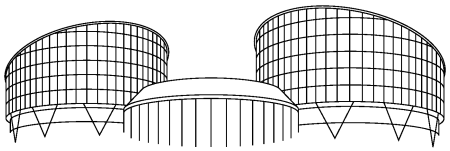

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide to Article 1 of Protocol No. 7 to the European Convention on Human Rights

Procedural safeguards relating to expulsion of aliens

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 1 of Protocol No. 7 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") until 31 October 2020. Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 22 November 1984, came into force on 1 November 1988[1].

2. This Protocol secures certain rights that had not previously been provided for by the Convention or its earlier Protocols: the right to procedural safeguards relating to the expulsion of aliens (Article 1), the right to have one's conviction or sentence reviewed by a higher tribunal (Article 2), the right to compensation for wrongful conviction (Article 3), the right not be tried or punished twice for an offence of/for which a person has already been finally acquitted or convicted ("ne bis in idem") (Article 4), and lastly the principle of equality of rights and responsibilities between spouses (Article 5).

3. Article 1 of Protocol No. 7 reads as follows:

Article 1 - Procedural safeguards relating to expulsion of aliens

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
>
> 2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

4. The first Article of Protocol No. 7 is divided into two paragraphs (*Nolan and K. v. Russia*, 2009, § 114).

5. The first safeguard in Article 1 § 1 of Protocol No. 7 provides that the alien concerned cannot be expelled except "in pursuance of a decision reached in accordance with law".

6. The first paragraph lists the procedural safeguards that must be secured by States parties to Protocol No. 7 in proceedings concerning the individual expulsion of an alien who is lawfully resident:

a. to submit reasons against one's expulsion,
b. to have one's case reviewed,
c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

7. The second paragraph provides for the circumstances in which the alien may be expelled before exercising the rights under paragraph 1 (a), (b) and (c):

- in the interests of public order
- for reasons of national security.

[1] The Protocol has been ratified by 44 member States of the Council of Europe.

8. It should be pointed out at the outset that, "as a matter of well-established international law and subject to their treaty obligations, the States have the right to control the entry, residence and expulsion of aliens. The Convention does not guarantee the right of an alien to enter or to reside in a particular country" (*Muhammad and Muhammad v. Romania* [GC], 2020, § 114; *Ilias and Ahmed v. Hungary* [GC], 2019, § 125; and *De Souza Ribeiro v. France* [GC], 2012, § 77).

9. According to the Explanatory Report on Protocol No. 7, in adopting Article 1 of Protocol No. 7 the States agreed to "minimum" procedural safeguards in the event of expulsion (*Muhammad and Muhammad v. Romania* [GC], 2020, § 117). This Article enabled protection to be granted in those cases which were not covered by other international instruments and allowed such protection to be brought within the purview of the system of control provided for in the European Convention on Human Rights (see point 7 of that report).

10. In the case of *Maaouia v. France* [GC], 2000, §§ 36-40, the Court found that Article 1 of Protocol No. 7 contained specific safeguards for expulsion proceedings which showed that "the States were aware that Article 6 § 1 [right to a fair trial[2]] did not apply to procedures for the expulsion of aliens and wished to take special measures in that sphere". It thus confirmed that decisions regarding the entry, stay and deportation of aliens did not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention.

11. However, the Court also emphasised that, in the event of deportation, the specific guarantees provided for in Article 1 of Protocol No. 7 complemented the protection afforded by Articles 3 and 8 of the Convention taken in conjunction with Article 13 (*Lupsa v. Romania*, 2006, § 51; *Baltaji v. Bulgaria*, 2011, § 54). Further details about other procedural rights under the Convention can be found in the *Guide to Article 8 of the Convention* and in the *Guide to Immigration*.

12. Lastly, in the context of Article 1 of Protocol No. 7, the Court has duly considered that the object and purpose of the Convention, as an instrument of human rights protection, call for an understanding and application of its provisions such as to render its requirements practical and effective, not theoretical and illusory (*Muhammad and Muhammad v. Romania* [GC], 2020, § 122; *Takus v. Greece*, 2012, § 63; and *Geleri v. Romania*, 2011, § 48). This is a general principle of interpretation of all the provisions of the Convention and the Protocols thereto (*Muhammad and Muhammad v. Romania* [GC], 2020, § 122).

2 For the scope of Article 6 § 1, see the Guides on Article 6 (Criminal limb and Civil limb), available on the Court's platform ECHR-KS.

I. Conditions of applicability

Article 1 of Protocol No. 7 of the Convention

"1. An alien lawfully resident in the territory of a State ..."

HUDOC keywords

Lawfully resident (P7-1-1) – Expulsion of an alien (P7-1-1)

A. Lawfully resident

13. Article 1 of Protocol No. 7 applies solely in the context of expulsions of aliens who are "lawfully resident" on the territory of a State party (*Muhammad and Muhammad v. Romania* [GC], 2020, § 91; *Georgia v. Russia (I)* [GC], 2014, § 228, and *Sejdovic and Sulejmanovic v. Italy* (dec.), 2002).

14. Article 1 of Protocol No. 7 applies only to individuals and not, for example, to international organisations (*O.I.J. v. the Czech* Republic (dec.), 1999; and *F.S.M. v. the Czech Republic* (dec.), 1999).

15. As to the notion of "residence" the Explanatory Report indicates: "The word resident is intended to exclude from the application of the article any alien who has arrived at a port or other point of entry but has not yet passed through the immigration control or who has been admitted to the territory for the purpose only of transit or for a limited period for a non-residential purpose. This period also covers the period pending a decision on a request for a residence permit" (see paragraph 9 of the Explanatory Report).

16. The Court has confirmed the definition of the word *resident* given in the Explanatory Report (*Yildirim v. Romania* (dec.), 2007; *S.C.* v. *Romania*, 2015, § 83).

17. The Court had occasion to clarify the meaning of the concept of "residence" in the case of *Nolan and K. v. Russia*, 2009. In that case the Court noted firstly that the notion of "residence" in a given State was not limited to "physical presence" on that State's territory and secondly that the word "resident" operated to exclude those aliens who had not been admitted to the territory or had only been admitted for non-residential purposes. It added that the notion of "residence" was akin to the autonomous concept of "home" developed under Article 8 of the Convention, in that neither were limited to physical presence but depended on the existence of sufficient and continuous links with a specific place[3]. Thus it was found that an alien, having been admitted for residential purposes and having established his or her residence in a given State, would not cease to be "resident" each and every time he or she took a trip abroad (*ibid.*, § 111).

18. As to the meaning of "lawfully", the Explanatory Report indicates that "[t]he word lawfully refers to the domestic law of the State concerned. It is therefore for domestic law to determine the conditions which must be fulfilled for a person's presence in the territory to be considered 'lawful'. The provision applies not only to aliens who have entered lawfully but also to aliens who have

3. On the notion of "home" see Prokopovitch v. Russia, no. 58255/00, § 36, ECHR 2004-XI (extracts): "The Court recalls the Convention organs' case-law that the concept of 'home' within the meaning of Article 8 is not limited to those which are lawfully occupied or which have been lawfully established. 'Home' is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular habitation constitutes a 'home' which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see the following authorities: *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 52-54, and Commission's report of 11 January 1995, § 63; *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 46; *Wiggins v. the United Kingdom*, no. 7456/76, Commission decision of 8 February 1978, Decisions and Reports (DR) 13, p. 40."

entered unlawfully and whose position has been subsequently regularised. However, an alien whose admission and stay were subject to certain conditions, for example a fixed period, and who no longer complies with these conditions cannot be regarded as being still 'lawfully' present" (see paragraph 9 of the Explanatory Report).

19. The Court has found in its case-law that "residence, in order to be lawful, must comply with the domestic law of the State concerned" (*Yildirim v. Romania* (dec.), 2007; see also *Sultani v. France*, 2007, § 88; and *Bolat v. Russia*, 2006, § 76). It is therefore for domestic law to determine the conditions which must be fulfilled for a person's presence in the territory to be considered "lawful" (*Sharma v. Latvia*, 2016, § 73).

20. The Court has taken the view that an alien was not residing lawfully on the territory of a State when he or she had no valid residence permit (*Sejdovic and Sulejmanovic v. Italy* (dec.), 2002, and *Sulejmanovic and Sultanovic v. Italy* (dec.), 2002), when an application for political asylum had been refused with final effect (*S.T. v. France*, Commission decision, 1993) or when, after the expiry of a temporary visa, the alien had remained in the country concerned pending the outcome of proceedings brought to obtain a residence permit or refugee status (*Voulfovitch and Oulianova v. Sweden*, Commission decision, 1993) or pending examination of an asylum application (*S.C. v. Romania*, 2015, § 84-85, and *N.M.* v. *Romania*, 2015, § 104-105). The same was true in the case of an alien who had possessed a valid residence permit up to a certain date but who, after its validity expired, had done nothing to extend it (*Yildirim v. Romania* (dec.), 2007) and for an alien whose residence permit had been cancelled and he had re-entered the country unlawfully in spite of an exclusion order (*Karimi v. Romania* (dec.), 2020, § 57).

21. Further and more generally, an alien who had never obtained a residence permit could not rely on Article 1 of Protocol No. 7 (*A.M. and Others v. Sweden* (dec.), 2009). Lastly, an alien who had illegally entered a country on a fake visa was not necessarily a lawful resident (*T.A. v. Sweden*, Commission decision, 1994).

22. However, an alien was lawfully resident when he held a valid residence permit at the time of his expulsion (*Nowak v. Ukraine*, 2011, § 80), as was an alien with a right of abode on the territory of the respondent State as an asylum seeker under domestic law (*Ahmed v. Romania*, 2010, § 46). The fact that the competent national authority had annulled an applicant's residence permit did not mean he was no longer "lawfully resident" where, at the time of the expulsion, the implementation of the relevant decision had been suspended by a court pending a review of its lawfulness (*Bolat v. Russia*, 2006, § 78).

23. In principle, if the condition of lawful residence is not met, Article 1 of Protocol No. 7 will not be applicable and the Court will declare the complaint inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (*Sulejmanovic and Sultanovic v. Italy* (dec.), 2002; *Yildirim v. Romania* (dec.), 2007; *S.C. v. Romania*, 2015, § 86).

B. Expulsion

24. As the Court has constantly repeated, the High Contracting Parties have a discretionary power to decide whether to expel an alien present in their territory but this power must be exercised in such a way as not to infringe the rights under the Convention of the person concerned (*Bolat v. Russia*, 2006, § 81, and *Nowak v. Ukraine*, 2011, § 81).

25. The European Court of Human Rights has clearly emphasised that the notion of "expulsion" is an "autonomous concept which is independent of any definition contained in domestic legislation" and that "with the exception of extradition, any measure compelling the alien's departure from the territory where he was lawfully resident, constitutes 'expulsion' for the purposes of Article 1 of Protocol No. 7" (*Bolat v. Russia*, 2006, § 79; *Nolan and K. v. Russia*, 2009, § 112; see also point 10 of the Explanatory Report).

26. The Court has thus characterised as an expulsion the fact of removing an applicant from his home and placing him on board an aircraft bound for another State (*Bolat v. Russia*, 2006, § 79). Similarly, a decision barring the applicant from returning to the respondent State following his next trip abroad, thus compelling his permanent departure, was considered to have amounted to an expulsion (*Nolan and K. v. Russia*, 2009, § 112).

27. However, in the case of *Yildirim v. Romania* (dec.), 2007, the Court noted that, since the applicant was not residing in Romania he had been denied the right to enter the country rather than being the subject of an expulsion. In the case of *Davies and Others v. Romania* (dec.), 2003, the Court took the view that the first applicant had not been the subject of an expulsion procedure, but had simply had his leave to enter and remain withdrawn on public order grounds. Having noted that there had not been an expulsion, the Court found the complaint under Article 1 of Protocol No. 7 to be incompatible *ratione materiae*. A similar approach was taken in the case of *Mirzoyan v. the Czech Republic*, 2024, § 107, where requests by the applicant, a lawful resident, for the extension of his long-term residence permit had been rejected by the administrative authorities and courts, but no other measure had been taken against him to compel him to leave the Czech Republic.

28. Is Article 1 of Protocol No. 7 applicable if the expulsion order has not in fact been implemented? The Court answered this question in *Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, §§ 21-23. The application had been lodged by a Serbian national who had lived since the age of eight in the respondent State, where she had obtained a residence permit that had been renewed until 2014, at which point the Interior Ministry had terminated her right of asylum. Her expulsion was then ordered on the ground that she represented a risk for national security. The applicant lodged an application with the Court on 1 April 2016 alleging that the proceedings in which she had been ordered to leave the Former Yugoslav Republic of Macedonia had not been surrounded by minimum procedural safeguards. In particular she complained that she had not seen or been able to challenge the evidence against her. The Court decided to examine the case under Article 1 of Protocol No. 7[4].

29. As to whether Article 1 of Protocol No. 7 was applicable even though no expulsion had taken place, the Court examined the practical consequences of the decision in question: it had had the effect of terminating the legal basis for the applicant's lawful residence in the respondent State and had also contained an order compelling her to leave it within the specified time-limit (*ibid*., § 22). The Court further noted that that order had not been revoked or otherwise invalidated and that the domestic authorities had not suspended its implementation or granted the applicant leave to remain in the respondent State (contrast *Saeed v. Denmark* (dec.), 2014, § 7). In addition, the enforcement of that order was not subject to any further formal requirements; accordingly, the applicant risked expulsion at any time. The fact that she had been granted one-off permission to leave and return to the respondent State, and the fact that the order had not been enforced, did not suffice for the Court to conclude that the order compelling her to leave the respondent State was no longer in force or that it could not lead to her deportation. In addition, the applicant's continued stay in the respondent State was merely tolerated at the national authorities' discretion and was not based on any statutory grounds (*Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, § 22).

30. In such circumstances, the Court was satisfied that the Interior Ministry's decision ordering the applicant to leave the respondent State was to be regarded, for all practical purposes, as a measure of expulsion taken against her and that it engaged Article 1 of Protocol No. 7 to the Convention (§ 23).

4. The European Court of Human Rights is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], no. 37685/10, § 126, 20 March 2018; *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013, and *Moretti and Benedetti v. Italy*, no. 16318/07, § 27, 27 April 2010).

II. Substantive safeguard: expulsion "in pursuance of a decision reached in accordance with law"

Article 1 § 1 of Protocol No. 7

"An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law ..."

HUDOC keywords

In accordance with law (P7-1-1) – Accessibility (P7-1-1) – Foreseeability (P7-1-1) – Safeguards against abuse (P7-1-1)

A. General principles

31. The first fundamental safeguard in Article 1 § 1 of Protocol No. 7 provides that an alien cannot be expelled "except in pursuance of a decision reached in accordance with law" (*Muhammad and Muhammad v. Romania* [GC], 2020, § 118). This notion has a similar meaning throughout the Convention and its Protocols (*ibid*.).

32. The term "law" here refers to the domestic law of the State concerned. "The decision must therefore be taken by the competent authority in accordance with the provisions of substantive law and with the relevant procedural rules" (*Bolat v. Russia*, 2006, § 81).

33. It has nevertheless been explained that the term "law" concerns not only the existence of a legal basis in domestic law, but also the quality of the law in question: it must be accessible and foreseeable and must also afford a measure of protection against arbitrary interference by the public authorities with the Convention rights (*Muhammad and Muhammad v. Romania* [GC], 2020, § 118; *Baltaji v. Bulgaria*, 2011, § 55; *Ahmed v. Romania*, 2010, § 52; *Kaya v. Romania*, 2006, § 55; *Lupsa v. Romania*, 2006, § 55). This equally applies to Convention provisions which lay down procedural rights, as does Article 1 of Protocol No. 7, for it is well established case-law that the rule of law, which is expressly mentioned in the Preamble to the Convention, is inherent in all the Articles of the Convention (*Muhammad and Muhammad v. Romania* [GC], 2020, § 118). This means that, even though an expulsion may be implemented in pursuance of a decision reached in accordance with law, if the law does not comply with Convention requirements there will have been a violation of Article 1 of Protocol No. 7.

34. There can be no exception to this rule (*Sharma v. Latvia*, 2016, § 80, and *Bolat v. Russia*, 2006, § 81).

35. In the context of expulsion on national security grounds it has been observed that, in view of the specificity of this field and the fact that threats to national security may vary in character and may be unanticipated or difficult to define in advance (see, *mutatis mutandis*, *C.G. and Others v. Bulgaria*, 2008, § 40), the requirement of foreseeability does not go so far as to compel States to enact legal provisions listing in detail all conduct that may prompt a decision to expel an individual on national security grounds (*Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, § 35).

B. Examples

36. In the case of *Bolat v. Russia*, 2006, the Court found that there had been no decision "in accordance with law" because no judicial decision ordering the applicant's expulsion had been

taken, whereas domestic law required such a decision for the expulsion of a foreign national (§§ 81-82).

37. In the case of *Sheveli and Shengelaya v. Azerbaijan*, 2020, the Court found that there had been no legal basis, since the Government had not referred to any domestic law permitting the expulsion of an individual in the absence of an enforceable order (§§ 45-46).

38. In the case of *Sharma v. Latvia*, 2016, concerning the expulsion of an Indian national from Latvia, domestic law provided that an administrative act normally took effect when it was notified to the addressee. However, the lodging of an appeal with an institutionally higher authority would suspend the enforcement of the act, unless the conditions for urgent enforcement of an administrative act had been set out either in *lex specialis* or in the contested decision itself. In this case the initial expulsion order in relation to the applicant had been adopted on 13 June 2005 and had come into effect on the same day when it was served on the applicant. The following day the applicant appealed to the higher authority, thus in principle suspending the execution of the initial expulsion order until the effective date of the decision reached as a result of the appeal. In the applicant's case the domestic authorities had not advanced any grounds justifying urgent enforcement of his expulsion pending his appeal. The applicant's appeal had been decided on 11 July 2005 and, as stated in the decision, it had taken effect upon notification to the applicant. The decision had not been served on the applicant before his expulsion on 12 July 2005. Accordingly, the expulsion had been based on a decision which had not yet become final, thus failing to comply with the procedure set out in the domestic law.

39. In the case of *Ahmed v. Romania*, 2010, § 53-55, the Court found that Romanian law did not provide for sufficient minimum safeguards against arbitrary action by the authorities and did not satisfy the condition of foreseeability, given that they had not provided the applicants with the slightest indication concerning the acts of which they stood accused, and the public prosecutor's office had not notified them of the orders against them in a timely manner (see also to the same effect *Kaya v. Romania*, 2006, § 57, and *Lupsa v. Romania*, 2006, § 57).

40. In the case of *C.G. and Others v. Bulgaria*, 2008, § 73, after noting that the first applicant's expulsion had not been decided "in accordance with the law", within the meaning of paragraph 2 of Article 8 of the Convention, and after finding that this expression had the same meaning wherever it was used in the Convention and the Protocols[5], the Court found that the expulsion did not satisfy the condition of lawfulness under Article 1 of Protocol No. 7 (see also to this effect *Lupsa v. Romania*, 2006, § 57, *Baltaji v. Bulgaria*, 2011, § 56, *Geleri v. Romania*, 2011, § 45).

41. In some cases the Court has examined not only the quality of the domestic law but also the compliance with the safeguards listed in paragraph 1 of Article 1 of Protocol No. 7 (see, for example,, *Lupsa v. Romania*, 2006, §§ 58-60, *C.G. and Others v. Bulgaria*, 2008, § 74, *Geleri v. Romania*, 2011, §§ 46-47).

42. The case of *Corley and Others v. Russia*, 2021, §§ 53-64, mainly concerns the applicants' "enforced departure" from Russia before being able to exercise their procedural rights. The Court found that the national authorities had deliberately created a situation in which the applicants had not been afforded a realistic possibility of exercising their procedural rights, in accordance with the law, prior to their expulsion. It took particular account of the expedited processing of the case by the authorities and the fact that one of the applicants had been made to sign an invalid waiver of his right of appeal in exchange for his release (ibid., § 63).

5 The Court finds that the expressions "in accordance with the law" (Article 8), "prescribed by law" (Articles 9-11), "provided for by law" (Article 1 of Protocol No. 1) and "in accordance with law" (Article 1 of Protocol No. 7) have a similar meaning (see *Malone v. the United Kingdom*, 2 August 1984, § 66, Series A no. 82; see also *Mihalache v. Romania* [GC], no. 54012/10, § 112, 8 July 2019).

III. Procedural safeguards

Article 1 § 1 of Protocol No. 7

"1. An alien ... shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority."

HUDOC keywords

Contest expulsion (P7-1-1) Review of expulsion decision (P7-1-1) Competent authority (P7-1-1) Represented (P7-1-1)

43. In addition to the condition of lawfulness, Article 1 § 1 of Protocol No. 7 provides for specific procedural safeguards. The alien concerned must be able:

a. to submit reasons against his expulsion,
b. to have his case reviewed, and
c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

44. In order to ascertain whether these safeguards were afforded in the cases before it, the Court has taken account of the various factual circumstances, without always specifically looking at one of the safeguards listed in Article 1 or by making an overall assessment. However, some of the factors mentioned in the Court's case-law allow the scope of these rights to be determined.

A. To submit reasons against his expulsion

1. Content and scope of rights guaranteed

45. The Court has often examined together the procedural safeguards listed in Article 1 § 1 (a) and (b) of Protocol No. 7.

46. As to the safeguard provided for in letter (a) – "to submit reasons against his expulsion" – in the cases of *Lupsa v. Romania*, 2006, and *Kaya v. Romania*, 2006, the Court noted, firstly, that the authorities had not provided the applicants with the slightest indication of the offence of which they were suspected and, secondly, that the public prosecutor's office had not notified them of the orders issued against him until the day of the only hearing before the Court of Appeal. Further, the Court of Appeal had dismissed all requests for an adjournment, thus preventing the applicants' lawyers from studying the order and producing evidence in support of their application for judicial review (*Lupsa v. Romania*, 2006, § 59, and *Kaya v. Romania*, 2006, § 59). Lastly, reiterating that any provision of the Convention or its Protocols had to be interpreted in such a way as to guarantee rights which were practical and effective as opposed to theoretical and illusory, the Court found, in the light of the purely formal review by the Court of Appeal in these cases, that the applicants had not genuinely been able to have their cases examined in the light of reasons against their deportation (*Lupsa v. Romania*, 2006, § 60, *Kaya v. Romania*, 2006, § 60, and *Geleri v. Romania*, 2011, § 48).

47. The Court has added that, where the competent authorities, such as administrative courts, refused to examine the merits of an appeal by an alien against his expulsion, the alien would be "deprived of the possibility of submitting reasons against his expulsion and of having his case examined in the administrative courts" (*Baltaji v. Bulgaria*, 2011, § 57). The Court also noted that the existing avenue of appeal to a higher authority could not be regarded as an effective domestic remedy, especially on account of the fact that the applicant had, at no time in the proceedings, been given access to the factual reasons for his expulsion and that the Minister, who was the institutionally higher authority of the body which issued the impugned order, was not an independent and impartial organ. For these same reasons, the Court took the view that the appeal had been a purely formal one and had not enabled the applicant to have his case properly examined in the light of the reasons against his expulsion (*ibid*., § 58).

48. It can thus be seen from the case-law that the Court has always found that, under Article 1 of Protocol No. 7, the alien concerned has the right to be notified of the accusations against him (*Lupsa v. Romania*, 2006, § 59) and has always found it reprehensible when no information has been given to applicants about the reasons for their expulsion (*Lupsa v. Romania*, 2006, §§ 40 and 56 ; *Kaushal and Others v. Bulgaria*, 2010, §§ 30 and 48; *Baltaji v. Bulgaria*, 2011, § 58, and *Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, §§ 36-39).

49. In the case of *Muhammad and Muhammad v. Romania* [GC], 2020, the Court looked at whether aliens expelled on national security grounds could rely, under Article 1 of Protocol No. 7, on the right to be informed of the factual reasons for their expulsion and the right to have access to the documents in the file on which the expulsion decision was based. After noting that these rights were not expressly mentioned in the text of Article 1 of Protocol No. 7, and being mindful of the principle of effectiveness, the Court provided some clarification in relation to its previous case-law. It thus found: "an alien cannot meaningfully challenge the authorities' allegations to the effect that national security is at stake, or reasonably submit reasons against his expulsion without being aware of the relevant factual elements which have led the domestic authorities to believe that the alien represents a threat to national security" (*Muhammad and Muhammad v. Romania* [GC], 2020, § 126). As regards access to documents in the file, the Court has found that under Article 1 of Protocol No. 7 "a right is secured to the alien to be informed, preferably in writing and in any event ... allowing an effective defence, of the content of the documents and the information relied upon by the competent national authority which is deciding on the alien's expulsion, without prejudice to the possibility of imposing duly justified limitations on such information if necessary" (*Muhammad and Muhammad v. Romania* [GC], 2020, § 128).

50. Article 1 § 1 of Protocol No. 7 thus secures to the aliens concerned the right to be informed of the reasons for their expulsion and to have access to the documents in the file underlying the expulsion proceedings, but to a limited extent: the rights that can be asserted by those concerned are thus limited to a right to be informed of the *relevant factual elements* which have led the competent domestic authorities to consider that they represent a threat to national security, together with a right of access to the *content of the documents and the information* in the case file on which those authorities relied when deciding on the expulsion (*Muhammad and Muhammad v. Romania* [GC], 2020, § 129; compare, for example, the requirements of Article 6 of the Convention, which guarantees the right of a person charged with an offence to be informed of the accusations against him and a right of access to all the documents in the file – see, for more details on this point, the *Guide to Article 6 (criminal aspect)*; compare also with the requirements of Article 8 of the Convention under which, in cases of expulsion of aliens on national security grounds, the guarantee of an effective remedy does not go so far as requiring the disclosure of classified information to the person concerned, *S.L. v. Romania* (dec.), 2022, §§ 42-43)).

2. Limitation of these rights

51. The Court has found that the rights secured by Article 1 § 1 (a) of Protocol No. 7 are not absolute (*Muhammad and Muhammad v. Romania* [GC], 2020, § 130). It has nevertheless clarified that any limitations of the rights in question must not negate the procedural protection guaranteed by Article 1 of Protocol No. 7 by impairing the very essence of the safeguards enshrined in this provision. Even in the event of limitations, the alien must be offered an effective opportunity to submit reasons against his expulsion and be protected against any arbitrariness (*ibid*., § 133).

3. Methodology to be followed when examining any limitation of guaranteed rights

52. In order to decide whether the limitation imposed on the relevant rights is compatible with Article 1 § 1 (a) of Protocol No. 7, the Court has established a two-stage test. It will first ascertain whether the limitations of the alien's procedural rights have been found by a competent independent authority to be *duly justified* in the light of the particular circumstances of the case. The Court will then examine whether the difficulties resulting from these limitations for the alien concerned were sufficiently compensated for by *counterbalancing factors* (*Muhammad and Muhammad v. Romania* [GC], 2020, §§ 133 and 137).

53. Should the national authorities have failed to examine – or have insufficiently examined and justified – the need for limitations on the alien's procedural rights, this will not suffice in itself to entail a violation of Article 1 § 1 (a) of Protocol No. 7. In any event, the Court will also ascertain whether any counterbalancing measures have been applied (*ibid*., § 144). Only the intensity of the Court's scrutiny will be different: the less stringent the examination by the national authorities, the stricter the Court's scrutiny of the counterbalancing factors will have to be (*ibid*., § 145).

54. The Court has also observed that in its assessment it will be guided by two basic principles: first, the more the information available to the alien is limited, the more the safeguards will be important, in order to counterbalance the limitation of his or her procedural rights; secondly, where the circumstances of a case reveal particularly significant repercussions for the alien's situation, the counterbalancing safeguards must be strengthened accordingly (*ibid*., § 146).

55. The Court has found that it must carry out its examination having regard to the circumstances of a given case, taking into account the proceedings as a whole (*ibid*., §§ 138 and 157), which means that it will consider all the factors in place throughout the proceedings.

56. As to the first stage of the test, the Court has clarified the conditions that must be met by the domestic authorities' assessment of the question whether the impugned limitation had been imposed for "duly justified reasons" (to be compared for example with the "compelling reasons" required in *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 265, and *Beuze v. Belgium* [GC], § 142, and the "good reasons" required in *Schatschaschwili v. Germany* [GC], § 107). The Court accepts that *duly justified reasons*, such as the need to protect national security, may allow limitations to be imposed on the alien's procedural rights, a matter which fell primarily to the national authorities to assess. The Court will therefore examine the decision-making procedure in which the limitation of the alien's procedural rights was imposed. In this connection the Court has set out the factors that it may weigh in the balance (*ibid*., §§ 139-142):

- scrutiny by a judicial or other authority which is independent from the executive body seeking to impose the limitation;
- the scope of the powers of that national authority and in particular
  - whether the authority is entitled to review the necessity of keeping information classified; and;

- the powers vested in the independent authority depending on the finding it has made in a given case as to the need to restrict procedural rights.

57. As to the second stage of the test – the counterbalancing factors – the Court has given a non-exhaustive list of the following factors (*Schatschaschwili v. Germany* [GC], § 151-156), some inspired by Article 1 § 1 (b) and (c) of Protocol No. 7:

- The relevance of the information actually disclosed to the alien with regard both to the factual elements underlying the expulsion decision and the access to the content of the documents and information relied upon by the authority making that decision; it being understood that the alien must be informed during the proceedings of the substance of the accusations against him or her; and bearing in mind that it falls to an independent authority to determine, after examining all the classified evidence, which factual information may be disclosed to the alien concerned (*ibid*., §§ 151-152). A mere enumeration of the numbers of legal provisions cannot suffice, not even *a minima*, to constitute adequate information about the accusations (*ibid*., § 168).
- The provision of information to aliens as to the conduct of the proceedings and the domestic safeguards to compensate for the limitation of their rights. The Court will ascertain whether the domestic authorities have provided the requisite information, at least at key stages in the proceedings, particularly where the alien is not represented by a lawyer and where the rules of domestic procedure impose a certain expedition in the examination of the case (*ibid*., § 153).
- Whether the alien was represented in the proceedings. Going beyond the safeguard of Article 1 § 1 (c), the possibility for an alien to be represented by a lawyer, or even by a specialised lawyer who holds the relevant authorisations to access classified documents in the case file which are not accessible to the alien, constitutes a significant counterbalancing factor; it should also be considered whether or not the representative's communication with his or her client was restricted once the access to the classified material had been obtained (*ibid*., §§ 154-155).
- The intervention of an independent authority in the proceedings[6].

58. In the case of *Hassine v. Romania*, 2021, §§ 51-54, the Court summed up the principles laid down in the case of *Muhammad and Muhammad v. Romania* [GC]. It then applied them to the facts of a situation that was similar to that of the *Muhammad and Muhammad v. Romania* [GC] case and found a violation Article 1 of Protocol No. 7.

B. To have his case reviewed

59. As to the scope of the right provided for under sub-paragraph (b) of the first Article of Protocol No. 7 – to have his case reviewed – the Court's case-law shows that a purely formal review of the expulsion decision does not satisfy this condition. In the case of *Kaushal and Others v. Bulgaria*, 2010, § 49, the Court thus noted that the national courts had failed to gather evidence to confirm or dispel the allegations serving as a basis for the decision to expel the first applicant and subjected this decision to a purely formal examination, with the result that the applicant was not able to have his case genuinely heard and reviewed in the light of possible arguments against his expulsion. Thus, the domestic courts' actions had run counter to letter (b) of paragraph 1 of Protocol No. 7.

60. The purely formal nature of the review of an expulsion decision was also impugned by the Court in *C.G. and Others v. Bulgaria*, 2008, § 74, where it observed that the national courts had refused to gather evidence to confirm or dispel the allegations serving as a basis for the decision to expel the applicant and had subjected this decision to a purely formal review, with the result that the

6. For more details on this factor see paragraph 63 of this Guide.

applicant had not been able to have his case genuinely heard and reviewed in the light of reasons against his expulsion, contrary to paragraph 1 (b).

61. In the case of *Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, § 35, the Court clarified the procedural safeguards under Article 1 § 1 (a) and (b) of Protocol No. 7 in a case where national security was at stake. In this case the decision to expel the applicant had been based on the claim that she was a risk to national security, without any factual reasons having been disclosed to her or to the domestic courts which had examined the measure. Based on the requirement of the foreseeability of the law and the concept of the rule of law, as applied in the context of an Article providing for procedural safeguards, the Court required deportation measures to be subject to some form of adversarial proceedings before an independent authority or a court competent to effectively scrutinise the reasons for them and review the relevant evidence, if need be with appropriate procedural limitations on the use of classified information. The independent authority or court had to be able to react in cases where the invocation of "national security" had no reasonable basis in the facts or was arbitrary.

62. This part of the text shows that the reasons underlying the expulsion decision must be examined by an independent authority – administrative or judicial – which must be competent to review the merits of the decision. Before this authority, even though the alien's rights may be restricted in order to protect classified information used as evidence to justify the expulsion, the alien must be able to challenge the assertion that national security is at stake. The Court found in that case that there had been a violation of Article 1 § 1 (a) and (b) of Protocol No. 7.

63. In the case of *Muhammad and Muhammad v. Romania* [GC], 2020, § 156, the Court noted that one of the factors capable of counterbalancing a limitation of the rights secured by Article 1 § 1 (a) of Protocol No. 7 was the intervention of an independent authority in the proceedings. Referring to the right secured by Article 1 § 1 (b) of Protocol No. 7 and to its relevant case-law in such matters, the Court consolidated the aspects already taken into account in previous cases and mentioned some others. The Court thus noted that the following aspects could be considered:

> (i) Whether one or more independent authorities, either administrative or judicial, were involved in the proceedings, either to adopt the expulsion measure directly or to review its legality, or even its merits (see, among many other authorities, *Al-Nashif*, cited above, § 137; *Lupsa*, cited above, § 56; and *Ljatifi*, cited above, § 32); and where that authority is a court, the question of its level in the hierarchy of the national legal system. In this connection, judicial scrutiny of the expulsion measure will have in principle a greater counterbalancing effect than an administrative form of scrutiny.
>
> (ii) Whether the applicant was able to challenge, in an effective manner and before an independent authority, the allegations against him according to which he represented a danger for national security (see *Ljatifi*, cited above, § 35).
>
> (iii) Whether the independent authority had the power to effectively examine the grounds underlying the expulsion application or decision, as the case may be, and the supporting evidence adduced, and if so, whether it duly exercised that power in the case at hand (see C.G. and Others, cited above, §§ 73 and 74; *Geleri*, cited above, § 48; and *Ljatifi*, cited above, § 35). On this point, the Court will take account of whether, to perform its task in that regard, that authority had access to the totality of the file constituted by the relevant national security body in order to make its case against the alien, including to the classified documents (see *Ljatifi*, cited above, § 32). Another major factor will be the power of that authority to verify the authenticity of the documents in the file, together with the credibility and veracity of the classified information adduced in support of the expulsion application or decision, as the case may be (see *C.G. and Others*, cited above, §§ 73-74; *Kaushal and Others*, cited above, § 49; and, *mutatis mutandis*, *Regner*, § 152). In this connection, there is no presumption that the State security grounds invoked by the competent national security body exist and are valid: the independent authority should be able to verify the facts in the light of the evidence submitted (see *Kaushal and Others*, cited above, §§ 31-32 and 49).

(iv) Whether the independent authority called upon to review an expulsion decision, had the power to annul or amend that decision if it found, in the light of the file, that the invoking of national security was devoid of any reasonable and adequate factual basis.

(v) Whether the necessity of the expulsion was sufficiently plausible in the light of the circumstances of the case and the reasoning provided by the independent authority to justify its decision. In this context the Court will ascertain whether the nature and the degree of the scrutiny applied by the national authority in respect of the case against the alien concerned transpire, at least summarily, from the reasoning of their decision.

C. To be represented before the competent authority

64. According to the Explanatory Report, sub-paragraph (c) of Article 1 § 1 requires that the alien concerned be afforded the right to have his case presented on his behalf to the competent authority or a person or persons designated by that authority. The report does not specifically mention the nature of that representation. It explains that the "competent authority" may be administrative or judicial (see also, to this effect, *Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, § 35). Moreover, the "competent authority" reviewing the case need not be the authority with whom the final decision on the question of expulsion rests. Thus, this provision would be satisfied by a procedure whereby a court which had reviewed the case in accordance with sub-paragraph (b) made a recommendation of expulsion to an administrative authority with whom the final decision lay (see point 13.3 of the Explanatory Report).

65. In the cases already examined by the Court, the "competent authority" was either judicial or administrative (for an example of a non-judicial authority: *Sharma v. Latvia*, 2016, and *Baltaji v. Bulgaria*, 2011). However, in the case of an appeal to an institutionally higher authority, namely the Interior Minister of the respondent State, the Court found that this avenue could not be regarded as an effective domestic remedy as the applicant had "at no point in the proceedings been able to take cognisance of the factual reasons for his expulsion" and that "the minister, who was the institutionally higher authority in relation to the authority which had issued the impugned order, could not be regarded as an independent and impartial organ" (*Baltaji v. Bulgaria*, 2011, § 58).

66. In the case of *Muhammad and Muhammad v. Romania* [GC], 2020, §§ 154-155, the Court clarified, referring to Article 1 § 1 (c) of Protocol No. 7, that aliens must be able to obtain representation before the competent authority for the purposes of the decision on their expulsion. This implies that provisions of domestic law should afford an effective possibility of representation in such cases. In the case of *Poklykayew v. Poland*, 2023, §§ 75 and 76, where it examined the possibility for the applicant to be represented in the proceedings as a factor counterbalancing the limitation of his right of access to documents in the file, the Court took into account the fact that the national authorities had not provided him with a list of lawyers who held security clearance.

D. Examples

67. In the case of *Nolan and K. v. Russia*, 2009, § 115, the Court noted that the Government of the respondent State had not furnished any explanation as to why the decision on the applicant's exclusion had not been communicated to him for more than three months or why he had not been allowed to submit reasons against his expulsion and to have his case reviewed with the participation of his counsel. He had therefore not been afforded the procedural safeguards set out in Article 1 of Protocol No. 7.

68. In *Nowak v. Ukraine*, 2011, § 82, the Court noted that the decision on the applicant's expulsion had been served on him on the date of his departure, in a language he did not understand and in circumstances which had prevented him from being represented or submitting any reasons against his expulsion. For those reasons there had been a violation of Article 1 of Protocol No. 7.

69. However, in the case of *Mokrani v. France* (dec.), 2002, after noting that the applicant had been able to challenge the deportation order in the context of court proceedings and that he had also been given the opportunity to submit reasons against his expulsion in the context of the proceedings before the deportation board, the Court found that the applicant had enjoyed all the safeguards provided for in Article 1 § 1 (a), (b) and (c) of Protocol No. 7.

70. Similarly, in the case of *Dorochenko v. Estonia* (dec.), 2006, the Court noted that the applicants' case had been adjudicated by an administrative court and, following their appeals, also by a court of appeal and by the Supreme Court. At all levels it had been open to them to submit reasons against the authorities' refusal to extend their residence permits. The applicant had enjoyed all the safeguards provided for in Article 1 § 1 of Protocol No. 7 (see also, to the same effect, *Nagula v. Estonia* (dec.), 2005, and *Unlu v. Switzerland*, Commission decision, 1996).

71. In the case of *Muhammad and Muhammad v. Romania* [GC], 2020, the applicants, two Pakistani nationals living lawfully in Romania, having been declared undesirable and banned from the country for fifteen years, were deported following an administrative process in which they were told that that were suspected of terrorist activities but without being notified of the specific accusations and without having access to the documents in the file classified as "secret". The domestic courts had been given access to a classified document in the file that had been drawn up by the Romanian intelligence agency. The applicants had been represented in their appeal by two lawyers who did not hold the certificate entitling them to access the classified document in question. Under domestic law the time-limit for this type of procedure was also particularly tight (five days for the appeal in question).

72. The Court noted that there had been a significant limitation of the applicants' right to be informed of the factual elements submitted in support of their expulsion and the content of the relevant documents. The need for such a limitation had not been examined or found duly justified by an independent national authority. Consequently, the Court had to exercise strict scrutiny with regard to the counterbalancing factors put in place. The applicants had received only very general information about the legal characterisation of the accusations against them. They had not been provided with any information about the key stages in the proceedings or about the possibility of accessing classified documents in the file through a lawyer holding the relevant certificate. The mere fact that the expulsion decision had been taken by independent judicial authorities at a high level, without it being possible to establish that they had actually used the powers vested in them under Romanian law, did not suffice to counterbalance the limitations that the applicants had sustained in the exercise of their procedural rights. The Court concluded that, having regard to the proceedings as a whole and to the margin of appreciation afforded to States in such matters, the limitations had not been counterbalanced in the domestic proceedings such as to preserve the very essence of these rights. Accordingly, there had been a violation of Article 1 of Protocol No. 7.

73. In the case of *F.S. v. Croatia* (2023, §§ 64, 68 and 70), after noting that the applicant's procedural rights had been significantly limited, the Court took account of the failure to inform him of any of the factual elements which had led the authorities to conclude that he represented a threat to national security (unlike *Muhammad and Muhammad v. Romania* [GC], 2020, §§ 12 and 161, where the applicants had at least been made aware that the concerns about them involved terrorism, and *Poklykayew v. Poland*, 2023, §§ 6 and 66, where it was noted in the decision notifying the applicant that he posed a threat to national security in Poland that he had collaborated with the Belarusian secret services). In examining the counterbalancing factors, although the domestic courts could have sought access to the classified material in the judicial review proceedings concerning his expulsion, they had not taken that opportunity. It further noted that the domestic courts had failed to make use of the available procedural mechanisms which could have given the applicant an effective opportunity to submit reasons against his expulsion and that their merely formalistic examination of the case could not constitute an adequate counterbalancing factor There had therefore been a

violation of Article 1 § 1 of Protocol No. 7 on account of the significant limitation of the applicant's procedural rights without sufficient counterbalancing safeguards.

E. Relationship between procedural safeguards under Article 1 of Protocol No. 7 and under other Convention Articles

74. By their very nature, the procedural safeguards under Article 1 of Protocol No. 7 may sometimes be closely linked to the content of other Convention provisions. In other words, a complaint before the Court concerning procedural safeguards may on occasion fall under more than one Article. The applicant will usually indicate the Article under which he or she seeks to have the application examined. Where more than one Article is relied upon in a complaint about the same procedural flaw, the Court may choose to examine it under the Article that it considers the most pertinent in the light of the particular circumstances of the case (see, for example, *Hassine v. Romania* (2021, § 74). However, given that the scope of the various Articles relied upon will be different, the Court may examine the applicant's allegations under a number of Articles.

75. The Articles most likely to be relied upon in order to complain about the same procedural safeguards are the following:

a. Article 8 of the Convention (right to respect for one's private and/or family life) taken alone or together with Article 13 of the Convention (right to an effective remedy)

76. In certain cases, in complaining about a lack of procedural safeguards in proceedings which led to their removal from their country of residence, applicants have relied on Article 8 of the Convention taken alone (*Baltaji v. Bulgaria*, 2011, § 20, and *Lupsa v. Romania*, 2006, § 19) or together with Article 13 of the Convention (*Kaushal and Others v. Bulgaria*, 2010, §§ 18 and 35). In these cases the Court examined the complaint under Article 8 of the Convention by verifying either whether the interference with the right to respect for private and family life was based on a law which satisfied the conditions of quality (*Lupsa v. Romania*, 2006, § 42, and *Kaushal and Others v. Bulgaria*, 2010, §33, *Baltaji v. Bulgaria*, 2011, § 38) or whether it was necessary in a democratic society (*Gaspar v. Russia*, 2018, § 43, and *Liu v. Russia (no. 2)*, 2011, § 85). It also found a violation of Article 13 of the Convention when it noted that the national courts had not carried out an adequate review of the proportionality of the measure in question (*Kaushal and Others v. Bulgaria*, 2010, § 41). The Court then examined the applicants' allegations from the angle of Article 1 of Protocol No. 7.

77. It is of interest to compare the methodology followed by the Court in examining a limitation of the rights guaranteed under Article 1 of Protocol No. 7 with that followed where a similar complaint has been raised under Article 8 of the Convention, alone or in conjunction with Article 13. Thus under Article 8, where applicants have complained of not being informed of the grounds for being banned from re-entering the country, the Court has indicated that this was only one of the many factors that it takes into account to determine whether there have been sufficient procedural safeguards. It has considered that it is for the States, under Article 8 of the Convention, for cases raising problems of national security, to put in place a procedure ensuring a balance between the need to restrict access to classified information and the need to ensure some form of adversarial proceedings. It has clarified that there may be more than one means of attaining this objective. It has thus considered that it should examine the entire procedural system put in place by the respondent State in order to verify whether the procedural safeguards required by Article 8 of the Convention were provided in the circumstances of the case (*S.L. v. Romania* (dec.), 2022, §§ 42-43 and *I.R. and G.T. v. the United Kingdom* (dec.), 2014, §§ 59-60, and *Saeed v. Denmark* (dec.), 2014, § 35).

78. The Court has also explained that in cases concerning expulsion on national security grounds, the guarantee of an effective remedy contained in Article 13 requires as a minimum that the competent independent appeals authority be informed of the reasons grounding the expulsion decision, but does not go so far as to require provision of this information to the individual concerned (*I.R. and G.T. v. the United Kingdom*, 2014, § 62). It has further pointed out that the appeals authority must be competent to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable; that there has to be some form of adversarial proceedings, if need be through a special representative after a security clearance; and that it is necessary to ascertain whether the measure would interfere with the right to respect for family life and, if so, whether a fair balance has been struck between the public interest involved and the individual's rights (*Al-Nashif v. Bulgaria*, 2002, § 137, and *I.R. and G.T. v. the United Kingdom*, 2014, § 62).

79. In the case of *Mirzoyan v. the Czech Republic* (2024, §§ 81-85), the Court took a different approach. In that case the applicant complained under Article 8 of the Convention that the judicial review of administrative decisions rejecting his requests for an extension of his long-term residence permit had been deficient. He alleged a lack of procedural safeguards, on account of his inability to access classified documents relied upon to accuse him of representing a threat to public order, but to which his lawyer had partial access. He also complained of an alleged failure by the authorities to take sufficient account of his family ties and to weigh up the interests at stake. The Court reiterated that under Article 8 of the Convention procedural safeguards formed an integral part of the legality of expulsion decisions. Referring to the principle of the harmonious interpretation of the Convention, it took the view that, in cases concerning measures affecting an alien's residence permit in a manner that could potentially lead to his or her expulsion, the procedural safeguards under Article 8 should be interpreted in the light of those guaranteed under Article 1 of Protocol No. 7, in so far as they were relevant (*Mirzoyan v. the Czech Republic,* 2024, § 82). Subsequently, as to the extent of the information to which an alien would be entitled during proceedings where national security concerns were at stake, the Court took account of the level set for the rights under Article 1 of Protocol No. 7 (ibid., § 83; *Muhammad and Muhammad v. Romania* [GC], 2020, §§ 128-129). Similarly, as to the factors that might be capable of counterbalancing limitations on procedural rights, the Court was guided *mutatis mutandis* by those listed in *Muhammad and Muhammad v. Romania* ([GC], 2020, §§ 151-156). Lastly, the Court added that where children were involved, their best interests should be accorded significant weight in the balancing exercise. After applying those principles to the present case, the Court found no violation of Article 8 of the Convention, given that the judicial procedure had afforded sufficient guarantees to counterbalance the limitation of the applicant's procedural rights and that the authorities had sufficiently taken into account his family ties, weighing in the balance the relevant interests at stake.

b. Article 13 of the Convention (right to an effective remedy)

80. In the case of *Takush v. Greece* (2012, § 49-50), the applicant relied only on Article 13 of the Convention in complaining that the remedy against the removal decision had not been effective, as he had been expelled before the ruling of the Administrative Court. The Court found that, from its reading of the applicant's complaint, his allegations had to be examined under Article 1 of Protocol No. 7.

81. In the case of *Berdzenishvili and Others v. Russia*, 2016, §§ 124 and 129, the applicants relied on Article 13 of the Convention in combination with Article 1 of Protocol No. 7 in complaining that they had not had an effective remedy by which to challenge the legality of their removal. After finding no violation of Article 1 of Protocol No. 7 on the ground that some applicants had failed to prove that they had been residing lawfully in the country and that others had not been expelled, the Court found that it did not have sufficient evidence to conclude that the applicants had an arguable

complaint under Article 1 of Protocol No. 7 such that it could examineir the complaint under Article 13 of the Convention.

82. In some cases, in addition to Article 1 of Protocol No. 7 applicants have relied on Article 13 of the Convention to complain that they had not had appropriate procedural safeguards in proceedings leading to their removal. Different approaches have been taken by the Court. In the case of *Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, § 45, the Court took the view that, in view of the finding of a violation of Article 1 of Protocol No. 7 as a result of the failure of the domestic courts properly to scrutinise whether the impugned order had been issued on genuine national security grounds, it was not necessary to examine whether there had also been a violation of Article 13 of the Convention. More recently, invoking its position as "master of the characterisation to be given in law to the facts" (*Radomilja and Others v. Croatia* [GC], 2018, §§ 113-115 and 126), the Court found it appropriate to examine the applicants' allegations only under Article 1 of Protocol No. 7 to the Convention (*Muhammad and Muhammad v. Romania* [GC], 2020, § 88, and *Poklykayew v. Poland*, 2023, § 42-43).

IV. Exceptions

Article 1 § 2 of Protocol No. 7

"An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

HUDOC keywords

Expulsion before exercising procedural rights (P7-1-2) Necessary in a democratic society (P7-1-2) Protection of public order (P7-1-2) National security (P7-1-2)

A. General principles

83. As a general rule, an alien must be authorised to exercise his or her rights under sub-paragraphs (a), (b) and (c) of paragraph 1 before being deported. However, paragraph 2 allows for exceptions, namely in cases where deportation before those rights have been exercised is regarded as necessary in the interest of public order or for reasons of national security reasons (see point 15 of the Explanatory Report; *C.G. and Others v. Bulgaria*, 2008, §§ 77-78, and *Takush v. Greece*, 2012, § 63).

84. These exceptions must be applied taking account of the proportionality principle as defined by the European Court of Human Rights (see point 15 of the Explanatory Report; and *C.G. and Others v. Bulgaria*, 2008, § 77).

85. The State relying on public order to expel an alien before he or she has exercised the rights mentioned in paragraph 1 of Article 1 must be able to show that this exceptional measure was necessary in the particular case or category of cases. On the other hand, if an expulsion was decided for reasons of national security, this in itself should be accepted as sufficient justification (see point 15 of the Explanatory Report).

86. In both situations, however, the person concerned should be entitled to exercise the rights specified in paragraph 1 after his or her expulsion (see point 15 of the Explanatory Report, *Lupsa v. Romania*, 2006, § 53, and *Kaya v. Romania*, 2006, § 53).

B. Examples

87. Thus in the case of *Nolan and K. v. Russia*, 2009, § 115, the Court found that the respondent Government had not submitted any material or evidence capable of corroborating their claim that the interests of national security or public order had been at stake. Accordingly, the exception set out in paragraph 2 could not be held to apply in that case and the applicant should have enjoyed the procedural safeguards described in paragraph 1.

88. In the case of *C.G. and Others v. Bulgaria*, 2008, § 78, the Court found that the Government had not put forward any arguments capable of convincing the Court of the need for the measure. Nor was there any indication in the file to suggest that it was truly necessary to expel the first applicant before he was able to challenge the measure. The Court further found that, as the applicant's expulsion was not based on "genuine reasons of national security" within the meaning of Article 8 § 2 of the Convention, the expulsion was also unfounded, in view of the similarity of the terminology, in terms of the exception allowed in the second paragraph of Article 1 of Protocol No. 7 (*ibid.*, § 77).

89. In addition, the fact of "merely indicating that the applicant was dangerous for public order and security, without relying on the slightest argument in support of that assertion, cannot be justified by the provisions of paragraph 2 of Article 1 of Protocol No. 7" (*Takush v. Greece*, 2012, § 63).

90. A general statement, given as the basis for an expulsion order, to the effect that the alien represented "a risk for [national] security", without any indication of the facts underlying that assessment and accepted without further explanation by the competent reviewing authority cannot justify an expulsion prior to the exercise of the procedural safeguards guaranteed by Article 1 of Protocol No. 7 (*Ljatifi v. the former Yugoslav Republic of Macedonia*, 2018, §§ 36-38).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dev.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudov.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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