



**EMN Ad-Hoc Query on AHQ on legal status of aliens who are subject to the principle of non-refoulement and have been recognized as representing a threat to national security**

Requested by Vytautas EŽERSKIS on 4th July 2017

**Protection**

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (19 in total)

Disclaimer:

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **Background information:**

The issue of regulation of the legal status of the aliens who are subject to the principle of non-refoulement and whose have been recognized as representing a threat to national security or public policy is being considered. The legislation of the Republic of Lithuania does not regulate the status of such an alien, nor does it provide for the issuance of any document authorizing him to stay or reside in the country. According to the Law on the Legal Status of Aliens, an alien whose residence in the Republic of Lithuania may pose a threat to national security or public policy cannot be issued a residence permit.

### **Questions**

1. In what cases is it prohibited to return or expel an alien? And in such cases are there any exceptions to the prohibition on grounds of representing a threat to national security or public policy? Please indicate specific provisions.
2. What status is granted to an alien who is subject to the principle of non-refoulement and who is considered to represent a threat to national security or public policy? Please specify how it is defined, for what period of time it is granted, what document is issued to an alien.
3. What rights are granted to the alien referred to in answer no. 2 (the right to take up employment, the right to social support, etc.)?
4. What restrictions apply to the alien referred to in answer no. 2 (e.g., movement, handing over of an identity card or a travel document, etc.) and how are they enforced (e.g., which authority is responsible, which measures are applied (regular reporting, inspection of the place of residence, etc.)?)

### **Responses**

	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<b>1.</b> A removal is inadmissible, if it violated against Art. 2 (right to life) or Art. 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the European Convention on Human Rights (ECHR) or against the prohibition of the death penalty or if it brought about a serious threat to the life or integrity of the person as civilian by reason of indiscriminate violence in situations of international or internal armed conflict. Further, a removal is inadmissible to countries where the life or the freedom of the person would be threatened on account of the person's race, religion, nationality, membership of a particular social group or political opinion (Art. 33 Geneva Refugee Convention), unless there is an

			<p>internal flight alternative. A removal is also inadmissible if this is contrary to an interim measure of the European Court of Human Rights. There is no exception to these rules (Art. 50 Aliens Police Act).</p> <p><b>2.</b> The stay of such foreigners may be tolerated (Art. 46a para 1 subpara 1 Aliens Police Act). In this case, the foreigner is issued a Card for Tolerated Stay (Art. 46a para 4 Aliens Police Act). A Card for Tolerated Stay is valid for one year (Art. 46a para 5 Aliens Police Act). The stay of tolerated foreigners is not legal (Art. 31 para 1a subpara 3 Aliens Police Act).</p> <p><b>3.</b> In general, tolerated foreigners are not entitled to take up employment (see Art. 4 para 1 subpara 1 Act Governing the Employment of Foreigners). Foreigners without the right to stay in Austria receive basic welfare support, if for legal or factual reasons they cannot be removed (Art. 2 para 1 subpara 2 Basic Welfare Support Agreement). According to the case-law of the Administrative High Court, this is not the case where the third-country national could have been expected to remove existing obstacles to a deportation (see the EMN study of 2016 on the return of rejected asylum seekers from Austria, p. 27).</p> <p><b>4.</b> Restrictive measures may only be ordered if the tolerated foreigner cannot be removed due to factual reasons (Art. 46a para 2 Aliens Police Act).</p>
	Belgium	Yes	<p><b>1.</b> Returns of irregular migrants are not possible if there is a problem regarding to the respect of article 3 (inhumane treatment), article 8 (right to family life) and article 9 (freedom of opinion, religion, ... <input type="checkbox"/> this last article will be dealt with in the asylum procedure, since this is also the basis of the Geneva Convention). Under article 3 ECHR we also have to consider the medical health of the returnee : if the person has a life threatening disease or a disease / mental condition for which there is no treatment available, accessible nor affordable for the returnee, the removal should (temporarily or definitively) not be executed or the necessary measures should be taken to foresee treatment in the country of origin. This rule is also to be respected for threats to national security or public order. When it comes to article 8 ECHR, exceptions are possible because there we can balance the public order / national security issue with the right of family life. If the burden for the society is too high in comparison to the right to family life, Belgium will remove the returnee, but this should be properly motivated in the return decision, why we do not take into consideration this right. However this may have consequences on the possibility to issue an entry ban or on the number of years the entry ban will be effective. In cases that the familymembers of the returnee are recognized refugees, the possibilities to issue an entry ban are</p>

			<p>smaller, since the family would not be able to join the returnee in the country of origin. There are no specific legal provisions in the immigration law regarding this problem; in fact every individual decision should be properly motivated and take into consideration the ECHR provisions. Furthermore, in accordance to the Fundamental Rights Charter of the EU (art. 41, 2 (a) ), every person who receives a decision has the right to be heard, before any individual measure which would affect him or her adversely is taken. Particularly in cases of withdrawal of staying permits, return decisions and entry bans, this is respected by the Immigration Office.</p> <p><b>2.</b> In general these persons do not receive a staying permit (temporary nor definitive); in very specific individual cases, exceptions can be made (mostly because of serious medical grounds), but this is only very rarely the case. The person should still leave the territory (of Belgium or of the Schengen area, depending whether it concerns an EU/EEA citizen or a third country national with right to stay in another EU member state, or whether it concerns a third country national without any right to stay). He or she can still go to another third country who is willing to accept his / her entry or staying on its territory.</p> <p><b>3.</b> If they have an order to leave they have only right to urgent medical treatment.</p> <p><b>4.</b> In some individual cases it is possible to impose a specific address (as well as other conditions, such as no contacts with former associates, with specific persons or organizations), which can be linked to regular reporting at the local police office or the Immigration Office. The Immigration Act does not allow inspection of the residence nor the handing over of identity documents. However it is possible that also the Justice Department can impose specific conditions; criminal law legislation gives more possibilities (e.g. in the framework of electronic tagging if the person would be released under conditions). This depends on the Court decisions.</p>
	Bulgaria	Yes	<p><b>1.</b> According to Bulgarian legislation, a TCN with imposed compulsory administrative measure of expulsion shall not be expelled to a country where his life and freedom are endangered and he/ she is subjected to a danger of prosecution, torture or inhuman or humiliating treatment.</p> <p><b>2.</b> Where above mentioned circumstances are established by an effective judicial decision the foreigner shall be issued and given an order by the authority that issued the expulsion order which explicitly</p>

			<p>states the prohibition of expulsion and the country in which the foreigner should not be deported. The order shall not be subject to appeal.</p> <p><b>3.</b> In case a year after the order expulsion in a third safe country has not been carried out, the foreigner shall be allowed temporary access to the labour market under the terms and conditions of the Labour Migration and Labour Mobility Act – until implementation of the expulsion.</p> <p><b>4.</b> Foreigners shall appear once a week at the territorial unit of the Ministry of Interior at their place of residence.</p>
	Croatia	Yes	<p><b>1.</b> 1. According to the Aliens Act, Article 6, it is forbidden to expel or in any way return a third-country national or stateless person to a country: in which his/her life or liberty would be threatened on account of his/her race, religious or national affiliation, membership of a particular social group or due to his/her political opinion; or in which they could be subjected to torture, inhuman or degrading treatment; or which could extradite him/her to another country, whereby the principle referred to in indents 1 and 2 of this paragraph would be undermined. However, there is an exception. A third-country national who meets the conditions for approval of international protection or who has had international protection approved may be expelled or returned to a country if he/she represents a risk to national security, or has been convicted of a serious criminal offence by a final judgement, signifying that they are a risk for public order.</p> <p><b>2.</b> 2. Not regulated.</p> <p><b>3.</b> 3. Not regulated.</p> <p><b>4.</b> 4. Not regulated.</p>
	Czech Republic	Yes	<p><b>1.</b> 1.-4. The Czech Republic does not have any experience in such specific cases.</p> <p><b>2.</b> N/A</p>

			<p><b>3.</b> N/A</p> <p><b>4.</b> N/A</p>
	Estonia	Yes	<p><b>1.</b> According to the Obligation to Leave and Prohibition on Entry Act, an alien may not be expelled to a state to which expulsion may result in consequences specified in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty. Also, the expulsion of an alien shall comply with Articles 32 and 33 of the United Nations Convention relating to the Status of Refugees (together with the Protocol relating to the Status of Refugees of 31 January 1967). Therefore, in case the alien poses a threat to national security but is a subject of torture or other cruel or inhuman treatment, or has the application of death penalty in the country where the alien should be expelled, based on the Article 33 of the United Nations Convention the alien should not be expelled to the country where his/her life is in danger.</p> <p><b>2.</b> The alien will remain in the status of an alien who is staying in the country illegally. There is no temporary status nor documents granted to the alien.</p> <p><b>3.</b> There are no above mentioned rights since the alien lacks a basis for stay and will remain in the status of an illegal. The AMIF project gives the alien access to need-based medical assistance.</p> <p><b>4.</b> If the alien is registered as a person who is staying in the country illegally but his/her expulsion is not possible, surveillance measures stipulated in Article 10 of the Obligation to Leave and Prohibition on Entry Act are applied. The enforcement of those measures is reviewed by officials of the Estonian Police and Border Guard Board. Surveillance measures are: 1) residing in a determined place of residence; 2) appearing for registration at the Police and Border Guard Board at prescribed intervals; 3) appearing at the Police and Border Guard Board to clarify circumstances ensuring compliance with a precept; 4) notifying the Police and Border Guard Board of the changes of residence of the alien and of his or her prolonged absence from the place of residence; 5) notifying the Police and Border Guard Board of the changes in the alien's marital status. 6) depositing of a travel document of a foreign country or an identity document of an alien at the Police and Border Guard Board or the Security</p>

			Police.
	Finland	Yes	<p><b>1.</b> In the Finnish Aliens Act, requirements for entry are laid down in Section 11: Aliens may enter Finland if 5) they are not considered a danger to public order, security or health or Finland's international relations. According to Section 36, a residence permit may be refused if the alien is considered a danger to public order, security or health or to Finland's international relations. However, the principle of non-refoulement is taken into account when making a decision on refusal of entry or deportation. Section 147 of the Aliens Act defines that no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area.</p> <p><b>2.</b> According to Section 89, aliens residing in Finland who are not granted asylum or a residence permit on the basis of subsidiary protection because they have committed, or there are reasonable grounds to suspect that they have committed, an act referred to in section 87(2) or 88(2) are issued with a temporary residence permit for a maximum of one year at a time if they cannot be removed from the country because they are under the threat of the death penalty, torture, persecution or other treatment violating human dignity. According to Section 87(2), asylum is not granted to aliens if they have committed, or if there are reasonable grounds to suspect that they have committed: 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes; 2) a serious non-political crime outside Finland before entering Finland as refugees; or 3) an act which violates the aims and principles of the United Nations. According to Section 88(2), an alien is not issued with a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed: 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes; 2) an aggravated crime; or 3) an act which violates the aims and principles of the United Nations.</p> <p><b>3.</b> Persons issued with a temporary residence on the basis of Section 89 do not have the right to employment. A person with this permit is not considered to be living in Finland permanently, and can usually only be entitled to emergency social assistance (e.g. food, acute need of medicines) from the Social Insurance Institution of Finland.</p> <p><b>4.</b> There are no such restrictions connected to the residence permit stipulated in the Aliens Act. The</p>

			police are responsible for the possible criminal investigation and measures related to it.
	Germany	Yes	<p><b>1.</b> For foreigners who are entitled to international protection because their refugee status has been recognised or they have been granted subsidiary protection, a deportation ban applies with regard to the country in which they face the relevant underlying danger (Residence Act, Section 60 (1) and (2)). A corresponding national ban on deportation applies in the event of an impending contravention of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms and such a ban is also to be observed when a substantial concrete danger applies to the foreigner’s life and limb or liberty in another state for different reasons, e.g. on health grounds (Residence Act, Section 60 (5) and (7) respectively). The competent ministry may impose a deportation order on a foreigner in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat, whereby this order may not be executed if the ministry establishes one of the grounds prohibiting deportation as specified above in the course of its own examination of the case concerned (Residence Act, Section 58a (3)). A foreigner whose refugee status has been recognised may only be expelled if the personal behaviour presently poses a serious threat to public security and order, which constitutes a fundamental interest of society, and the expulsion is crucial to protecting this interest (Residence Act, Section 53 (1) and (3)). Where it is already known that the foreigner poses a danger to the general public or to the security of the Federal Republic of Germany, the granting of subsidiary protection is ruled out from the outset (Asylum Act, Section 4 (2), no. 4). Where subsidiary protection has been granted or a national ban on deportation has been established, if the foreigner poses a danger to the security of the Federal Republic of Germany this may constitute a particularly serious interest in expulsion (Residence Act, Section 54 (1), no. 2). In reaching the decision on expulsion, this is to be weighed against the foreigner’s interest in remaining in the federal territory, whereby the legal status as a person entitled to subsidiary protection establishes a particularly serious interest in remaining (Residence Act, Section 53 (1), Section 55 (1), no. 5). It is to be noted that the underlying law does not exclusively apply the concept of public security and order, but rather adopts a differentiated approach with regard to areas of protection and the applicable levels of potential danger, thereby also according due consideration to the different protection and residence statuses. The Residence Act and the Asylum Act can be retrieved in English via the following links (please note information on the status of the translations): <a href="http://www.gesetze-im-internet.de/englisch_aufenthg/index.html">http://www.gesetze-im-internet.de/englisch_aufenthg/index.html</a> <a href="http://www.gesetze-im-">http://www.gesetze-im-</a></p>

[internet.de/englisch\\_asylvfg/index.html](http://internet.de/englisch_asylvfg/index.html)

**2.** The granting of a residence permit is legally prohibited both in the case of a person qualifying for international protection and in the case of a foreigner who is subject to a national deportation ban when the respective conditions constituting such a threat are met (Residence Act, Section 25 (2), sentence 2 in conjunction with Section 25 (1), sentence 2 and Section 25 (3), sentence 1 and 3). When the foreigners cannot be deported to a third country which is willing to admit them and in which they do not face any danger and there is no threat of them being deported on to their persecuting country, their deportation is suspended (Residence Act, Section 60a (2), sentence 1). The foreigner is issued with an official certificate confirming suspension of deportation (Residence Act, Section 60a (4)); this certificate is generally issued for a period of up to six months and extended as appropriate.

**3.** A foreigner who is obliged to leave the federal territory and whose deportation has been suspended is fundamentally entitled to benefits in accordance with the Asylum Seeker Benefits Act (Asylum Seeker Benefits Act, Section 1 (1), no. 4). Where the foreigners are directly responsible for the factors preventing measures to terminate the residence in the federal territory, they receive only such benefits as are required to cover their needs for food and accommodation, including heating, personal hygiene and healthcare, whereby these are to take the form of non-pecuniary benefits (Asylum Seeker Benefits Act, Section 1a (3)). When these circumstances apply, the foreigner is prohibited from taking up gainful employment (Residence Act, Section 60a (6), no. 2).

**4.** Political activities may be restricted or prohibited (Residence Act, Section 47 (1), sentence 2 and section 2). The foreigners may be prohibited from leaving the federal territory and their passport, residence title or certificate confirming suspension of deportation may be confiscated to ensure enforcement of this prohibition (Residence Act, Section 46 (2), Section 48 (1)). A foreigner who has received an expulsion order for reasons of internal security is required to report to the relevant authorities and his residence is subject to restrictions, he may be obliged to live in a certain place of residence, he may be prohibited from entering into contact with specific persons and from using certain means of communication or services (Residence Act, Section 56). Contravention of the above stated provisions is punishable by up to one year's imprisonment or a fine (Residence Act, Section 95 (1), no. 4 and 6a). The act to facilitate the enforcement of expulsion orders has been passed by parliament but has not yet entered into force (and is therefore not included in the translation which is retrievable via the

			<p>provided link). Under this act, the obligation to surrender the foreign passport will be extended to persons who also hold German citizenship and who are thus subject to a ban on leaving the federal territory under the Passport Act (as opposed to the Residence Act) (Residence Act, Section 48 (1), sentence 2). To enable electronic monitoring of their whereabouts, in future it will be possible to oblige a foreigner to wear a technical device at all times (“electronic tag”), whereby breaches of this requirement shall be punishable with up to three years’ imprisonment or a fine (Residence Act - new - Sections 56a, 95 (2), no. 1a). The foreigners authority is the competent authority for all the above stated measures, whereby the foreigner is generally required to report to their local police station. A criminal conviction due to breach of the conditions and requirements can only be brought by a court of law.</p>
	<p>Hungary</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li><b>1.</b> According to Section 45 Subsections (1)-(2) of Act LXXX of 2007 on Asylum "the prohibition of refoulement prevails if the person seeking recognition were exposed to the risk of persecution due to reasons of race, religion, ethnicity, membership of a particular social group or political opinion or to treatment/behaviour determined in Article XIV(2) of the Fundamental Law and there is no safe third country which would receive him/her. In the case of an unaccompanied minor, the prohibition of refoulement also prevails if the unification of the family or any state or other institutional care is not possible either in his/her country of origin or in another state accepting him/her.</li> <li><b>2.</b> Hungary shall grant protection in the form of tolerated stay to a foreigner not complying with the criteria for recognition as refugee or beneficiary of subsidiary protection but, in the event of his/her return to the country of origin, s/he would be exposed to a risk of persecution for reasons of race, religion, ethnicity, membership of a particular social group or a political opinion or to behaviour as specified in Article XIV (2) of the Fundamental Law, and there is no safe third country to admit him/her. The refugee authority shall recognise as a person with tolerated stay the individual with regard to whom it a) established the prohibition of refoulement in the alien policing procedures, or b) rejected the application for asylum, parallel with the establishment of the prohibition of refoulement. Persons with tolerated stay receive a residence permit on humanitarian grounds for one year. The refugee authority shall review the criteria for recognition as person with tolerated stay on an annual basis.</li> <li><b>3.</b> Persons with tolerated stay are entitled to stay in the territory of Hungary. In order to take up employment first they need to get official authorization from the Immigration and Asylum Office.</li> </ol>

			<p><b>4.</b> Persons with tolerated stay are not entitled to a passport and identity card. The Immigration and Asylum Office is the responsible authority in Hungary. As mentioned in question 2 the refugee authority shall review the criteria for recognition as person with tolerated stay on an annual basis with a personal interview and fact checks.</p>
	Latvia	Yes	<p><b>1.</b> According to the Immigration Law a foreigner shall not be returned, if return is in contradiction with the international obligations of the Republic of Latvia. There are no exceptions to this rule.</p> <p><b>2.</b> Legislative acts do not prescribed status of such persons.</p> <p><b>3.</b> Legislative acts do not prescribed rights of such persons (except the one mentioned in the answer to the first question – right not to be returned).</p> <p><b>4.</b> Legislative acts do not prescribed specific restrictions to such persons (general restriction is to refuse issuance of residence permit, if the foreigner creates a threat to national security or public order and safety).</p>
	Lithuania	Yes	<p><b>1.</b> It is prohibited to expel or return an alien to a country where his life or freedom is in danger or where he may be subjected to persecution on grounds of race, religion, nationality, membership of a certain social group or political opinion or to a country from where he may later be expelled to such country (Article 130(1) of the Law). These provisions do not apply to an alien who, for serious reasons, represents a threat to the security of the Republic of Lithuania or who has been convicted by an effective court judgment of a grave crime and constitutes a threat to the community (Article 130(3) of the Law). An alien is not to be expelled from the Republic of Lithuania or returned to a country where there are serious grounds for believing that in that country the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment (Article 130(2) of the Law). The Law does not provide for any exceptions to this prohibition.</p> <p><b>2.</b> Not regulated (the status of such an alien is not defined; the issuance of a document authorizing to stay or to reside in the country is not provided for).</p>

			<p><b>3.</b> Not regulated.</p> <p><b>4.</b> Not regulated.</p>
	Luxembourg	Yes	<p><b>1.</b> In Luxembourg return and expulsion are regulated by different articles of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration law). Article 116 (1) establishes the conditions for expelling a third-country national. This article states: “An alien may be expelled from the Grand Duchy of Luxembourg if his/her presence constitutes a serious threat to public policy or public security or if he/she reappears on the territory despite having been prohibited from entering the territory.” In regards to return the applicable articles of the Immigration Law are 109, 110 and 124 (1). Nevertheless, the Immigration law establishes in article 129 that: “An alien may not be removed or expelled to a country if s/he establishes that his/her life or liberty are seriously threatened there or if s/he risks suffering there treatment which is contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or to treatment within the meaning of Articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”</p> <p><b>2.</b> No status is foreseen in the law. The only possibility that can be granted is a postponement to removal in accordance with article 125bis of the Immigration Law. The postponement of removal will last until there is a real perspective to enforce the expulsion or the return decision.</p> <p><b>3.</b> During the period of postponement of the removal, the alien shall be given humanitarian assistance as defined in Article 27 of the Law of 18 December 2009 organising social aid. He has the right to take up employment. A Temporary Occupation Permit (AOT autorisation d’occupation temporaire) could be granted.</p> <p><b>4.</b> In accordance with article 125bis(1) of the Immigration law the third-country national can be put under house arrest under the conditions of article 125 (1) (regular show up at the administration withholding his/her identity documents and travel documents and/ or deposit of a financial guarantee).The Ministry in charge of Immigration is responsible to establish the measures that are going to be applied and Grand ducal police at the request of the Minister in charge of Immigration proceeds to</p>

			carry on the necessary controls in accordance with article 133 (1) in accordance with article 134.
	Malta	Yes	<p><b>1.</b> Persons who are in need of international protection (i.e. applicants for international protection) and beneficiaries of international protection are protected from refoulement in accordance with Article 33 of the Geneva Convention and Article 19 of the EU Charter of Fundamental Human Rights. Whereas Article 33 of the Geneva Convention allows for an exception to the principle of non-refoulement in case there are reasonable grounds for regarding a beneficiary of refugee status as a danger to national security, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community, Article 19 of the EU Charter of Fundamental Human Rights, effectively prevents a Member State from removing, expelling or extraditing someone to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.</p> <p><b>2.</b> In such cases the Office of the Refugee Commissioner would proceed to withdraw international protection if the person is a beneficiary, or to exclude or not grant international protection (depending on the circumstances of the case) if the person concerned is still an asylum seeker. Persons who have committed criminal offences are sanctioned in terms of the Criminal Code.</p> <p><b>3.</b> In case of a beneficiary of refugee status whose status has been withdrawn on grounds of national security or because the person constitutes a danger to the community of the Member State, he or she is entitled to the rights set out in, or similar to those set out in, Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State that granted them international protection. The same applies in case of a person eligible for refugee status but who is not granted such status on the same grounds. In accordance with the Qualification Directive, no rights are envisaged to a beneficiary of subsidiary protection status whose status is withdrawn, or to a person eligible for subsidiary protection, but who is excluded on grounds of national security or for having committed a serious crime.</p> <p><b>4.</b> Restrictions would be imposed depending on the nature and circumstances of the crime committed by the person in question.</p>

	Netherlands	No	
	Portugal	Yes	<p><b>1.</b> This is clearly a borderline case and, therefore, requires solid ponderation on the values and circumstances at stake so that a final decision may be taken, namely i) the effective degree of the threat to national security or public policy, ii) the risk for his/her life in case of his/her removal for a given country and iii) the possibility of his/her removal for a different country. In exceptional cases, when a residence permit can be granted by reason of international protection, he/she will be recognized the same rights of a legal resident, namely to employment and health care. Notwithstanding, these are situations duly and carefully pondered on a case-to-case basis.</p> <p><b>2.</b> See answer above</p> <p><b>3.</b> See answer above</p> <p><b>4.</b> See answer above</p>
	Slovak Republic	Yes	<p><b>1.</b> Two cases have to be considered: if a foreigner's life or his/her freedom is threatened: a) According to the Slovak legislation (Article 81 (1) of the Act No. 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts), a foreigner cannot be administratively expelled to a country where his/her life would be threatened on the grounds of race, nationality, religion, affiliation to a social group or due to political views in which he/she would be subject to torture, cruel, inhuman or degrading treatment or punishment. At the same time, it is not possible to administratively expel a foreigner to a country where he/she would be subject to death penalty or there is an assumption that during criminal proceedings he/she could be sentenced to such a punishment. b) Also, according to the Slovak legislation (Article 81 (2) of the Act No. 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts), a foreigner cannot be administratively expelled if his/her freedom is threatened on the grounds of race, nationality, religion, affiliation to a social group or due to political views. However, this does not apply if he/she threatens the national security or if he/she has been sentenced to punishment for a criminal act and he/she represents a danger for the Slovak Republic. In such case there is an exception to the prohibition of return. A stateless person can be administratively expelled only if he/she threatens the national security or public order and he/she is not</p>

subject to the obstacles to administrative expulsion.

**2.** According to national legislation, a foreigner who is subject to the obstacle of administrative expulsion (Article 81 (1) of the Act No. 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts) can be granted tolerated stay based on his/her application. Tolerated stay can be granted or prolonged for the period of 180 days or for the period during which the reasons for the its granting persist. The foreigner is issued a confirmation about the granting of the tolerated stay with the exact date when it was granted.

**3.** Persons with tolerated stay do not have access to the labour market. (There are exceptions for those granted tolerated stay on the grounds of the right to respect for their private and family life; those whose tolerated stay was prolonged as they are victims of human trafficking; and those granted tolerated stay due to illegal employment under particularly exploitative conditions if their presence is required for the purpose of criminal proceedings. These persons have the right to take up employment.) They can neither do business. Minors are subject to compulsory education. As for the adults, a system of provision of free language courses and courses of socio-cultural orientation is absent. These kinds of courses are usually available at the local level provided for free mainly by non-governmental or intergovernmental organizations (IOM). In addition to this, stateless persons can apply for funding of courses through IOM. There is a possibility to apply for retraining courses through IOM Migration Information Centre under Allocation Scheme of Educational or Retraining Courses for Migrants financed by the European Union from the European Fund for the Integration of Third Country Nationals within the framework of the programme Solidarity and Management of Migration Flows. Persons with tolerated stay do not have access to the public health insurance system. However, they are entitled to commercial insurance. If they meet the conditions set by the national legislation, they can apply for the benefit in material need. In order to receive the benefit in material need, they have to work at least 32 hours each month doing community service jobs or voluntary work.

**4.** The foreigner cannot leave the territory of the Slovak Republic (their residence would thus terminate). If the reason, due to which he/she was granted the tolerated stay, does not persist, he/she has an obligation to inform the Police unit within 15 days since he/she learnt about this.

	Slovenia	Yes	<ol style="list-style-type: none"> <li><b>1.</b> Quoted from Aliens Act: "The principle of non-refoulement referred to in this Act and customary international law shall mean an obligation of the Republic of Slovenia not to deport an alien to a country in which his life or freedom would be threatened on the basis of race, religion, nationality, membership of a special social group or political conviction, or to a country in which the alien would be exposed to torture or other cruel, inhumane and humiliating treatment or punishment." No exceptions apply.</li> <li><b>2.</b> In such cases only detention in Aliens center is applicable.</li> <li><b>3.</b> In detention only basic rights apply, e.g. food, accommodation, healthcare, clothing if required, social welfare, access to legal assistance and such.</li> <li><b>4.</b> Restriction of movement applies. It is enforced by the police unit of the Aliens center and restricted to the premises of Aliens center.</li> </ol>
	Sweden	Yes	<ol style="list-style-type: none"> <li><b>1.</b> Persons who face death penalty or torture if they were to return (non-refoulement)</li> <li><b>2.</b> The SMA Director-General has declared recently that such persons as mentioned above is now only granted a tolerated stay (in effect a postponement of their expulsion) for a period of one (1) year from the date of the decision.. This is a change, previously such a person could be granted a 1-year permit due to impediments to expulsion, which would in effect grant the person limited rights during that period, such as the right to employment, alien's passport, social support etc.</li> <li><b>3.</b> Such persons are not granted the right to employment, nor social support. Acute medical treatment would be granted.</li> <li><b>4.</b> A SIS-alert will be set up, which makes travelling abroad and return to Sweden difficult, regular reporting to a specific office in a specific area or city is an option, detention another (in special cases) The Swedish Security Services will be responsible for such measures.</li> </ol>



United Kingdom

Yes

- 1.** We cannot remove or extradite an individual where doing so would breach the UK's international obligations, including those under the European Convention on Human Rights. This includes individuals who have an outstanding asylum claim or human rights claim yet to be considered or decided; if they have a live appeal from within the UK against removal, an injunction or other legal barrier to removal such as a judicial review or live application for a judicial review. In cases where someone is considered to be a threat to national security they cannot be returned unless there are assurances from the authorities of the country of return that the returnee will not be subject to torture, inhumane treatment or the death penalty, and that applicable rights such as that of fair trial, adequate prison conditions and right to medical treatment will be respected.
- 2.** Where an individual cannot be removed because doing so would breach their rights under the European Convention on Human Rights, but they are excluded from the Refugee Convention for Article 1F reasons, and therefore would not qualify for Humanitarian Protection, shorter and more restrictive periods of leave may be granted under the Restricted Leave policy. This is explained in more detail at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575522/Restricted-leave-v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575522/Restricted-leave-v2.pdf) In such cases the individual's case will be reviewed regularly to check whether it has become possible to remove the individual.
- 3.** The conditions, and rights/restriction of rights attached to the leave will depend on the individual circumstances of the case. The individual is likely to may have restricted employment rights and will not have access to social support unless they are destitute. The restrictions attached to the leave will depend on the individual circumstances of the case but can include restrictions on movement, education, employment, access to publicly funded social support and residence restrictions. There will be a presumption in favour of restricting the right to work, rather than denying it outright. However, any restrictions on employment will apply to all forms of employment including self-employment and voluntary/unpaid work.
- 4.** The restrictions imposed must be in proportion to the public protection risk posed by the individual. Restrictions will depend on the individual circumstances of the case. Restrictions are outlined fully in the published guidance at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575522/Restricted-leave-](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575522/Restricted-leave-)

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