – threat of torture, convincing and valid grounds are sufficient to persuade the aliens authorities or the court.

Expulsion does not take place because of a threat of torture in the State of origin if there is a specific risk to the individual.

GREECE

- The definition of torture in Greece is that which is accepted worldwide and which is given in Article 1(1) of the New York Convention.

- The mere threat of torture is sufficient.

- Such a situation must have been verified, or the country in question must have been condemned for the use of torture, or well-founded suspicions must exist that the country uses such methods.
SPAIN

- Under Spanish legislation, commission of homicide, injury, threatening behaviour, coercion or harassment (constituting an offence) in the course of a police or judicial investigation with the aim of extracting a confession or evidence.

- It must pose a threat to physical or mental integrity.

- Where it poses a threat to the person's physical or mental integrity.

FRANCE

Pour prendre et exécuter leurs décisions d'éloignement, les autorités françaises se réfèrent à l'article 3 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales du 4 novembre 1950. Elles ne sont pas exécutées vers le pays envisagé si la personne établit qu'elle y risque des tortures ou des traitements inhumains ou dégradants.

IRELAND

See above C 1a).

LUXEMBURG

La législation actuelle ne contient pas de définition du terme "torture".

Il est actuellement envisagé d'introduire une telle définition par un projet de loi qui vise à modifier le code pénal sur certains points. Afin de constituer un obstacle à l'expulsion, le risque de torture doit être réel et justifié.

NETHERLANDS

As regards the concept of "torture", Dutch law follows the definitions of torture given in the various international Conventions to which the Netherlands is a party. There are no known practical cases.

Obviously it should be made sufficiently credible that the alien, upon return to his country of origin, runs a real risk of receiving treatment covered by the definition of torture as described in the relevant international Conventions. It is impossible to give a general indication as to what the actual extent of the risk of torture should be. A general appraisal will be carried out in each individual case, concerning which the opinion of the Minister for Foreign Affairs will also be sought. If no residence permit is granted and an expulsion decision is taken, the alien may still apply to the courts to have the legality of the authorities' decision checked.
AUSTRIA

As regards the definition of torture, Austria follows the abovementioned international human rights treaties in accordance with the jurisprudence of the European bodies for the protection of human rights, the Constitutional Court, the Higher Administrative Court and the Supreme Court.

The acceptance of an obstacle to expulsion depends on the existence in each case of "solid grounds" within the meaning of paragraph 37(1) or (2) of the Aliens Law.

PORTUGAL

See above point C 1a).

FINLAND

See above point C 1a).

SWEDEN

Sweden agrees with the definition in art. 1 in the convention against torture.

Expulsion will not take place when there is an obvious threat of torture.

UNITED KINGDOM

The threat must be specific to the individual, and we would expect there to be a 'serious possibility' of torture. Any individual who was able to demonstrate a serious possibility that he would be subjected to torture in his country of origin would not be removed there.
(c) **Inhuman or degrading treatment or punishment**

*Can an alien be expelled to a country in which the courts can legally order corporal punishment to be inflicted on him?*

*Can an alien be expelled to a State where there is a real danger that a punishment under Islamic law will be imposed on him?*

*Is an alien expelled to a State where he is threatened with an extremely disproportionate, but in itself admissible, punishment?*

*Is the alien in question expelled, despite the threat of particularly harsh conditions of imprisonment, such as unjustified isolation or withholding of medical or psychological care?*

*Can an alien be expelled if there is a danger that he will be subject to particularly harsh interrogation methods?*

*On what other conditions is expulsion waived because of inhuman or degrading treatment or punishment?*

*Can an alien be expelled if there is a danger of his being punished a second time for the same offence in his country of origin?*

**GERMANY**

- Section 53(4) of the AuslG contains a reference to the EHRC as the legal basis. This means that the results of the rulings of EHRC bodies regarding Article 3 of the EHRC are also reflected in domestic German law.

- Such cases might satisfy the conditions constituting an obstacle to expulsion because of a threat of inhuman or degrading treatment. We are not yet aware of practical examples. The rulings of EHRC bodies are therefore of great importance.

- The conditions constituting an obstacle to expulsion because of a threat of inhuman or degrading treatment might be fulfilled in this case also. The rulings of EHRC bodies are therefore of great importance.

- Any obstacle to expulsion should be rejected in principle unless the conditions laid down in Section 53(1), (2), (3) or (4) of the AuslG obtain. The proportionality of the punishment is determined in accordance with the criminal law system and the State of origin's practice regarding punishment. It is possible that in certain extreme situations, in particular where a person's life is in serious danger, a different decision might be taken.

- If especially harsh conditions of imprisonment overstep the boundary with torture or inhuman or degrading treatment even allowing for the general conditions in the country of origin, it may be assumed that an obstacle to expulsion exists. The rulings of EHRC bodies are therefore of great importance.
What has been said in connection with particularly harsh conditions of imprisonment applies here.

This is determined in accordance with the provisions of the EHRC, i.e. the particular circumstances surrounding the individual case are decisive.

The danger that an alien will be punished a second time for an offence in his country of origin is not in itself sufficient to constitute an obstacle to expulsion. In the framework of the structure of the Aliens Law Section 53(5) emphasizes that the danger of prosecution and the threat of punishment in the country of origin do not stand in the way of expulsion.

GREECE
- No alien has hitherto submitted to us any request for suspension of the application of expulsion measures on the grounds that he runs the risk of being sentenced to corporal punishment in his country.
- Reply as above.
- Reply as above, and similarly for the remaining paragraphs; we have hitherto received no such requests from aliens and, having examined no such cases, we have no experience in this area.

SPAIN
- No, if there is reason to believe he may be meted out such punishment.
- No, if the same is shown as for the previous question.
- No, if the same is established as for the previous question.
- No, if there is reason to believe he might be exposed to such treatment.
- No, as for the previous question.
- Expulsion is not carried out if there are established to be such grounds of inhuman or degrading treatment or punishment.
- No, if this is established by means of a court sentence in the country from which he comes.

FRANCE
Voir sous C 1b).
IRELAND

See above C 1a).

LUXEMBURG

Voir sous point C 1a).

NETHERLANDS

In each individual case, it will have to be weighed up whether the expected treatment or punishment upon expulsion will constitute an infringement of Article 3 of the ECHR or of another provision of a Convention (see also under (a)).

If there is a danger that punishment will be imposed in accordance with Islamic law, it will also have to be established in each individual case whether expulsion to the country of origin constitutes an infringement of Article 3 of the ECHR or of any other Convention to which the Netherlands is a party.

The fact that an alien is threatened with harsh, but in itself admissible, punishment does not in itself form an obstacle to expulsion.

The same applies if there is a threat of particularly harsh conditions of imprisonment or if he may be subject to particularly harsh interrogation methods.

In all these cases the rule is that expulsion is only waived if it is established that this would constitute an infringement of Article 3 of the ECHR or of any other international Convention to which the Netherlands is a party. The judge's ruling is ultimately the decisive factor.

If it becomes apparent to the Netherlands authorities from a police notice or other notice that a foreign authority is asking to have an alien tracked down (and arrested for the purpose of extradition) on grounds of having committed a crime, the extradition procedure is applicable. Extradition will then be opposed under the "double jeopardy" principle. If, however, no request for extradition has been submitted and it is not apparent to the Netherlands authorities in any other way that the alien is being sought, then the alien may be expelled.

AUSTRIA

In these cases too, a ruling under paragraphs 37(1) and (2) of the Aliens Law would have to be given.

PORTUGAL

See above point C 1a).
FINLAND

See above point C 1a).

SWEDEN

An alien can not be expelled to a country where there is a real danger that corporal punishment will be inflicted on him, whether it is under Islamic law or otherwise.

An alien will not be expelled to a country where he is threatened with an extremely disproportionate punishment unless he is expelled because of a particularly grave criminal offence. The same applies if he is threatened with particularly harsh conditions of imprisonment or harsh interrogation methods or inhuman or degrading treatment or punishment. As mentioned above, the risk of torture or corporal punishment is always an obstacle to expulsion.

UNITED KINGDOM

Corporal punishment is a bar to expulsion if it is judged to be disproportionate to the conduct which gave rise to it. Prison conditions and interrogation methods would be taken into account prior to expulsion.

2. Measures taken by third parties

(a) Blood feuds

(b) Anarchy

Is expulsion waived where there is a threat of persecution by third parties, for example in the case of blood feuds or anarchy, not attributable to the State?

GERMANY

In the case of acts involving persecution by third parties which are not attributable to the State (e.g. threat of blood feud) expulsion may be waived if there is a major specific threat to the person, life or liberty of the alien concerned and he cannot avoid that situation, i.e. he cannot find protection in any part of his home country (Section 53(6), first sentence of the AuslG). Anarchy does not come under this heading.

GREECE

We have no experience of the above.
SPAIN

Yes.

FRANCE

Dans ce cas aussi, l'éloignement n'est pas mis en œuvre si l'application de l'article 3 de la convention du 4 novembre 1950 n'est pas garantie. Il n'existe cependant pas de liste des pays vers lesquels le renvoi est contre-indiqué d'une manière générale ; cette appréciation se fait toujours au cas par cas compte tenu du risque couru par l'intéressé dans le pays de renvoi, ou seulement une région de ce pays.

L'intéressé devra par ailleurs être en mesure d'apporter au début de preuve à l'appui de ses déclarations.

IRELAND

Each case is assessed on its merits in consultation with the Department of Foreign Affairs and, as necessary, with the UNHCR.

LUXEMBURG

Le Luxembourg n'a pas encore été confronté à de telles hypothèses. Se pose à ce moment-là un problème de preuve quant à la réalité du risque de vendetta ou d'anarchie.

NETHERLANDS

Where there is a threat of persecution by third parties not attributable to the State, an examination will be carried out to see whether the alien has a "residence alternative" in his country of origin. If a threat of persecution by third parties exists, for instance, in one part of the country only but not in another, expulsion may be effected.

Where it is established that the alien has justifiable grounds to fear persecution from third parties upon his return to his country of origin, he may – depending on the circumstances in individual cases – be entitled to refugee status or a residence permit on humanitarian grounds. In such cases expulsion is obviously not an option.

AUSTRIA

Where there is a threat of persecution which is not attributable to the State, paragraph 37 of the Aliens Law is not applicable. In such cases, however, expulsion is waived on humanitarian grounds.
PORTUGAL

The threat or well-founded fear of persecution are understood to exist not only when the threat emanates from or the fear is induced by established regimes, but also when the threat emanates from or the fear is induced by organizations acting on the assumption that the authorities will take no action.

FINLAND

In principle threat of persecution by third parties is not reason to waive an expulsion. It is assumed that national authorities in such cases should be able to protect their citizens and such a person may be deported to the home country.

SWEDEN

Blood feuds or anarchy, not attributable to the State, is generally not seen as an obstacle to expulsion. The risk for the person concerned must in such a case be very obvious.

UNITED KINGDOM

The relevant considerations are whether those inflicting the persecution are doing so with the authority of the State or as agents of the State; or whether they are being tolerated by the State; or whether the State is unable to protect its citizens from them. If the answer to any of these questions is positive, expulsion may be waived, but if the State could be expected to offer protection no impediment would arise.

3. Civil war as a special case

On what conditions is there a waiver of expulsion to countries in a state of civil war? Can you give instances? Must there be a specific threat to the person, life or liberty of the alien concerned in such cases?

GERMANY

Dangers of a general nature which affect not only the individual alien but also a part or group of or even the entire remaining population (e.g. civil war) may be taken into account in the case of decisions taken pursuant to Section 54 of the AuslG. The highest Land authority may accordingly order for reasons of international law or humanitarian reasons or to safeguard the political interests of the Federal Republic of Germany that the expulsion of aliens from particular States or groups of aliens selected by another means or expulsion to particular States is suspended for a period of not longer than six months. If expulsion is suspended for a period of longer than six months, the order needs the agreement of the Federal Ministry of the Interior.
Where a general ban on expulsion is ordered pursuant to Section 54 of the AuslG, all members of the group of persons subject to the order are covered. The question of a specific threat to the person, life or liberty of the individual alien is not relevant in such cases. There is for example a Federation-wide rule banning expulsion of people from Bosnia and Herzegovina.

A further legal basis for the admission of war and civil war refugees is afforded by the newly introduced Section 32a of the AuslG (since 1 July 1993). Under that Section the Federation and the Länder may agree that at any given time specific aliens from war- or civil war-torn territories may be given temporary refuge in the Federal Republic of Germany. However, for the period during which refuge is provided, persons admitted pursuant to Section 32a of the AuslG are not allowed to participate in asylum proceedings running simultaneously.

GREECE

Greece examines each such case separately, and if it is ascertained that the alien subject to expulsion measures would be in danger in his country because of civil conflict, he is advised to travel to another third country, or else the expulsion order is suspended until such time as this type of obstacle no longer applies. Such circumstances have arisen regarding Somalia, Liberia, Sudan and Bosnia.

SPAIN

Expulsion is not carried out if there is a specific threat to the life or physical integrity of the alien concerned.

FRANCE

Même réponse qu’au 2.

IRELAND

Each case is assessed on its merits in consultation with the Department of Foreign Affairs and, as necessary, with the UNHCR.

LUXEMBURG

L’exécution de mesures d’expulsion vers des pays qui connaissent une situation de guerre civile est suspendue en attendant une amélioration de la situation dans le pays d’origine de la personne.

Ainsi, les autorités luxembourgeoises ont renoncé à expulser des personnes vers la Bosnie-Herzégovine et vers le Kosovo, alors qu’il y a des incertitudes quant au sort leur réservé en cas de retour dans ces régions.
NETHERLANDS

Where there is a civil war in the country of origin while there are no grounds for recognizing the alien as a refugee or granting him a residence permit on humanitarian grounds, an alien may be granted a conditional residence permit. The relevant criterion is that forced expulsion to the country of origin would be particularly harsh on the alien in view of the general situation in that country.

Only where the alien makes a reasonable case proving that he has personal legitimate reasons to fear persecution (i.e. that there is a real threat to his person, life or liberty) as a result of civil war, may he in principle be entitled to refugee status.

AUSTRIA

Paragraph 37 of the Aliens Law applies also to civil war situations. If in such cases there is a specific threat to the person, life or liberty of the alien, action must be based on the existence of an obstacle to expulsion in accordance with paragraph 37 of the Aliens Law.

PORTUGAL

Expulsion may be waived for humanitarian reasons when the specific situation of the foreign citizen is examined on a case-by-case basis.

FINLAND

In many civil wars there are fights which can be very local meaning that it is in some cases possible to expel persons to those parts of the state concerned which are not affected by the fights.

SWEDEN

There is a general waiver of expulsion to countries in a state of civil war only when the fighting are such that an expulsion order cannot be enforced in a normal way, for example when the airports are closed for regular flights. Otherwise there has to be a specific threat to the alien concerned in order to waive a decision.
UNITED-KINGDOM

Each war situation must be assessed in the light of its particular circumstances and effects on
the civilian population but as a general rule the United Kingdom would not return civilians to a
war zone. For example, the United Kingdom currently has a policy of granting exceptional leave
to enter or remain for people from war zones in the former Yugoslavia. This is consistent with
the line advocated by the United Nations High Commissioner for Refugees who has urged
Convention signatory states to consider some kind of temporary protection to those who have
fled the conflict and who do not qualify as refugees. No-one is being returned by the United
Kingdom to the war zone, which we presently take to include the whole of Bosnia Herzegovina.
Those granted exceptional leave will be expected to return to the former Yugoslavia when it is
judged safe for them to do so.

4. Political and economic conditions

Can, under certain circumstances, expulsion to countries in which there are unfavourable
political, economic and other special circumstances (for example natural catastrophes,
famine) be waived? Can you give practical instances? Must there be a specific threat to
the person, life or liberty of the alien concerned in such cases?

GERMANY

Unfavourable political, economic or other special circumstances such as natural catastrophes and
famines may be taken into account when decisions are taken under Section 54 of the AuslG.
To that extent what was said above applies accordingly.

GREECE

We have no experience of the above.

SPAIN

Expulsion is not carried out if there is a threat to life or physical integrity.

FRANCE

Même réponse qu’au 2.

IRELAND

Each case is assessed on its merits in consultation with the Department of Foreign Affairs and,
as necessary, with the UNHCR.
LUXEMBURG

De tels cas ne se sont pas encore présents pour les autorités luxembourgeoises.

Néanmoins, des personnes originaires de régions sujettes à des catastrophes naturelles ou à des cas de famine pourraient se voir octroyer des autorisations de séjour provisoire pour raisons humanitaires.

NETHERLANDS

Aliens who invoke unfavourable political, economic or special circumstances (natural catastrophes, famine) in the country of origin are not in principle entitled to be recognized as refugees or be granted a residence permit. No practical examples are available here either. Only in particularly harrowing cases may a residence permit possibly be granted on humanitarian grounds.

Where no residence is granted, the said circumstances in the country of origin constitute no obstacle to expulsion.

AUSTRIA

In the cases referred to, although paragraph 37 of the Aliens Law is not applicable, an expulsion can be waived on humanitarian grounds if there is a specific threat to the alien concerned.

PORTUGAL

In special circumstances, in particular in the event of a catastrophe, the criterion already mentioned for civil war situations is applied.

FINLAND

If a person does not fulfil the requirements for issuing a residence permit on any reason, the normal procedure is that such a person will be expelled if a person decided not to leave country voluntarily.

Political, economic or other special circumstance in general does not waive the expulsion. Natural catastrophes (especially on a large area) can be a reason for issuing a residence on humanitarian grounds.

SWEDEN

Such circumstances could be an obstacle to expulsion only if it is impossible, for practical reasons, to carry it out.
UNITED KINGDOM

All emergency situations and their impact on the civilian population must be carefully assessed in the light of all available information. However, where conditions in a particular country are so unacceptable that it would be wholly unreasonable to expect a person to be able to maintain the most basic level of subsistence, the United Kingdom would be unlikely to return them there. Examples would include the immediate aftermath of a major national disaster, or in a post-war situation which had left institutions and infrastructures totally devastated, as occurred in Somalia. Whilst these situations persist, assessment of individual cases would be unnecessary.

5. General ban on expulsion

On what conditions can expulsion of particular groups of foreigners be waived? Please give practical examples.

GERMANY

The respective highest Land authority takes on its own authority the decision ordering a general ban on expulsion pursuant to Section 54 of the Ausländerrechtsgesetz. For periods longer than six months the agreement of the Federal Ministry of the Interior is needed in order to maintain consistency within the Federal Republic. There is currently a general ban on the expulsion of civil war refugees from Bosnia and Herzegovina.

GREECE

Greece is particularly cautious about expelling aliens of Kurdish origin.

SPAIN

In cases involving applicants for asylum or refugees and where aliens come from countries experiencing conflicts or serious disturbances of a political, ethnic or religious nature.

FRANCE

Dans certains cas lorsque la sécurité ou la vie d'étrangers appartenant à un groupe particulier est menacée, des instructions générales peuvent être données aux autorités habilitées à prendre les mesures d'éloignement pour ne pas exécuter celles-ci à l'encontre des personnes appartenant au groupe concerné.

Des instructions de ce type ont été données aux préfectures pour les ex-yougoslaves et les haitiens, mais ont été rapportées pour ces derniers avec le retour du président Aristide, et rapportées en partie pour les premiers (pour les slovènes et les croates) ; en outre, il ne s'agissait pas de prohibition totale de l'éloignement : en cas de trouble à l'ordre public notamment, l'éloignement est possible, mais après examen par l'administration centrale.
IRELAND

This would depend on the particular circumstances.

LUXEMBURG

Il n’existe pas d’interdiction générale des mesures d’expulsion à l’encontre de certains groupes d’étrangers au Luxembourg.

NETHERLANDS

Netherlands Legislation on Aliens makes no provision for a general ban on expulsion in respect of specific categories of aliens. Individual examination is carried out in all cases. Where there are no grounds for granting refugee status or a residence permit on humanitarian grounds or for granting a conditional residence permit (see above under B3(a)), expulsion will in principle be effected.

AUSTRIA

There is no provision for a general ban on expulsion in Austrian legislation.

PORTUGAL

The waiving of expulsion for particular groups of foreigners is not provided for in Portuguese national law.

Compliance with the "non bis in idem" principle also applies to extradition (it is not possible to instigate or continue criminal proceedings in Portugal on the same grounds that lay behind the application or to enforce a sentence whose enforcement is delegated to a foreign judicial authority), as does compliance with the European Convention on Human Rights, with the Portuguese State extending protection as far as possible, beyond its own border.

FINLAND

There are no general ban on expulsion of particular groups of foreigners. Each application for asylum or residence permit will be considered individually in casu.

SWEDEN

Expulsion can be waived only in individual cases. However, a decision to waive an expulsion order in an individual case can of course have impact on many similar cases from the same country. For example when the government found that a person could not be sent back to Somalia because of the present situation in the country, this decision would have impact on all other cases concerning expulsion to Somalia.
UNITED KINGDOM

Each asylum claim is assessed on an individual basis although the Secretary of State may, on occasion, declare an official policy of not returning a particular group of people because of events in their country of origin. For example, in the aftermath of the Tiananmen Square massacre, it was announced that Chinese nationals who were in the United Kingdom on, or before, 4 June 1989 would not be forcibly removed there if they expressed a fear of return. This policy is reviewed annually.

D. LIMITATION OF A BAN ON EXPULSION FOR REASONS OF NATIONAL SECURITY

Must expulsion also be stopped in cases where, although obstacles to expulsion exist, the continued presence of the alien in the country would constitute a danger to public order and national security?

GERMANY

Under Section 51(3) of the AuslG persons entitled to asylum, other aliens who enjoy the legal status of alien refugees or are recognized outside Federal territory as alien refugees within the meaning of the Geneva Convention as well as aliens in respect of whom the Federal Office has determined the existence of conditions under Section 51(1) of the AuslG (ban on expulsion because of political persecution), may nevertheless be expelled to the State of origin if for serious reasons they are to be regarded as a danger to the security of the Federal Republic of Germany.

The same applies if they constitute a danger to the general public because they have received a definitive sentence for a particularly serious offence. In accordance with case law there must also be grounds in addition to the definitive sentence for assuming that there is a danger of repetition.

This exception corresponds to Article 33(2) of the Geneva Convention.

There is no corresponding special clause applying to compelling obstacles to expulsion under Section 53(1) to (4) of the AuslG, i.e. in cases in which there is a threat of the death penalty, torture or inhuman or degrading treatment or punishment.

GREECE

We have no experience of the above.

SPAIN

Not always, the specific circumstances have to be assessed in each case.
FRANCE

Les décisions administratives d'éloignement ainsi que celles du pays de renvoi interviennent dans un cadre fixé strictement par la loi ; elles sont de plus soumises au contrôle du juge administratif qui peut les annuler et éventuellement condamner l'administration à réparer le dommage causé à l'intéressé.

Il ne saurait donc être question de déroger aux limites fixées par la loi et la justice aux mesures d'éloignement.

Cependant, si l'obstacle à l'éloignement n'est pas d'ordre juridique, mais pratique, il est probable qu'une solution peut être rapidement trouvée si la prolongation du séjour de l'étranger constituerait un danger pour l'ordre public et la sécurité nationale.

IRELAND

This would depend on the circumstances of the particular case.

LUXEMBURG

Ces cas doivent être appréciés au cas par cas.

NETHERLANDS

Article 33(2) of the Convention on Refugees provides for an exemption from the principle of non-refoulement: aliens who constitute a danger to national security or who have been convicted of a very serious crime may be expelled even if this were to constitute an infringement of the principle of non-refoulement. However, there are no practical examples where recourse has been had to this Article.

AUSTRIA

Paragraph 37(1) of the Aliens Law contains an absolute ban on expulsion, to which there are no exceptions. Where there is a prohibition on expulsion under paragraph 37(2) of the Aliens Law, expulsion is in exceptional cases admissible if the alien for compelling reasons constitutes a threat to the security of the Republic of Austria, or if he is ruled by a court of law to be a danger to society for having committed a crime punishable by more than 5 years' imprisonment (paragraph 37(4) of the Aliens Law in conjunction with Article 33, point 2, of the Geneva Convention on Refugees).
PORTUGAL

In exceptional circumstances and in extreme cases an attempt is made to ensure that the person is expelled to a country in respect of which there are no obstacles to expulsion.

By analogy, under Portuguese law, asylum may be refused whenever this is warranted by internal or external security considerations or when the protection of the population so requires, in particular in the light of the social or economic situation of the country.

FINLAND

According to Aliens' act an alien (also refugee) may be deported from Finland if he has engaged in or may on account of his previous activities or otherwise justifiably be assumed to engage in sabotage, espionage or illegal intelligence-gathering activities in Finland or in activities which may endanger Finland's relationship with a foreign power and it entails special reason for deportation due to considerations of Finland's national security or public order.

When an alien's deportation from Finland is under consideration, all relevant matters and circumstances must be assessed in their entirety.

SWEDEN

See answer under B.2.

UNITED-KINGDOM

Very occasionally a situation may arise where, for example, an international terrorist, who might otherwise have qualified as a refugee, can be removed without substantive consideration of his claim by invoking Article 32. However, it is not possible to refoul a refugee who is planning a terrorist attack in another Member State, or any other country, unless it can be shown that he committed serious non-political crimes before coming to the United Kingdom (Article 1(F)(b)), or until after he has been convicted of a particularly serious crime in the United Kingdom (Article 33).